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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 10 OF 10

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CERTIFICATE OF COUNSEL

Entities to provide internet, security, and television services over that same core network. (Hr’g Tr. 804:14–811:9, 860:2–864:4). If the Farmers network did not provide wireless service, it would likely not need some of the assets (certain routers, for example) that are currently deployed in the network, (*id.*), but Mr. Wyatt testified that for the most part the Farmers Entities would essentially use the same network infrastructure whether it provides only telephone voice services or whether it provides both voice and data services (e.g. internet, video, IPTV, etc.). (Hr’g Tr. 860:2–25). If Farmers Coop, FTCC, and Diversified ceased to provide wireless, internet, security, and television services, they would still need most of the network system to continue providing landline telephone service. (*Id.*)

Douglas Meredith is a consultant on economic and policy issues relating to telecommunications and rural telephone service who testified on behalf of the Farmers Entities. He is the Director of Economics and Policy for JSI, LLC, which represents a variety of clients—including rural telephone cooperatives—on issues relating to economics, pricing and policy with respect to universal service programs. (Hr’g Tr. 877:9–878:15). In his capacity as a consultant, he frequently testifies before various regulatory bodies that govern rural telephone cooperatives. (Hr’g Tr. 882:2–12). The Court qualified Mr. Meredith as an expert in economics and policy issues related to telecommunications and rural telephone service.

Mr. Meredith testified that rural telephone cooperatives have historically filled an economic need in rural communities by providing telephone service where it was too cost prohibitive for larger, national telephone companies to do so. (Hr’g Tr. 904:4–25). He opined that—from an economic standpoint—there is a high degree of substitution between wireless and wireline (or landline) service, meaning that the end-users see wireless and wireline as both providing telephone service. In other words, although the technology and provisioning of the service may have evolved or changed over time, the actual service itself remains the same: it is the ability to send and receive a telephone call over the public switch telephone network. (Hr’g Tr. 900:6–12, 902:2–11, 912:5–15).

CONCLUSIONS OF LAW

1. General Conclusions

This Court has subject matter jurisdiction in this case pursuant to S.C. Code Ann. §§ 1-23-600(A) (Supp. 2014) and 12-60-460. The hearing before the ALC is a contested case hearing and

is heard de novo. *Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control*, 358 S.C. 573, 579, 595 S.E.2d 851, 854 (2004). This Court must make its factual findings based on the preponderance of the evidence. See S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2014); see also *Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998); *Nat'l Health Corp. v. Dep't of Health and Envtl. Control*, 298 S.C. 373, 379, 380 S.E.2d 841, 844 (Ct. App. 1989).

“In general, the party asserting the affirmative issue in an adjudicatory administrative proceeding has the burden of proof.” *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 78, 804 S.E.2d 633, 643, 2017 WL 3723331 (Ct. App. 2017). The Taxing Entities contend that the Settlement Agreement and the final assessment certifications issued by the Department constitute Department Determinations from which the Taxing Entities can appeal to the Administrative Law Court. By filing a request for a contested case hearing, the Taxing Entities are challenging the Department's decision to exempt certain assets of the Farmers Entities by means of the Settlement Agreement (which covered tax years 2010–2015) or as expressed in the final assessment certifications for tax years 2010–2018. Because the Taxing Entities are asserting the affirmative issues in this case, the Taxing Entities have the burden to prove by a preponderance of the evidence that the Department's decision to exempt those assets during those specific tax years was in error. *DIRECTV*, 421 S.C. at 78, 804 S.E.2d at 643 (upholding ALC's decision that burden of proof lies with the person challenging the Department's determination).

Although the Taxing Entities bear the burden of proof, the Court will construe the tax exemption statutes narrowly and strictly against the Farmers Entities. See *Se.-Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981); *York Cty. Fair Ass'n v. S.C. Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967) (“Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption. He must clearly bring himself within the constitutional or statutory language upon which he relies.”).

2. The property and assets owned by Farmers Coop, FTCC, and Diversified that are used to provide rural telephone service are one hundred percent exempt from ad valorem taxation.

At bottom, this Court is tasked with answering a simply inquiry: do Farmers Coop, FTCC, and Diversified own property that is used to provide rural telephone service? Answering this

question, however, is anything but simple. To begin, the Rural Telephone Service Exemption merely states that property “used in providing rural telephone service” is exempt, but it does not define any of the operative terms such as “used,” “rural,” or “telephone service.” It also does not explain what percentage of assets might be exempt for a telephone company created after 1973, such as FTCC or Diversified, and how that percentage might be calculated where the telephone company is a single member LLC and therefore a disregarded entity that assumes the tax benefits of its single member. In addition, Farmers, FTCC, and Diversified all share a common telephone network infrastructure, but each entity also separately owns a number of different assets. The network and assets are used by each entity to provide a variety of services, including both plain old telephone service as well as wireless voice and data service, Internet Service Protocol (ISP), television service, security services, and answering/operator services. Moreover, the extent to which the network and assets are used to provide these services differs for each entity, and the parties disagree as to the best measure for determining the network’s overall utilization.

Thus, as this Court has previously noted, the Court must engage in statutory construction to determine what constitutes property “used in providing rural telephone service” in order to qualify for the exemption. (See Order Denying Motion for Partial Summary Judgement dated Apr. 3, 2018). In addition, in order to answer the ultimate issue in this case the Court must resolve several factual questions such as the meaning of “telephone service” as it was understood in 1978, identifying what “telephone services” and “non-telephone services” the Farmers Entities provide, and determining to what extent the property and assets are used for “telephone” and “non-telephone” service.

a. One hundred percent of Farmers Coop’s property used to provide rural telephone service is exempt from taxation under the Rural Telephone Service Exemption.

S.C. Code § 12-37-220 provides a number of exemptions from ad valorem taxation. In particular, section 12-37-220(B)(10) (the Rural Telephone Service Exemption) provides the following exemption from property taxes:

[N]otwithstanding any other provisions of law, the property of telephone companies and rural telephone cooperatives operating in this State used in providing rural telephone service, which was exempt from property taxation as of December 31, 1973, shall be exempt from such property taxation; provided, however, that the amount of property subject to ad valorem taxation of any such company or cooperative in any tax district shall not be less than the net amount to

which the tax millage was applied for the year ending December 31, 1973. Any property in any tax district added after December 31, 1973, shall likewise be exempt from property taxation in the proportion that the exempt property of such company or cooperative as of December 31, 1973, in that tax district was to the total property of such company or cooperative as of December 31, 1973, in that tax district

S.C. Code § 12-37-220(B)(10) (emphasis added).

Although the current version of the Rural Telephone Service Exemption was enacted in 1978, *see* 1978 S.C. Acts 621, §2, the history of the exemption dates back to 1957, when the General Assembly amended Section 65-1522 to exempt “all property of every kind owned by rural telephone co-operatives” *See* 1957 S.C. Acts 177, §1. The 1957 amendment also exempted “all rural party telephone lines and instruments . . . serving party line customers and used in the transmission of messages, conversation or other means of communication by means of electricity over rural lines.” *Id.* These exemptions were subsequently re-codified in section 12-37-220(40) and (41).

In 1978, these two exemptions for rural telephone cooperatives and rural party telephone lines and instruments were consolidated into one exemption, codified at section 12-37-220(B)(10). The new, amended exemption in subsection (B)(10) applied both to rural telephone cooperatives and telephone companies. Importantly, the amended exemption applied to any property used to provide a particular service (rural telephone service), rather than the prior statute’s blanket exemption of “all property of every kind” (for rural telephone cooperatives) or only a specific type of property or technology (“telephone lines and instruments . . . used in the transmission of messages, conversation or other means of communication by means of electricity over rural lines”). In addition, the amended exemption had an “effective date” of December 31, 1973, as follows:

- For rural telephone cooperatives:
 - All property exempt from property taxation as of December 31, 1973 continued to be exempt from property taxation (except city and town taxes).
 - All property added after December 31, 1973 is exempt from property taxation (except city and town taxes) *if the property is used in providing rural telephone service.*
- For telephone companies:

- Rural telephone lines and instruments of telephone companies exempt from property taxation as of December 31, 1973 continued to be exempt from property taxation (except city and town taxes).
- Property added after December 31, 1973 that is used in providing rural telephone service is exempt from property taxation for each taxing district (except city and town taxes) based on the following ratio: exempt rural telephone lines and instruments in the district as of December 31, 1973 *divided by* total property in the district as of December 31, 1973.

Although some version of the Rural Telephone Service Exemption has been in existence for over 60 years, there is a dearth of case law interpreting or applying any version of the Rural Telephone Service Exemption. One of the few authorities to address the exemption is SC Technical Advice Memorandum #90-3 drafted by the Department in 1990. (Ex. 183, p. 1–3). Although this Memorandum by its own terms purports to have no precedential value, it is—at a minimum—a helpful indication of how the Department has understood and interpreted the Rural Telephone Service Exemption to apply in light of its statutory predecessors. In the Memorandum, the Department concluded that under the new code section 12-37-220(B)(10), ***all*** property of rural telephone cooperatives exempt from property taxation as of December 31, 1973 is exempt from property taxation (except city or town taxes), and ***all*** property of rural telephone cooperatives added after December 31, 1973 is also exempt from property taxation (except city and town taxes) to the extent it is used in providing rural telephone service. *Id.* In other words, the 1978 amendment effectively provided rural telephone cooperatives a 100% property tax exemption (except for city or town taxes) for property used in providing rural telephone service in any district where the cooperative operated in 1973, whether existing property or property that the cooperative may later acquire.

Although the Department has not issued any formal, written guidance, policies or procedures regarding how to apply and interpret the Rural Telephone Service Exemption, the Court finds that the Department has interpreted and applied the exemption to the various telephone cooperatives in a consistent manner over the years. For each telephone cooperative or company, the Department has applied the exempt percentage that was applied the previous tax year, such that the same exempt percentage is carried forward year after year. (Ingram 30(b)(6) Depo., 22:21–23:17). For decades, Farmers Coop has claimed one hundred percent of its property as exempt because the property is used to provide rural telephone service, even though the infrastructure may

also be used to provide other non-telephone services. (Hr’g Tr. 499:9–500:6). Although the Department may not have any record of what property Farmers Coop owned on December 31, 1973, its longstanding practice has been to exempt one hundred percent of Farmers Coop’s property that provides telephone service in rural areas, regardless of whether the property existed in 1973 or was acquired later.¹⁵

Accordingly, the Court affirms the Department’s longstanding practice of granting the Rural Telephone Service Exemption on one hundred percent of Farmers Coop’s property used to provide rural telephone service. *Media Gen. Commc’ns, Inc. v. S.C. Dep’t of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 530–31 (2010) (“An agency’s long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled by a reviewing court in the absence of cogent reasons . . .”).

b. Because FTCC and Diversified are disregarded entities that qualify for the same tax benefits available to Farmers Coop, one hundred percent of FTCC’s and Diversified’s property used to provide rural telephone service is also exempt from taxation under the Rural Telephone Service Exemption.

