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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

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.

RECORD ON APPEAL - VOLUME 4 OF 10

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
Docket 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,)
Petitioners,)
v.)
SC DOR & Farmer's Telephone)
Cooperative, FTC Communications, LLC)
and FTC Diversified Services, LLC,)
Respondents.)
-----)

PRE-TRIAL CONFERENCE

Tuesday, May 14, 2019
9:33 a.m. - 10:27 a.m.

The pre-trial conference before the Honorable Ralph King Anderson, III was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 14th day of May 2019, before Cortney N. Glover, Court Reporter and Notary Public in and for the State of South Carolina.



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EXHIBITS

(There were no exhibits marked for this pre-trial conference.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.



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1 **CALL TO ORDER:**

2 **THE COURT:** This is a hearing in the matter of
3 Charleston County, Florence County, et al,
4 petitioners, versus South Carolina Department
5 of Revenue, Farmer's Corporative, Inc., FTC
6 Communications, LLC, and FTC Diversified
7 Services, LLC, respondents. Docket number is
8 17-ALG -- excuse me -- ALJ-17-0237-CC. All
9 right.

10 It's -- this is a pre-hearing hearing, but
11 there's been a motion for summary judgment
12 filed, a motion in limine filed, and, well,
13 whatever else. Therefore I decided to get a
14 court reporter and make this a little more
15 formal. I did want to tell y'all up front that
16 I had that ---

17 And Ms. Geer, do you need another seat?

18 **MS. GEER:** I'm fine, your Honor. Thank you.

19 **THE COURT:** Oh, along those lines, you requested
20 that we start at 10:00 o'clock. I just didn't
21 get a response from everybody ---

22 **MS. GEER:** It was no problem at all.

23 **THE COURT:** And I'm fine with starting it at 10:00.
24 As a matter of fact, y'all are the ones that
25 wanted it at 9:30.



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1 MS. GEER: We outsmarted ourselves.

2 THE COURT: Well, so I could move that down the
3 road. But I want to tell y'all ---

4 (Off-the-record discussion.)

5 THE COURT: I was gonna tell y'all -- maybe I
6 started a little bit of this confusion. So I
7 was gonna refer to -- as a matter of fact, the
8 taxing unit fees in fees in your opposition,
9 you quoted my order, in which I stated that the
10 Department's -- and I was talking about --
11 well, I'll just read it.

12 If the Department's interpretation is correct,
13 then the settlement agreement remains
14 unimpaired. On the other hand, if the
15 Department's interpretation of 12-37-220(B)(10)
16 is incorrect, then the settlement agreement
17 would be compromised by the faulty
18 interpretation of Section 12-37-220(B)(10) upon
19 which it is based.

20 What I want to explain to y'all is, at least
21 the way that I view this case at this point in
22 time, is I have no intention of going behind
23 the settlement agreement. I think the
24 settlement agreement, in and of itself, is
25 something that I would not seek to dissolve in



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1 any way or to find invalid. However, what the
2 Department is doing is taking the legal
3 determinations within that settlement agreement
4 and projecting it upon the counties, as far as
5 what they must approve and the payment -- or
6 accepting the payment of taxation.

7 And there is where my problem lies. So I'm
8 not -- when I say the language that I'm
9 saying -- and I'm trying to be careful because
10 this is a muddy mess. I see Mr. Von Lehe's
11 shaking his head.

12 **MR. VON LEHE:** Yes, your Honor.

13 **THE COURT:** And I can barely see you. I wish we
14 could move that monitor a little bit. There
15 you go. But so I'm trying to do the nuance of
16 recognizing that I can't go behind the
17 settlement agreement but also recognizing that
18 the implications that the Department is seeking
19 to give that settlement agreement as far as
20 affecting the counties and the counties having
21 a right to when they are told to pay -- or to
22 the levy of taxes as to having input.

23 Now, I know you -- y'all take the position that
24 they don't have any. So far, I don't agree
25 with that, okay? So with that said, I hope



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1 everybody understands as best I understand how
2 we're proceeding in this case. And I'll hear
3 from y'all. So who's going?

4 **MR. LUTHER:** Your Honor, we do have one, I guess one
5 might call this a housekeeping -- matter that
6 we would like to have discussed first, if we
7 may?

8 **THE COURT:** On the exhibits?

9 **MR. LUTHER:** The matter of having to do with Rick
10 Reams [ph].

11 **THE COURT:** Okay.

12 **MR. LUTHER:** And if you don't mind ---

13 **MR. CARTIN:** Farmer's has agreed that they'll
14 withdraw Mr. Reams as a witness, and therefore
15 we are happy to withdraw our motion in limine
16 to exclude him and would ask -- it's also been
17 requested that that be removed from the record.
18 And we have no objection to that at all.

19 **THE COURT:** All right. That is hereby granted.

20 **MR. VON LEHE:** Thank you, your Honor. I do have a
21 withdrawal letter from Mr. Reams with me.

22 **(Off-the-record discussion.)**

23 **MR. VON LEHE:** I'm just informed that it is Rick
24 Reames who has requested his own withdrawal for
25 which ---



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1 THE COURT: Okay.

2 MR. VON LEHE: --- the taxpayers agreed -- Farmer's
3 had agreed.

4 THE COURT: Well, he can request it all he wants.
5 If y'all wanted to subpoena him ...

6 MR. VON LEHE: Yes. Because there are two different
7 things here, your Honor, just to be for
8 clarity. One of them is appearance as an
9 expert witness. He's withdrawing with regard
10 to that.

11 THE COURT: Okay.

12 MR. VON LEHE: The other is -- has to do with this
13 settlement agreement and his -- what he did
14 with regard to that. That's just a matter of
15 fact. We intend to -- and I think it's going
16 to be agreed -- to put his affidavit in
17 evidence ---

18 THE COURT: Okay.

19 MR. VON LEHE: --- with regard to what he did with
20 regard to the settlement agreement. So
21 basically that's we are. But so long as a
22 reference to him, which you say is granted, the
23 reference to him to him with regard to the
24 ethics violation, so long as that is being
25 withdrawn, then I see no reason to read his



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1 withdrawal letter.

2 **THE COURT:** His ethics violation?

3 **MR. VON LEHE:** Yes. There's an allegation this is
4 why he withdrew. There's an allegation in
5 their motion that he violated the ethics laws
6 because he accepted an assignment too soon
7 after he left as director of the Department.

8 **THE COURT:** Oh, I missed that. Thank you.

9 **MR. VON LEHE:** Yes.

10 **THE COURT:** Okay.

11 **MR. VON LEHE:** So as long they're withdrawing it and
12 it's not gon' be in the record, there no point
13 in my reading his letter in defense, one might
14 say.

15 **THE COURT:** Okay.

16 **MR. VON LEHE:** But it's not our contention.

17 **THE COURT:** Okay.

18 **MR. VON LEHE:** Thank you, your Honor.

19 **THE COURT:** All right. What's next?

20 **MR. LUTHER:** Your Honor, I guess if you want to
21 address the motion for summary judgment. And
22 I don't know that I have much to add at this
23 point, understanding where the Court lies and
24 his position on this.

25 **THE COURT:** I have taken positions in the past, had



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1 argued -- lawyers argued why I'm wrong and
2 learned that I was wrong. So you still got a
3 shot at it.

4 **MR. LUTHER:** Understood. And why don't we do this.
5 And I'll keep it brief because I think most
6 of -- I think all of our argument is contained
7 in the memo that we filed.

8 **THE COURT:** And I did read it.

9 **MR. LUTHER:** And I know you did. And so in our
10 view, the Department's view, there's really two
11 legal questions that have to be answered for
12 purposes of the summary judgment motion and
13 then two sets of factual questions.
14 The first legal question is: Does the
15 Department have the authority to settle cases?
16 And I think everybody seems to agree that they
17 do.

18 **THE COURT:** 100 percent agree with that.

19 **MR. LUTHER:** And so the second legal question is:
20 If they settle a case, what impact or what is
21 the consequence of that settlement agreement?
22 And we have a statute, again, on point that
23 says, provided that certain factual elements
24 are met, the import of that settlement
25 agreement is that it's final and conclusive.



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1 And so those are the two ---

2 **THE COURT:** And I agree with you on that.

3 **MR. LUTHER:** And I understand.

4 **THE COURT:** Here's -- I think it is filed
5 inconclusive as to the parties of the
6 settlement agreement.

7 **MR. LUTHER:** I agree. And I think that's an issue
8 that I had ---

9 **THE COURT:** And I'll grant your summary judgment on
10 that.

11 **MR. LUTHER:** And that may be the -- sufficient for
12 purposes of the Department. I think that the
13 question that was concerning to us was whether
14 if a settlement agreement like this one is
15 entered into between the taxpayer and the
16 Department, that at some point that can be
17 undone.

18 **THE COURT:** And I don't think it should -- well, it
19 can be undone if there's fraud -- whatever the
20 three criteria.

21 **MR. LUTHER:** Correct.

22 **THE COURT:** And I don't think that's at issue here.

23 **MR. LUTHER:** And that was simply our point for the
24 motion, is that the evidence that's been
25 developed through the course of this litigation



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1 is insufficient. In fact, it hadn't been
2 alleged at all that it was fraud, malfeasance,
3 or misrepresentation.

4 **THE COURT:** There you go, malfeasance.

5 **MR. LUTHER:** I think the argument was that there was
6 invalidity. Perhaps there were some issues
7 with whether it's an enforceable contract. And
8 that's where I think the Court is struggling.
9 And I -- and quite frankly, I think this is
10 probably because it hasn't been fully
11 explained. I don't think the Department's
12 position -- if fact, I will say that the
13 Department's position is not that the
14 settlement agreement somehow binds -- that we
15 are binding the counties by the settlement
16 agreement. The settlement agreement is done
17 within the function of what the Department has
18 in its authority to determine exemptions. Once
19 we do that, the binding comes by operation of
20 law. And so whether the counties want to argue
21 that somehow that law doesn't apply to them in
22 this situation, which is we assess the
23 property; they bill it. That's certainly an
24 argument they can make. The Department's sole
25 position was when -- we have done what we are



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1 authorized to do, which is to review an
2 exemption and a refund request, to determine
3 the assessment of a particular piece of
4 property and if we so decide with the taxpayer
5 to settle that for a specific time period and
6 a specific set of property. Once we do, that's
7 as far as the Department goes. We then pass it
8 on to the counties. And by operation of law,
9 they may be required to issue refunds or not,
10 but we're not ordering them to to the extent
11 the settlement agreement contains that
12 language. It's simply parroting what the
13 statute says.

14 **THE COURT:** That's fair.

15 **MR. LUTHER:** And so I think in a nutshell, that
16 would be the Department's position and, again,
17 understanding where you sort of fall. I'm
18 happy to go through in more detailed argument
19 as to what we've argued and why we think the
20 facts show what they show but ---

21 **THE COURT:** All right. So far you and I are in
22 agreement. So I'll find out if I stay on that
23 page. But, I mean, I'm in agreement that
24 it's -- once you execute a settlement
25 agreement, then it's binding between the



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1 parties. And then we have to determine the
2 implications of that settlement agreement as to
3 the counties. So but what's your position
4 on ---

5 **MR. VON LEHE:** Your Honor, can I speak to that?

6 **THE COURT:** Well, I was just jumping real
7 quickly ---

8 **MR. VON LEHE:** As you wish, your Honor. As you
9 wish.

10 **THE COURT:** Go ahead. Go ahead.

11 **MR. VON LEHE:** But we would join him in his motion
12 in this -- in his motion. We think it is
13 binding on the counties as where we --
14 obviously that argue will continue.

15 **THE COURT:** Yes.

16 **MR. VON LEHE:** --- even though you have granted it,
17 I believe, or about to grant it with regard to
18 the taxpayer and the Department of Revenue.
19 And certainly we feel that is certainly proper
20 because there's been no allegation of there
21 being anything improper about how it was done.
22 So but with regard to the counties themselves,
23 the settlement agreement obviously involves a
24 county property tax levied by a county. And
25 therefore this taxpayer, having entered into an



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1 agreement with the Department of Revenue, when
2 they did that, it would be anticipated -- and
3 we think correctly -- that by entering into
4 that agreement, that that would bind the
5 counties to follow the terms of that agreement
6 because that is what we believe to be the law.
7 So that would be our position.

8 **THE COURT:** Okay.

9 **MR. CARTIN:** Your Honor, I guess the one question I
10 have to ask is: If they can enter into a
11 settlement agreement that completely disposes
12 of every issue in the case, well, then what's
13 left for the counties to dispute? I mean, I
14 think that's the argument that's being made
15 here is that essentially we have resolved these
16 past five tax years. We've made this a
17 substantive determination as the application of
18 the exception. But counties, you still have a
19 right to appeal. But it's a meaningless right
20 if their interpretation is correct. There's
21 nothing for us to appeal, your Honor.
22 To back up a little bit, I don't want to go too
23 much into fully fleshing out my argument, but,
24 A, I think we could all agree that in order to
25 for an agreement to be formed under



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1 South Carolina law, there has to be an offer,
2 an acceptance, consideration for it. And this
3 settlement agreement's no different. And part
4 of the fundamental principles of contract law
5 is the necessary parties to a settlement, in
6 order to for it to be appropriately formed,
7 need to actually be signatories to it.

8 **THE COURT:** Well, I see all what you're saying on
9 that. Honestly, if it wasn't for the statute
10 granting review to the counties in my -- and
11 least my current viewpoint of that, at least in
12 this stage of litigation, I could see that --
13 the Department having the right to enter into
14 a settlement agreement that would be binding
15 upon the counties. It's just my problem in
16 this entire case, I have to go back and re-read
17 my previous orders to refresh my memory on all
18 this -- was the existence of the statute that
19 granted the counties the authority to have
20 review. And if you have that statute, then
21 what -- how does this all mesh? And so I don't
22 want to cut you completely off your contract
23 analysis. I don't think it's as strong of an
24 argument, at least for me right now.

25 **MR. CARTIN:** And I want to make sure I don't rehash



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1 other ground where the Court's already
2 inclined, but I think the implication is
3 that -- and the question I would just have to
4 pose to DOR is: Well, left for the counties to
5 appeal if all of these issues can be resolved?

6 **THE COURT:** Let me stop you here. I, you know,
7 have set forth that I don't have a problem
8 granting a partial summary judgment as to
9 whether a settlement agreement is binding upon
10 the parties to that settlement agreement and
11 that there has been no evidence offered to me
12 that there was a misrepresentation,
13 malfeasance, or fraud. And at this -- and
14 therefore I can grant that.

15 Now, that still reserves the legal implications
16 as to the counties regarding the settlement
17 agreement. Like I said, this case would in my
18 view, still go forward, obviously. What is
19 your position on that?

20 **MR. CARTIN:** Two things. I think we have at least
21 two arguments, your Honor, that -- and they
22 both center around that legality argument. I
23 think it's fairly unobjectionable that DOR and
24 the taxpayer cannot enter into a settlement
25 agreement that is contrary to South Carolina



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1 law. So I would still assert that if we
2 prevail on the wireless issue, the tax
3 exemption issue that underlies this, that as a
4 matter of law that settlement agreement would
5 be based on an -- a misinterpretation and a
6 misapplication of the law that DOR could not
7 enter into.

8 **THE COURT:** They could enter into a settlement
9 agreement based upon a misinterpretation of the
10 law between themselves, I think. The issue
11 is ---

12 **MR. CARTIN:** Could the Court enforce it?

13 **THE COURT:** Yeah. And the implications. 'Cause you
14 used the word "implications." And I agree with
15 you on that. But that's not the component of
16 what I'm arguing about, if that's the right
17 word. It's not the right word I want to use.
18 But I -- that's basically not what I'm setting
19 forth that would be the part of the summary
20 judgment 'cause I -- the implications remain.
21 So I agree with you as -- on one hand but not
22 on the other. I think they can -- if two
23 parties want to come up to some skewed
24 interpretation of the law and bilaterally enter
25 into an agreement that's based on that skewed



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1 interpretation, then away they go. But I can't
2 take that interpretation and "project" -- is a
3 word I used earlier -- upon y'all.

4 **MR. CARTIN:** And I guess the question I would ask,
5 your Honor, is this, is we would take the
6 position that as to these folks, it -- a
7 settlement agreement would certainly be binding
8 to the actual signatories. And I think that's
9 the meaning of that statute, to allow the folks
10 who are actually signatories to those
11 settlement agreements not to come back and say,
12 you know, you told me this and now you're
13 changing your tune here. If we're gonna
14 construe all that together, then there has to
15 be a substantive right of the counties in order
16 to appeal. And I think that would mean that if
17 we could show that there was a faulty
18 underpinning for the settlement agreement
19 that -- for instance, in addition to the tax
20 exemption being inappropriately granted, the
21 time periods that were covered by the
22 settlement agreement were in contravention of
23 what DOR has statutory authority to do, while
24 they may still be bound by it, in order to for
25 us to have a meaningful right of appeal to



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1 avoid the loss of a significant sum of money,
2 we would necessarily have to have the right for
3 this Court to be able to find that that
4 settlement agreement, while binding to them, is
5 not binding as to us and that we should ---

6 **THE COURT:** That's what I'm telling you.

7 **MR. CARTIN:** Okay.

8 **THE COURT:** I think that's still an issue whether --
9 which way I decide.

10 **MR. CARTIN:** Right.

11 **THE COURT:** I'm gonna withhold. But that issue is
12 still open.

13 **MR. CARTIN:** Okay. And that -- I mean, that's our
14 concern, your Honor, just to be very blunt
15 about it, is that we believe in order to have
16 a meaningful appeal right, we should be able to
17 make those arguments about the application, the
18 exception, as well the time periods that can be
19 rightfully covered by DOR in a settlement
20 agreement. And if we prevail on those issues,
21 that my client should not have to make this
22 massive refund and lose this revenue going
23 forward.

24 **THE COURT:** Okay. All right. Any response?

25 **MR. LUTHER:** I think two things: One, I would



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1 respectfully disagree that the question of the
2 exemption and whether it's valid could somehow
3 retroactively unwind the settlement agreement.
4 The Department ---

5 **THE COURT:** The question of the exemption
6 retroactively do what?

7 **MR. LUTHER:** So the argument that the counties are
8 making is that, first, the Court has to look at
9 the exemption and whether -- in particular
10 wireless assets qualify for the rural telephone
11 service exemption. And if the Court finds that
12 they don't, then that then renders a settlement
13 agreement in which the compromise was for a
14 specific period to grant the exemption, it
15 renders that settlement agreement's somehow
16 invalid because it violates the law.

17 **THE COURT:** That, I agree with you on. It would not
18 render the settlement agreement between the
19 parties invalid. Like I said earlier, y'all
20 can come up with whatever viewpoint of the law
21 you wish to make and enter into a settlement
22 agreement.

23 **MR. LUTHER:** And I think ---

24 **THE COURT:** I agree it would be valid. The
25 implications to them would be invalid. And



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1 I -- presuming that I have the right to make
2 that determination. And as I told all of
3 y'all, at least right now, I don't know if
4 there's an inherent right for the counties to
5 come in and challenge the Department -- excuse
6 me, y'all. I had bronchitis -- entering into
7 a settlement agreement that has implications
8 upon them. But for there being a statute that
9 grants, at least potentially, we'll iron it
10 out, that authority.

11 MR. LUTHER: Right.

12 THE COURT: And there -- where I'm coming from.

13 MR. LUTHER: Okay.

14 THE COURT: So I'm fine with what you just said so
15 far.

16 MR. LUTHER: Okay.

17 THE COURT: You had two. That was the first one,
18 wasn't it?

19 MR. LUTHER: I do. The second one is --
20 Mr. Cartin's argument is if the settlement
21 agreement, if your Honor rules, as you've
22 indicated you're inclined to do, that
23 somehow ---

24 THE COURT: I'm not inclined. I've set forth that
25 in the pleadings, and I probably -- that's my



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1 viewpoint now. But I'm also subject to change.

2 So maybe inclined is a little too strong.

3 **MR. LUTHER:** Fair enough.

4 **THE COURT:** I perceive it that way right now.

5 **MR. LUTHER:** Well, do think -- regardless, I do
6 think the counties would -- that there still is
7 the element of -- or the opportunity for them
8 to consider the exemption for years after the
9 settlement agreement. And we certainly put
10 that in our motion for summary judgment that
11 the only thing we're trying to get -- decide as
12 a matter of law at this point for purposes of
13 streamlining next week's hearing, quite
14 frankly, is the settlement agreement and the
15 years covered by that. I understand the Court
16 has already ruled on the jurisdictional issue
17 in terms of the ability of the Court to hear
18 this underlying case.

19 **THE COURT:** Yeah.

20 **MR. LUTHER:** And so if that's the Court's position
21 then 16, 17, 18 and prospectively are all
22 issues that are yet to be decided as to the
23 exemption and its application to wireless
24 assets. So they're not -- I just would
25 disagree that the counties are totally out of



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1 an appeal right at this point if the Court were
2 to grant our motion for summary judgment.

3 **THE COURT:** Okay.

4 **MR. VON LEHE:** Your Honor, if I may?

5 **THE COURT:** Yeah.

6 **MR. VON LEHE:** I think the dilemma here that we're
7 all considering, I think the answer to that is
8 when you have a settlement agreement, these --
9 and this is to be argued and I understand
10 this -- the sections, the two sections which
11 you cited earlier in your orders do not apply
12 when you have a settlement agreement. We
13 can't ---

14 **THE COURT:** Well, we've got to decide.

15 **MR. VON LEHE:** That is what we have to decide. But
16 the counties, in our opinion, of course, and
17 our opposition is when a taxpayer has a
18 settlement amount with the Department of
19 Revenue, the counties cannot undo that
20 settlement through some type of reliance on
21 these statutes. Those statutes of appeal were
22 not meant for when a settlement has been
23 entered into. Those statutes on appeal were
24 meant when there was a -- an existing
25 controversy between the Department of Revenue



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1 and the taxpayer.

2 **THE COURT:** I just -- the problem I have with that
3 is -- so the counties have less rights when
4 there's a controversy but -- no, no -- more
5 rights when there's a controversy that goes
6 forward actually gets litigated. But somehow
7 or another, when there's a settlement
8 agreement, they -- and I don't want to say
9 "magically." I can try to come up with a
10 better word, but I'm gon' stick with
11 "magically" recognizing its inherent flaw --
12 that they magically lose their rights. I just
13 struggle with that, Mr. Von Lehe.

14 **MR. VON LEHE:** Your Honor, here's why we believe
15 that that is the case.

16 **THE COURT:** Okay.

17 **MR. VON LEHE:** The entire scheme of the Tax
18 Procedure Act is based on the fact that
19 exemptions are within the purview of the
20 Department of Revenue and not the counties.

21 **THE COURT:** Uh-huh.

22 **MR. VON LEHE:** And there's a reason for that,
23 obviously. There are political reasons for it.
24 There are reasons to -- that's -- they are the
25 ones with the expertise to determine these



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1 various exemptions, et cetera, et cetera. So
2 it is in their hands as to whether or not an
3 application for exemption will be granted or
4 not. And this application for exemption,
5 having been made within our judgment within the
6 proper type periods, even though that is really
7 no longer in question because the settlement
8 agreement hopefully has been availed. But the
9 whole scheme of the property tax laws are that
10 when the Department of Revenue and the taxpayer
11 are entered into a settlement, that is final.
12 I can think of -- there are just -- this thing
13 is going on -- the counties, they have their
14 properties that they assess and they look at.
15 They are entering into agreements with
16 taxpayers over the properties that they assess
17 and that they look at. It doesn't include
18 utilities, of course. That's within the
19 Department of Revenue's purview. But every
20 time one makes an appeal with the County,
21 making an appeal with the County on a matter
22 with the County, it's within the County's -- a
23 jurisdiction, the County enters into that
24 settlement agreement. It's happening every day
25 all over the state. The Department of Revenue



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1 doesn't get involved in that because it's not,
2 quote, their business. Here's a situation in
3 which ---

4 **THE COURT:** What does that have to do with ---

5 **MR. VON LEHE:** --- we have the opposite side.
6 Here's where we have the opposite side. It's
7 the Department of Revenue's business to
8 determine if property is exempt. That is
9 absolutely clear. They've made that
10 determination. And there has been a settlement
11 entered into, and it has been a settlement
12 entered into, which there's no reason not to
13 recognize it or you have recognized it. So
14 that is -- pardon me using the word again --
15 that's the settlement of the issues. The
16 counties simply don't have a right to appeal a
17 settlement.

18 **THE COURT:** Okay.

19 **MR. VON LEHE:** I want to mention another thing too,
20 your Honor. One other thing, we're gonna get
21 to all this eventually, I know. But this term
22 "massive refund," we're gonna show these aren't
23 massive refunds. And it's always within
24 somebody's own purview as to how much money is
25 massive.



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1 THE COURT: Did I use ---

2 MR. VON LEHE: But I can tell you, this is no
3 massive refund.

4 THE COURT: Did you use that term?

5 MR. VON LEHE: No. He did just a moment ago.

6 THE COURT: Okay.

7 MR. VON LEHE: But this is no massive return. It
8 wouldn't make any deference if it were. But
9 it's simply not.

10 MR. CARTIN: Your Honor, under their interpretation,
11 what's to stop them ---

12 THE COURT: I'll tell you what, we're getting now
13 into the -- and I'm gon' let you argue ---

14 MR. CARTIN: Okay.

15 THE COURT: --- in response, but we're really
16 getting -- I started with summary judgment, at
17 which I -- and the -- to use your term, am
18 inclined to grant. But in the narrow areas.
19 But now we're actually getting into the case
20 itself, which I really don't know if we need to
21 jump too far into today.
22 But go ahead and respond.

23 MR. CARTIN: I think is this has to do with the
24 issue for the summary judgment is this: What's
25 to stop them from walking out the door right



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1 now, executing a settlement agreement, and then
2 completely wiping away our right to any review.
3 Their interpretation of the statute, there's
4 nothing. What's to stop them from a situation
5 where Department determination issues and
6 before the counties' appeal right runs, they
7 enter a settlement agreement which completely
8 wipes the issue off the books. They mention
9 that Mr. Von Lehe mentioned that there was some
10 sort of a holy and inherent right of the
11 Department of Revenue to make exemption
12 decisions. Now, they get the make the initial
13 decision, but our appeal right has to mean
14 something, your Honor. There's no limitation
15 on our appeal right. There's nothing in the
16 statutes, nothing in the regulations that say
17 our appeal right is in any way, shape, or form
18 limited. And if we're going to have a meaning
19 appeal right, your Honor, then their
20 interpretation of the settlement agreement,
21 which frankly I went through a lot of
22 hypotheticals with their witnesses, results in
23 the Department being able to determine when a
24 Department determination issues. And it's in
25 every instance that I could think of, always



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1 within their control, completely eviscerates
2 any right of appeal. There will never be an
3 appeal under the old statute or under Act 265,
4 your Honor, if this assertion of the settlement
5 agreement authority is upheld because it's just
6 too expansive in practical terms.

7 **THE COURT:** All right. Thank you very much. All
8 right. I'm not gonna issue a formal order
9 because of all things that we just said. Based
10 on what I have set forth in the record thus
11 far, I grant partial summary judgment as to --
12 well, I grant partial judgment finding
13 regarding the issue that parties to a
14 settlement agreement -- how did it word that
15 earlier? -- that a settlement agreement is
16 binding as to parties of the settlement
17 agreement itself. But I do not grant a summary
18 judgment relating the implications of that
19 settlement agreement upon the counties. Okay.
20 You were looking like you were thinking.

21 **MR. LUTHER:** Just listening.

22 **THE COURT:** Okay. All right. And I'm gon' stop
23 there.

24 **MR. LUTHER:** Your Honor, if I may? So is it fair to
25 understand your ruling to also say that as a



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1 matter of law this particular case the evidence
2 shows that it was approved by the director and
3 that there was no ---

4 **THE COURT:** Now, I'm not gon' go in there yet; no.

5 **MR. LUTHER:** Okay.

6 **THE COURT:** That may be implications down the road
7 that I -- I'm not so sure about that evidence
8 and how convincing it will be for me. But I'm
9 not foreclosing it at this point in time.

10 **MR. LUTHER:** Okay. Thank you.

11 **THE COURT:** All right.

12 **MR. CARTIN:** And so, your Honor, just to clarify, I
13 would not see that as having any limitation on
14 the evidence we can present at the upcoming
15 trial, that limited summary judgment ruling.
16 We're still able to present evidence about all
17 the tax years and to make all of our arguments,
18 is that ---

19 **THE COURT:** I think so, yeah. All right.
20 Mr. Von Lehe?

21 **MR. VON LEHE:** No response on that, your Honor. I
22 believe that's another motion.

23 **THE COURT:** I was going to say that I have recently
24 heard a case that I think you should have
25 participated in it more.



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1 MR. VON LEHE: Thank you, your Honor. Quite
2 frankly, I'm not sure what it was, but I would
3 like to have been in it.

4 THE COURT: I'm talking about a case that you may
5 have been in. You might should have
6 participated in it more but ...

7 MR. VON LEHE: I think that make two of us.

8 THE COURT: Okay.

9 MR. CARTIN: Your Honor, I could be very quick on
10 our motion in limine.

11 I think that's the only outstanding matter; is
12 that right?

13 Mr. Douglas Meredith was an expert witness who
14 was positive as an expert in a number of
15 different areas.

16 THE COURT: I was -- just to let you know, I've had
17 a lot going on. I haven't read the motions in
18 limine. So y'all might need to be a little
19 more particular in those.

20 MR. CARTIN: Understood, your Honor. And I
21 typically don't move for motions in limine
22 at -- before this Court. I understand it's a
23 bench trial and your Honor is more than capable
24 of sorting through the evidence and making
25 appropriate -- sequestering all certain



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1 evidence where appropriate.

2 **THE COURT:** Well, I'll add one more to it. Do you
3 think if I issue a motion in limine today, it's
4 binding?

5 **MR. CARTIN:** I think it could help us in the
6 efficient administration of this trial, which
7 has ten witness. And I'm really kind of
8 worried we're not gonna be able to do it all in
9 a week. But I think this is such a clear issue
10 of law that the Court could set forth a ruling
11 today that would be almost unassailable on
12 appeal and ---

13 **THE COURT:** Well, here's what I want you to
14 understand is when a Court grants a motion in
15 limine, it is binding only in two instances.
16 In other -- and so I -- you can be clear, I
17 grant the motion in limine; the trial proceeds;
18 then you get to the point where the Department
19 or Farmer's offers evidence. That evidence
20 could still potentially get introduced. 'Cause
21 a motion in limine is only binding if it is
22 offered immediately before the evidence is
23 presented into evidence or if the court says,
24 I hereby grant the motion in limine and
25 would -- and hereby find that it's binding.



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1 And my struggle with that is I've never done
2 that. And I don't intend to do it here because
3 as a trial develops, things could happen. And
4 that's why that is the theory behind not
5 binding Courts' determinations in motion in
6 limines. Because as a trial, develops, things
7 can happen and the Court would say, okay. I
8 now see where my ruling was in error.

9 And I'm going to grant or allow the evidence to
10 come in. So I, by and large, treat motions in
11 limines as education purposes because it
12 ultimately will not be binding at the time
13 until the evidence is actually offered.

14 **MR. CARTIN:** And, your Honor, I have to make a
15 proffer as well ---

16 **THE COURT:** Okay.

17 **MR. CARTIN:** --- at which we ---

18 **THE COURT:** So proceed on that theory, is what I'm
19 just letting you know.

20 **MR. CARTIN:** Well, I'm happy to do this, your Honor.
21 I mean, if I see the way that the -- you know,
22 the Court is likely to rule, if we could
23 preserve the arguments that we've set forth in
24 this motion in limine till the time of trial,
25 what I want to do is avoid a protracted



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1 two-hour-long debate about the issue. And the
2 issue in this motion in limine is that they
3 have an expert who's essentially going to read
4 the law to the Court, read federal law to the
5 Court and then argue about what that federal
6 law means.

7 **THE COURT:** Okay.

8 **MR. CARTIN:** And I think that's a different
9 situation than other -- you know, other motions
10 in limine that I've filed before -- not before
11 this Court but in other circumstances that are
12 more of technical issues. This is an expert
13 who's been asserted to opine on the law, and
14 it's entirely the province and duty of this
15 court to say what the law is.

16 **THE COURT:** I agree with that. I've granted that
17 recently.

18 **MR. CARTIN:** The specific category of testimony we
19 object to is that this eyewitness is going to
20 talk about how the Federal Communications
21 Commission's rulings, directives, and
22 regulations view and address wireless telephone
23 service and what -- wireless telephone service.
24 So he's essentially, from his testimony, going
25 to read the rulings, directives, and



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1 regulations of the Federal Communications
2 Commission into the record, as far as I can
3 tell from what he said he's going to do, and
4 then argue -- basically make a legal argument
5 before the Court about what these things mean.
6 So that's the basic in a nutshell what the
7 motion in limine was about.

8 **THE COURT:** Okay.

9 **MR. CARTIN:** I think it's utterly improper, and we
10 shouldn't have to even spend any time with it
11 but ---

12 **THE COURT:** Okay. I'd like to hear your response to
13 that.

14 **MR. VON LEHE:** Thank you, your Honor. Yes. We
15 certainly view this quite differently
16 obviously. This is not a legal matter. He is
17 not going to testify with regard to the law.
18 In there -- they state in their motion that
19 basically this isn't a question of what the
20 Federal Communications Commission or the
21 South Carolina Public Service Commission
22 believes telephone service means. Instead it's
23 a question of what the South Carolina property
24 tax law means, and therefore actions of these
25 entities in interpreting that phrase "telephone



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1 service" are irrelevant. They've got two
2 objections. One's on relevance, and the other
3 one is as a matter of law that he's gonna
4 testify about.

5 Now, on question of relevance, certainly. We
6 agree this is a question of South Carolina
7 property tax law. I find absolutely nothing in
8 the deposition that was taken of Mr. Douglas
9 Meredith that has any comment on South Carolina
10 property tax law on whether or not these items
11 are exempt or not. That's the ultimate
12 question before the Court. So but what I --
13 what we do find is that, as a matter of fact,
14 of course, that's the whole purpose of an
15 expert witness is to help the Court in reaching
16 of decisions about matters of fact of knowledge
17 about -- and there's no definition of telephone
18 service. Again, I'm going back to their
19 motion. There's no definition about telephone
20 service in the South Carolina tax law to help
21 the Court define it. The dictionary is kind of
22 muddled up if one looks at it. Depends on what
23 dictionary you want to look in. But it still
24 doesn't do you any good. So looking at other
25 venues where the term is commonly used like the



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1 FCC and the South Carolina Public Service
2 Commission, it's perfectly proper. He is an
3 expert ---

4 **THE COURT:** Can it also be made though in a proposed
5 order or a motion to clarify that for me?

6 **MR. VON LEHE:** I don't think so, your Honor, because
7 his expertise is such that someone, an expert
8 in this area, is necessary. I mean, when you
9 go -- when you look at the cases -- and they've
10 given three cases to it, which has to do
11 with -- or rule, as you know, this is all about
12 Rule 702. Of course, this deducts, if you
13 understand that. The experts with specialize
14 knowledge will assist the trier of fact to
15 understand the evidence and to determine a fact
16 issue, qualify witness by knowledge, skill,
17 experience, training, et cetera, may testify
18 thereto, meaning give the Court the benefit of
19 this specialized knowledge in that area. I
20 don't think it's been questioned that
21 Mr. Meredith has that specialized knowledge.
22 His resume indicates that he has it. So
23 there's no question Mr. Meredith has the
24 specialized knowledge.
25 And then another point which is one of their



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1 central arguments, they're arguing this is not
2 telephone service. All right. That's one of
3 their arguments, this is not telephone service.
4 That may even be their main argument.
5 Mr. Meredith can tell the Court what facts have
6 been used by these bodies, these regulatory
7 bodies in talking about telephone services by
8 applying these rules. He's -- you know, help
9 the Court in making determination of facts in
10 this area.

11 Another specific one here, they've alleged
12 that, look, nothing after 1978 can be exempt.
13 That's one of their primary arguments. All the
14 assets that have existed in 1978 can be
15 exempted. Mr. Meredith, he knows what assets
16 existed in 1978. He knows what assets exist
17 today to deliver telephone service. He can
18 discuss, contrast, et cetera. This is a part
19 of his expertise, which hopefully will aid the
20 Court in making this determination once all the
21 evidence is presented.

22 So, I mean, yeah, there are a couple of
23 engineers that have -- that are going to
24 testify, and they're good engineers. You know,
25 they're gonna talk about things like bandwidth,



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1 megabits, megabytes, backhaul rates. This man
2 can tell us in plain English what these
3 things -- what these -- terminology means and
4 what these assets pertain to.

5 **THE COURT:** I think your second part is a stronger
6 argument than your first.

7 **MR. VON LEHE:** He's certainly not being asked to
8 answer the ultimate question that's before the
9 Court. He's not being asked to do that; he
10 won't be asked to do that. Now, we looked at
11 this cases that have been cited. There's three
12 of them that they have cited. Well, we think
13 the cases are helpful to us because they show
14 the other side of this coin, what you can't do,
15 not what you can do. We've got a number of
16 cases we'd like to bring to the Court's
17 attention to show what can be done. But with
18 regard to what can't be done, they cited three
19 cases.

20 And they start with the case of Dawkins. And
21 in that case, Professor Freeman entered an
22 affidavit. And he -- and that affidavit
23 contained an opinion on the ultimate issue in
24 the case: Should a summary judgment motion be
25 granted? Professor Freeman's affidavit said,



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1 yes, it ought to be. It was excluded because
2 of -- it's a -- it was an opinion of law based
3 on -- I guess a law professor could have that.
4 That would be an easy way to be tripped up.
5 But it was a question of law, and so he went on
6 to usurp the Court's authority. If you look at
7 what Mr. Meredith is going to propose in his
8 expert witness disclosure, his deposition, he's
9 not going to give any testimony along those
10 lines as Mr. Freeman attempted to do. And so,
11 of course, Mr. Freeman's deposition was
12 correctly not allowed.

13 **THE COURT:** Well, have y'all responded to the motion
14 in limine ---

15 **MR. VON LEHE:** We don't have a written response yet,
16 your Honor. This is sort of it for the moment.

17 **THE COURT:** I'll tell you what I'm gonna do. If I'm
18 not gonna rule on it specifically today, you've
19 got your motion in limine. I'll -- I would
20 like to -- y'all to give a written response.
21 And then by trial, I'll be hopefully primed and
22 ready to go to make a decision.

23 **MR. VON LEHE:** Yes, your Honor.

24 **THE COURT:** How about that?

25 **MR. VON LEHE:** That's fine.



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1 **THE COURT:** And I will tell you, if I can read it --
2 when it comes to decisions of law, if I can
3 read it, I would prefer to read a well-written
4 proposed order regarding the law. But -- so
5 that would just be my preference. So I'll punt
6 on that one. There was one more thing I
7 thought. Something about exhibits?

8 **MR. CARTIN:** I believe we've happily resolved all of
9 that.

10 **THE COURT:** Well, good. Okay.

11 **MR. CARTIN:** I think that's right. We want to talk
12 about presentation.

13 **MR. LUTHER:** There was a -- we've been internally
14 discussing what the order of trail ought to be,
15 given the unique scenarios here.

16 **THE COURT:** Yeah.

17 **MR. LUTHER:** I think -- and y'all correct me if I'm
18 wrong -- we've agreed that the counties would
19 go present first as the petitioners for
20 maintaining the standard process, although I
21 think they would have a burden -- that issue
22 may be resolved now -- to the extent they were
23 trying to undo the settlement agreement, they
24 would have the burden on that. The taxing --
25 the taxpayer Farmer's would then rebut first,



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1 and then the Department would go third. And
2 that's the order we talked about yesterday.
3 Is that right?

4 **MR. CARTIN:** It is. I would disagree with the
5 embedded statement about the settlement
6 agreement, but that's the general order. And
7 then you mentioned the surrebuttal that --
8 Farmer's, as they are taxpayer who bears the
9 burden of proving that they are within the
10 limits of the exemption, they would have a
11 surrebuttal of the technical issue
12 particularly.

13 **THE COURT:** And that is why -- I don't know if y'all
14 know -- I've had our rules changed about the
15 judge determining the order of the case. What
16 is happening here is the very reason that I did
17 not like the rules that existed and made it
18 discretionary now. So thank y'all. You did a
19 good job.

20 **MR. CARTIN:** The other -- we have one witness, your
21 Honor, who we'll need to take out of order I'm
22 hoping to do Thursday morning.

23 **THE COURT:** Oh, you only have one? Thank you very
24 much. I'll hold you to that.

25 **MR. CARTIN:** Only one out of order. The other we



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1 managed to bring well within the limits of our
2 case in chief. That's with the consent of the
3 other parties, and we'll do our best to ---

4 **THE COURT:** I thought we were about to shorten this
5 thing. Okay.

6 **MS. GEER:** Your Honor, one other logistical
7 question: Is it ever possible to get a third
8 table in the other room where you are?

9 **THE COURT:** We'll be in the bigger room.

10 **MS. GEER:** Yeah.

11 **THE COURT:** But, yeah, we can get -- if --
12 especially if there's not a hearing proceeding
13 in one of those other smaller courtrooms, we
14 could probably take it out.

15 **MS. GEER:** Okay.

16 **THE COURT:** So yeah.

17 **MS. GEER:** And the other thing we talked ---

18 **THE COURT:** Maybe we'll just go buy another table
19 and have it stuck somewhere.

20 **MR. LUTHER:** I've got some folding tables I can
21 bring from home if I need to.

22 **THE COURT:** Well, I don't know if I want your tacky
23 tables.

24 **MR. LUTHER:** They're nice folding tables.

25 **THE COURT:** Oh, okay. Well, I'm up for that.



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1 MR. LUTHER: From Walmart.

2 MR. VON LEHE: Your Honor, there are stores like
3 Rent-A-Center, for example, where I can rent a
4 table for a short period of time.

5 THE COURT: Yeah. And then I'll end up with another
6 Rent-A-Center case in front of me.

7 MR. LUTHER: I don't think Rent-A-Center wants to be
8 anywhere near the Department of Revenue.

9 MS. GEER: The other thing that I had talked to
10 McCarben [ph] about beforehand is possibly
11 starting Monday at 10:00 as well.

12 THE COURT: Yeah, yeah. I'm fine with that.

13 MS. GEER: You agree with that? Okay.

14 THE COURT: Like I say, that -- y'all started that.
15 I'm flexible. I get here normally around a
16 quarter to 8:00, so anywhere from 8:00 on down,
17 I'm good.

18 MS. GEER: Okay.

19 THE COURT: But y'all ...

20 MS. GEER: Did you want talk about going late? I
21 can't remember how landed on Taylor.

22 MR. LUTHER: So on the first day, your Honor, we
23 have one witness who is sort of the most
24 popular witness in this trial. I think that's
25 a nice way of saying it. And everybody is



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1 going to probably need to spend some time with
2 him. The order of presentation for the
3 counties and the other taxing entities would be
4 we have the CFO of Clarendon County, who will
5 be probably a short witness. I think the
6 parties have talked about limiting our opening
7 statements to 15 minutes each to just
8 efficiently use the Court's time. And then we
9 would present Mr. Anthony and Taylor Ingram
10 [ph], who is a utility assessment coordinator
11 for the Department would be our next witness in
12 our case in chief. Again, a lot of attention
13 will probably be focused on this witness. So
14 Mr. Ingram lives in Charleston. And in order
15 to accommodate his schedule, we were hoping we
16 might be able to go a little bit later on that
17 Monday night beyond that 5:00 o'clock. I don't
18 think it would be anything to significant. We
19 could certainly truncate our lunch period. But
20 and we want to be mindful of the staff and --
21 who has to keep the doors open and everything
22 like that. We don't want to burden them too
23 much but ---

24 **THE COURT:** I can go farther.

25 **MR. LUTHER:** Okay.



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1 THE COURT: I go past 5:00 o'clock all the time. I
2 didn't know I had a 5:00 o'clock ---

3 MR. LUTHER: Understood.

4 THE COURT: Was I sticking with 5:00 o'clock
5 recently? I don't think I ---

6 MR. LUTHER: Not that I recall, your Honor.

7 THE COURT: Yeah.

8 MR. LUTHER: As a matter of fact, I know not.

9 MR. CARTIN: I think I remember seeing Sam Tolbert
10 up here, one of our experts, get grilled till
11 8:00 o'clock at night by Mr. Thomas, my
12 colleague, when he was here.

13 THE COURT: Yeah. So I'll -- I don't think that's a
14 time frame y'all have to worry about. I would
15 like to just give you forewarning if you go
16 late, just so that I can help my staff and me
17 work out any logistics. Especially the most
18 important thing would be the court reporter.
19 Because if she decides to leave, we're all
20 through anyway. All right. Thank y'all very
21 much.

22 (There being no further questions, the pre-trial
23 conference concluded at 10:27 a.m.)
24
25



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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
Docket 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,)
)
Petitioners)
)
v.)
)
South Carolina Department of)
Revenue, Farmer's Telephone Coop,)
Inc., FTC Communications, LLC and)
FTC Diversified Services, LLC,)
)
Respondents)
)
-----)

ADMINISTRATIVE HEARING

Monday, May 20, 2019
10:02 a.m. - 4:10 p.m.
Tuesday, May 21, 2019
10:24 a.m. - 5:46 p.m.
Wednesday, May 22, 2019
10:03 a.m. - 4:19 p.m.
Thursday, May 23, 2019
9:34 a.m. - 4:39 p.m.
Friday, May 24, 2019
9:33 a.m. - 12:02 p.m.



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ROA 001514

ADMINISTRATIVE HEARING

Monday, May 20, 2019

10:02 a.m. - 4:10 p.m.

Tuesday, May 21, 2019

10:24 a.m. - 5:46 p.m.

Wednesday, May 22, 2019

10:03 a.m. - 4:19 p.m.

Thursday, May 23, 2019

9:34 a.m. - 4:39 p.m.

Friday, May 24, 2019

9:33 a.m. - 12:02 p.m.

The administrative hearing before the Honorable Ralph King Anderson, III was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 20th day of May, 2019 through the 24th day of May, 2019 before Travis McLeod, Court Reporter and Notary Public in and for the State of South Carolina.



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ROA 001515

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VickieLynn Mitchell

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EXHIBITS

(Joint Exhibit Numbers 1 through 189 were marked prior to the hearing; Joint Exhibit Numbers 1, 9, 13, 15, 16, 18, 20 through 28, 30, 32, 33, 34, 41, 49, 55, 58, 70, 76, 77, 78, 80, 81, 82, 83, 86, 87, 90, 91, 92, 95, 103, 131, 134, 136, 139, 143, 148, 149, 151, 153, 155, 156, 169, 178, 179, 183, 185, 186 and 190 were introduced into record as follows:)

Joint Exhibit Number 1 20,122,1007
(Farmer's Coop's Property Tax Return for
Tax Year 2011)

Joint Exhibit Number 2 20,1007
(Farmer's Coop's Property Tax Return for
Tax Year 2012)

Joint Exhibit Number 3 20,1007
(Farmer's Coop's Property Tax Return for
Tax Year 2013)

Joint Exhibit Number 4 20,1007
(Farmer's Coop's Property Tax Return for
Tax Year 2014)

Joint Exhibit Number 5 20,1007
(Farmer's Coop's Property Tax Return for
Tax Year 2015)

Joint Exhibit Number 6 20,1007
(Farmer's Coop's Property Tax Return for
Tax Year 2016)

Joint Exhibit Number 7 20,1007
(Farmer's Coop's Property Tax Return for
Tax Year 2017)

Joint Exhibit Number 8 20,1007
(Farmer's Coop's Property Tax Return for
Tax Year 2018)

Joint Exhibit Number 9 20,474,1007
(FTCC's Property Tax Return for Tax Year
2010)

Joint Exhibit Number 10 20,1007
(2010 Proposed Assessment for FTCC -
initial (May 28, 2010))

Joint Exhibit Number 11 20,1007
(FTCC's Amended Property Tax Return for
Tax Year 2010)

Joint Exhibit Number 12 20,1007
(2010 Proposed Assessment for FTCC -
Final (June 14, 2017))

Joint Exhibit Number 13 20,149,1007
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Year 2011)



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ROA 001519

Joint Exhibit Number 14	20,1007
(2011 Proposed Assessment for FTCC - initial (April 25, 2011))	
Joint Exhibit Number 15	20,660,1007
(Refund Claim - letter from Jeff Allen to SCDOR Requesting refund of property taxes for 2010-2011 (December 28, 2012))	
Joint Exhibit Number 16	20,151,1007
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(Letter from Linda Baltenbach to Samuel Crowe re: not being assessed for property taxes (July 26, 2012))	
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Joint Exhibit Number 22	20,130,1007
(Protest of 2012 assessment for FTCC (October 11, 2012))	
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Joint Exhibit Number 25	20,136,1007
(Letter from Taylor INgram to Jeff Allen re: 2012 FTCC appeal (January 15, 2014))	
Joint Exhibit Number 26	20,670,1007
(Email from Taylor Ingram to Jeff Allen (January 15, 2014))	
Joint Exhibit Number 27	20,691,1007
(Email from Jeff Allen to Taylor Ingram (January 30, 2014))	



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ROA 001520

Joint Exhibit Number 28	20,671,1007
(Letter from Jeff Allen to Taylor Ingram regarding 2010, 2011, and 2012 appeals (January 30, 2014))	
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Joint Exhibit Number 37	20,1007
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Joint Exhibit Number 38	20,1007
(2013 Proposed Assessment for FTCC - final (June 14, 2017))	
Joint Exhibit Number 39	20,1007
(FTCC's Property Tax Return for Tax Year 2014)	
Joint Exhibit Number 40	20,1007
(2014 Proposed Assessment for FTCC - initial (August 12, 2014))	
Joint Exhibit Number 41	20,131,1007
(2014 Proposed Assessment for FTCC (80% assessment) (December 16, 2014))	
Joint Exhibit Number 42	20,1007
(FTCC's Amended Property Tax Return for Tax Year 2014)	
Joint Exhibit Number 43	20,1007
(2014 Proposed Assessment for FTCC - final (June 14, 2017))	



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ROA 001521

Joint Exhibit Number 44	20,1007
(FTCC's Property Tax Return for Tax Year 2015)	
Joint Exhibit Number 45	20,1007
(2015 Proposed Assessment for FTCC - initial (August 24, 2015))	
Joint Exhibit Number 46	20,1007
(2015 Proposed Assessment for FTCC (80% assessment) (October 26, 2015))	
Joint Exhibit Number 47	20,1007
(FTCC's Amended Property Tax Return for Tax Year 2015)	
Joint Exhibit Number 48	20,1007
(2015 Proposed Assessment for FTCC - final (June 15, 2017))	
Joint Exhibit Number 49	20,479,1007
(FTCC's Property Tax Return for Tax Year 2016)	
Joint Exhibit Number 50	20,1007
(FTCC's Amended Property Tax Return for Tax Year 2016)	
Joint Exhibit Number 51	20,1007
(2016 Proposed Assessment for FTCC, LLC (June 15, 2017))	
Joint Exhibit Number 52	20,1007
(FTCC's Property Tax Return for Tax Year 2017)	
Joint Exhibit Number 53	20,1007
(2017 Proposed Assessment for FTCC, LLC (June 15, 2017))	
Joint Exhibit Number 54	20,1007
(FTCC's Property Tax Return for Tax Year 2018)	
Joint Exhibit Number 55	20,162,1007
(Diversified's Property Tax Return for Tax Year 2013)	
Joint Exhibit Number 56	20,1007
(2013 Proposed Assessment for Diversified - initial (January 15, 2014))	
Joint Exhibit Number 57	20,1007
(2013 Proposed Assessment for Diversified (80% assessment) (February 27, 2014))	
Joint Exhibit Number 58	20,164,1007
(Diversified's Amended Property Tax Return for Tax Year 2013)	
Joint Exhibit Number 59	20,1007
(2013 Proposed Assessment for Diversified - final (June 14, 2017))	



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ROA 001522

Joint Exhibit Number 60	20,1007
(Diversified's Property Tax Return for Tax Year 2014)	
Joint Exhibit Number 61	20,1007
(2014 Proposed Assessment for FTCC, LLC - Initial (August, 12, 2014))	
Joint Exhibit Number 62	20,1007
(2014 Property Assessment for Diversified (80% assessment) (December, 16, 2014))	
Joint Exhibit Number 63	20,1007
(Diversified's Amended Property Tax Return for Tax Year 2014)	
Joint Exhibit Number 64	20,1007
(2014 Proposed Assessment for Diversified - final (June 14, 2017))	
Joint Exhibit Number 65	20,1007
(Diversified's Property Tax Return for Tax Year 2015)	
Joint Exhibit Number 66	20,1007
(2015 Proposed Assessment for Diversified - initial (August 24, 2015))	
Joint Exhibit Number 67	20,1007
(2015 Proposed Assessment for Diversified (80% assessment) (October 26, 2015))	
Joint Exhibit Number 68	20,1007
(Diversified's Amended Property Tax Return for Tax Year 2015)	
Joint Exhibit Number 69	20,1007
(2015 Proposed Assessment for Diversified - final (June 14, 2017))	
Joint Exhibit Number 70	20,479,1007
(Diversified's Property Tax Return for Tax Year 2016)	
Joint Exhibit Number 71	20,1007
(Diversified's Amended Property Tax Return for Tax Year 2016)	
Joint Exhibit Number 72	20,1007
(2016 Proposed Assessment for Diversified (June 15, 2017))	
Joint Exhibit Number 73	20,1007
(Diversified's Property Tax Return for Tax Year 2017)	
Joint Exhibit Number 74	20,1007
(2017 Proposed Assessment for Diversified (June 15, 2017))	
Joint Exhibit Number 75	20,1007
(Diversified's Property Tax Return for Tax Year 2018)	



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ROA 001523

Joint Exhibit Number 76 20,666,1007
 (Email between Jeff Allen and Taylor
 Ingram re: meeting to discuss the rural
 telephone appeals (April 11-May 13, 2013))

Joint Exhibit Number 77 20,668,1007
 (Emails between Jeff Allen and Taylor
 Ingram re: breakdown of assets and equipment
 (July 29-August 19, 2013))

Joint Exhibit Number 78 20,669,1007
 (Emails between Jeff Allen and Taylor
 Ingram re: status of rural telephone
 coops and attaching LOB (November 20 -
 December 2, 2013))

Joint Exhibit Number 79 20,1007
 (Letter, with certain attachments, from
 Jeff Allen to SCDOR re: FTCC and
 Diversified protests for tax year 2013
 (February 18, 2014))

Joint Exhibit Number 80 20,663,1007
 (Letter with certain attachments, from Jeff
 Allen to SCDOR re: FTCC and Diversified
 protests for tax year 2013
 (February 18, 2014))

Joint Exhibit Number 81 20,664,1007
 (Letter from Jeff Allen to SCDOR re:
 FTCC and Diversified protests for tax
 year 2014 (November 6, 2014))

Joint Exhibit Number 82 20,692,1007
 (Email from William Condon to Jeff Allen
 (February 18, 2015))

Joint Exhibit Number 83 20,694,1007
 (Letter form Jeff Allen to William Condon
 (April 22, 2015))

Joint Exhibit Number 84 20,1007
 (Email from Samuel Crowe to Jeff Lawrimore
 and Taylor Ingram (August 17, 2015))

Joint Exhibit Number 85 20,1007
 (Emails between Jeff Lawrimore and Samuel
 Crowe (August 17-20, 2015))

Joint Exhibit Number 86 20,664,1007
 (Letter from Jeff Allen to SCDOR re:
 FTCC and Diversified protests for tax year
 2015 (October 8, 2015))

Joint Exhibit Number 87 20,671,1007
 (Emails between Jeff Allen and William
 Condon (February 18-March 11, 2016))



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ROA 001524

Joint Exhibit Number 88	20,1007
(Emails between Jeff Allen and William Condon (March 24-April 26, 2016))	
Joint Exhibit Number 89	20,1007
(Emails between Jeff Allen and William Condon (August 24-September 22, 2016))	
Joint Exhibit Number 90	20,697,1007
(Emails between Jeff Allen and William Condon re: revised settlement agreement (October 6, 2016))	
Joint Exhibit Number 91	20,140,1007
(Settlement Agreement (January 8, 2017))	
Joint Exhibit Number 92	20,679,1007
(Letter from Jeff Allen to Taylor Ingram re: amended returns for 2010-2015 (January 20, 2017))	
Joint Exhibit Number 93	20,1007
(Email from Kendra Eaddy to Jeff Lawrimore (May 27, 2017))	
Joint Exhibit Number 94	20,1007
(Memorandum from SCDOR to County Auditors re: 2012 tax year protest by FTCC (October 16, 2012))	
Joint Exhibit Number 95	20,218,1007
(Memorandum from SCDOR received by Clarendon County Auditor re: 2012 tax year protest by FTCC (October 16, 2012))	
Joint Exhibit Number 96	20,1007
(Memorandum from SCDOR received by Florence County Auditor re: 2012 tax year protest by FTCC (October 16, 2012))	
Joint Exhibit Number 97	20,1007
(Memorandum from SCDOR received by Lee County Auditor re: 2012 tax year protest by FTCC (October 16, 2012))	
Joint Exhibit Number 98	20,1007
(Memorandum from SCDOR received by Williamsburg County Auditor re: 2012 tax year protest by FTCC (October 12, 2012))	
Joint Exhibit Number 99	20,1007
(Memorandum from SCDOR received by Clarendon County Auditor re: 2013 tax year protest by Farmer's Coop, FTCC and Diversified (February 27, 2013))	
Joint Exhibit Number 100	20,1007
(Memorandum from SCDOR received by Florence County Auditor re: 2013 tax year protest by Farmer's Coop, FTCC and Diversified (February 27, 2013))	



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ROA 001525

Joint Exhibit Number 101.	20,1007
(Memorandum from SCDOR received by Lee County Auditor re: 2013 tax year protest by Farmer's Coop, FTCC and Diversified (February 27, 2013))	
Joint Exhibit Number 102.	20,1007
(Memorandum from SCDOR received by Williamsburg County Auditor re: 2013 tax year protest by Farmer's Coop, FTCC and Diversified (February 27, 2013))	
Joint Exhibit Number 103.	20,231,1007
(Memorandum from SCDOR to County Auditors re: 2014 tax year protest by FTCC (December 16, 2014))	
Joint Exhibit Number 104.	20,1007
(Memorandum from SCDOR to County Auditors re: 2014 tax year protest by Diversified (December 16, 2014))	
Joint Exhibit Number 105.	20,1007
(Memorandum from SCDOR to County Auditors re: 2014 tax year protest by Farmer's Coop (December 16, 2014))	
Joint Exhibit Number 106.	20,1007
(Memorandum from SCDOR received by Clarendon County Auditor re: 2014 tax year protest by Farmer's Coop, FTCC and Diversified (December 16, 2014))	
Joint Exhibit Number 107.	20,1007
(Memorandum from SCDOR received by Florence County Auditor re: 2014 tax year protest by Farmer's Coop, FTCC and Diversified (December 16, 2014))	
Joint Exhibit Number 108.	20,1007
(Memorandum from SCDOR received by Lee County Auditor re: 2014 tax year protest by Farmer's Coop, FTCC and Diversified (December 16, 2014))	
Joint Exhibit Number 109.	20,1007
(Memorandum from SCDOR received by Williamsburg County Auditor re: 2014 tax year protest by Farmer's Coop, FTCC and Diversified (December 16, 2014))	
Joint Exhibit Number 110.	20,1007
(Memorandum from SCDOR to Lee County Auditor re: 2015 appeal by FTCC and Diversified (October 26, 2015))	



Joint Exhibit Number 111	20,1007
(Memorandum from SCDOR to Clarendon County Auditor re: 2015 appeal by FTCC and Diversified (October 26, 2015))	
Joint Exhibit Number 112	20,1007
(Memorandum from SCDOR to Florence County Auditor re: 2015 appeal by FTCC and Diversified (October 26, 2015))	
Joint Exhibit Number 113	20,1007
(Memorandum from SCDOR to Williamsburg County Auditor re: 2015 appeal by FTCC and Diversified (October 26, 2015))	
Joint Exhibit Number 114	20,1007
(Memorandum from SCDOR to County Auditors re: 2016 Annual Utility Certification for Farmer's Coop, FTCC, and Diversified (August 16, 2016))	
Joint Exhibit Number 115	20,1007
(Memorandum from SCDOR to Florence County Auditor re: Utility Appeal Resolution Certifications for Farmer's Coop, FTCC, and Diversified, with supplemental certifications for 2010-2015 (June 14, 2017))	
Joint Exhibit Number 116	20,1007
(Memorandum from SCDOR to Georgetown County Auditor re: Utility Appeal Resolution Certifications for Farmer's Coop, FTCC, and Diversified, with supplemental certifications for 2010-2015 (June 14, 2017))	
Joint Exhibit Number 117	20,1007
(Memorandum from SCDOR to Lee County Auditor re: Utility Appeal Resolution Certifications for Farmer's Coop, FTCC, and Diversified, with supplemental certifications for 2010-2015 (June 14, 2017))	
Joint Exhibit Number 118	20,1007
(Memorandum from SCDOR to Sumter County Auditor re: Utility Appeal Resolution Certifications for Farmer's Coop, FTCC, and Diversified, with supplemental certifications for 2010-2015 (June 14, 2017))	
Joint Exhibit Number 119	20,1007
(Memorandum from SCDOR to Williamsburg County Auditor re: Utility Appeal Resolution Certifications for Farmer's Coop, FTCC, and Diversified, with supplemental certifications for 2010-2015 (June 14, 2017))	



Joint Exhibit Number 120	20,1007
(Memorandum from SCDOR received by Clarendon County Auditor re: 2016 Supplemental Utility Certification for Farmer's Coop, FTCC, and Diversified (June 15, 2017))	
Joint Exhibit Number 121	20,1007
(Memorandum from SCDOR received by Florence County Auditor re: 2016 Supplemental Utility Certification for Farmer's Coop, FTCC, and Diversified (June 15, 2017))	
Joint Exhibit Number 122	20,1007
(Memorandum from SCDOR received by Williamsburg County Auditor re: 2016 Supplemental Utility Certification for Farmer's Coop, FTCC, and Diversified (June 15, 2017))	
Joint Exhibit Number 123	20,1007
(Memorandum from SCDOR received by Sumter County Auditor re: 2016 Supplemental Utility Certification for Farmer's Coop, FTCC, and Diversified (June 15, 2017))	
Joint Exhibit Number 124	20,1007
(Memorandum from SCDOR to Clarendon County Auditor re: Utility Appeal Resolution Certification for FTCC and Diversified - correction (July 6, 2017))	
Joint Exhibit Number 125	20,1007
(Memorandum from SCDOR to Florence County Auditor re: Utility Appeal Resolution Certification for FTCC and Diversified - correction (July 6, 2017))	
Joint Exhibit Number 126	20,1007
(Memorandum from SCDOR to Lee County Auditor re: Utility Appeal Resolution Certification for FTCC and Diversified - correction (July 6, 2017))	
Joint Exhibit Number 127	20,1007
(Memorandum from SCDOR to Sumter County Auditor re: Utility Appeal Resolution Certification for FTCC and Diversified - correction (July 6, 2017))	
Joint Exhibit Number 128	20,1007
(Memorandum from SCDOR to Williamsburg County Auditor re: Utility Appeal Resolution Certification for FTCC and Diversified - correction (July 6, 2017))	



Joint Exhibit Number 129	20,1007
(Memorandum from SCDOR to County Auditors re: 2017 Annual Utilities Certification (August 16, 2017))	
Joint Exhibit Number 130	20,1007
(Memorandum to County Auditors re: 2017 Utilities Supplemental Certification - Revision (August 24, 2017))	
Joint Exhibit Number 131	20,240,1007
(CV of Joe Moss)	
Joint Exhibit Number 132	20,1007
(Affidavit of Joe Moss (November 29, 2017))	
Joint Exhibit Number 133	20,1007
(Joe Moss' Network Utilization Analysis (March 15, 2019))	
Joint Exhibit Number 134	20,325,1007
(Bandwidth Calculation Spreadsheet Joe Moss)	
Joint Exhibit Number 135	20,1007
(Affidavit of Jeffrey Lawrimore (December 15, 2017))	
Joint Exhibit Number 136	20,490,495,1007
(Second Affidavit of Jeffrey Lawrimore (January 22, 2018))	
Joint Exhibit Number 137	20,1007
(Affidavit of Charles Brewer (January 22, 2018))	
Joint Exhibit Number 138	20,1007
(Affidavit of F. Bradley Erwin (January 22, 2018))	
Joint Exhibit Number 139	20,597,1007
(Farmer's Coop form letter from Brad Erwin to various county officials regarding settlement)	
Joint Exhibit Number 140	20,1007
(Affidavit of Jeffrey Allen (February 6, 2018))	
Joint Exhibit Number 141	20,1007
(Affidavit of Rick Reames (February 6, 2018))	
Joint Exhibit Number 142	20,1007
(CV of Rick Reames)	
Joint Exhibit Number 143	20,715,1007
(CV of George Wyatt)	
Joint Exhibit Number 144	20,1007
(Various documents related to George Wyatt's assessment of Moss Analysis)	



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ROA 001529

Joint Exhibit Number 145	20,1007
(Letter from George Wyatt supplementing response to Moss Analysis (May 7, 2019))	
Joint Exhibit Number 146	20,1007
(CV of Douglas Meredith)	
Joint Exhibit Number 147	20,1007
(Affidavit of Milton Kimpson)	
Joint Exhibit Number 148	20,327,1007
(Farmer's Link Usage Data for 2017)	
Joint Exhibit Number 149	20,329,1007
(Farmer's Link Usage Data for 2018)	
Joint Exhibit Number 150	20,1007
(MOU and Data Chart for FTCC from 2009-2017 and related documents)	
Joint Exhibit Number 151	20,332,1007
(MOU and Data Chart for FTCC from 2009-2018 and related documents)	
Joint Exhibit Number 152	20,420,1007
(Diagram of Farmer's Network)	
Joint Exhibit Number 153	20,309,1007
(Diagram of Farmer's Network)	
Joint Exhibit Number 154	20,1007
(Network Map)	
Joint Exhibit Number 155	20,1007
(Network Map)	
Joint Exhibit Number 156	20,585,1007
(FTCC work Plan Update from 2017-2018)	
Joint Exhibit Number 157	20,1007
(Farmer's Coop Work Plan Update from 2016-2017)	
Joint Exhibit Number 158	20,1007
(FTCC Construction Work Plan Update from 2015-2016)	
Joint Exhibit Number 159	20,1007
(Farmer's Work Plan Update from 2014-2015)	
Joint Exhibit Number 160	20,1007
(FTCC Construction Work Plan Update from 2013-2014)	
Joint Exhibit Number 161	20,1007
(Video Hosting Services Agreement)	
Joint Exhibit Number 162	20,1007
(Video Hosting Services Agreement)	
Joint Exhibit Number 163	20,1007
(Switching Services Agreement)	
Joint Exhibit Number 164	20,1007
(First Amended and Restated Joint Operating Agreement)	
Joint Exhibit Number 165	20,1007
(IP Commercial Agreement)	



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ROA 001530

Joint Exhibit Number 166	20,1007
(Network Summary)	
Joint Exhibit Number 167	20,1007
(Subscriber Totals)	
Joint Exhibit Number 168	20,1007
(Charts re: subscribers of various services for Farmer's Coop, FTCC, and Diversified)	
Joint Exhibit Number 169	20,337,1007
(Updated charts re: subscribers of various services for Farmer's Coop, FTCC, and Diversified from 2009-2018)	
Joint Exhibit Number 170	20,1007
(Tax Notice, Clarendon Co.)	
Joint Exhibit Number 171	20,1007
(Walk Cartin letter to Hugh K. Leatherman, Sr., Freedom of Information Act Request)	
Joint Exhibit Number 172	20,1007
(Walt Cartin letter to G. Murrell Smith, Jr., Freedom of Information Act Request)	
Joint Exhibit Number 173	20,1007
(Richard L. Pearce letter to Walt Cartin, Response to Freedom of Information Act Request)	
Joint Exhibit Number 174	20,1007
(Kenneth M. Moffitt letter to Walt Cartin, Response to Freedom of Information Act Request)	
Joint Exhibit Number 175	20,1007
(Utility and Railroad Companies Property Tax Return (PT-420)-Sample)	
Joint Exhibit Number 176	20,1007
(Distribution Information (PT-427)-Sample)	
Joint Exhibit Number 177	20,1007
(Distribution Information (PT-429)-Sample)	
Joint Exhibit Number 178	20,701,1007
(Sample PT-300 and related schedules and instructions)	
Joint Exhibit Number 179	20,341,1007
(Sample Farmer's Coop ISUP Report and ISUP Report Summary (February 17-April 28, 2019))	
Joint Exhibit Number 180	20,1007
(South Carolina Property Tax Manual dated 2015)	
Joint Exhibit Number 181	20,1007
(SC Tax Commission Letter (July 1, 1981))	
Joint Exhibit Number 182	20,1007
(Revenews (April 1990))	
Joint Exhibit Number 183	20,126,1007
(SC Technical Advice Memorandum #90-3 (February 27, 1990))	



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ROA 001531

Joint Exhibit Number 184	20,1007
(SC Revenue Procedure #06-2 Department of Revenue Internal Appeals Process and Procedure (January 11, 2007))	
Joint Exhibit Number 185	20,937,1007
(CV of Brenton Robertson)	
Joint Exhibit Number 186	20,210,1007
(Telephone Appraisal Worksheet)	
Joint Exhibit Number 187	20,1007
(Lawrimore Exh. 52-spreadsheet of all revenues)	
Joint Exhibit Number 188	20,1007
(Emails between Taylor Ingram and Sally Moozon (February 21-May3, 2017))	
Joint Exhibit Number 189	20,1007
(Emails between Taylor Ingram, Chris Miles, and Kevin Yokim (June 6-15, 2017))	
Joint Exhibit Number 190	1005,1006
(Utilization Analysis with notes)	

(The original exhibits were retained by the Court.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.



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ROA 001532

(Joint Exhibit Numbers 1 through 189 were marked prior to the hearing.)

CALL TO ORDER:

THE COURT: All right. This is the hearing in the matter of Cherokee County, et al., Petitioners verses The Department of Revenue and Farmers, Respondents. And I'm short cutting that phrase too, or caption, but it's Docket Number 17-ALJ-17-0237-CC. Are there any motions or stipulations the parties wish to make before we proceed?

STIPULATIONS:

MR. CARTIN: Your Honor, the parties have reached joint stipulations. I've circulated those for signature. What I can do is at lunch make copies so the parties have all of those and then we can enter those into the record after lunch, if that's okay?

THE COURT: That's fine.

MR. CARTIN: Your Honor, we've also agreed to the entry of approximately 189, 190 exhibits, which I believe Ms. Mitchell has a copy of those exhibits for the Court in electronic format that we can provide but those have already been stipulated as to their entry into evidence.



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ROA 001533

1 **THE COURT:** All right. When you say you have them
2 in electronic format on a flash drive or ...

3 **MS. MITCHELL:** Yes, sir.

4 **THE COURT:** Okay. Well, you receptive to that?
5 Oh, it's up here already?

6 **MR. CARTIN:** All ready.

7 **THE COURT:** Oh, good. Okay. Anything else? All
8 right.

9 **OPENING STATEMENT OF PETITIONER:**

10 **MR. CARTIN:** Your Honor, for the record, my name is
11 Walt Cartin and I represent the 13 governmental
12 entities which are the petitioners in this
13 case. I'm gonna refer to them as the taxing
14 entities as a short form that we've used
15 throughout this case. And so by the
16 convention, I'm gonna use. And I want to take
17 a moment to introduce a couple of folks to you
18 this morning. We have here Mr. David Epperson.
19 Mr. Epperson is the Clarendon County
20 Administrator. Clarendon County is the lead
21 county in this case. We also have Mr. Lynden
22 Anthony, he's the CFO of Clarendon County.
23 He's gonna be our first witness up today. In
24 addition, Mr. Jo Moss here is our telecom
25 expert that we will probably hear from



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ROA 001534

1 tomorrow. And in addition, we have Ms. Vickie
2 Lynn Mitchell, our paralegal. Mr. Madison
3 Felder with our Greenville office and Mr.
4 Michael Kozlarek with Kozlarek Law, LLC, in
5 Greenville.

6 **THE COURT:** Okay.

7 **MR. CARTIN:** Your Honor, this case is at base about
8 what the General Assembly meant in 1978 when it
9 used the term, rural telephone service.
10 There's a blizzard of detail heading your way
11 unfortunately but in all of that detail, I
12 don't want that to ever get lost, that that's
13 what this case is really about. And we believe
14 that the Court's gonna hear testimony that in
15 1978, this could have only meant one thing,
16 landlines, sometimes referred to as wireline
17 telephone service transmission of a voice over
18 lines connecting two people at physical
19 locations. Now there's been a massive
20 technological shift over the past 40 years. A
21 shift which is truly amazing and interesting.
22 What the taxpayers do is a fascinating industry
23 and I think you are really gonna enjoy hearing
24 some of this testimony about how telecom
25 technology actually works. But you're gonna



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ROA 001535

1 hear from our expert, Your Honor, that wireless
2 technology is fundamentally different that
3 wireline technology. Wireless technology which
4 allows us to access information on this phone,
5 which in 1978 would have been something you
6 would have only seen in a Star Trek episode.
7 That's the kind of technological change here.
8 I'm talking about a technology that is enabled
9 the establishment of wireline infrastructure.
10 So that when the General Assembly created a tax
11 incentive in 1978 to establish a landline
12 network throughout rural areas, you're gonna
13 see, Your Honor, that when you hear about how
14 this industry works, the wireless industry is
15 a very competitive industry. It needed no tax
16 incentives to become a very robust competitive
17 market, even in rural areas, like where
18 Farmer's operates. Moreover, Your Honor,
19 you're gonna hear from our expert that today
20 Farmer's Network and for all tax years in
21 controversy, Farmer's Network, as a total
22 metric of network capacity, has been used less
23 than five percent for the actual provision of
24 voice services, which is what the General
25 Assembly generally intended when it entered



1 into that statute in 1978. In the past most
2 recent years, we believe less than one percent
3 of their traffic on the network is attributable
4 to those voice calls, that voice transmission.
5 So that on the substantive issue I want a --
6 we're the petitioners so we have preserved the
7 normal flow of these cases, but I do want to
8 highlight that this is a tax exemption case and
9 Your Honor knows that it is black letter law in
10 South Carolina that it is in the taxpayers
11 court, it is the taxpayers burden, the
12 taxpayers duty to squarely bring themselves
13 within the limits of that tax exemption. So
14 that, you're gonna hear testimony from us
15 first, Your Honor, but it's their burden. I
16 don't want that -- I know the Court won't get
17 confused with that but I want to highlight that
18 as we go forward. But in addition to the
19 substantive issue, there are also very
20 important procedural issues. Procedural issues
21 that strike at the very heart of what the
22 Department has the authority to do, what the
23 General Assembly has given to the Department,
24 the restraints within which it has to operate.
25 And these are what I will refer to as our



1 retroactivity argument. There are two basic
2 themes of the evidence I think are going to
3 show, Your Honor. The first is that Section
4 12-60-1750 states that the taxpayer can only
5 get a refund for an exemption if they timely
6 applied for that exemption. And then, Section
7 12-04-720 states the taxpayer, like Farmer's,
8 who files annual returns has to claim that
9 exemption on those annual returns every year or
10 else they can't get it. And the evidence is
11 going to show that what was filed in this case
12 on behalf of Farmer's for the tax years at
13 issue was anything but a clear request for an
14 exemption. In fact, the evidence is going to
15 show that the Department had no idea what was
16 actually being claimed as exempt, could not
17 segregate out that property into a definite tax
18 bill until after the settlement agreement was
19 entered into in 2017.

20 **THE COURT:** So conceivably you could lose this case
21 on the legal argument going forward, but still
22 win it on the retroactivity.

23 **MR. CARTIN:** I think so, Your Honor, as far as the
24 refunds go.

25 **THE COURT:** Okay.



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ROA 001538

1 **MR. CARTIN:** In addition ...

2 **THE COURT:** I'm sorry I threw you ...

3 **MR. CARTIN:** That's okay. I was going so well.

4 Second, Your Honor, the Department did not
5 comply with the requirement to timely determine
6 exemptions. There is a very clear legislative
7 scheme set up here. A taxpayers reply requires
8 it annually requests an exemption. Every year
9 on its tax return faithfully it has to request
10 that exemption if it wants to get one. The
11 Department is required to annually determine
12 those property tax exemptions. This is because
13 the policy reason behind this is it completely
14 sucks assessed value off the tax rolls of these
15 counties, so it's important that it be done
16 quickly, it be filed quickly and determined
17 quickly. And in addition, Your Honor, The
18 Department has a duty to report exemptions that
19 have been determined prior to the June 1st
20 deadline of each year. That's an important
21 date because county budgets have to be
22 finalized by June 30th. I know the Court's
23 heard this before so I don't want to berate it,
24 but you're gonna hear information and evidence
25 that supports why this is an important policy



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ROA 001539

1 and generally we'll clarify for the Court what
2 The General Assembly was looking to do when it
3 enacted this legislative structure. And we
4 believe that because these tax returns were not
5 filed annually and because they were not
6 determined annually, the Department can not go
7 back and retroactively change this because it
8 upends the entire legislative scheme. So in a
9 nutshell, that's the overall retroactivity
10 argument, which the Court has spent a great
11 deal of time, I'm certain way. But at the end
12 of the day, Your Honor, we believe that the
13 evidence is gonna show two things. That the
14 taxpayer's property does not qualify for the
15 rural telephone service exemption and that the
16 Department's actions in this case, while well
17 meaning, we certainly don't insinuate any
18 nefarious intent at all, were contrary to their
19 statutory obligations, contrary to their
20 statutory restraints and ineffective as to the
21 taxing entities.

22 **OPENING STATEMENT OF THE RESPONDENT:**

23 **MR. VON LEHE:** May it please the Court.

24 **THE COURT:** Sir.

25 **MR. VON LEHE:** One might ask, and I believe you



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ROA 001540

1 have, how can a taxpayer have an appeal to this
2 Court but the county does not. The answer to
3 that, we believe, Your Honor, is both the
4 taxpayer and the counties do have an appeal but
5 only under appropriate circumstances, which do
6 not exist here. The two code sections which
7 have been cited for you, and which you've
8 discussed in our previous meetings, Section 12-
9 60-2130 and 12-60-2150, both refer to the
10 taxpayer or the local governing body being able
11 to appeal to this Court. There's a third
12 section, which is 12-7-535, which just simply
13 has no application in our judgment. That's got
14 to do with -- that's over whether Department of
15 Revenue has done -- believes that the county
16 has not done what it's suppose to do with
17 regard to its programs, like, reassessment,
18 etc., etc. The code section prior to this 12-
19 4-535 is investigation, prosecution of
20 violations and number one says the Department
21 shall examine cases in which the laws of this
22 state relating to valuation, assessment of
23 taxation that have complained of or discovered
24 to have been invaded. And it goes on to say,
25 the Department may issue Department



1 determination directing the appropriate county
2 official to comply with all applicable law.
3 That section is just not applicable, but the
4 two which are under consideration both grant
5 both the taxpayer and the county this right to
6 appeal to this Court. However, it doesn't
7 grant that right in cases of a settlement. All
8 right. If you go through the applicable
9 statutory provisions which are in 12-64-50,
10 which is Appeal of Proposed Assessments, other
11 code sections say you do the same for denial of
12 exemptions. A taxpayer can appeal the division
13 decision, I skipped, and disagreeing with the
14 Department of Revenue or proposed assessment by
15 filing a written protest with the Department
16 within 90 days, blah, blah, blah. It goes on
17 to say in subparagraph (D)1, after the protest
18 is filed, the taxpayer and the Department shall
19 stipulate facts, that's among themselves, and
20 issues upon which they can agree and may
21 attempt to settle the case. And this is 12-64-
22 50(D)1. That's precisely what happened here.
23 Not only did they attempt to settle the case,
24 they did settle the case. And it goes on
25 assuming that, that did not work, they didn't



1 get together, it goes on in subparagraph 2A,
2 Department determination adverse to the
3 taxpayer, and it discusses it say it has to be
4 in writing and it says, as to inform the
5 taxpayer of his right to request a contested
6 case hearing. And in subparagraph D, if a
7 proposed assessment was protested, explain that
8 the taxes will be assessed in 30 days and
9 payment demanded unless the taxpayer request a
10 contested case hearing. So this is the
11 background upon which these code sections grant
12 the taxpayer and the Department, excuse me, the
13 taxpayer, and one is concerned with whether or
14 not it also grants the county this right. It
15 does not. When there's a settlement, the case
16 is settled and one does not go forward with the
17 Department determination. All of us have
18 struggled to an extent with what's meant by
19 this Department determination in looking for
20 definitions of it. We find those definitions,
21 to the extent they exist, in the definition
22 section of the Code 12-60-30. And it says,
23 Department determination means the final
24 determination within the Department from which
25 a person may request a contested case hearing



1 before the Administrative Law Court.

2 **THE COURT:** Wait a second.

3 **MR. VON LEHE:** And then a key ---

4 **THE COURT:** Hold on a second.

5 **MR. VON LEHE:** Yes.

6 **THE COURT:** Let me catch up with you.

7 **MR. VON LEHE:** Yes. That would be 12-60-30 in paren
8 10.

9 **THE COURT:** Go ahead.

10 **MR. VON LEHE:** That's the definition Department
11 determination given there. Then another key
12 section which does sheds some light on this,
13 and certainly has been so interpreted by the
14 Department as the testimony in this case will
15 show, Department representative is another key
16 definition here. Department representative
17 means, the person appointed by the Department
18 to prepare the Department's determination and
19 represent the Department at the contested case
20 hearing. There was no determination which was
21 drafted by the Department representative.
22 Instead, he drafted a settlement agreement. He
23 did not draft up a Department determination
24 because the taxpayer and the Department of
25 Revenue agreed. So we think there is much to



1 be gleaned from these code sections and as you
2 well know, Your Honor, our position is there
3 has been no Department determination in this
4 case and for that reason, the code section
5 which apply when a Department determination is
6 forth coming, which are the two we've been
7 talking about, that they grant both the
8 taxpayer and the county the right to appeal
9 don't apply. The county does not have a right
10 to appeal from a settlement agreement. They
11 may only appeal from a Department
12 determination. Now when you ruled in our most
13 recent hearing, you ruled that between the
14 Department of Revenue and this taxpayer, that
15 the settlement agreement was certainly
16 enforceable. Now how far along that went is
17 still up to the Court, obviously, because
18 they've challenged the right of the Department
19 and this taxpayer to enter into this settlement
20 agreement. We say this -- and they have
21 alleged one of the reasons why they can't do
22 this is because proper application wasn't made
23 or all the laws weren't complied with. We say
24 this, whenever two entities enter into a
25 settlement agreement, often times there are



1 arguments about whether the laws have been
2 properly applied, often times. But this
3 settles those issues. Now you ruled last time,
4 yes between those two parties but you said, I'm
5 not projecting this, I believe was the term you
6 used, onto the counties. We believe it should
7 be projected to the counties for the reason
8 I've just given. But if we do need to go to
9 the merits, obviously we look forward to doing
10 that, and hope we're prepared to do that. So
11 with regard to the merits of the case, has
12 proper application for this exemption been
13 made? Definitely, there's no question about
14 it. A taxpayer is given 36 months to apply for
15 an exemption. This is in Code Section 12-4-
16 720, entitled, Filing of Applications for
17 Exemptions. That's where all the definitions
18 are given for filing applications for
19 exemptions and it says, number 1, (A)1, such as
20 provided any property owner whose property may
21 qualify for property exemption shall file an
22 Application for Exemption with the Department
23 within the period set in Section 12-54-85(5)F.
24 That is 36 months in this case. We've made
25 application within 36 months, we made our



1 application. They have relied in their
2 briefings on this TNS Mills case, a case
3 decided prior to the enactment of this statute.
4 But TNS Mills actually is a case in favor of us
5 because what happened there was, if you go
6 down, one further down under this 12-04-720(A),
7 you reach number 2 and it talks about exemption
8 under 12-37-220(A)8. What is that exemption?
9 That's the exemption for pollution control,
10 which was the exemption that was being
11 discussed in the TNS Mills case. The taxpayer
12 didn't do anything there. They neither filed
13 a return claiming the exemption nor did they
14 send a letter claiming the exemption. They
15 just didn't do anything. And the Court said,
16 no. We're sorry, all you did was sign a
17 return, you didn't list assets, you didn't file
18 -- they said you could do a separate letter if
19 you want to, but you didn't do that either. So
20 you have for pollution control, you've got one
21 year to file. You don't have to list it on the
22 tax return. The Department of Revenue has
23 never interpreted a section like that. You
24 just got a one year or more specifically,
25 before the penalty date of the following year,



1 which is January 15, the payment date, you've
2 got that one year to apply for pollution
3 control. You've got three years to make
4 application for any other exemption that the
5 Department of Revenue controls. You made that
6 application within three years, so we're timely
7 on the question. It makes no sense, Your
8 Honor, to have a law that says you've got to
9 apply every year on your tax return and have
10 another law, which is what they're arguing, and
11 have another law that says you've got 36 months
12 to do it. Thereby clearly meaning you don't
13 have to do it on an annual basis. And that has
14 always been the Department of Revenue's
15 interpretation of this code section, as the
16 evidence will show. Now we get to the question
17 of the assets ---

18 **THE COURT:** So I can be clear, a while ago when you
19 went to pollution and control ---

20 **MR. VON LEHE:** I did.

21 **THE COURT:** You went to section 3?

22 **MR. VON LEHE:** I went to section 2. That would be
23 (A) 2.

24 **THE COURT:** And then when it refers to 12-37-220(A)
25 ---



1 MR. VON LEHE: (A) .

2 THE COURT: (A) . That's where's ---

3 MR. VON LEHE: Yes, that's pollution control.
4 That's correct, Your Honor. I should have
5 specified that, but that's where it is.

6 THE COURT: All right. Proceed.

7 MR. VON LEHE: All right. The assets in question --
8 are the assets in question, are they property
9 of a rural telephone cooperative, used in
10 providing telephone service. Obviously we're
11 not talking about whether a cell phone is
12 exempt, we're not talking about that. They
13 don't own the cells phones, the individuals who
14 carry them around like that. We're talking
15 about the assets that are used in the rural
16 telephone cooperative used in providing
17 telephone service. So this requires two
18 things. First of all, it's got to be property
19 of a cooperative, that's number one. The South
20 Carolina Supreme Court ruled in CFRE, CFRE, or
21 however it's pronounced, that a property owned
22 by a 100 percent LLC, 100 percent LLC
23 ownership, is the same thing as actual
24 ownership for tax purposes. So there's no
25 question for property tax purposes ownership in



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1 100 percent LLC is just as if it is owned by
2 the co-op. That's been clarified. That's one
3 requirement, that's the one we had to get over
4 it first here, way back when there was
5 confusion about this being allowed this
6 exemption on their ground. The other one is,
7 are these assets used in providing telephone
8 services? They are, they are used in providing
9 telephone services. We're going to describe
10 the assets, Your Honor, as we proceed through
11 all of this. We're going to show you,
12 hopefully, that just like a landline, assets
13 used in providing telephone service to
14 wireless, that is to say, these wireless
15 oriented assets, they're used in providing
16 telephone service. It just seems, like, I
17 don't know, it's, kind of, how can they not be?
18 This is really the question. How can this not
19 be. And they said, it will not be, it can not
20 be because if you go -- because they say that
21 most of the -- that the assets are only used
22 about five percent for telephone service. This
23 is not accurate. We'll show this is not
24 accurate. Even under their method, they're
25 saying data is taking up, like, 95 percent.



1 We're gonna show that is not accurate. But
2 that is based on volume going through. The
3 real test ought to be, if you want to look how
4 something is used is, how much time is being
5 spent using this. If you're using something
6 like a forklift in a warehouse or whatever it
7 is that one is using, we're going to show, Your
8 Honor, that 95 percent of the time, and in
9 recent years an even higher amount of the time,
10 is used by these assets to provide telephone,
11 meaning voice services rather than data. The
12 assets -- a key to this also is, these assets
13 are used for both. It's not like, okay, here
14 are your voice assets over here, here are your
15 data assets over here. That's not the case.
16 These assets are used for both, for both voice
17 and for data transmission. They make an
18 argument that -- this is how they make their
19 argument, they say, look you've got to go back
20 to 1978 and we're only going to look at today
21 what would have been exempted back in 1978.
22 That's their argument. Well obviously we
23 disagree with that. Each year the legislature
24 continues to reenact that law. And each year
25 they continue to say it's assets used in



1 providing telephone service. So sure, assets
2 change over the years. We'll show that
3 examples from the Department of Revenue where
4 the exemptions continue to be granted of course
5 even though things change. I mean, look for
6 example, look at the research and development
7 exemption for property tax purposes. You mean
8 to tell me that research and development assets
9 are going to be limited to the way they existed
10 back in 1978? No. If you're using for
11 research and development today, those assets,
12 modern day assets are going to be exempt. Same
13 thing goes for modern day telephone assets. If
14 they're being used to provide rural telephone
15 service, they are going to be exempt. One of
16 the things that has been raised throughout all
17 of this is that there's been no notice to the
18 counties that these exemptions were being
19 claimed. That's not factually accurate, Your
20 Honor. Notice has been provided to the
21 counties each year. We -- beginning in 2012,
22 we began to protest this, claiming the
23 exemption. Since the Department of Revenue is
24 taxed with determining exemptions, except for
25 one or two having to do with the homestead



1 exemption which the auditor of the county
2 determines, but certainly the assets of
3 utilities, which is what we're looking at now,
4 the Department of Revenue is taxed with making
5 that determination. So we filed a protest
6 every year since 2012 saying that we're
7 claiming this exemption and what happened to
8 that protest? It got sent, in different form
9 perhaps, it got sent to every one of these
10 county auditors. And they were told for each
11 of these years, time after time after time,
12 these assets are under protest. The taxpayers
13 claiming their exempt. So if the counties did
14 anything about that, which they didn't, and
15 that testimony of course will be forth coming,
16 if they did anything about that then they did
17 something about it. If they didn't do
18 something about it, then they didn't do
19 something about it. But the fact of the matter
20 is, they got that notice. Now this has been
21 expanded significantly under a new law,
22 expanded significantly. The new section, the
23 new code section, which we believe is relevant
24 so far as notice is concerned, is contained in
25 something called Act 265. And in this, they go



1 through these existing code sections and make
2 changes in them. And one of the things they do
3 in here is, they instruct that county auditor,
4 when you get this notice, you alert the
5 chairman of the county counsel. County
6 auditors are now mandated to do this. So it
7 shows that yeah there was a obvious a ---

8 **THE COURT:** You said Act 2 ...

9 **MR. VON LEHE:** That is Act 265.

10 **THE COURT:** And when was it passed?

11 **MR. VON LEHE:** It was passed last year. I believe
12 it was effective -- do we have an effective
13 date on it? It was passed in 2018. We don't
14 have an effective date on it but I believe it's
15 effective for 2019. In any case, we can't know
16 exactly why because there's a, you know, it's
17 not exactly a dearth of legislative history,
18 but in the way we -- in South Carolina but
19 obviously somebody thought that the county
20 auditors ought to be told to take this
21 information to county counsel because whether
22 they were doing it or not doing it, and some of
23 them apparently were and some of them
24 apparently weren't, they have now been mandated
25 to do this. So there will be no question



1 about, oh well we didn't know they were
2 protesting it because the auditor failed to
3 tell us about it. That just won't exist in the
4 future because we're not dealing with those
5 years. So, Your Honor, there's basically the
6 way we see it. We don't think the case is
7 properly before the Court because there's a
8 settlement. By the way, this new act changes
9 a lot of things which are relevant to this
10 case, particularly these notice provisions, but
11 it changes nothing with regard to a settlement
12 agreement. So when a case is settled, the case
13 is settled and no Department determination is
14 going to be issued. Thank you, Your Honor.

15 **OPENING STATEMENT OF THE RESPONDENT:**

16 **MR. LUTHER:** Good morning, Your Honor.

17 **THE COURT:** Good morning.

18 **MR. LUTHER:** May it please the Court. For purposes
19 of the record, I'm Jason Luther and along with
20 Andrew Saleeby, who's sitting here with me.
21 We're going to be representing the Department
22 this week in the contested case hearing. The
23 General Assembly created a statutory scheme for
24 determining whether properties of exempt from
25 ad valorem taxation. And it placed the



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ROA 001555

1 responsibility squarely on the Department and
2 put in general guidelines to aid the Department
3 in determining how to resolve disputes over
4 property tax exemptions. And as I was thinking
5 about it this weekend, of course that
6 ultimately puts the Department in position
7 where regardless of how it goes, they've made
8 a decision about money that somebody's gonna
9 have and money that somebody's not. And as
10 we're the bad guy and that's okay. That's
11 certainly has been the case in this proceeding
12 and I suspect by the end of the week we'll have
13 more enemies than friends.

14 **THE COURT:** You're, kind of, like, in the position
15 I'm in. I'm gonna be the bad guy for one group
16 and the good guy for the other so you're not
17 completely the bad guy.

18 **MR. LUTHER:** Well, understood and I don't ---

19 **THE COURT:** Although in this case, you could end up
20 being the total bad guy.

21 **MR. LUTHER:** That very much is the case.

22 **THE COURT:** You may have granted something to
23 somebody that they may not be able to give you.

24 **MR. LUTHER:** I was reminded by someone of the scene
25 -- not to get too far off script, but I was



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1 reminded the other day of the scene from Scar
2 Face when Al Pacino has this great speech where
3 he says, you all need me to be the bad guy.
4 You all need to point your finger at me and
5 maybe that's the Department. But I do want to
6 underscore something just at the outset of this
7 hearing, both for purposes of the Court and for
8 the parties that are here. That regardless of
9 whether we end up being the bad guy in
10 something like this, the goal of the Department
11 from the beginning of this dispute has been to
12 get it right and to interpret and enforce the
13 law that the General Assembly has given it to
14 the best of its ability. And I notice that in
15 both of these presentations, we almost -- both
16 parties inevitably went to the General Assembly
17 because at the end of the day, that's what
18 we're here to figure out. And I also thought
19 it would be a lot easier if we could just have
20 the General Assembly come over here and tell us
21 what they meant and what they were thinking.
22 But that's been the goal of the Department ---

23 **THE COURT:** Hearings would last a long time for
24 that.

25 **MR. LUTHER:** That's a good point.



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ROA 001557

1 **THE COURT:** There's a lot more than one person.

2 **MR. LUTHER:** But I say that because -- and I
3 appreciate the comments of both attorneys but
4 throughout this litigation there at times has
5 been a suggestion perhaps from some of the
6 witnesses that the Department was, in a sense,
7 out to get the counties or that we were at
8 least indifferent to the financial concerns of
9 the counties and that we entered into some
10 secret settlement agreement.

11 **THE COURT:** You can move on from that.

12 **MR. LUTHER:** And I wanted to assure them and Your
13 Honor, that was not the case.

14 **THE COURT:** Okay.

15 **MR. LUTHER:** In fact, I think the evidence will show
16 that in this particular matter, the Department
17 not only followed its standard practice, but it
18 went above and beyond that in trying to keep
19 everyone apprised. But by the same token, the
20 Department believes that, and it's already been
21 stated and would agree with this, that
22 ultimately the determination of whether a
23 property owner is entitled to an exemption,
24 that burden falls on the taxpayer. And so in
25 this proceeding, the Department does not intend



1 to argue or advance the case of the taxpayer.
2 That is solely their burden in this case. So
3 with that in mind, I think as I view it, I
4 think there are three things that the
5 Department believes the evidence will show this
6 week. The first is that the Department
7 followed its standard procedure to the tee in
8 evaluating tax controversies that it handles,
9 including property tax controversies. And that
10 process comports with its long standing
11 practice and also the guidelines that the
12 General Assembly has put in place in Title 12.
13 It was a manner consistent with the Revenue
14 Procedures Act. It was a manner consistent
15 with the Department's own Revenue Procedure 06-
16 2. As I said, it was by the book. A division
17 of the Department, The Property Division,
18 received a property return. It issued a
19 proposed assessment. The assessment was
20 protested by taxpayer. That division reviewed
21 that protest. It ultimately -- and met with
22 the taxpayer, it ultimately concluded that it
23 could not resolve the protest because there
24 were legal questions that it felt like it was
25 not equipped to resolve. So it sent it on to



1 the Department's legal group and the Department
2 representative who was assigned the file
3 reviewed it, met with the taxpayer, requested
4 additional information and ultimately as it is
5 permitted to do within the RPA, it chose to
6 settle the case with the taxpayer. Secondly,
7 I think the evidence and testimony will show
8 this week that because the Department followed
9 the process which comports with the law, there
10 are legal consequences that followed, not
11 because the Department chose them but because
12 the General Assembly did. Those are some of
13 the issues that we've already raised to the
14 Court last week that I know Your Honor is
15 preserving judgment on at this time. Lastly,
16 I think the evidence and the testimony will
17 show that ultimately the Department's grant of
18 the exemption as it relates to wireless assets,
19 and that's really at the heart of the dispute
20 here, it's granting that exemption in the
21 settlement agreement was reasonable and proper
22 for purposes of the settlement agreement. And
23 I think it's important to emphasize here at the
24 outset again, the Department's position in this
25 case has always been that the settlement



1 agreement was a negotiated resolution of a
2 disputed issue for a specific taxpayer and
3 specific assets and a specific time period.
4 There were a host, and you'll hear it this
5 week, there were a host of legal questions that
6 are embedded in the ultimate decision about
7 wireless assets. You heard reference to the
8 CFRE case, you heard reference to how does the
9 Department deal with evolving technology,
10 particularly with a piece of property or assets
11 that at one point had a single use and now have
12 multi-uses. Does the statute require that?
13 But the settlement agreement did not decide --
14 it was not a determination by the Department on
15 how to value the property, how to assess the
16 property, those were issues were left to the
17 property division after the settlement
18 agreement was signed. It solely decided the
19 question this particular asset and whether it
20 legally qualifies for the exemption during this
21 finite period. As the settlement agreement
22 itself said, it was not an admission by the
23 Department concerning any claims or issues with
24 respect to the property tax. And I think by
25 virtue of it being a settlement agreement, it



1 was intended not to be a determination. And so
2 from the Department's view, and in fact as we
3 see it at this point today, neither party has
4 ever requested a determination from the
5 Department. And so you've got two parties here
6 represented by very able counsel this week and
7 because we believe the evidence shows that the
8 exempting of the wireless assets was reasonable
9 and proper for purposes of the settlement
10 agreement ---

11 **THE COURT:** Can I stop you there?

12 **MR. LUTHER:** Sure.

13 **THE COURT:** Do you think there's proper resolution
14 of this case would have been that county should
15 have asked for -- would you inform them that
16 they will require exempt those property. That
17 they should have turned around and said, well
18 we wished you'd have given us a determination,
19 because I don't see how that would have been
20 any different than what you -- you've told them
21 that there's exempted property and then now
22 they're to ask for a determination that they're
23 to exempt the property, which is the very thing
24 they had been told to do. So I don't see the
25 difference.



1 **MR. LUTHER:** So the short answer to your question is
2 yes, I do think the statute provides the
3 counties an opportunity to request a
4 determination from the Department. And in our
5 view, there are two -- that's why I've been
6 very careful to differentiate between the years
7 and the assets that are covered by the
8 settlement agreement, and the fact that that
9 exemption and those assets are disputed for
10 future years. And so I understand that your
11 Court at the beginning of this case ruled on
12 the jurisdictional issue, and it's been raised
13 again by Mr. von Lehe again this morning, but
14 my point is simply that there is and there was
15 an opportunity for the counties to ultimately
16 have the question of the exemption decided.

17 **THE COURT:** And what would have been the difference
18 and the result if they had asked for a
19 determination?

20 **MR. LUTHER:** I think the difference and the result
21 was A, you avoid some of the jurisdictional
22 questions that procedurally have been embedded
23 in this case, whether it's properly here.

24 **THE COURT:** Okay.

25 **MR. LUTHER:** And B, it would have then put the



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1 Department in a position of having said, this
2 is how we see the exemption applying for all
3 years for the assets of this taxpayer.

4 **THE COURT:** So the difference is it would have been
5 an approach that would have been looked to the
6 future more.

7 **MR. LUTHER:** Yes, correct.

8 **THE COURT:** It would have been prospective.

9 **MR. LUTHER:** Correct.

10 **THE COURT:** Okay.

11 **MR. LUTHER:** Prospective. And I think ultimately
12 what I'm just trying to emphasize is, it would
13 have put the Department in the posture more in
14 line with some of its tax cases, where it comes
15 here to advance a certain position.

16 **THE COURT:** Okay.

17 **MR. LUTHER:** And I guess my point is, by virtue of
18 how this case was resolved, the Department
19 specifically did not take a position
20 prospectively for purposes of the assets or
21 multi-use property or any of those other
22 embedded legal questions. So because of that,
23 I think, we will show why we think the decision
24 was reasonable and proper for purposes of the
25 settlement agreement, but ultimately we will



1 look to the Court to give us the guidance
2 because we have not decided it yet in terms of
3 how it should be applied going forward.

4 **THE COURT:** Okay. Thank you.

5 **MR. CARTIN:** Ready for our first witness, Your
6 Honor?

7 **THE COURT:** Yes.

8 **MR. CARTIN:** We call Mr. Lynden Anthony.

9 **LYNDEN ANTHONY,** having been duly sworn, testifies as
10 follows:

11 **MR. ANTHONY - DIRECT EXAMINATION BY MR. CARTIN:**

12 Q: Good morning, Mr. Anthony. Would you please
13 state your full name for the record?

14 A: My name is Lynden, middle initial, D, last
15 name, Anthony.

16 Q: Okay, Mr. Anthony. Where do you live?

17 A: I live at 1165 Heritage Drive in Manning, South
18 Carolina.

19 Q: Okay. What county is that in?

20 A: It's in Clarendon County.

21 Q: Okay. Let's talk a little bit about your
22 background. Where are you from?

23 A: Originally from Orlando, Florida.

24 Q: Okay. Where did you go to school?

25 A: Graduated from public high school there in



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1 Orlando and then attended Penn State University
2 for four years and received my four year degree
3 in management.

4 Q: And very briefly, what did you do after you
5 graduated from college?

6 A: After graduated college, I began work with Sun
7 Banks, Inc., there in central Florida. Started
8 in a management training program and then for
9 the next seven years essentially rising up and
10 fulfilling a position of commercial corporate
11 lending throughout that period, handling
12 responsibilities such as credit analysis,
13 reviewing, analyzing, projected performance for
14 various commercial clients, etcetera. After
15 Sun Bank, I moved over to South Trust Bank,
16 again there in the Orlando marketplace as
17 branch manager for a new branch they opened up,
18 located in between Orlando and Kissimmie.
19 Again, the responsibilities as branch manager,
20 not just the efficient operation of the branch
21 itself from a customer service perspective, but
22 also to essentially grow the balance sheet from
23 the perspective of retail commercial loans and
24 then certainly manage the liability sort of
25 deposits that we took in as well from our



1 customers. After banking, again within the
2 Orlando marketplace, I joined Prudential Health
3 Care Group utilizing those skills in the
4 training that I had been using from essentially
5 analyzing commercial financial statements, cash
6 flow, taking that inside the organization. I
7 became finance manager there in the Orlando
8 Group operations, essentially responsible for
9 maintaining internal controls, internal
10 accounting, again managing to some extent cash
11 flows and then using that information
12 accumulated through research in terms of our
13 health care utilizations and projecting those
14 forward from an expense perspective. I moved
15 then to South Carolina where I took position
16 with Planned Administrators as finance manager.
17 Responsibilities there again, internal
18 accounting, audit, internal controls and then
19 customer service aspects as well. From Planned
20 Administrators, went to United Way of South
21 Carolina as finance manager. Responsibilities,
22 internal controls, internal accounting, audit
23 work, human resources and again, customer
24 service. Moved to Manning, at which point I
25 took the position as Controller with Clarendon



1 County. That was 17 years ago, and then the
2 position has evolved to CFO position. But in
3 that time I'm responsible for again, internal
4 controls, internal accounting, budgeting, audit
5 preparation, working with both internal stake
6 holders as well as external stake holders. And
7 then assisting county counsel in terms of
8 direction.

9 Q: Okay. We'll talk about some of those things
10 individually in a little bit but to whom do you
11 report?

12 A: I report directly to our County Administrator,
13 Mr. David Epperson.

14 Q: Okay. Who reports to you?

15 A: As manager of the finance department, I've got
16 individuals that basically have the tasks of
17 accounts payable, non-tax receivables, payroll,
18 again I've got a budgeting analyst/accountant
19 within my office as well.

20 Q: Okay. What, if any, interaction do you have
21 with county counsel?

22 A: With county counsel, again because I report
23 directly to the county administrator, somewhat
24 limited to monthly presentations at our
25 regularly scheduled county counsel meetings.



1 Essentially I've got a standard line item on
2 the agenda where I present our operational
3 status from a revenues and expense perspective.
4 Not just within the general fund but also the
5 other funds that we manage on behalf of our
6 enterprise funds or debt service funds.

7 Q: Do you have any interaction with county counsel
8 regarding their development of policy?

9 A: During the budgeting process, excuse me, I do
10 have an opportunity to meet with county counsel
11 members with Administrator Epperson throughout
12 the budgeting process. So this would be in a
13 four month period beginning in March, ending in
14 June, where we sit down individually with
15 counsel members. They essentially tell
16 administration, here are the goals and
17 objectives, essentially long term policies that
18 we have for the county. And then we have a
19 dialogue that, kind of, brings that down to the
20 physical realities that we're faced. County
21 counsel inevitably always wants to accomplish
22 more than we have the fiscal abilities to do.
23 So basically, through that process we identify
24 those priorities, that prioritization with
25 essentially the limited resources that we have



1 available to us. Those meetings, like I said,
2 are on a monthly basis and can last several
3 hours each month with members of county
4 counsel.

5 Q: And you mentioned you work for Mr. Epperson.
6 What types of interactions do you have with Mr.
7 Epperson?

8 A: Our offices are just down the hall from each
9 other. I do have an opportunity to interact
10 with Administrator Epperson quite frequently,
11 both on nature from a physical perspective,
12 revenue, expenses, but it's also from an
13 operational perspective as well. I've been
14 with the county for 17 years and have had an
15 opportunity over those years to be involved
16 directly and indirectly with just about every
17 phase of our county operations. Because we see
18 the bills, because we pay the bills and handle
19 the human resources aspects and what have you,
20 it gives us and the finance department a
21 somewhat intimate knowledge in terms of what's
22 going on, at least at the Departmental level,
23 throughout the county.

24 Q: Okay. What, if any, interaction do you have
25 with the county treasurer?



1 A: With the county treasurer as an elected
2 official, the treasurer's office is essentially
3 tasked with collecting county money via from ad
4 valorem and taxes what have you. He's tasks
5 with managing those monies. The treasurer and
6 his staff when they accept money, when they
7 receive monies, they're actually receiving
8 those monies in most part into both the tax
9 system and the general ledger. One of my
10 primary responsibilities in managing the
11 accounting and the internal controls in the
12 fiscal reporting is maintaining that, that
13 general ledger is correct. The treasurer's
14 office on any given day, either he or his staff
15 will enter a thousand entries into the general
16 ledger. We review those line items from time
17 to time, trying to identify and make sure
18 entries are made correctly. If we do find an
19 outlier or something that we think is not
20 correct, we'll walk over to the treasurer's
21 office -- I walk over to the treasurer's
22 office, see if I can confirm that the deposit
23 or the receipt was correctly posted, and if
24 not, try to resolve that issue.

25 Q: What, if any, interaction do you have with the



1 county auditor?

2 A: Again, as an elected official, significantly
3 less interaction. The county auditor, nor
4 their staff, have access to the general ledger
5 system. They work exclusively in our tax
6 system, which by the way, I don't have access
7 to but our work with the auditor over the years
8 has evolved, for intents and purposes, around
9 our annual fiscal reporting. Within our audit
10 report, he asks we require we make certain
11 notifications, certain statements that we are
12 reliant upon the auditors office to provide --
13 and there's also information required within
14 the statistical section of our audit report
15 that I get from our auditor's office. In
16 addition to that, from time to time, we do have
17 various general obligation bond issuances and
18 I'll go over to the auditor's office to solicit
19 their signatures, what have you, on the bond
20 documents themselves.

21 Q: Are you familiar with Act 388?

22 A: Yes, I am.

23 Q: How, if at all, do Act 388 impact your fiscal
24 management for the county?

25 A: Act 388, really it places certain, I'm gonna



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1 say, restrictions upon county counsel in terms
2 of the degree of which they could increase
3 millage rates. There are also components of
4 Act 388 that change the sales tax structure and
5 school districts operating but I don't deal
6 with that. Act 388 also placed some market
7 growth valuations, in terms of market values on
8 owner-occupied real estate. Again, not
9 something that my office deals with but it did
10 place some restrictions in terms of that
11 assessed value growth from one year to another.
12 But in terms of Act 388's impact on the
13 budgeting process, because it does cap county
14 counsel's ability to increase millage by more
15 than CPI plus population growth, it really took
16 away county counsel's ability to effect some of
17 those priorities that I may have mentioned
18 before. County counsel may want to do a
19 project and our citizens want the project done,
20 but because of that limitation on millage rate
21 growth essentially capping the amount of our
22 primary revenue source, in terms of that
23 growth, it limited our ability to increase
24 taxes. What it did essentially from a
25 budgeting perspective is, it placed a higher



1 degree, or it really reduced the tolerances
2 that we had in terms of preparing the budget
3 and then moving forward as we converted from a
4 budgetary environment to say July 1, when the
5 budget becomes finalized and we're operating in
6 our fiscal year effective July 1. If I'm not
7 able to increase millage rate, or I'm capped,
8 if my operating expenses, that we don't
9 necessarily have control over, increase by an
10 amount that squeezes the choices that we have,
11 the variable rate so to speak, we don't have as
12 much wiggle room, so to speak, in the event
13 that anticipated revenues come in a little less
14 than we anticipated, or if operating expenses
15 are a little bit more than we anticipated. It
16 essentially, like I said, it takes away a
17 little bit of that freedom that we had.

18 Q: And we spoke about the treasurer and the
19 auditor, what is your understanding of whether
20 these are independent elected officials or
21 whether they report to the county somehow?

22 A: They are completely independent. As elected
23 officials, those two offices as, you know, they
24 will tell you, they report to the citizens of
25 Clarendon County. And while I can go over



1 there and request information, neither the
2 county treasurer nor the county auditor are
3 compelled to provide it to me, certainly not in
4 a timely fashion. I would hope that over the
5 years we've got an established working
6 relationship but they're really not compelled
7 to do anything either I, Administrator Epperson
8 or county counsel would request of them.

9 Q: In your capacity as CFO, can you tell the Court
10 a little bit about what your duties are.

11 A: We, from an accounting perspective as I eluded
12 to is essentially making sure that the general
13 ledger is correct. When it comes to expense
14 management, we want to make sure that our
15 expenses are not out of line with what we had
16 budgeted, what county counsel had budgeted in
17 terms of its budget ordinance. We watch those
18 expenses closely within the finance department.
19 As I indicated, one of our staff members
20 produces in large part all of the support
21 rolling up into the budgeting process, but at
22 the same time is also reviewing our daily,
23 weekly, monthly transactional activity from
24 both a revenues and expenditures perspective,
25 and then comparing that to the budget that was



1 established. And I do that as well. As we get
2 in to tax notices going out in the Fall and
3 into the tax collection, and when I say, taxes
4 in this case I'm talking primarily about ad
5 valorem and specifically real estate because
6 that is the largest component of our ad valorem
7 taxes. When we get in to the collection dates,
8 when citizens actually begin to pay their
9 taxes, in December and then in bulk before the
10 first deadline of January 15th but then in
11 subsequent as that, we take a hard look at how
12 is that revenue coming in, those ad valorem
13 taxes coming in compared to the budgetary
14 assumptions that we had utilized in many cases,
15 you know, anywhere from eight to ten months
16 earlier.

17 Q: Okay. With regard to preparation of budget,
18 let's talk a little bit about what your duties
19 are with that.

20 A: To start the process, we go out and we
21 communicate, meet with, I use the term stake
22 holder. It's the term we started using back in
23 the mid '80s in banking a lot. Department
24 managers, elected officials, basically trying
25 to identify what their departmental needs are



1 going to be in the upcoming year. We also
2 communicate with county counsel to get a sense
3 of, kind of, like, what are those global
4 operating assumptions that they have for us.
5 These would be, kind of, like, the large items
6 where I ask them, you know, are these -- is
7 this on the table, does it have to stay on the
8 table or does it come off the table right away,
9 costs of living increases, raises, some other
10 projects perhaps building out some office
11 space, what have you. As we get this
12 information back, at the same time I'm going
13 through our revenues collections, 'cause at
14 this point I'm into February, you know, late
15 January, early February so I, kind of, know
16 where the bulk of our real estate, real
17 property ad along tax collections are going to
18 be, 'cause we've gotten past first penalty. So
19 we begin to put this together in terms of what
20 our departmental, elected officials needs,
21 wants from an expense perspective, from a
22 capital growth perspective. At the same time,
23 we're marrying that against our anticipated
24 revenue. Our budget model is based upon our
25 actual collections for the prior year so I'm



1 looking at actual collections, what were my
2 budgetary assumptions in making those estimates
3 and where do we stand in terms of actual
4 collections. Were those underlying assumptions
5 correct, incorrect, and then I build those
6 assumptions into the upcoming fiscal year's
7 budget. We go through a, you know, meeting
8 with county counsel individually as I alluded
9 to. We get into a first reading of the budget.
10 Come May, we have second reading, a public
11 hearing of the budget. Throughout this process
12 it is a living and breathing document. It
13 continues to change as we are fine tuning our
14 expense projections. At the same time
15 continuing to develop the revenue model, not
16 just from ad valorem along tax perspective but
17 our non-tax revenue as well, fees, fines, state
18 revenues, what have you. And then whenever we
19 get into June, we'll have a scheduled county
20 counsel meeting in June where counsel will --
21 well they're required to give us a third and
22 final reading on a balanced budget. And then
23 that budget becomes effective with the
24 beginning of our new fiscal year on July 1.

25 Q: When is that meeting in June typically held



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1 with county counsel?

2 A: Historically, it has been at its regularly
3 scheduled county counsel meeting which is the
4 second Monday of each month. So as an example,
5 upcoming it will be the second Monday in June.

6 Q: Okay. And in practical terms, what does it
7 mean when the county budget is finalized?

8 A: On June 30th, when the budget is finalized,
9 that essentially gives various staff at the
10 county, myself, our procurement director, what
11 have you, we have the authorizations
12 essentially through that budget ordinance to
13 begin contracting for goods and services in the
14 upcoming year. We begin that notification,
15 that communication with the vendors. Now we
16 can't execute the contracts technically until
17 July 1, but we begin that communication so
18 we're ready to go. If we've created any new
19 positions within the general fund, within the
20 fire department, many times those positions
21 will become effective July 1. We'll actually
22 begin the notification process for those
23 positions prior to, we'll just hold off on
24 interviews until we get into July and certainly
25 hiring until July. And then, essentially it



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ROA 001579

1 gives us authorization to say, all right, now
2 this is the budget we're required to operate
3 in, now let's make the operational decisions.
4 Let's begin tracking essentially so that we can
5 monitor how we're responding to that budget
6 going through the year but then essentially
7 that we stay and we make sure that we finish
8 the year on the next June 30th, either at or
9 below budget in terms of budgeted expenses.

10 Q: Okay. You also referenced that one of your
11 duties as CFO was for the revenue cycle
12 management. Can you tell the Court a little
13 bit about your revenue cycle?

14 A: Our -- and it's primarily to the general fund,
15 because my comments -- the general fund while
16 the bulk of our revenues are ad valorem in
17 nature, about 75 percent of our general fund
18 revenue is ad valorem in nature. Like, with
19 the fire department, which is a separate taxing
20 entity, nearly 100 percent of its revenue is ad
21 valorem in nature. But within the general
22 fund, we look at our ad valorem revenues from
23 a real property, real estate perspective. We
24 send out those tax notices generally in the
25 Fall, and this would be, like, your house



1 taxes. And our citizens will begin paying
2 those certainly by December 31 for those
3 citizens that wish to take the credit on their
4 taxes. But mostly they'll come in and pay
5 certainly before January 15, which is the first
6 penalty date. A lot of our taxpayers will wait
7 until the next penalty date, February 15th, but
8 the bulk of our real estate taxes have come in
9 by January 15. And that's the date for
10 business personal property as well. About 13
11 percent of our ad valorem or tax revenue is
12 vehicle taxes. Now vehicle taxes are cyclical
13 in nature. They come in fairly constant each
14 month of the year. But in terms of revenue
15 flow, the bulk of our revenues do come in, in
16 the December, January, certainly February time
17 frame for the general fund. On my non-tax
18 revenue, again those tend to be more cyclical
19 in nature. If it's fees and fines, sales or
20 use taxes I may see that come up somewhat in
21 the Summer months, particularly, like, an
22 accommodations tax but the largest component of
23 that sales and use tax would be, like, our
24 local option sales tax which tends to be fairly
25 consistent from one month to the next. Our



1 revenues from the state, which is a large
2 component of our revenue stream in excess of a
3 million dollars, the state pays on a quarterly
4 basis. So while the quarter end may be
5 September 30, I'll get the state check sometime
6 in late October. So again, that's a pretty
7 good chunk of change, revenue, I apologize.
8 But that's on a quarterly basis. But again,
9 from a revenue cycle perspective, about 75
10 percent of our revenues, and that would be the
11 ad valorem component, are coming in pretty much
12 within a two, two and a half month period of
13 time.