The Court finds that both FTCC and Diversified are eligible to claim the Rural Telephone Service Exemption and that their assets used to provide rural telephone service are one hundred percent exempt.

South Carolina code section 12–2–25(B) provides that for “South Carolina tax purposes: (1) a single-member limited liability company, which is not taxed for South Carolina income tax purposes as a corporation, is not regarded as an entity separate from its owner.” In *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 75, 716 S.E.2d 877, 881 (2011), the South Carolina Supreme Court examined the application of section 12-2-25(B) to property taxes and concluded that the property owned by a single-member LLC qualified for the legal residence ratio of the sole member of the LLC. In explaining the legal effect of section 12-2-25(B), the Supreme Court stated that the law “disregards the corporate form for single-member limited liability companies that are not taxed as corporations, thereby merging the existence of the company and its member for all tax purposes. This means the company will qualify for any tax benefits its member qualifies for.” *Id.* at 79, 716 S.E.2d at 883–84 (emphasis added).

¹⁵ Consistent with its practice for all of the rural telephone cooperatives, the Department has applied the exemption to Farmers Coop’s gross investments related to regulated assets (as listed in the PSC annual report) but not the investments attributable to non-regulated assets. (Ingram 30(b)(6) Depo., 22:21–23:17). The Court will address below whether some of the non-regulated assets—such as wireless—should also be tax exempt.

Here, it is undisputed that FTCC and Diversified are not taxed as corporations and Farmers Coop is the sole member of both FTCC and Diversified. Thus, because Farmers Coop is entitled to claim the Rural Telephone Service Exemption with respect to its property, FTCC and Diversified can claim the same tax benefits as their member, Farmers Coop.¹⁶ Therefore, FTCC and Diversified are entitled to claim a one hundred percent exemption on their respective properties, provided that the properties meet the other requirements of the Rural Telephone Service Exemption. Whether any of Farmers Coop's, FTCC's, or Diversified's specific assets or property in fact qualify for the exemption will be discussed later in this Order.

3. Farmers Coop, FTCC, and Diversified provide “rural telephone service.”

It is axiomatic that the text of section 12-37-220(B)(10) is the fundamental starting point for the court in interpreting and applying the exemption. *Fox v. Moultrie*, 379 S.C. 609, 614, 666 S.E.2d 915, 917–18 (2008) (“If the statute is clear and unambiguous that is the end of the matter . . .”). In determining the plain meaning of a statute, courts must look at the particular statutory language at issue and the language and design of the statute as a whole. *Id.*; see also *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581(2000) (“Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.”).

If the statute is ambiguous, however, courts must construe the terms of the statute using the accepted rules and canons of statutory construction. *Lester v. S.C. Workers' Comp. Comm'n*, 334 S.C. 557, 561, 514 S.E.2d 751, 752 (1999). The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). In ascertaining legislative intent, “a court should not focus on any single section or provision but should consider the language of the statute as a whole.” *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). “A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.” *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 468, 636 S.E.2d 598, 606–07 (2006). In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords

¹⁶ The Taxing Entities conceded this point in their initial briefing with this Court. See Taxing Entities' Motion for Partial Summary Judgment, p. 10.

with its general purpose. *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

“Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.” *Bennett v. Sullivan's Island Bd. of Adjustment*, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct. App. 1993). Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

Here, the exemption statute merely states that property “used in providing rural telephone service” is exempt. The statute does not define “rural telephone service” and does not provide guidance as to what level of use of the property, if any, is required to claim the exemption. Thus, as this Court has previously noted, the statute is ambiguous as to these definitions, and therefore the Court must engage in statutory construction to resolve these issues.

a. In 1978, telephone service would have been understood to mean the ability to make and receive a voice call over distance.

One of the Taxing Entities’ primary arguments is that the Rural Telephone Service Exemption applies only to property providing rural telephone service as it contends the phrase “telephone service” was understood in 1978. According to the Taxing Entities, telephone service as commonly used by engineers in the telephone industry in 1978 was generally understood to mean “voice traffic via an electrical circuit over a pair of copper wires.” (Ex. 132, ¶ 15). Therefore, because no reasonable person in 1978 would have understood “telephone services” to include technologies that had not yet been invented or deployed on a wide scale in 1978 (e.g. wireless services), the Taxpayers’ property used to provide those services cannot qualify for the Rural Telephone Service Exemption.

There are two implications to adopting the Taxing Entities’ position. First, the exemption would only apply to the specific technologies that existed in 1978. Thus, only the portions of the network that uses copper wires using electrical current to transmit voice traffic would be exempt. Under this interpretation, the portions of the network that utilize newer switches or fiber optic cable would not be exempt. Second, the exemption would only apply to property used to provide voice traffic. The moment the property is used to provide non-voice traffic services (e.g. digital TV services, internet services, security services, and wireless cellular services) it would cease to

be exempt. In other words, if a portion of the network included a copper line using an electrical circuit, but it was transmitting only dial-up Internet access or a dedicated special circuit transmitting financial data between two banks, that property would also not be exempt.

The testimony and evidence at trial presented conflicting views of what “telephone service” would have been understood to mean in 1978. On the one hand, the Taxing Entities provided evidence that a telecommunications engineer in 1980 would have understood “telephone service” to mean a voice service that allowed a user to speak into a device that was routed to the public switch telephone network that allowed communication with another user. (Hr’g Tr. 259:13–23). In the late 1970s and early 1980s, telephone service was almost universally provided using an electrical circuit over a pair of copper wires. Fiber optic cable and wireless technology were not contemplated by most engineers.

On the other hand, witnesses for the Farmers Entities testified that there were rudimentary wireless networks across the county as early as the 1960s, and that the first commercial wireless cellular networks were deployed in 1983. (Hr’g Tr. 399:12–401:11, 919:14–21). Moreover, it appears that as early as 1974 federal regulators were already laying the regulatory groundwork for wireless telephone networks that would interconnect with existing telephone systems, which they believed were at least three years away from operation. *See Nat’l Ass’n of Regulatory Util. Comm’rs v. F.C.C.*, 525 F.2d 630, 634–35 (D.C. Cir. 1976).¹⁷ Even the Taxing Entities’ expert conceded that radio phones existed prior to 1978, and that there were probably regulators and research and development engineers who were aware that the deployment of cellular networks was on the horizon. (Hr’g Tr. 387:24–389:9).

Regardless of these factual disputes, witnesses from both parties did provide some commonality in their definitions of “telephone service” as understood in the industry. Based on their testimony, the Court finds that, at a minimum, telephone service in 1978 would have been understood to mean the ability to make and receive a voice call over a distance. (Hr’g Tr. 259:13–23, 578:14–21).

- b. Telephone service means a system that uses wire, fiber, radio, light, or other electromagnetic means to transmit voice communication services over a distance.**

¹⁷ Notably, the South Carolina Public Service Commission was an intervenor in this case.

Although the meaning of “telephone service” as it was understood in 1978 is a factual inquiry, the question of what the legislature intended the term “telephone service” to mean for purposes of section 12-37-220(B)(10) is a question of law. *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 2010 WL 10079890, at *3 (S.C. Ct. App. Apr. 7, 2010) (holding that the determination of the meaning of “telephone company” in taxing statute is a question of law). The Rural Telephone Service Exemption in section 12-37-220(B)(10) does not define what is considered a “telephone” or “telephone service” for purposes of the exemption.

When faced with an undefined statutory term, the Court must interpret the term in accord with its usual and customary meaning.” *Branch v. City of Myrtle Beach*, 340 S.C. 405, 409–10, 532 S.E.2d 289, 292 (2000). “Courts should consider not merely the language of the particular clause being construed, but the undefined word and its meaning in conjunction with the purpose of the whole statute and the policy of the law.” *Id.* Dictionaries can be helpful tools during the initial stages of legal research for the purpose of defining statutory terms. *Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005).

The dictionary defines “telephone” to mean “an instrument for reproducing sounds at a distance; *specifically*: one in which sound is converted into impulses for transmission (as by wire or radio waves).” See Meriam-Webster’s Online Dictionary, *available at* <https://www.merriam-webster.com/dictionary/telephone>. Older dictionaries that pre-date the passage of the Rural Telephone Service Exemption have similar definitions.¹⁸

In addition to dictionary definitions, the Court may also look to other related sections of the South Carolina code for guidance in determining how “telephone” and “telephone service” should be defined for purposes of this property tax exemption. For example, the Telephone Cooperative Act,¹⁹ under which Farmers Coop is organized, defines a “telephone cooperative” as

¹⁸ For a thorough discussion of various dictionary definitions of “telephone” from 1966, 1969, 1982, and 2000, see *City of Jefferson v. Cingular Wireless, LLC*, 2005 WL 1384062, at *3 (W.D. Mo. June 9, 2005), in which the court concludes that “telephone” has been defined broadly and that being connected to a wire is not an essential characteristic of a telephone.

¹⁹ The Telephone Cooperative Act, S.C. Code § 33-46-10 et seq., was enacted in 1994 to provide a specific means by which telephone cooperative nonprofit membership corporations could be organized “for the purpose of rendering communication and information services” See § 33-46-210. It also enabled any South Carolina corporation that had been organized “for the purpose of providing communications and informational services in rural areas” to be converted into a “telephone cooperative and become subject to this chapter with the same effect as if originally organized under this chapter.” § 33-46-800 (2014).

a corporation that was or is financed under the provision of the Rural Electrification Act of 1936. See S.C. Code Ann. § 33-46-20 (2014) (citing the “Rural Electric [sic] Act of 1936, Title 26, Section 922 of the United States Code, *and acts amendatory thereto . . .*” (emphasis added)).²⁰ For purposes of the Telephone Cooperative Act, “telephone service” means

the providing of ***communication service including, but not limited to, the transmission of voice***, sounds, signals, pictures, writing, or signs of all kinds ***through the use of electricity or the electromagnetic spectrum between the transmitting and receiving apparatus***, together with any communication services requiring band-width capacity, community antenna, and cable television services and including all lines, wires, radio, lights, electromagnetic impulse and all facilities, systems, or other means used in the rendition of such services, but not including message telegram service or radio broadcasting services or facilities within the meaning of Section 3(o) of the Federal Communications Act of 1934, as amended (47 USC Section 153(o)).

S.C. Code Ann. § 33-46-20(5). Importantly, this definition is almost identical to the definition used with respect to loans for rural telephone service provided under the Rural Electrification Act of 1936:

As used in this title, the term “telephone service” shall be deemed to mean ***any communication service for the transmission or reception of voice, data***, sounds, signals, pictures, writing, or signs of all kinds ***by wire, fiber, radio, light, or other visual or electromagnetic means, and shall include all telephone lines, facilities, or systems used in the rendition of such service***; but shall not be deemed to mean message telegram service or community antenna television system services or facilities other than those intended exclusively for educational purposes, or radio broadcasting services or facilities within the meaning of section 153(o) of Title 47.