14 Q: Do you monitor who the top taxpayers in the
15 county are?

16 A: Once a year that is required information that
17 we put in our statistical section of our audit
18 report. So when I'm in the process of
19 preparing the draft audit report, I'll go over
20 to our treasurer's office and essentially say,
21 who were our 10 top taxpayers for the prior tax
22 year. And this is top 10 taxpayers based upon
23 amount of taxes paid. Again, that goes in --
24 that's part of the required information on our
25 statistical section.



1 Q: Are you familiar who the taxpayers are in this
2 case?

3 A: Yes, I am.

4 Q: Okay. Where, if anywhere, on your top 10 list
5 have the taxpayers in this case historically
6 ranked?

7 A: The last fiscal year end that the taxpayer was
8 reflected on that tax list was for our fiscal
9 year ended June 30, 2016. I believe this would
10 be referred to as tax year 2015 but both
11 entities were individually in the top 10. If
12 they were combined, it would be number four on
13 our 10 list. Like I said, and that's reflected
14 on our statistical section and our fiscal year
15 end 2016 audit report.

16 Q: Is that before the exemption was granted our
17 after?

18 A: It had to have been because they weren't
19 reflected on the report at all the next year
20 when they did not pay property taxes.

21 Q: How does the cyclical nature of your revenue
22 stream, if at all, affect your expense
23 management?

24 A: When we do our budget, obviously we're looking
25 at our cash high points, when are cash low



1 points. Because our cash high points tend to
2 be in the late Fall and Spring, when we're
3 taking a look at our expenditures, you know,
4 obviously I've got to take a look at what are
5 my expenditures that I'm being incurred each
6 and every week, each and every month, salaries,
7 salary related, utilities, etc. From an
8 expenditure perspective, you know, it's an
9 expense management issue but also to some
10 degree a cash flow management issue. And I see
11 the two as separate so if I'm answering your
12 question in one direction and, you know, please
13 let me know if I need to go another way, but
14 expense management is something that we do on
15 an ongoing basis. You know, what are my
16 operating expenses, is that within budget. Is
17 something going on that we did not anticipate,
18 what have you. And we watch and manage our
19 expenses on an ongoing basis. From a cash flow
20 perspective we try to manage or manipulate
21 those larger ticket item expenditures, capital
22 expense particularly. We try to do that in a
23 period of time when we historically have been
24 cash high as opposed to cash low. I've used
25 the example with one of our elected officials



1 over the years, every year we look to budget
2 the acquisition of -- update our law
3 enforcement fleet, patrol vehicles
4 particularly. And while a budget may include
5 the acquisition of x number of patrol vehicles,
6 I can't go out July 1st and purchase those
7 vehicles because that's when I'm historically
8 in a low cash position. We may place the order
9 such that I'm actually taking delivery of those
10 vehicles when we get later into the Fall.
11 Again, whenever we've got a little bit more
12 cash. So from an expense management and cash
13 flow management, they're, kind of, very similar
14 but at the same time whenever you get into the
15 weeds, so to speak, it can be seen and treated
16 as different items.

17 Q: If you have an unexpected expense, can that
18 impact the county's ability to provide services
19 to its constituents?

20 A: Yes, it can.

21 Q: Okay, how?

22 A: If I have a, you know, if we were to have a
23 large, unanticipated expenditure ---

24 **MS. GEER:** Your Honor, I'm sorry, I want to pose and
25 enter an objection here, as to relevance. So



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1 the two issues that I think we all, kind of,
2 agreed on in our opening are, with some
3 subsections under them, statutory right to
4 appeal and does Farmer's qualify for the
5 exemption. So I'm not sure where all his
6 testimony is going but we're not in a Court of
7 Equity. We're not balancing whether the county
8 is impacted by if they have to pay a refund or
9 if they don't have money that they think they
10 should have going forward. It's does Farmer's
11 qualify for the exemption. So ...

12 **THE COURT:** Does the Department have a ...

13 **MR. LUTHER:** No, Your Honor.

14 **THE COURT:** Okay.

15 **MR. CARTIN:** Your Honor, part of our retroactivity
16 argument has to do with the policy reasons and
17 practical reasons that the General Assembly
18 would have enacted that June 1st deadline. And
19 the ability of a county to deal with a large,
20 unbudgeted shortfall after its budget is set --
21 -

22 **THE COURT:** So you're offering this for information
23 purposes to influence my viewpoint of how I
24 construe the statute.

25 **MR. CARTIN:** To provide some factual background for



1 the Court to understand how counties operate
2 and set their budgets and have to deal with
3 unbudgeted expenses so that in light of that,
4 the Court can interpret the law as put forth by
5 the General Assembly. So I think its relevant,
6 Your Honor.

7 **THE COURT:** I tend to agree with Farmer's on this
8 that I can't hear from legislators about their
9 interpretation of the statute and this is --
10 you can see there is case law that sets forth
11 that the historical context of which statutes
12 are passed are something that the Court can
13 consider when interpreting that statute. But
14 I'm not sure this fits within those parameters
15 because there is -- you've talked about the
16 current context of how they budgeted by the
17 historical context of when the legislature
18 passed the law and even there I wouldn't be sure
19 the application, but I certainly would think it
20 would be more relevant there.

21 **MR. CARTIN:** I think of the TNS Mills case, Your
22 Honor, they talked about some of these types of
23 facts that we're getting on the record here,
24 how the counties budget, when it has to be
25 finalized and that was part of the underlying



1 analysis that the Court included in its final
2 conclusions as to the reason for that June 1st
3 deadline. So I would prefer to be able to
4 provide the Court some actual hard and concrete
5 -- understand it's not a Court of Equity, we
6 certainly didn't agree that those were the only
7 issues. I think we framed the issues a little
8 bit differently, so I would disagree with that
9 characterization that we all agreed on what was
10 at issue here. But we do, in fact, believe
11 it's very relevant to helping the Court to
12 understand the factual position in which the
13 counties and the other taxing entities find
14 themselves.

15 **THE COURT:** Any response to that?

16 **MS. GEER:** Again, back to your point that context
17 might be relevant as to when the statute is
18 enacted. I'm not sure I see how evidence of
19 what they're currently doing and how unexpected
20 expenses or unexpected decreases in revenue, I
21 guess is a better way to say it, currently
22 informs us on what the legislature meant.

23 **THE COURT:** How about his argument that the Supreme
24 Court utilized these type facts in their
25 analysis in TNS Mills and therefore if the



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1 Supreme Court saw fit that this was something
2 to be utilized in TNS Mills, by implication it
3 would be something that I would consider. I'm
4 actually making his argument better than he
5 made it.

6 **MS. GEER:** I object to that, Your Honor.

7 **THE COURT:** Right, well yeah, no. The only reason
8 I'm doing this is because that's the way I'm
9 gonna have to ultimately view it.

10 **MS. GEER:** Yeah.

11 **THE COURT:** So I'm gonna put it in the context of
12 the way I would ultimately view it, so I'm
13 gonna allow you ---

14 **MS. GEER:** I understand.

15 **THE COURT:** --- to respond to that.

16 **MS. GEER:** I mean, I don't know if the parties in
17 TNS Mills, maybe they didn't object to all that
18 evidence and it all came in and if it's all in
19 and admitted, then the Court can consider
20 what's before it.

21 **THE COURT:** Okay.

22 **MS. GEER:** I still don't think it's relevant.

23 **THE COURT:** That's a good argument.

24 **MR. CARTIN:** And I don't have much -- it doesn't
25 take long to get this on the record, Your



1 Honor, so it wouldn't be a massive amount of
2 the Court's time.

3 **THE COURT:** Well that's not how I rule. I mean, I
4 rule to what's objected to. Let me just take
5 a short, and when I say short, I'll just step
6 out and talk to staff and I'll be right back.

7 **MS. GEER:** Your Honor, are you okay with us taking a
8 restroom break while you do that or do you want
9 to be ---

10 **THE COURT:** I'm gonna do that but I don't want y'all
11 to -- no, I'm just kidding.

12 (Off the Record)

13 **THE COURT:** All right. Y'all be seated. Everybody
14 back? As to the means of interpreting the
15 statute, if offered for -- to reflect the
16 burden upon the county, I sustain the
17 objection. I think Mr. von Lehe has risen.
18 Your seat uncomfortable or you got a different
19 position?

20 **MR. VON LEHE:** No. I'm just listening, Your Honor.

21 **THE COURT:** Okay.

22 **MR. CARTIN:** Just one clarification, so is the
23 Court's ruling that any discussion of policy or
24 if it currently existed ---

25 **THE COURT:** If it involves how -- what the county



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1 does intermeshes with how they're to comply
2 with the law for the tax laws for the
3 Department, I don't have a problem with that
4 and I was debating this outside of the
5 courtroom. Because I could have argued up
6 until this point here on the burden part, I
7 would have seen an objection even before then
8 in one aspect but then not in the other. So I
9 just think you've reached the point now when
10 you're offering it for the burden that it has
11 upon the county that that's presumed by the
12 textual aspects of the law. So I don't need to
13 hear the depth of the burden because that's
14 already -- the tax law speaks for itself.
15 Along those lines, if I could take a point in
16 your opening statement, you presented something
17 and I want y'all to brief something for me. So
18 it's got nothing to do with this ruling but it
19 does have something to do with where we're
20 headed for. And now I've got to go look up my
21 -- I've got a -- what is it 100, what is that
22 -- it's up to around 170 page outline on
23 statutory construction. But this little area
24 I'm about to ask you about is -- I've got a
25 hole in it. Justice Scalia in his book on



1 statutory construction law referenced a -- he
2 had a section on fixed meaning cannons. But he
3 said words must be given the meaning that they
4 had when the text was adopted. South Carolina
5 follows that approach. But he went on to say
6 that drafters of every era know that
7 technological advances will precede pace and
8 that the rules they create will one day apply
9 to all sorts of circumstances that they could
10 not possibly envision. And then he quoted one
11 of his cases, and this is where I want y'all to
12 help me on, because I've looked the case up
13 when you were giving your opening statement.
14 It's got a -- look at the deciding references,
15 6327. Hence why I want y'all to look into this
16 for me. But the case he quoted was -- it's K-
17 Mart verses Cardiair, Inc., 486 US 281, 108
18 Supreme Court 1811. Let's see when it was
19 decided, 1988. But he quoted, Scalia that is,
20 his concurring decision in part and dissenting
21 in part. And he said, quote, the 19th century
22 statute criminalizing the theft of goods is not
23 ambiguous in its application to the theft of
24 microwave ovens. So when you make the argument
25 that it has its historical context, I agree



1 with that but he's also making a point the
2 legislatures envision that things will happen.
3 So, but I'm not sure all the -- how far I take
4 the implications of this and I would like y'all
5 to assist me in learning about this.

6 **MR. CARTIN:** We're happy to help, Your Honor.

7 **THE COURT:** And you could potentially make my book
8 on statutory construction all the better.

9 **MR. CARTIN:** Happy to do it.

10 **Q:** Just a few more questions for you, Mr. Anthony.
11 What is your understanding of what a tax
12 exemption is?

13 **A:** A tax exemption is essentially that the value
14 of that property has been removed from the tax
15 rolls. So the, you know, any taxing entity
16 loses the ability to tax those assets.

17 **Q:** How, if at all, does an exemption impact your
18 revenue that you receive?

19 **A:** Well the revenue doesn't exempt or doesn't
20 exist for that exemption.

21 **Q:** If you had notice of what tax exemptions had
22 been granted prior to June 1st of each year,
23 what, if anything, could you do with that
24 information?

25 **A:** If the exemption was not taken into



1 consideration in our budget model, then, you
2 know, again depending on its materiality, I
3 would have to or we would have to go back
4 essentially rework the budget model and present
5 to county counsel these modifications before we
6 got to third and final reading. Essentially I
7 would have to reduce anticipated revenue by
8 that amount and because we are required to pass
9 a balanced budget, I would have to reduce
10 expenditures equally.

11 Q: What, if any, interactions do you have with
12 other governmental entities within Clarendon
13 County?

14 A: I alluded to earlier that the treasurer's
15 office receives tax collections. The treasurer
16 then appropriates those monies out to the
17 various other taxing entities that we collect
18 on behalf of. That is all done within the
19 general ledger. The general ledger and its
20 accuracy is my responsibility. So again, it's
21 one of those areas that I go in and check from
22 time to time to make sure entries appear
23 correct but as we get into the budgeting
24 process, we'll have these other taxing entities
25 from time to time who are responsible for



1 preparing their own budgets will call me up and
2 ask me what sort of growth am I seeing or
3 anticipating in total assessed value. What
4 sort of assumptions am I taking into my
5 budgeting model. And then they can decide
6 whether or not it fits within their budgeting
7 assumptions or what have it. It's, you know,
8 conversation more colleague to colleague in
9 terms of what you're anticipating, what kind of
10 assumptions are you writing into your budgeting
11 models. If for any reason they see a revenues
12 being less than what they had anticipated in
13 their models, they have in the past called me
14 up and basically asked me if I'm seeing the
15 same sort of revenue drops in either the
16 general fund or fire department or what have
17 you. And again, we'll have that kind of
18 discussion, you know, why do you think that's
19 happening, what have you.

20 **MR. CARTIN:** That's all I have for this witness,
21 Your Honor.

22 **THE COURT:** How long are you going to be on this
23 witness? I know it's early to break for lunch
24 now but I'm ---

25 **MS. GEER:** Maybe 20 minutes.



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ROA 001595

1 THE COURT: --- just trying -- oh, okay. Proceed
2 ahead.

3 MS. GEER: Thank you, Your Honor.

4 MR. ANTHONY - CROSS-EXAMINATION BY MS. GEER:

5 Q: Mr. Lynden, good morning. Bryson Geer, I met
6 you earlier at a deposition a few months ago.
7 I have a few questions for you. All right, so
8 you talked about your role in overseeing the
9 budget seeing process as CFO. And as I
10 understand it, your job is to accurately
11 predict, as best you can, what the expected
12 expenses and revenues will be for the coming
13 year. Is that right?

14 A: That is correct.

15 Q: Okay. And on the expense side, I think you
16 said you get information from the department
17 heads as to what they expect their expenses to
18 be in the coming year. Is that right?

19 A: We start out with what sort of expenditures do
20 they want to make, essentially what kind of
21 changes, if any, or growth within their
22 departments they're required to make pursuant
23 to law. What kind of changes they're
24 requesting if county counsel has the ability to
25 fund those changes, additional staff, what have



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ROA 001596

1 you.

2 Q: Right.

3 A: But ultimately what we do is, we, kind of,
4 break that down into the dollars associated
5 with that and we see if when we total up all of
6 those various departments an elected officials,
7 it fits within our budgetary restrictions.

8 Q: Okay. And on the revenue side you talked about
9 several different components, but I want to
10 focus in on the revenue that's associated with
11 the property taxes that are paid by the
12 taxpayers that are assessed by the Department.
13 Okay, so taxpayers like Farmer's. So for that
14 revenue, you get that information from the
15 county auditor. Is that correct?

16 A: No ma'am. I don't get any taxpayer information
17 from the county auditor.

18 Q: You don't get any revenue information as to
19 what the expected collections ---

20 A: No, I do not.

21 Q: --- tax revenue will be?

22 A: In our budgeting model we utilize what have we
23 collected in the prior year and in years past.

24 Q: Okay.

25 A: If I know what I've collected and I know what



1 the millage rate was, then I effectively know
2 what taxable assessed value, in terms of actual
3 collections were. That's what our budget model
4 is primarily based on.

5 Q: Okay. So you're only looking at what happened
6 last year?

7 A: And ---

8 Q: And maybe prior years.

9 A: And making assumptions based upon anticipated
10 growth from, say, our assessors office and what
11 have you.

12 Q: Okay. And I think you told me in your
13 deposition that the county incurs refunds
14 liability each year.

15 A: Yes, we do.

16 Q: Okay. So each year the county has to refund a
17 certain amount of dollars to taxpayers who have
18 overpaid their taxes. Is that right?

19 A: The bulk of those refunds are associated with,
20 like, the homeowners exemptions. Taxpayers
21 will come in and apply for the homestead
22 exemption retroactively and we'll have to
23 process those refunds. Again, I only see that
24 refund activity in the general ledger. By the
25 time I see it, or I'm aware of it, the checks



1 have essentially have already been generated
2 and have been mailed out by the treasurer's
3 office. I don't get any specific refund
4 information prior to the refund being granted
5 or the checks being written out.

6 Q: Okay. But you understand that the county
7 auditor receives information each year,
8 throughout the year, of which taxpayers have
9 protested assessments, right?

10 A: I don't know what information they auditor
11 gets.

12 Q: You have no information today, sitting here
13 today, that the auditor receives notices from
14 the Department of Revenue as to which taxpayers
15 have protested their assessments.

16 A: I understand that auditor receives information,
17 I don't know the extent of the nature of that
18 information.

19 Q: Okay. And why is that? Where is her office in
20 relation to yours?

21 A: It's in the same building, essentially across
22 the hall.

23 Q: Okay. So she has information. You're trying
24 to predict to the best of your ability good
25 figures for the coming year. Why don't you



1 walk across the hall and ask her for that
2 information?

3 A: What I do from a refund perspective is I rely
4 in large extent, almost exclusively, to our
5 refund activity historically. Our refund
6 activity is relatively small dollar amounts in
7 nature and over the last five to six years has
8 been fairly constant in terms of dollar amount.
9 It's something that from a trend analysis or a
10 projection prospective, I feel comfortable
11 going and utilizing forward. I've never
12 received information from the auditor's office
13 in terms of any extraordinary activity.

14 Q: Well I think you told me in your deposition
15 that there was one occasion where you had some
16 extraordinarily large, out of the ordinary I
17 should say, refunds I think they were may 250
18 \$1,000.00 refunds from a taxpayer.

19 A: That is correct. That is information though
20 that I saw after the checks had been generated.
21 I went over to the treasurer's office and asked
22 what, you know, what was the nature of those
23 refunds.

24 Q: Right.

25 A: Those dollar amounts were extraordinary in the



1 time that I've been with the county. I don't
2 recall seeing anything that large before.

3 Q: Right. And my point is, you know that is a
4 possibility. You know there can be
5 extraordinary amounts.

6 A: Yes.

7 Q: And so my question is, why not go to the person
8 across the hall who would be able to tell you.
9 I mean, you said earlier you know who the top
10 taxpayers in the county are, right?

11 A: That is correct.

12 Q: And you said these taxpayers together are
13 number four. So why not walk across the hall
14 as say, county auditor how about tell me my top
15 10 taxpayers, any of them file protests this
16 year.

17 **MR. CARTIN:** I'm gonna object to this, Your Honor.
18 Essentially there's a lack of foundation as to
19 his knowledge of what the county auditor
20 actually has. He basically said, I don't know
21 what the county auditor receives and there's
22 been an attempt by counsel to supply some facts
23 to him and to get his reaction to what he would
24 do if he had those facts, which is like posing
25 a hypothetical to fact witness, which is



1 typically not something that is admissible, so
2 I would object to this.

3 **THE COURT:** Ms. Geer.

4 **MS. GEER:** Let me ask a few more questions.

5 **THE COURT:** All right.

6 Q: We've established that you know that there
7 could be extraordinary refund claims out here
8 and that would be something -- let me ask you
9 this, would you want to know if there's an
10 extraordinary refund potentially lying out
11 there as the CFO of the county?

12 A: I would hope that our county auditor would
13 bring that to my attention, yes.

14 Q: Okay. And is it your testimony that you don't
15 know, you did not know, who might have that
16 information for you?

17 A: I don't know what source of information were
18 being provided to the county auditor.

19 Q: And I understand that.

20 A: Okay.

21 Q: But you know that information is out there
22 somewhere, in someone's hands, so what did you
23 do to determine if any of your top 10 taxpayers
24 have protests out there?

25 A: I've never approached the auditor to ask them,



1 you know, if there was a protest out there on
2 my top 10 taxpayers.

3 Q: Okay. And you're saying that the county
4 auditor never mentioned this information to
5 you?

6 **MR. CARTIN:** Object to the form, calls for hearsay.

7 **THE COURT:** Objection overruled , you may respond.

8 Q: Did you ever learn that the county auditor had
9 that information?

10 A: In regards to these?

11 Q: Yes.

12 A: No, I did not.

13 Q: The county auditor never approached you to
14 share any information with you?

15 A: No, ma'am.

16 Q: And would you agree with me that it would have
17 been helpful, as your job as CFO, to have that
18 information?

19 A: If the dollar amounts associated with the
20 exemption were material or significant in
21 nature ---

22 Q: Okay.

23 A: --- yes.

24 Q: And what would you define as material or
25 significant?



1 A: I've not run across that question. I'll know
2 it when I see it.

3 Q: Would over 100,000 be on your radar?

4 A: Yes, it would.

5 Q: Okay. And are you aware of the recent change
6 in the law in Act 388 where you now receive
7 notices of all taxpayer protest, correct?

8 A: I think that's Act 265.

9 Q: 265, I've got the wrong one written down. Do
10 you now receive notice?

11 A: I believe our county administrator is receiving
12 those notices.

13 Q: Okay. And so the legislature has mandated that
14 that information be spread out to a more wider
15 audience.

16 A: Yes.

17 Q: Is that correct?

18 **MR. CARTIN:** Objection. There's no -- she hasn't
19 asked enough questions about what he knows
20 about Act 265 other than the administrator gets
21 notifications now, so there's no, like, --
22 there's no foundation for the testimony.

23 **THE COURT:** I think the act may speak for itself
24 too.

25 **MS. GEER:** I'll leave it with the act.



1 Q: Is the county administrator sharing that
2 information with you now?

3 A: He has shared a couple of the notifications
4 with me. I don't know if that's all of them or
5 not.

6 Q: All right. And so in your budgeting process,
7 if you receive notice of a substantial claim,
8 how do you take that into account?

9 A: I've not had to take that into account. I've
10 not received notification of a large claim
11 during the budgeting process.

12 Q: Would you agree with me that a prudent CFO
13 would take a large potential refund liability
14 into account?

15 A: Yes.

16 Q: It's my understanding that the county does not
17 have a dedicated rainy day fund, do they?

18 A: That is correct.

19 Q: Okay. But do they have an accumulated fund
20 balance?

21 A: Yes, we do have what I refer to as an
22 unrestricted, unreserved fund balance.

23 Q: Okay. And what is the amount of that?

24 **THE COURT:** Unrestricted, unreserved fund balance.

25 A: Right. From an accounting perspective, certain



1 amounts of the available fund balance are
2 restricted for specifically legal required
3 uses, so I can't use those in general county
4 operations if I needed to.

5 **THE COURT:** Legal, required uses. What is that?

6 A: Our local option sales tax as an example, if we
7 received more in local option sales tax revenue
8 then our county counsel has credited to
9 taxpayers. Our county counsel is required to
10 credit 100 percent of that, then those monies
11 can only be used towards future tax credits.
12 I can't utilize any of those monies for other
13 purposes.

14 **THE COURT:** So the state imposed rainy day fund in
15 that area.

16 A: The county counsel has the ability to increase
17 its credit to taxpayers by more than we
18 anticipate receiving in revenue thereby
19 reducing that particular amount of restricted
20 fund balance.

21 Q: All right. And you've talked about
22 restrictions on raising the millage rate. Do
23 you remember that testimony?

24 A: Yes.

25 Q: Are you aware there are some exceptions, some



1 occasions, where the county is able to increase
2 the millage rate?

3 A: Yes, I am aware of it.

4 Q: Okay. Is one of those exceptions if there's a
5 deficiency in the proceeding year?

6 A: I believe so.

7 Q: Okay. And is one of those exceptions complying
8 with a court order or decree?

9 A: I believe so.

10 Q: Okay. And would you agree with me that a
11 taxpayer should not be asked to pay more
12 property taxes that it owes?

13 A: I would, correct.

14 Q: And would you agree with me that if it
15 determined the taxpayer has overpaid its taxes,
16 those taxes should be refunded?

17 A: Yes.

18 **MS. GEER:** One moment, Your Honor. That's all I
19 have right now, thank you.

20 **THE COURT:** All right.

21 **MR. ANTHONY - CROSS-EXAMINATION BY MR. LUTHER:**

22 Q: Good morning, Mr. Anthony. I'm Jason Luther.
23 I'll be very brief. I think you just testified
24 the information -- that you currently get
25 information from the county administrator



1 regarding DOR -- protest for DOR on property
2 tax exemptions. Is that right?

3 A: Administrator Epperson has forwarded a couple
4 to me, yes.

5 Q: And that's helpful information for you for
6 budgeting purposes.

7 A: There's not a lot of information, at least in
8 the ones that I've received. It doesn't state
9 what the exemption is or what have you. The
10 only -- what I've done with that is I've
11 essentially gone over to the treasurer's office
12 with that notification and have asked the
13 treasurer how much did this taxpayer pay us in
14 the prior year. I don't know what exemptions
15 or what was being contested, for lack of a
16 better word. But again, to get a sense for
17 initial materiality. I'll ask the treasurer
18 how much did the pay the prior year. And each
19 of instances so far has been immaterial.

20 Q: So in order to determine whether it's material
21 or not, it would be helpful for you to know who
22 the taxpayer is, right?

23 A: Yes.

24 Q: Okay. Because you can match that up with your
25 top 10 list if you had to.



1 A: Yes.

2 Q: Okay. And it would be helpful to know if
3 there's a protest, right?

4 A: Yes.

5 Q: And if the protest is an exemption, it would be
6 helpful to know that, that is the nature of the
7 protest, right?

8 A: The extent of the exemption. Again going back
9 to materiality.

10 Q: Right. I just want to make sure I'm clear.
11 Sometimes there could be a protest about the
12 value of the property and sometimes there could
13 be a protest about whether the property is even
14 subject to taxation, right?

15 A: That's my understanding.

16 Q: So certainly you'd want to know if it was an
17 exemption protest. That would be helpful and
18 then further, you might want to know some more
19 details about the nature of the exemption. Is
20 that fair?

21 A: Any detail associated with the nature of any
22 exemption, yes. Again, going back to
23 materiality.

24 Q: Okay. And then it would be helpful for you to
25 know perhaps what the taxpayer had paid the



1 prior year, or perhaps what the proposed
2 assessed value is of the property for this
3 current year, correct?

4 A: Again, what is the nature of the request, the
5 exemption. You know, I've got to know that so
6 that I can go to our treasurer and auditor to
7 get a sense of the dollar amount associated
8 with any action.

9 Q: So let's say for example, if you had a property
10 that was currently assessed at \$100.00, but it
11 potentially could be exempt from taxation,
12 that's \$100.00 difference in revenues, correct?

13 A: So it's a reduction of \$100.00 in taxable
14 assessed value, which would result in a loss of
15 revenue.

16 Q: Got it, thank you.

17 **MR. CARTIN:** I don't have any re-direct, Your Honor.

18 **THE COURT:** You may step down.

19 **MR. CARTIN:** May we release the witness back into
20 the wild?

21 **MS. GEER:** No objection.

22 **MR. LUTHER:** I've got no objection.

23 **THE COURT:** All right. You're released into the
24 wilds of Clarendon County.

25 **MR. ANTHONY:** You've been there.



1 **MR. CARTIN:** Is this a perfect time to take a lunch
2 break? Your Honor, if it's okay with you,
3 could we break for lunch now?

4 **THE COURT:** Will y'all come back at 1:00 or ...

5 **MS. GEER:** 1:15?

6 **THE COURT:** Okay. All right. Are we still planning
7 on going late tonight?

8 **MR. CARTIN:** I think I can -- Mr. Ingram's our next
9 witness. He's the only witness we have on the
10 docket this afternoon. I know everybody has
11 something for Mr. Ingram.

12 **THE COURT:** Everybody has something for him?

13 **MS. GEER:** We also have a good bit ---

14 **THE COURT:** Bearing gifts.

15 **MR. GEER:** --- of his testimony that's gonna be
16 enter, I think, by designation. I think, Walt,
17 you said you has some?

18 **MR. LUTHER:** Some 30(b)6 designations, yeah.

19 **THE COURT:** I love stuff like that.

20 **MS. GEER:** So it may be shorter than you normally
21 would expect on that.

22 **THE COURT:** Okay. Just curious. Thank y'all.
23 Okay, 1:15.

24 **(Off the Record)**

25 **THE COURT:** Be seated, thank you. All right.



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ROA 001611

1 Proceed ahead.

2 **MR. CARTIN:** All right, Your Honor. I think there
3 was one question about the brief that you
4 mentioned on the technological change issue
5 about the timing of that. I know a couple of
6 us have had conversations. What is the timing
7 of that, Your Honor, would you like ---

8 **THE COURT:** Oh, I was just letting you in the
9 future.

10 **MR. CARTIN:** Okay.

11 **THE COURT:** All right. If y'all want to get it to
12 me tomorrow ...

13 **MR. CARTIN:** Mr. Luther said he wanted to and I
14 didn't want to hold him to it though.

15 **THE COURT:** I've even come up with another angle I
16 want y'all to discuss, but I'll hit you with
17 that later.

18 **MR. CARTIN:** Thank you, sir. We call Taylor Ingram.

19 **TAYLOR INGRAM,** having been duly sworn, testifies as
20 follows:

21 **MR. INGRAM - DIRECT EXAMINATION BY MR. CARTIN:**

22 Q: Mr. Ingram, please state your full name for the
23 record.

24 A: Taylor Ray Ingram.

25 Q: And what's your occupation?



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ROA 001612

1 A: I'm an appraiser with the Department of
2 Revenue, utility assessment coordinator.

3 Q: And you've been with them since 2003, is that
4 right?

5 A: Yes.

6 Q: And you became the utility assessment
7 coordinator sometime in 2005, 2006. Is that
8 right?

9 A: Somewhere in there, yes.

10 Q: All right. And what are your duties at the
11 Department?

12 A: I currently -- the utilities file on an annual
13 basis and they are appraised and assessed on an
14 annual basis. So when property returns come
15 in, they're due the last day of the fourth
16 month after their account closing date. So
17 once those are received, usually in April or
18 May, we review those and make sure they're in
19 timely. We try to go through and make sure
20 that what we need is in there, the information
21 that we need. Then we begin working on the
22 assessments. I say we, it's me and another
23 individual working with the utilities. We go
24 through the returns to get information out so
25 we can render an opinion of value. Unit of



1 evaluation is what we utilize from the utility
2 companies and that's by way of a cost approach
3 to value or an income approach to value. Those
4 values are then used to apply an assessment
5 ratio and certified to the county so they can
6 attach their local millage rates and bill.

7 Q: Okay. You mentioned very generally utilities.
8 But you also oversee the tax return process for
9 telephone companies. Is that right?

10 A: Yes.

11 Q: Okay. And specifically, rural telephone
12 cooperatives?

13 A: Yes.

14 Q: Okay. And how many rural telephone
15 cooperatives are there in the state?

16 A: Cooperatives, I believe there are six of those.

17 Q: Okay. And is Farmer's Telephone Cooperative,
18 Inc. one of those cooperatives that you oversee
19 the tax return process for?

20 A: Yes.

21 Q: Okay. Is FTC Communications, LLC, one of those
22 companies that you oversee the tax return
23 process for?

24 A: Yes.

25 Q: Is FTC Diversified LLC, one of those companies



1 for which you oversee the tax return process?

2 A: Yes.

3 Q: Okay.

4 A: Property tax return process.

5 Q: The Farmer's entities, which I may refer them
6 as, and I'm gonna talk about the Farmer's
7 entities as the co-op, FTC Communications
8 Diversified. If you have any confusion about
9 what I'm talking about, please let me know, but
10 generally when I talk about them collectively
11 I'll refer to them as the Farmer's entities,
12 okay? The Farmer's entities are the types of
13 taxpayers that are required to file returns
14 annually. Is that correct?

15 A: Yes.

16 Q: All right. And did you oversee the tax return
17 process for FTC Communications, LLC for tax
18 years 2010 to 2017?

19 A: Yes, I did.

20 Q: Okay. And did you oversee the tax return
21 process for FTC Diversified LLC, for tax years
22 2010 to 2017?

23 A: Yes.

24 Q: Okay. What specific forms constitute a tax
25 return filed by one of these utilities?



1 A: The property tax form for these specific
2 utilities that you're mentioning would be the
3 PT-420. That's, kind of, our main utility
4 property tax form. And a supplemental form is
5 attached to that, which is also an internal
6 document for us that we need submitted with
7 that PT-420. It's either a PT-427 or a PT-429.
8 And those are distribution forms where the
9 taxpayer lists out gross investments by county
10 and taxing districts. So then we can take that
11 information and when we certify to the counties
12 we need that distribution information so we
13 know, you know, what allocations to distribute
14 the assessment to the different counties and
15 taxing districts.

16 Q: And that's so the counties can calculate tax
17 bills the correct way. Is that right?

18 A: Yes.

19 Q: Okay. And they do that by making sure the
20 right tax overlay district attaches to the
21 particular property at issue, right?

22 A: Yes.

23 Q: Okay. As far as the returns go, when you think
24 about the total tax return for one of these
25 entities, what does that include?



1 A: When you say these, you're talking about these
2 specific entities ---

3 Q: Property taxes.

4 A: What the telephone companies,
5 telecommunications, the PT-420, 427, 429 are
6 the forms that we require and then we ask that
7 any supplemental information that gives us any
8 insight to the cost of the investments, the
9 revenue that they have, income, anything they
10 can supplement with that. There's some PSC
11 annual reports that have some other, you know,
12 items that we find useful and we ask that they
13 attach that to their property tax returns as
14 well. So it's anything they could supply us
15 that would help us with the appraisal and the
16 assessment process but specifically the PT-420,
17 427, 429 and the PSC annual report.

18 Q: Okay. So when you receive the return from
19 these entities, you look to make sure you have
20 all those forms. Is that right?

21 A: Yes.

22 Q: Okay. Now with regard to the return process
23 itself, we're talking about who you process the
24 returns for, but I want to understand the steps
25 in the process. The first thing that happens



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ROA 001617

1 is the taxpayer submits his return to the
2 Department. Is that right?

3 A: Yes.

4 Q: Okay. And then you review them to make sure
5 they include all the needed information.

6 A: Yes.

7 Q: So you would look for the 420, the 429 and the
8 427.

9 A: Yes.

10 Q: Okay. And you take information and you develop
11 an assessed value.

12 A: Right.

13 Q: Okay. And then you certify that assessed value
14 to the county auditor.

15 A: Yes. Now the way you say it, there's a time
16 line to it but yes, those steps in that order
17 do take place.

18 Q: And that final certification to the county
19 auditor is, sort of, your last say on value
20 before it goes to the counties, right?

21 A: Ask the question again, you said counties
22 twice, you mean the taxpayer?

23 Q: The county auditor. So your -- as far as the
24 value, the assessed value, of the property goes
25 ---



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ROA 001618

1 A: Right.

2 Q: That final certification that you send to them
3 is the last step in the process for the
4 Department.

5 A: Yeah. There's an annual certification that
6 goes out in August and we send that to all 46
7 counties for all the utility companies. They
8 use that document that has all the information
9 for all the companies to attach their local
10 millage rates. So once the county auditor gets
11 that, which is who we correspond with and send
12 that to, they would then do whatever internally
13 through the treasurer's office or whatever they
14 need to go with it to issue the bills.

15 Q: Okay. And the county auditor is an elected
16 official in your in your -- is that right?

17 A: Yeah.

18 Q: And is it your understanding that they're
19 independent of counties.

20 A: I don't know.

21 Q: With regard to exemptions, do you evaluate
22 exemption requests ---

23 **MR. VON LEHE:** I didn't hear that answer. I'm
24 sorry, I missed it. I heard the question,
25 which I want to object whether they're



1 independent to the counties or not.

2 **THE COURT:** Well he said, I don't know so I don't
3 think ---

4 **MR. VON LEHE:** Thank you, Your Honor, now that I've
5 heard that.

6 **THE COURT:** Know that you're whole out there.

7 **MR. VON LEHE:** Now I've heard it.

8 **MR. CARTIN:** That's why I moved on.

9 **THE COURT:** You could still object. It would be
10 belated but it didn't harm you, so ---

11 **MR. VON LEHE:** Thank you, Your Honor.

12 Q: So I'll start back with my other question. Do
13 you evaluate exemption requests from utilities?

14 A: Yes.

15 Q: Okay. Are you aware of any written policies or
16 procedures that address how you determine
17 exemptions?

18 A: Written policies or procedures how do you mean?

19 Q: DOR policies or procedures.

20 A: For exemptions in general or specific
21 exemptions?

22 Q: Well property tax exemptions like the one in
23 this case.

24 A: No, not that I know of.

25 Q: Okay. And you would agree with me that the



1 Department is obligated to follow the statutes
2 and regulations that govern it, correct?

3 A: Yes.

4 Q: And so any timely filing requirements or other
5 deadlines set forth in statute would be
6 mandatory for you and your office as you
7 perform your function, correct?

8 A: I believe so.

9 Q: And a taxpayer that files a return annually, is
10 it your understanding that, that taxpayer is
11 required to claim that exemption on its annual
12 return?

13 **MR. VON LEHE:** Your Honor, an objection here.
14 Certainly he can, I assume he can testify with
15 what is understanding, which is the question,
16 but's he really being asked the question of
17 ultimate law, which is a decision for you to
18 make in this case. Is this annual return
19 claiming this exemption required to get an
20 exemption? That's one of the primary questions
21 in this case.

22 **MR. CARTIN:** Well he just said ---

23 **MR. VON LEHE:** I object to it as -- if he said he
24 didn't know, I'll withdraw this but I'm not
25 sure what he's gonna say.



1 **THE COURT:** He hasn't responded. I don't have a
2 crystal ball so I don't know the answer to that
3 one but ...

4 **MR. CARTIN:** Your Honor, it's the property tax
5 administer utility assessment coordinator who
6 actually intakes these ---

7 **THE COURT:** Let me just cut to the chase, I normally
8 allow the Department of Revenue to testify to
9 how they apply the law. They can't tell me how
10 I should apply the law, but they can tell me
11 how they apply the law.

12 **MR. VON LEHE:** Thank you, Your Honor.

13 **THE COURT:** So if you want to stay within those
14 parameters, you're welcome to.

15 **MR. CARTIN:** Thank you, Your Honor.

16 Q: I'll say that again. A taxpayer that files --
17 excuse me, if a taxpayer has to file a return
18 annually, they're required to claim that
19 exemption on their return. Is that your
20 understanding?

21 A: Yes, that was my understanding.

22 Q: Okay.

23 A: Through this case, I've heard other things
24 about the exemption process obviously, but we
25 always understood it internally to be that the



1 exemption was applied or filed with the
2 property tax return.

3 Q: Okay. And your understanding is that the
4 Department is required to make property tax
5 exemptions determinations on an annual basis?

6 A: Yes.

7 Q: And that means once every year there this
8 timely make those determinations?

9 A: Yes.

10 Q: Okay. If the taxpayer doesn't agree with what
11 the Department concludes on an exemption, is it
12 your experience they can appeal?

13 A: Yes.

14 Q: Okay. And similarly, if a county doesn't like
15 what the Department concludes about an
16 exemption, is it your experience that the
17 county can appeal?

18 A: By way of this case, that is my understanding
19 now. Before I wouldn't have known.

20 Q: All right.

21 **MR. VON LEHE:** Your Honor, again, this is calling
22 for an ultimate conclusion of law in this case.
23 It's one of the primary questions. As you
24 know, it's our position that the counties don't
25 have an appeal right in this case.



1 **THE COURT:** All right. I take his answer as just
2 we're here and that's where he's getting it
3 from. I didn't take it as a reference to what
4 the law means, but if y'all want to clarify
5 that.

6 **MR. CARTIN:** No, Your Honor. I think I was asking
7 what his personal understanding is of what the
8 rights are as the utility assessment
9 coordinator.

10 **THE COURT:** Okay.

11 **MR. CARTIN:** He's already provided a 30(b)6 topic on
12 this so---

13 **MR. VON LEHE:** Whether it's a personal
14 understanding, again, Your Honor, we'd object
15 to that because of the position of the
16 Department of course I guess he ---

17 **THE COURT:** Yeah, he can testify to that.

18 **MR. VON LEHE:** Yeah, his personal belief entered,
19 he's under a 30(b)6 that he's already issued so
20 that's completely contrary to his being
21 appointed as 30(b)6 witness.

22 **MR. CARTIN:** Your Honor, I've never seen ---

23 **THE COURT:** I didn't ---

24 **MR. CARTIN:** --- such a determined effort to ---

25 **THE COURT:** Well, I didn't find it that probative is



1 what I was getting at but if the testimony was
2 offered to establish the position or his
3 interpretation of the law as I should decide
4 it, I strike it for that purposes. I'll only
5 viewed it as he was just commenting about that
6 we're here and that's why he came to that
7 conclusion so ...

8 **MR. VON LEHE:** That may have been the question, Your
9 Honor, if it could be read back or it could be
10 restated.

11 **THE COURT:** Well, let's just restate the question or
12 proceed how you wish.

13 **MR. CARTIN:** In your experience at the Department,
14 have counties ever appealed from exemption
15 determinations?

16 **MR. VON LEHE:** Your Honor, that's not the question
17 he was asked.

18 **THE COURT:** I know. I've ---

19 **MR. CARTIN:** I don't remember the ---

20 **THE COURT:** --- struck the last one, so.

21 **MR. VON LEHE:** He doesn't remember what he was
22 asked, so.

23 **THE COURT:** I over ruled the objection if you're
24 making one this question, so.

25 **MR. VON LEHE:** I believe he was asked his response



1 was something about, except for what I have
2 heard here in this courtroom, I think that was
3 what you said and that's what I understood him
4 to say. I object to that because that was
5 irrelevant.

6 **THE COURT:** That's not -- you're objecting to the
7 current question or the last one?

8 **MR. VON LEHE:** The one before this current one. The
9 one in which he says, not since I got here and
10 heard it in this courtroom.

11 **THE COURT:** Okay. Well, I struck that one as to
12 applying to anything concerning the law or his
13 interpretation of the law.

14 **MR. VON LEHE:** Thank you, Your Honor.

15 **MR. CARTIN:** So just to be clear, people who are
16 going to talk about what the law is and what it
17 means can't testify in this case.

18 **MR. VON LEHE:** If you don't mind, address your
19 remarks to the Court, please sir. I don't
20 think I've got that much chance of agreeing
21 with you or you with me.

22 **MR. CARTIN:** I'm just making sure that I understand
23 the positions because I think they've got some
24 people who are going to testify on what the law
25 means.



1 **THE COURT:** Well I will rule on the objections as
2 they come up. We'll figure out my position.

3 **MR. CARTIN:** Understood, Your Honor.

4 **THE COURT:** At least, I'll figure it out.

5 Q: As the utility assessment coordinator, is it
6 important to you as you do your job that a
7 taxpayer clearly apply for an exemption?

8 A: It's important that I clearly understand that
9 they are applying for an exemption.

10 Q: In a manner that allows the Department to
11 understand what property is being claimed as
12 exempt. Is that fair?

13 A: I think so.

14 Q: And, I mean, you're charged with completing a
15 very complete, concrete task. Is that a fair
16 assessment of what you do?

17 A: Yes.

18 Q: Okay. And in order to do that you have to have
19 the tools about what the property is, or to
20 determine the assessed value, right?

21 A: Right.

22 Q: Okay. Are you familiar with the rural
23 telephone exemption at issue in this case?

24 A: Yes.

25 Q: Okay. And do you have any understanding as to



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ROA 001627

1 when to that exemption was first created?

2 A: An understanding it was explained to me or
3 interpreted it from first working with 12 years
4 ago that the exemption was put in place to
5 provide a property tax exemption to telephone
6 companies that were mandated or required to
7 provide rural landline telephone services for
8 911, for emergency services. Since there was
9 a requirement or something in place, the
10 property tax exemption was then granted so that
11 they could then also have some exemption for
12 those investments that they were making.

13 MR. VON LEHE: Your Honor, I'm gonna have to object
14 to this also. There's been no background as to
15 where he acquired this information in which
16 he's now testifying to. Obviously he was not
17 present for this, obviously, because of the
18 years involved and so there's been no
19 background shown on this. The only thing he
20 could possibly be testifying about is hearsay.

21 MR. CARTIN: Your Honor, he can object to my
22 question, but he didn't object to the question,
23 he just didn't like the witness's answer. So
24 I don't know what to do about that.

25 THE COURT: I ruled, go ahead.



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ROA 001628

1 **MR. VON LEHE:** Yes, Your Honor, I'm just standing to
2 hear.

3 **THE COURT:** Well I was gonna say, the objection was
4 belatedly made after the answer was given so
5 can you explain that further?

6 **MR. VON LEHE:** I will. His answer -- I had no way
7 of knowing his answer was gonna be based on
8 hearsay until he gave it. He could have said
9 yes, I was there but, you know, he couldn't
10 have been probably because of the numbers here,
11 the years, but yes, I was there or I looked at
12 the legislative records or I have a reason for
13 knowing this but -- first hand reason, but
14 there are none.

15 **THE COURT:** Any response.

16 **MR. CARTIN:** Your Honor, I think this sounds like
17 great fodder for cross-examination by the
18 taxpayers' attorney.

19 **THE COURT:** Can you give me your question again one
20 more time?

21 **MR. CARTIN:** I don't remember which -- can the court
22 reporter read it back. I can't remember which
23 one we're even objecting to.

24 **COURT REPORTER:** We'd have to go off the record for
25 a second so I can rewind the recording.



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ROA 001629

1 MR. CARTIN: Can we do that?

2 THE COURT: Yes, do that.

3 (Off the Record)

4 THE COURT: All right. What were you going to say?

5 MR. CARTIN: That, that's a perfectly unobjectionable
6 question if he knew when an exemption was first
7 established. And then, now his answer went on
8 for several sentences.

9 THE COURT: And then, I think we entered into the
10 area of where at least he could object to the
11 foundation late, so if you want to go into that
12 area, just ask the question again and let's see
13 what we can come up with.

14 MR. CARTIN: I ---

15 THE COURT: I sustain his objection as to the
16 historical reasons for passage of the statute.

17 MR. CARTIN: But is his answer as to when it was
18 established ...

19 THE COURT: No, that's not stricken at all.

20 MR. CARTIN: Okay. Then I'm fine, that's all I
21 need.

22 THE COURT: Okay.

23 MR. CARTIN: The rest of it was just extra.

24 THE COURT: Diatribe.

25 MR. CARTIN: That's right.



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ROA 001630

1 Q: Does the Department have any record of what
2 Farmer's Telephone Cooperative, Inc., would
3 have owned, property wise, on December 31st,
4 1973?

5 A: Records from 1973? Not that I know of.

6 Q: Okay. So you don't know, the Department
7 doesn't know, what non-exempt property Farmer's
8 might have owned on that date?

9 A: Only what they would report as that to this
10 current date, not records from that date
11 stating as such.

12 Q: Okay. And I'm guessing the Department doesn't
13 know, or you as the utility assessment
14 coordinator, don't know what other non-exempt
15 businesses Farmer's may have been involved in,
16 in 1973?

17 A: No.

18 Q: Until this case arose, the Department had only
19 applied the rural telephone service exemption
20 to landline assets owned by rural cooperatives,
21 correct?

22 A: Rural cooperatives and rural telephone
23 companies.

24 Q: Right.

25 A: Yes.



1 Q: And that's how -- strike that. And that's how
2 you, as the utility assessment coordinator,
3 have always applied the rural telephone service
4 exemption, only to landlines, correct?

5 A: Yes.

6 Q: Is it correct that Farmer's, the Farmer's
7 entities here, is the only utility you regulate
8 that seeks an exemption for its wireless
9 assets?

10 A: Currently, yes. I believe so.

11 Q: And the, as utility assessment coordinator,
12 regarding whether wireless assets qualify for
13 the rural telephone service exemption.

14 A: That specific policy, no.

15 Q: All right. And so the rural telephone co-ops
16 that you regulate, have all traditionally
17 claimed the exemption for wireline assets on
18 their annual tax returns, correct?

19 A: Yes.

20 **MR. VON LEHE:** Your Honor, I'm gonna object to this
21 based on relevancy. This doesn't have anything
22 to do with the question before this Court, what
23 other taxpayers have claimed.

24 **THE COURT:** Your response?

25 **MR. CARTIN:** I think the response is, Your Honor,



1 we're establishing just this general class of
2 taxpayers is the type that's required to file
3 their returns annually and if they're required
4 to file a return annually with DOR, the statute
5 says they're required to claim that exemption
6 annually. So I'm gonna make sure that its
7 clear on the record that the rural telephone
8 co-ops, who are the type of taxpayer with whom
9 he interacts, and the type of taxpayer that's
10 at issue here, is the type that files their
11 returns annually and also claims their
12 exemptions annually on their property tax
13 returns.

14 **MR. VON LEHE:** Again, Your Honor, whether or not
15 other rural telephone companies are claiming an
16 exemption for wireless or not, it's irrelevant
17 to the determinations of this Court and the
18 decision, so it's irrelevant. What they do as
19 opposed to what we do is irrelevant.

20 **MR. CARTIN:** I don't think that's the question I
21 asked, that's about landline assets.

22 **MS. GEER:** You called it wireline, which might be a
23 reason for confusion.

24 **MR. CARTIN:** Ah, okay.

25 **THE COURT:** Okay.



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ROA 001633

1 MR. CARTIN: Wireline and landline are
2 interchangeable terms.

3 THE COURT: Rephrase the question then.

4 MR. CARTIN: Okay.

5 Q: All right. The rural telephone co-ops that you
6 oversee have traditionally claimed the rural
7 telephone service exemption for wireline assets
8 on their tax returns each year, correct?

9 A: Yes.

10 MR. VON LEHE: Your Honor, again, I'm gonna object
11 to this to the extent there's an implication as
12 to whether or not they have asked for wireless
13 to be exempted. That is an implication of that
14 question. It is irrelevant.

15 MR. CARTIN: Your Honor, I would stipulate for the
16 record that when I say wireline, I mean,
17 landline, or I'll rephrase and say landline.

18 MR. VON LEHE: My objection, Your Honor, is to an
19 inference that, it was a direct question a
20 moment ago, but to an inference that other
21 taxpayers don't claim it. Therefore ---

22 THE COURT: Therefore ---

23 MR. VON LEHE: --- it's irrelevant.

24 THE COURT: Therefore you should not be claiming it
25 also.



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ROA 001634

1 MR. VON LEHE: Correct.

2 THE COURT: That's what he's arguing about.

3 MR. VON LEHE: That is my objection, it's
4 irrelevant.

5 MS. GEER: I think it's Walt talking about
6 landlines, I think you'll say landline it might
7 be clearer..

8 MR. CARTIN: I'll do that. I'll do that. But I
9 will just say for the purposes of the record,
10 there's a lot of people here are going to
11 testify and use the word wirelines, so if this
12 is really going to be an issue, we need to sort
13 this out now because it's an interchangeable
14 term.

15 THE COURT: Well let's just get down a path right
16 now.

17 Q: All right. In the rural telephone co-ops that
18 you regulate, all right, that you're the
19 utility assessment coordinator you oversee,
20 that have traditionally claimed their
21 exemptions for landline assets on the tax
22 returns they file on an annual basis, correct?

23 A: Yes.

24 Q: Let's look at Exhibit 1.

25 (Joint Exhibit Number 1 was introduced into the



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ROA 001635

1 record at this time.)

2 Q: Mr. Ingram, we have the document notebooks over
3 here. Let me show you how to use this.
4 They're all in numerical order. I'll pull it
5 up here but in case you prefer a hard copy or
6 need to see something.

7 MS. GEER: Sorry, Your Honor, I lost my screen.

8 MR. LUTHER: There's power buttons up near the
9 front. You maybe can turn it off.

10 THE COURT: Have y'all lost yours now?

11 MS. GEER: Technology.

12 MR. VON LEHE: I'm gonna need you to be able to see
13 this.

14 THE COURT: Well do y'all have yours now?

15 MR. VON LEHE: I think I can just slide it around so
16 we both can both look at it.

17 MR. CARTIN: You guys have hard copies right here.
18 Everybody ready to go?

19 Q: Mr. Ingram, do you recognize this document?

20 A: Yes, generally speaking.

21 Q: It's my understanding this is the 2011 return
22 for the co-op.

23 A: Tax year 2011 property tax return for Farmer's
24 Telephone Cooperative.

25 Q: I may for shorthand refer to the Farmer's



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ROA 001636

1 Telephone Cooperative, Inc., as it co-op. Is
2 that okay with you? You'll know where I'm
3 referencing? And so just to confirm, this is
4 not the return for FTC Communications, LLC, or
5 FTC Diversified, LLC.

6 A: No.

7 Q: Again, the parts of this return that you look
8 at to find the critical information are the PT-
9 420, right?

10 A: Right.

11 Q: The 427, correct?

12 A: Yes.

13 Q: And the 429, right?

14 A: Yes.

15 Q: Okay. And when you receive this at the
16 Department, as long as you have been regulating
17 Farmer's Telephone Cooperative, Inc., they have
18 been receiving the rural telephone exemption.
19 Is that correct?

20 A: Yes.

21 Q: Okay. And so there was no doubt in your mind
22 that they were claiming the exemption on this
23 tax return because they had always gotten the
24 exemption, right?

25 A: Right.



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ROA 001637

1 Q: Okay. And so you had all the knowledge you
2 needed at the Department in order to understand
3 what the taxpayer was requesting, correct?

4 A: I believe so, yes.

5 Q: All right. Let's go to page SC1076. All
6 right. And is this a copy of the PT-427 form
7 we've been referencing?

8 A: Uh-huh.

9 Q: Can you tell the Court a little bit about the
10 types of information that on this form so it
11 understands?

12 A: Sure. There's several columns here and I as
13 mentioned earlier, this helps us determine the
14 distribution of the assessment out to the
15 different counties and taxing districts. So in
16 the first column it's listed by county. And
17 then the second column, it's the tax district
18 or municipality within that county. The real
19 property gross investment is the next column.
20 Personal property gross investment and then a
21 total of those two gross investments at the
22 end.

23 Q: Okay. Now look down at the last, second to
24 last line, all counties rural property. Do you
25 see that line?



1 A: I do, yes.

2 Q: Okay. Is it your understanding that rural
3 property line items with the co-op is claiming
4 as the exemption in this case?

5 A: Yes, I believe so.

6 Q: Okay. And that space on the fact that the co-
7 op had always gotten the exemption, right?

8 A: I think so.

9 **MR. VON LEHE:** I'm trying to get adjusted here, Your
10 Honor, so I see it.

11 Q: Go to Exhibit 183. I'm gonna skip around on
12 you a little bit.

13 A: This book?

14 Q: This one right here.

15 **(Joint Exhibit Number 183 was introduced into the**
16 **record at this time.)**

17 **MS. GEER:** What number did you say?

18 **MR. CARTIN:** 183.

19 Q: Do you recognize this document?

20 A: Yes.

21 Q: I just want to ask you a general question about
22 how you understood your position in this case
23 as utility assessment coordinator. When you
24 were posed with the question of do wireless
25 assets qualify for the rural telephone service



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ROA 001639

1 exemption, did you look at this document?

2 A: This was brought to my attention.

3 Q: Okay. Did this resolve that issue in your
4 mind?

5 A: No.

6 Q: Okay. Go to Exhibit 20. You'll have to go
7 back to a different notebook, I'm sorry.

8 (Joint Exhibit Number 20 was introduced into the
9 record at this time.)

10 A: That's all right.

11 Q: Or you can just look at it on the screen, but
12 maybe I'll advise you to have a hard copy in
13 front of you too.

14 THE COURT: Blow it up a little bit.

15 MR. CARTIN: Let's see if we can get it.

16 THE COURT: There you go.

17 Q: Can you read it on the screen?

18 MR. VON LEHE: I can not.

19 THE COURT: Blown up for you there.

20 MR. VON LEHE: This is better.

21 Q: Do you recognize this letter?

22 A: Yes.

23 Q: Okay. Did you receive this letter?

24 A: This would have come directly to Samuel Crowe's
25 attention but I would have seen it as well.



1 Q: Can you explain to the Court who Mr. Crowe is?

2 A: He also works with the utility property taxes.
3 He sits next to me and we have no rhyme or
4 reason, we both deal with all these utility
5 companies. We deal with the assessments, we
6 look at all the information, we both correspond
7 with the counties. We both correspond with
8 taxpayers so information that comes in, could
9 come to me or him interchangeably, but we
10 usually review -- both of us review it at the
11 same time.

12 Q: Okay. And is the first you've heard of FTC
13 Communications, LLC, requesting an exemption?

14 A: Around this time. I'm not sure if this was the
15 first example, but around this time I would
16 think.

17 Q: So up until this point you had no idea that FTC
18 Communications, LLC, was seeking an exemption
19 under the rural telephone service.

20 A: Like I said, after review of the timeline and
21 all of the information and everything but it
22 was around this time.

23 Q: Okay. And is there any indication in this
24 letter that FTC Communications asserts the
25 property has to be used in a certain way to



1 comply with the rural telephone service
2 exemption?

3 **MR. VON LEHE:** Your Honor, the letter speaks for
4 itself, so I object.

5 **MR. CARTIN:** That's fine, withdraw the question.

6 Q: Is it your understanding that FTC
7 Communications, LLC's primary function is to
8 provide wireless telephone services?

9 A: Yes.

10 Q: Okay. Let's go to Exhibit 21.

11 **(Joint Exhibit Number 21 was introduced into the**
12 **record at this time.)**

13 Q: Do you recognize this letter?

14 A: Again, this is from Samuel Crowe. It looks
15 like to contact with the taxpayer, but I would
16 have reviewed this as well.

17 Q: Okay. Again, he works with you. Is that
18 correct?

19 A: Yes.

20 Q: Okay. And he denies the request for an
21 exemption. Is that correct?

22 A: Yes.

23 Q: All right. And at the time, the Department's
24 property tax section believed that FTC did not,
25 excuse me, FTC Communications did not qualify



1 for the exemption is that correct?

2 A: Yes.

3 **MR. VON LEHE:** Your Honor, again I object to this.

4 If there is some background in which he can
5 make that evaluation, it hasn't been laid.

6 **THE COURT:** Well, on this one I overrule because he
7 is the person from the Department making the
8 decision at the time, correct?

9 **MR. CARTIN:** That's absolutely right, Your Honor.

10 **THE COURT:** Yeah. He can testify as to what he did.

11 Q: Did you, as the utility assessment coordinator
12 at that time, believe that FTC Communications,
13 LLC's activities were the provision of rural
14 telephone service?