7 U.S.C.A. § 924 (West).

The Court recognizes that these definitions of “telephone service” were enacted or amended after the South Carolina legislature enacted the current version of the Rural Telephone Service Exemption in 1978. See Act No. 392 (1994) (enacting Telephone Cooperative Act); see also Food, Agriculture, Conservation, and Trade Act of 1990, PL 101–624, 104 Stat. 3359 (amending definition of “telephone service” in § 924(a) by inserting “data” after “voice” and by

²⁰ Section 33-46-20(4) references the “Rural Electric Act of 1936”, but this appears to be a scrivener’s error as the proper name is the “Rural Electrification Act of 1936.” Subsection (4) contains a second error in that the Act is contained in Title 7—not Title 26—of the United States Code. Regardless, Section 922 of the Rural Electrification Act of 1936 authorizes the Secretary of Agriculture to make loans to cooperatives providing “telephone service in rural areas,” and Section 924 of the Act provides the definition of “telephone service” and “rural area.”

striking “through the use of electricity between the transmitting and receiving apparatus” and inserting “by wire, fiber, radio, light, or other visual or electromagnetic means”). However, despite these subsequent modifications, the Court finds these definitions are still relevant for at least two reasons.

First, the Telephone Cooperative Act links its definition of “telephone cooperatives” to the Rural Electrification Act of 1936 *“and acts amendatory thereto.”* See S.C. Code Ann. § 33-46-20 (2014) (emphasis added). Thus, the telephone cooperatives organized under the Telephone Cooperative Act, which are the entities most likely to receive the Rural Telephone Service Exemption, are specifically defined in terms of the “evolving” federal definitions of “telephone services” and “rural areas” that date back to 1936.

Second, each definition or amended definition of “telephone service” in the federal amendments since 1936 has at least one common feature: it has used broadly worded language to define *any communication service* involving the transmission of voice and *all systems or technology* used to provide this voice communication service, with each subsequent amendment tending to further broaden—rather than restrict—the definition. The below chart illustrates the various definitions of “telephone service” in the Rural Electrification Act of 1936, as amended:

<i>“any communication service whereby voice communication through the use of electricity between the transmitting and receiving apparatus, is the principal intended use thereof, and shall include all telephone lines, facilities, or systems used in the rendition of such service....”</i> See Pub. L. No. 81-423, 63 Stat. 948 (1949) (emphasis added)	<i>“any communication service for the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity between the transmitting and receiving apparatus, and shall include all telephone lines, facilities or systems used in the rendition of such service . . .”</i> See Pub. L. No. 87-862, 76 Stat. 1140 (1962) (emphasis added)
<i>“any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writing, or signs of all kinds by wire, fiber, radio, light, or other visual electromagnetic means and shall include all telephone lines, facilities or systems used in the rendition of such service...</i> See Pub. L. No. 101-624, 104 Stat. 3359 (1990) (emphasis added)	<i>“any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writing, or signs of all kinds by wire, fiber, radio, light, or other visual or electromagnetic means, and shall include all telephone lines, facilities, or systems used in the rendition of such service...</i> See 7 U.S.C.A. § 924 (West) (current version, last amended in 1993)

In the absence of a specific definition within section 12-37-220, the Court finds that these related statutory definitions are informative in interpreting the intent and meaning of the legislature when it granted a property tax exemption for property used to provide “rural telephone service”. Accordingly, the Court finds that “telephone service” as used in section 12-37-220(B)(10) includes, at a minimum, all telephone lines, facilities, or systems used to provide any communication service that transmits voice and other information by wire, fiber, radio, light, or other visual or electromagnetic means.

Importantly, this definition is consistent with the definitions provided by witnesses for both parties that, at bottom, “telephone service” has always been understood—both by engineers and customers—to mean the ability of end-users or subscribers to communicate over distance. (Hr’g Tr. 259:13–23, 578:14–21).

c. Property used to provide wireless voice services is exempt under the Rural Telephone Service Exemption because wireless services are a substitute for landline telephone services.

The Taxing Entities contend that the Farmers Entities’ property does not qualify for the Rural Telephone Service Exemption because the primary use of the property is data communications and the use for voice communications is only incidental. This issue is addressed more fully below. However, the Taxing Entities further contend in the alternative that even if multi-use property can qualify for the Rural Telephone Service Exemption, the exemption is still not permissible here because wireless telephone service was not a feature of rural telephone service in 1978.

The Taxing Entities are correct to a point: this history of the period in which a statute is passed may be considered in interpreting a statute, and the intent of the legislature can often be gleaned from the overall climate in which the legislation was enacted. *See In re Hospital Pricing Litig.*, 377 S.C. 48, 54, 659 S.E.2d 131, 134 (2008); *Stardancer Casino, Inc. v. Stewart*, 347 S.C. 377, 385, 556 S.E.2d 357, 361 (2001). However, although “every statute’s *meaning* is fixed at the time of enactment, new *applications* may arise in light of changes in the world.” *Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018); *see also City of Columbia v. Tatum*, 174 S.C. 366, 177 S.E. 541, 549–50 (1934) (“The language of the statute should be construed from a modern viewpoint, and not to prohibit progress in the public interest.”); *Brooks v. Northwood Little League Inc.*, 327 S.C. 400, 406–07, 489 S.E.2d 647, 650–51 (Ct. App. 1997) (“[A] statute does not apply

only to facts in existence at the time of its adoption. Statutes must be updated functionally to reflect changes in technology, terminology, and the legal landscape.”); ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 86 (2012) (“The meaning of rules is constant . . . [o]nly their application to new situations presents a novelty.”). As Justice Scalia explained, “[d]rafters of every era know that technological advances will proceed apace and that the rules they create will one day apply to all sorts of circumstances that they could not possibly envision.” SCALIA & GARNER at 86. Consistent with these principles, courts have routinely found changed circumstances and new technologies that were beyond the conception of the legislature at the time it enacted a statute are to be included within statutory definitions—including in the realm of telephone and telecommunication services. *City of Jefferson v. Cingular Wireless, LLC*, 2005 WL 1384062, at *1 (W.D. Mo. June 9, 2005) (finding ordinance that taxes persons “engaged in the business of supplying telephone and telephonic service” applies to mobile telephone services just as it applies to land line telephone services, even though mobile telephone technology did not exist at the time the ordinance was adopted).

The Court finds the evidence presented at trial demonstrates that wireless cellular services are a substitute for landline telephone service. Therefore, the Court concludes that wireless cellular services fall within the meaning of “telephone service” in this exemption statute. Wireless service is merely the latest technological advancement in the evolution of telephone and telecommunications networks. Although the technology and means of provisioning has changed—from Alexander Graham Bell first speaking into a telephone in 1876 (“Mr. Watson – Come here – I want to see you.”) to Steve Jobs’ announcement of the first iPhone in 2007—the underlying service remains the same: the ability of end-users to communicate over a distance. Thus, whether the cables are copper or glass, whether the communication is transported by electricity or light, or whether the “last mile” of the network²¹ is underground or through the air, the telephone network is still providing a service for the transmission and reception of voice and data from one person to another.

As the engineering witnesses for both parties testified, the Famers network provides the same telephone service as the earliest telephone networks—a connection between subscribers

²¹ The “last mile” refers to the last piece of the network that gets to the customer premise. (Hr’g Tr. 502:2–13). Regardless of the type of service being, those services will inevitably travel over the last mile of infrastructure.

through a local network that is itself connected to the public switch network. From the end-user/consumer's perspective, wireless and landline are merely two different ways of providing the same telephone service. *Id.* at *4 (“[E]ven in today's age of innovation, a “telephone” need not be connected to wires. People understand that if you put it up to your ear and you speak into a microphone and someone some distance away is able to hear you, you are using a telephone.”). Further, both parties’ experts agree that whether something is “telephone service” depends solely on the type of service that is being provided, not the medium or technology that is used to provide it. (Hr’g Tr. 435:25–437:17, 578:22–579:7). In addition, the State USF regulates and funds FTCC as a substitute provider of rural telephone service, in large part because wireless cellular networks are helping achieve the policy of universal and affordable access to telephone service in rural areas.²² This underlying policy objective of the State USF is consistent with what is presumably the purpose of the Rural Telephone Service Exemption: to provide a property tax incentive to those companies or cooperatives that provide telephone service in rural areas. *People v. Gilbert*, 324 N.W.2d 834, 840 (Mich. 1982) (“Technological innovation may not be an obstacle to the application of a statute where the new technology facilitates the achievement of ends which the Legislature clearly meant to encourage or discourage.”).

Therefore, the Court finds that wireless telephone service is a substitute for landline telephone service and meets the definition of “telephone service” as used in the Rural Telephone Service Exemption. *See also* Op. S.C. Att’y Gen., WL 6629071, at *4 (Dec. 20, 2017) (“[R]egardless of whether wireless service is considered facilities-based or radio- based, both wireless providers and wireline providers ensure the widespread availability of affordable local exchange service.”); *In Re Petition of South Carolina Telephone Coalition*, at 34 (“Wireless and landline voice telecommunications services are substitute services”); *City of Jefferson*, 2005 WL 1384062, at *1 (“The mobile telephone . . . is the functional equivalent of land line based telephones, which have existed for more than a hundred years.”).

d. Property used exclusively to provide Internet and television services is not exempt under the Rural Telephone Service Exemption.

It is undisputed the Farmers network provides a spectrum of services including landline

²² This finding is consistent with the line of cases imposing the same tax consequences on wireless service providers as landline telephone providers. *See Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 2010 WL 10079890, at *4 (S.C. Ct. App. Apr. 7, 2010) (citing cases).

telephone service, wireless voice and wireless data services, operator and answering services, and a variety of “broadband services” such as Internet service, television services, and security alarm services. The Taxing Entities contend that wireless, Internet, television, and security alarm services are not “telephone service” as used in the exemption statute. Thus, the Taxing Entities argue that the exemption should not be granted for any property used to provide these non-telephone services.

The Farmers Entities concede that its property used *exclusively* to provide Internet and television (IPTV) service is not exempt under the Rural Telephone Service Exemption. (Hr’g Tr. 498:23-499:12). Accordingly, because the Farmers Entities have conceded this issue for purposes of this contested case hearing, the Court finds that any assets owned by the Farmers Entities and used exclusively to provide Internet and IPTV services are not exempt from property tax. *See Shasta Beverages v. S.C. Tax Com’n*, 280 S.C. 48, 56, 310 S.E.2d 655, 659 (1983) (stating general rule that courts should not render advisory opinions on hypothetical issues that will have no practical effect on the outcome of the case).

e. Property used exclusively to provide security services is not exempt under the Rural Telephone Service Exemption.

Under the Settlement Agreement, Diversified agreed that property used to provide security services was not exempt for the tax years covered by the Settlement Agreement (2010–2015). Based on the trial testimony, it appears that Diversified has continued to treat property used exclusively to provide security services as non-exempt in the years since the Settlement Agreement. Moreover, although the trial testimony by the Farmers Entities’ witnesses was conflicting on this point, the Farmers Entities’ expert conceded that security services are not telephone services. (Hr’g Tr. 801:21–802:4).²³ Accordingly, the Court finds that any property owned by Farmers Coop or Diversified that is used exclusively to provide security services is not exempt under the Rural Telephone Service Exemption.