15 A: You said communications?

16 Q: Yes.

17 A: No.

18 Q: All right, Exhibit 22.

19 **(Joint Exhibit Number 22 was introduced into the**
20 **record at this time.)**

21 Q: Do you recognize this letter?

22 A: Yes, I believe so.

23 Q: Okay. Did you receive this letter, do you
24 recall?

25 A: Yes, this would have come across my desk.



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ROA 001643

1 Q: Okay. When a taxpayer protests an assessment,
2 do you typically send the effected county
3 auditor what I'll call an 80 percent notice?

4 A: Yes.

5 Q: Okay. And what does that 80 percent notice
6 convey?

7 A: It usually lets the county auditor know that
8 there has been an appeal and that while we are
9 resolving the appeal, they are to bill at the
10 80 percent assessment until it's certified
11 finalized, resolved.

12 Q: Okay. Do you normally send one out every time
13 you receive a protest?

14 A: Yes, we send that out to the county auditor.

15 Q: Okay. Go to Exhibit 23. That's not the right
16 exhibit.

17 **MR. CARTIN:** Beg the Court's indulgence for one
18 moment.

19 Q: An 80 percent notice, I'm not sure that might
20 be -- go to number 41.

21 **(Joint Exhibit Number 41 was introduced into the**
22 **record at this time.)**

23 Q: This is a proposed assessment, is that right?

24 A: Yes.

25 Q: Is this an 80 percent notice?



1 A: Yes. What this is, this is an 80 percent to
2 the taxpayer. So once the assessment is --
3 this is what I was talking about the timeline
4 earlier. After we have an appraisal and an
5 assessment, we send the proposed assessment to
6 the taxpayer and that proposed assessment sets
7 the time for the 90-day appeal period. Once
8 they appeal it, then we would certify something
9 like this to the taxpayer letting him know our
10 procedure appeal for that 80 percent. This is
11 also going to the county. They're going to
12 bill based on this and 80 percent would go to
13 the county letting them know to bill 80 percent
14 as well. So one would go to the taxpayer, one
15 would go to the counties involved.

16 Q: And so, you sent it to the county auditor,
17 correct.

18 A: County auditors.

19 Q: Okay. And that notice of protest, that 80
20 percent notice that goes to the county auditor,
21 it doesn't tell them what the dispute is about,
22 does it?

23 A: It tells them there is protest or an appeal and
24 that 80 percent is this.

25 Q: And so it could be the dispute is about 10



1 percent of the value, correct?

2 A: Could be.

3 Q: Or 30 percent of the value.

4 A: Could be.

5 Q: Or all of the value.

6 A: It could be.

7 Q: But the county auditor wouldn't have anyway of
8 knowing just on the face of that 80 percent, is
9 this correct?

10 A: On the face of that memo, no.

11 Q: And this language that's been highlighted by
12 Ms. Mitchell here, it's, sort of, indicative of
13 what normally gets sent out. It says, due to
14 the protest filed with SCDOR on November 6th,
15 2014 -- see that language there in yellow?

16 A: Yes.

17 Q: Okay. Is that indicative of the type of notice
18 that the county auditors would have received?

19 A: Somewhat similar, yes. It wouldn't be exactly
20 that language but it would be similar.

21 Q: Okay. There would be no material deviations
22 from that language ...

23 A: I'd have to see one, but it is not this word
24 for word, no.

25 Q: Okay. It's close to that though.



1 A: It's similar, yeah.

2 Q: Go to Exhibit 33.

3 (Joint Exhibit Number 33 was introduced into the
4 record at this time.)

5 Q: Do you recall receiving this letter?

6 A: Yes. I would have seen this as well, yes.

7 Q: And what's your understanding of what this
8 letter is?

9 A: Could you give me a few minutes to review this?

10 Q: Please, look over it. Take all the time you
11 need.

12 **THE COURT:** I don't know about all the time.

13 **MR. CARTIN:** Not all the time.

14 A: Again, I would probably want to see the
15 timeline of when the correspondence took place
16 but this looks to be a letter from the
17 taxpayer's representation basically explaining
18 why they're appealing it, why they believe the
19 exemption is due and they lay out some
20 information on code sections, the exemption
21 code section. They mention refund claims. It
22 just gives a lot more detail in this letter.

23 Q: And go to the last page, it should be Farmer's
24 0000045.

25 A: Is that still under 33?



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ROA 001647

1 Q: Yep.

2 A: You said, 0045?

3 Q: Yep. There's several sets of Bates numbers on
4 this, at least two. Look at the far right-hand
5 corner, that's the Bates numbers I'm referring
6 to.

7 **MS. GEER:** It's not the last page of the exhibit, I
8 think that's what you said.

9 **MR. CARTIN:** Oh did I, I'm sorry.

10 A: It's okay. It's different, let me find it.

11 Q: Actually here it is right here on up right.
12 I'll tell you what I'm looking at. This is --
13 you received this in September of 2013. Is
14 that fair?

15 A: Yes.

16 Q: Okay. And as of this date at least it says,
17 the significant issue remaining in dispute is
18 whether wireless assets may qualify for the
19 exemption. You see that language?

20 A: Yes.

21 Q: So at this time, you had still, the Department
22 had still not agreed with the taxpayer that
23 wireless assets qualified for the exemption.
24 Is that a fair characterization of the
25 Department's position at this point in time?



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ROA 001648

1 A: This time, yes.

2 Q: Okay. All right. Go to Exhibit 25.

3 (Joint Exhibit Number 25 was introduced into the
4 record at this time.)

5 Q: All right. Did you draft this document?

6 A: Yes.

7 Q: And what is this document?

8 A: This is -- it looks like it's in response date
9 wise to the detailed appeal information that
10 was filed on behalf of the taxpayer by
11 representation. And it basically says we're
12 not making any changes. We didn't agree with
13 the exemption, we're denying the appeal. It
14 gives them a date to then appeal this letter
15 and at that point we would have litigation take
16 the case or what not.

17 Q: And this is in January of 2014 you sent this
18 letter, right?

19 A: It's dated January 15th, 2014.

20 Q: Okay. So it would have gone out sometime
21 around that?

22 A: Yes.

23 Q: But as of this point in time when you drafted
24 this letter, the Department still did not
25 believe that wireless assets qualified for the



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ROA 001649

1 rural telephone service exemption?

2 **MR. LUTHER:** I'm gonna object to the question. He's
3 asking what the Department believed as opposed
4 to his capacity as the property division.

5 **MR. CARTIN:** Well this is sent on behalf of the
6 Department of Revenue. It's on SCDOR
7 letterhead. This letter is to inform you that
8 you're, not we, presumed to the Department, are
9 not making any changes to the methodologies and
10 procedures, we, presuming sent on the
11 Department letterhead, currently utilize for
12 the valuation, assessment of the utility
13 company under protest. So I think he's sending
14 it on behalf of the Department.

15 **THE COURT:** Mr. Luther, your response. Because I
16 get your point but it does say we and I was
17 gonna sustain the objection until I ...

18 **MR. LUTHER:** Well I think, so as he's testified, the
19 we so far has been him and Mr. Crowe, as the
20 utilities assessment division within the
21 property division that's been handling this.
22 So I think if he's speaking on his behalf
23 certainly in his capacity as an appraiser or
24 assessor.

25 **THE COURT:** I think I'm gonna overrule the objection



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ROA 001650

1 but just state for the record, I think I've got
2 enough sense having heard these cases to see
3 how just because he's saying we, at the time,
4 things can progress further down the line in
5 the Department.

6 **MR. LUTHER:** Thank you.

7 Q: And the protest was not ultimately resolved
8 with the taxpayer and DOR until 2017. Is that
9 your understanding?

10 A: I believe so.

11 Q: But at least in this point in time in 2014, you
12 felt that you had not received sufficient
13 information to approve the exemption request?

14 A: That's correct, within tax section, did not.

15 Q: And at some point this was handed off to the
16 litigation section of DOR, is that right?

17 A: Yes. We would have had conversations at some
18 point prior to that but this letter would
19 probably be the -- if we got correspondence
20 back, which we did, we would just hand the file
21 over, I mean, the property section would be,
22 kind of, out of it while litigation took the
23 file and met and whatever they do, so.

24 Q: Okay. And at that point you handed off the
25 whole file to the litigation section, right?



1 A: Yes. We were still involved with conversations
2 and meetings but yes, we handed off things.

3 Q: Because the taxpayer's continuing to file ---

4 A: Right.

5 Q: --- assessments and so forth, tax returns and
6 so forth. And you'd agree with me that the
7 property section of DOR is the section with the
8 relevant technical knowledge regarding how
9 utilities are assessed within the Department.

10 A: Can you ask the question again?

11 Q: I understand the Department assesses a number
12 of different types of property. And so there
13 are different pockets within the Department
14 that handles different types of properties. Is
15 that a fair characterization?

16 A: Yes.

17 Q: Okay. And your section, the property section,
18 has over the years of assessing and processing
19 tax returns for utilities developed a certain
20 level of expertise in that type of property.
21 Is that fair?

22 A: For the most part, yes.

23 Q: I just want to confirm that at some point in
24 time the decision as to whether these assets,
25 the wireless assets, were tax exempt was taken



1 out of your hands and passed on to another
2 place in the Department. Is that fair?

3 A: Yes.

4 Q: Let's go to Exhibit 91.

5 (Joint Exhibit Number 91 was introduced into the
6 record at this time.)

7 Q: All right. Do you recognize this document, Mr.
8 Ingram?

9 A: Yes.

10 Q: Okay. And is the settlement agreement that was
11 executed in this case?

12 A: It appears to be, yes.

13 Q: And you received a copy of this settlement
14 agreement. Is that correct?

15 A: Yes.

16 Q: Okay. And what date was it executed? Can you
17 read it for the record? You may need to flip
18 to -- you can actually flip to the last page on
19 this one.

20 A: Okay. I see two dates with two signatures, so
21 ... It was executed between January 4th and
22 January 8th of 2017.

23 Q: Okay. And do you recall when you received the
24 initial protest letter from the taxpayer in
25 this case?



1 A: I don't recall the exact date, sometime in 2012
2 I believe.

3 Q: Okay. So this is five years later, correct?

4 A: It looks like that.

5 Q: All right. Let me ask this, do you see -- are
6 you familiar with who the taxing entities that
7 are the petitioners in this case are?

8 A: Ask again.

9 Q: Do you know who I represent in this case?

10 A: As far as the counties?

11 Q: Uh-huh.

12 A: Yes.

13 Q: Okay. Do you see any signatures on this
14 document of any of the counties or other school
15 districts or the single hospital district that
16 is a party to this case as petitioners?

17 A: No. Not on this document.

18 Q: And did you personally have any conversations
19 with Mr. Rhames, the then director about his
20 document?

21 A: I personally did not.

22 Q: Do you have any personal knowledge of whether
23 Mr. Rhames, who you would agree with me, it was
24 the director of revenue at the time of this?

25 A: I believe so. I'm not sure the exact window of



1 the time he was there, but around this time he
2 was there.

3 Q: He was there this time. But you don't have any
4 personal knowledge regarding whether he
5 actually approved this settlement agreement, do
6 you?

7 A: I don't know.

8 Q: Okay. Go to section 2.3. So if you keep
9 flipping to -- this is going to be on page
10 SC0191.

11 A: Okay.

12 Q: And I'm talking about the first 2.3. There are
13 two 2.3s here. It's the first 2.3. And I'm
14 gonna read this and then get your reaction and
15 ask some questions about it so we it in the
16 record what you're responding to. It says, the
17 parties have not agreed to the amount of any
18 revised assessment. FTCC Diversified and the
19 property division will work together in good
20 faith to determine what information is needed
21 from FTCC and Diversified in the process
22 necessary for the property division to make the
23 appropriate assessments. So that's the
24 language from 2.3 there. Just one clarifying
25 point, we haven't talked about this and we have



1 a lot of evidence that's already in the record
2 so I'm gonna try and not to be too tedious. At
3 this point in time, FTC Diversified, LLC had
4 also requested the exemption for certain of its
5 assets. Is that fair?

6 A: Yes.

7 Q: Okay. And so they were included in this
8 settlement agreement. Is that correct?

9 A: Yes.

10 Q: All right. And as I read this language, I
11 wonder if you would agree with me that there
12 was still additional action that had to be
13 taken before you could determine what property
14 was exempt.

15 A: It looks that way.

16 Q: Okay. It seems to me that you are in fact the
17 property division, you and Mr. Crowe, are the
18 property division referenced in this settlement
19 agreement. Is that fair?

20 A: It most likely would have been me, Samuel and
21 maybe our supervisor.

22 Q: Okay. And so this contemplates that in order
23 to complete the final step in the process to
24 determine what the value of the exemption was,
25 you had to take some step. Is that right?



1 **MR. VON LEHE:** Your Honor, again I've been trying to
2 restrain myself on this interpretation of the
3 document, but the document speaks for itself.
4 Anyone could read it and draw their own
5 conclusions.

6 **MR. CARTIN:** I'm asking if he understood, Your
7 Honor, he had to do after this document was
8 signed.

9 **THE COURT:** Well ask it in that way then.

10 **Q:** Once the settlement agreement was enacted, what
11 additional steps did you, as the utility
12 assessment coordinator, have to take in order
13 to determine the value of the exempt assets?

14 **A:** We had to get amended returns or returns that
15 laid out the different types of property from
16 the taxpayers so then we could apply the
17 exemption to those that were deemed to be
18 exempt through the settlement agreement.

19 **Q:** Okay. Because the original returns did not
20 provide you that information.

21 **A:** I don't believe they provided the same detail
22 on that information, no.

23 **Q:** Okay. So from the returns that you had in your
24 possession on the date that this settlement
25 agreement was signed, you did not have the



1 information you needed to determine what was
2 exempt verses non-exempt.

3 A: The information would be in there. I don't
4 know if it would have been spelled out like we
5 wanted or needed it in order to administer the
6 exemption as it's laid out in the settlement
7 agreement.

8 Q: You're in charge of the property tax section is
9 that ---

10 A: No.

11 Q: Who's in charge of the property tax section?

12 A: The property tax section is part of the
13 government services and that would be Meredith
14 Cleland.

15 Q: Okay. But you're the utility assessment
16 coordinator, right?

17 A: Yes. In charge of the property tax assessments
18 under the utility tax umbrella, utilities.

19 Q: So you're aware of the exemption determinations
20 that are made by the Department with respect to
21 the taxpayers that you oversee. Is that right?

22 A: Yes.

23 Q: And you're familiar with the notifications that
24 are sent out on behalf of the Department of
25 Revenue about exemptions that have been granted



1 within the purview of your department. Is that
2 fair?

3 A: Ask it again, ask the question again.

4 Q: So you're in the property tax division ---

5 A: Uh-huh.

6 Q: --- that determines certain exemptions. And
7 I'm just asking you, I know the answer but
8 you're familiar with the notifications that are
9 sent out regarding the grant of exemptions that
10 have to do with property that you oversee the
11 taxation of.

12 A: Okay. Well there's no specific notification
13 that out for the granting of exemptions from my
14 section. We don't send that specific
15 information out. The notifications would be in
16 reference to an assessment for those companies
17 as a whole, which would have the exemption
18 removed from them at that point, but no
19 notification. It just talks about the
20 exemption comes from the utility section.

21 Q: You're not aware of any notification sent by
22 the Department prior to June 1st of each year
23 telling counties what utility property tax
24 exemptions have been granted, are you?

25 A: I don't know if -- no.



1 Q: Okay. Is it your understanding that the
2 Department does not do that?

3 A: Yes, that's my understanding.

4 Q: I think it's fair to say that the Department
5 has limited resources when it comes to going,
6 as with checking behind tax returns, that have
7 been filed. Is that fair?

8 A: In what regard?

9 Q: You don't have enough staff members to go out
10 and be able to conduct audits of every single
11 individual taxpayer to determine if what
12 they've provided is truthful or not.

13 A: No. We probably don't have those resources.

14 Q: Okay. And so, you count on the taxpayer to
15 provide you the information that you need in
16 order to do your job. Is that a fair
17 characterization?

18 A: Yes.

19 Q: And when they provide information to you, it's
20 my understanding that they need to break out
21 property that's used for exempt purposes from
22 non-exempt purposes. Is that a fair
23 characterization what they present to you?

24 A: Yes. For the most part. Is that a general
25 question or are we -- you say, they generally



1 speaking to these entities.

2 Q: Generally.

3 A: Okay, yes.

4 Q: And with regard to these entities that are
5 regulated here, it's important to you, as the
6 utility assessment coordinator, that they
7 clearly indicate to you what's exempt verses
8 non-exempt. Is that fair?

9 A: Again because of this case, I would answer
10 that, yes. Prior to this case, there was only
11 entity that we would required split it out
12 that way. The one that we had in the past, so
13 that would have been the one that I would have
14 known to do so. But through this case, yes,
15 now several entities that we would need to
16 split out differently because of that.

17 Q: The Department does not have, that you're aware
18 of, a multi-use property policy, meaning a
19 specific written policy about how much of a
20 property must be used for an exempt purpose
21 verses for a non-exempt purpose before it fails
22 to qualify for some exemption.

23 A: For general exemptions or for this exemption?

24 Q: This exemption.

25 A: For this exemption, no. I don't think we have



1 any policy or procedure in place for that, no.

2 Q: Now when the taxpayers provided you their
3 returns in this case, was it your understanding
4 that their returns would have fairly segregated
5 out what was exempt verses non-exempt?

6 A: Again which entities are you speaking of?

7 Q: FTC Communications and FTC Diversified.

8 A: Prior to the appeal, we wouldn't have known to
9 look for any separation of those assets because
10 we wouldn't have thought there was any
11 application of exemption because we would have
12 never granted an exemption for that type of
13 property so. So after this case, yes, but
14 before this case, no.

15 Q: This may be easier to go through some of these
16 tax returns. I just want to --- let's go to
17 Exhibit 13.

18 **(Joint Exhibit Number 13 was introduced into the**
19 **record at this time.)**

20 Q: All right, Mr. Ingram. Do you recognize this
21 document?

22 A: Yes, generally speaking. This would have been
23 the property tax return that would have come in
24 for FTC Communications.

25 Q: Okay. This is my understanding, this would be



1 the 2011 tax return for FTC Communications,
2 LLC.

3 A: Tax year, 2011 based on calendar year ending
4 12/31/2012.

5 Q: As of 2011, FTC had never requested the rural
6 telephone exemption before. Is that correct?

7 A: I don't believe so, no.

8 Q: So when you received this, PT-420 and
9 accompanying documents in 2011, you had no idea
10 that FTC Communications, LLC, was requesting
11 the rural telephone exemption, correct?

12 A: Correct.

13 Q: All right. Now if you look at page SC0644,
14 maybe the third page of the exhibit here, see
15 that? And I want you to focus on, let's go
16 down to the section and look at -- let's see
17 which one we want to look at, under the
18 municipality of tax district, certain of these
19 are coded as rural, correct?

20 A: Correct.

21 Q: Okay. And that means they're in unincorporated
22 parts of a particular county. Is that correct?

23 A: That's what we would interpret that to be, yes.

24 Q: Okay. And the way that we would read this is
25 to look at the rural designation and then move



1 to the left and look at the county, correct?

2 A: Yes.

3 Q: And that would tell us that the particular
4 property at issue here listed under both real
5 and personal property was in an unincorporated
6 area of that particular county for that
7 particular tax year. Is that fair?

8 A: Yes.

9 Q: Okay. Again without more than what was on the
10 face of this return, you did not know what was
11 being claimed as exempt from the taxpayer. Is
12 that correct?

13 A: Upon receipt of this return, there would have
14 been no indication that they were asking for any
15 sort of exemption on any property.

16 Q: Okay. Now let's look at Exhibit 16.

17 **(Joint Exhibit Number 16 was introduced into the**
18 **record at this time.)**

19 Q: All right. My understanding is and I want you
20 to tell me if you'd agree or disagree, that
21 following the settlement agreement the
22 taxpayers submitted additional documentation to
23 you about the tax year in dispute. Is that
24 fair?

25 A: Yes.



1 Q: Okay. And this is an example of the
2 information that FTC Communications sent. Is
3 that correct?

4 A: It looks like it.

5 Q: Okay. And this appears to me to appear to, and
6 please confirm for me, that this is some
7 amended filings for tax year 2011, correct?

8 A: It would appear that way. It doesn't say
9 amended on there but yes, it would appear that
10 way.

11 Q: Okay. And let's look at what's included. We
12 have a scheduled accumulated depreciation,
13 correct?

14 A: Yes.

15 Q: And then we have a PT-427, correct?

16 A: Yes.

17 Q: But we don't have a PT-420, do we?

18 A: No, not in this binder.

19 Q: Okay. We don't have a PT-429, do we?

20 A: Again, not in this binder.

21 Q: Okay. And let's look at the spreadsheet, which
22 is on page SC0635.

23 A: Okay.

24 Q: This essentially breaks the property, as I view
25 it, down into two broad categories, correct?



1 A: It looks that way.

2 Q: All right. And certain of these assets appear
3 to be -- and when I say certain of these
4 assets, I'm referencing the wireless dash
5 exempt assets. You see those there?

6 A: I do.

7 Q: Okay. Those appear to be, you know, claimed as
8 exempt. Is that correct?

9 A: Yes, it would appear that way.

10 Q: And you're able to understand that as in your
11 role as utility assessment coordinator, as it's
12 clear on the face of this what's being claimed
13 as exempt, right?

14 A: Again, that coinciding with the case and every
15 conversation that I've had leading up to this,
16 I knew to look for that breakout on this
17 particular document.

18 Q: Okay.

19 A: Had this been the first document along with it,
20 I would have questioned it then as well and
21 gone through some stuff, but yes, this case
22 brought to light that these needed to be
23 separated out like this.

24 Q: Okay. And now let's look at the next page. We
25 look at page 0636, we have a PT-427 for FTC



1 Communications, LLC, and at the top it clearly
2 references wireless dash exempt, correct?

3 A: Yes.

4 Q: Okay. And again, that's yet another indication
5 that these assets are being claimed as exempt.
6 Is that fair?

7 A: It would appear that way, yes.

8 Q: Okay. And if we go down that continues on to
9 the next PT-427, again additionally sets out
10 more wireless assets that are being claimed as
11 exempt. Is that correct?

12 A: Yes.

13 Q: All right. And if we flip over to the next
14 page, this is 0638.

15 A: Right.

16 Q: We see FLD at the top. Do you know what FLD
17 is?

18 A: Farmer's Long Distance, I believe, but I'm not
19 positive.

20 Q: Okay. And there's no exempt characterization
21 there by that designation, is there?

22 A: No.

23 Q: Okay. And if we look on the first page of this
24 exhibit, you can see that the FLD it states
25 taxable very clearly like their in the ---



1 A: Yes.

2 Q: --- amended filing, correct?

3 A: Yes.

4 **THE COURT:** Is this on the form I'm looking at? Oh,
5 there you go.

6 **MR. CARTIN:** Yes, sir.

7 Q: All right. Now let's, if we can, compare this
8 return to Exhibit 13. I'm gonna do some
9 flipping back and forth.

10 A: Okay. Are we gonna leave this one up on the
11 screen?

12 Q: Let's do this, let's start out with Exhibit 13,
13 we'll try to go real slow through this so I'm
14 not confusing everybody but there is a point.
15 All right.

16 **MR. CARTIN:** On Exhibit 13, Ms. Mitchell, I'm gonna
17 go to page 0645.

18 Q: Do you have an Iphone with you, Mr. Ingram.

19 A: Yes.

20 Q: Does it have a calculator on it?

21 A: Yes.

22 Q: Okay. We'll do a calculation here. Remember
23 Exhibit 13, you agree with me that this is the
24 2011 original return for FTC Communications,
25 LLC, right?



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ROA 001668

1 A: Yes.

2 Q: Okay. I want you to look down on page 0645 and
3 tell me, what is the total real and personal
4 gross investment value there?

5 A: The total real gross investment, 1.7, you want
6 the exact number?

7 Q: I'm looking at page -- are you looking at the
8 same page as me?

9 A: 0645, bates number?

10 Q: 0645, far right hand column.

11 A: Far right. So you want the total together,
12 real and personal gross investment?

13 Q: Exactly.

14 A: One number.

15 Q: Yeah.

16 A: 35,988,688.

17 Q: I'm gonna give you a pen. I want you to write
18 that number down. All right. Got that number?

19 A: Yeah.

20 Q: Let's go back to the amended return.

21 A: Remind me of that number because I lost my page
22 writing this down.

23 Q: This is Exhibit 16.

24 A: 16.

25 Q: Now I'm specifically gonna go to page 0637.



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ROA 001669

1 A: Okay.

2 Q: And I want you to look down at what's the total
3 real and personal gross investment value at the
4 far right hand corner at the bottom.

5 A: Okay.

6 Q: And I see that's 34,805,908.

7 A: Yes.

8 Q: Sound right? All right. Write that one down.

9 A: Okay.

10 Q: Now so, if the original tax return was higher
11 than the amended, total gross investment value.

12 A: Well before we go on, you'd have to add in this
13 other total it looks like.

14 Q: I understand. I'm talking about that total
15 value though of what's tax exempt verses non-
16 exempt. Okay. I see you have to add the FLD
17 ---

18 A: Yeah, to get something ---

19 Q: 1.1, right.

20 A: Okay. Yes, sir.

21 Q: Just bear with me, okay. All right. But those
22 two numbers are higher than each other, right?
23 So we've got to figure out what was segregate
24 -- to figure out what was being claimed ---

25 **THE COURT:** You said, those two numbers are higher



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ROA 001670

1 than each other?

2 A: Yeah, I'm a little confused too. I'm sorry I
3 confused you.

4 **THE COURT:** I don't know how that can happen.

5 A: Let me get my phone in case you have me do a
6 calculation.

7 Q: Yes, I want you to calculate the difference
8 between those two numbers.

9 A: Between these two but not including this total
10 real and gross for the FLD.

11 Q: Not including that.

12 A: Okay.

13 Q: Okay. We're gonna figure out where that FLD
14 number came from, that's the point of this.

15 A: Got you.

16 Q: All right. So let's look back at the original
17 return which you should have in front of you,
18 Exhibit 16.

19 A: The original return?

20 Q: Uh-huh.

21 A: That's not Exhibit 16, that's the amended.

22 Q: Excuse me, 13, 13, 13. All right. Let's look
23 at page 0644.

24 A: Okay.

25 Q: And if we look at the line item here on 0644,



1 you there?

2 A: Yes, I'm on 0644.

3 Q: For Sumter rural, you see that line item is
4 about two-thirds down ---

5 A: Yes.

6 Q: --- the way. Okay. So again, this is the
7 original 2011 FTC Communications LLC, return.
8 And if you look under the personal property
9 gross investment number, what is that number?

10 A: For Sumter rural personal property gross
11 investment.

12 Q: Okay.

13 A: That's the one you're asking about?

14 Q: Yeah.

15 A: 7,827,668.

16 Q: And the way this chart in the original return
17 is that the personal and real property on this
18 chart is located in a rural, unincorporated
19 area of Sumter County. Is that correct?

20 A: Yes. That's what they would be reporting here.

21 Q: All right. Now, let's go back to Exhibit 16.
22 You there?

23 A: Yes.

24 Q: And I want you to go to page 0636.

25 A: Okay.



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ROA 001672

1 Q: Okay. And I want you -- this is what's being
2 -- you'd agree with me that this is what's
3 being claimed as exempt now on this tax return,
4 correct? These assets listed as wireless
5 exempt on page 0636 and 0637, right?

6 A: Yes.

7 Q: Okay. The FLD information is not being claimed
8 as exempt at this point?

9 A: Correct.

10 Q: All right. Look under Sumter rural here.

11 A: Okay.

12 Q: Okay. And what is the value of the personal
13 property gross investment under Sumter rural?

14 A: Personal property gross investment for Sumter
15 rural, 6,658,561.

16 Q: Okay. So when you look at the original 2011
17 return, it's impossible to tell what's exempt
18 verses non-exempt in that return, you would
19 agree with me.

20 A: That was a lump sum total of everything. This
21 one splits that out into two categories so you
22 wouldn't split the two.

23 Q: And you can't just look at the rural
24 classification to determine what's exempt
25 verses non-exempt can you?



1 A: No.

2 Q: Because in order to figure out what was non-
3 exempt in their amended filings, they had to
4 take about a million dollars worth of personal
5 property out of what was classified as rural in
6 their original tax return and put that into a
7 non-exempt category. Is that fair?

8 A: Based on this case and the settlement
9 agreement, they were deemed to have to separate
10 it out so we could determine where the
11 exemption would be applied. So then they took
12 that lump sum number for the original,
13 separated it and then we would apply the
14 exemption according to the settlement
15 agreement.

16 Q: So if you'd taken their original tax return
17 filed for tax year 2011, and generated a tax
18 bill assuming that it was totally exempt, FTC
19 Communications, LLC's, property was totally
20 exempt for tax for 2011, that would have been
21 an incorrect tax bill, tax assessment?

22 A: We wouldn't have done that. That's not
23 something that would have been done.

24 Q: But I guess my point is, you couldn't tell from
25 that 2011 return for FTC Communications, LLC,



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1 what was being claimed as exempt.

2 A: No.

3 Q: Let's go to Exhibit 55.

4 (Joint Exhibit Number 55 was introduced into the
5 record at this time.)

6 A: Do you need this back or would you like me to
7 just keep it?

8 Q: I just wanted you to have it. All right. Can
9 you tell what this document is?

10 A: It looks like a consolidated property return
11 for the entities that we're talking about
12 today.

13 Q: Okay. And is this the original return filed
14 for Diversified for tax year 2013?

15 A: I don't know while looking at this. It could
16 possibly, yeah.

17 Q: Okay.

18 A: And they've got the PT-427 attached with this
19 PT-420 so I would assume that yes, this was
20 their first property tax return filing for
21 Diversified for tax year 2013.

22 Q: Okay. And what's your understanding of the
23 types of services that Diversified provided --
24 provides?

25 A: I'll have to look through what was on there.



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ROA 001675

1 I was understanding though that they provided
2 services other than just the landline
3 telephone, wireline whatever we're calling it,
4 landline telephone services. I'm not sure what
5 all those services were, I'd have to review all
6 this.

7 Q: But looking at this original tax return, you'd
8 agree with me, you can't tell whether there's
9 any property that they owned that's non-exempt
10 or exempt. It just property all owned by
11 Diversified, LLC, used for whatever
12 Diversified, LLC, does, right?

13 A: Yes. We would -- again, we wouldn't check this
14 unless there was a reason to check for the
15 exempt property. So prior to this appeal and
16 all of this, we wouldn't have looked for any
17 exempt property in here. But if this were one
18 we were looking for exempt property, we would
19 review telephone plan services verses non-
20 regulated investments to see if there was a
21 difference but I'm not sure that would have
22 helped in this case because we didn't have an
23 exemption to go based on up to this point.

24 Q: Okay. So you didn't know that they were
25 claiming the exemption on this return?



1 A: No.

2 Q: Okay. Now let's go to Exhibit 58.

3 (Joint Exhibit Number 58 was introduced into the
4 record at this time.)

5 Q: And do you recognize this document?

6 A: Based on one of the previous tabs you've shown
7 me, it looks to be a similar amended return
8 after the settlement agreement for Diversified
9 Services.

10 Q: Okay.

11 A: Tax year, 2013, I believe.

12 Q: All right. So this would match up with the
13 original return that we just reviewed, right?

14 A: Yes, I believe so.

15 Q: Okay. And again, this was provided to you
16 after the settlement agreement was executed,
17 right?

18 A: I think so, yes.

19 Q: Okay. Look at page 1319. It's, kind of, hard
20 to see, it's actually embedded in the document
21 itself but, all right, you'd agree with me that
22 this spreadsheet breaks out the property owned
23 by Diversified Services into a number of
24 different categories.

25 A: Yes.



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ROA 001677

1 Q: Okay. And I see voice, video, ISP and WIFI
2 written on here, correct?

3 A: Yes.

4 Q: Is it your understanding that some of this
5 property would be exempt and some of it would
6 not be exempt under the rural telephone service
7 exemption?

8 A: Yes, but I would have to refer to the
9 settlement agreement to see what was deemed to
10 be exempt and non-exempt.

11 Q: Now let's look at the next page as it breaks
12 the property out into PT-427's based on
13 different classifications of property. Is that
14 correct?

15 A: Yes.

16 Q: Okay. And so again, each separate portion of
17 property has a PT-427 schedule that lays out
18 where it's located and the value of that
19 property, right?

20 A: The cost, the gross investment of that value.
21 I mean, not necessarily value, the gross
22 investment value.

23 Q: Okay. You have to use that with the depression
24 schedule in order to come up with the value,
25 right?



1 A: Right.

2 Q: Okay. Now is it your understanding that the
3 video assets were being claimed as exempt or
4 non-exempt?

5 A: I believe non-exempt but I'm not sure.

6 Q: How about the ISP assets on page 1322.

7 A: Again, non-exempt I believe but I'd have to
8 check against the settlement agreement.

9 Q: Okay. How about the WIFI assets?

10 A: Again, non-exempt.

11 Q: All right. One more point before we leave
12 this, if you have 1321. All right. This PT-
13 427 shows video property. Is that correct?

14 A: Yes.

15 **MR. VON LEHE:** What exhibit, please?

16 **MR. CARTIN:** This is the same one we've been on.
17 Just on page 1321.

18 Q: And this property is not exempt, correct?

19 A: I believe so, yeah.

20 Q: Okay. Look down at Williamsburg County, all
21 the way at the bottom.

22 A: Yeah.

23 Q: All right. You agree with me that this non-
24 exempt property has a municipality or tax
25 district that indicates this is in an



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ROA 001679

1 unincorporated part of the county. Is that
2 fair?

3 A: It appears that is what this would indicate.

4 Q: And so the way you would read this is that
5 there is \$133,135.00 dollars worth of personal
6 property gross investment in a rural area of
7 Williamsburg County that is not being claimed
8 as exempt.

9 A: Yes.

10 Q: Okay. So the indication of whether it's rural
11 or not doesn't tell you anything about whether
12 an exemption applies to a particular piece of
13 property, does it?

14 A: Again, because of this settlement agreement, we
15 had to split these out to determine which
16 property should receive the exemption and which
17 shouldn't.

18 Q: But the rural designation alone doesn't ---

19 A: No.

20 Q: Okay.

21 **MR. CARTIN:** Beg the Court's indulgence for a
22 moment. Your Honor, that's all I have for Mr.
23 Ingram.

24 **MR. VON LEHE:** Your Honor, if we could prior to
25 cross-examination, I'd like to talk to my



1 clients for a moment. If we could have about
2 10 minutes?

3 **THE COURT:** You okay with that?

4 **MR. CARTIN:** Yes, sir.

5 **THE COURT:** All right.

6 **MR. VON LEHE:** Thank you.

7 (Off the Record)

8 **MR. INGRAM - CROSS-EXAMINATION BY MR. VON LEHE:**

9 Q: Mr. Ingram, good afternoon.

10 A: Good afternoon.

11 Q: I'm gonna hand to you copies of some code
12 sections. Just a little easier than trying to
13 dig them up.

14 **MR. CARTIN:** Your Honor, never mind, I'll ...

15 **THE COURT:** Okay.

16 **MR. VON LEHE:** They're not for an exhibit, they're
17 just for an observation. They are just
18 sections out of the code.

19 Q: Mr. Ingram, I want you to turn to code section
20 12-37-220, (10). That would be on page 630.
21 The page numbers are at the bottom of each of
22 these codes. Do you see that number (10)? All
23 right. Number (10) says, notwithstanding any
24 other provisions of law, the property of
25 telephone companies and rural telephone



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1 cooperatives operating in this state used in
2 providing rural telephone service, is that the
3 exemption of law that you understand this case
4 is all about?

5 A: Yes.

6 Q: All right, sir. Now does the exemption I just
7 read, does anything in that language address
8 whether changes in technology impact the
9 taxpayers ability to qualify for the exemption?
10 For example, does it state something like, as
11 of 1978? See any such language in there?

12 **MR. CARTIN:** Objection, Your Honor. The language of
13 the statute speaks for itself.

14 **MR. VON LEHE:** That's exactly my point, Your Honor.
15 That is my reason for asking him if he sees
16 anything in this statute mentions anything
17 about 1978.

18 **THE COURT:** Well, I sustain the objection since you
19 agree with it.

20 **MR. VON LEHE:** Your Honor, I also wanted to ask you
21 this.

22 Q: Now in your deposition which you took sometime
23 back, you weren't aware of any occasions in
24 which the Department has denied an exemption
25 based on a determination that the exempted item



1 has different technology today than the item
2 did when the exemption statute was enacted. Is
3 that still your opinion?

4 A: Other than the facts of what we're talking
5 about here?

6 Q: Yes. I guess this case has yet to be
7 determined.

8 A: Yes.

9 Q: But in the past still, are you aware of any ---

10 A: Not on the top of my head. That I've dealt
11 with? No, I don't ---

12 Q: Okay. Thank you, thank you. Example, in your
13 deposition, I believe, you specifically may
14 have mentioned research and development
15 equipment. Do you remember that as a vastly
16 changing technology? Or do you not recall?

17 A: I don't recall saying that. I don't know.

18 Q: But would that be an example of a vastly
19 changing technology?

20 A: I would think so.

21 Q: Okay. I would ask you, when you speak of the
22 required level of use, which you were asked
23 about a little while ago, required level of use
24 for exempt purposes, do you find anything in
25 the exemption statute for rural telephone



1 service that says what an asset must be used
2 for in order to qualify except it just says to
3 provide rural telephone service. Is there
4 anything in there that gives you direction to
5 prorate for example?

6 **MR. CARTIN:** Objection, Your Honor. Again the
7 language of the statute speaks for itself.

8 **MR. VON LEHE:** I'll rephrase that, Your Honor.

9 **THE COURT:** Okay.

10 Q: In your work prior to this case, has it ever
11 been necessary to try to prorate out something
12 that has a dual purpose? Have you ever had to
13 do that or ...

14 A: No, not that I can recall.

15 Q: All right, sir. Now I'm gonna show you a
16 couple of other statutes and ask you to take a
17 look at them. One is 12-37-220(A)4.

18 **THE COURT:** 12-37- what?

19 **MR. VON LEHE:** 12-37-220(A), number (4). That's on
20 the second page, Your Honor, of this handout,
21 page 637 of the code.

22 Q: And it mentions all property of charitable
23 trusts and foundations used exclusively for
24 charitable and public purposes. Do you see
25 that written?



1 A: Yes.

2 Q: You see number (4)?

3 A: Yes, sir.

4 Q: And I believe you've already said that you
5 don't see any such language in the statute that
6 we're talking about exclusively.

7 A: Right.

8 Q: Now with regard to section 12-37-220(B)16.
9 B16(A) and that's going to be on page -- that's
10 all the way over to the end. That's gonna be
11 on the last page of 631. Do you see that
12 provision?

13 A: Yes.

14 Q: The property of any religious, charitable,
15 eleemosynary, educational or literary society,
16 corporation or other association, when the
17 property is used by it primarily for the
18 holding of meetings. In your work, have you
19 ever denied an exemption for a rural telephone
20 service because it was not primarily used.
21 Have you ever asked a taxpayer to explain if
22 something is primarily used?

23 **MR. CARTIN:** Objection, Your Honor. I'm gonna
24 object to the extent that the premise of the
25 question includes the recitation of law. It



1 seems like they were two disconnected questions
2 there. We read a portion of the law and then
3 a question was asked about primary purpose,
4 about a different subject matter of tax
5 exemption. So to the extent that counsel's
6 question includes as a premise, some recitation
7 of the law where that's part of the question,
8 that I would ask that be stricken.

9 **MR. VON LEHE:** Your Honor, I think it is perfectly
10 good background for him. He's talking about
11 what he has done. At least after all, he is
12 head of the -- well not head of, but he's a
13 high official in the property tax division
14 there, as been pointed out a number of times in
15 his direct testimony. I think it is perfectly
16 proper for him to say if he's ever applied this
17 before. And the only way I know to tell him if
18 he's applied for it before is to show it to him
19 and say, have you applied this.

20 **THE COURT:** Well, I'll overrule that, although I
21 will recognize that, until this case, he's
22 denied -- I think he said he's ever granted an
23 exemption through this category so I don't know
24 how primarily he's gonna weigh into all that.
25 But you can continue.



1 **MR. VON LEHE:** I don't know what the weight of it's
2 going to be, Your Honor. I don't think it will
3 be substantial but I honestly don't know.

4 **THE COURT:** Okay.

5 **MR. CARTIN:** Your Honor, I guess there would be a
6 lack of foundation objection to the extent a
7 question includes whether this witness has done
8 anything for charitable trusts and so forth to
9 which this applies because he's never, he's got
10 no experience with that. So again, if that's
11 -- if we're reading a section that has to do
12 with charitable trusts and these other
13 categories ---

14 **THE COURT:** Well, I recognize that he read that, but
15 then his question went to, have you ever denied
16 an exemption for primarily, and I forgot how it
17 ended, exactly how it ended, but he was taking
18 one word out a statute and applying it in this
19 instance. So ...

20 **MR. CARTIN:** Understood, Your Honor.

21 **MR. VON LEHE:** Thank you, Your Honor.

22 Q: And one last one along these lines. I've got
23 one last code section in here which is on page
24 627. If you'll turn to that page, number (8).
25 And instead of my paraphrasing what it says, I



1 mean, I can do that but I would like to just
2 read the language of it. All facilities or
3 equipment, do you see that with that number
4 (8)?

5 A: Yes.

6 Q: All facilities or equipment of industrial
7 plants designed for the elimination,
8 mitigation, prevention, abatement, control of
9 water or air or noise pollution, with internal,
10 external, blah, blah, blah, of the line and
11 then usually conducted for external required by
12 state or federal government and used in the
13 conduct of their businesses, at the request of
14 the Department of Revenue, the Department of
15 Health and Environmental Control shall
16 investigate the property of any manufacturer or
17 company eligible for this exemption to
18 determine the portion of the property that
19 qualifies for pollution control property. Have
20 you ever applied this exemption?

21 A: Yes.

22 Q: You have applied this exemption. And could you
23 explain a little about -- is this the way this
24 works in other words? Does the Department of
25 Revenue go out and get some expertise to look



1 at this particular property and tell whether or
2 not it is -- to what proportion it is being
3 used?

4 A: Yes. If we can't determine what was reported
5 and our understanding of the property that's
6 been reported on the property tax return, we
7 then go to DHEC to get them to, kind of, assist
8 with that process to determine what portion is
9 exempt and what portion is not exempt.

10 Q: All right, sir. Thank you. So the law is
11 pretty specific to tell you what to do in this
12 case. Go out and get some help in proportion
13 it, right?

14 A: Yes.

15 Q: All right. Now I wanted to talk to you about
16 how the assets ought to be indicated on tax
17 returns, which is something you just spent a
18 large amount of time with with Mr. Cartin going
19 over the various tax returns that have been
20 filed and how the assets were listed on them.
21 And with regard to Farmer's Cooperative, I
22 won't go back through the returns, hopefully we
23 won't have to but if we do, we will, I will ask
24 you to. But, I'll try to be a little bit more
25 general. With regard to Farmer's Cooperative



1 itself, with regard to the co-op, which have
2 been filing for many years.

3 A: Many years.

4 Q: Probably over 20 or what have you.

5 A: I think so.

6 Q: Now in getting their exemption, is it a fact
7 that they simply list the assets on their
8 return and send it in to you, and you grant it?

9 A: Yes.

10 Q: And they didn't down to exempt and non-exempt,
11 right? We can look at the returns, I think you
12 already said they did not.

13 A: Right. No.

14 Q: They list those assets, you look at it, you
15 grant the exemption?

16 A: Yes.

17 Q: With regards to these other two entities. With
18 regard to FTCC and Diversified, is it not a
19 fact that they listed their assets on the
20 initial returns that they filed?

21 A: They listed their investments in the counties
22 and taxing districts, yes.

23 Q: They did the same thing the cooperative did,
24 did they not?

25 A: Yes.



1 Q: All right. But I believe it's been -- your
2 impression was, I assumed, that they were not
3 applying for the exemption by doing that. Is
4 that correct?

5 A: Until the appeal of the protest, we had no
6 knowledge that they were asking for an
7 exemption on that property.

8 Q: So if they did the same thing as the
9 cooperative did but you did not review that, if
10 in fact you had occasion to study it, maybe you
11 did, maybe you didn't. You can tell us. But
12 you did not review that as applying for the
13 exemption at that time, right?

14 A: Right.

15 Q: They filed the same forms generally that the
16 co-op files?

17 A: Other than the distribution information form,
18 yes.

19 Q: And that needs to be different?

20 A: It should be, yes.

21 Q: Right. And with regard to the -- so you had no
22 reason to tell them to file something
23 differently, correct? These returns which were
24 filed they were, if in fact they were looked at
25 earlier.



1 MR. CARTIN: Object to ---

2 Q: Did you have any reason to ---

3 THE COURT: Wait a second.

4 MR. CARTIN: I just think the questions were unclear
5 as to ---

6 A: Yeah, I was gonna ask you ---

7 Q: Well it probably was, but did you have any
8 reason to ask them to re-file these returns?

9 A: Prior to the settlement agreement?

10 Q: Yes.

11 A: No. Not that I have no of.

12 Q: Thank you. We talked about -- you and Mr.
13 Cartin talked about this June the 1st deadline
14 he spoke of, okay, and that counties needed to
15 have this information by June the 1st. You
16 remember having that conversation with him a
17 moment ago?

18 A: Yes.

19 Q: A few minutes here. Is there any way in the
20 world you can meet a June 1st deadline to tell
21 these counties? There's not a practical
22 possibility is it? You tell me what happens.
23 You started to go through it a little while
24 ago. The taxpayer files for an exemption and
25 then what happens?



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1 A: For a particular tax year as far as the
2 exemptions are concerned with the utilities
3 that I deal with, it's not a realistic date to
4 meet in that particular tax year.

5 Q: All right.

6 A: Most of the companies that I work with, 90
7 something percent probably, have an accounting
8 closing date of 12/31. So their property tax
9 returns would be due the last day of the fourth
10 month from that date, which would be ---

11 Q: April.

12 A: End of April, yes. They post mark it by that
13 date. It makes it way to the Department, it
14 makes it way to my desk that first week of May
15 most of the time and we're talking about a
16 couple of hundred utility accounts. And a good
17 hand full of those, I wouldn't know the number,
18 I'm not going to begin to guess, have pollution
19 control exemption, rural telephone exemptions,
20 exemptions within there.

21 Q: Yes.

22 A: So the turn around time to go through all of
23 those, render an opinion of value for an
24 appraisal and then issue an assessment,
25 proposed assessment to send back to the



1 taxpayer and then to turn around and send the
2 certification to the county within that three
3 and a half week period, that's -- that is
4 unreasonable. That's too short of a window to
5 get from there to June 1 to do all that.

6 Q: In generally, I'll ask a question, in generally
7 the Department of Revenue does not attempt to
8 do this. Is that correct?

9 A: No. Our first correspondence with the county
10 is when it comes to the certification, the
11 assessments, it's usually the mid August when
12 we certify the annual utility certification.

13 Q: All right. With regard to the 80 percent
14 notices which you and Mr. Cartin discussed,
15 please tell the Court again, how does this 80
16 percent notice come about.

17 A: I don't know the code section off of the top of
18 my head. Either the number of the code section
19 or the exact language, but there's something in
20 the law that states when they file a protest,
21 when a taxpayer files a protest for an appeal,
22 the county can then bill based on 80 percent
23 until that's resolved or settled. And so we
24 know that, we take our assessment, we apply the
25 80 percent, we calculate what that is and we



1 send that number and it's, you know, a lot of
2 numbers because we are talking about several
3 different counties and taxing districts. We
4 send those numbers in two reports. One is a
5 proposed assessment that has the 80 percent
6 figure to the taxpayer.

7 Q: Yes.

8 A: The other one is along with the 80 percent
9 memo, an 80 percent certification that has 80
10 percent of the original assessment for each one
11 of those counties and taxing districts. So the
12 counties can then bill based on 80 percent with
13 their millage rates. It stays like that until
14 the appeal is settled, resolved, goes to court
15 or whatever the case may be. Then we would
16 issue a finalized certification there would be,
17 whatever the number at the end is.

18 Q: Now the fact of the matter is it's 80 percent
19 of some number. Is that correct?

20 A: Yes.

21 Q: Now if I were looking at something, and I'm
22 gonna ask you this question, if I were looking
23 at something that told me this is an 80 percent
24 notice from a county auditor, I'm looking at
25 something that tells me this is an 80 percent



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1 notice from the Department of Revenue and it's
2 in blank amount, I should be able to tell what
3 the 100 percent amount should be, shouldn't I?
4 This is 80 percent of it, surely if 80 is 80
5 percent of 100 then 100 is 100 percent of 100.

6 A: Yes.

7 Q: I mean, it doesn't require a lot of calculation
8 to do that.

9 A: From the county's perspective, they've already
10 received the 100 percent most of the time
11 because they got that in August. So the 80
12 percent, they could just match that up with
13 what we originally certified to them and they
14 could see if that was 80 percent.

15 Q: So they're going to know what this amount is if
16 they -- whether or not they concentrated on it
17 or not is an entirely different question. I
18 don't know if you were here for this mornings
19 testimony by the chief financial officer. I
20 believe he said he never heard from his county
21 auditors, but the auditors know.

22 A: The auditors would know. We send all our
23 correspondence directly to the county auditor.
24 We do know that in a good hand full of the 46
25 counties, the deputy auditor handles the



1 utility accounts but all of our correspondence
2 goes directly on the envelope and the letter to
3 the county auditor.

4 Q: All right, sir. Now I did a lot of objecting
5 to this last question but nevertheless, I'm
6 gonna go there anyhow.

7 **THE COURT:** You opened the door, huh?

8 **MR. VON LEHE:** I think I am, Your Honor, because I
9 received a little additional information that I
10 think the Court would probably like to have.

11 Q: You were asked earlier whether or not any other
12 of these, I think it's six cooperatives that
13 you said there are, whether any of them are
14 claiming an exemption for wireless.

15 A: Yes, sir.

16 Q: And you said there were not.

17 A: Currently I'm not aware of any others asking
18 for those.

19 Q: All right. Were you aware of the fact that
20 none of the other cooperatives have wireless?

21 **MR. CARTIN:** Objection, Your Honor, that assumes a
22 fact that is not in evidence.

23 **MR. VON LEHE:** I want to know if he knows it or not.

24 **MR. CARTIN:** Well ---

25 **MR. VON LEHE:** This is the opportunity.



1 **THE COURT:** He would have to know it of his own
2 personal knowledge.

3 Q: Do you?

4 A: As it currently stands, we don't require that
5 those companies split out the types of assets
6 so to my knowledge, I'm not sure if they have
7 wireless assets.

8 Q: You don't know if they do or they don't?

9 A: Correct.

10 Q: All right.

11 **MR. VON LEHE:** Forgive me, Your Honor, that was just
12 an inference I didn't want left on the record.
13 But for some, you know, some reason nobody else
14 is reporting it, and, you know, therefore we
15 should be, I mean, that was the inference. Had
16 to be a reason for asking that question. So
17 anyhow.

18 Q: I want to ask you the following. You -- we
19 talked about claiming exemptions. We talked
20 about claiming exemptions on tax returns
21 earlier. You testified that to your knowledge,
22 in order to claim an exemption, you had to list
23 it on the current tax return. That's what you
24 said, is that correct?

25 A: With the current tax return.



1 Q: You had to do it with the current tax return.

2 A: Yes.

3 Q: Were you aware that others at the Department of
4 Revenue have testified and will testify that
5 that is not necessary.

6 **MR. CARTIN:** Objection, Your Honor. I ---

7 **MR. VON LEHE:** I mean, he's either aware of it or
8 he's not.

9 **THE COURT:** I think that's pitting the witness
10 though, isn't it?

11 **MR. VON LEHE:** I think it's very important from the
12 standpoint of the Department policy, which is
13 what he is being asked about. I mean, here
14 we've got -- I realize it's up to me to prove
15 this but we've got to prove to the Court
16 somewhere that you've got 36 months to claim
17 these exemptions and there's no question about
18 it. And you don't have to claim it on the
19 current return.

20 **THE COURT:** You can ask him of other witnesses, but
21 whether it's relevant or not doesn't change the
22 pitting witness rule is what I'm getting at.
23 Can you explain that to me?

24 **MR. VON LEHE:** Yes, I would like to know why maybe
25 because they're in a different area of work or



1 something. I have no idea but there must be
2 some reason that other personnel at the
3 Department of Revenue are saying you got 36
4 months to claim and exemption and he's saying
5 you got to do it on your current return.

6 **MR. CARTIN:** This is all based on hearsay of how the
7 Court -- I mean they were pitting this witness
8 against hearsay statements that are being
9 supplied by counsel.

10 **THE COURT:** I'll sustain that objection.

11 **MR. VON LEHE:** All right, Your Honor.

12 Q: Are you familiar, to any extent, and I know
13 you're a utilities appraiser and head of that
14 section, but are you generally familiar with
15 manufacturers?

16 A: Somewhat, yes.

17 Q: During your work at the Department of Revenue,
18 and your progressing through the steps to be
19 where you are today as the head of this group,
20 did you ever do any work with manufacturers
21 returns?

22 A: Very limited. It would have been in the
23 capacity of in fee of lieu tax, it wouldn't
24 necessarily been a PT300 for appraisal
25 purposes.



1 Q: So you did some fee in lieu work also?

2 A: Yes.

3 Q: And is that not reported on PT300 schedule T,
4 I believe it is.

5 A: TRS, yes.

6 Q: TRS, okay. One is a manufacturer fee in lieu
7 and one's non-manufacturer fee in lieu?

8 A: Correct.

9 Q: Now with regard to that manufacturing tax
10 return, to those manufacturers, is it your
11 understanding that with regard to a
12 manufacturer that they have to make a claim
13 annually in order get an exemption or is it
14 your understanding that they have 36 months in
15 which to make a claim?

16 **MR. CARTIN:** Your Honor, I'm gonna object to the
17 relevance to this. There are no manufacturers
18 at issue in this case. He may have knowledge
19 about this but I just fail to see the
20 relevance. If there's a statute -- I'm just
21 getting the sense that there's a statutory
22 construction argument that counsel wants to
23 make. The appropriate place to make a
24 statutory construction argument is in a final
25 order and I just -- I have to question the



1 relevance of this fact testimony to what's at
2 issue before the Court which is the rural
3 telephone service exemption.

4 **MR. VON LEHE:** I'll be happy to answer that, Your
5 Honor, if I may. Therefore, based on Mr.
6 Cartin's argument as I just heard it, there
7 would have to be some difference in applying
8 for an exemption for utilities and applying for
9 an exemption for manufacturers. And I'm just
10 trying to find out if he knows if there's any
11 difference. It is very relevant because if
12 there is no difference, and if manufacturers
13 are routinely applying for this within 36
14 months, something's gone awry here and I've got
15 a right to cross-examine him about it.

16 **THE COURT:** Well you've got wide latitude on cross-
17 examination, I agree with you on that. Whether
18 they are misapplying laws or applying laws,
19 doesn't really matter to me ultimately in
20 making a decision because I've got to apply the
21 law correctly so it wouldn't matter to -- I
22 don't know how probative it is they're making
23 any mistakes in other areas.

24 **MR. VON LEHE:** Yes.

25 **THE COURT:** And if they are properly following the



1 law, then it doesn't matter. I need to do the
2 law accordingly.

3 **MR. VON LEHE:** Your Honor, I'm trying to find out
4 what they're doing. That's what I'm -- I want
5 the facts of what they're doing. If he doesn't
6 know, he doesn't know. If he knows, I think
7 it's something that you should hear.

8 **MR. CARTIN:** Your Honor, I'd argue only facts
9 relevant to inquiry here as to what's done with
10 this particular exemption ---

11 **THE COURT:** I'm gonna ---

12 **MR. CARTIN:** --- and how its being applied.

13 **THE COURT:** --- overrule the objection right now.

14 **MR. VON LEHE:** Thank you, Your Honor.

15 Q: There would have to be then some difference,
16 wouldn't there, assuming it's a manufacturer's
17 return, are you aware of the fact that a
18 taxpayer can go back -- pollution control, they
19 could go back one year, can they not?

20 A: I'm not that familiar with the manufacturer ---

21 Q: All right. You don't feel comfortable in
22 testifying about ---

23 A: Well and again, earlier you're asking -- and I
24 think earlier this morning I was asked about
25 the exemption and how it was filed or applied



1 for on the utility property tax return ---

2 Q: You were.

3 A: --- and I spoke to ---

4 Q: You were.

5 A: --- my knowledge of that.

6 Q: You were.

7 A: Through this case, again through conversations
8 I hear people talking about 36 months or ---

9 **THE COURT:** Well you can't go into ---

10 A: I know and that's why I feel like it needs to
11 go on record because I've heard of it, but
12 that's not what I do. I don't deal with that.
13 I haven't -- all of the exemptions that come
14 through me, the utilities, whether they're
15 pollution control, whether they're rural
16 telephone, they are filed within the property
17 tax information on the return, with the return.
18 So I don't usually get those years down the
19 road. But that doesn't mean that I know the
20 law so well that I can speak to say that this
21 type or other doesn't have 36 months. I'm just
22 not familiar with that.

23 **MR. VON LEHE:** You're honest, so let me ask you
24 this, perhaps you do know this' because I think
25 it was in the questions you were questioned a



1 little earlier about whether or not you, I
2 think the term, handed off, the file to the
3 general counsels office. I believe that was
4 what was said. Do you know as a matter of fact
5 that they, when they did the settlement
6 agreement that they recognized that there's 36
7 months to go back in order to claim these
8 exemptions.

9 **MR. CARTIN:** Objection, Your Honor. That's ---

10 **MR. VON LEHE:** Either he knows or he doesn't, Your
11 Honor. He either knows or he doesn't.

12 **MR. CARTIN:** Well it seems that they can give 36
13 months back.

14 **MR. VON LEHE:** I'm asking what they did. I'm asking
15 what they did.

16 **THE COURT:** You're asking whether they could do it
17 as a result of their determination.

18 **MR. VON LEHE:** I meant to ask whether they did it.
19 Is what I meant to ask but I may have
20 misspoken.

21 **THE COURT:** Well he can answer what they did.

22 **Q:** Did they not go back 36 months in allowing this
23 in the settlement agreement? Didn't it go back
24 for a number of years?

25 **A:** Go back as in what?



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1 Q: That's as to the exemption have been claimed.
2 I mean, a letter was read a few minutes ago to
3 you from Mr. Jeff Allen to the Department of
4 Revenue asking for a refund of these taxpayers
5 that went back three years. That letter was
6 read to you a few minutes ago.

7 A: Right.

8 Q: Do you recall?

9 A: Yes, I do.

10 Q: And he was asking for a refund for three years
11 was he not in that letter?

12 A: He was, the previous two years, yes.

13 Q: And it was eventually granted, was it not?

14 A: I believe so.

15 Q: And wasn't it these same tax returns that we're
16 talking about that were in issue?

17 A: And those decisions were made through the
18 litigation ---

19 Q: That's what makes them legal, I understand
20 that. But it was done by the Department,
21 correct?

22 A: Yes.

23 Q: I know there are some questions asked about all
24 this going back five years. You remember that
25 a few minutes ago? Since it's been five years



1 you were asked, it's been, like, five years
2 since this thing was filed and the time it
3 granted you were asked that question.

4 A: Well the question was asked based on the
5 settlement agreement date where there were two
6 signatures, I think it was January 4th, 2017
7 and January 8th, 2017. What was the time
8 difference between that date and when this
9 process started ---

10 Q: Yes.

11 A: --- was sometime in 2012.

12 Q: Yes.

13 A: So I think that is around five years. It won't
14 quite be five years but it was around five
15 years based on '17 and '12.

16 Q: Do those that do the Department of Revenue who
17 worked on this, I mean, we can go back through
18 -- well never the less, I'm gonna ask you what
19 you know about it. But, I mean, was there any
20 slow down at the Department, any reason in
21 trying to address this?

22 A: No.

23 Q: No reason to believe that is there?

24 A: No.

25 Q: All the expedience was used as much as



1 possible. Is that correct?

2 A: This was discussed at nauseam. We deliberated
3 with the taxpayer, the taxpayer's
4 representative, we got people from litigation
5 involved before the file was handed off. It
6 was -- we covered all the bases we could before
7 we decided to hand it to litigation and at that
8 point, we in the property tax section, that's
9 who I work with, believed that litigation did
10 everything they could in their power ---

11 Q: All right.

12 A: --- to take care of it.

13 Q: Okay. Now when this settlement agreement was
14 signed, that you looked through a few minutes
15 ago, there was some things yet to be done. And
16 one of them was that the taxpayer was to file
17 an amended return.

18 A: Several amended returns.

19 Q: Several. And they did that, did they not?

20 A: Yes.

21 Q: As far as you know on a timely basis?

22 A: Yes.

23 Q: They had no reason to wait on this, right?

24 A: Right.

25 Q: So they did that. They filed those with you.



1 Did you then receive everything that you
2 needed?

3 A: I think so. We probably had some
4 correspondence back and forth with whoever was
5 providing those so we made sure we understood
6 ---

7 Q: You had this.

8 A: --- what was in them but as far as the returns
9 themselves, I believe we were able to take what
10 we needed out of those.

11 Q: And then you proceeded to notify the counties
12 of the exemption.

13 A: Yes.

14 Q: Through an amended certification I believe.

15 A: We sent a certification stating that these
16 would be the finalized certifications and that
17 the settlement agreement had resolved the
18 appeal and based on that settlement agreement,
19 here were certifications.

20 Q: And there are some items that the taxpayer did
21 not claim during the arguments. They may have
22 claimed earlier, that remains to be seen as to
23 how His Honor interprets these few things on
24 the tax return. But they didn't claim
25 exemptions for certain things like internet



1 service provider, video and answering service.
2 Do you recall those in your primary items that
3 were ---

4 A: You mean through the settlement agreement ---

5 Q: Yes.

6 A: --- thereafter?

7 Q: Yes.

8 A: Yeah. The only things that they claimed or
9 asked for and that was granted through the
10 settlement agreement was voice and I guess long
11 distance as well, are not exempt from ---

12 Q: All right.

13 A: --- through the wireless.

14 Q: Now after the settlement agreement, that has to
15 do with tax years 2016, 2017, 2018, you're
16 working on 2019, right? And the taxpayer has
17 applied for exemption for those years?

18 A: They filed the same window they have through
19 this process.

20 Q: And that exemption has been granted?

21 A: I believe so.

22 Q: Okay. And I want to ask you about one
23 particular year if you remember much about it.
24 The 2016 year, which I believe was in the
25 stipulation, number 26. Do we have the



1 stipulation handy, our stipulation?

2 **MS. GEER:** No. I gave it to Walt.

3 **MR. VON LEHE:** Is it around? Could we get a copy of
4 it?

5 **MR. CARTIN:** Yeah. We just got a fully executed
6 copy but if we'll get it back at the end, we'll
7 ---

8 **MR. VON LEHE:** I'll try not do anything to it. It's
9 been signed, hasn't it?

10 **MR. CARTIN:** It has.

11 **MR. VON LEHE:** Good.

12 **Q:** Okay I want to ask you about this. This is a
13 stipulated fact among the parties. This is in
14 the stipulation it's titled number 26 but it
15 says, on or after April 25, 2016, FTCC and
16 Diversified filed property tax returns for tax
17 year 2016. When August 16, 2016, the
18 Department sent a memorandum to the county
19 auditors for the taxing entities with utility
20 certifications for the 2016 tax year. This is
21 on August 16, 2016, the Department sent this
22 memorandum. The certifications for FTCC and
23 Diversified for tax year 2016 showed an
24 assessed value for each of 0, and noted the
25 status as under appeal. Do you recall having



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1 sent that assessment notice showing assessed
2 values for the tax year 2016 as 0?

3 A: I'd have to review that, I don't.

4 Q: You don't recall that.

5 A: I don't recall that.

6 Q: Thank you.

7 **MR. VON LEHE:** If I may have just a moment, Your
8 Honor. One last question, Your Honor.

9 Q: Mr. Ingram, you were shown the letter, I think
10 two letters, one October 11th, 2012 for FTCC
11 and another, I believe, for Diversified from
12 their counsel requesting exemption. You
13 remember those letters -- going over those
14 letters a few minutes ago?

15 A: I do remember some letters.

16 Q: All right.

17 A: Specifics of them, I'd prefer to review it if
18 I could.

19 Q: Well I just want to ask you this if you recall
20 this, after that time, which I believe you have
21 testified prior to -- in the earlier part of
22 this, let's put it like this so the earlier
23 part of this, you were not aware that FTCC or
24 Diversified were asking for the exemption.

25 A: After the letters were received?



1 Q: Before.

2 A: Before that ---

3 Q: Yes.

4 A: --- no.

5 Q: But after these letters were received, you did
6 become aware that they were asking for the
7 exemption. Is that correct?

8 A: Yes. Through correspondence with the taxpayer,
9 the representative, they would have let us know
10 that they were asking for the exemption.

11 Q: And then they continued to file their returns
12 listing all of their assets, right?

13 A: Yes.

14 Q: All right. Thank you.

15 **MR. VON LEHE:** Thank you, Your Honor.

16 **MR. INGRAM - CROSS-EXAMINATION BY MR. LUTHER:**

17 Q: Good afternoon, Mr. Ingram.

18 A: Good afternoon.

19 Q: I've got good news for you. Most of the
20 questions that we need to cover have already
21 been asked. I'm just gonna go back and try to
22 fill in some gaps primarily for the Court's
23 benefit, because I suspect there may be some
24 questions. And I'll do my best to try and
25 project on the screen some of these exhibits



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ROA 001713

1 that we've got. In order to not belabor the
2 point too much, I may skip around a little bit,
3 so bear with me. I want to go back to the very
4 beginning of your testimony and set some detail
5 out about the assessment process. So for
6 property tax purposes, what type of companies
7 fall under the utilities?

8 A: We have water and sewer companies, electric
9 companies, telecommunication companies, which
10 include, you know, telephone, ILECs, CLECs, any
11 kind of telephone company, wireless carriers,
12 cable companies. And then under the
13 responsibilities that I handle, we also do
14 railroads and pipelines. So under the code
15 section I think are technically transportation
16 for hire companies but we, kind of, lump them
17 in with the utilities because I appraise and
18 assess those as well.

19 Q: Okay. Is there a special type of process or
20 methodology you use for assessing utilities?

21 A: We administer or go through the unit valuation
22 process where we value all of the functioning
23 assets as a going concern. If you think about
24 what types of companies we're talking about,
25 and I'll compare it to a manufacturer, because



1 that was brought up just recently. A
2 manufacturing company can -- or a manufacturer
3 can report their property on a property tax
4 return and an appraiser can go to that site and
5 see the property. They have machinery and
6 equipment inside, they have a warehouse, they
7 have some kind of building, it's on a piece of
8 land. With the utilities, the unit value
9 concept has to be utilized because their
10 property spans throughout different
11 municipalities within a county, throughout
12 different counties within a state and for a lot
13 of what I do, throughout different states
14 within the country. So we usually, you know,
15 go through a cost approach to value, an income
16 approach to value if we can. We put a total
17 unit value on it. We can allocate it to the
18 state if need be. This isn't really a case
19 where we need to do that but some of the
20 railroads and some of the other companies,
21 telecoms that we have that are larger go into
22 other states. We allocate it to the state, and
23 then we use those distribution documents to
24 actually allocate the assessment to the
25 counties and taxing districts. So the process



1 that we use for the appraisal and the
2 assessment is, kind of, unique in that the
3 types of companies these are and the way their
4 property expands, it lends itself to need this
5 type of procedure.

6 Q: So between the cost approach and the income
7 approach, which one do you use for telephone
8 companies?

9 A: We're using cost approach most of the time.

10 Q: Okay.

11 A: And you say telephone companies, it would
12 depend on the nature of the company.

13 Q: Rural telephone cooperatives.

14 A: Those are usually, if not always, I think we
15 only have six cooperatives, so those are always
16 based on a cost appraisal worksheet. Those
17 businesses are made up to not really, I guess,
18 make a huge profit so capitalizing on income
19 doesn't necessarily indicate the opinion of
20 value that I would for that property. So we
21 do, kind of, a cost appraisal worksheet and
22 just leave it at that.

23 Q: What interplay, if any, from your perspective
24 is there between the cost of the assets that
25 you're valuing the use of the assets.



1 A: As far as these cooperatives and the way I'm
2 doing it? It wouldn't have been as big of an
3 issue prior to this case. So I wouldn't have
4 really had to think about it as much. Now
5 based on the outcome of whatever is decided
6 here, it's gonna be a bigger issue. When you
7 have an entity that's actually making money and
8 they're in the business of making a good, you
9 know, that operating income, you want to look
10 at that income because that might indicate that
11 the value of the property is worth more than
12 what's on the books. So a lot of times when
13 we're doing a cost approach for a cooperative,
14 if you introduce a, you know, an FTC commonly
15 used as an example, that does primarily
16 wireless service, they might have a low cost
17 for their equipment but they might have a high
18 income approach because they're a lot of money
19 on that small investment. So it could make a
20 difference. We just haven't had to review
21 that. As far as the property that we're
22 looking at, and I think the way your question
23 was set up though, if you're going down the
24 direction of a dual usage, we don't have a
25 policy or procedure on property that does



1 multi-use or dual use. So we'd have to
2 implement some sort of policy or procedure to
3 look at that type of property to determine if
4 the income approach would help with that or if
5 we need to introduce an income approach or can
6 the cost approach do it and then how do we
7 allocate out. We haven't crossed that bridge
8 yet. It would be based on this case.

9 Q: I want to come back to the valuation concept in
10 a minute but while we're talking about it,
11 there have been some questions for you about
12 that application for the rural telephone
13 service exemption. Does the Department or the
14 property division have a specific application
15 form that it provides for this exemption?

16 A: No, not for this exemption. And not for any of
17 the exemptions that I deal with, with the
18 utility property taxes.

19 Q: Other than this case, have you ever had a
20 company apply for the rural telephone service
21 exemption that wasn't already receiving it?

22 A: Not that I know of.

23 Q: Can you explain to the Court the role, you
24 discussed it a little bit earlier, but the role
25 that the PSC annual report has in terms of your



1 overall review of a rural telephone
2 cooperative's return?

3 A: Sure. For one, the PSC annual report, and it
4 might actually mention this on the PT-420, but
5 it actually helps us to see that what they've
6 reported and 420 and 427 or 429 is matched back
7 to something else, so an audited or regulated
8 financial statement. So that PSC report helps
9 us to see some total figures that we'd like to
10 help match up to what's been reported on the
11 property tax return. It's a way to almost, you
12 know, checks and balances audit itself. But
13 furthermore, within that PSC report, in
14 relation to cooperatives, there are some line
15 items in there that are telephone plant and
16 service or non-regulated investments. And as
17 far as the exemption is concerned on the cost
18 appraisal worksheet that we do for these
19 cooperatives, the exemption calculation is done
20 based on the regulated assets, which up to this
21 point the PSC report, we always interpreted to
22 be, and assumed to be, the regulated wireline
23 or landline assets. The materials and supplies
24 or anything in the non-regulated line item,
25 which non-regulated at that point would be



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1 interpreted to be any of the other services
2 that are provided. Those would not be
3 calculated within that exemption so they
4 wouldn't be receiving the exemption and none of
5 the credit for the exemption would be given to
6 that investment. So it's, kind of, you get the
7 property tax return, the 420, and the 427 or
8 the 429 and then you'd use the PSC report to
9 help back that information but also get a
10 little bit further detail with that
11 information.

12 **THE COURT:** Does the PSC report reflect wireless?

13 A: Not as just a line item wireless, but I think
14 it is lumped in with some of the other
15 categories, like non-regulated investment. And
16 that can be cable, wireless, ISP, there could
17 be a whole bunch that are lumped in there with
18 that.

19 Q: And I think we may walk through a couple of
20 examples in a second but while we're on this
21 point -- well we'll come back to that. Does
22 DOR ever consult with the counties in terms of
23 deciding whether specific property is exempt,
24 utility property is exempt?

25 A: No, not that I know of.



1 Q: Do you ever consult with the counties at all in
2 determining whether a certain type of property
3 is assessed a certain way?

4 A: Not in determining it. We might communicate
5 about it and after the fact but not in
6 determining an exemption or an assessment of
7 property.

8 Q: Other than this case, are you aware of a county
9 ever challenging, I mean, like, the
10 Administrative Law Court, one of your exemption
11 decisions?

12 A: Not that I recall, no. I haven't been to court
13 for this, prior to this case.

14 Q: Why do you send the assessment to the county
15 auditors?

16 A: That's always been our point of contact or
17 correspondence because they deal primarily with
18 tax and I think they communicate with the
19 treasurer and the assessor for things they need
20 to. But the utility property taxes as we're
21 concerned go through their office and I guess
22 they apply the millage rate or enter in their
23 system. I know the manufacturing section had
24 different -- they sometimes deal with the
25 assessor but ours has just always been



1 employees at the county auditors and the deputy
2 auditor within those offices sometimes.

3 Q: Have you ever sent an assessment or a
4 certification to a county official other than
5 the county auditor?

6 A: Not that I know of, no. Unless, like I said,
7 it went to the deputy auditor, because we know
8 that's who corresponded.

9 Q: I think you were asked this but for purposes of
10 making sure it's clear on the record, if a
11 piece of property has a dual use, does the
12 property division have a standard rule of thumb
13 that it uses for how much that property has to
14 be used for the exempt purpose in order to
15 qualify?

16 A: No. I don't think there's any policy or
17 procedure in place for that.

18 Q: Okay. Have you ever actually been presented
19 with an exemption request for property that had
20 multiple uses, some of which are exempt and
21 some of which aren't?

22 A: Not specifically like that. Now through this
23 case, it's come to light that somebody could be
24 putting a dual use property in a category and
25 me not be aware of it. Now if a policy and



1 procedure is set after this case is decided so
2 we can determine how to treat that dual use, we
3 will at that point. But up until this case,
4 no.

5 Q: All right. Let's take a look if we can at
6 Exhibit 186.

7 **(Joint Exhibit Number 186 was introduced into the**
8 **record at this time.)**

9 Q: I don't know if you can see it up there. I just
10 want to have you, sort of, explain for the
11 Court the difference between and the
12 relationship between proposed assessment, the
13 telephone, the appraisal worksheet and the
14 distribution.

15 A: Yeah. Are all those attached to this?

16 Q: They should be so I think I've got them in
17 order. The first would be the proposed
18 assessment.

19 A: The proposed assessment is this document right
20 here that we would send to the taxpayer once
21 the -- to go through the timeline that I've
22 discussed a few times today, receiving the
23 return, reviewing the information, rendering an
24 opinion of value, applying an assessment ratio
25 and then now having an assessed value. And



1 where at that point this would be sent to the
2 taxpayer saying, here is your proposed
3 assessment for this tax year based on your
4 property and what not. This is it. And then
5 that's part of it, that same page. All right.
6 This third page here, this is the telephone
7 appraisal worksheet that we do internally to
8 calculate that assessment for the telephone
9 cooperatives and rural telephone companies.
10 This is something that we keep in our file but
11 we also send to the taxpayer along with their
12 proposed assessment. This information on this
13 sheet is pulled from the property tax return as
14 well as supplemental information to that tax
15 return which can be and is most of the time PSC
16 report, but could be as I mentioned earlier
17 from my first testimony of the day, that this
18 could come from other supplemental information
19 that's attached or included within the property
20 tax return. All that information is pulled
21 here.

22 Q: Let me stop you right there for a second.

23 A: Okay.

24 Q: Just while we're on this page. So which of
25 those line -- this is a document that you



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ROA 001724

1 create internally. Is that right?

2 A: This was created internally but yes, we use
3 this. It's, like, a template. We use this
4 with the information that's provided to render
5 the assessment.

6 Q: Okay. And so which of those line items or
7 which of those numbers are you pulling from the
8 PSC report?

9 A: These top sections, the materials and supplies,
10 gross investment, non-regulated investment,
11 it's, kind of, in the middle of this, the
12 depreciation would most likely be coming from
13 that. The vehicles I think come from one of
14 the supplemental pieces of information, if they
15 have vehicles that need to be, you know, taken
16 into consideration there is a separate item
17 within their return. But the PSC report
18 usually splits out gross investment, which I
19 think is called telephone, plan and service or
20 something on that return, I mean, that report.
21 There's a line item for materials and supplies
22 and a line item for non-regulated investment
23 and then there's a line item for depreciation
24 to telephone plan service.

25 Q: Okay. So in essence, the worksheet is -- you



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ROA 001725

1 put in all of the investment, the cost of the
2 investment?

3 A: Correct.

4 Q: And you take out depreciation and any other
5 non-regulated assets and that gives you your
6 total taxable investment?

7 A: The non-regulated investment is still taxable,
8 it's just not included within the exemption
9 portion of this.

10 Q: Right, thank you. And so then you apply that
11 total taxable investment to the assessment
12 ratio.

13 A: Yes.

14 Q: And that's that 2.4 million right there on that
15 page.

16 A: Yes.

17 Q: How do you use that number?

18 **MR. LUTHER:** If you could scroll down a little bit
19 Andrew.

20 Q: If you could explain to the Court how that
21 number then goes through a calculation for
22 purposes of allocating that out among the
23 different taxing districts.

24 A: Okay. So if you pay attention to this page and
25 just look at the 2.491,430, that's the



1 assessment after the 10 and a half percent
2 assessment ratio. If there's another page
3 attached, scroll down. I'm not sure what's
4 attached to this. Okay, yeah, scroll down.
5 This is the one. You can see the total under
6 the assessment column is 2,491,430. So based
7 on what's been reported on the taxpayer's PT-
8 429 in this case, because it's a rural
9 telephone cooperative, we would take the gross
10 investments and personal and real property for
11 the different taxing districts and
12 municipalities for the separate counties and
13 separate out that 2.4 million to the different
14 municipalities and taxing districts based on
15 the allocation up there, investment. And
16 that's what that last sheet did.

17 Q: Okay.

18 A: This one.

19 Q: And so the last one that I had mentioned
20 earlier, that's the distribution report which
21 is essentially allocating it on that total
22 taxable income to the various districts.

23 A: Yes. And this document here goes to -- this
24 whole packet right here, these four pages go to
25 the taxpayer and the information on this page,



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ROA 001727

1 not the other pages, but this page, in the
2 first two columns and the last column goes to
3 each respective county. So Clarendon County
4 would get a rendering of this document. It
5 wouldn't look the same because it doesn't have
6 the gross investment column. They also don't
7 get the information for other counties that
8 don't pertain to them. What Clarendon County
9 would get a certification that would have
10 county, Clarendon, that's them, district and it
11 would have the three line items, Manning,
12 Paxville, Turbeville and then assessment
13 number. It would have the three assessment
14 numbers and a total.

15 Q: Okay. So for all the tax years at issue in
16 this case, I want to try to make sure just from
17 a 30,000 foot view level of the timeline for in
18 terms of documents that you're generated, so if
19 you would can start with the return that the
20 taxpayer filed, correct?

21 A: Yes. That would be the first document, a tax
22 return.

23 Q: And then, if you scroll back up Andrea, the
24 proposed assessment we just looked at would go
25 out to the taxpayer.



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ROA 001728

1 A: Yes.

2 Q: And that has their -- there's that 2.4 million
3 number right there on the front. And then
4 assuming the taxpayer protested ...

5 A: There's a -- if you scroll down this page a
6 little bit and to the bottom, the date of the
7 notice and then it usually coincides a day or
8 two with the mailing of that. They have a 90-
9 day appeal period, and that's what this second
10 page talks about is their appeal rights, if you
11 scroll down to the next page, the appeal
12 procedure. So if they would want to appeal the
13 protest, they would do it after receiving this
14 and they would file according to this within
15 that time period.

16 Q: Okay. And so assuming they do appeal, that
17 comes to you and then is the 80 percent
18 assessment the next thing that would go out
19 from your office?

20 A: It is. There are some cases, this is not one
21 of them, where it's a mistake that might have
22 been made or something can be changed or you
23 can avoid the 80 percent and just make the
24 correction and send a revised to the counties.
25 That doesn't happen often and it didn't happen



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ROA 001729

1 in this case. This was an appeal where there
2 were issues and it needed to be discussed and
3 reviewed so we would issue the 80 percent memo
4 to the counties involved as well as an 80
5 percent assessment to the taxpayer.

6 Q: Okay.

7 A: So that way the taxpayer when they're looking
8 at that proposed assessment, they know the
9 assessment number that they're gonna be billed
10 based on because they know I sent those same
11 numbers to the counties that are involved.

12 **MR. LUTHER:** And just to show the Court, I think we
13 saw them earlier but, Andrew, could you go to
14 the Exhibit 23, over there on the right?

15 **(Joint Exhibit Number 23 was introduced into the**
16 **record at this time.)**

17 Q: And so that would be with the, what I call the
18 80 percent assessment that goes to the
19 taxpayer?

20 A: Yes.

21 Q: Okay. And then eventually, I guess this would
22 be true in every situation where they might be
23 protesting an 80 percent assessment, you would
24 eventually send out to the taxpayer a final
25 assessment.



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ROA 001730

1 A: Yes.

2 Q: It reflects the resolution.

3 A: Right.

4 Q: If you look at ---

5 **MR. LUTHER:** Andrew, if you would pull up Exhibit
6 30.

7 **(Joint Exhibit Number 30 was introduced into the**
8 **record at this time.)**

9 Q: That would be what the final assessment would
10 look like.

11 A: Something like this. It has something stating
12 on it that, this is to the taxpayer, that this
13 has been, you know, resolved, finalized, here's
14 the final assessment number for this tax year
15 for this entity, and this is what the counties
16 are gonna bill you based on.

17 **MR. LUTHER:** If you pull up Exhibit 95.

18 **(Joint Exhibit Number 95 was introduced into the**
19 **record at this time.)**

20 Q: So in between or at about the same time, the 80
21 percent assessment is sent out to the taxpayer.
22 You mentioned just now that you also send a
23 memo to the counties.

24 A: Yes.

25 Q: So if we're looking at Exhibit 95 here, is this



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ROA 001731

1 an example of the memo that you're talking
2 about?

3 A: Yes.

4 Q: Okay. So this is dated October 16th, 2012 to
5 the county auditors. And is this -- does the
6 property division have a process or standard
7 procedure for issuing these types of memos to
8 the counties?

9 A: No. Just when we get the appeal, when we know
10 it's gonna be put on an 80 percent before it's
11 resolved, we know that we need to send
12 something to the counties are aware of the
13 protest of the appeal.

14 Q: So any protest of a property tax case, you
15 would send a memo like this to the county.

16 A: Yes. Unless it is one of those rare instances
17 where it was a mistake or something can be
18 fixed quickly so we don't need to send an 80
19 percent and turn around the day after and send
20 a finalized that was 98 percent or something
21 like that.

22 Q: Okay. How frequently would you estimate that
23 you send a memo like this to the county
24 auditor?

25 A: That's a hard question because we have a hand



1 full of appeals every tax year and those hand-
2 full of appeals cover differing counties. So
3 one specific county, I can't say how many they
4 would get a year but in a broad sense, the
5 30,000 foot view as you stated, if we do a
6 hand-full of appeals a year, we would send, you
7 know, a hand-full of these a year, which five,
8 six companies that they cover, five or six
9 counties. You can do the math, that's how many
10 we would send for that particular tax year.

11 Q: Okay. So it's common in the sense that you
12 routinely send these out.

13 A: Yes.

14 Q: But perhaps unusual for a county to actually
15 get one of these. In other words, you said
16 there are five or fewer a year.

17 A: Yeah. I wouldn't say it's unusual, it's just
18 not a -- they don't have to get one. In a
19 given tax year, if they didn't receive one,
20 they're not gonna think that's unusual. But if
21 they did receive one, they're not gonna think
22 that's unusual either. It's not common, it's
23 not all the time.

24 Q: Got it. Do you normally include with a memo
25 like this an explanation of the reason for the



1 protest?

2 A: No. We have on occasion, but no. And I say we
3 have, it's usually just an attachment of maybe
4 a cover page or some page from the taxpayer so
5 they can see that an appeal was filed or a
6 protest was filed, you know, by given date or
7 a certain reason. But that isn't -- they don't
8 send that out. Usually this is sent every
9 time, 100 percent of the time. That's even
10 less so.

11 Q: If you look at this one, according to the memo
12 did you send a letter of the protest to the
13 county auditor with this memo?

14 A: It looks like one because that second line
15 says, along with the letter of protest, so I'm
16 thinking I would have put a copy in there and
17 don't know because I'm just looking at this one
18 page.

19 **MR. LUTHER:** I think actually if you scroll down
20 Andrew, keep going.

21 A: But yes, then that probably would have been a
22 copy attached with it.

23 Q: And that letter's dated, if you scroll up,
24 October 11th, 2012.

25 A: Okay.



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ROA 001734

1 Q: So the day before sending out this memo. Is it
2 your testimony that you sent a memo like this
3 with those types of documents to each of the
4 counties?

5 A: Yes.

6 Q: After 2012?

7 A: Yes.

8 Q: Would you have done that for the other tax
9 years at issue as well?

10 A: In those tax years, I would have sent the same
11 information to each county. So if that copy of
12 that appeal or protest document was sent to
13 one, they all would have gotten it in that
14 particular tax year. But that doesn't mean I
15 sent that document each tax year. Does that
16 make sense?

17 Q: Yes. Not that particular one, I got you.

18 A: Yeah.

19 Q: And obviously we have it in the record so we
20 can go back and pull them out. While we're on
21 the subject, in terms of your communication
22 with the counties, how would you describe the
23 level of communication between you and the
24 counties on a protest like this?

25 A: There aren't that many protests like this so in



1 this specific protest, there was a lot of
2 communication that was over the telephone. The
3 correspondence that you have, I guess in all
4 these big binders would be every tax year when
5 there's an 80 percent and the memos in doubt
6 when there's a, you know, obviously when the
7 settlement agreement came through, when there's
8 annual certification prior to the protest that
9 year, all of those would have taken place. But
10 since this was ongoing, this particular case,
11 which is different than the others, the
12 counties would have wondered, you know, what's
13 going on. And I can vaguely remember some
14 telephone conversations where they said, is
15 this gonna be settled soon, are we close to the
16 end of this, are we gonna, you know, settle
17 this in court, is it gonna go to court, it's
18 one of those things. And I answered the
19 questions to the best I can at that time,
20 especially after the file was handed over to
21 litigation. I'm not really in the know of
22 everything that's going on. My answer is it's
23 in litigation, you know, they're still
24 appealing every tax year until it's settled.
25 They already knew the issues were whether or



1 not wireless was exempt at that time, so there
2 was some correspondence between all these
3 documents that were taking place with the
4 counties, telephone conversations or I go to
5 continuing education and go to road shows where
6 they update on any tax laws that have taken
7 change in the last year. I've run in some
8 officials, there's some face to face
9 conversations. If there's a big appeal going
10 on in that particular county, I run into
11 person, they definitely will make a point to
12 bring it up to me and say are we any further
13 with that, you know. Didn't want to call you
14 about it but now I see you, you know, can you
15 tell me anything that's transpired.

16 Q: Did you answer all the questions you received
17 from county officials about this?

18 A: Yes, to the best I could. And if they had
19 further questions that were out of my realm of
20 expertise, I gave them the attorney's contact
21 information that were working on the case.

22 Q: All right. Bear with me just a second. All
23 right, Mr. Ingram, those are all the questions
24 I've got. Thank you.

25 **THE COURT:** Redirect?



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ROA 001737

1 MR. INGRAM - REDIRECT EXAMINATION BY MR. CARTIN:

2 **MR. CARTIN:** I have some very brief re-direct on new
3 matters that were not discussed in my original
4 direct.

5 Q: Mr. Ingram, you just mentioned the term in
6 answering a lot of your questions about what
7 notices were sent, you used the term county but
8 is it more accurate to say your notices were
9 sent to the county auditors?

10 A: Yes. I think I stated earlier in my testimony
11 my correspondence goes to the county auditor or
12 the deputy auditor for the county, so yes, it
13 would be county auditor.

14 Q: Okay. So you would not have communicated with
15 anybody else as the actual county employees
16 other than -- you would not have communicated
17 with any county employees.

18 A: Well do I have recollection of that
19 conversation or anything, no. But that doesn't
20 mean that another individual with the county
21 wouldn't ask about it and have a conversation
22 but I don't have any knowledge of that taking
23 place other than an auditor or deputy auditor.

24 Q: Again because you interact almost exclusively
25 with the county auditors office?



1 A: Yes. And that's who reaches out. But I did
2 mention, you know, just a minute ago that when
3 we go to some of these, you know, road shows or
4 continuing education classes, they're not
5 always the county auditors that are in there,
6 but there might be a treasurer or assessor
7 that's in the know about a specific case and
8 they could bring it up.

9 Q: Understood, but you don't specifically have any
10 recollection of speaking with any of the
11 counties that are petitioners in this case
12 about that.

13 A: Other than the auditors or deputy auditors, no.

14 Q: Thank you. Exhibit 95, one we were just
15 looking at, that's the 2012 appeal FTC
16 Communications, LLC, I think it's up there on
17 the screen. Let's look at the first page here.
18 You would agree with me that there is no
19 reference on this first page to an exemption,
20 correct?

21 A: It does not mention the language, exemption.

22 Q: Okay and there's no reference to the value
23 that's potentially at issue, correct?

24 A: Other than the 80 percent.

25 Q: Okay. There's no reference to the nature of



1 the protest on this letter itself, the single
2 letter.

3 A: This front page right here?

4 Q: This front page.

5 A: No, not that I can see.

6 Q: Okay. Now let's go to the second page. This
7 is the letter, I believe it's the protest
8 letter. All right. This letter doesn't say
9 anything about the value of the property that's
10 to be exempted, does it?

11 A: No.

12 Q: Okay. And this doesn't say anything other than
13 a statutory reference about why the exemption
14 is being claimed, correct?

15 A: Right.

16 Q: Okay. So a county auditor that received this
17 without more would not be able to determine the
18 specific amount of assessed value at issue just
19 by receiving this, correct?

20 A: As far as the numbers the county would have,
21 they'd have the original assessment at 100
22 percent, the 80 percent that I sent and without
23 any further information, no, they wouldn't have
24 anything but 100 percent and 80 percent.

25 Q: Right. So we've got, you know, FTC



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ROA 001740

1 Communications, LLC, we went through and we saw
2 that earlier in your testimony there was a
3 difference in the original return and the
4 amended return in the actual value that was
5 claimed as exempt, correct?

6 A: Yeah, I think so.

7 Q: So if the county had just assumed that all the
8 value on the books was going to be taken off
9 those property books, it would have been an
10 incorrect assumption, correct?

11 A: Yes.

12 Q: Okay. We talked about your telephone appraisal
13 sheet a little bit ago.

14 A: Yes.

15 Q: If you do not have correct information filed in
16 a return, you can not correctly fill out that
17 telephone appraisal sheet. Is that a fair
18 statement?

19 A: It would be a fair statement. We make the
20 effort to get correct information if we knew it
21 was incorrect.

22 Q: I understand. You also reference a PSC report,
23 do you have any personal knowledge regarding
24 whether the PSC audits those reports?

25 A: Of one specifically? I don't have any personal



1 knowledge of that.

2 **MR. CARTIN:** That's all I have, Your Honor.

3 **MR. VON LEHE:** Your Honor, if I may?

4 **THE COURT:** Re-cross on those narrow issues.

5 **MR. VON LEHE:** Yes. Some of what he's presented.

6 **MR. INGRAM - RECROSS-EXAMINATION BY MR. VON LEHE:**

7 Q: Yes, I think we talked about this a little bit
8 earlier, Mr. Ingram, but, I mean, if you sent
9 a notice that this assessment is 80 percent of
10 a certain amount, can't you determine what a
11 100 percent is. You know, 80 percent of
12 something is equal to whatever that 100 percent
13 of that same thing, is it not?

14 A: Yes.

15 Q: It would have been simply for a county auditor
16 who is in fact trained in this area to know how
17 much is being protested, would it not? You
18 sent them an 80 percent assessment so they know
19 what 80 percent is, they know what 100 percent
20 is.

21 A: They would be able to calculate 100 percent
22 from the 80 percent. They would have already
23 received the 100 percent so they'd have that on
24 file but they ---

25 Q: Yes.



1 A: --- would be able to calculate that 100 percent
2 based on the 80 percent.

3 Q: If they looked at it, right? I mean, they'd
4 have to look at it in order to come up with it.

5 A: Yes.

6 Q: Very good. And with regard to the attached
7 letter that was mentioned a minute ago, well
8 nevertheless, that letter said we're claiming
9 an exemption, that which was attached to that
10 assessment notice, right.

11 A: Yes.

12 Q: And it said, we're claiming an -- even gave the
13 code section under which it was being claimed.

14 A: Yes.

15 Q: Okay.

16 **MR. CARTIN:** Your Honor, I didn't talk about this
17 exhibit. I talked about a specific set of
18 narrow of exhibits that were brought up in my
19 redirect, not generally every exhibit in the
20 notebook.

21 **MR. VON LEHE:** Well I think you brought up the
22 general concept, not just general, but specific
23 concept of what kind of notice these auditors
24 are being placed on. I mean, I'm looking at a
25 letter, Your Honor, I mean, you can tell me ---



1 THE COURT: Well ----

2 MR. VON LEHE: --- I'm looking at a letter here ---

3 THE COURT: That was brought up in his direct or
4 redirect.

5 MR. VON LEHE: It was brought up in his redirect a
6 few minutes ago that the auditors, basically
7 that the auditors did not have the information
8 about what was being requested in the protest.
9 This is basically what it was about.

10 THE COURT: All right. I'll let you go into that.

11 Q: All right. There's a letter here of November
12 6th, 2014 -- I don't know if we can put it up.

13 MS. GEER: Exhibit 103.

14 MR. VON LEHE: What's that?

15 MS. GEER: Exhibit 103.

16 MR. VON LEHE: Exhibit 103, can we put it up?

17 (Joint Exhibit Number 103 was introduced into the
18 record at this time.)

19 MR. VON LEHE: I know this, if anybody puts it up,
20 it can't be me. You found it?

21 Q: Can you see it on the screen?

22 MR. VON LEHE: Put it up just a little so he can
23 visualize it.

24 Q: Do you see that letter there, Mr. Ingram?

25 A: Yes.



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ROA 001744

1 Q: Okay. Doesn't it say about the third line in
2 ---

3 MS. GEER: I think you've gone to the attachment,
4 right?

5 MR. VON LEHE: Yes.

6 MS. GEER: Keep scrolling.

7 MR. VON LEHE: Keep going for the attachment please.

8 A: This is what you are talking about?

9 MS. GEER: Yes.

10 Q: All right. Do you see that now, Mr. Ingram?

11 A: Yes.

12 Q: See about the second paragraph about three
13 lines down, the basis of the protest is The
14 Department's failure to exempt the assets of
15 FTC and Diversified and it even gives the code
16 section.

17 A: Yes.

18 MS. GEER: And the next one.

19 Q: And the next one. FTC's the single number,
20 limited liability company owned by Farmer's
21 that provides wireless telephone service. You
22 see that?

23 A: Yes.

24 Q: Thank you.

25 MR. VON LEHE: Thank you, Your Honor.



MR. INGRAM - RECROSS-EXAMINATION BY MR. LUTHER:

Q: Three basic, real quick questions. For all of your years that you've been issuing certifications to the county auditors, do the county auditors then issue bills based on those?

A: Yes.

Q: And those are bills for taxes that they collect, correct?

A: Yes.

Q: And those taxes and those revenues then go to the county for whom they work.

A: Yes. But you can they, so the county auditors office receives our certification. They apply a millage rate and then the billing and collecting may be done by a different -- that's out of my area of expertise. But once it gets to the billing and collecting, it could be the treasurer's office for that county. Our correspondence on our end from our certification and any questions they have about said certification, that takes place between us and the county auditor or deputy auditor.

Q: And prior to this case, did you understand that the counties so vigorously distance themselves



1 from their auditors of being separate persons.

2 **MR. CARTIN:** Objection, Your Honor, the
3 characterization of the county actions with
4 regard to their county auditors.

5 **MR. LUTHER:** I think the question I just asked was
6 are they different people.

7 **THE COURT:** Well I remember you said, vigorously
8 distance themselves.

9 **MR. LUTHER:** I'll withdraw the characterization.

10 Q: Is it your understanding that the counties
11 viewed themselves as separate from the
12 auditors.

13 A: The counties as in who? When we send the
14 information to the county auditor and the
15 deputy auditor, we, sort of, have the
16 understanding or had the understanding prior to
17 this case that, that information was being
18 disseminated appropriately between people that
19 needed to be in the know within that county.

20 Q: In your mind the county auditors were
21 representative of the county.

22 A: Yes.

23 **MR. INGRAM - REDIRECT EXAMINATION BY MR. CARTIN:**

24 Q: Just on Exhibit 103, Your Honor, and it's a
25 very quick question. You saw Exhibit 103. I



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ROA 001747

1 think it's got a copy of the letter there. On
2 this exhibit is there anywhere mentioned the
3 specific amount of value at risk by this
4 exemption?

5 A: No. Not on the page that's right here in front
6 of me.

7 Q: Can we scroll to the next page. I'm not sure
8 who has control of the television.

9 A: I didn't see any mention of the exact amount.

10 Q: Okay. And there have been a number of these
11 protest letters referenced here. Do you
12 actually know for sure, sitting here today,
13 that all of the attachments were actually sent
14 to the county auditors?

15 A: The attachments with what? With my ---

16 Q: With your protest notice.

17 A: My protest notice. This one right here?

18 Q: Uh-huh.

19 A: If you scroll up. This document here with all
20 these right here, I'm not positive. Everything
21 above that, yes. I can attest that would have
22 been sent to the counties.

23 Q: So you're saying, this would have been sent to
24 the county.

25 A: Yes.



1 Q: This is page, for the record, FC0324, correct?

2 A: Yes. I don't see the bates number on this one
3 so.

4 Q: Yeah. Is that what you're talking about.

5 A: Yes. That would have been sent to the
6 counties.

7 Q: But you're not sure what else in that package
8 would have been sent to the counties.

9 A: Well they would have also received figures
10 associated with what's stated in that memo,
11 whether it be 80 percent or if it's the
12 finalized number.

13 Q: But not necessarily the protest letters.

14 A: It doesn't have to be attached to that protest
15 letter. If I stated that the protest letter
16 was attached to that memo and one county got
17 it, the other counties would have gotten it.

18 Q: Okay. But if you didn't state in there that it
19 was attached ...

20 A: Then it might not have been.

21 Q: Okay. And are you 100 percent sure what the
22 counties received, what the county auditors
23 received, in this case, that there couldn't
24 have been some sort of a slip up?

25 A: We trust the U.S. Postal Service so, I don't



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ROA 001749

1 know. Am I 100 percent? No, I'm not 100
2 percent but I would assume that they got the
3 information we sent to them.

4 **THE COURT:** I think he was asking about whether the
5 protest letter ...

6 Q: Yeah. I'm more concerned about that than the
7 supplemental certifications. They certainly
8 would have alerted you if they hadn't received
9 those.

10 A: Again, I'm going based on what's being provided
11 to me, right here, as I sit here with the
12 information in this binder and on the screen.
13 It's being suggested that they were attached
14 together when I submitted them to you and my
15 legal counsel, so if you're asking me if
16 they're in the file, they are attached, they
17 were sent, yes. Am I 100 percent that the
18 counties received these documents, no. I'm not
19 100 percent that they received these documents.

20 **MR. CARTIN:** Thank you, Your Honor, that's all I
21 have.

22 **THE COURT:** All right. I can't imagine there would
23 be anything else. All right.

24 **MR. LUTHER:** Nothing further from us.

25 **THE COURT:** Okay. You may step down.



1 MR. INGRAM: Thank you.

2 MR. CARTIN: Your Honor, our next witness is Mr. Joe
3 Moss. We had planned on having him tomorrow
4 morning. It would probably break it up, and
5 I'm not sure I can get him over here before
6 5:00.

7 THE COURT: That's fine. Can we -- are we still on
8 schedule to finish?

9 MR. CARTIN: Absolutely, Your Honor.

10 THE COURT: Do we needed to start earlier.

11 MR. LUTHER: I think right now we're ahead of
12 schedule because we anticipated Mr. Ingram
13 would take longer today.

14 THE COURT: Oh, okay. Well good. What time do you
15 want to start tomorrow?

16 MR. CARTIN: I'm good with 10:00 if y'all ...

17 MS. GEER: Same time is good.

18 THE COURT: Okay.

19 MR. LUTHER: 10 works.

20 THE COURT: You're adjourned until 10 tomorrow.
21 Thank you.

22 (DAY ONE of the administrative hearing adjourned at
23 4:10 p.m.)

24 (DAY TWO - TUESDAY, MAY 21, 2019. The administrative
25 hearing reconvened at 10:24 a.m.)



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ROA 001751

1 **THE COURT:** Y'all be seated and thank you. All
2 right. Ready?

3 **MR. CARTIN:** All right, Your Honor. I think that
4 was all or most of the disputes.

5 **THE COURT:** Well, that's a good thing.

6 **MR. CARTIN:** Our next witness is Mr. Joe Moss.

7 **THE COURT:** I've heard that y'all may be getting a
8 little warm in here. Feels comfortable right
9 now. I've got two options. One of them is you
10 can -- because I'll tell you that in the past
11 there was a case, I think Joe Zelenski said it
12 was too warm in here. And the people that run
13 the heating and air for the building turned
14 down the whole building. Froze everybody else,
15 but everybody was comfortable in this
16 courtroom. Apparently that is not to happen
17 again. So your options are you can take off
18 your jackets or y'all could breath a little
19 less. I imagine you'll take option A. Oh,
20 well. Go ahead.

21 **MR. CARTIN:** All right, Mr. Moss.

22 **JOE MOSS,** having been duly sworn, testifies as
23 follows:

24 **MR. MOSS - DIRECT EXAMINATION BY MR. CARTIN:**

25 **Q:** Good morning, Mr. Moss. Please state your full



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ROA 001752

1 name for the record.

2 A: My name is Joe Moss, II. No middle name.

3 Q: All right. And where are you originally from?

4 A: Ordinarily from Mecklenburg County, Pineville,
5 North Carolina.

6 Q: Where do you live now?

7 A: I live in Richburg, South Carolina.

8 Q: Okay. In very general terms, what do you do
9 for a living?

10 A: I do telecommunications engineering consulting
11 work.

12 Q: Okay. Let's talk a little bit about your
13 background. Can you please pull up Exhibit
14 131. Mr. Moss, I'm going to get this for in a
15 trial notebook ---

16 A: Okay.

17 Q: --- so you can look through it.

18 A: Okay. Sorry.

19 **MR. CARTIN:** Ms. Mitchell, we're going to go to Page
20 131-006.

21 **(Joint Exhibit Number 131 was introduced into the**
22 **record at this time.)**

23 Q: Mr. Moss, do you recognize the copy of this?

24 A: Yes, sir.

25 Q: Okay. What is this document?



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ROA 001753

1 A: This is a copy of my resume.

2 Q: Okay. Is this a correct resume, true and
3 accurate copy?

4 A: Yes, sir.

5 Q: Okay. Does it accurately reflect the
6 professional activities?

7 A: Yes, sir.

8 Q: All right. Let's talk a little bit about your
9 education background. Where did you go to
10 school?

11 A: I went to NC State University.

12 Q: Okay. And what type of degree did you receive?

13 A: I graduated with a Bachelor of Science in
14 Engineering Operations.

15 Q: And what types of things did you study in
16 school?

17 A: Engineering Operations was a degree designed to
18 be a more broad application across the
19 engineering profession. We -- we took some
20 civil courses. We took some electrical
21 courses. Some business and management courses
22 mixed in. So, it was -- it was broader
23 engineering background degree.

24 Q: Okay. And when you graduated -- actually, it's
25 probably helpful if you'll turn to the last



1 page of your resume, 131-008.

2 A: Uh-huh.

3 Q: What did you do when you graduated?

4 A: I graduated and actually one week after
5 graduation, I went and worked for BellSouth in
6 Charlotte.

7 Q: Okay. And what were the types of things that
8 you did for BellSouth.

9 A: The whole time I was BellSouth, my title was
10 Outside Plant Engineer. And what that entailed
11 was basically all aspects of -- of engineering,
12 design in the -- in what's termed the outside
13 plant. That's -- that's everything in the
14 communications network other than long distance
15 trunking. Their office work, we didn't get
16 involved in that.

17 Q: Okay. And was this in the telecommunications
18 industry?

19 A: Oh, yes. 100 percent. Yeah.

20 Q: Okay. And did you receive any professional
21 designations?

22 A: Yes. I'm a professional engineer. I'm
23 registered in North and South Carolina.

24 Q: Okay. What does that mean, to be a
25 professional engineer?



1 A: Profession engineer is a -- it's a -- obviously
2 a professional designation. It's a licensing.
3 As a PE you can -- you're -- one's qualified to
4 -- certain work is required to carry a PE seal,
5 a stamp. And basically what that means is
6 you're certified and you're qualified to
7 certify the accuracy of that work and assume
8 responsibility for it in a nutshell.

9 Q: Okay. And -- and -- it appears that you were
10 at BellSouth for -- how many years?

11 A: I was at Bell for -- I have to look and see
12 it's so long ago. About 17 years.

13 Q: Okay. And during your time at BellSouth, what
14 titles did you have?

15 A: The whole time at BellSouth, my title was
16 Outside Plant Engineer. My responsibilities
17 varied over that time. Initially, I was part
18 of a group where each engineer was responsible
19 for a specific geographic area, an exchange
20 they called it. And over the years, I had
21 responsibility for different exchanges. In
22 those days, the Charlotte District covered
23 Mecklenburg County and areas west, all the way
24 over to Gaston County, Cleveland County, and
25 Rutherford County. So, in my time there I had



1 -- I had responsibility for exchanges that
2 varied from urban exchanges in town in
3 Charlotte, all the way out to some really very
4 rural exchanges in -- in Rutherford County and
5 Cleveland County. After that -- after several
6 yeas of that, I sort of transitioned into a
7 role in a group that we had in Charlotte that
8 was -- that specialized in digital systems. At
9 that time, digital loop systems were just
10 becoming -- just being deployed in the local
11 loop. And it was kind of specialized for
12 everybody in the -- for every engineer to learn
13 that. So, I became part of a group that we
14 just did digital loop carrier systems in all
15 the exchanges. That was -- and that's what I
16 was doing when I left.

17 Q: And what types of areas did you help design
18 networks?

19 A: Well, as I said the -- we were -- all my work
20 was -- I was in the Charlotte District my whole
21 career at BellSouth. And I -- as I just
22 explained, it covered everything from -- from
23 downtown Charlotte to, you know, exchanges in
24 Rutherford and Cleveland Counties that were
25 extremely rural, little towns called Caser and



1 Cliffside, places like that.

2 Q: Where did you go to work after working for
3 BellSouth?

4 A: I left Bell and went to Parsons Telecom. At
5 the time, BellSouth made the decision to
6 outsource it's engineering function. That was
7 sort of the -- the style in those days. And
8 they bid the engineering function is -- they
9 did it -- on district-wide basis. So, the
10 engineering function in the Charlotte district,
11 for example, was won by Parsons Engineering.
12 There were other companies that won the -- the
13 business in other districts, but I -- I made
14 the decision to got to work for Parsons. So,
15 Parsons was a -- a large engineering firm and
16 prior to this, they did mainly big civil
17 engineering projects, things like that. But
18 when the opportunity to get involved in
19 communications came along with the BellSouth
20 outsourcing, they decided to open up a -- a
21 communications arm or division that was called
22 Parsons Telecom. So, basically, Parsons
23 Telecom was set up for the exclusive purpose of
24 serving the BellSouth outsourcing and I was
25 part of that. I went to Parsons as supervising



1 engineer for the -- for the western district in
2 North Carolina. And that -- that entailed,
3 that encompassed everything from Charlotte --
4 or at least --- all the BellSouth territories
5 in Charlotte and west, Charlotte, Gastonia,
6 Morgantown, Lenoir, Asheville, those kind of
7 areas. So, I had supervisory responsibility
8 for all the engineering function in that area.
9 Another part -- I spent time at Parsons in just
10 helping to get the whole telecom -- the whole
11 Parsons Telecom division up and running because
12 they were -- they basically started from
13 scratch. They didn't have any
14 telecommunications expertise. And so, they --
15 they had myself and some other guys with some
16 experience and we sort of help them understand
17 what they needed to do in order to fill that
18 role.

19 Q: While you were with Parsons and BellSouth, were
20 you working with wireless assets?

21 A: No. In those days, I didn't -- we really
22 didn't get involved in wireless very much. In
23 fact, for the first part of time at Bell,
24 cellular systems didn't -- hadn't even been
25 deployed yet. When the first cell systems were



1 deployed in 1983, BellSouth spun off a -- a
2 little subsidiary that, at the time, I believe
3 it was called BellSouth Mobility. And they
4 handled all the wireless and we didn't really
5 get involved in that other than there were some
6 outside plant functions to deliver landline
7 connectivity to some of the early cell sites.
8 But it was really -- I didn't really get
9 involved in much where I was working at Bell at
10 all.

11 Q: Okay. And while you were at BellSouth and
12 Parsons, were you involved with wireline
13 technology?

14 A: Yes. That's -- that's what I worked on 100
15 percent of the time. Yeah.

16 Q: Okay. And where did you go after Parsons?

17 A: I was only at Parsons a little over a year.
18 And after that, the opportunity came along to
19 go work for Palmetto Net. At that time, they
20 were in Rock Hill. Since they moved to
21 Columbia and become Spirit, and now Segra, up
22 here on Hampton Street. I went to work with
23 Palmetto Net as, I believe, the sixth or
24 seventh employee of Palmetto -- Palmetto Net.
25 And that was -- that was -- that was a big



1 change coming from a place -- a company as big
2 as BellSouth going to a company that was --
3 that everybody could fit around a conference
4 table. It was fun.

5 Q: Okay. And what did you do at Palmetto Net?

6 A: At Palmetto Net, it was quite a contrast of
7 what I had done previously just by the very
8 fact that we were so small. So, my title was
9 Chief Engineer. And in the early years of
10 Palmetto Net, that was -- the whole engineering
11 department was basically me. So, it -- it's --
12 it was really, really -- as you would -- as you
13 would imagine, it was really broad at that
14 point. Any -- any design work that was -- that
15 had to be done, I did it. I was also
16 responsible for the capital budget. I was
17 responsible for interacting with what we -- the
18 term we used was member companies, but more
19 accurately, they were the owner companies of
20 Palmetto Net, such as Farmers, Horry, Palmetto
21 Rural, those companies. So, Palmetto Net's
22 network in those days was primarily designed to
23 interconnect the member companies, to provide
24 transport facilities between the member
25 companies. So, a large portion of what I was



1 responsible for was technical coordination with
2 the member companies to make sure everything --
3 the network fit together in an efficient
4 manner.

5 Q: And who do you recall were the owners of
6 Palmetto Net?

7 A: It -- it was the -- the owners were the -- most
8 of the independent companies in South Carolina,
9 there were a few independents that were not
10 involved in that. I'm not sure that I can name
11 them all now, but it -- it was Rock Hill
12 Telephone, at the time, now known as True
13 Vista, Chester Telephone, which is now -- no,
14 I'm sorry -- Rock Hill is now Comporium,
15 Chester is now True Vista, there -- West
16 Carolina, Piedmont Rural, Palmetto Rural,
17 Horry, Sandhill, Chesnee. I'm sure I'm going
18 to leave somebody out. But -- but most of the
19 -- most of the independents in the state were
20 our owners.

21 Q: And would that have included rural telephone
22 cooperatives?

23 A: Most of them were rural telephone -- telephone
24 cooperatives. Some of them weren't co-ops.
25 Some of them were just companies, but their



1 ownership -- I mean, it -- it was the same as
2 far as we were concerned.

3 Q: What types of projects, if any, involving rural
4 telephone cooperatives were you involved in
5 during this time at Palmetto Net?

6 A: Well, as I said, the main function that I had
7 -- or the main function that Palmetto Net had
8 really was to provide interconnection between
9 those companies. So, we really did not get
10 involved in local projects that the member
11 companies would undertake. For example, if --
12 if a company, say Horry, was going to build
13 cable to serve a new subdivision or something
14 like that, we really didn't get involved in
15 that. We got in -- I -- we were involved --
16 Palmetto Net was involved in the
17 interconnection, which you might term -- well,
18 we called it long haul at the time. It's
19 really not. Long haul is actually between
20 cities like Charlotte to New York or something.
21 But we considered -- in our world, we
22 considered Myrtle Beach to Columbia to be long
23 haul. So, those systems might traverse several
24 different member companies territories. And
25 so, it was my role to, again, implement systems



1 and coordinate among the companies to make sure
2 everything was interconnected and functioned
3 properly.

4 Q: And ---

5 A: I was -- I was also -- I'll add that I was also
6 involved in the billing structure. I was -- it
7 was part of my -- it was part of my
8 responsibility to help coordinate equipment
9 rentals and things like that between Palmetto
10 Net and the member companies.

11 Q: During this time, what if any interaction with
12 wireless networks did you have?

13 A: At Palmetto -- Palmetto Net, excuse me -- I did
14 do -- I began to get involved with some
15 wireless work there. Again, not so much in the
16 actual provision of wireless services, but
17 Palmetto Net was what's called a carrier's
18 carrier. And as the carrier's carrier, our
19 customers were, as you might guess, other
20 carriers. So, at Palmetto Net some of our main
21 customers were -- would be like Verizon or T-
22 Mobile or cellular providers. So, because each
23 one -- each cell tower has to be connected to
24 a landline network somewhere, those customers
25 would come to us to buy -- transport bandwidth



1 to -- that would transport their aggregated
2 cell traffic back to wherever it needed to go.
3 So, we did -- I did interact with a lot of
4 wireless companies at Palmetto Net. Again,
5 it's a little -- the line gets a little fuzzy
6 as to exactly what's wireless and what's not.
7 I'm was -- at that time, I was providing the
8 back haul for those cellular companies.

9 Q: Okay. And what did year did you leave Palmetto
10 Net?

11 A: I left -- let me again refer to my notes. I
12 left in 2007.

13 Q: And what did you do?

14 A: At that point, I started a little private
15 practice on my own and began doing consulting
16 work.

17 Q: What types of projects do you do?

18 A: It's really varied. I have a relatively
19 limited client list, but my clients tend to do
20 a lot of different types of work. It -- it
21 really varies. I've worked -- I've done
22 landline design at -- when I went out in
23 private practice is when I really started
24 getting more involved in the actual cellular
25 business. My clients -- I do work for -- I



1 still do work for Segra over here some. I do
2 some work for SCANA. I do work for other
3 engineering companies. Specific like -- when
4 -- when some other engineering companies who
5 might do work for, say Verizon or T-Mobile or
6 AT&T -- when they have a need for something a
7 little more specialized than what capabilities
8 they have, say some more advanced fiber optic
9 planning or things like that or if they have
10 something that needs -- requires a PE stamp, a
11 lot of times they'll call on me for -- to seal
12 -- review a sealed document or produce
13 documents, so a lot of what I do now is -- is
14 permit applications because -- again, permits
15 can be really complex and a lot of these
16 companies just don't have the resources or the
17 expertise to see the -- see the permit process
18 all the way through for -- especially for
19 complex projects where you might involved with
20 a core of engineers or Department of Natural
21 Resources or, you know, different things like
22 that. And so, I offer those services to people
23 or to companies who just -- it's easier for
24 them to get me to do it than to train their own
25 people to do it.



1 Q: Okay. You mentioned wireless and wireline
2 technologies as technologies that you work
3 with, but are there any other telecommunication
4 services you've assisted on projects with?

5 A: Well, that's a really broad category. Planning
6 -- you know, the financial end of it, I've done
7 -- I've done cost studies and project -- like
8 some development work, but as far as the actual
9 technology, it's pretty much limited to
10 wireline and cellular.

11 Q: Okay.

12 MR. CARTIN: Your Honor, at this time, I would like
13 to move that Mr. Moss be qualified as an expert
14 in the area of telecommunications.

15 MS. GEER: No objection.

16 MR. LUTHER: No objection.

17 THE COURT: So qualified.

18 Q: Mr. Moss, what documents have you reviewed in
19 this case?

20 A: A lot. As everybody knows, this is -- this is
21 a fairly complex case and -- and as such, I --
22 I consulted a whole lot of different sources,
23 some were more helpful than others. An
24 exhaustive -- I'm sure I cannot give you an
25 exhaustive thought -- exhaustive list right



1 now. I've -- in looking for different types of
2 documentation and figures, I've consulted
3 IEEE's website, the FCC, I've looked at
4 different manufacturers' websites, Ciena,
5 Kalex, Juniper, Cisco. The list is really long
6 there as well. There's other -- other sources
7 I've tried to get information from, NTCA.
8 There's an organization called NFOEC, the
9 National Fiber Optic Engineers Conference.
10 They have a lot of good information. They have
11 a -- in fact, they have a massive amount of
12 information. They, honestly, really didn't
13 have a lot that was really helpful to the case,
14 but I did consult with them. Again, I'm sure
15 I'm leaving others out, but a lot of different
16 ---

17 Q: I meant a -- a specific -- some specific
18 categories ---

19 A: Okay.

20 Q: --- and ask you if you reviewed anything.

21 A: Okay.

22 Q: But with regard to what you just mentioned, are
23 those the types of documents that experts in
24 the field with telecommunications might rely
25 on?