4. Multi-use property owned by the Farmers Entities that provides rural telephone services is exempt under Rural Telephone Service Exemption even if the property also provides non-telephone services.

²³ The undisputed testimony at trial is that the security services offered by Farmers Coop and Diversified are provided using a POTS line, which dials out an outbound voice signal whenever an alarm is triggered. (Hr’g Tr. 542:4-14, 616:9-17). Moreover, the Taxing Entities expert testified that the landline telephone networks that existed in 1980—which he contends are the types of networks that provided the type of telephone service contemplated in the exemption—had special circuits that were used to provide services like dedicated fax lines or burglar alarms. (Hr’g Tr. 261:6-262:2). In other words, the security services provided by Farmers Coop and Diversified have been a part of POTS networks since the 1980s, and the service itself arguably meets the definition of “telephone service” as a telephone line that is used to transmit voice by wire.

Having determined which services are “telephone services” within the meaning of the Rural Telephone Service Exemption and which are not, the Court must now determine how the exemption applies to multi-use or dual-use property that provides both telephone and non-telephone services.

- a. The Rural Telephone Service Exemption does not require that the property be used exclusively or primarily to provide rural telephone service to qualify for the exemption.**

The Taxing Entities urge this Court—for the first time—to adopt a rule regarding property tax exemptions that has never been adopted by any South Carolina court: that a property tax exemption like the Rural Telephone Service Exemption can only be granted on property where its *primary* use is for the specifically stated exempt purpose and a *merely incidental* use for the specifically stated purpose is not sufficient to warrant exemption. The Taxing Entities acknowledge that their position is novel, (Petitioners’ Motion, p. 20), and they also concede that no South Carolina court has specifically analyzed how to determine what constitutes sufficient usage for exemption purposes when the property is used for exempt and non-exempt purposes. However, Taxing Entities argue that based on their analysis of the Farmers Entities’ entire network the exempt telephone services are such a small percentage of the overall network’s utilization that all of the Farmers Entities’ property is taxable and that no exemption is allowed and no refunds are due.

- b. The plain language of the statute does not contain a threshold level of use in order to qualify for the exemption.**

In addressing the argument advanced by the Taxing Entities, it is important to note that the plain language of the exemption statute does not require that the taxpayer use the property “primarily” or “substantially” in providing rural telephone service in order to qualify for the exemption. The Court finds it compelling that the General Assembly has used language quantifying the required use of property in other property tax exemption statutes but chose not to use such quantifying language here. See *First Citizens Bank & Tr. Co., Inc. v. Blue Ox, LLC*, 422 S.C. 461, 471, 812 S.E.2d 418, 423 (Ct. App. 2018) (noting that the legislature knows how to provide an exception in a statute, particularly where it has included such exceptions in other subsections of the same statute). For example, in section 12-37-220, which contains a number of property tax exemptions including the Rural Telephone Service Exemption, the General Assembly

also exempted from property taxes “the property of any fraternal society, corporation, or association, when the property is used **primarily** for the holding of its meetings and the conduct of its business.” S.C. Code Ann. § 12-37-220(B)(12) (2014) (emphasis added).²⁴

In *Hibernian Society v. Thomas*, 282 S.C. 465, 469, 319 S.E.2d 339, 341-42 (Ct. App. 1984), the Court of Appeals analyzed the “fraternal order” exemption in section 12-37-220(B)(12) to determine whether the subject property was used “primarily” for the holding of the society’s meetings and the conduct of its business. The Court defined “primarily” to mean “of first importance” or “principally”. *Id.* at 471, 310 S.E.2d at 342–43 (citations omitted). The Court concluded the property was exempt because it was being used to hold meetings and conduct the business of a fraternal organization, even though the society also derived a significant income from renting out the property to members and nonmembers for their own personal, social use. *Id.* The inclusion of the word “primarily” to impose a certain level of usage was a critical component of the *Hibernian* court’s analysis, so the inclusion or exclusion of the word is important to the plain, ordinary meaning of property tax exemption statutes.

Here, it is reasonable to conclude that by *not* including the word “primarily” or any other qualifier imposing a certain level of exempt usage, the legislature did not intend to impose a primary-usage requirement in order for a property to qualify for the Rural Telephone Service Exemption. Thus, to adopt the Taxing Entities approach would be tantamount to re-writing the exemption statute in a manner than injects a new requirement into the statute: that the property must be “used [**primarily**] in providing rural telephone service.”

- c. Because the evidence demonstrates that the property at issue is used to provide rural telephone service, the Court need not adopt a method for determining how the Farmers network is utilized for the provisioning of telephone versus non-telephone services.**

²⁴ See also § 12-37-220(A)(1) (exempting property of the State and various political subdivisions “if the property is used *exclusively* for public purposes”); § 12-37-220(A)(4) (exempting property of charitable trusts and foundations “used *exclusively* for charitable and public purposes”); § 12-37-220(A)(11) (exempting property of public benefit corporations “used *exclusively* for economic development purposes”); § 12-37-220(B)(5) (exempting property of various veterans organizations “when used *exclusively* for the purpose of such organization”); § 12-37-220(B)(11)(a) (exempting property of nonprofit housing corporations “devoted *exclusively* to providing below-cost housing”); § 12-37-220(B)(16) (exempting property of “religious, charitable, eleemosynary, educational, or literary society, corporation, trust, or other association, when the property is used by it *primarily* for the holding of its meetings and the conduct of the business”); § 12-37-220(19) (exempting property owned by volunteer fire departments and rescue squads “used *exclusively* for the purposes of these departments and squads”); § 12-37-220(B)(20) (exempting property of “nonprofit museums which is used *exclusively* for such purpose”); § 12-37-220(B)(24) (exempting property that is “used *exclusively* for the promotion of the arts”); and § 12-37-220(B)(34) (granting exemption only to facilities “devoted *directly* and *primarily* to research and development”).

The Court is hesitant to impose a qualifier such as a required level of rural telephone service usage of the property to qualify for the exemption where the plain, ordinary text of the statute indicates that the Legislature has declined to impose such a standard. *See John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer*, 276, S.C. 314, 317, 278 S.E.2d 340, 342 (1981) (“The language of a tax exemption statute must be given its plain, ordinary meaning.”). Furthermore, if the Court were adopt the Taxing Entities’ “primary versus incidental” approach, the statute provides no guidance or direction for determining what level of usage is enough to constitute primary or incidental.²⁵

Not only is the exemption statute silent on the question of whether the use of the property must exclusively or primarily for the exempt purpose, it is also silent as to how that “usage” should be evaluated when examining property that provides commingled services. The Taxing Entities presented a well-reasoned argument that the entire network is primarily used for exempt purposes based on the minutes of use attributable to voice services as opposed to data services. Likewise, the Taxing Entities presented a compelling argument that bandwidth is the appropriate measure of the subject property’s usage, and that based on the bandwidth utilization of the Farmers network the subject property is primarily used for non-exempt purposes.

In addition, the Department has long used the unit valuation method to value and assess utilities like the Farmers Entities, which provides yet another potential method for evaluating the usage of the property for exempt versus non-exempt purposes. (Hr’g Tr. 200:19–204:8).²⁶ The Department has primarily used the cost approach in valuing rural telephone cooperatives under the unit valuation method, which values the property based on its gross investment cost on the books.

²⁵ The Court notes that some state taxing statutes provide a specific method for determining how to assess property that is used for exempt and non-exempt purposes. *See, e.g., Larimer Cty. Bd. of Commissioners v. Colorado Prop. Tax Adm’r*, 316 P.3d 60, 73 (Co. Ct. App. 2013) (analyzing specific statute and regulations dealing with incidental use of tax-exempt property, which provide specific formulas for calculating partial usage and permit property to maintain full exempt status so long as the usage for non-exempt purposes does not exceed certain hours or gross income thresholds); *6787 Steelworkers Hall, Inc. v. Scott*, 933 N.E.2d 591, 595 (Ind. T.C. 2010) (noting that Indiana code limits the exemption to a specific ratio based on a reconciliation of the property’s actual amount of time usage during the year).

²⁶ The unit valuation concept is a method of valuation that takes into account the value of an entity’s entire property as a whole operating unit, regardless of where the property is located. *CSX Transportation, Inc. v. South Carolina Department of Revenue*, 851 F.3d 320, 323 (4th Cir. 2017). The unit valuation method is useful in valuing the property of companies whose systems are integrated and spread over multiple taxing and assessment districts, and the Department uses this method to value property owned by telecommunications companies, power companies, water and sewer systems, pipelines, and railroads.

However, as the Department's witness testified during the hearing, as a result of this case the Department has begun to reevaluate how it values multi-use property and whether it should incorporate the income approach in assessing the property of rural telephone cooperatives. (*Id.*) Although there is not a one-to-one correlation between the gross investment in a piece of property and the income that property subsequently generates, the valuation of the property is certainly interrelated to its usage.²⁷ Thus, another method for determining whether the property is primarily used in a manner that qualifies it for the Rural Telephone Service Exemption would be to compare the revenues generated from the exempt usages (telephone services) to the revenues generated from non-exempt usage (non-telephone service). *See, e.g., In re Boy Scouts of Am. Quivira Council*, 270 P.3d 1218, 1226–27 (2012) (approving a “revenue comparison” analysis for measuring and comparing exempt and nonexempt uses for purposes of a property tax exemption).

However, regardless of which method the Court might adopt, there is still the problem of determining what percentage use of the property for exempt purposes qualifies the property for a tax exemption. Is the property tax exempt so long as it is used at least 50% or more for exempt purposes, but not exempt from taxation if the non-exempt usage exceeds the non-exempt usage? Should the exemption be applied on a pro-rata basis relative to the exempt usage? These are the sort of public policy, line-drawing determinations that are typically within the sole province of the legislature. *Hampton v. Haley*, 403 S.C. 395, 403–04, 743 S.E.2d 258, 262 (2013). Where the statute is silent on this issue, the Court declines to impose its own threshold requirement of exempt versus non-exempt usage.

Instead, relying solely on the plain language of the statute, the Court need only determine whether the property owned by Farmers Coop, FTCC, and Diversified is *used to provide rural telephone service*. The simple answer is yes. It is undisputed that the Farmers Entities use the same core network infrastructure to provide both the telephone and non-telephone services. (Ex. 132, ¶ 23). The expert for the Farmers Entities opined to a reasonable degree of engineering certainty that the assets in question are being used to provide rural telephone service. (Hr’g Tr.

²⁷ As the evidence at trial demonstrates, there is a significant capital cost for the property that provides rural telephone service but that service is not very profitable for the Farmers Entities. (Hr’g Tr. 512:15–513:6). By contrast, there is only an incremental cost to add the property and equipment needed to provide the non-telephone services, but the income derived from those services is much greater. (Hr’g Tr. 512:15–513:6, 1026:18–1029:8). In recent years, the majority of the Farmers Entities’ revenues have been generated from voice services, but as voice traffic diminishes and data traffic grows, (Hr’g Tr. 847:18–848:1), the revenues generated from each will likely change as well.