1 A: I think so. Yeah.

2 Q: Okay. Did you review any of Farmer's Telephone
3 Cooperative, Inc., FTC Communications, LLC, or
4 FTC Diversified, LLC's descriptions of their
5 networks?

6 A: I'm sorry. Yeah. I didn't mention the most
7 obvious one. Yeah, I was able to review a lot
8 of the documents that we received during --
9 that were received during production.

10 Q: Okay. And did you attend any ---

11 A: So ---

12 Q: Did you attend any depositions?

13 A: Mr. Wyatt's.

14 Q: Okay. Did you speak with anyone to -- to
15 gather industry information?

16 A: There again, I talked to a lot of folks, some
17 more helpful than others. Three names that
18 were able to help me that I can -- that I'll --
19 I'd like to mention. I spoke with a gentleman
20 named John Flake. John actually used to work
21 for -- for Spirit, but now is the network
22 engineer with Ciena, one the equipment
23 manufacturers here in the case. I spoke with
24 him. I spoke with a gentleman I've known for
25 quite a while named Tom Brady. Tom is a Vice



1 President of sales at Ciena. And another
2 gentleman I spoke with -- I actually ended up
3 getting in touch with the FCC and I spoke with
4 a guy by the name of Alex McDonald and he is in
5 the -- he's the Telecommunications Specialist
6 in the FCC's industry analytics division. I
7 hope I got that right. I think that's his
8 title. He was very helpful.

9 Q: And can you give me a brief overview or give
10 the Court a brief overview of what you were
11 asked to analyze in this case?

12 A: So, when I was contacted initially, the whole
13 objective was to analyze Farmer's network with
14 the -- with the objective of attempting to
15 determine what percentage of that network is
16 being utilized for voice as opposed to non-
17 voice.

18 Q: When you say voice, what do you mean?

19 A: Voice -- by voice I mean a -- just a plain old
20 telephone -- a telephone circuit that would end
21 up being connected into the public switch
22 telephone network or voice traffic.

23 Q: Okay. Were there other opinions that you were
24 asked to provide in this case?

25 A: That was a prime -- that the prime -- the



1 primary objective was just to determine the
2 utilization of the network.

3 Q: Well, in analyzing that, have you reached other
4 conclusions in this case?

5 A: Well, they -- I reached some conclusions in
6 relate -- in relating and regarding what types
7 of equipment they're using, how it's utilized,
8 what their network architecture might look
9 like, evolution -- you know, in -- in analyzing
10 the network as it is now, it's important to
11 understand how it evolved into the architecture
12 that's out there now, so I did some reviews of
13 -- of just telephone technology in general.

14 Q: Did you develop a report to help you -- or a
15 presentation to help you present your testimony
16 ---

17 A: Yes. I did.

18 Q: --- for the Court?

19 A: It's a -- it's the PowerPoint that's up here
20 now.

21 Q: Okay. Let's talk a little bit about what
22 you're going to tell the Court today.

23 A: Okay. Real briefly, those five bullet points
24 summarize that I'm going to try to explain that
25 just basically what we're talking about when we



1 talk about rule of telephone service. As I
2 mentioned, I'm going to go through the -- a
3 brief history, just an overview of the
4 technology just to provide some background and
5 context. We're going to look at the equipment
6 and technology and architecture that's involved
7 in just involved in networks in general and
8 then looked at -- at the taxpayers -- this
9 network in particular and how it's equipped and
10 how the equipment is deployed and arranged in
11 its network. And then, as I said, the final
12 opinion is what extent it's being utilized to
13 provide voice service.

14 Q: Okay. Let's talk about that first opinion. In
15 your opinion, what is the meaning of rural
16 telephone service?

17 A: In my opinion, it's -- it's exactly what it
18 says. It's providing service -- voice service
19 over a landline network that's terminated into
20 -- that's routed to the public switch telephone
21 network.

22 Q: Okay. In 1980 what would that have meant?

23 A: It would -- it would have meant exactly that.

24 **MS. GEER:** Your Honor, just as we're going down this
25 line of testimony, I would like -- obviously,



1 he's not trying, I don't think, to speak to
2 what telephone service means as it says in the
3 statute.

4 **THE COURT:** Legally. Yeah.

5 **MS. GEER:** But if we could maybe confine our
6 questions to what does it mean to an engineer.

7 **MR. CARTIN:** Sure or -- or to him as an engineer in
8 the industry in 1980. Yeah.

9 **MS. GEER:** Yes. Thank you.

10 **MR. CARTIN:** I'm happy to do that. Or just other
11 people in telecom.

12 **THE COURT:** Right.

13 Q: Mr. Moss, in 1980 when you started as a Telecom
14 engineer, what would the understanding have
15 been in your industry with regard to what
16 telephone service meant?

17 A: It -- as I said, it would have meant to -- to
18 engineers in my capacity and just people in
19 general, I think -- just voice service.
20 Something you talk on from -- a device you
21 speak into that's routed to the public switch
22 telephone network and allows communication with
23 another.

24 Q: In 1980, with regard to a telecommunications --
25 networks that existed at that time, practically



1 would there have been any use for a landline
2 network other than wireless?

3 A: Not ---

4 **MS. GEER:** Objection. Leading.

5 A: The -- there were ---

6 **THE COURT:** Woah. Woah. She objected. You ---

7 **MR. CARTIN:** I -- I think it's just would there have
8 been. He can say yes or he can say no, and
9 then ---

10 **MS. GEER:** I mean, typically the yes/no is given to
11 ---

12 **THE COURT:** I agree with you typically. It's not
13 always though.

14 **MS. GEER:** Exactly.

15 **THE COURT:** I'm sorry. I ---

16 **MR. CARTIN:** I can ---

17 **THE COURT:** I ---

18 **MR. CARTIN:** I can rephrase.

19 **THE COURT:** You rephrase it or you can ask the
20 question again and let me just carefully
21 analyze it because Ms. Geer is correct that
22 typically it is. It's not always.

23 **MR. CARTIN:** Right.

24 **THE COURT:** And I have to listen to the question
25 carefully ---



1 MR. CARTIN: Okay.

2 THE COURT: --- so.

3 MR. CARTIN: I -- I'll try to rephrase in a way that

4 ---

5 THE COURT: Okay.

6 Q: As a practical matter in 1980, what other uses,
7 if any, would a landline network have had?

8 A: Okay. Your Honor, I understand. So, I -- I
9 said a minute ago that the understanding would
10 be the purpose of network. The reason these
11 networks existed in those days was to provide
12 voice service. Now, there were in those -- in
13 those days, 1980, when I went to work, we did
14 have what we used to call special circuits.
15 So, special circuits might be something like a
16 fax line or a -- like a burglar alarm. And
17 those circuits were provided over voice grade
18 facilities that already existed in the network.
19 I mean, in other words, the -- there were some
20 specialized applications that the telephone
21 network could be utilized for, if that makes
22 sense. And again those would be -- they were
23 -- they were somewhat limited, they did exist.
24 Again, I think the most common ones I remember
25 dealing with were fax lines and burglar alarm



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1 circuits, and there were probably a few others,
2 but the primary function was by voices. Really
3 I think that's why -- when I -- I remember --
4 when I graduated and went to work and people
5 would ask me who I went to work for, you could
6 just -- in those days you could say I went to
7 work for the telephone company and they know
8 what you were, you know -- everybody understood
9 what that meant.

10 Q: Okay. You talked about some of those other
11 uses. With regard to a total percentage of
12 network utilization, what would have been the
13 breakdown for the network utilization through a
14 telephone service versus those other services
15 you just mentioned?

16 A: I understand the question. That's hard to say.
17 For one, that was a long time ago and for
18 another, it would vary depending on the
19 location. For example, as I said, I work in
20 Charlotte, so if you had responsibilities for
21 the exchange that included downtown Charlotte,
22 there may have -- there were -- there were more
23 special circuits there, then there would have
24 -- then I would have run into out in the hills
25 of Rutherford County, so. But to answer -- I



1 would make -- I would take a guess at an answer
2 to your question to be ---

3 **MS. GEER:** Objection, Your Honor. I don't think
4 we're here to listen to his guesses, Your
5 Honor.

6 **MR. MOSS:** Okay.

7 **MR. CARTIN:** I think it's the way he phrased it,
8 Your Honor.

9 **THE COURT:** Well, but he's got to rephrase that for
10 that objection.

11 A: I'm sorry.

12 **THE COURT:** Take a guess ---

13 A: I'm sorry. I -- I understand.

14 Q: In your experience ---

15 A: In my opinion -- in my opinion, the -- the
16 percentage would have probably been somewhere
17 around five to ten percent.

18 Q: Okay. Let's talk a little bit about how
19 telephone networks have changed over time next.

20 **MS. GEER:** And I apologize. I didn't here the --
21 the question was -- what was the five to
22 percent? Voice or data?

23 **MR. CARTIN:** I think it was data. That's how I
24 understood it, right?

25 A: Yes. I hate to use the term data, however,



1 because in those days, it wasn't really thought
2 of as data. It was just thought of as non-
3 voice. And later on in the presentation ---

4 **THE COURT:** And when ---

5 A: --- we're going to make ---

6 **THE COURT:** When you say non-voice, what you're
7 speaking of is the fax and burglar alarm?

8 A: Yes, sir.

9 **THE COURT:** Special circuits?

10 A: Yes, sir. That's right. That's correct.

11 **THE COURT:** And when you say a special circuit, it -
12 - that information or data or whatever it was,
13 it went over or through the landlines ---

14 A: Yes.

15 **THE COURT:** --- and I -- I imagine what you're
16 telling me is there had to be a special circuit
17 to take that information or route it or ---

18 A: It was ---

19 **THE COURT:** What does special circuit ...

20 A: It -- it meant -- in just common policy, it
21 meant that it had to be treated specially. It
22 ---

23 **THE COURT:** Okay.

24 A: These -- these circuits -- in those days,
25 everything was transported over copper analog



1 line. You didn't have digital back then until
2 later on. But -- so it was -- it was analog
3 circuit, which is essentially the same circuit
4 as the voice circuit, but because it was a fax
5 line for a burglar alarm technicians had to be
6 careful with how they handled it. A voice --
7 voice line in those days, just a copper analog
8 connection, was really robust. You'll see some
9 pictures later of how splices are made. But
10 you could get in and manipulate it and redirect
11 it from one point to another, but a special
12 circuit, if you got in and did -- if a
13 technician got into -- into a special circuit
14 and disconnected it for some reason, it might
15 generate an alarm and the police would come --
16 would be called out or a fire alarm. So, it
17 had to be handled specially. We -- it was --
18 it was a special circuit.

19 **THE COURT:** All right.

20 A: Does that make sense?

21 **THE COURT:** Yeah. And plus, I -- I don't want to
22 start getting ahead of where you're going
23 either.

24 **MR. CARTIN:** No and we're going to walk all through
25 that, Your Honor, for the whole evolution.



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1 **THE COURT:** Okay.

2 **MR. CARTIN:** There we go. And just for the Court's
3 benefit, there's -- there's no text under this
4 and that was part of our agreement between
5 counsel today to eliminate most of the
6 objections to this demonstrative.

7 **A:** Okay. So, the next few slides attempted to put
8 together a little brief survey review of -- the
9 evolution of technology. And it's not just a
10 history lesson. That's not what we're here
11 about, but I think it's -- there's a couple
12 points I'd like to make because some of --
13 because it'll have impact on how networks are
14 configured today. So, if you just bear with me
15 for a minute. This is a picture of the very
16 earliest -- how the earliest systems might have
17 been deployed. They were all copper or
18 electrical analog circuits that would originate
19 at a central office. In those days, it was a
20 manual switchboard. You've seen that in the --
21 in the movies an on T.V., I'm sure. The
22 switchboard -- from the switchboard out to the
23 subscriber would be a pair of copper wires or
24 in some cases, steel. They used to call them
25 iron wire circuits, was the term that they used



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1 to use. But the whole purpose for those -- for
2 that circuit was to provide an electrical
3 connection out -- all the way to the telephone
4 on the right hand side. And so, there'd be
5 electrical current flowing through that circuit
6 and the handset -- the -- the telephone would
7 allow voice -- would allow voice to be
8 translated into the -- not translate. Let me
9 -- let me rephrase that. The handset allows
10 the electrical current to be modulated to carry
11 voice. So, it was analog voice modulation to
12 complete the circuit. But the import --
13 another key point I wanted to make here is that
14 in this scenario, everything has to be
15 connected. There's a one to one connection all
16 the way from the -- from the switchboard out to
17 the telephone. It has to -- it has to be a one
18 to one connection for this system to work. If
19 any piece of that's broken, then the telephone
20 no longer works and you're out of business.

21 Q: Mr. Moss, can you explain how the switch works
22 in this instance?

23 A: A switchboard -- okay. So, the switch -- let
24 me think how you say this. The switch is what
25 routes one call to a -- routes the called from



1 one telephone to the next telephone. So, it's
2 simply a physical connection between a
3 telephone jack, they used to call it. It's is
4 a physical connection from the jack out to one
5 telephone to the jack to another telephone. If
6 you look closely, you'll see that though -- on
7 those really old phones didn't even have a
8 dial. There's no dial on that phone. And
9 you've all seen on -- Andy Griffith would pick
10 the phone up and -- and he didn't dial. He
11 would ask Sarah to get the mayor's office. And
12 so, Sarah would be the lady at the switchboard
13 and she would make a connection and take a
14 physical patch cord, plug it into the
15 connection to one phone, plug it in the
16 connection to the other phone. That completes
17 the electrical circuit and the call is -- is in
18 progress.

19 Q: What, if any, understanding do you have of the
20 term plain old telephone system?

21 A: I think you mean plain old telephone service.
22 I've used that a lot. It's a -- it's a term
23 that's called POTS. And that's what this is
24 referring to. And it's just -- it's a kind of
25 a silly term and it's a contraction of plain



1 old telephone service. So, that's a term that
2 was in use back then. That's what this is a
3 picture of and it's kind of funny. It's ironic
4 even with all of the technological advances
5 that we'll look at. That term is still in use
6 today. And you can -- you can use that term
7 with any engineer and say -- ask him how's he
8 going to configure his POTS line and he'll know
9 exactly what you're talking about. That's a
10 voice circuit that is terminated into public
11 switch telephone network.

12 **MR. CARTIN:** All right. Next slide, please.

13 A: Next. So, as I -- as I tried to stress in that
14 -- in -- the original architecture required an
15 individual connection between the central
16 office switchboard and each user, each
17 subscriber. So, as the demand for telephones
18 increased and more and more subscribers wanted
19 phones, it could result in a situation like
20 this. This is just sort of a -- it's not
21 silly, just a little picture to illustrate how
22 -- how far those -- demand for individual
23 connections could go and how this really became
24 untenable pretty quickly.

25 **MR. CARTIN:** Okay. Next slide.



1 A: Next. So, the next slide, I'm trying to
2 illustrate how the demand -- the increased
3 demand for telephones was addressed. Now,
4 there's really no change in the technology from
5 this slide to the previous slide. It's still
6 a continuous unbroken electrical circuit
7 between the switch and the telephone. It's
8 still analog. It's still analog, a DC current
9 modulated to carry a voice. There's still a
10 one to one connection. But rather than a
11 manual switchboard, now we have a mechanical
12 switch. It's just a technological advancement.
13 And instead of having individual open wires on
14 cross arms on those poles you see -- I found a
15 picture of some copper cables, so now those are
16 twisted pairs in bundles of either -- usually
17 25 pairs, but sometimes larger, sometimes 50
18 pair binders. The next image -- the little
19 green box there is what was known as a cross
20 connect interface. And the reason I included
21 that is that -- is to illustrate the fact that
22 that's a -- those devices were used to make
23 connections between copper pairs in the -- in
24 the field. It's really hard to see, but if you
25 can sort of visualize the -- the little purple



1 area -- it looks like a purple mass in between
2 those two blocks of binding posts. Those are
3 jumper wires that make physical connections
4 from a pair of what we used to call binding
5 posts, from there back to the central office.
6 And on the right hand side, there are binding
7 posts that are connected out to the telephone
8 and it's a way to -- it was a method that we
9 used to use in those days to redirect central
10 office lines to wherever they needed to go is
11 -- it's a cross connect, cross box we used to
12 call it. But it's still analog. It's still
13 one to one. And it's still electrical current.

14 Q: What years would this technology have been
15 prevalent?

16 A: This -- this technology stayed -- this was the
17 prevalent architecture for a long time. When
18 I first went to work in 1980, the majority of
19 that work -- in fact, practically all the local
20 exchange network was built like this. It -- I
21 don't know exactly. I'm sure it arrived on the
22 scene at different times based on the location
23 and demographics, but probably sometime in the
24 probably '30s or '40s. And it -- it remained
25 the standard architecture on up into the '80s.



1 And I'm sure there's some places where -- where
2 you could find this out in the field right now
3 most likely. But not many.

4 Q: Okay.

5 **MR. CARTIN:** Let's go to the next slide.

6 A: So, this is just a slide showing again how the
7 demand for more telephones results in the need
8 for more connections, which could only be
9 provided by more copper pairs, which leads to
10 situations like this. It's just a -- just an
11 illustration of congestion and how growth --
12 growth demand -- growth and demand for
13 telephones is -- was the driver at network
14 design.

15 Q: Okay.

16 **MR. CARTIN:** Next slide.

17 A: Now, this slide -- this is the technology that
18 was just coming into use in the local exchange
19 when I was at -- at Bell South when I started
20 in the early '80s. And it's known -- it's --
21 this is digital technology. Now, this is a big
22 step and I'll try to talk through this one
23 fairly briefly. There were systems deployed
24 that were -- that were called digital loop
25 carrier, DLC Systems. And the distinction here



1 -- let me just back up -- let me describe what
2 we're looking at first. At the central office,
3 the mechanical switch -- switches were
4 beginning to be replaced by electronic
5 switches. And at the field -- at the field
6 then, rather than the cross box -- rather than
7 the mechanical interface, I've shown what we --
8 what's known as a remote terminal. And there
9 at the -- instead of everything being
10 mechanical now, the -- there are electronics at
11 the remote terminal. So, the thing to remember
12 with these digital copper systems is that from
13 the -- what we used to call the feeder cable,
14 the sections between the central office and the
15 remote terminal you see in the image here,
16 would no longer be analog. That's now digital.
17 So, digital takes an analog voice circuit,
18 slices it up into little bits, and packs them
19 all into -- on -- onto a digital line and what
20 I'm -- and let me explain digital lines. So,
21 the easy -- the much simpler way to explain
22 that is that two copper pairs that previously
23 could serve two customers. By the use of this
24 digital technology, could now be utilized to
25 provide 24 voice channels -- 24 voice grade



1 channels on two copper pairs. So, in 1980 when
2 I was -- well, actually -- actually, these came
3 off slightly after 1980. Say '83, '84 when I
4 was working on these systems, we thought this
5 was a -- a godsend because all of a sudden we
6 could provision 24 telephones on the very same
7 facilities that used to be limited to two
8 phones. So, you can see how that -- that would
9 enable us to -- to provide facilities for
10 growth. Another thing I want to point out on
11 this picture is that what I'm describing is the
12 -- is the digital section is only from the
13 remote terminal back to the central office,
14 from the remote terminal out to the subscriber.
15 The technology is essentially unchanged from
16 the very, very beginning. It's a pair of
17 copper wires carrying analog circuit out to
18 each individual telephone. The -- the digital
19 conversion happens there at the remote terminal
20 to provide additional transport capacity back
21 to the central office. So, the one to one
22 connection is still there. It's just that on
23 the feeder section, each channel is dedicated
24 to a particular subscriber. You'll notice in
25 the picture I'm just -- the little box there in



1 the middle, I try to depict three digital
2 channels. In real life that would go down to
3 24. It would have been 24 channels, but I just
4 didn't have room on the picture. It was -- it
5 was too busy to show all 24, but -- what I'm
6 trying to communicate there is that from each
7 one of those telephones back to the electronic
8 switch, there's still a single discreet
9 connection from the phone -- from the
10 subscriber, through the analog server to the
11 remote terminal over a dedicated channel back
12 to the switch. Next. All right. This --
13 excuse me just a moment. Thank you. Now, this
14 slide here brings us up to current technology
15 today. This is -- now, this is a big change.
16 This is the advent of fiber cable -- fiber
17 optic cable. Mr. Cartin, I brought a piece of
18 copper -- of fiber cable to show the Court and
19 left it in my -- my bag back there. So, we'll
20 just skip over that part I suppose. The -- the
21 difference here is that the conductor is no
22 longer copper. Now, we're talking about a
23 piece of glass fiber. The medium is no longer
24 electrical current. Not it's light -- it's
25 laser light. And this really -- this



1 technology is -- is really a game -- game
2 changer, to use that term, as far as network
3 design goes. The initial fiber systems were
4 deployed in the local loop depending again on
5 where you worked, the time maybe mid to late
6 '80s. And the initial deployment of these
7 systems was driven by the need, as in all the
8 previous years, for additional -- additional
9 telephone facilities. So, but the amount of
10 bandwidth capacity, the amount information
11 carrying capability of a fiber is so much more
12 than a -- than a piece of copper cable. It's
13 -- it's really -- it's hard to describe. In
14 fact, the -- it's just -- I'm -- I'm trying to
15 think how to describe it without getting into
16 too much detail. Just suffice it to say that
17 fiber cable can carry orders of magnitude more
18 information than a -- than a copper cable can.
19 And so, soon after these initial copper --
20 fiber systems were deployed in the loop, and
21 this happen to coincide with the arrival of the
22 internet. And so, it didn't take long before
23 the service providers, and engineers and
24 designers realized that this massive increase
25 in information carrying capability could be



1 utilized for a whole lot more than just plain
2 old telephones, the POTS lines. And so, next
3 thing you know, you start connecting to the
4 internet. And that's what I'm -- that's what
5 I'm trying to show here. So, a couple --
6 again, a couple of key points, these systems,
7 which are -- which are what's in service right
8 now today, can provide and do provide POTS
9 service just like the very, very earliest
10 picture we had. In fact, I think -- I think a
11 way to think about it is if you can somehow
12 bring back a user, a subscriber from 1919, hand
13 him this telephone handset right here and tell
14 him to carry on a conversation, it -- he would
15 -- it would be a recognizable experience to
16 him. It would -- it would feel the same
17 because you still talking into the mouthpiece
18 and listening through the earpiece through --
19 the quality of conversation would probably be
20 better and the phone would be a lot more
21 advanced, but it still provides the exact --
22 basically, the same service. It's a connection
23 from a -- a subscriber through the network to
24 the public switch network to another
25 subscriber. But the difference is here it's



1 able to do so much more because of that
2 advanced -- the -- the bandwidth capacity that
3 fiber offers. I mentioned the internet. I --
4 I think -- it's safe to say, in my opinion,
5 that the internet we know now would not exist
6 if it weren't for this technology right here.
7 This is what makes the internet happen. And so
8 one more key component of this picture that I
9 want to point out is that previously as we've
10 been talking about analog transmission and we
11 introduced the idea of digital systems on the
12 previous slide. This is the next step. This
13 is -- this is -- this technology is called --
14 they refer -- it's referred to as packetized.
15 This is packing data. So, let me explain a
16 little bit about the nature of what a -- what
17 a packet is. It's kind of a term that ---

18 **THE COURT:** And when you say packet, you're kind of
19 -- you're interlacing that with electronic
20 light?

21 A: Yes, sir. Let me explain. Just -- it'll make
22 a little more since hopefully. So, in -- the
23 way that technology works is it takes input.
24 Whatever information is input into the system,
25 whether it's voice or an internet session or a



1 T.V. show, or anything that's transported
2 across the telecommunications network is, if
3 you will, sliced up into little -- little bits
4 and those -- those little bits of information
5 are assembled up into packets, what's known as
6 packets. The best way to think about it, the
7 packet is -- is like an envelope. It's like an
8 envelope that carries bits of information. So,
9 the envelope just -- just as on an envelope
10 that you drop in the mail, you put a address
11 on. You might have an address on the front of
12 it. So, a packet carries addressing
13 information so that the -- the system knows how
14 to route that packet to carry the bits to the
15 destination they need to go to, the IP address.
16 I know you see IP addresses on computers and
17 things. That's -- that's part of the routing
18 information in a packet switch system, which is
19 what I'm trying to show here. Also, I failed
20 to mention the difference in the switch. I
21 guess I should mention that. So, on the
22 previous slides, we had a manual switchboard,
23 then we had a mechanical switch, then we had an
24 electronic switch. To bring this up to modern
25 standards, I'm showing what's known as a soft



1 switch. Now, not everybody is -- has gone over
2 to soft switch. There's still some -- some
3 electronic switches out there in the network.
4 But a modern -- the most modern application is
5 what's known as a soft switch. And I don't --
6 I'm not going to get in a lot of detail about
7 that, but the main thing to remember is that
8 mechanical switches and electronic switches
9 required -- they had a fixed number of ports.
10 And by port I mean a place where telephones --
11 where user telephones would be connected to the
12 switch, like I've tried to depict in the
13 previous slides here. But a soft -- and those
14 -- and because you had to have a discreet set
15 of ports for each service, for each subscriber,
16 they could be physically large. It could take
17 up this room in a lot of places. You could go
18 over here to Senate Street at the -- at the
19 AT&T Central office and see an electronic
20 switch that is bigger than this room. A soft
21 switch on the other hand is exactly that. It's
22 software based so that a soft switch can
23 actually reside on a -- on a computer server.
24 So, every -- all the switching function takes
25 place within the software of a soft switch.



1 It's -- think of it as a computer as opposed to
2 a mechanical device. That's a -- that's really
3 brief description of a soft switch. But
4 another thing to note on here, and I've got it
5 labeled there, is that a soft -- a switch,
6 whether it's a soft switch or an electronic
7 switch for that matter if it's going to handle
8 packetized data, has to have what's known as a
9 media gateway. That's the reason -- that's
10 important. That's the reason I included it
11 here because all the previous slides, the
12 network architecture that I've been trying to
13 depict is known as circuit switch. Now, in a
14 circuit switch network, calls and traffic are
15 routed based on the telephone number. The
16 system recognizes the telephone number that you
17 dialed. It recognizes that -- that --where
18 your phone is. It recognizes where the other
19 telephone number is and so it routes it based
20 on that information. That's a circuit switch
21 network. The -- on a packet switch network,
22 those envelopes that I spoke about a minute ago
23 have an -- have an IP address and the function
24 of the media gateway is to translate -- you can
25 think of it like this, the media gateway



1 translates the packet addressing information
2 into a format that could be recognized as a --
3 as a telephone number essentially to route the
4 call across the public switch telephone
5 network. Now, the media gateway is not
6 required for non-voice traffic because that's
7 routed expressly based on it's IP address out
8 into what we call the cloud. And that's what
9 I'm trying to show right here is the -- with
10 the little icons down there that everybody
11 recognizes. Amazon -- you could -- the same
12 facility, the same network, in fact, the same
13 individual connection to a single house can be
14 used for that POTS conversation, that
15 conversation over a POTS line. Simultaneously,
16 you can run your computer, be streaming a --
17 you know, streaming an episode of Mayberry on
18 the T.V. Now, I understand they even have
19 smart appliances now that will tell you when
20 the milk's about to go bad. That's why I put
21 the refrigerator on there. So, all that
22 generates information. It all ends up as
23 packets on the network and it all is
24 transported over a common medium, a common
25 system. In fact, there's a little bit of



1 analogy because the distinction between packet
2 switching and circuit switching is important to
3 understand for -- it'll come again later on.
4 And there's a little analogy I think that helps
5 visualize it. So, let's imagine if I can use
6 an analogy. You're in your house, you're in
7 your office here in Columbia, you dial a phone
8 number on the circuit switch network. Now,
9 previous to this -- on all the previous slides,
10 we're talking about circuit switch. So, on a
11 circuit switch network, let's -- let's -- let's
12 try to imagine the telecom network as a
13 railroad. Bear with me if you will. Let's
14 imagine it's a railroad. You dial your phone
15 here in Columbia, you call a cousin in New
16 York. On a circuit switch network, you just
17 rented that entire railroad. The entire
18 railroad track from Columbia to New York is
19 vacant except for you. You have full and
20 exclusive use of that railroad track, as long
21 as that call is -- is in session. So, you
22 speak into the mouthpiece, the voice is trans-
23 -- it's changed into data, into these bits,
24 loaded in a railroad car if you can bear with
25 my analogy, shipped off to New York. So, other



1 than the traffic that you're generating on a
2 railroad track, it's -- it's empty. You've
3 rented it for the entire conversation. Now,
4 when you hang up, the connection's broken and
5 that railroad track would then be used for
6 other trains. Now, in a packet switch network,
7 the -- imagine the same railroad track. You're
8 at the -- you pick up the phone in Columbia,
9 dial to the phone to your cousin in New York.
10 Same thing happens. The voice is chopped into
11 these little packets, into bits. And then
12 packets loaded on the railroad cars, but the
13 difference is in this scenario, you might have
14 every -- your -- your car gets connected to a
15 train that's going -- the entire train is going
16 to New York. So, there might be 100 cars,
17 1,000 cars on this train. Your car though is
18 getting loaded on to say every tenth car or so.
19 The rest of the time, the other cars on the
20 train are hauling other traffic that you may or
21 may not even be aware of. It could be other
22 devices in the same location or it could be
23 other telephones from your neighbors. All that
24 stuff gets loaded on -- stuff, I shouldn't say
25 that. All that data gets loaded onto the train



1 to New York and it's hauled up the railroad
2 track. So, that -- the -- the point of all
3 that is how much more efficient packet switch
4 technology is than circuit switch. That's the
5 reason that people use it because it's
6 insufficient to have the railroad tracks sit
7 empty other than when one users is using them.
8 If you can use that same facility to transport
9 cargo all day long, all the time, it -- the
10 efficiencies are obvious. So, that's sort of
11 a silly little analogy, but it's -- it's -- I
12 think it's easy to picture how the difference,
13 the contrast between a packet switch network
14 and a circuit switch network. I think that's
15 about all I have on this, unless you have any
16 questions.

17 **MR. CARTIN:** Next slide.

18 A: The one piece of the evolution of the network
19 that I hadn't talked about yet is cellular
20 technology. I think I mentioned earlier, when
21 I started to work in 1980, cellular systems
22 didn't exist. Now, there were what they used
23 to call radio phones. You could see them
24 sometimes in -- in old movies, police cars
25 would have them. And the way a radio phone



1 would work is there would a phone in the car
2 with a -- with a dialer on it. But the
3 difference was the -- the difference between a
4 cellular system and a radio telephone system is
5 that on the previous systems, bandwidth could
6 not be reused. And -- I shouldn't say
7 bandwidth. Spectrum. Radio spectrum could not
8 be reused on the pre -- on the old systems.
9 So, for example, in New York, there may have
10 been one big radio telephone tower. And as I
11 understand it, in the '70s, there were a total
12 of 12 channels that were available for radio
13 telephone use in New York. So, you can see
14 from that that it really never was a
15 commercially viable product. It was really
16 specialized and only policeman and doctors and
17 007 had them. The difference -- when cellular
18 technology was developed, the whole point of
19 cellular technology is the fact that this
20 limited amount of radio spectrum can be
21 utilized at this tower and the same spectrum
22 utilized at the next tower, and the next, and
23 the next, and the next. So, obviously it
24 multiplies the available spectrum, so that it
25 quickly became a much more commercial viable



1 technology. There were some -- some -- the
2 first -- as I -- I think I mentioned earlier,
3 the very first cell system was deployed in this
4 country in 1983. At the time, those systems,
5 even though they were much, much advanced over
6 radio phones, were still pretty primitive
7 compared to what we have now. Plus, they were
8 analog and you could only do voice. Then came
9 what they call the second generation. And that
10 was -- the difference between the first initial
11 deployment and the second generation was that
12 the second generation was digital. But even
13 so, it was really limited. Then, you may
14 remember people -- you probably remember when
15 3G phones came out, third generation. It just
16 -- it just enhanced -- it added some additional
17 digital capacity to those cell phones and now
18 we're in the fourth generation. And as
19 everybody knows, a 4G cell phone basically
20 allows full internet access, voice, everything.
21 It's all over common infrastructure. And also,
22 the one thing I wanted to point on this phone
23 -- well, let me just talk through how this
24 slide is arranged. So, what I've just
25 described is obviously the connection from the



1 radio, this handset to the antenna at the top
2 of the tower. The antenna receives the radio
3 signal, converts it to an electrical signal,
4 which comes down the tower on -- on some coax
5 cable into typically an equipment cabinet or
6 sometimes a little structure at the base of the
7 tower. And it includes -- that's the interface
8 between the cellular provider and the landline
9 provider. Now, that's -- that's important to
10 note that. Cellular technology as great as it
11 is would just hit a dead end at the base of the
12 tower if you didn't have the -- if not for the
13 landline networks. So, the landline network
14 provides the connection between the tower and
15 the -- and the core network. We refer to is as
16 wireless back haul or mobile back haul. That's
17 what this -- this is a picture of a mobile back
18 haul or the landline. The port -- the portion
19 at the bottom is a picture of a mobile back
20 haul. It hauls the traffic from the tower --
21 it hauls the cellular traffic from the tower
22 through the landline network to what's called
23 a mobile telephone switching office. It's
24 called a MTSO. It's referred to as a MTSO.
25 So, MTSO then routes the traffic, if it's a



1 phone call -- if it's a voice call, it's routed
2 from the MTSO out to the public switch
3 telephone network. If it's a -- if it's not
4 voice -- if it's a -- looking up the weather
5 report or something, it's routed out to the
6 internet, to the cloud that we saw earlier.
7 Next.

8 Q: A couple quick questions for you here. Who can
9 use a wireless network like this? Who has
10 access to it?

11 A: As far as -- any -- anybody who has a handset.
12 Anybody who has a cell phone.

13 Q: Can you give some examples of how roaming might
14 work?

15 A: Roaming -- roaming -- yeah. So, we've all --
16 everybody's done this. Everybody in the
17 courtroom, I -- you know, if you used a cell
18 phone, you've done it. But you pick up your
19 phone no matter where you are, dial the number
20 and expect it to work. Back in the early
21 generations, cellular coverage was so spotty,
22 there were places where phones wouldn't work.
23 And there still are a few now. I -- I know a
24 few places in South Carolina where it's really
25 hard to get a cell signal. But as long as



1 there's a radio signal -- as long as there's a
2 cell tower within reach of the handset, the
3 call is completed no matter where you're from.
4 If you're from -- you could be from Chester
5 County or I could be from Florida, it's all the
6 same. It's all interoperable. They -- the
7 whole -- the telecommunications industry -- if
8 they do -- if they do one thing pretty well,
9 it's interoperability. I mean, it would be
10 really inconvenient if one carrier wouldn't
11 talk to another carrier. Then, it wouldn't be
12 commercial viable. So everything is going to
13 connect. Everything's coordinated. There
14 regulatory bodies that -- not regulatory, but
15 industry bodies that work on -- do nothing but
16 just work on standardization.

17 Q: So, if you had a person from New York in rural
18 Sumter County, what limitations, if any, would
19 there be on their ability to make a wireless
20 call?

21 A: None. If you're talking about Sumter County.
22 A good example would be the interstate, I-95.
23 All -- if you look at a map of cell tower
24 deployments, it's almost looking -- like
25 looking at a road map -- nationally, I mean,



1 because they're concentrated towers --
2 typically are concentrated in downtown areas
3 and along interstates because you want to be
4 able to pick up more -- you -- you don't want
5 any piece of the interstate to be -- you don't
6 want cell coverage to not be available on any
7 place like a -- like an interstate, like I-95.
8 So, going up and down 95, you could -- you
9 could -- you could pick up the phone and start
10 talking in Savannah and not hang up until you
11 got to, you know, Richmond. And it's going to
12 switch those -- it's going to switch along
13 towers as you go up the interstate and you
14 won't -- you -- if everything works right, you
15 shouldn't notice any interruption in the call,
16 but calls do get dropped, but that's because of
17 congestion and things.

18 Q: What is the competitive landscape like in
19 wireless service?

20 A: It's -- it's very competitive. As far as I
21 know, there aren't any restrictions on which
22 company can serve which areas, Verizon, Sprint,
23 AT&T, T-Mobile, they're all over.

24 Q: Are you familiar with what wireless carriers
25 operate in the Farmer's' ILEC area?



1 A: Not thoroughly. I know there's Verizon down
2 there, Sprint -- I'm pretty sure T-Mobile's
3 there, AT&T, and maybe some others. And of
4 course, the -- of course, FTCC has some -- some
5 as well the -- the mobile -- the cell component
6 of the ...

7 Q: Okay.

8 **MR. CARTIN:** Let's go to the next slide.

9 A: So, this one -- the next little section I'm
10 going to try to just kind of talk through how
11 networks are typically designed. And this --
12 this will go pretty quick right here, but I
13 just want to show a tip -- some typical
14 applications before we get into specifics.
15 This little slide here -- and the idea behind
16 this one is just to basically illustrate
17 categories of equipment and how networks are
18 generally designed with an idea of aggregation.
19 The idea is to aggregate from the edge back to
20 the -- what we call the core. So, on this one,
21 the little box is labeled CPE. CPE would stand
22 for Customer Premise Equipment. And that might
23 be a device in a house or a business or maybe
24 a cell tower. Well, let's stick with a house
25 and business in this example. That -- anything



1 that generates traffic, a telephone -- like in
2 house, it's -- it might be a router or a
3 gateway. It's a connection to the network.
4 You're network connection at the house. It can
5 be several different forms. But that's why
6 people -- we use a generic term, Customer
7 Premise Equipment because there's several
8 different types of devices that would qualify.
9 And so, the -- any number of Customer Premise
10 Equipment devices would be routed into what we
11 call an edge device, an edge router. A lot of
12 edge routers would be aggregated into what's
13 known as an access device and several access
14 devices would be connected into the core
15 network. Now, from here on out, we're going to
16 talk a lot about the core network because
17 that's where I sort of focused my analysis.
18 But the point of all that is all the traffic
19 hits -- all -- all the traffic is aggregated
20 back onto the core at some point. The core is
21 -- is what's -- well, I'm getting ahead of
22 myself a little bit. But the core is exactly
23 that, it's the core network of any
24 communications network. And that's -- at some
25 point along the core is where the connection



1 takes place to the -- to the outside world, if
2 you will. I have a couple of slides later on
3 that will illustrate that. Next.

4 **MR. CARTIN:** Next slide.

5 A: This is -- this is just a ---

6 **MS. GEER:** Can I just interpose an objection here?
7 It seems we've dispensed with questions and
8 that we're just doing a PowerPoint. Kind of
9 sort of teaching.

10 **THE COURT:** Your objection would be as to narrative.

11 **MS. GEER:** Yes.

12 **THE COURT:** You want to ---

13 **MR. CARTIN:** Your Honor, I -- he's an exert. He can
14 provide his opinion in a narrative. I'm hoping
15 to speed this up for the Court ---

16 **THE COURT:** Okay.

17 **MR. CARTIN:** --- so, we can go through in a logical
18 manner. I think it's well within the Court's
19 6-11 discretion to allow it.

20 **THE COURT:** Well, I'll overrule it right now. If
21 it's start to get where you're think you're not
22 able to interpose objections when you need to,
23 how about that?

24 **MS. GEER:** Thank you, Your Honor.

25 A: Well, what kind of ---



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1 **THE COURT:** I'm going to stop you. You were
2 explaining how with the fiber optic

3 A: Yes, sir.

4 **THE COURT:** --- network or ---

5 A: Right.

6 **THE COURT:** --- you were able to utilize the
7 packets. But then, in your example you showed
8 how the information goes to the share -- the
9 cell tower.

10 A: Right.

11 **THE COURT:** And it's transmitted down to the -- the
12 ---

13 A: Landline.

14 **THE COURT:** Well, the landline, but switching the
15 box. So the bottom of the cell tower.

16 A: Right.

17 **THE COURT:** But you said via coaxial.

18 A: Right.

19 **THE COURT:** Well, how is -- if coaxial doesn't
20 properly give information through packets, it
21 seems like there would be a deficiency there
22 and I'm just curious.

23 A: Well, that's -- that's a good -- that's an
24 excellent question. The equipment in that
25 little cabinet that I showed up there does



1 that. It takes the signal from the coax cable
2 and converts it to a digital signal for
3 interface into the landline network. It's --
4 there's an interface device there. It's not
5 just a straight connection. There's some
6 electronics in there that do that. Does that
7 make sense?

8 **THE COURT:** Well, it seems like the coaxial -- since
9 you've got coaxial in the -- in the loop that
10 there would be a deficiency because of the use
11 of that medium.

12 A: You mean in the carrying -- the information
13 carrying capacity?

14 **THE COURT:** Yeah.

15 A: Well, there is. It's limited. I mean, the
16 coax cable -- the limitation on cell towers is
17 -- the radio spectrum is usually more of a
18 limitation than the limitation imposed by the
19 coax, so it doesn't come into play, if that
20 makes sense. The coax can carry more
21 information than the available spectrum can
22 carry ---

23 **THE COURT:** Okay.

24 A: --- at a particular tower. So, it really
25 doesn't come into play, but I understand your



1 question.

2 **THE COURT:** All right.

3 Q: Mr. Moss, can you explain how this shows a more
4 physical description of the network and how
5 it's laid out?

6 A: Yes. And I'll -- I'll try to speed up on this.
7 This -- this actually is going to make a point
8 later on in -- in the analysis. But this is
9 just a little slide where I'm trying to show
10 how that aggregation idea can play out over an
11 entire network. The little edge devices again
12 would be a house of business, whatever. You see
13 up there, there's some towers on here. I'm
14 sorry. I said edge devices. The black box is
15 representing the Customer Premise Equipment
16 that would be in a house of business or
17 whatever. The towers would feed into an edge
18 device normally. All that's aggregated back
19 through the access devices, back to the core.
20 That's -- that pretty much the whole point in
21 that slide.

22 Q: All right. One second, Mr. Moss before we move
23 on. There are wireless towers depicted on this
24 slide, is that ---

25 A: Right. Yes. That's what those are.



1 Q: Okay. If you were to remove those wireless
2 towers, would this network still function?

3 A: Yes. Yes. The network just provides access
4 for the tower -- connection from the towers to
5 the core so that -- the network -- this network
6 -- a network like this would exist prior to the
7 construction of any cell towers.

8 Q: Okay. Next slide.

9 **THE COURT:** You got one tower going straight to
10 access.

11 A: I did. I kind of did that on purpose because
12 those -- the access and edge designation, in
13 real life it's sort of blurry. The same
14 devices can be used to provide different
15 functions. They can be utilized in either
16 capacity. So, I don't -- I don't mean to imply
17 that a single -- that an edge device is always
18 required to be connected to an access device,
19 which is always required to be connected to the
20 core. And in fact, in real life because of
21 just the geography, a lot of times, an edge
22 device could conceivably be -- be routed
23 straight into the core that happens to be
24 sitting -- that's physically close to one of
25 the core locations. So, that's not a hard and



1 fast rule, if that makes sense.

2 Q: Okay. Got it.

3 **MR. CARTIN:** All right. Go to the next slide.

4 Q: Did you undertake any review of the network
5 maintained by the taxpayers in this case?

6 A: Yes, sir. My -- what I was tasked to do -- and
7 we'll talk about this in just a little bit, was
8 to look at this network and try to make a
9 determination as to what portion of it's
10 utilized for voice and what portion of it's
11 utilized for other than voice. And so to do
12 that, you obviously need to look at not just
13 generic networks, but this network in
14 particular. So, that's what -- I did do that.
15 And that's what we'll be talking about in the
16 next few slides. So, the network -- when I say
17 the network, I understand you're -- I think
18 three ---

19 Q: Let's do this. Let's go through them one by
20 one.

21 A: Okay.

22 Q: With regard to Farmer's Telephone Cooperative
23 Inc. ---

24 A: Uh-huh.

25 Q: --- do you have an understanding as to what



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ROA 001813

1 they provide?

2 A: Yeah. I think -- I think the co-op provides
3 landline voice service. It provides cable T.V.
4 services. It provides internet services and
5 security services.

6 Q: Okay. And with regard to Diversified Services,
7 Inc., what understanding -- excuse me --
8 Diverse- -- FTC Diversified, LLC, what if any
9 understanding do you have regarding the
10 services they provide?

11 A: I think they do the same services, just in a
12 different geographic area. FTC is the ILEC,
13 the Incumbent Local Exchange Carrier. So, they
14 operate within the -- the co-op territory. DSI
15 is the CLEC, The Competitive Local Exchange
16 Carrier. As I understand it, they provide the
17 same services, just outside the co-op's
18 geographic area.

19 Q: Can you take a second and explain for the Court
20 what an ILEC is?

21 A: So, ILEC is a term that's used in the industry
22 and again it -- I mean, it's abbreviation for
23 Incumbent Local Exchange Carrier. It means
24 exactly what it says, it was the Local Exchange
25 Carrier in that area prior to deregulation.



1 It's the incumbent. It was there first. So,
2 some of the co-ops, not just in South Carolina,
3 but all over and I don't -- I don't -- I'm not
4 a lawyer. I don't claim to know all the legal
5 background, but there were -- there were some
6 telecommute- -- excuse me -- telecommunication
7 act, I think it was back in the '30s, that
8 provided for co-ops to be set up and give
9 exclusive right to -- to provide landline
10 service in your location. In fact, if my
11 understanding's correct, that applied to
12 everybody in the whole telecom industry up
13 until it was deregulated in the '80s, I think
14 it was. So, even when I went to work at
15 BellSouth, there was no alternative landline
16 provider in the ILEC territory that was
17 Charlotte, as far as BellSouth's concerned.
18 Now, when deregulation came along, competitive
19 carriers could come in and that's why -- in
20 places like Columbia, that's why you can get
21 telephone service from AT&T or Sprint or
22 whoever. But in the co-op territories, there
23 is some exceptions built into the law that I
24 don't know the details of, but I think they're
25 able to maintain their monopoly status. So,



1 there is no landline competition in those
2 areas.

3 Q: And with regard to FTC Communications, LLC,
4 what if any understanding do you have with
5 regard to the services it provides?

6 A: That's the wireless carrier and -- and they
7 provide wireless voice, mobile voice and mobile
8 cellular data services as well.

9 Q: Okay. You just described the services provided
10 by Farmer's Telephone Cooperative, Inc., FTC
11 Diversified, LLC, and FTC Communications, LLC.

12 A: Uh-huh.

13 Q: What if any interaction do those entities --
14 services have with one another?

15 A: Well, based on information that I just knew
16 from experience, plus what we learned in --
17 what I was able to learn in -- from documents
18 provided during Discovery and from Mr. Wyatt's
19 deposition is that all three of those entities
20 all utilize the same land base infrastructure.
21 They all use the same landline network at one
22 point or another.

23 Q: Okay. Let's talk about for each one of those
24 some different types of services and how
25 they're provided.



1 **MR. CARTIN:** Madison, can you go to slide 28? Just
2 need to make sure we're keeping our place here.
3 Notice ---

4 A: Yeah.

5 **MR. CARTIN:** --- that text.

6 A: Yeah.

7 Q: With regard to landline, how is that set up for
8 the various entities that you said -- described
9 provided landline services?

10 A: Well, there's -- there's -- let me think how to
11 describe it. They'll have physical cable
12 routes. I can't think how to describe it
13 without using the word landline network. It
14 would be the telecommunications network, the
15 noncellular telecommunications network. It'd
16 be made up of fiber optic cables, copper,
17 different types of equipment.

18 Q: What types of equipment do they use?

19 A: Well, we learned from Mr. Wyatt's deposition
20 that in the -- in the landline network -- let
21 me rephrase -- the -- the network -- the
22 landline network provides different functions.
23 So, the core network utilizes Juniper routers
24 specifically, [REDACTED] and I think they also
25 utilize some Kalix devices. You remember one



1 of the slides previously I spoke about mobile
2 back haul, the connection between the cell
3 towers and the landline network. I think
4 there's some Ciena equipment being utilized for
5 that, specifically like [REDACTED]
6 multiplexors. And I think Mr. Wyatt mentioned
7 like a [REDACTED] device. It's more of an edge
8 device. So, those -- that equipment's being
9 utilized for the most back haul portion of the
10 network.

11 Q: Can you explain what back haul is for the
12 Court?

13 A: Yeah. Again, mobile back haul is an industry
14 term that refers to the landline connection
15 between the cell tower and the -- and the core
16 network. So, it's -- basically hauling -- the
17 back haul would be hauling cellular traffic, to
18 use that term, from the tower to the core. And
19 again, that's -- that's done mostly with the
20 Ciena equipment. And it's -- and as Mr. Wyatt
21 explained, that's interconnected to the Juniper
22 core at the tandem for connection out to the --
23 to the MTSO. And we hadn't talked about a
24 tandem yet. I need to speak ---

25 Q: What's a tandem?



1 A: Just a -- just a real brief explanation of the
2 term tandem. So, every local exchange has
3 what's known as a tandem location. And what
4 that is, is it's usually a central office.
5 There's a lot of equipment in there. The core
6 is all -- it has access to all the components
7 of the network at a tandem. And -- but what's
8 special about a tandem is that that's where the
9 connection from the local exchange is made to
10 the -- to the outside world, if you want to use
11 that term. And in the -- in this specific case
12 -- and there's some slides coming up later to
13 show it, but voice traffic is routed from the
14 tandem to the switch up there at Horry that we
15 hadn't talked about yet. But it's routed out
16 to the public switch telephone network. And
17 that -- from the tandem and also from the
18 tandem cellular traffic, to answer your
19 question, is routed from there to the mobile
20 telephone switching office. It's the point on
21 the network that interfaces with the outside
22 world.

23 Q: All right. What understanding, if any, do you
24 have regarding what switches these network rely
25 on?



1 A: I didn't know that -- Mr. Wyatt was able to
2 clarify that a good bit during his deposition.
3 So, I had to pick a soft switch up there a
4 little while ago, but the soft switch, there's
5 a -- Horry Telephone owns a soft switch, which
6 is in Conway and Farmer's has an agreement with
7 Horry to do the -- for their soft switch to do
8 the -- to switch the landline voice traffic.
9 At the -- the specific brand of that switch is
10 a Metaswitch. It's a -- that's a brand name.
11 So, you'll hear us -- you'll hear people refer
12 to the Metaswitch at Conway or the Metaswitch
13 at Horry. That's just a brand like Kalix or
14 Ciena or Cisco. So, the Metaswitch at Horry
15 provides the switching for the landline voice
16 traffic. Mobile voice is switched at AT&T's
17 mobile switch -- mobile telephone switching
18 office, AT&T's MTSO. So, all the mobile
19 traffic goes to the MTSO. All the landline
20 voice traffic goes up to the Metaswitch at
21 Conway.

22 **MR. CARTIN:** All right. The next slide.

23 Q: Can you explain what this shows?

24 A: Yeah. This is the slide I'm -- it's basically
25 trying to -- trying to summarize all those



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1 items we've just now mentioned before in that
2 -- in that previous description, but this is an
3 attempt to kind of bring everything together
4 and show how it all utilizes common core
5 network. So, I'll go through this real briefly
6 because we've pretty much talked about all
7 these components, but this shows how they all
8 fit together. So, there would be a -- a cell
9 tower up in the upper right showing a little
10 handset communicating with the antennas at the
11 tower. It shows the coax down to a [REDACTED],
12 which would then be connected to a [REDACTED] [REDACTED],
13 which then is connected to the core. And I
14 show the connection via the core down to the
15 MTSO. And then, the landline network is -- is
16 depicted down in the lower right with a series
17 of houses with different inputs going into the
18 Kalix device, which would feed into the Juniper
19 router, which makes -- compromises the core.
20 From the Juniper router, it would be routed up
21 the Metaswitch in -- or out to the cloud,
22 depending on whether it's voice traffic or
23 internet traffic.

24 Q: So, just to illustrate the point, if you made
25 a wireless call here, which switch would it



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1 travel to?

2 A: It would go to the MTSO.

3 Q: Okay.

4 A: And this is the ---

5 Q: And that's the one at the bottom?

6 A: --- voice. Right down at the bottom.

7 Q: Okay. Do you know who owns that MTSO?

8 A: I did not know, but I learned from Mr. Wyatt in
9 a deposition that AT&T owns that.

10 Q: Okay. And if you made a landline telephone
11 call, can you state for the record where that
12 land -- which switch that landline telephone
13 call would use?

14 A: Again, I learned in the deposition that it --
15 that it would be switched by that Metaswitch
16 that belong to Horry out there in Conway.

17 Q: Okay. All right. Next slide.

18 A: All right.

19 Q: Can you describe what this -- this is for the
20 record, Exhibit 153.

21 **(Joint Exhibit Number 153 was introduced into the**
22 **record at this time.)**

23 Q: Can you describe what this shows?

24 A: Yes, sir. This is a schematic that was
25 provided during Discovery. And it's -- it's



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1 exactly as it's labeled. It's a FTC Core
2 Network dated 2018. Again, obviously it's a
3 schematic and what the squares represent there
4 are the -- the core node locations. Those are
5 physical -- those are geographic locations.
6 Those would be the places where the Juniper
7 routers are. For example, Manning, Pocalla,
8 Sumter. The lines between the boxes are what
9 -- what we refer to as links. Those are
10 literally fiber optic cables that connect the
11 different nodes. This is, in my opinion, a
12 really well laid out network because it
13 provides alternative routes between the nodes.
14 It's what's called a mesh layout. It's done
15 for -- for protection in case of equipment
16 failures and cable cuts.

17 Q: Okay.

18 A: Next.

19 **MR. CARTIN:** Can we go to the next slide?

20 Q: And what does this show?

21 A: So, this is just a -- just my attempt at
22 filling in the blanks in the schematic with
23 actual information. It should line up. I made
24 an attempt to make it line up with the -- with
25 the physical layout of the previous slides.



1 So, I'm just showing Juniper routers at the
2 core node locations with the cell tower feeding
3 into a [REDACTED], which is in this case located
4 adjacent to the core node at -- at Kingstree.
5 Showing the house with the Customer Premise
6 Equipment, which would be routed into -- again,
7 in this case Manning. And the connection from
8 the -- from the location down there labeled
9 NKGS MX2. I -- I'm showing that as the tandem.
10 I never really learned for certain if that's
11 where the tandem is. I believe it is just
12 based on some other information that was
13 provided during Discovery. I think the
14 tandem's at Kingstree, but the point is from
15 wherever the tandem is that's where the
16 connection goes out to the Metaswitch at Horry
17 for the landline voice traffic. And out to the
18 MTSO for the wireless traffic.

19 Q: From a conceptual standpoint, does it matter
20 where specifically the tandem is?

21 A: Not really. The architecture is the same, I
22 just showed it this way.

23 Q: Now, before we go into the next part of the
24 analysis, I figure I might -- he's going for a
25 long -- a relatively -- a good amount of time



1 -- is ask, if anybody else needs a break, I'm
2 fine to keep going. Everybody good? Okay.
3 Mr. Moss, you okay?

4 A: If I can have a Tic Tac. Just a second. Okay.

5 Q: All right. Mr. Moss, did you analyze whether
6 and to what extent the taxpayers network was
7 used for rural telephone services.

8 A: Yes, sir. That's -- that's what I was asked to
9 do. To basically look at the network,
10 determine the percentage that could be
11 allocated to voice and the percentage that
12 would be allocated to non-voice traffic.

13 Q: Okay. How did you do that?

14 A: Well, I was able to analyze information that
15 was provided during Discovery and also just
16 other information I was able to gather from --
17 from other sources. But primarily during
18 discovery to provide an estimate of the percent
19 network capacity utilized for voice. And the
20 first step was to try to determine a total
21 amount of network capacity used in a given
22 period, then determine what portion of that
23 could be attributable -- would be attributable
24 to voice traffic, and then just do a little
25 separate calculation to determine percentage.



1 Q: All right. In conducting your analysis, did
2 you have to analyze what an appropriate measure
3 of network capacity would be?

4 A: Yes, sir. And I have some slides that will
5 address that in a minute, but I believe the
6 appropriate -- I'm sorry. Let me -- I'm
7 getting behind. I believe the appropriate
8 measure is -- we need to look at capacity.

9 MR. CARTIN: Go back to the one before this next
10 one. Okay.

11 A: Yeah. I mean, that little slide up there, I
12 just -- I just have that up there as an
13 illustration that -- to contrast a copper
14 cable, as we talked about earlier to the -- to
15 the fiber cable shown in the image. And there
16 are two points to kind of look at on this slide
17 that I'm trying to illustrate. One, we've
18 already talked about, the additional
19 information carrying capacity of that piece of
20 fiber compared to copper. And it's
21 exponential. I mean, it's really, really --
22 it's really hard to communicate how much more
23 capacity glass fiber has than a pair of copper
24 wires. But also, to illustrate the whole idea
25 of connections and all those slides that we



1 looked at earlier with all the copper cables.
2 And the individual's connection or channel,
3 either physical connection or digital, a
4 channel was required for every -- every user,
5 every device. Whereas with fiber, everything
6 all runs over the same medium, everything runs
7 over a common infrastructure. So, that's --
8 that's sort of what this is trying to show.

9 Q: Okay. Can you ---

10 A: Next slide.

11 Q: --- the Court a little bit about the metrics
12 that you consider and what you ultimately
13 chose?

14 A: Yeah. I mean, you know ---

15 **MR. CARTIN:** Next.

16 A: It's my opinion and in my -- and I believe,
17 just generally accepted within the industry
18 that the way a modern network needs to be
19 looked as in terms of bandwidth capacity, the
20 size of the carrying capacity of the network,
21 equipment, fiber, whatever. Now there -- there
22 was some discussion of minutes of use. We
23 hadn't really talked about minutes of use yet,
24 but ---

25 Q: Can you explain to the Court what a minute of



1 use is in terms ---

2 A: Yeah. That's -- that's what this little
3 picture is attempting to explain. And if you
4 remember back on those earliest -- those
5 earlier slides, I tried to emphasize the idea
6 that growth required more connections. Each
7 one of those successive slides required --
8 additional telephones required more
9 connections, more connections. We've already
10 been thought that. So, I'm trying -- I'm
11 trying to illustrate that here. So, this is a
12 super simplified little -- little picture of
13 how a circuit switch network would be
14 configured. So, I have a picture here of a
15 mechanical switch and as I mentioned earlier,
16 those switches have a discreet number of ports,
17 so you have to have ports. You have to have a
18 sufficient number of ports for the number of
19 subscribers in the exchange. Here I'm going to
20 show three just to make it easy. I mean in
21 real life it would be who knows how many,
22 hundreds or thousands. In this example, I'm
23 showing five telephones. Now -- so, the thing
24 to remember -- there's a couple of things to
25 understand. Central office switches were never



1 sized to provide one port for every subscriber.
2 That's just not economically feasible. It's
3 just like McDonald's don't have parking lots
4 big enough for every McDonald's customer over
5 the course of a day. The idea is telephone
6 conversations take place obviously over time,
7 right? So, every telephone conversation takes
8 a certain amount of time. So, in this little
9 example, let's just think -- let's just think
10 -- let's use a 10-minute period. So, a simple
11 way to think about it would be those three
12 ports on the switch. If you consider a 10-
13 minute period, they're going to create a pool
14 of a -- 30 -- they're going to -- three ports
15 over 10 minutes would create a pool of 30
16 minutes of use. Thirty minutes of use would be
17 available on the switch over a 10-minute
18 period. Five telephones for the same 10-minute
19 period, we're going to create a potential pool
20 of 50 minutes of use. So, there's a lot of
21 calculations, a lot of smart guys figure out
22 the optimum number of ports to configure on a
23 switch to be able to accommodate efficiently
24 those five telephones. Now, everybody knows
25 that all this whole concept is build on the



1 fact that all telephone conversations aren't
2 going to take place at the same time. So, just
3 to walk through this one, obviously, first
4 telephone -- subscriber up there at the first
5 phone, picks up the phone, dials a number, is
6 connected to support number one on the switch,
7 the call is completed. Subscriber number two
8 does the same thing. He's connected to port
9 number two, the calls completed. Caller number
10 three does the same thing, he goes to port
11 number three. Everybody's good, they're talking
12 on the phone. Problem happens, then subscriber
13 number four decides he wants to make the phone
14 call while subscribers one, two and three are
15 still on the phone. They used to call that --
16 the central office technician would call that
17 being locked out. He's locked out. That phone
18 is locked out of the switch and can't get in.
19 There's no access. There's no physical access
20 for that connection to be completed. And so,
21 that's when you would hear that little fast
22 busy you used to get sometimes when you dial a
23 phone -- a call and it gives this fast busy
24 signal. It's because they're locked out of the
25 switch. It's not because the other phone's



1 busy. It's because you don't have access to
2 the network. This is where minutes of use is
3 an appropriate measure. Minutes of use are
4 important here when you're limited by the
5 number of connections. You got a fixed number
6 of connections, some numbered subscribers and
7 you have to figure out the most efficient way
8 to provide -- to divide those limited number of
9 ports up among the subscribers. That's what
10 this is. This is minutes of use. So, again,
11 the idea remember is that when a fixed -- a
12 finite number of physical connections are
13 available, you have to be able to consider
14 minutes of use to understand how to allocate
15 those connections.

16 **MR. CARTIN:** Go to the next slide.

17 A: Next, please.

18 Q: Can you describe to the Court what bandwidth --
19 the term means in your industry?

20 A: An easy way to think of it -- you hear it
21 referred to as the size of the pipe, even
22 within the industry. Engineers will refer to
23 this customer has a hundred megabit pipe or
24 that customer has a 10-gigabit pipe or
25 whatever. It's the -- it's the amount of the



1 bandwidth. It's the amount of -- and when I
2 say bandwidth, it's the amount of kilobits, the
3 amount of information that can be carried over
4 a particular system. What I'm trying to show
5 here is, again, a really super simplified
6 schematic of -- to illustrate that. So, the
7 thought behind this little diagram was to take
8 those same five telephones that we saw in a
9 previous slide along with a computer and
10 illustrate the fact that when we're talking
11 about a packet switch network, which is what
12 we're talking about here. If we're on a packet
13 switch network utilizing IP architecture --
14 Internet Protocol Architecture, the number of
15 connections is no longer a constraint. So, all
16 five of these phones could be in use all at one
17 time. They're all connected to the same
18 device. They're all riding -- all those phones
19 can be in simultaneous conversation across this
20 -- this IP link to the -- and I show the soft
21 switch up there, but I'm trying to illustrate
22 it with the colors here. If you sort of go
23 back to the railroad analogy I used earlier,
24 this would be -- this would be a picture of the
25 railroad, the cars and the train, to -- to use



1 a -- the analogy. The -- the red bars there
2 would signify the information coming from the
3 computer, which are hooked into the train,
4 which carries blue cars with conversation from
5 the blue phone, purple cars with conversation
6 from the purple phone, etcetera. It's just a
7 -- sort of a picture of -- of a -- of how that
8 transport can happen. And I'm trying to
9 illustrate that it's all going on
10 simultaneously and for that reason, the number
11 of connections is not a -- it's not a
12 constraint. Let's just imagine -- I don't have
13 it labeled here, but let's say that's a --
14 let's say that's a -- let's say that's a
15 connection going into a business. I think
16 Parker Poe -- we'll use Parker Poe's office as
17 an example. I think in some of our
18 conversation, I learned that the Parker Poe
19 office downtown is serviced by -- I think it's
20 150-megabit connection. So, if you could
21 imagine -- the X-axis of that little graph, if
22 you could imagine that being 150 megabits.
23 Well, as long as the information from all of
24 these devices doesn't exceed 150 megabits, you
25 could have five phones. You can have 50



1 phones. You can have 100 phones all talking at
2 the same time, as long as you don't try to
3 introduce more than 100 megabits or 150
4 megabits per second into that system. So, the
5 constraint is the size of the pipe. The
6 constraint is the bandwidth capacity, the
7 system, not the number of connections. And so,
8 for that reason -- you know it's my opinion
9 that minutes of use is really not relevant when
10 we're looking at a packetized network like this
11 one is. Another -- another point that I'll
12 mention while this slide is up is -- and I
13 mentioned earlier, the entire reason that
14 internet protocol exists is for efficiency.
15 Efficiency is -- efficient -- you want --
16 operators want to make the most efficient use
17 of their investment. You want to make the most
18 efficient use of the network. And you'll
19 notice -- I don't know if you can really even
20 see it on the slide, but on -- I left one of
21 the -- one of the little railroad cars, if you
22 will, blank, like the second one from the left.
23 It's empty, it's not carrying anything. Now,
24 what I'm trying to illustrate with that is that
25 voice over IP has a -- it has a function that's



1 -- now this is just for voice traffic on over
2 Internet Protocol Connection -- has a function
3 called voice activity detection or silence
4 suppression. It's known by a couple of
5 different terms, but what that means is that
6 when you're talking on the phone -- when you're
7 making a phone call over a voice over IP
8 connection, which is what we have here, the
9 protocol -- the software is smart enough to
10 recognize the difference between silence and
11 sound. So, silence is not transmitted over a
12 voice over IP call. IP does not transmit
13 silence. So, every little break between a word
14 or when you take a breath or sit the phone down
15 to get a cup of coffee, there is no -- no
16 packets being transported at all. So, you can
17 see the efficiency there. When those packets
18 are not being utilized to transmit voice or
19 when they're not being utilized to transmit
20 silence, as they would be in a circuit switch
21 network, then those railroad cars would become
22 available when every other car goes to get
23 loaded onto them. So, it's super efficient.
24 That's the reason that -- that people use voice
25 over IP because they're able to get so much



1 more utilization out of their network. It's a
2 great technology and Farmer's have done a
3 really good job of implementing it into their
4 network. I mean, they're to be commended.
5 It's extremely efficient. You know, again, the
6 silence suppression thing -- Your Honor, I --
7 I was trying to look up exactly how that might
8 impact the amount of packets that would be
9 transport -- transmitted in a particular call
10 and I was able to find some statical analysis
11 of that, but it varies. And I was -- I was
12 telling the attorneys that I'm working for, the
13 way I talk there would be a lot more sound
14 suppression than there might be in some of my
15 friends from New York who talk a lot faster
16 than I do. But any -- and we're talking about
17 milliseconds. So, I think specifically the --
18 the silence suppression protocol operates in --
19 in increments of 10 -- 10 milliseconds, I
20 believe it is. So, for every 10 milliseconds
21 of silence, it frees up that bandwidth to be
22 used for something else. So, you can see the
23 efficiency of that. And I think that's a key
24 point to remember as we go forward.

25 Q: Let me ask you a quick question about this



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1 before we move on. You've got all these
2 connections here on the right hand side of your
3 graphic with the telephones and the computer
4 and I want to understand how the network can
5 operate if something goes wrong with the
6 switch. So, if a telephone call were to be
7 made and the switch was for some reason
8 inoperable, would that have any impact of a
9 person in the same house to use the internet or
10 access other network services?

11 A: No. Because the non-voice traffic, anything
12 other than a voice over IP -- any traffic other
13 than voice over IP, is not routed to the
14 switch. It just goes out to the -- to the
15 clouds. So, you know, email or movies or
16 whatever would not be affected by a switch
17 failure. Because everything's routed -- all of
18 this data is routed as I said before -- all
19 this data -- all the train cars in this picture
20 are routed based on your IP address. And the
21 -- so the switch serves to be the -- serves as
22 the interface to the -- to the public switch
23 telephone network. So, anything that doesn't
24 go to the public switch telephone network would
25 continue to be routed on based on it's IP



1 address.

2 **MR. CARTIN:** Okay. Next slide.

3 Q: My understanding is that you prepared Exhibit
4 134, which is in evidence. Can you describe
5 what methodology you used in order to analyze
6 how the network of the taxpayers is utilized?

7 **(Joint Exhibit Number 134 was entered in the record**
8 **at this time.)**

9 A: Yes. So, in a nutshell, it sounds simple at
10 the outset. It turns out to be not quite so
11 simple. But basically, what we need to do is
12 just take a -- take a particular time period,
13 try to determine the total amount of network
14 utilization -- the total amount of bandwidth
15 that utilized in that time period, then
16 determine what portion of that is generated by
17 voice traffic. Once you've determined those
18 two things, you just do a simple division
19 problem and come up with the percentage.

20 Q: Okay. With regard to step one of that
21 calculation, determining the total network
22 utilization for a time period, what data
23 sources did you use?

24 A: Okay. So, step one is that there was
25 determined -- I asked myself, how much network



1 would utilize on this network all at one time,
2 how much bandwidth? So, there were a couple of
3 sources we had -- or I had -- this right here
4 in the core networks schematics, which we've
5 already seen. That was helpful. I also was
6 able to obtain what we're calling utilization
7 sheets. It's measurements of the equipment
8 that shows the amount of bandwidth utilized on
9 each one of those links there. I show you an
10 example in a minute. That would account for
11 the landline traffic, but we still need to
12 account for the wireless traffic. So, I was
13 provided that in a real convenient format on
14 what I'll refer to minutes of use spreadsheet.
15 I'll show that to you in a minute. But
16 basically ---

17 Q: And who prepared that -- who prepared that
18 minutes of use spreadsheet?

19 A: I'm not sure who did it. It was provided by
20 the taxpayer. I'm not sure who did it.

21 Q: Okay. And tell the Court a little bit about
22 what 153 and how it was used in your analysis.

23 A: Okay. So, that's -- again, that's just a
24 schematic that was shown earlier. In this
25 little picture right here, you'll -- this will



1 make more sense when you see the next one. But
2 it's just that traffic on the core -- core
3 traffic between these Juniper routers is -- is
4 divided between what was called as inbound and
5 outbound. In this particular example, we're
6 looking at link A, which is the connection
7 between this stand MX router and the North
8 Sumter M -- router number one or MX1. The
9 green represents traffic inbound through that
10 stand router and the blue is outbound traffic.

11 **(Joint Exhibit Number 148 was introduced into the**
12 **record at this time.)**

13 Q: Okay. Next slide.

14 A: This is the little diagram that I was referring
15 to earlier. These are measurements that I --
16 that we obtained during -- that I was able to
17 obtain during discovery that read -- it's
18 reading straight off of the Juniper routers
19 that we had shown earlier. And it shows
20 exactly just how it was labeled. You can see
21 the labels on there.

22 **THE COURT:** Okay. If I could, the Juniper routers
23 are the voice?

24 A: Yes, sir.

25 **THE COURT:** Okay.



1 A: This is the landline network. That's correct.
2 Yeah. There the big core routers in the middle
3 on that schematic we had earlier. So, what
4 this shows is average bandwidth utilization
5 over the course of a 24-hour period. And I
6 want -- I want to talk about this just for a
7 minute. The -- the X-axis there, the
8 horizontal axis is time as you can see. So,
9 this is for a specific 24-hour period. That
10 would be 12/31/2018. The Y-axis, the vertical
11 axis, is the amount of bandwidth being utilized
12 or the amount of data being transferred across
13 that link at -- at that date. Now, note here
14 that this is an average. That's why the lines
15 are nice and flat because this is -- this is an
16 average number and it's a rate, it's not a
17 quantity. So, it's the average rate at which
18 data traveled across this link in that 24-hour
19 period. If -- if this were a -- you can do a
20 similar graph as this that would show live
21 traffic. In other words, live traffic over
22 time. That graph would be spiky, up and down,
23 up and down all day long. But because this is
24 an average, it averages out the peaks and
25 valleys to give us a nice smooth number that --



1 a nice smooth picture that we can look at. In
2 this particular example, there are 8.3 giga- --
3 the average rate was 8.3 gigabits per second
4 inbound and 3.12 gigabits per second outbound
5 for a total of 11.42 gigabits per second over
6 that link. And when I had the same information
7 for each one of those links on the schematic we
8 saw earlier.

9 Q: And for the record, what Exhibit Number is
10 this?

11 A: It's -- this is Exhibit 149. I'm sorry.

12 **(Joint Exhibit Number 149 was introduced into the**
13 **record at this time.)**

14 Q: Okay. All right. With regard to putting
15 together Exhibit 134, which was your analysis
16 that's in evidence in this case?

17 A: Right.

18 **MR. CARTIN:** Next slide, Madison.

19 Q: Can you talk about what data inputs you used
20 and where they went?

21 A: Yeah. Certainly. Your Honor, I'm going to
22 warn you, the next few slides or going to be
23 sort of cumbersome. It can be kind of -- can go
24 sort of slow, but I want to show where all
25 these numbers fit into the calculations. So, on



1 the example I just showed earlier for that
2 specific link A. This is where that -- that
3 information would be input into the
4 calculation. And let me just mention here that
5 it's really important to keep our units
6 straight. Anytime -- anytime you're doing any
7 kind of mathematics, you know, obviously. But
8 you -- you don't want to mix up -- in these
9 kind of calculations, it's -- because things
10 are measured in different increments of bits.
11 So, you have to be really careful not to get
12 mixed up between kilobits and megabits or
13 gigabits and bytes, and all those other terms.
14 So, to be consistent, I chose to go -- to use
15 megabits per day as a -- as a standard unit.
16 So, all through this whole calculation, I'm
17 going to try to convert everything into
18 megabits per day over there in the right-hand
19 column in order to be consistent and make the
20 math work correctly. So, this -- that -- I
21 have that same information for -- as I said,
22 for all the links in the core. So, that number
23 adds up to that subtotal down there, that
24 4307735 number. It's a total amount of
25 bandwidth that was utilized on the core and



1 that day. And let me comment right here as
2 well. I know we've had some discussion. In
3 order to look at the -- my objective was to
4 look at how this whole network's being
5 utilized. So, to do that, you need to exactly
6 that. We need to look at the entire network.
7 I don't think we -- I don't think it's accurate
8 to look at individual components. We need to
9 look at the whole network in aggregate. So,
10 that's why I'm going to try show here as you'll
11 see. We need to look at how each piece of the
12 network is utilized. Then add it all up and
13 get an average. Otherwise, the results can be
14 skewed, if you only look at one particular
15 piece here or there. We need to look at the
16 whole network in aggregate and again, that's
17 what -- that's what I'm going to walk us
18 through right here. So, that -- the number
19 there -- that's subtotal, that 4307 represents
20 the total on the landline network. Just like
21 you mentioned, Your Honor, the Juniper core,
22 this is the total on the Juniper core right
23 there. But that's not all the bandwidth that
24 was utilized that day in the network. You have
25 to account for the wireless traffic, which is



1 down in that -- in the lower section and I'll
2 show you where that came from on the next
3 slide. So, this is -- this is what I'll refer
4 to -- this is Exhibit 151 and I will refer to
5 it as the MOU spreadsheet.

6 **(Joint Exhibit Number 151 was introduced into the**
7 **record at this time.)**

8 A: I think I've already mentioned it once or
9 twice. This was -- this was provided to us --
10 to me from the -- during discovery. It was
11 produced by the taxpayer. I don't know who put
12 it together, but they were really helpful
13 because they already totaled everything up for
14 me and divided out some of the -- some of the
15 values. I'll show you when we zoom in on the
16 next slide. So, take just a second to
17 understand what we're looking at here. The top
18 part up there that's labeled MOU, that's
19 exactly that. That's the total number of voice
20 minutes of use for year 2018. I don't -- I
21 mean, nobody ever really told me, but I'm sure
22 those number were read right off the -- the
23 AT&T switch at the MTSO. I'm sure because
24 they're basically minutes of use. Because of
25 the voice minutes for the year 2018. Now



1 remember, we have to keep our units straight,
2 so I've got to somehow turn that voice minutes
3 into an equivalent amount of data. And as I
4 mentioned earlier, whoever put this sheet
5 together was nice enough to do that for me.
6 So, you will see highlighted down there that
7 974521 number, if you can see it. If you can't
8 -- it's hard to see, but that's the total
9 number of kilobits. Let me -- let me rephrase
10 that. That -- that's a -- that's the data
11 equivalent of that amount of voice minutes on
12 the network. So, that's in kilobits. It's
13 really important to keep our -- our units
14 straight. So, that many kilobits went across
15 that -- was generated by the wireless component
16 in a -- in a year, in the year 2018. Now, the
17 bottom part down there, is the -- and it's
18 labeled data. It's highlighted data where it
19 -- see, it's KBs. That's the non-voice
20 component of all the wireless traffic for that
21 year. Now, note that that down -- that --
22 those numbers are in kilobytes. Now -- now, we
23 hadn't really talked about kilobytes or bits
24 yet. I talked a little bit about bits. So --
25 so, the easiest way to think of that is bytes



1 are composed of bits, specifically eight bits.
2 There are eight -- there are eight bits in a
3 byte. A byte is a measure of information. A
4 bit is a measure of what -- what the
5 information is made up of. The easy way to
6 think of it, a bit is to a byte as letters are
7 to words. So, words are made up of letters.
8 And bytes are made up of bits. So,
9 specifically eight bits, if that makes any
10 sense. Content tends to be measured in bytes.
11 If you look at -- if you get -- if you look at
12 a -- at a -- statistics on a movie, how large
13 a movie file might be. It's -- it's almost
14 always in bytes, but the transport of that
15 movie across the network is always measured in
16 bits per second. So, it can get really
17 confusing, but it's not bad if you just pay
18 attention to what you were looking at. So,
19 just -- just remember that this -- I'll show
20 you in the calculation that this -- this
21 information down at the bottom is in kilobytes
22 per year. So, where that information goes in
23 a spreadsheet, we need to account for all of
24 the mobile traffic. So, you see highlighted
25 across the bottom down there, that red number



1 is -- the giant number that starts with a
2 6169358, that's the kilobyte total off the MOU
3 spreadsheet earlier. We need to convert that
4 to kilobits, so we have to multiply it by
5 eight. Then to get it into megabits, divide by
6 1,000 and then because that's an annual total,
7 you need to divide by 365 to come up with a
8 daily total of megabits for non-voice data off
9 the wireless network. Same thing for voice --
10 the quantity of the voice data. I mean, it was
11 already in kilobits, so we didn't have to do
12 the byte to bit conversion. We just had to go
13 through kilobits to megabits, and then get that
14 down to a daily number rather than an annual
15 total. So, you see here highlighted in yellow,
16 just -- you add up -- simply add up the total
17 amount of voice utilization for the day with a
18 total amount of -- I'm sorry, let me back up.
19 You add up the total amount of landline
20 utilization to the total wireless utilization
21 and come up with a number.

22 Q: And what was that number?

23 A: That number -- let's see. Let me get my units.
24 4,445,627,845 megabits on that day in 2018.

25 Q: Okay. What was the second step of your



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1 calculation?

2 A: All right. So the next step, that's the --
3 that -- I'll refer to that number again. I
4 should have mentioned it while it was still up
5 there, but that will be the denominator in our
6 equation. That's the -- that's the total
7 bandwidth utilization on the network in a -- a
8 -- one day in 2018. So, the next step is to
9 determine -- you have to come up with a
10 numerator for the division problem. So, the
11 numerator is the voice component. We have to
12 -- the next step -- the next task I had was to
13 try to come up with how much of that total
14 bandwidth utilization is attributable to voice.
15 And I'll show you exactly how we do that. So,
16 to -- to the two -- again, the two components
17 of voice traffic, one is the cellular traffic.
18 That was pretty easy because that's already
19 given on the MOU spreadsheet that we looked at
20 earlier. Had to do a little bit of arithmetic
21 to come up with the amount of voice traffic on
22 the landline voice traffic. And to do that,
23 I'll show you later, but basically, we were --
24 I did not have those numbers directly during
25 Discovery. I did not have any kind of



1 information showing this is the amount of
2 landline voice we had. But I did get the
3 number of subscribers. And from some
4 information that I'll show you in just a
5 minute, I was able to determine the average
6 number of calls per subscriber per day, the
7 average duration of those calls, then -- so we
8 know what the bit rate for the standard bit
9 rate for voice call. And there's a -- there's
10 another factor that will go into the
11 calculation that I'll describe when I -- when
12 I can point it out. Next.

13 Q: What does Exhibit 169 show or how was it used
14 in your analysis?

15 **(Joint Exhibit Number 169 was introduced into the**
16 **record at this time.)**

17 A: So, 169 here is -- I just want to show the
18 sources of all those data -- all that data that
19 we just now mentioned, those -- those
20 components of the equation. This is -- this is
21 a piece of information that I received during
22 discovery that shows the total number of voice
23 subscribers for the two landline components of
24 the network. There's a number of voice
25 subscribers for the co-op, FTC, for the years



1 29 and 2018, and the same thing for CLEC
2 subscribers. 6544 for year 2018.

3 Q: All right. And how did this ---

4 A: Total ---

5 Q: I'm sorry. Go ahead.

6 A: Well, I was just going to say, add those two
7 together and that will be the total number of
8 landline subscribers served by the Farmer's in
9 that year.

10 Q: Okay. Now, we're back to Exhibit 1 ---

11 A: Yeah.

12 Q: --- 34. How did -- how did the information on
13 Exhibit 169 fit into Exhibit 134?

14 A: That's just -- that's just what I'm showing
15 here. It's just -- these are just snapshots of
16 the actual spreadsheet where I did the
17 calculations. So, I won't bore you by reading
18 it, but it fits into the blocks that are
19 highlighted there. And 31925 is the number of
20 voice subscribers. And the 65 -- FTC voice
21 subscribers. And the 6544 is the number of DSI
22 voice subscribers. And you see those two
23 numbers brought down into the little -- under
24 the heading of summary of inputs for
25 calculation right there (indicating).



1 Q: All right. Did you have subscriber information
2 for the FTC Communications, LLC entity?

3 A: No. But didn't really need that because we
4 already had -- they provided that information
5 right straight on the MOU spreadsheet, which
6 I'm highlighting on this -- back on Exhibit
7 134. That number that we talked about earlier,
8 the 2,669,922, is the voice component of the
9 total wire -- total mobile traffic that day.
10 So, I already had that. That was easy. I
11 didn't have to do any calculations for that.
12 Next slide. So, you've got this -- the little
13 -- the thing here that displays -- got the
14 little green checks to show what we already
15 talked about. We talked about where the number
16 of subscribers came from. Just now -- just
17 mentioned right then the amount of wireless
18 voice traffic is that 2,669,922 that you see
19 highlighted there, mobile voice totals. Now,
20 remember you've seen this before, Your Honor.
21 This is our denominator. This is the total
22 bandwidth utilization on the whole network for
23 that day. That's our denominator. You'll see
24 that again. Next. So, the next thing that I
25 had to -- and then, one last -- I want to show



1 where that goes in the calculation there.
2 That's what this slide is for, just simply to
3 show how -- where that number fits into the
4 summary or the inputs for the calculation.
5 That's there. Now, the next number that you
6 see here is 56 kilobits per second.

7 Q: Where did ---

8 A: So, let me talk ---

9 Q: Where did you get that number from?

10 A: So, that's just what I was going to address.
11 56 kilobits per second is like the industry
12 standard for voice circuit, period. That's the
13 -- that's the industry standard for voice
14 circuit. Now, there are different numbers that
15 could be used there. But that's the standard
16 number and I think that's the best number that
17 we can -- that -- to complete this calculation.
18 We need -- we need to know the data rate for
19 the voice component to make the -- to do the
20 math, so we can calculate the total
21 utilization. So, that's -- 56 kilobits
22 converted over to megabits per second, .056.

23 Q: Are there any other publications in your -- and
24 used in your field that support the use of that
25 number?



1 A: Yeah. There's a -- there -- one of those --
2 it's -- it's a lot of places, but one thing
3 that I did use, I referred -- there's a --
4 there's a book that's called Newton's Telecom
5 Dictionary. And it's sort of the standard
6 bible in that telecommunications engineers use.
7 And if you look up voice circuit, in tel- -- in
8 Newton's it describes -- it defines this 56
9 kilobits per second in the U.S. It's 64 in
10 Europe.

11 MR. CARTIN: Okay. Next slide.

12 Q: Can you explain to the Court how Exhibit 179,
13 if at all, played into your analysis?

14 **(Joint Exhibit Number 179 was entered in the record**
15 **at this time.)**

16 A: Yeah. This is Exhibit 179. This is kind of
17 complicated -- it's sort of busy. This is a --
18 actually, it's a very helpful report that,
19 again, was produced during discovery. This is
20 called an ISUP trunk root totals report. As
21 you can see, it -- what ISUP is abbreviation of
22 I-S-D-N User Part. ISDN is integrate -- let's
23 see -- Integrated Services Digital Network.
24 All those -- those names aren't that important.
25 But what is important here -- what's relevant



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ROA 001854

1 is that this shows -- this report shows the --
2 excuse me -- total number of minutes that were
3 switched on the Metaswitch in Horry. So, this
4 represents the total number of minutes of
5 landline voice traffic generated by FTC and DSI
6 over a specific period. In this case, there's
7 a 70-day period from February to -- whatever I
8 ---

9 Q: Mr. Moss, one quick question.

10 A: Yeah.

11 Q: Who generated this report? Can you tell?

12 A: It came -- it came from taxpayers. Of course,
13 I imagine it was generated by the folks at
14 Horry because they own the switch. Although,
15 I don't know that.

16 Q: All right. Go -- what specific information did
17 you use in your analysis?

18 A: Okay. So, on this one, the important
19 information that I was able to get off of this
20 report -- in fact, it was again, somebody very
21 helpful. Whoever produced this was helpful
22 enough to actually do a little calculation for
23 me. So, it was averaged out to -- rather --
24 because this -- so, this -- the total numbers
25 on the -- on the report for 70 days -- whoever



1 produced this report already divided it out
2 into average minutes per day and average calls
3 per day. Daily -- daily average out of that
4 70-day total. So, there's some other numbers
5 that they calculated, but I really didn't --
6 they weren't really pertinent on this report I
7 used the total minutes per day and the total
8 calls per day. And by the way, I did check the
9 math. They did an excellent job. Those
10 numbers are correct, so.

11 Q: Can you walk the Court through that calculation
12 and how it ---

13 A: Yeah. Let me just walk through this real
14 quick. Remember the objective is to determine
15 the amount of bandwidth that's utilized, the
16 amount of kilobits that were generated by voice
17 calls on the landline network. I didn't have
18 that information, but now that I've got -- now
19 that I have that previous information that we
20 just talked about, the minutes per day and
21 calls per day, you can do a little calculations
22 that I'm just -- to come up with the total --
23 the average calls per day per customer. So, to
24 do that, I took the total amount of voice
25 subscribers, which we knew from the previous



1 chart that I -- that I just showed you. We
2 took -- I took the total amount of -- let me
3 think through it so that I say it correctly.
4 We took the total amount of subscribers, in
5 this case the numbers worked out to be 37,839.

6 Q: And Mr. -- for the record, Mr. Moss, what
7 entity subscribers did you look at?

8 A: Okay. So, this was -- FTC and DSI. So you see
9 the totals there at 31,295 for FTC is 65,044
10 for DSI.

11 Q: And when you say FTC here, does that refer to
12 Farmer's Telephone Cooperative, Inc.?

13 A: Yes that ---

14 Q: Or ---

15 A: This is -- this is landline traffic. This is
16 not mobile traffic. This is the landline voice
17 for the ILEC and for the CLEC.

18 Q: Okay.

19 A: So, that gives a total of -- you know, that
20 number -- that 37,839 total voice subscribers,
21 and if you just do the math and divide that
22 out, it comes out to be an average of 16.5
23 calls per day per subscriber. Landline, not --
24 not mobile. Landline. 16.5.

25 Q: I believe that's in your sheet.



1 A: That goes here on this sheet. Now, you'll
2 notice it's a -- it's a little confusing. I'm
3 showing that number twice, but that's because
4 I had separate lines for DSI and FTC, so it's
5 -- because it's -- it's all -- it's an average,
6 so I just put that -- you know, that number
7 shows up twice. It's an average number of
8 calls per landline subscriber. So, the next
9 part of -- the next piece of information I
10 needed to figure out is how long the calls
11 lasted. So, now we've come up with the total
12 number of calls per subscriber per day. I'm
13 sorry. So -- so, the next calculation is we
14 take the total minutes per day divided by the
15 total number of calls per day, which we --
16 which I showed you earlier. Do the math, it
17 comes out to 2.7 minutes per call. So, that
18 means that -- every -- every voice call on a
19 landline network averaged 2.7 minutes in
20 duration.

21 Q: Okay.

22 A: Next.

23 Q: How did that fit into Exhibit 134?

24 A: You see where that -- where that goes into
25 calculation down there. It's highlighted in



1 yellow. And again, it's in there twice because
2 it's the same average for DSI and for FTC.
3 Next. So, next -- y'all here's a schematic,
4 again. You've already seen this a couple of
5 times. But I want to show here, I want to
6 address what's labeled as the -- this little
7 multiplier that I had to add to the calculation
8 to make it accurate. So, Mr. Wyatt in -- in
9 his deposition pointed out the fact that a
10 voice call -- voice over IP call, just like any
11 other data, is most likely going to utilize
12 more than one link in the network. It's not
13 just going to be one link. It's going to go
14 across more than one. So, IP is programed --
15 voice over IP is programed to route the call in
16 the most efficient manner. Let me think how to
17 talk through this. Let me -- before I get into
18 that, let me just illustrate. It's not because
19 -- because it's routed in the most efficient
20 manner. Any -- any call from any point to any
21 other point could be routed any number of ways.
22 So, that's what this little diagram right here
23 is showing. This is -- let's use -- let's take
24 for example a call that would originate and
25 stand and go over to the tandem at Kingstree.



1 Q: Can you point out where that is on those --
2 sort of orient the court?

3 A: Yes. So, the stand -- notice over the left
4 hand side, you see the blue letters? I mean
5 the blue arrows indicating the path from stand
6 to Kingstree, MX-1 down to Kingstree MX2. So,
7 in this example, that call would utilize
8 capacity on two links, but it's -- it's not
9 necessarily all going to be routed that way.
10 It could be routed a different way. It could
11 be routed this way. Again, based on IP
12 protocol and whatever constraints are on the
13 network, it could go from this stand MX down to
14 Pocalla to Manning over to Kingstree. So, in
15 this case, it would utilize three -- capacity
16 on three links. Now -- so now I'm faced with
17 a -- with a statistical problem. So, how do
18 you determine how many links any particular
19 calls going to utilize? Well -- so I just came
20 -- I performed a really simplistic, basic
21 little manual calculation right here, knowing a
22 couple of -- a couple of constraints. So,
23 number one, as I mentioned earlier, IP is
24 programmed to route the -- all traffic, not
25 just voice traffic. All traffic is programmed



1 to be routed in the most sufficient path. And
2 there's a lot of factors that can affect what
3 the most efficient path might be at any given
4 point and time. Network congestion is one of
5 the most common, but equipment failure is --
6 damages -- cable damage -- if one of the links
7 becomes damaged, it could -- it could cause a
8 call to be rerouted. There's a lot of
9 different factors. Sometimes, users for one
10 reason or another, network operators can impose
11 constraints to throttle down certain lengths or
12 open up certain lengths. But in general, it's
13 always going to take the most efficient route
14 in -- in general, the most sufficient route
15 will tend to be the shortest route although
16 it's not guaranteed to be the shortest route.
17 So, I tried to -- I had to come up with a way
18 to account for that. So, this little exercise,
19 I simply sat down with the schematic that we
20 saw earlier, counted up the minimum number of
21 lengths to get from any one node to any other
22 node, totaled them all up and took an average.
23 It's as simple as that. And if you -- I think
24 there's a slide where we zoom in a little bit.
25 Yeah. On this next one -- so, the average --



1 if you do that simple manual calculation, the
2 average minimum number of links that could be
3 utilized between any two nodes on a network,
4 work out to be about 1.547. Now, I just --
5 just talked about how it's -- I don't -- I
6 don't need to repeat the discussion about how
7 IP chooses the most sufficient route. I also
8 don't need to repeat that I'm aware that it
9 doesn't always take the most efficient route.
10 So, in an effort to try to account for that, I
11 just decided to multiply it by two. You have
12 to come up with some idea -- we have to come up
13 with some estimate of the number of lengths
14 that these calls are going to traverse in order
15 to make it comparable to the way that -- to our
16 denominator. Because it -- the denominator
17 considers all the lengths as well. So, I just
18 got -- I need to make sure that I'm trying to
19 make -- that we have to account for -- add that
20 into the calculation. So again, just repeat,
21 I took the average shortest -- the average
22 minimum number of links between any two nodes,
23 doubled it and that'll show up in the
24 calculation on the next page.

25 Q: And all of this is in Exhibit 134?



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ROA 001862

1 A: Yeah. Exhibit 134. Yes. Thank you. So,
2 that number -- that -- if you double that
3 number, it comes out to .0938 and you see that
4 down at the very bottom of the calculation
5 there. Okay. So, step three. Now that -- all
6 that went into gathering the data for the --
7 for the actual percentage calculation. So, now
8 let me just talk through -- from here out the
9 methodology is pretty simple. We just take the
10 total amount -- the total amount of voice
11 traffic, landline and wireless, divide it by
12 the total amount of bandwidth utilized on the
13 network in a whole day and just simply do the
14 math and that's what this shows right here.
15 So, the top part of this little call out of the
16 spreadsheet shows all our voice data. That's
17 what we -- we've been through each one of those
18 numbers previously, but I'm taking the total
19 amount of bandwidth that was utilized by voice
20 traffic on the FTC network, plus the total
21 amount of bandwidth that was utilized by voice
22 traffic on the DSI network that we calculated.
23 I just described that calculation, plus the
24 total amount of voice network on the cellular
25 network, which you remember was taken directly



1 off the MOU spreadsheet. That's our numerator.
2 The denominator down there referenced E -- I
3 mean, F that you see, we've seen that number
4 several times already. That's what I
5 calculated the total core utilization of the
6 network to be that day. And the number -- that
7 number that's labeled E is simply the
8 difference. So, if we know the -- if we know
9 the total and we know the amount that's the
10 voice component, then that's just simply -- the
11 rest is not voice by definition. So, down at
12 the bottom, you just work out the math and
13 divide the numbers out and so my conclusion was
14 that in the year 2018, there's about .45
15 percent of the total network utilization for
16 that day was attributable to voice traffic.
17 And that would leave 99.55 percent for non-
18 voice.

19 Q: Well, with regard to -- okay. So, let me ask
20 you. That's for 2018. What if any analysis
21 did you conduct for 2010 through 2017?

22 A: Okay. I used 2018 as an example. I did the
23 same analysis for years 2010 to 2017. It was
24 all conducted -- the same calculation was done.
25 However, for years 2010 to 2016, there's an



1 extra step I had to go through because if you
2 remember, there are basically four components
3 to the calculation, the total amount of
4 landline voice, the total amount wireless
5 voice, the grand total of landline network
6 utilization and the grand total of wireless
7 utilization -- the total amount of wireless
8 bandwidth. So, I had three of the four --
9 three of those four components for all the
10 years was provided during discovery, I had
11 that. What I do not have was the total amount
12 of bandwidth utilized on the landline network,
13 the first part of our denominator if you
14 remember from the spreadsheets. That was -- I
15 had that for 2018, 2017, but did not have that
16 from years prior to that.

17 Q: And did you request that?

18 A: Yeah. We had -- I asked for that, but it was
19 just not available I was told. So, I had to --
20 had to go through a few additional steps to
21 come up with an estimate of what that number
22 would have been had it been available or had it
23 been provided to me.

24 Q: Okay. What steps did you take to do that?

25 A: So, I think I spoke to this briefly earlier



1 when you asked me about source that I had
2 utilized. When you -- at the outset, I
3 thought, well this won't be bad. This -- this
4 information should be available. This
5 information, it turns out, is really hard to
6 find. When I -- when I ended up talking to Mr.
7 McDonald at FCC because I thought if any -- if
8 anybody should have this, it would be the FCC.
9 And when I say -- let me back up. I didn't
10 define exactly what I was looking for. We --
11 we have actual total -- total bandwidth network
12 -- total bandwidth utilization on Farmer's
13 Network to 2017 and 2018. I had that. What I
14 need is that number for the prior years. So --
15 because I didn't have it, the next way to get
16 would be -- if you knew what a growth rate
17 would be -- if you knew what an average growth
18 rate across those years, if I could determine
19 that, then we could use the 2017 data as a
20 starting point and work back from that to come
21 up with a reasonable estimate of what that
22 bandwidth data would have been, had it been
23 available. So, what I'm looking for is the
24 amount -- an average growth rate in total
25 bandwidth utilization across those years.



1 That's the objective. That's what I ended up
2 calling the FCC about and was told that they
3 basically ---

4 **MS. GEER:** Your Honor, I want to object to this.
5 He's talking about hearsay.

6 **MR. CARTIN:** He's an expert, Your Honor.

7 **MS. GEER:** He is an expert, but he's ---

8 **THE COURT:** You have to lay the foundation for him
9 utilizing that.

10 **MR. CARTIN:** Okay. I can do it now.

11 Q: Mr. Moss, are you familiar with what the FCC
12 is?

13 A: Federal Communications Commission.

14 Q: Okay. And what does the Federal Communications
15 condition -- Commission do?

16 A: Well, among other things, they regulate the
17 telephone industry -- telecommunications
18 industry.

19 Q: Okay.

20 A: So, I thought they would be a good resource.

21 Q: Okay. Does the Federal -- FCC. I'm just going
22 to call them that.

23 A: Right.

24 Q: Regulate landlines?

25 A: Yes.



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ROA 001867

1 Q: Okay. Do they regulate wireless?

2 A: Yes.

3 Q: Okay. Does the FCC ---

4 **MS. GEER:** Can I just -- I don't disagree that the
5 FCC is expert. We asked for all the materials
6 that he relied upon in reaching his opinions
7 and we asked him about all that in his
8 deposition and this is the first time I've ever
9 heard of him ---

10 **THE COURT:** All right.

11 **MS. GEER:** --- communicating ---

12 **THE COURT:** All right.

13 **MS. GEER:** --- with the FCC. So, that's the
14 objection.

15 **THE COURT:** Okay. Well, number one, I was thinking
16 you need to lay the found -- a foundation for
17 whether this information is commonly relied
18 upon. But now ---

19 **MS. GEER:** That too.

20 **THE COURT:** --- the ---

21 **MS. GEER:** Thank you for making an additional
22 objection.

23 **THE COURT:** Well, now, I -- I thought that's what --
24 that's what your objection was. Now, you're
25 clarifying it. So, can you respond to that?



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ROA 001868

1 **MR. CARTIN:** I -- I think this -- what he's really
2 getting at is not information he got from the
3 FCC, but just that he was directed to Cisco
4 reports, which everybody agrees. And that --
5 that's where this is going. I think that ---

6 **MS. GEER:** And I don't think you need this step.
7 You have the Cisco reports, right?

8 **MR. CARTIN:** Sure. We can do that.

9 A: Okay.

10 **THE COURT:** Yeah. I feel that where we are now --
11 how much longer is he going to be? We're at
12 12:43 right now.

13 **MR. CARTIN:** You may want to take a lunch break,
14 Your Honor.

15 **THE COURT:** I think that answers the question in an
16 indirect way. Okay. Well, let's just take a
17 lunch break and come back at 2:00. Good timing
18 for your objection.

19 (Off the Record)

20 **THE COURT:** Y'all can be seated. Thank you.

21 **MS. GEER:** Your Honor ---

22 **THE COURT:** You're standing.

23 **MS. GEER:** I am standing. I have one issue to raise
24 before we start. So ---

25 **THE COURT:** Just one?



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ROA 001869

1 **MS. GEER:** Just one. We talked earlier, as you know
2 about revising the PowerPoint to take out what
3 we objected to. And basically, we objected to
4 large sloths of texts on the basis that, you
5 know, you're not supposed to lead your
6 witness. They shouldn't be able to just sit
7 and read a teleprompter. Well, I can't tell
8 for sure, but it was brought to my attention
9 during the lunch break that the entire
10 PowerPoint is up here with the witness.

11 **MR. CARTIN:** It's got his notes, Your Honor. And I
12 think the Court's observed him. He hasn't read
13 from a sheet or anything like that.

14 **THE COURT:** Well, on one hand, I have observed him
15 and he does seem that he's not relying on
16 notes. On the other hand, if he does have
17 notes -- let's see. The rule is you can't use
18 notes to refresh your memory, so he can't --
19 but if he does use notes, counsel's entitled to
20 see -- see them ---

21 **MR. CARTIN:** Absolutely.

22 **THE COURT:** -- and cross-examine him upon them. So,
23 what -- where are we going on this?

24 **MR. CARTIN:** I'm happy to let them have the notes
25 and ---



1 MS. GEER: So, let me think about this.

2 THE COURT: You going to cogitate upon that ---

3 MS. GEER: I'm cogitating.

4 THE COURT: --- for a second?

5 MS. GEER: Yeah.

6 THE COURT: Well, I'll give you to do said activity.

7 Okay.

8 MS. GEER: So, that's not the PowerPoint
9 presentation? That's just all of his notes?

10 MR. CARTIN: It's both. It's all of his notes.

11 MS. GEER: Okay.

12 MR. CARTIN: It's -- and the PowerPoint, which has
13 little marginal notes and stuff like that for
14 him. But I -- I've been watching him. I think
15 the Court's been watching him. I think the
16 place where you get into problem with expert
17 notes is when they're reading them into the
18 record. I don't think that's been the case
19 here.

20 THE COURT: I don't think -- well, the problem with
21 expert's or anyone's notes is when they utilize
22 them and counsel is not aware that they
23 utilizing them, and doesn't have the
24 opportunity to review them -- cross-examine
25 them upon it. And then, one of the other



1 purposes is that it may not even be their
2 testimony. Now, in this instance, it's his
3 notes. So, that's ---

4 **MS. GEER:** Well, I don't know if his notes. The
5 PowerPoint -- did he create the PowerPoint?

6 **MR. CARTIN:** Yes. We ---

7 **MS. GEER:** Okay.

8 **MR. CARTIN:** --- worked with him to help do that.
9 He's every step of the way created it.

10 **THE COURT:** Okay. Can we ask ---

11 A: You want ---

12 **MR. CARTIN:** Absolutely. Yeah. They -- please ---

13 A: Is that appropriate?

14 **THE COURT:** Do you want me to give you a break and
15 just ---

16 **MS. GEER:** Just -- yeah. Let me just ---

17 **THE COURT:** I will say this, he seems to be one of
18 the most knowledgeable expert witnesses I've
19 ever had before me. Doesn't mean yours won't be
20 either.

21 **MS. GEER:** Thank you, Your Honor.

22 **THE COURT:** I found the area interesting.

23 **MR. CARTIN:** And if you want me to finish up with
24 him and then you can take some time to look at
25 those before cross-examine?



1 THE COURT: That's however you wish. It's a proper
2 objection.

3 MS. GEER: Yeah.

4 MR. VON LEHE: What's he asking?

5 MS. GEER: He's asking whether we want time for it -
6 - time to look at them now or ---

7 MR. VON LEHE: I think we would like that -- would
8 like a couple minutes, Your Honor. Yes.

9 THE COURT: All right. Do you want me to stay in
10 here or ---

11 MS. GEER: Why don't we go out.

12 THE COURT: Okay.

13 MS. GEER: Yeah.

14 THE COURT: Maybe while y'all are gone, we can
15 settle this case.

16 (Off the Record)

17 MS. GEER: I'm a little bit at a loss of what my --
18 you know -- if I had understood from the
19 beginning -- my understanding was we were
20 redacting them for all purposes. So, I
21 probably would have prepared differently
22 knowing -- I don't know. I didn't -- it's just
23 hard to unwind what has happened at this point.
24 And ---

25 THE COURT: I understand that.



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ROA 001873

1 **MS. GEER:** So, I mean, I would -- I don't believe he
2 should be able to have a PowerPoint
3 presentation that was prepared by he and his
4 counsel to present as his testimony. I
5 understand if he's looking at his notes from
6 calculations he made, but if you -- and I know
7 you haven't seen the full presentation, but
8 it's -- it reads like testimony. Not like my
9 notes of what I did in this case. So, I -- I
10 don't think it's proper, but I -- of course,
11 that's up to Your Honor.

12 **THE COURT:** Well, do you wish it be removed from
13 him?

14 **MS. GEER:** Yes, Your Honor. That is what I would
15 ask.

16 **THE COURT:** All right.

17 **MR. CARTIN:** All right. For the remainder, that's
18 fine, your Honor.

19 **THE COURT:** Okay. I will -- so the record will be
20 clear, I haven't observed him thumbing through
21 anything. So, he -- he seems to have been --
22 I mean, I've been looking at him. And his eyes
23 have not gone down very much.

24 **MS. GEER:** And that's my other problem is I haven't
25 been able to see him as well for ---



1 THE COURT: Well, I'm saying ---

2 MS. GEER: I'm looking at my screen that's in the
3 way, so I appreciate that, Your Honor.

4 THE COURT: Yeah. Well, from my perspective, I've
5 been looking at him. I -- and so, I haven't
6 observed him utilizing any materials anyway.
7 But with that said, let's just -- if you could
8 take the materials.

9 MR. CARTIN: Y'all want to hold on them to him for
10 the cross-exam? I think they're in your
11 notebook too. I don't know if it's ---

12 THE COURT: Can I -- I'll speak to the witness. If
13 you need to consult anything, then let us know.

14 A: Okay.

15 THE COURT: And -- and that will be the approach we
16 will take and that way counsel will know ---

17 MS. GEER: Yes.

18 THE COURT: --- when you're consulting your
19 materials and when you're not. And it makes
20 for a more fair approach for ---

21 A: We should be okay. I mean, the -- I mean, I'm
22 assuming I can answer, right? I mean, can I?

23 THE COURT: Yeah.

24 A: Okay. And most of that text was just talking
25 points that I would have written down anyway



1 and I just thought it would be more explanatory
2 to have it up on the screen with all this going
3 on.

4 **THE COURT:** Well, from what I've observed, I could
5 see that. But Ms. Geer's got a right to
6 object and have -- if she disagrees with that
7 concept ---

8 **MR. CARTIN:** Understood.

9 **THE COURT:** --- he has a right to voice that concern
10 and have a ruling made there, if y'all agree to
11 all that.

12 **MS. GEER:** Thank you, Your Honor.

13 **MR. CARTIN:** Understood.

14 **THE COURT:** And there hasn't been too many times,
15 I've observed in the past, that Ms. Geer gets
16 perplexed.

17 **MR. CARTIN:** I'd like to present a set of facts to
18 ...

19 Q: All right. Mr. Moss, before we left, we were
20 talking about Cisco reports. What -- what is
21 Cisco?

22 A: Cisco is a credit manufacturer. One of the
23 largest in the industry. But they also -- as
24 part of their manufacturing process, over the
25 years, they've started -- they gather a lot of



1 data. And they issue a lot of white papers and
2 do a lot of research and they've become
3 industry-wide -- known industry-wide as a
4 reliable source for information. I can't
5 remember if I mentioned before the break or not
6 -- I think I did and we decided that was not
7 really important, but -- in speaking with the
8 FCC, they actually rely on some of the Cisco
9 reports. So, the reason I consulted -- you
10 didn't ask me that question. They're equipment
11 manufacturer that also does a lot of research.

12 Q: All right. But, did any of the other witnesses
13 in this case during the depositions reference
14 Cisco reports?

15 A: I think Mr. Wyatt did once or twice. I can't
16 remember exactly what was said. But I think he
17 mentioned it too.

18 Q: Do you recall what if anything he said with
19 regard to the reliability of Cisco reports?

20 A: We have to acknowledge that they're -- that
21 it's a reliable source.

22 Q: Okay. How, if at all, did the Cisco reports
23 that you reviewed play into your calculation?

24 A: What I was able to utilize is these particular
25 reports are called VNI reports. But I might --



1 I can't remember -- I think that's the next
2 slide coming up. VNI stands for Visual Network
3 Index. And it's a -- this particular -- they
4 -- as I said, they do a lot of different
5 reports and data, but this particular VNI Index
6 is a -- is an index of bandwidth -- IP
7 bandwidth growth for the current year and then,
8 projected out five years out. And it's
9 utilized, as I said, by equipment manufacturers
10 to plan their manufacturing process. It's used
11 by government agencies, all sorts of people.
12 There's a lot of information in there, but the
13 -- the particular piece of information that
14 I've wanted to utilize for these reports,
15 that's critical, is the -- the VNI reports are
16 listed out or issued for five years. So, for
17 example, the VNI report for 2011 would include
18 actual reported traffic between 10 and
19 projected traffic for the next five years, if
20 that make sense. So, we'll put an example up
21 here in a little bit. The first year's data is
22 actual data that they gathered from network
23 operators -- all the -- all the sources that
24 they can gather information from to come up
25 with a -- with a total bandwidth utilization in



1 different geographic areas, specifically North
2 America, the numbers that I used. So, from
3 these being our reports, I was able to gather
4 -- to issue or get a number -- a number total
5 of the total IP bandwidth utilization for North
6 American for years, 2010, '11, and '12, on up.
7 And so from that I was able to calculate a
8 growth rate.

9 Q: Do you recall what year reports you looked at?

10 A: I looked at 2010, '11, '12, '13, '14, and '17,
11 I think it was. There are a couple of years in
12 the middle that for whatever reason -- and the
13 -- and the -- Mr. McDonald at FCC -- at FCC
14 also had noticed that Cisco either didn't
15 publish or didn't issue VNI reports for years
16 2016, '15 and '14. There's a three-year gap.
17 So, for those years, I utilized just the data
18 from -- let's see. '16, '15 -- 2013. And for
19 -- and figured out -- you know, calculated just
20 a straight line growth rate from there to 2017.

21 Q: Okay.

22 A: Yeah. I'm just putting this up here as a
23 picture of the -- this is the cover of the
24 specific report. I'll use for an example, it's
25 the 2010 report. I want to show you where



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1 those numbers came from. This is Table 2 off
2 of Cisco's VNI report for 2010 where we see the
3 actual numbers for 2010. So, those -- those
4 numbers would be the actual reported numbers
5 for those different geographic areas and in
6 this example, '11, '12, '13 through '15 are
7 projections. But I don't want to work with
8 projections, so I tried to use the actual
9 number for each year so I could calculate a
10 real growth rate rather than a projected growth
11 rate for those years.

12 **MR. CARTIN:** Okay. Next slide.

13 A: This is just an example of the -- my idea here
14 was sort of bookend the VNI reports instead of
15 making it look at everyone, I'm going to show
16 you 2010 and then, 2017. So, that's what this
17 one is. So, for 2017, you can see that the
18 total bandwidth utilization in North America
19 for 2017 was 42 exabytes. Now, Your Honor, I
20 tell you everything's in multiple of a
21 thousand, so there's a thousand kilobytes.
22 There's a megabyte and a thousand megabytes is
23 a gigabyte and this exa is two or three levels
24 on up from that. So, it's just a huge, giant
25 number with a whole lot of zeros out there, but



1 it's 42 exabytes in North America.

2 **THE COURT:** So, is petabytes bigger than exabytes?

3 A: An exa -- an exabyte is a thousand petabytes.

4 **THE COURT:** Wow.

5 A: So, these are really, really large numbers
6 we're talking about here, but the idea is to
7 show the amount of growth that happens every
8 year.

9 Q: Next slide. Can you show how that information
10 that you took from the Cisco reports factored
11 into Exhibit 134?

12 A: Yes, sir. The numbers here -- so, we -- I took
13 the two numbers that I just showed you. The
14 VNI report data for the year 2017, we know
15 that. We know the VNI report actual number for
16 the year 2010 and from there, you can just do
17 a simple present value calculation to come up
18 with a -- with a growth rate -- an average
19 growth rate from the period 2010 to 2017. And
20 that's why I sort of tried to highlight those
21 in red and you see the equation down at the
22 bottom. It's just a -- just a simple present
23 value calculation.

24 Q: Can you read for the record how you do that
25 present value calculation?



1 A: Yeah. So, the -- the growth rate would be
2 future value divided by present value times one
3 over N -- I mean, to the one over N power minus
4 one. So, it's a -- it's actually a financial
5 calculation, but it works for any sort of
6 growth rate percentage -- percentage rate
7 calculation that you wanted to do. And for
8 that period then I came up with an average
9 growth rate of 29.18 percent in total. Now,
10 remember this is total IP Bandwidth
11 utilization. Next. So, the next piece of this
12 little calculation was to take that growth rate
13 that I've just now calculated, the 29.18
14 percent. Now, we can apply that to our -- use
15 the same equation, but now have different give-
16 ins. So, the given information in this
17 calculation is our calculated FTC total
18 bandwidth utilization for 2017. So, we
19 calculated that using the information that
20 we've got during Discovery or it was calculated
21 during the -- using the information we gather
22 -- that we got in Discovery. So, that would be
23 our -- our future value. So, we know the
24 future value. We know the growth rate. We
25 know the number of periods. From that, I can



1 calculate what I'm calling the present value,
2 which would be Farmer's Total Bandwidth
3 Utilization in 2010 if it at that -- at that
4 calculated growth rate that was calculated from
5 the VNI reports, does that make sense? And did
6 the calculation and came up with the total of
7 583,000,000 times a 105019 megabits. That
8 would be total bandwidth -- that would be my
9 estimate of the total landline bandwidth
10 utilization for 2010 based on the national
11 growth rate.

12 Q: And did you do that for each of the years and
13 issue in this case?

14 A: Did that for every year. Yes, sir.

15 Q: Okay.

16 A: Same calculation.

17 **MS. CARTIN:** Next.

18 Q: How -- how did you do the remainder of your
19 analysis?

20 A: So, at that point, then it became fairly
21 straightforward because remember, I already --
22 we all -- I already had actual data from --
23 from Farmer's for Discovery for the other --
24 for the other three components of the
25 calculation. We had from the MOU reports, I



1 have total bandwidth -- well, actually, from
2 the MOU reports, I had total wireless
3 utilization, total wireless data utilization.
4 I had total wireless voice utilization. Was
5 able to calculate total landline voice using
6 the number of subscribers that -- described
7 before the lunch break, then an average call
8 length and all that. And after doing the
9 regression off the VNI data, now we're able to
10 come up with the missing piece, which is the
11 total landline utilization for that year. So,
12 that just plugged it right back into the
13 spreadsheet in the same format that we showed
14 earlier and it's just circled there in red to
15 show you how the numbers add up.

16 Q: Okay. When you conducted this analysis for
17 each of the years, how did that -- what result
18 did you reach with regard 2010 through 2018?

19 A: That's shown on the next slide, I think. Yeah.
20 So, here we -- I just ran through those
21 numbers, did the same calculation as I just
22 described and these are the results that I came
23 up with. You can -- I can read them off for
24 the record. The values range from -- now this
25 is the total amount of voice -- this is the



1 voice component of total bandwidth utilization
2 for each one of these years as a percentage.
3 So, 2018, I came up with .45 percent as we
4 already spoke about before lunch.

5 Q: .45 percent of -- is what -- attributable to
6 what?

7 A: .45 percent voice out of a total amount of the
8 network that was utilized in that year. 2017
9 was .64 percent voice, 2016, .83 percent, 2015,
10 1.01, 2014, 1.32 percent, 2013, 1.08 percent,
11 2012, 2.19, 2011, 3.16 and 2010, 4.75 percent.
12 And obviously, just subtracting from 100, you
13 get the total -- the corresponding percentages
14 of non-voice traffic in those years.

15 Q: Okay. How did this compare with the
16 utilization analysis conducted by the taxpayer?

17 A: Well, taxpayers didn't -- didn't prepare an
18 analysis of total voice. They -- there was
19 analysis done with wireless voice -- the
20 wireless traffic. I'm going to need to
21 rephrase. I'm sorry. They didn't do an
22 analysis of the total bandwidth. They did an
23 analysis of the wireless bandwidth shown on the
24 MOU spreadsheet. Voice of the percent of total
25 utilization.



1 Q: Okay. Did you agree with their analysis?

2 A: No. I think there's a mistake. I think -- I
3 think there's a little mistake in there. I
4 mean, I can show you I think the next page.
5 So, as I was checking -- well, Your Honor, do
6 you remember this spreadsheet that we sent
7 several times over the course of the testimony.
8 This is what I've been referring to as MOU
9 spreadsheet. So, again, just to re ---

10 **THE COURT:** The last information you had that was
11 off Exhibit 134?

12 **MR. CARTIN:** Yes, sir.

13 **THE COURT:** Okay. I just want to make sure ---

14 A: Yes.

15 **THE COURT:** --- I keep ---

16 A: Yes, sir.

17 **THE COURT:** --- keep up with ---

18 A: Right.

19 **THE COURT:** So, now you're switching to ---

20 **MR. CARTIN:** 151.

21 **THE COURT:** Okay.

22 A: Yeah. And you've seen this one before.

23 **THE COURT:** Yeah.

24 A: I don't -- I don't need to go back over it, but
25 remember the top part -- the top portion is a



1 total amount of voice -- cellular voice and
2 minutes of use. The bottom portion is a total
3 amount of non-voice data in kilobytes. And if
4 you zoom in -- I'll show the calculation.
5 That's just zoomed in a little closer so you
6 can see the numbers hopefully. And on the next
7 page, I'll show you the calculation. So, what
8 I did, I went through and I tried to duplicate
9 or I was able to duplicate the calculation
10 where the percent of network utilization due to
11 voice is calculated by taxpayer as showing in
12 the yellow down there. As you can see, the
13 results they came up with ranged from 14
14 percent in 2018 to 90 -- I believe, that's a
15 six -- 96 percent in 2010. And just to restate
16 it, that's the percent of voice utilization as
17 -- as bandwidth. Not minutes of use. This is
18 calculated on bandwidth. This is the same
19 calculation I did except just for the wireless
20 traffic.