799:11–17). Taxing Entities’ expert agrees that FTCC is providing wireless rural telephone service to its customers and that Diversified is providing landline rural telephone service to its customers. (Hr’g Tr. 1016:2–1017:6). In fact, the expert witnesses for both the parties agreed that if the Farmers Entities were to provide only voice telephone service, the Farmers network would consist of virtually the same infrastructure that is currently in place. (Hr’g Tr. 1021:14–1022:10, 1033:7–13). In other words, notwithstanding any disagreement about the overall utilization of the property at issue, the parties agree that the property is “used in providing rural telephone services.” This is all that the statute requires. Accordingly, the property “shall be exempt from such property taxation.” S.C. Code § 12-37-220(B)(10). The fact that this property is also used for other reasons is irrelevant to the statutory analysis. Because the evidence establishes that the property at issue is used to provide rural telephone service, the Court need not adopt a method for determining how the Farmers network is utilized for the provisioning of telephone versus non-telephone services.

5. The Farmers Entities’ property is used to provide *rural* telephone service.

The undisputed testimony at trial is that the Farmers Entities are providing telephone and other services predominantly to rural areas of South Carolina. Farmers Coop is a rural telephone cooperative that was created to provide telephone service in a handful of rural counties in South Carolina where no other company else was willing to provide telephone service. (Hr’g Tr. 452:20–453:1, 537:4–20). To this day, it provides telephone service in the same geographic footprint as when it was first created. (Hr’g Tr. 601:21–603:2). The Department’s longstanding practice has been to treat property as “rural” if it was located in the unincorporated portions of each county in which Farmers Coop operated, (Hr’g Tr. 124:5–125:5, 149:21–150:8), and for decades the Department has granted the exemption to Farmers Coop for providing telephone service within the same territory it has served since its inception. (Hr’g Tr. 601:15–603:2).

Diversified was created to provide landline telephone service in the rural communities within Farmers Coop’s geographic territory but which the Coop does not serve. (Hr’g Tr. 461:17–462:18, 543:18–25).²⁸ Likewise, FTCC serves small, poor, rural communities within the larger Farmers Coop territory. (Hr’g Tr. 549:18–550:7).²⁹

²⁸ Diversified provides telephone service in Kingstree, Manning, Lake City, Olanta, Summerton, Hemmingway, Johnsonville, Bishopville, and Sumter. (Hr’g Tr. 461:17–462:18, :602:14–19).

²⁹ There are some wireless companies (e.g. Verizon, T-Mobile, and Sprint) who provide wireless cellular service in portions of Farmers Coop’s ILEC territory, but none of those companies provide coverage for the entire territory. In

Neither the Taxing Entities nor the Department appear to challenge whether the Farmers Entities are providing telephone service in rural areas. Accordingly, the Court finds that Farmers Coop, FTCC, and Diversified are providing *rural* telephone service, and therefore their property used to provide such service qualifies for the Rural Telephone Service Exemption.

6. The Department Properly Granted FTCC and Diversified the Property Tax Exemption for Tax Years 2010–2015.

Having determined which property of FTCC and Diversified qualifies for the Rural Telephone Service Exemption, the Court now turns to the question of whether the Department properly granted FTCC and Diversified property tax exemptions in 2017 (by means of the Settlement Agreement) for the tax years 2010–2015. The Taxing Entities object to the grant on several grounds. First, the Taxing Entities argue that the Farmers Entities did not properly apply for the exemption and therefore cannot be granted the exemption. Second, the Taxing Entities argue the Department did not provide the affected counties with timely notice of the exemptions as required by statute and therefore the exemptions are unlawful.

Admittedly, the statutory framework regarding the application and granting of property tax exemptions is not easy to decipher. However, having reviewed the applicable law and the facts presented in this case, the Court finds that the Department acted within its statutory authority and discretion in granting the exemption and refund request and did not contravene the overall intent of the statutory process in the manner by which it notified the counties of the exemption decision.

a. FTCC and Diversified properly applied for the Rural Telephone Service Exemption.

Whether the Farmers Entities properly applied for the exemptions is a mixed question of law and fact. Under South Carolina law, the Department has the sole responsibility to appraise and assess the property of entities engaged in the telephone business. S.C. Code Ann. § 12-4-540(A)(1)(f) (2014). Taxpayers, including those engaged in the telephone business, must submit to the Department annual property tax returns by April 30 for taxpayers who have a December 31 year-end for income tax purposes. See S.C. Code Ann. § 12-37-970 (2014). The Department determines the property tax assessments from the return and supplemental records provided with

other words, FTCC is the only wireless provider that provides wireless service in the entirety of Farmers Coop's rural telephone service territory. (Hr'g Tr. 554:7–556:2)

the return. *Id.* The Department then forwards the assessments prepared from the returns submitted to the appropriate local taxing authorities by August 15 of the applicable tax year. *Id.*

Certain property is exempt from property tax in South Carolina, S.C. Code Ann. § 12-37-220 (2014), so property tax returns and exemptions are interrelated. The Department determines whether any property qualifies for an exemption from local property taxes under section 12-37-220. See S.C. Code Ann. § 12-4-710 (2014). For many exemptions, property taxpayers are required to submit an application for exemption. When property taxpayers are required to file applications for exemption, the following statutory provisions in section 12-4-720(A)–(C) are applicable:

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

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

(2) Owners of property exempt under Section 12-37-220(A)(8) shall file an application for exemption before the first penalty date for payment of property taxes.

(3) Applications for exemption are not required for properties owned by the United States Government or those exempt properties enumerated in Section 12-37-220(A)(1), (5), (6), (10), and (B)(9), (13), (14), (15), (17), (23), (25), and (30).

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

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

S.C. Code Ann. § 12-4-720(A)–(C) (2014). Upon receipt of an application for exemption and a proper investigation, the Department may declare property to be exempt. S.C. Code Ann. § 12-4-730 (2014). If so, the Department will then certify the exemption to the appropriate taxing authority, who will then void any existing tax notice applicable to the property. *Id.*

i. FTCC and Diversified applied for the Rural Telephone Service Exemption during the tax years at issue.

The Taxing Entities assert that the Department improperly granted the Rural Telephone Service Exemption for 2010 through 2015 because FTCC and Diversified did not properly apply for the Rural Telephone Service Exemption. However, the Court finds that the record evidence demonstrates FTCC (for 2010 through 2015) and Diversified (for 2013 through 2015) *did* apply for the exemption for each year.

The Taxing Entities rely on the language of section 12-4-720(C), which provides that a “taxpayer who is required to file property tax returns with the department shall claim any exemption on the return each year the property is exempt.” As the Taxing Entities see it, because the Settlement Agreement required FTCC and Diversified to provide amended tax returns for the tax years at issue specifically denoting which property was exempt, this necessarily means that the original returns did not adequately identify which property they were claiming was exempt and therefore FTCC and Diversified failed to comply with the requirements of section 12-4-720(C).

The Department has created a variety of forms that taxpayers must complete and file to constitute an application for a tax exemption. However, there is not a separate form on which rural telephone companies must apply for the Rural Telephone Service Exemption. Instead, telephone companies and cooperatives generally file the main utility property tax form (PT-420), along with either a PT-427 or a PT-429, which contains distribution information identifying the taxpayer’s gross investments by taxing district. Telephone companies and cooperatives that have received the exemption in the past also file copies of their annual report to the PSC, which the Department uses as a way to cross-check the value of the taxpayer’s gross investments. In other words, the Department has historically treated the combined PT-420, PT-427, and PT-429 (along with the PSC report) as the means by which a telephone company or cooperative claims the Rural Telephone Service Exemption. Farmers Coop has filed these forms every year, and the Department has granted the exemption to Farmers Coop.

For 2010 through 2015, FTCC annually filed Form PT-420, Form PT-427, and supplemental data in the same manner that Farmers Coop has historically filed those documents. The same was true for Diversified for 2013 through 2015. These returns and forms were prepared by the same individuals who prepared and filed the Farmers Coop returns. On each of these property tax returns, FTCC and Diversified labeled certain property as being in a “RURAL” tax district, just as Farmers Coop had historically done on its property tax returns. Because property

located in a municipality is not exempt under the Rural Telephone Service Exemption and municipalities are not considered to be rural areas, labeling certain property as “rural” appears to be an attempt by the taxpayer to claim the property as exempt in those “RURAL” areas. (Brewer Depo. 17:12–16).

Although the language of section 12-4-720(C) mandates that a taxpayer who is required to file property tax returns “shall claim any exemption on the return each year the property is exempt,” a careful reading of the entirety of section 12-4-720 indicates that this is not the *only* way that a taxpayer can apply for an exemption.³⁰ The fact that subsection (B) provides that a filed property tax return listing property as exempt is considered an application for exemption from property taxes suggests that there are ways to claim the exemption other than by listing the property as exempt on the property tax return. *See also TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (noting taxpayers may apply for exemptions separately from their tax returns). Moreover, section 12-4-720(A)(1) allows a taxpayer to file an application for a property tax exemption within the time period that a claim for refund can be filed under section 12-54-85, which is within three years from the time the return was filed or two years from the date the tax was paid, whichever is later. This means that a rural telephone cooperative could timely file an application for exemption up to three years after the due date of the respective property tax return. If the only way to apply for an exemption was by claiming it on the return when it was filed, as the Taxing Entities suggest, this interpretation would render subsection (A)(1) meaningless. *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (“[We must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous . . . for the General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.”).

Moreover, the statute provides that a claim for refund of property taxes may be made within three years of the tax being paid. The Department has interpreted this to mean that a taxpayer can file an amended return claiming the exemption and seeking a refund—even if the original return

³⁰ In fact, all that subsection (C) requires is that a taxpayer “claim” any exemption on its return each year the property is exempt. It is not entirely clear that “claiming” the exemption is synonymous with “applying” for the exemption. In fact, subsections (A)(1)–(3), as well as (B) and (D), use the term “application[s] for exemption,” but only subsection (C) discusses “claim[ing]” a property tax exemption. Regardless, the Court finds nothing in section 12-4-720 indicating that a taxpayer’s failure to claim an exemption on the return is fatal to the taxpayer’s application for the exemption.

had not claimed the exemption—so long as the amended return is filed within the standard three year statute of limitation. (Brewer Depo., 60:10–25, 62:19–63:22).

Based on the evidence presented at trial, the Court finds that FTCC and Diversified took several steps to claim or apply for the exemption during the tax years at issue. Both entities filed their returns and supplemental information in the same manner as Farmers Coop had always filed and received the Rural Telephone Service Exemption. Both FTCC and Diversified identified property as “rural” on their property tax returns as a means of claiming the exemption for those particular assets. In addition, counsel for both FTCC and Diversified sent multiple letters to the Department indicating that the taxpayers were claiming the Rural Telephone Service Exemption for their property, and at the same time filed written protests of the proposed assessments claiming that the Department did not properly assess the property because it failed to apply the Rural Telephone Service Exemption.³¹ And, once the appeal was finally resolved, FTCC and Diversified filed amended returns specifically identifying the assets that were exempt and non-exempt as negotiated under the terms of the Settlement Agreement.