21 Q: Was there anything different about this
22 analysis and what you did?

23 A: Well, there was -- I -- as I was going through
24 these numbers, I tried to double-check all the
25 numbers, my own numbers, plus numbers that were



1 provided to make sure all the arithmetic was
2 right. And I stumbled across, what I believe
3 to be a -- just a simple conversion error in
4 this one. And it's really understandable. As
5 I mentioned earlier, it's really -- it's really
6 -- it can be challenging to keep your units
7 consistent through these calculations, but you
8 have to be really careful with them.

9 **THE COURT:** Earlier, when you were talking about
10 bytes versus ---

11 A: Yes.

12 **THE COURT:** --- bits? Okay.

13 A: Yes, sir. Yeah. That's correct. So, in fact,
14 that's where I think the mistake is here
15 because they -- they have -- this -- this
16 calculation is the correct arithmetic. It's
17 the correct math. You take the total amount of
18 voice data divide it by the total amount of
19 voice data plus the total amount of non-voice.
20 So, that's the total data. Same calculation
21 that I did, but I think the mistake is here is
22 in the -- in multi -- there kilobits are
23 divided by kilobits and kilobytes, as I'll show
24 you in a minute here on the next page. So, I
25 -- just to show you the calculation that I



1 duplicated so you just -- for the year 2018.
2 Do you want to read the numbers? I mean, it's
3 just -- you can see the numbers highlighted
4 here.

5 Q: Just tell the Court how you did the ---

6 A: Well, it's ---

7 Q: --- raw calculation?

8 A: It's the -- the calculation we see in the -- in
9 the blue box down there. It's the total amount
10 of voice. 974,521,371,600 in kilobits for the
11 year 2018 divided by -- you have to add those
12 two together, remember, to get the denominator.
13 So, that same number, 974,521,371,600. But the
14 problem comes in -- well, let me just describe
15 this calculation first. Plus the total non-
16 voice data, which is the 6,169,538 number.
17 You'd add those together and divide the top by
18 that and it should give you a percentage. So,
19 when I did the calculation, I just took it out
20 three decimal points, 13.641, they rounded it
21 off to 14 percent as you can see highlighted
22 there in the yellow. That's 2018. I also did
23 it for 20 -- as a matter of fact, I did it for
24 all the years, but I'll show you 2017 as well.
25 That's just the 2017 numbers. Same



1 calculation. And the -- my result out the
2 three decimal points is 19.636. They rounded
3 it up to 20, so the -- the arithmetic is
4 correct. The problem is in the conversion,
5 which ---

6 Q: What -- yeah -- what specifically is the
7 problem?

8 A: Well, it's -- as I mentioned already, on that
9 sheet as we remember, the top -- the voice
10 component have shown in minutes. Minutes were
11 converted to kilobits accurately. The bottom
12 part was show in megabytes, but the problem
13 comes because in the denominator of the
14 calculation, they have kilobytes or actually --
15 oh yeah, kilobytes and kilobits. So, it
16 overstates the results because you have to
17 remember that eight -- one byte has eight bits.
18 Each byte has eight bits, so the number should
19 have been actually multiplied by eight. And
20 I'll show you that in just a second. So, the
21 correct calculation here would be just what I
22 described, exactly as they have it. Except the
23 denominator needs to have an eight in it to
24 multiply kilobytes to get kilobits to keep
25 everything consistent. And so, I bring those



1 numbers ---

2 **THE COURT:** But it really doesn't need to have an
3 eight in it, it just needs to be ---

4 A: Need to be ---

5 **THE COURT:** --- multiplied by it.

6 A: --- multiplied by eight. That's what I meant.
7 The equation should have an eight in it. It
8 needs to be multiplied by eight. Right. I'm
9 sorry. So, I did that calculation for each
10 year and the results are on the next slide, I
11 think. So, the orange line is the -- the voice
12 percent utilization of the wireless bandwidth
13 as in the original calculation and the yellow
14 highlight are the results that I came up with
15 when I did the calculations, which I -- I
16 believe to be correct. And I might add that
17 through numbers in the yellow -- the yellow
18 numbers, what I believe to be the correct
19 numbers, while not very nicely with all the --
20 all the external data that I saw all through
21 the -- in my preparation, all the research I
22 did, that's the number I would expect to see.

23 Q: Mr. Moss, can you read for the record what the
24 redone arithmetic, using the right multiplier
25 yields in this case ---



1 A: Okay.

2 Q: --- for this year?

3 A: Yes, sir. For the record, I'm -- I came up
4 with one -- and this is percent voice, percent
5 -- the voice component of the total data
6 utilization on the wireless network. For 2018,
7 I got 1.94 percent, 2017, 2.6 -- 96, 2016,
8 4.84, 2015, 4.24, 2014, 6.99, 2013, 11.96,
9 2012, 20.9, 2011, 36.90, and 2010, I got 73.07.

10 Q: All right. Let's talk about some summaries of
11 your testimony today.

12 A: Okay.

13 Q: With regard to what would have been understood
14 as rural telephone service in 1978 or 1980 and
15 we just picked that when you started, what
16 would the common understanding have been with
17 telecommunication industry?

18 A: Well, I think I stated this at the beginning,
19 but the primary purpose -- the reason a
20 telecommunications network would have existed
21 in 1980 or 1978 would be to deliver voice
22 telephone service.

23 Q: With regard to how the taxpayers use their
24 network, what conclusions have you reached with
25 regard to how it's used for voice traffic?



1 A: After all this analysis and running through all
2 these numbers, I do not believe there is a year
3 since 2010 in which voice consumed more than
4 five percent of the total network capacity,
5 which is exactly what I expect to see. I think
6 those numbers would hold true for more or less
7 any network in the U.S., you're going to see
8 very, very similar numbers. It would -- they
9 would -- it would not vary more than a few
10 percent here or there, I don't think. That's
11 just my opinion.

12 Q: All right.

13 MR. CARTIN: Your Honor, I'm happy to turn over Mr.
14 Moss for cross-examination. If they need some
15 time to go through these notes, I'm more than
16 happy to do that so that they can ---

17 THE COURT: Well, are you through?

18 MR. CARTIN: I'm through with Mr. Moss right now.

19 THE COURT: All right. Well, then I will ask them,
20 do -- are y'all ready for ---

21 MS. GEER: If we could just take five minutes.

22 THE COURT: Okay.

23 MS. GEER: Five minutes.

24 (Off the Record)

25 THE COURT: Y'all can be seated. Thank you. All



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1 right, Ms. Geer.

2 **MS. GEER:** Thank you, Your Honor.

3 **MR. MOSS - CROSS-EXAMINATION BY MS. GEER:**

4 Q: Mr. Moss, good afternoon. I have a few
5 questions for you. So, when you were going
6 over your qualifications, it sounds like you
7 have a lot of experience in designing and
8 constructing landline networks.

9 A: Uh-huh.

10 Q: Is it true that you do not have much experience
11 with the design and construction of the
12 switching portion of the landline network?

13 A: That's true. I've worked with it. I've never
14 really gotten involved in switch design per se
15 or the construction of any assembling of the
16 switches.

17 Q: And did I understand correctly that the bulk of
18 your background or experience in the wireless
19 arena is in the back haul portion, the portion
20 where the wireless connects with the landline?

21 A: Up until the last several years, after I
22 started on -- out on my own. I started my
23 consulting work and in fact, that's the real --
24 the main reason I ended up setting my own LLC
25 -- Bluegate Engineering, LLC. I was able to



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1 win some business from Spirit. It lasted about
2 two years. But I actually got contracts to
3 build out some small cell systems for them in
4 Mount Pleasant, here in Columbia right around
5 the foot ball stadium. We -- we built -- my
6 company built out the first small cell cellular
7 systems in the state right around the -- USC
8 down here. Now, I subcontracted out most of
9 the -- most of the actual technical work -- the
10 technicians and bucket trucks because I didn't
11 have that.

12 Q: Okay.

13 A: But I've built out those systems. I've built
14 systems in -- I think it was Seneca, a couple
15 of other places. Mostly, around Columbia and
16 Mount Pleasant.

17 Q: Got it.

18 A: So, I did have some wireless -- hands-on
19 wireless experience at the end, but nothing
20 much prior to that.

21 Q: Can you explain for me just so I understand
22 exactly which part you subcontracted out?

23 A: The -- the -- how can I say, the nuts and bolts
24 piece. The actual guys with the bucket trucks,
25 bolting the equipment on the poles and also,



1 this work was for Verizon. My contract was
2 with Spirit, but Spirit's client was Verizon.
3 So, Verizon required a really -- a really
4 complete closeout package. And there is some
5 testing that has to go along -- some
6 qualification testing that I didn't have the
7 equipment to do, so that was included in my
8 contract to my subcontractors.

9 Q: Okay. All right. And some of your testimony
10 was discussing definitions, telephone and
11 telephone service. I want to run through that
12 with you. So, your definition, if I understood
13 you, of a telephone is a device that carries a
14 call from one point to another, is that
15 correct?

16 A: By way of the public switch telephone network.
17 Yeah.

18 Q: And tell me your definition of public switch
19 telephone network.

20 A: I would imagine there's an official FCC
21 definition somewhere that I don't have
22 memorized, but in -- in practice the public
23 switch telephone network is all that -- the
24 aggregate network of all the different phone
25 companies and around the country that route



1 circuit switch telephone calls. It -- it
2 routes -- it handles telephone calls that are
3 routed by dialing a number -- a telephone
4 number directed calls.

5 Q: Okay. And so in terms of what a telephone is,
6 my iPhone sitting over there, you would say, is
7 a telephone?

8 A: I would agree that's a telephone ---

9 Q: Okay.

10 A: --- with it's use to speak on and access the
11 public switch telephone network. Yeah.

12 Q: Okay. And the landline telephone that's
13 probably back in the judge's office ---

14 A: Certainly.

15 Q: That's a telephone?

16 A: Uh-huh.

17 Q: Okay. All right. And then, you talked about
18 the smart phones offer different features ---

19 A: Right.

20 Q: --- than they did ---

21 A: Yeah.

22 Q: --- in 1978. Is it true that the landline
23 telephones also offer different features than
24 they offered in 1978? Do they now have call
25 forwarding, call blocking, call -- caller ID?



1 A: Yes, ma'am. I think most of those are
2 functions of the updated switching -- switches,
3 the soft switch and electronic switches were
4 able to provide those services whereas the old
5 manual switchboard and the mechanical switch
6 couldn't do that.

7 Q: Okay. But you're not saying that because my
8 smart phone will also allow me to watch a
9 video, that it's no longer a telephone?

10 A: No. I would -- I would agree with that.

11 Q: Okay.

12 A: It's still a telephone when it's used for that
13 purpose.

14 Q: And you say when it's used for that purpose.
15 I want to discuss that. So, my car, I can get
16 a telephone call through my car -- it comes
17 through my Bluetooth.

18 A: Right.

19 Q: I can send text message, if I want to. I'm
20 violating the law, so I shouldn't do it, but I
21 could.

22 A: Yeah.

23 Q: I can listen to the radio. I can watch -- my
24 kids can watch a movie in the back.

25 A: Right.



1 Q: So, it's still a car right?

2 A: Right.

3 Q: And it's still a car even though all those
4 other things can be taken place in it?

5 A: Right.

6 Q: Okay.

7 A: Well, but let me just -- I just want to qualify
8 a minute.

9 Q: Yes.

10 A: That's part of what I've been attempting to
11 show through all this presentation is the fact
12 that just as you say, every -- all those
13 services are all mingled in together now in the
14 network. And so, because you can carry on a
15 conversation over the Bluetooth in your car,
16 which is exactly right, I would not say your
17 car is a telephone. So, it's really more
18 function based rather than a particular device.
19 Every -- the lines are becoming more blurred as
20 technology advances, so.

21 Q: Right.

22 A: My point, when I define a telephone, I'm -- I'm
23 thinking in terms of the purpose you're using
24 the device for. So, it's ---

25 Q: Got it.



1 A: --- hard to point to a particular ---

2 Q: Right.

3 A: --- delineation.

4 Q: And just to go a step further, you talked about
5 a telephone, you also talked about telephone
6 service.

7 A: Right.

8 Q: So, that's the provision of services for the
9 telephone and I -- I understood that you would
10 say that telephone service includes both
11 providing telephone service by landline and
12 telephone service by wireless.

13 A: Yes. I agree with that.

14 Q: Okay. And you talked a little bit in your
15 testimony about the FCC.

16 A: Uh-huh.

17 Q: Would you say that both the FCC and the South
18 Carolina Public Service Commission are
19 regulatory bodies that are probably the ones
20 that deal the most closely with telephone
21 utilities?

22 A: As far as I know, yes.

23 Q: And are you aware that both the FCC and the
24 South Carolina Public Service Commission treat
25 wireless telephones and landline telephones as



1 providing equivalent services for purposes of
2 universal funding?

3 A: I think I have read that. I -- really I don't
4 want to comment on much legal stuff because I'm
5 clearly not an attorney.

6 Q: Okay.

7 A: But I -- I ---

8 Q: You don't have ---

9 A: I think I have read that.

10 Q: Okay. All right. So, we've gone through
11 telephone and telephone service to date.

12 A: Uh-huh.

13 Q: Let's talk back in 1978.

14 A: Okay.

15 Q: All right. So, one of your opinions is that in
16 1978 -- tell me if I'm right on this. In 1978
17 an engineer in the telecommunications industry
18 would have understood telephone service to be
19 a voice traffic over a pair of copper wires, is
20 that right?

21 A: Yes. That's the ---

22 Q: Okay.

23 A: I would agree.

24 Q: And I think you also testified that the first
25 deployment of cellular was around 1983?



1 A: In this country, right.

2 Q: Okay. Do you believe that engineers and
3 regulatory bodies had some idea in 1978 that
4 that was on the horizon? That that was -- that
5 cellular networks were in development and on
6 the horizon to be implemented?

7 A: Right. I'm sure there were some engineers that
8 were -- who were aware of that particularly
9 research and development engineers. My
10 testimony was from my experience in 1980, I was
11 -- again, as I've mentioned, an outside plant
12 engineer. So, my job in those days was to
13 build the networks that were available to be
14 built.

15 Q: Right.

16 A: So, I really, quite honestly, didn't follow a
17 whole lot -- I was pretty busy doing that. I
18 didn't have a whole lot of time to track future
19 developments. Now ---

20 Q: Okay.

21 A: --- obviously, cell phone technology didn't
22 fall out of the air onto the planet in 1983.
23 So, somebody somewhere was working on it.

24 Q: Right.

25 A: I'm just saying in common usage, in my



1 experience, those -- I -- I stand by my
2 definitions of that ---

3 Q: Right. But you're not saying that there aren't
4 a lot of other people out there that might have
5 been ---

6 A: Right.

7 Q: --- fully aware ---

8 A: Of course not. No.

9 Q: --- that the cellular phones were coming?

10 A: I'm sure there are people out there that are
11 aware of a lot of things that I can't think
12 about right now, so. So, yes. I agree.

13 Q: Are you familiar with the -- a case that was
14 decided between the National Association of
15 Regulatory Utility Commissioners and the FCC
16 that was decided in 1976?

17 A: No, ma'am.

18 Q: Okay. So, you might not know it by name, I'm
19 just going to describe what they said ---

20 A: Okay.

21 Q: --- and you tell me if you've heard of that?

22 A: Okay.

23 Q: So, in that case, they're discussing how much
24 spectrum is necessary for cellular telephone
25 networks ---



1 A: Uh-huh (affirmative response).

2 Q: --- the desirability for the functioning of
3 cellular networks, who should have rights to
4 that spectrum, and they talk about that
5 cellular networks are currently being developed
6 and are estimated to be about three years away
7 from being operational. That was back in 1976.
8 And just so you can have a sense of some of the
9 parties involved in that case, we've got the
10 two parties that I've already named, as well as
11 -- let's see. We've got AT&T. We've got
12 Motorola. We've got General Electric. We've
13 got Air Signal International. We've got the
14 South Carolina Public Service Commission.
15 We've got the North Carolina Utilities
16 Commission. We've got the Utilities
17 Telecommunications Council, a bunch of other
18 councils. So, sounds like there's a lot of
19 people out there that in 1976 new that wireless
20 was about to happen.

21 **MR. CARTIN:** Objection, Your Honor. I -- there was
22 a bunch of facts just supplied there and I'm
23 struggling to come up to a way to characterize
24 what the objection is. But I think that last
25 bit as to -- you say, he didn't have any



1 familiarity with the case, counsel just
2 supplied him with facts, and then asked him to
3 reach a conclusion based on the facts supplied
4 by counsel. If she had said, does that ring a
5 bell to you in a case involving those parties
6 about this issue, that might have laid a
7 foundation for it. But the way it was
8 established, there's no foundation for the
9 testimony other than facts as ---

10 **MS. GEER:** Your Honor, I -- I'm happy to withdraw my
11 last question.

12 **THE COURT:** Okay.

13 **MS. GEER:** I've got the case.

14 **THE COURT:** Yeah.

15 **MS. GEER:** I can put in my brief for you.

16 **THE COURT:** Okay.

17 **Q:** Let me ask you this. Does it surprise you that
18 in 1976 there were a number of people who
19 thought cell phone deployment was about three
20 years away?

21 **A:** It does not surprise me now because I know what
22 happened in 1983, but I was not aware of that.

23 **Q:** You weren't aware of it at the time?

24 **A:** No. I -- I was not. I do not know anything
25 about that.



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ROA 001905

1 Q: All right. Thank you. All right. And you
2 talked about a lot of different technology.

3 A: Right.

4 Q: And I'm not going to make you go through all of
5 it again.

6 A: Thank you.

7 Q: It was a very good explanation of some of the
8 technology. What I want to ask you is -- I'm
9 going to ask you a couple of the specifics and
10 tell me if those were around in 1978. So
11 you've got digital, was that around yet?

12 A: Not that I know of.

13 Q: Okay. What about sonic?

14 **THE COURT:** Had you finish answering.

15 A: Well, I was just going to say that I mean, most
16 of my testimony has been based on 1980 because
17 that's when I entered the industry. In 1978,
18 I was a sophomore at NC State, so I mean, I
19 wasn't aware of a whole lot of anything to be
20 quite honest with you. But I understand the
21 question and no I -- I think -- my first
22 experience running into digital systems would
23 have been in the mid '80s around '82 or 3,
24 somewhere in that time frame.

25 Q: Okay.



1 A: But whether it existed or not, I -- I can't
2 really -- I don't know.

3 Q: Okay. What about sonic technology?

4 A: Sonic came later.

5 Q: What about IP technology?

6 A: I'm not -- I'm not sure when IP was actually
7 developed. It -- the deploy - it's deployment
8 in the telecommunications network came later.

9 Q: So, are you saying that in 1978, someone -- an
10 engineer in your field would or would not have
11 understood telephone service provider by IP
12 technology to be ---

13 A: No. I don't think so. No. The whole idea of
14 voice over IP didn't come along to probably mid
15 '90s, late '90s.

16 Q: Okay. And what about fiber optic technology.

17 A: Again, interestingly, fiber -- the technology
18 itself -- the existence of fiber optic cable
19 dates fairly far back. I believe it was first
20 developed in the '50s, but it was never -- the
21 -- can I explain just a little bit?

22 Q: Sure.

23 A: It's not -- the development of -- the ability
24 to deploy fiber optic communication systems is
25 not so much a function of the invention of



1 fiber optic cable. It's the lasers and the
2 mutlplexors that need to bite onto the cable
3 that came later. People could use optics to
4 move light from one point to another in a lab
5 or in a room, but it wasn't -- it was not
6 nearly precise enough or strong enough to be
7 commercially deployable. So, to answer your
8 question, fiber optics did exist, but it was
9 not utilized for widespread -- it did not enter
10 widespread application in the communications
11 industry until mid to late '80s.

12 Q: Okay. So, again, I'm trying to tie all this
13 back to your ---

14 A: Right.

15 Q: --- opinion of what someone would have -- an
16 engineer would have understood telephone
17 service to be in 1978.

18 A: Okay. I'm sorry.

19 Q: I'm -- I'm thinking that you're saying fiber
20 optic would not.

21 A: Right. That's correct.

22 Q: Okay.

23 A: I should have said, not it would not.

24 Q: Okay. In all these different technology
25 changes, you also talked about a number of



1 different components, parts of the switch,
2 parts of the routers. You've got lots of
3 different pieces.

4 A: Uh-huh.

5 Q: Are all of these pieces of equipment also
6 changing technology all during this time of
7 1978 to the present?

8 A: Yes. Tech -- technology is really continuously
9 evolving. So, yes. I would agree with that.

10 Q: And would you agree with me that when you gave
11 me your definitions of telephone and telephone
12 service, neither of those general definitions
13 which you gave me as I understood, those were
14 the definitions that an engineer would ---

15 A: Right.

16 Q: --- give for them.

17 A: Uh-huh.

18 Q: Neither of those definitions referred to the
19 type of technology used, correct?

20 A: The definitions didn't -- the technology would
21 have been understood because that's what
22 existed at the time. It was sort of implied,
23 but ---

24 Q: I understand that. But your definition of the
25 terms ---



1 A: Right. I would agree with that.

2 Q: --- did not have a limitation as to the
3 technology.

4 A: I would agree with that.

5 Q: Okay. All right. I think I understood your
6 testimony that -- that back in 1978 landline
7 networks were being used to transmit data, is
8 that correct?

9 A: Not in the sense that data is being transferred
10 now. They would -- those landline systems --
11 in those days, landline network were utilized
12 for what I call special circuits or what were
13 called special circuits as I explained earlier.
14 Now grant it, that's not the voice, but again,
15 the term in -- the term data as we now
16 understand on telecom networks would not
17 describe those circuits. Those -- those were
18 non-voice services deployed over voice circuit.

19 Q: Okay.

20 A: If that makes any difference. I know that's
21 splitting hairs, but I ---

22 Q: You are splitting a hair. I will agree with
23 that because I'm not really following the
24 distinction. Let me ask you a few follow-up
25 questions. So, when you mentioned special



1 circuits, I think you gave the example of a fax
2 machine and a burglar alarm..

3 A: Right. Yeah.

4 Q: Are -- were those not called full period voice
5 circuits? And let me go further ---

6 A: Okay.

7 Q: --- and say what I thought special circuits
8 were. But special circuits were used for
9 transactional purposes, inter-company transfers
10 of information, banks submitting information
11 from one bank to another. That's what I
12 understood a special circuit to be.

13 A: In 1978 ---

14 Q: Yes.

15 A: --- or 1980?

16 Q: Yes.

17 A: All I can comment on is what I -- what the --
18 the terminology we were using in the office
19 where I worked and special circuits applied.
20 As I said earlier, I mean ---

21 Q: Okay.

22 A: The term may have been applied differently in
23 other locations, other companies ---

24 Q: Well, do you agree that -- that back in 1978
25 there -- businesses were able to transmit data



1 such as bank information to another bank and
2 send their data over the voice telephone
3 network?

4 A: I bel- -- I think that may have been possible,
5 but that was so rare. I -- I honestly never
6 ran into that. It was over an analog channel.
7 So, again, I suppose that could be referred to
8 as data, but it's not in the same sense that we
9 use the word now.

10 Q: And I think we -- you already talked about
11 this. I just want to kind of go a little bit
12 deeper, but you said that wireless phone
13 service does not operate independent of
14 landline. It connects to the landline and you
15 showed us the diagram ---

16 A: Right.

17 Q: --- where it goes down the ---

18 A: Right. Right.

19 Q: --- coaxial cable. Would you agree that the
20 only true wireless function is occurring
21 between the tower and the user device?

22 A: Yes. I'd agree with that. That's the only
23 place where the radio spectrum is being
24 utilized. So, yeah.

25 Q: So, that's the wireless function. Everything



1 else is using the landline network? Once it
2 gets down from that tower.

3 A: Right. I mean, you do have the little coax
4 link in the middle which is technically
5 classified as part of the wireless system, but
6 it's carrying a -- the electrical -- you know,
7 the electrical signal from the antenna to the
8 multiplexor, but in -- I know what you're
9 saying ---

10 Q: Okay.

11 A: And I would probably not disagree.

12 Q: Do you have any recollection about the AT&T
13 microwave network that went across the country
14 back in the '60s?

15 A: I do remember that. Yes.

16 Q: Okay. Would that also have used wireless
17 technology?

18 A: That's microwaves, so yes. That would be
19 wireless. That's correct.

20 Q: And that was a landline network using wireless
21 technology, correct?

22 A: Microwave systems -- I'm not sure I understand
23 your question.

24 Q: So, the microwave system used by AT&T ---

25 A: Right. Yeah.



1 Q: --- it collected it and then ---

2 A: Yes.

3 Q: --- sent it down through their landline
4 network?

5 A: At some point, but the -- those -- those
6 systems you're talking about ---

7 Q: Yeah.

8 A: The -- the microwave systems were typically
9 used -- they had several applications, but if
10 you remember in my presentation, the little
11 network -- the diagram with the core and all.
12 Those links were designed to replace a core
13 link. They were substitute for a landline
14 connection. I didn't get into that because I
15 thought that was more detailed than we really
16 wanted. But microwave systems are utilized as
17 back haul systems typically. So, for example,
18 when I went to work at Palmetto Net, we had --
19 we had fiber optic system into Savannah. And
20 once we got to the river, we couldn't get
21 across the river. We couldn't get permits to
22 cross the river with the fiber optic system.
23 So, we installed a microwave system on either
24 side of the river. That provided the link
25 between -- the missing link between the dead



1 end, if you will, and the fiber network, right?
2 So, yes. That was wireless, but it's not a --
3 it's not a wireless system in the sense of a
4 cell system. You can't pick up a phone and
5 talk on it. That's -- it was -- that's a back
6 haul system that we're talking about now.

7 Q: Okay.

8 A: But, yes. Yes. Technically, that is
9 definitely wireless.

10 Q: Okay.

11 A: It's microwave.

12 Q: Thank you. All right. I want to talk to you
13 about your opinion that you think bandwidth is
14 the right measure for determining network
15 capacity and usage.

16 A: Yes, ma'am.

17 Q: All right. So, back when I talked to you in
18 your deposition, I remember we talked about
19 minutes of use and we talked about several
20 other terms that are used similar to minutes of
21 use in your field. And it was erlangs and
22 centum call seconds.

23 A: Right.

24 Q: Do you remember that?

25 A: Yes.



1 Q: And I think you told me that you have heard of
2 them, but that you are not very familiar with
3 them, is that true?

4 A: I wasn't then. I -- I'll say I'm a little more
5 familiar with them now.

6 Q: Okay.

7 A: But, yes. That was true then.

8 Q: All right. And do you now understand that
9 those are different ways to measure time when
10 talking about use of a network?

11 A: No. And quite frankly, you're right. At the
12 deposition I had been aware of those terms, but
13 over the intervening since then, I've done a
14 little bit of research and an erlang is
15 actually -- it's not really a measure of
16 anything. It's a dimensionally statical unit
17 that's used to analyze situations like I had up
18 in the thing with the three ports and the five
19 telephones. It goes into that statistical
20 calculation where -- where you try to balance
21 a given number of connections on this end with
22 a given number of potential use on the other
23 end. And then, you're also figuring in the
24 tolerance -- the -- it's queuing theory. It's
25 like -- it's like queuing theory, it's based on



1 -- I'm jumping around. I'm sorry.

2 Q: That's okay.

3 A: You -- you speak -- you figure in -- you try to
4 balance the limited availability of ports on
5 this end, but the number of subscribers on this
6 end and it's -- the term -- the actual term
7 erlang was developed by, I believe it was a
8 Danish guy in like 1908. And it's based on a
9 statistical -- it's a -- it's a statistical
10 method used to determine queuing. So, it's
11 really not a measure of anything. It's the
12 rate of -- it's a calculation. It's a
13 statistical calculation.

14 **THE COURT:** What is queuing?

15 A: How can I describe it? Sequencing things. In
16 this case, telephone calls.

17 **THE COURT:** Okay.

18 A: In a -- in an efficient way to accomplish
19 whatever. I mean, you -- you use queuing
20 theory in design of, you know, traffic -- like
21 car traffic or checkout lines in the grocery
22 store. Anything ---

23 **THE COURT:** Placing something in a queue?

24 A: Exactly. That's right. Any -- any place where
25 you've got a limited number of facilities that



1 need to be divided up among a given number of
2 potential users and you're trying to do it in
3 an efficient way.

4 **THE COURT:** Okay.

5 A: So, that what erlangs does.

6 Q: Centum call seconds?

7 A: Same thing. I think centum call seconds --
8 it's -- again, it's the idea that time use of
9 a limited number of -- the use of a limited
10 number of facilities over a period of time.
11 And centum call seconds is another statical
12 unit that's -- that's 100 seconds worth of
13 calling that can be ---

14 Q: Okay. My initial question and we might have
15 gotten off track.

16 A: I'm sorry.

17 Q: It's just that these are all based on issues
18 where you're looking at time.

19 A: Yes. Exactly.

20 Q: Okay.

21 A: That's correct.

22 Q: Yep.

23 A: And connections. Connections are the other
24 main component.

25 Q: Okay.



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ROA 001918

1 A: That's -- I think I covered that in my -- in my
2 testimony, but ---

3 Q: All right. And I understand you've done some
4 research. I -- I'm very impressed, but is it
5 still correct that you don't have experience?
6 You -- you are not typically in your business
7 using these measurements?

8 A: No, ma'am. I ---

9 Q: Okay.

10 A: I don't know that I've ever used those
11 measurements.

12 Q: Okay. Now, from an engineering perspective, I
13 think I heard a comment at one point where we
14 were looking at the network diagram where you
15 said something about the Farmer's network was
16 well laid out.

17 A: Yes, ma'am.

18 Q: I mean, do you have any criticism or critique
19 about the -- about the network itself? Does it
20 appear to be well ---

21 A: Absolutely.

22 Q: --- well constructed?

23 A: Right. Yes. I think it's a very well built --
24 it's a well designed, well built network and
25 from what I can tell, it's very well



1 administered. I -- I have no qualms with that.

2 Q: Are you aware that when they were designing the
3 Farmer's' landline network and more
4 specifically, all of the switching functions of
5 the landline network, that they were looking at
6 minutes of use to design that system?

7 A: No, ma'am. I wasn't. I don't know what went
8 into it.

9 Q: Okay.

10 A: Right. I'll add to that. No, I don't -- I
11 can't imagine that minutes of use had any
12 impact on the design of that schematic. It
13 would be in terms of the switch.

14 Q: And are you also aware that Farmer's looks at
15 minutes of use on a weekly basis to make
16 decisions about network capacity and whether
17 they need to, for example, add additional trunk
18 lines?

19 A: Yeah. But -- yes, because --- well, now. Let
20 me answer your question.

21 Q: Yes.

22 A: No. I'm not aware of that.

23 Q: Okay.

24 A: But I can imagine that that's true because
25 again, we're talking about connections. The



1 number of trunk lines is just like the number
2 of ports on my little example. So, I -- I'm not
3 arguing that minutes of use are relevant --
4 aren't relevant in that. Any -- any time
5 you're trying to allocate a limited number of
6 ports, trunks, parking spaces, anything, then
7 time use comes into play. So -- so, yeah. I
8 would -- I would not be surprised at that.

9 Q: Okay. And I think you agreed with me in your
10 deposition that minutes of use was a good
11 metric, I think was your term for measuring or
12 determining network capacity on a wireless
13 network. And your problem was with it on a
14 landline network. Is that still accurate?

15 A: I did use that term good. If I had it to do
16 over again, I'm not sure that I would use that
17 ---

18 Q: Nope. No do-overs.

19 A: Right.

20 **MR. CARTIN:** Objection.

21 A: I understand. Relevant. And again, if -- just
22 to repeat myself. The relevance -- where it
23 comes into relevance in cell tower design is
24 that idea that there's a limited -- it's just
25 like ports. There's a limited amount of radio



1 spectrum that's available at each tower. And
2 so, that -- that has to go into calculation to
3 allocate how many calls they can expect to come
4 in to take up those connections. Connections
5 is the driver in all these. That's what all
6 these things have in common.

7 Q: So, you're not saying minutes of use is not
8 something that's used by engineers at Farmer's
9 every week to look at issues? You just don't
10 think it's the best measure in this case?

11 A: No. I don't think it's the best measure in
12 this case because I think it's -- I'm not
13 denying it's applicability to certain pieces of
14 the network, very specific pieces of the
15 network. Just the ones that you've described,
16 a trunk line, which is really not part of the
17 local exchange network anyway. That's the
18 trunks back out to the switch. And cell
19 design, I'm sure it's part of that, but that's
20 -- that's the wireless carrier. That's limited
21 to the cell -- the cell tower and I was asked
22 to look at the -- the whole networking
23 aggregate and then, if we're going to look at
24 that, we have to find the common denominator.
25 And the common denominator is bandwidth.



1 Q: All right. And I -- I'm going to get you to
2 turn to an Exhibit, which I need to get to.
3 It's 151. Do that here. Now ---

4 A: Is that in my book?

5 Q: Yes. It should be in your book.

6 A: The minutes of use spreadsheet?

7 Q: Yes.

8 A: Okay.

9 Q: And I want you to focus on -- kind of need a
10 magnifying glass for this one. Sorry.

11 A: You took my good copy. I can't read this one.

12 Q: Might have to get him another copy of that.

13 A: That's okay.

14 Q: I don't know if I can read it. Let's see.

15 A: I was hoping I wasn't going to have to rely on
16 these, but ...

17 Q: Okay. I'm going to put on my reading glasses.
18 I apologize ---

19 A: I wasn't going to say nothing.

20 Q: I like to pretend like I don't need them.

21 **THE COURT:** Well, they're cool looking.

22 **MS. GEER:** Thank you, Your Honor.

23 Q: All right. So, if you could look at the top
24 half of the chart ---

25 A: Uh-huh.



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ROA 001923

1 Q: --- under the voice time use of the network
2 line.

3 A: Yes. I see that.

4 Q: That bottom line.

5 A: Yes. Yeah. Right. Uh-huh.

6 Q: All right. And so, let's just assume for
7 purposes of this question that we want to know
8 how much of the system is being used for voice
9 telephone service based on the time it's being
10 used.

11 A: Uh-huh.

12 Q: All right. So, does it look like to you we've
13 got ranging starting in 2018? We've got 90
14 percent, then going backwards 93.8, 96.2, 98.1,
15 98.8, 99.3, 99.6, 99.8, 99.9 and 99.9?

16 A: Yes, ma'am.

17 Q: All right. So, you would agree with me -- and
18 you don't have any criticisms of these
19 calculations, do you?

20 A: Well actually, yes. I do. And I was going to
21 invest at -- am I interrupting your question?

22 Q: No.

23 A: I mean, so -- the problem with -- the problem
24 here is the conversion from data to minutes of
25 use.



1 Q: Uh-huh.

2 A: So, when we're looking at minutes of use -- let
3 me think how to say this without taking all
4 afternoon. When we're looking at minutes of
5 use, it obviously involves a device. A
6 telephone is in a minute of -- in a use for a
7 minute or a, you know -- well, not even or
8 specifically a phone. This are voice minutes
9 of use, right, that it's being compared to.
10 That's the numerator of this equation. But the
11 denominator is taken off the core. You're
12 looking at the entire core. For this to be an
13 accurate -- to me this conversion -- I've
14 always been worried about any attempt to
15 convert data to minutes of use because it's
16 like fundamentally flawed because to be
17 consistent, and we have to be consistent -- and
18 the minutes of use, as I said, are generated by
19 either a telephone or a port on a switch or
20 it's got to be a specific device somewhere
21 that's in use for a specific amount of time.
22 Like that -- that's the only way the term can
23 make sense, right? So, to be consistent, we
24 should take these data numbers at the bottom --
25 -



1 Q: Can I stop you for a minute?

2 MS. GEER: Your Honor, this has been issue that's
3 come up and the first time I just sort of let
4 it go, but -- did you not tell me in your
5 deposition that you had no criticism of the
6 calculations?

7 A: No. The calculation -- the math is accurate,
8 but the whole -- the concept is -- is flawed.

9 Q: All right.

10 THE COURT: If I could ---

11 MS. GEER: Keeping -- yeah. Go ahead.

12 THE COURT: He was answering the question.

13 MS. GEER: Yes.

14 THE COURT: Your question.

15 MS. GEER: I know.

16 THE COURT: He can answer the question.

17 MS. GEER: That's fine.

18 THE COURT: And then, you can impeach him ---

19 MS. GEER: Yes.

20 THE COURT: --- on the fact ---

21 MS. GEER: I'm fine.

22 THE COURT: --- on ---

23 MS. GEER: Yep. You're right, Your Honor.

24 THE COURT: --- on the definitions.

25 MS. GEER: Thank you.



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ROA 001926

1 **THE COURT:** You can finish the answer.

2 A: Okay. Okay. Well, let me just go -- because
3 I've given this a lot of thought. And because
4 I look at these numbers and I say to myself,
5 you know, early on when -- as soon as I saw
6 this, I'd say -- first, I think I did was
7 checked the math. And that's why that I said
8 ---

9 Q: Yep.

10 A: --- the math is correct. But then, I thought,
11 well this can't be right. These numbers would
12 not be accurate for any network anywhere in
13 this country for the last 15 years. And so, I
14 -- so, I started asking myself, what's wrong
15 with them. You know, why are these numbers --
16 how did they get these numbers? And it --
17 again, it comes back to the idea -- the whole
18 concept of a minute of use happens at the edge
19 of the network. A telephone is in use for a
20 minute or a port on a switch is in use for a
21 minute. So, to be consistent, if we're going
22 to look at data, we should look at how long a
23 particular computer is in use or a -- or a
24 particular T.V. set. So, we should be counting
25 -- you don't count total core of bandwidth on



1 the core and compare it to how long a
2 particular telephone is in use. If we're going
3 to be consistent, you need to look at -- count
4 how long a television is turned on or how long
5 is a computer put hooked to an email server.
6 To be -- and those numbers would yield -- that
7 would make the denominator be more accurate.
8 That would be a really difficult thing to do.
9 That's why nobody does it because you can't
10 hardly measure data in that -- in terms of
11 time. So, my problem with this sheet is not
12 the arithmetic. My problem is the entire
13 concept of trying to convert data to equivalent
14 minutes of use when you don't know -- you don't
15 -- you never know what the data rate is at any
16 given point.

17 Q: Okay.

18 A: Does that make any sense?

19 Q: I got a couple of follow-ups for you.

20 A: Okay.

21 Q: First of all, in your deposition, I did ask you
22 if you had any criticism, critique whatsoever
23 of the minutes of use and whether you were
24 going to have any -- any -- any opinions at
25 trial on this, and you told me no. correct?



1 **MR. CARTIN:** Your Honor, I'm going to object to this
2 because I never brought out this opinion. Had
3 she not asked the question, this opinion never
4 would have seen the light of day. So, it's not
5 fair for her to ask in cross-exam an opinion --
6 an opinion about something and he didn't
7 volunteer it at trial. Again, I didn't even
8 bring it up.

9 **THE COURT:** This ---

10 **MR. CARTIN:** I'm glad she did, but ---

11 **THE COURT:** This is what redirect is all about. I
12 mean, I -- I overrule that. She's asking.
13 Now, I get -- you can make that also -- that
14 argument in closing or whenever because I do
15 get your point, but she can ask the question.

16 **MR. CARTIN:** I understand, Your Honor.

17 **A:** Well, I answer the question. And that's a fair
18 question because what you're saying is true.
19 Quite honestly, at that point, I had not looked
20 at them that closely because I was focused on
21 completing my analysis at the network.

22 **Q:** Yes.

23 **A:** And when I got through with my analysis, came
24 up with the number that I came up with, I asked
25 myself why -- how in the world can I come up



1 with .45 percent and -- and smart people at
2 Farmer's come up with 95 percent. There's --
3 there's a mismatch or something fundamentally
4 wrong here. And that's when I started thinking
5 -- putting some thought into it and looking at
6 the numbers. And that's -- that's why I now
7 believe -- that's the problem. It took a long
8 time for me to kind of figure out what the
9 problem -- the issue is. And the issue is the
10 denominators are not consistent. We're using
11 one denominator for voice. I mean, I don't
12 even know what the denominator is here. I
13 think it's like one gigabit or ten gigabits.
14 I can't even remember. But the math here
15 assumes that one minute at 56 kilobits is equal
16 to one minute at one gigabit, which is 1,000
17 times 1,000 more. So, that's clearly not --
18 those two things are not the same. So, you
19 can't use those two things in math and come out
20 with a reasonable number.

21 **MS. GEER:** Your Honor, can I have one minute please?

22 **Q:** So, let me ask you this.

23 **A:** Uh-huh.

24 **Q:** If I have been on a telephone call with you for
25 the past three hours ---



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ROA 001930

1 A: Right.

2 Q: --- take three hours for that telephone call to
3 take place, right?

4 A: Three. Right.

5 Q: That's how much the network is being used,
6 right? Three hours?

7 A: That's how much -- 56 kilobits worth of the
8 network is being used. Yes.

9 Q: Now, if we take the Court Reporter's
10 transcript, put in a piece of paper, scan in it
11 my computer and email it, how long does that
12 take to go through?

13 A: Five seconds.

14 Q: Okay.

15 A: But that's not my point though.

16 Q: I realize.

17 A: Okay.

18 Q: And you're welcome to give more points later
19 with Mr. Cartin.

20 A: Okay.

21 **MR. CARTIN:** Your Honor, I think he ought to have a
22 chance to explain his answer. He clearly ---

23 A: Well, I can ---

24 **MR. CARTIN:** --- had an explanation beyond that.

25 **THE COURT:** I think this is one that would -- you



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ROA 001931

1 could do redirect on.

2 **MR. CARTIN:** Okay. Thank you.

3 Q: Let me figure out which Exhibit Number I'm
4 getting to next. It should be in your same
5 book. So, 134, I thought we had more than just
6 a native file. Does your 134 have an actual
7 document in it?

8 A: It's just -- it looks like copies of my
9 spreadsheet.

10 **MS. GEER:** Okay. Is there anyway you could ---

11 **MR. CARTIN:** You need one?

12 **MS. GEER:** Somehow I -- I ended up with just the
13 native file.

14 **MR. CARTIN:** I'm happy to help you.

15 **MS. GEER:** Perfect. I know we've put that at the
16 end. Let me figure out which page I'm looking
17 at first.

18 Q: And actually, I'm not sure -- we're going to
19 talk about this generally, but I'm not sure if
20 we need a specific page yet, so.

21 A: Okay.

22 Q: I kind of want to talk to you about some of the
23 pieces.

24 A: Okay.

25 Q: All right.



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ROA 001932

1 **THE COURT:** He's got it.

2 **MS. GEER:** I'm sorry. I'm good, Jason. Thank you.

3 Q: So, part of your analysis in here came from
4 Exhibits 40 -- 148 and 149.

5 A: Right.

6 Q: Okay. So, we had that up on the screen
7 earlier.

8 A: Right. Yeah. I'm familiar with these.

9 Q: Okay. And then, if you will turn to -- and so
10 looking at -- let's just look at 148 to start
11 out with. It gives you inbound traffic and
12 outbound traffic, right?

13 A: Right.

14 Q: And then, if you -- so for each -- this is link
15 A is the first one. So, link A shows you what
16 -- what came in to link A and what left.

17 A: Right.

18 Q: Okay.

19 A: That's correct.

20 Q: Okay. And then, if you'll flip over to 152.

21 **(Joint Exhibit Number 152 was introduced into the**
22 **record at this time.)**

23 A: Okay. Yeah.

24 Q: And I can put it up over here.

25 **THE COURT:** You can also zoom out and give you ---



1 MR. CARTIN: Go down a little bit.

2 MS. GEER: Down a little. How's that? That got it
3 all?

4 A: That's good.

5 MR. CARTIN: A little bit more.

6 MS. GEER: A little more.

7 MR. CARTIN: There you go.

8 THE COURT: Yeah. There's a -- I was going to tell
9 you.

10 MS. GEER: That would be a lot easier.

11 Q: All right. So, I might just stand over here if
12 Your Honor doesn't mind. All right. So, these
13 are the lengths that we're looking at, which
14 are -- we just talked about capturing both
15 inbound and outbound, right?

16 A: Right.

17 Q: Okay.

18 A: Yes.

19 Q: So, first of all, I just want to ask you about
20 a hypothetical situation. So, we've got the
21 Scranton link up at the top right.

22 A: Right.

23 Q: So, it's SCTN-MX.

24 A: Uh-huh.

25 Q: All right. So, let's say we have two callers



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ROA 001934

1 off the Scranton link.

2 A: Right.

3 Q: How does a call complete between them? What
4 links would be traversed?

5 A: So, it would go from Scranton -- first of all
6 my answer is going to be based on my assumption
7 that the tandems at Kingstree MX2, which I
8 think it is, but I'm not sure. But if it's --
9 if it's there, the call would go from Scranton
10 -- most likely go from Scranton down link K to
11 that Kingstree MX2 node. Then be transported
12 up to the metaswitch at Horry and where --
13 where was the destination? Kingstree?

14 Q: If we had two people off the Scranton.

15 A: Oh, well it would come back down to Kingstree
16 and back up to Scranton again to the other
17 subscriber.

18 Q: So, you're understanding is that it -- all
19 would traverse is link K?

20 A: Well, no. As I mentioned earlier, now this is
21 a voice over IP network. This -- that's --
22 that's critical. If this was a circuit switch
23 network, then I'll just say yes. But it's not.
24 It's a voice over IP.

25 Q: Okay.



1 A: So, because it's voice over IP, the individual
2 packets -- not only can the -- can the voice
3 conversation take a different route, the
4 individual packets could actually take
5 different routes. So, it could very well in
6 this example utilize link K to get to Kingstree
7 and from there to Horry. Or it could actually
8 go around the other side of the ring. It could
9 go on E, D, H, and I.

10 Q: Okay. Is there any difference between if it's
11 a phone call traveling network versus a data
12 session?

13 A: I don't think so. I think all -- all IP
14 traffic's routed by the same protocol.

15 Q: All right. And so, let's assume we've got a
16 data ---

17 A: Okay.

18 Q: --- transmission. And I don't know that this
19 route that it would follow. I'm just ---

20 A: I understand.

21 Q: --- using this ---

22 A: Yeah.

23 Q: --- for hypothetical purposes.

24 A: Right.

25 Q: And let's say we're starting at the North



1 Kingstree bottom right.

2 A: Okay.

3 Q: And it travels link I.

4 A: Right.

5 Q: And let's say it's one gigabyte.

6 A: Okay.

7 Q: All right. So, we have one gigabyte, so it's
8 going to be counted at North Manning as one
9 gigabyte, right?

10 A: It would be counted on that -- on the Exhibit
11 -- do we have the number? The 140 -- it's
12 counted on a link actually.

13 Q: Yes.

14 A: I believe it's counted on a link, not the node,
15 but yes.

16 Q: Okay. So, on the link.

17 A: You count it on -- it would be counted on link
18 I.

19 Q: Okay. And then when it goes through to
20 Pinewood on Link H, it'll be picked up on ---

21 A: If it ---

22 Q: --- on the link H data.

23 A: If it -- if it is headed to some other
24 destination. Yes.

25 Q: Yes.



1 A: It would be counted there. Yes.

2 Q: And so it's been counted as one gigabyte,
3 right?

4 A: Right.

5 Q: All right. And then, let's say it goes onto
6 Pocalla.

7 A: Right.

8 Q: So, it's traveling the D link.

9 A: Right.

10 Q: So, D link is going to pick it up as one
11 gigabyte.

12 A: Yes.

13 Q: And then it goes onto the one says Stan-MX.

14 A: Right.

15 Q: So, link E. So, link E's going to pick up one
16 gigabyte.

17 A: Correct.

18 Q: All right. And so, starting at North
19 Kingstree, you had one gigabyte that stopped
20 through -- made one, two, three, four different
21 stops.

22 A: Right.

23 Q: It's one gigabyte, right?

24 A: Yes.

25 Q: Okay. But the links have picked it up as one,



1 two, three, four gigabytes, right?

2 A: Yes. Four gigabytes of data was processed on
3 that route.

4 Q: Okay.

5 A: Now, let me just explain -- I mean, if --
6 unless you have a follow-up question, let me
7 just add that again, you -- we're not talking
8 about content. I'm -- I was asked to analyze
9 the total utilization of the -- of the network.
10 So, you're exactly correct. Everyone of those
11 links have been utilized in that, but the -- I
12 mean, I see what you're getting at, I think.
13 But that's -- you have to look at the whole
14 network in aggregate. You can't look at just
15 one -- at one entry point and exit point. If
16 you took anyone of those links out, then the --
17 it fails. It doesn't get where it's going. It
18 has to utilize all those intermediate links.

19 Q: And I understand it has to use all those links,
20 but four gigabytes of data did not go through
21 the network on that route.

22 A: The network provided -- four gigabytes worth of
23 network was utilized on that route.

24 Q: That -- let's just ---

25 A: Again, I'm not -- I'm not talking about



1 content. I'm talking about network
2 utilization.

3 Q: Okay. So, your measurement is measuring each
4 gigabyte that goes through each link. And if
5 we have a four -- a one gigabyte -- and I know
6 one gigabyte would not carry a piece of paper
7 typically ---

8 A: No. I understand.

9 Q: But I have one piece of paper that I'm emailing
10 that's going through all these different
11 sessions and in your analysis -- and I
12 understand you may have reasons for why you did
13 ---

14 A: Right.

15 Q: --- your way.

16 A: Right.

17 Q: But your analysis is going to count that one
18 gig ---

19 A: Right.

20 Q: --- of paper that went through four times.

21 A: Sure. I -- I understand the complaint.

22 Q: Okay.

23 A: And Mr. Wyatt and I'm ---

24 Q: Yeah. And I ---

25 A: Mr. ---



1 Q: Go ahead.

2 A: Mr. Wyatt raised that at his deposition and I
3 had -- and I gave that some thought and I
4 thought, you know -- I had to think -- rethink
5 the whole process. Are we doing -- am I
6 looking at this correctly? And I believe I am
7 for several points. One -- first of all, in
8 the -- in the example that we're using, that's
9 actually not the way it would travel. It --
10 the -- again, with the whole IP rallying thing
11 that I keep talking about, the way it would
12 really route is it would just be like all over
13 the network all at once practically. Route --
14 packets go everywhere. They don't -- they
15 don't all follow a single path. So, how can
16 you pick out one and say it used this one and
17 it didn't use that one. It uses the whole
18 network. So, you have to -- that's why I went
19 through all that calculation was to try to come
20 up with a metric in -- that would fairly
21 allocate data and voice. You have to get
22 everything to a common denominator. The common
23 denominator here is a core because voice does
24 the same thing, exactly just like you said for
25 a voice calls going to do the same thing. So,



1 you have to get -- that was my intent with the
2 little multiplier to account for that. The
3 fact that voice -- we need to count voice the
4 same way we count data. I mean, I understand
5 that -- I understand the concern.

6 Q: Yep.

7 A: I'm just saying, I believe this analysis
8 accounts for that and it's as close as you can
9 come to an apples to apples comparison of data
10 and voice on the core network.

11 Q: Okay.

12 A: So.

13 Q: I understand your answer, but you and I can
14 agree to ---

15 A: Okay.

16 Q: --- disagree ---

17 A: Okay.

18 Q: --- on that point too.

19 A: All right.

20 Q: And did I understand correctly, you've assumed
21 a 56 kilobit voice transmission path?

22 A: Yes.

23 Q: And are you aware that Farmer's uses -- SIP for
24 voice traffic, which is Simple Internet
25 Protocol?



1 A: Actually, it's Session Initiation Protocol, but
2 yes.

3 Q: Oh. I got bad information.

4 A: Yeah.

5 Q: I'm sorry. Whatever it is.

6 A: Session -- SIP is Session Initiation Protocol
7 and it's -- you know earlier, Judge, when I was
8 -- Your Honor, when I was talking about packets
9 in an envelope. SIP is sort of like the
10 address on the envelope. It's the -- it's the
11 supervisory portion of a -- of a signal. The
12 actual contents carrying what they call RTP,
13 which stands for Real Time Protocol. So -- and
14 if you could go back to the little train
15 analogy from first thing this morning, SIP is
16 like the engine on the train and RTP is like
17 the cars that hauls the content. And that's
18 just nomenclature. But we kind of need to
19 understand that because I -- I know ---

20 Q: I'm not going ---

21 A: --- where this is going.

22 Q: I'm not going very far down that line.

23 A: No. That's okay. I know where this going.

24 **MR. CARTIN:** Objection, Your Honor.

25 A: I'm ready.



1 **MR. CARTIN:** He should get to explain his answers.

2 He's getting cut off here ---

3 A: Well ---

4 **MR. CARTIN:** --- from explaining to the Court ...

5 **THE COURT:** I think he went a little further than
6 her question. So, I -- I go back to ---

7 **MS. GEER:** My question was does Farmer's -- are you
8 aware if Farmer's uses SIP protocol.

9 **THE COURT:** Yeah.

10 **MS. GEER:** I didn't ask for any information ---

11 A: Okay.

12 **THE COURT:** We can test your competency in redirect
13 later on, but -- but right now we're dealing
14 with her competency ---

15 A: I understand. I think I know where she's
16 going. I understand. Go ahead. I'm ready.

17 Q: Okay. Are you -- do you know the bit rate for
18 that?

19 A: No. I don't.

20 Q: Okay. Are you aware that Farmer's uses 100
21 kilobits transmit and receipts of two kilobits
22 per session?

23 A: No.

24 Q: 200 kilobits per session.

25 A: No. I wasn't aware of that and I'm not -- I'm



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ROA 001944

1 not questioning the information that the
2 taxpayers given me, but I did a little research
3 on that about codecs. And codecs is what the
4 governs the size of the packets. So, as I
5 understand it, I'm -- the largest codec I could
6 find it G.711, in which the voice packets
7 defined as 64 kilobits. So, if there's one out
8 there that does 100, I'm not going to
9 contradict that, but I'm not aware of it.

10 Q: Okay. Well, we'll hear from witnesses later
11 this ---

12 A: Okay.

13 Q: --- week that can address that for us.

14 A: And well let me just -- and before we leave
15 that, I'd like to speak to that a little bit
16 because I know Mr. Wyatt had some concern about
17 that in his deposition. So, I -- I've given
18 that some thought as well.

19 MS. GEER: Your Honor, I did not have a pending
20 question. I mean I'm happy ---

21 THE COURT: Okay.

22 MS. GEER: --- for him to talk as much as he wants
23 on redirect.

24 THE COURT: Yeah. Yeah.

25 A: Okay. Okay.



1 **THE COURT:** Now, do you really mean that?

2 **MS. GEER:** No. I don't. Let me take that back.
3 Can we say -- we said do-overs are allowed,
4 right?

5 **THE COURT:** Nah. I thought you said no do-overs
6 were allowed.

7 **MS. GEER:** I know. I changed that to apply to me.
8 If it's me, then I get a do-over. All right.

9 Q: All right. I believe I understood your
10 testimony at one point to say that any carrier
11 can use anyone's network. Did I understand you
12 correctly on that?

13 A: I said as far as I understand it. And I'm not
14 -- I don't claim to be an expert on the
15 different regulatory laws applied to cell
16 carriers. But I don't know of any restriction.

17 Q: Well, isn't it true that you would have to have
18 the same technology to be able to use another
19 carrier's network? In other words, Verizon
20 does not roam AT&T, do they?

21 A: I'm really not sure about.

22 Q: Okay.

23 A: I don't know.

24 Q: So, you would defer to others on that?

25 A: I would have to -- have to defer to others on



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ROA 001946

1 that?

2 Q: Okay.

3 A: I don't know which carriers use which
4 technology.

5 **MS. GEER:** Your Honor, if I could just have a
6 moment.

7 Q: All right. So, moving on from ---

8 A: Okay.

9 Q: --- how we measure ---

10 A: Right.

11 Q: --- things. Would you agree with me that
12 diversified assets today ---

13 A: Uh-huh.

14 Q: --- are being used to provide telephone
15 services?

16 A: I believe so.

17 Q: Okay.

18 A: As far as I know.

19 Q: And do you believe today that FTCC's assets are
20 being used -- I'm sorry. Let me go back to --
21 no. Go ahead. Let me go ahead. Are FTC's
22 assets being used to provide telephone service?

23 A: Yes.

24 Q: Okay. Thank you, Mr. Moss. That's all I have
25 right now. All right. Who did I get this



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ROA 001947

1 from? Vicki?

2 **MS. GEER:** Thank you.

3 **THE COURT:** Do you want a break or ---

4 **MR. LUTHER:** No. I -- I have only a few questions
5 and it's mostly for my clarification here.

6 **MR. MOSS - CROSS-EXAMINATION BY MR. LUTHER:**

7 Q: Hello, Mr. Moss.

8 A: Hey.

9 Q: It's good to see you again.

10 A: Good to see you.

11 Q: What I -- what I wanted to figure out was you
12 were asked just a few minutes ago about your
13 definition of telephone service.

14 A: Right.

15 Q: Now, I understand that your opinions in this
16 case are A, what you believe telephone service
17 would -- or was understood to mean in 1978.

18 A: Right.

19 Q: But then you also were asked about telephone
20 service, as I think you understand it today.

21 A: Right.

22 Q: And your -- your definition as you understand
23 it today, it does contain any sort of
24 particular technological component, is that
25 fair?



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ROA 001948

1 A: That's correct.

2 Q: Okay. But the definition that you believe
3 applied in 1978 does have a technological
4 element, is that right?

5 A: I think the definition I gave in '78
6 specifically referred to an analog circuit. I
7 don't think that's -- because of the advances
8 in technology, I don't think it's limited to
9 analog now.

10 Q: Did it also include the component of two copper
11 wires?

12 A: 1978, yes.

13 Q: Okay. So, I -- and I'm just trying to make
14 sure I understand ---

15 A: Right.

16 Q: --- from the Department's perspective. So, if
17 -- if we're asking what the definition of
18 telephone service was in 1978 as you understood
19 it, I think there's two components. One is the
20 serve as voice traffic, correct?

21 A: Right.

22 Q: And the other is by the means of wire -- two
23 copper wires twisted together ---

24 A: Right.

25 Q: --- going through the circuit. So, is it -- is



1 it your opinion that as soon as you change one
2 of those two components, it's no longer
3 telephone services you think it was understood
4 in '78.

5 A: No, sir. I -- I hope I didn't confuse the
6 issue by using the reference to copper wires
7 because the question was what was telephone
8 service understood to be then and then, that
9 was the only technology that was available.
10 So, any understanding of the term would have by
11 definition included that. To -- I think the
12 definition is really whether you talk about in
13 1978 or now or 1915 even, the definition should
14 be on what the service is. And in my opinion,
15 that's a dial or a -- telephone -- a vocal
16 conversation that takes place over whatever
17 medium, as long as it's routed -- ultimately
18 routed to the public switch telephone network.
19 So, the medium, in my opinion, is -- is not
20 critical. It's the -- the -- the application.

21 Q: Okay. And that is -- that's helpful. That --
22 I was getting confused and here's where I was
23 kind of headed. If we took the definition of
24 telephone services, you believe that it was
25 meant -- what would be understood at '78. Does