Most telling is the fact that during the entire time period the Department was evaluating the applicability of the Rural Telephone Service Exemption, the Department never questioned whether FTCC or Diversified had actually applied for the exemption. Rather, the letters of protest were filed because the Department had not reduced the Farmers Entities’ assessments by the exemption, so the protests were treated as exemption requests. Because each protest was filed within three years from the due date of the applicable property tax return, the applications for exemption were timely filed for each year by FTCC and Diversified under section 12-4-720(A)(1).³²

³¹ The property tax returns for 2012 through 2015 were due on April 30 of each year. Three years after each tax return due date was April 30, 2015, April 30, 2016, April 30, 2017, and April 30, 2018, respectively. In letters to the Department dated October 1, 2012, February 18, 2014, November 6, 2014, and October 8, 2015, FTCC protested the proposed assessments for 2012, 2013, 2014, and 2015, respectively, for failure to exempt FTCC’s assets under section 12-37-220(B)(10). Similarly, in letters to the Department dated February 18, 2014, November 6, 2014, and October 8, 2015, Diversified protested the proposed assessments for 2013, 2014, and 2015, respectively, for failure to exempt Diversified’s assets under section 12-37-220(B)(10). If there was any question whether FTCC and Diversified had applied for the exemption by listing the property as exempt on the property tax returns, this correspondence removed all doubt.

³² The filing of each protest invoked the administrative remedy process for appealing proposed assessments and denials or tax exemptions. See S.C. Code Ann. § 12-60-2120 (2014). As part of this administrative remedy process, the Department and the Farmers Entities properly settled the case, which resulted in the granting of the exemption for 2012 through 2015 and a resulting refund. See S.C. Code Ann. §§ 12-4-320(4) (2014), 12-60-450(C)-(E) (2014), 12-60-2120(D) (2014).

ii. FTCC properly filed a claim for refund within the time period allowed by statute.

The South Carolina Revenue Procedures Act (RPA) gives a property taxpayer the right to file a claim for a refund of property taxes assessed by the Department and paid by the taxpayer if the taxpayer believes the property is exempt. S.C. Code Ann. § 12-60-2150(A) (2014) (governing claims for refunds for property valued by the Department). Section 12-60-2150 contains two inter-related limitations relating to properly requesting a refund of property taxes: the claim for a refund is subject to the limitations in S.C. Code Ann. § 12-60-1750 (2014) and must be submitted within the time limitation of S.C. Code Ann. § 12-54-85(F) (2014). *Id.* The limitation in section 12-60-1750 requires that, when the claimed refund relates to a property tax exemption, the application for exemption must be timely filed. S.C. Code Ann. § 12-60-1750(1) (2014). As discussed above, under section 12-4-720(A)(1) an application for exemption must be filed within the Department within the time period provided in section 12-54-85(F) for claims for refund. Thus, the deadlines both for filing an application for exemption and filing a claim for refund of taxes on an exempt property are governed by section 12-54-85(F)(1). *See* S.C. Code Ann. §§ 12-4-720(A)(1) (2014), 12-60-2150(A) (2014). In other words, a claim for refund of property taxes relating to a claimed exemption is timely if the exemption application and refund request are filed “within three years from the time the return was filed, or two years from the date the tax was paid, whichever is later.” S.C. Code Ann. § 12-54-85(F)(1) (2014).

FTCC timely filed a property tax return for property tax years 2010 and 2011. On December 28, 2012, FTCC sent a letter to the Department requesting a refund of \$726,966.53 for tax year 2010 and \$827,067.55 for tax year 2011. In its refund request, FTCC claimed it was not aware it could qualify for the property tax exemption as a single-member LLC until the decision in *CFRE, LLC v. Greenville County Assessor* clarified the tax status of a single limited liability company. *See* § 12-60-2150(C) (“If the claim for refund states the property is exempt, the claim for refund must state the basis on which exemption is claimed.”).

Here, FTCC’s claim for refund satisfied the time limitations in section 12-60-2150(A). The Department received FTCC’s 2010 and 2011 property tax returns before the April 30 due date of each return, so the filing date of those returns is deemed April 30, 2010 and April 30, 2011, respectively. *See* S.C. Code Ann. § 12-54-85(F)(5)(a) (2014) (“A return filed before the last day prescribed for the filing is considered as filed on the last day”). FTCC had three years from these

filing dates to file its respective application for the Rural Telephone Service Exemption or claim for a refund: April 30, 2013 and April 30, 2014, respectively. Because FTCC filed its combined application for exemption and claim for a refund for both 2010 and 2011 on or about December 28, 2012, it timely filed the applications for the Rural Telephone Exemption and the claims for a refund for both 2010 and 2011.

7. The Department complied with the statutory framework regarding proposed assessments, applications for exemptions, claims for refund, and taxpayer appeals.

Based on the testimony and evidence presented at the hearing, the Court finds that the Department complied with the statutory process of preparing and certifying property tax assessments, deciding on exemption requests, engaging in the administrative remedy process including settling cases, and certifying assessments after a settlement agreement.

a. The Department notified the affected counties about the property tax dispute.

The RPA sets forth the procedure for determining a dispute with the Department and a dispute concerning property taxes. *See* S.C. Code Ann. § 12-60-20.³³ Relevant to this contested case, the RPA gives a property taxpayer the right to seek a remedy for property tax matters that the taxpayer disputes—whether assessments, exemptions, or refunds. Although the RPA specifically addresses each of these disputes in separate subsections, the administrative appeals process for these disputes is largely the same and ultimately reverts to the general appeals procedures set forth in section 12-60-450.³⁴

When the Department receives a claim for refund of property taxes paid, it is required to notify any counties affected by the claim for refund. *See* S.C. Code Ann. § 12-60-2150(B). The version of section 12-60-2150 that was in effect during the relevant tax years at issues does not

³³ Subarticle 1 of Article 5 of the RPA provides the general appeal procedures; Subarticle 1 of Article 9 of the RPA provides the provisions applicable to all property tax protests, appeals, and refunds, while subarticle 5 contains the process for protests, appeals, and refunds for property valued by the Department and exemptions determinations. *See* 12-60-410 through -520, and 12-60-1710 through -2150.

³⁴ *See* S.C. Code Ann. § 12-60-2120(D) (providing that all appeals of property tax assessments proposed by a division of the department or denials of a tax exemption by the department “must be conducted as provided in Section 12-60-450(C) through (E)”; S.C. Code Ann. § 12-60-2150 (providing procedure for filing a claim for refund of property taxes and stating that “[a]ll appeals before the department must be conducted as provided in Section 12-60-450(C) through (E)”).

specify how the Department is required to notify the counties of the claim for refund or to whom the notification should be sent. However, subsection (B) provides that “[a] county auditor, upon notification, shall notify any affected municipalities or other political subdivisions.” In addition, section 12-60-2140(A) provides the following notification requirement regarding property tax appeals:

If it is reasonably expected that the appeal will not be resolved by December thirty-first of the tax year, the department shall notify the auditor of the county where the property is located to adjust the property tax assessment of property under protest to eighty percent of the protested property tax assessment, or any valuation greater than eighty percent agreed to in writing by the taxpayer, and enter the adjusted property tax assessment on the tax duplicate. The tax must be paid as in other cases.

S.C. Code Ann. § 12-60-2140. Thus, the statute appears to contemplate the county auditor is the person at the county who will receive (and disseminate) information from the Department related to property tax issues—whether appeals of assessments or refunds of taxes already paid.

Consistent with this interpretation of section 12-60-2150, the Department has historically considered the county auditor to be the point of contact at the county level with respect to property tax issues related to utilities. (Hr’g Tr. 182:15–23, 207:14–208:6, 233:10–22). When a taxpayer protests a property tax matter, the Department typically sends a memorandum to the counties notifying them of the protest, and the Department followed that standard process in this particular case. Although the memorandum does not typically contain an explanation of the nature of the protest, the memorandum the Department sent to the county auditors regarding FTCC’s and Diversified’s appeal also included a copy of the taxpayer’s letter of protest, which provided a more detailed explanation of the nature and basis of the protest and appeal. In fact, the information contained in the Department’s memoranda and documents provided to the county auditors is precisely the type of information that Clarendon County’s CFO testified would be helpful information to have for budgeting purposes: the name of the taxpayer, the fact that the taxpayer has protested the Department’s denial of a property tax exemption, and the proposed assessment value of the property for the current year. (Hr’g Tr. 94:20–96:8).

Thus, the Court finds that the Department fulfilled its statutory obligations of notifying the counties regarding the property tax appeals by FTCC and Diversified for tax years 2010–2015.

- b. The June 1 deadline in Section 12-4-710 does not bar the Farmers Entities from receiving the Rural Telephone Service Exemption and related refunds for the tax years at issue.**

The Taxing Entities also assert that the Department failed to comply with the statutory requirements of S.C. Code Ann. § 12-4-710 because it did not resolve the subject property tax exemption disputes by June 1 of each year. Section 12-4-710 provides that the Department must determine if any property qualifies for exemption from local property taxes under Section 12-37-220 in accordance with the Constitution and general laws of this State. This determination must be made on an annual basis and the appropriate county official so advised by June first of each year by the department.

S.C. Code Ann. § 12-4-710. The Taxing Entities argue that if the Department does not make a determination about all exemptions and advise the appropriate county official by June 1 of each year then any exemption granted after June 1 of the applicable tax year would be an illegal granting of a retroactive exemption. Thus, the Taxing Entities contend that because the Department did not enter into the Settlement Agreement until January of 2017, any exemptions granted for tax years prior June 1, 2017 are invalid.

The Department argues that the Taxing Entities' interpretation of section 12-4-710 is both inconsistent and impractical in terms of the overall statutory framework. First, the Department argues the June 1 deadline in section 12-4-710 conflicts with the provisions of sections 12-4-720 and -730. Under section 12-4-720, a property taxpayer may apply for an exemption by listing the property as exempt on its property tax return. Once the Department receives the application, it may declare the property exempt and notify the county auditor of its decision. S.C. Code Ann. § 12-4-730. Because there is not a separate form for rural telephone companies and cooperatives to apply for the Rural Telephone Service Exemption, most of them apply for the exemption on their property tax return. By law, the taxpayer can file its property tax return as late as the last day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes. *See* S.C. Code § 12-37-970. Thus, any taxpayer with an accounting period that ends on February 28 or later, who timely files its returns listing its property as exempt, would never be able to claim the exemption because that taxpayer is not even required to file its returns until after the June 1 deadline has passed.

Second, the Department contends that it is administratively impossible for the Department to resolve *all* exemption issues for a given tax year by June 1 of that tax year. Most companies and cooperatives apply for property tax exemptions by claiming property as exempt on their property tax return. Moreover, most manufacturers and utilities, including the rural telephone cooperatives,

use a calendar year accounting period. Thus, the Department receives the majority of these exemption requests at the time the returns are filed, which is typically sometime in April of each year. By that point, it is a practical impossibility for the Department—in less than a month—to review and determine the assessed value and any exemptions for most of the manufacturing and utility property in the state.

Third, the Department contends that the Taxing Entities interpretation of section 12-4-710 is not a reasonable interpretation of the statutory framework because it would not allow the taxpayer a meaningful opportunity to engage in the administrative remedy process. Even if a taxpayer applied for an exemption and the Department denied the exemption request prior to June 1, the taxpayer may invoke its administrative remedies under section 12-60-2120. The appeal of a property tax dispute, including potential litigation and a contested case hearing at the Administrative Law Court, can sometimes take months or even years to resolve, thereby extending resolution of the dispute far past June 1 of the tax year in question. In fact, section 12-60-2140, which directs the Department to notify the counties if an appeal will not be resolved by December 31 of the tax year (and issue corrected property tax assessments when the dispute is finally resolved) necessarily contemplates that an appeal of an exemption may not be finally resolved prior to June 1. Moreover, section 12-4-720(A) allows taxpayers to file their applications for exemption as late as three years after the property tax return was filed, which further illustrates that the Department could not resolve all exemption issues and advise the counties of such resolution by June 1 of the applicable tax year. In light of the apparent conflict between section 12-4-710 and sections 12-4-720 and 12-60-2140, the Department has not interpreted section 12-4-710 to require the Department to resolve and notify the counties of all issues about property tax exemptions by June 1 of each year.

In light of these concerns, the longstanding practice of the Department has been to follow the timeline in section 12-37-970 by deciding the exemption requests and property assessments simultaneously and then forwarding the property tax assessments, as affected by any exemptions, to the appropriate local taxing officials by August 15 of the applicable tax year. See S.C. Code Ann. § 12-37-970 (2014) (“The Department of Revenue shall forward the assessments prepared as a result of the returns submitted pursuant to this section to the appropriate local taxing authorities no later than August fifteenth of the applicable tax year.”). In fact, the testimony at trial revealed that the utilities section of the Property Division was not aware of and does not follow the June 1

deadline for purposes of notifying counties of property exemption decisions related to manufacturers or utilities; instead, it notifies the counties of exemption decisions by August 15 at the conclusion of the Department's assessment process. (Hr'g Tr. 145:21–146:3; Brewer Depo., 30:19–31:23, 57:15–58:11).

In keeping with this practice, the Department in this case sent multiple notices to the county auditors related to FTCC's and Diversified's protest regarding the Rural Telephone Service Exemption and the assessment of the subject property. The county auditors annually received the initial assessments for that tax year, which in this case was not reduced by the claimed Rural Telephone Service Exemption. Later, and in most instances during the applicable tax year, the county auditors annually received the 80% assessment, which informed the Taxing Entities of an ongoing property tax dispute, along with a memorandum further detailing the nature of the dispute.

Although the practical difficulties identified by the Department are legitimate, the Court cannot overlook the fact the section 12-4-710 clearly requires the Department to make determinations about property tax exemptions on an annual basis and advise the counties of the determination by June 1 of each year. However, the Court need not opine on whether the Department's longstanding process complies with the requirements of sections 12-4-710, -720, and -730 because the real issue at dispute in this case is whether the Department's failure to make a determination about the Farmers Entities' exemption request and notify the counties by June 1 of each tax year at issue here renders the exemption invalid for the Farmers Entities.

The Taxing Entities rely on *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998) as support for their argument that all property tax exemptions must be resolved by June 1 of each year and that failure to do so results in an invalid retroactive grant of a property tax exemption. The issue in *TNS Mills* was whether certain pollution control equipment qualified for a property tax exemption for tax years 1986 through 1991. *TNS Mills*, 331 S.C. 611, 615-16, 503 S.E.2d 471, 473-74 (1998). The court found that the taxpayer did not timely apply for the exemption and therefore was not eligible for a refund of property taxes it had previously paid. *TNS Mills*, 331 S.C. at 619, 503 S.E.2d at 475. In addition, the court found that the Department of Revenue could not grant retroactive exemptions where the taxpayer had failed to timely apply for the exemption. *Id.* at 621, 503 S.E.2d at 476.

The *TNS Mills* court was forced to reconcile the provisions of section 12-4-720, which required applications for the pollution control exemption to be filed by a specific date, with the

provisions of section 12-4-730, which allowed the Department to grant exemptions upon receipt of an application. The taxpayer asserted that the lack of a deadline in section 12-4-730 meant the Department could grant a retroactive exemption, but the court rejected that argument finding the lack of a deadline in section 12-4-730 did not alter the mandatory deadline for the pollution control exemption in section 12-4-720(A)(2). Moreover, the court noted that interpreting the statutes to allow a retroactive exemption would not fit within the procedural scheme, because the code also requires the Department to make annual determinations concerning exemptions and notify the counties by June 1. As the court noted, the language of the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. *Id.* at 620, 503 S.E.2d at 476.

The analysis in *TNS Mills* is instructive in this case, although its holding is not necessarily dispositive. As the *TNS Mills* court noted, county budgets rely on ad valorem tax revenues, and the overall statutory scheme in section 12-4-710 indicated an intent by the General Assembly that the Department determine all property tax exemption requests on an annual basis and within a general timeframe that allows the counties to plan their budgets based on the property tax exemptions. Thus, the statutes at issue should be construed with this intent in mind.

However, the specific statutes analyzed in *TNS Mills* have since been amended. Although the June 1 deadline was in place during the tax years relevant to *TNS Mills*, see S.C. Code Ann. § 12-4-710 (Supp. 1991), the primary statute at issue was section § 12-4-720(A)(1) and (2) (Supp. 1991), which had specific deadlines for applying for certain property tax exemptions, including the pollution control exemption.³⁵ That statute was amended in 1995 to include the language that was in effect during the tax years at issue in the instant case. Under the 1995 amendment, a property owner may apply for the exemption with the Department within the 3 year period for refund claims; one way to apply is by filing a property tax return listing the property as exempt. See S.C. Code Ann. § 12-4-720(A)(1), (2) (2014). Thereafter, the property owner is not required to file more than one application for each exemption, but once the exemption is granted the property owner is

³⁵ For exemptions other than the pollution control exemption, section 12-4-720(A)(1) required a tax-exempt property owner to file an application with the Tax Commission between January 1 and April 15 of the first year for which the exemption is claimed. S.C. Code Ann. § 12-4-720(A)(1) (Supp. 1991). Thereafter, the owner was not required to file an additional application unless there was a change in the status of the property or a different exemption was requested. S.C. Code Ann. § 12-4-720(A) (Supp. 1991). Presumably this timeframe applied to the rural telephone service exemption.

required to claim the exemption on the return each year the property is exempt. *See* S.C. Code Ann. § 12-4-720(B)–(D) (2014).

In other words, at the time of *TNS Mills* a rural telephone cooperative would have been required to apply for the Rural Telephone Service Exemption by April 15 of the first year for which the exemption was being claimed, but thereafter need not reapply unless the status of the property changed. After the 1995 amendment, however, a rural telephone cooperative can apply for the exemption by listing the property as exempt on its returns or by filing some other application with the Department, but the timeframe to apply for the exemption was extended to match the time period provided for claims for refund (3 years).³⁶ In addition, once the exemption is granted the rural telephone cooperative need not reapply for the exemption each year, but it does need to claim the exemption on each property tax return in subsequent tax years.

Furthermore, underlying the court’s analysis in *TNS Mills* was the fact that the taxpayer admitted it had not timely applied for the property tax exemption, and the Tax Commission had determined that the taxpayer was not entitled to retroactive property tax exemptions. That is not the case here. As discussed above, the totality of the evidence indicates that the taxpayers did timely apply for the exemption and timely seek a refund of taxes paid in prior tax years, as permitted under section 12-4-720. In other words, unlike the taxpayer in *TNS Mills*, the taxpayers in this case did everything they were required to do under the statute in order to apply for and claim the Rural Telephone Service Exemption. Importantly, the Court finds nothing in the relevant statutes suggesting that a taxpayer can lose its right to a property tax exemption—for which it had properly and timely applied and to which it was legally entitled—as a result of the Department’s subsequent failure to comply with a reporting or notification deadline to the counties.

Thus, the Court finds that the Settlement Agreement granting the Rural Telephone Service Exemption to FTCC and Diversified for tax years 2010–2015 is not an illegal retroactive exemption.

³⁶ At first glance, allowing taxpayers three years to apply for a property tax exemption seems to conflict with the separate obligation of the Department to determine property exemptions and notify counties by June 1 of each year. However, as the *TNS Mills* court noted, the General Assembly had repeatedly extended the deadline for filing exemption applications in the years leading up to the *TNS Mills* dispute, even though the June 1 deadline was statutorily required during that timeframe. *TNS Mills*, 331 S.C. at 623, 503 S.E.2d at 477 (noting that in 1985 the legislature extended the exemption application deadline for tax years 1981–1985 to July 1, 1985; then extended tax years 1985–1987 to July 1, 1987; then extended tax years 1985–1988 to July 1, 1988; and finally extended tax years 1988–1989 to July 1, 1990). Thus, the 1995 amendment that granted a three year extension to apply for the exemption seems to be in keeping with the General Assembly’s prior extensions.

c. The Department has the statutory authority to settle this disputed property tax matter with the Farmers Entities.

The appeals process begins when the taxpayer files a written protest with the Department following receipt of a decision by a division of the Department. *See* S.C. Code Ann. § 12-60-2120(A)–(B); § 12-60-2150(A) and (C). After the protest is filed, the RPA provides that the Department and property taxpayer “shall stipulate the facts and issues upon which they can agree and may attempt to settle the case.” S.C. Code Ann. §§ 12-60-450(D). In other words, the RPA grants the Department the statutory authority and discretion to settle property tax disputes. *See* S.C. Code Ann. § 12-4-320(3) (2014) (granting the Department the explicit authority to “compromise *any tax* imposed by [Title 12]”); *compare* S.C. Code Ann. § 12-60-2120, -2150 (providing that appeals of property taxes must be conducted in accordance with § 12-60-450(C)–(E)), *with* S.C. Code Ann. § 12-60-450(C)–(E) (providing that the Department “may attempt to settle the case” after the property taxpayer has filed its protest).

The Department has issued guidance consistent with this portion of the RPA that sets forth its internal appeals process and procedure. (Ex. 184). As set forth in Rev. Proc. #06-2, the appropriate division of the Department will issue a proposed assessment indicating that a tax is due, assessing property, denying a property tax exemption, or some other action adverse to the taxpayer. *Id.* at 4. Once the taxpayer submits a written protest, the Department will attempt to conduct a conference with the taxpayer to determine whether the protest can be resolved. *Id.* at 6. If the protest is not resolved, the file is forwarded to the Office of General Counsel for Litigation, where a Department representative is assigned to review the file and either prepare the Department’s determination or attempt to resolve the dispute. *Id.* As provided in the RPA, “the Department representative has the authority to settle cases based upon the hazards of litigation.” *Id.* (emphasis added). A settlement based on the hazards of litigation must be reviewed by the Department’s General Counsel for Litigation (or designee) and authorized by the Department’s Director (or designee).

Here, the record evidence demonstrates that the Department followed the RPA and its own internal procedures when it conducted a review of the subject property tax dispute and ultimately chose to settle the case. After the Farmers Entities submitted written protests of the proposed assessment and initial denial of the exemption application, Department personnel (both in the Property Division and Office of General Counsel) met with the Farmers Entities or its counsel on

a number of occasions to discuss whether the protest could be resolved. Once a settlement was proposed, the Department's General Counsel for Litigation reviewed the Settlement Agreement, and the totality of the evidence indicates that the Settlement Agreement was approved by the Director. (Exs. 91, 140, 141, and 147). Therefore, the Court finds that the granting of the exemption for 2010–2015 pursuant to the Settlement Agreement complies with the applicable statutory framework for the administrative review process available to property taxpayers who claim a refund.³⁷

d. FTCC and Diversified are entitled to a refund of any overpaid taxes for tax years 2010 to present.

Under the RPA, if the resolution of a property tax protest—whether through settlement or a court decision—results in a change to the proposed assessment of the property tax, the Department is required to certify a revised assessment to the applicable counties, which may result in an additional tax payment from the taxpayer or in a refund from the applicable local governing bodies. See S.C. Code Ann. § 12-60-2140(B)-(D) (2014).

In this matter, the Department followed the statutory framework for assessing property and exemption requests of rural telephone cooperatives and working with the property taxpayers through their administrative remedies as set forth by the General Assembly. The Department notified the appropriate official at each county that the Farmers Entities had appealed the initial assessments by sending an assessment for 80% of the initial assessments. S.C. Code Ann. § 12-60-2140(A) (2014). After the refund claims and protests were filed with the Department, the Department discussed the facts and issues with the Farmers Entities and ultimately settled the case. See S.C. Code Ann. §§ 12-4-320(3)-(4) (2014), 12-60-450(D)(1) (2014), 12-60-2120(D) (2014), 12-60-2150(F) (2014).

Finally, after the Settlement Agreement was executed, the Department's Property Division prepared and issued the Post-Settlement Assessment Certifications to the appropriate county

³⁷ The Taxing Entities challenge the validity and effect of the Settlement Agreement on several grounds. Similarly, the Farmers Entities and Department contend that S.C. Code Ann. § 12-4-320(4) precludes this Court from reviewing the terms of the Settlement Agreement. However, the Court need not address whether section 12-4-320(4) bars judicial review of the Settlement Agreement because the Court has already determined that the property at issue in the Settlement Agreement qualifies for the Rural Telephone Service Exemption. Moreover, because the Taxing Entities have been given the opportunity in this contested case hearing to review the Department's decision regarding the property at issue in the Settlement Agreement, the Court need not determine whether the Department's interpretation of section 12-4-320(4) and its decision to enter into a Settlement Agreement conflicts with the appeal rights of counties and local governments as provided in the Revenue Procedures Act.

officials under which “[t]he overpayment of tax must be refunded.” S.C. Code Ann. § 12-60-2140(C) (2014). Accordingly, the Court finds that FTCC and Diversified are entitled to a refund from the Taxing Entities of taxes paid in 2010–2011 for any property that is used to provide rural telephone service.³⁸

CONCLUSION

After considering the evidence in the record and the pertinent legal authorities, I conclude that the reliable evidence presented at the hearing supports the finding that FTCC’s property and assets used to provide wireless cellular service is exempt from ad valorem taxation under the Rural Telephone Service Exemption. Likewise, I conclude that Farmers Coop’s and Diversified’s property and assets used to provide landline telephone service is also exempt from ad valorem taxation under the Rural Telephone Service Exemption. However, I conclude that any property owned by Farmers Coop, FTCC, or Diversified that is used exclusively to provide Internet, television or IPTV, or security services is not exempt from ad valorem taxation under the Rural Telephone Service Exemption.

Further, I conclude that the Settlement Agreement between the Department and FTCC and Diversified is a valid resolution of the property tax assessment in dispute for 2010–2015, and therefore FTCC and Diversified are entitled to a refund of property taxes from the applicable taxing entities for tax years 2010 through 2015. FTCC and Diversified are also entitled to a refund for any portion of ad valorem taxes paid in tax years subsequent to 2015 on property that is used to provide rural telephone service.

ORDER

IT IS THEREFORE ORDERED that Farmers Coop’s property used to provide rural landline telephone service or wireless cellular service is 100% exempt from ad valorem taxation under the Rural Telephone Service Exemption.

³⁸ The Taxing Entities also challenge the validity of the Settlement Agreement on the grounds that it purports to bind a non-party to its terms by requiring the Taxing Entities to issue refunds to the Farmers Entities for any overpayment of taxes. (Ex. 91). This argument is misplaced. The Taxing Entities’ duty to issue refunds is imposed by statute, not by the Settlement Agreement. See S.C. Code Ann. § 12-60-2140(C) (requiring refund of overpayment of taxes once the property tax appeal is finally determined). The fact the Settlement Agreement merely memorializes what the statute requires does not mean the Settlement Agreement has improperly bound a third-party to its terms such that the agreement should be rendered invalid.

IT IS FURTHER ORDERED that FTCC's property used to provide wireless cellular service is 100% exempt from ad valorem taxation under the Rural Telephone Service Exemption, and FTCC is entitled to a refund of any ad valorem taxes paid for this property since 2010.

IT IS FURTHER ORDERED that Diversified's property used to provide rural landline telephone service is 100% exempt from ad valorem taxation under the Rural Telephone Service Exemption, and Diversified is entitled to a refund of any ad valorem taxes paid for this property since 2013.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

September 20, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Clarendon County, Florence County, Lee)
County, Sumter County, Williamsburg)
County, Williamsburg County School)
District, Clarendon School District Two,)
Florence School District One, Florence)
School District Three, Sumter County)
School District, Clarendon County Hospital)
District, Lee County School District, and)
Clarendon School District One,)

Petitioners,)

vs.)

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

Respondents.)

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

FINAL ORDER
(PROPOSED BY THE TAXING ENTITIES)

APPEARANCES:

Walter H. Cartin, Esq., Michael E. Kozlarek, Esq. and Madison Felder, Esq for Petitioners 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.

Jason P. Luther, Esq. and Andrew W. Saleeby, Esq. for Respondent South Carolina Department of Revenue.

John C. von Lehe, Jr., Esq., Bryson M. Geer, Esq., and William E. Durant, Jr., Esq. for Respondents Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC.

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to Petitioners 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’s (each a “Taxing Entity,” and collectively, the “Taxing Entities”) request for a contested case hearing. The Taxing Entities challenge the South Carolina Department of Revenue’s (“Department”) decision to grant certain ad valorem property tax exemptions to FTCC Communications, LLC (“FTCC”) and FTC Diversified Services, LLC (“Diversified,” and collectively with FTCC, the “Taxpayers”) under S.C. Code Ann. § 12-37-220(B)(10) (the “Rural Telephone Service Exemption”) for tax years 2010 through 2018.

A hearing on this matter was held before the ALC in Columbia, South Carolina, from May 20, 2019, to May 24, 2019.

ISSUES

(1) Whether exemptions that are granted in tax year 2017, but which are applicable to tax years 2010 through 2018, are illegally retroactive where the Taxpayers failed to comply with the exemption application requirements of S.C. Code Ann. § 12-4-720 and § 12-60-1750?

(2) Whether exemptions that are granted in tax year 2017, but which are applicable to tax years 2010 through 2018, are illegally retroactive where the Department failed to comply with the annual determination and annual County notification requirements of S.C. Code Ann. § 12-4-710?

(3) Whether the Taxpayers’ property is exempt from ad valorem taxation under the Rural Telephone Service Exemption for tax years 2010 through 2018?

FINDINGS OF FACT

I. Background

A. The Parties

Farmers Telephone Cooperative, Inc. (“Farmers”) was incorporated in South Carolina in 1952. (Stip. of Facts ¶ 1). Farmers provides landline service, wireless service, broadband/internet service, television service, and security services in South Carolina. (Trial Tr. 538:23–539:7). The property Farmers owns and uses to provide rural telephone service in South Carolina has been exempted from ad valorem property taxation under the Rural Telephone Service Exemption located in section 12-37-220(B)(10) of the South Carolina Code. (Trial Tr. 124:15–20).

FTCC was organized as a limited liability company in South Carolina on July 1, 2009. It is a single-member LLC. (Stip. of Facts ¶ 2). Diversified was organized as a limited liability company in South Carolina on July 1, 2012. It is a single-member LLC. (Stip. of Facts ¶ 3). FTCC and Diversified are each a wholly owned subsidiary of Farmers. (Trial Tr. 458:25–459:3; 462:19–21). For taxing purposes, FTCC and Diversified are not regarded as separate entities from their owner, Farmers. *See* S.C. Code Ann. § 12-2-25(B)(1); *see also* *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 78–79, 716 S.E.2d 877, 883–84 (2011).

FTCC provides wireless cellular service, operator service, and answering services. Diversified provides landline telephone service, television service, internet service, and security services. (Stip. of Facts ¶ 4).

The Taxing Entities include five South Carolina Counties: Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County (each a “County,” and collectively, the “Counties”), and eight other governmental entities: 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 (each a “District,” and collectively, the “Districts”). (Stip. Of Facts ¶¶ 5–6).

Farmers’ and the Taxpayers’ property is located throughout each County and each District, and is used to provide the Taxpayers’ customers with a range of services, including landline telephone service, wireless cellular service, broadband/internet service, television service, and security services. (Stip. of Facts ¶ 4).

B. The Taxing Entities’ Budgeting Process and Property Tax Administration

State law requires the Taxing Entities to adopt their annual budgets before the fiscal year begins on July 1. (Stip. of Facts ¶ 30)); *see also* S.C. Code ann. §§ 4-9-140; 6-11-260. As a result, June 30 is the deadline for each Taxing Entity to adopt its budget for the upcoming fiscal year. (Stip. of Facts ¶ 30).

The Taxing Entities’ ad valorem property tax revenues are managed, at various points, by each Taxing Entities’ respective County Assessor, County Auditor, and County Treasurer. (Stip. of Facts ¶¶ 31 & 35). The County Assessor values and assesses certain real property located within the Taxing Entity. (*Id.*) The County Auditor values and assesses certain personal property located within the Taxing entity and is responsible for coordinating with certain governmental bodies authorized to impose millage in order to ensure the millage rate is correct. (*Id.*) The County Treasurer issues and collects tax bills on behalf of the County, the Districts, and other local governmental entities. (*Id.*) For utility taxpayers, like the Taxpayers in this case, the Department communicates directly with the County Auditor by providing assessment notifications and certifications regarding the value of certain property, which the County Auditor enters onto the tax duplicate and uses to apply the appropriate millage rates for the various governmental bodies authorized to impose millage. (*Id.*) Both the County Auditor and the

County Treasurer are completely independent, elected officials who report directly to the citizens of their respective county. (Trial Tr. 61:22–25) (*See also* Ruple Dep. Designations 83:14–23).

Clarendon County’s (“Clarendon”) Chief Financial Officer, Lynden Anthony, testified in detail about Clarendon’s budgeting process and the importance of receiving timely notification of ad valorem property tax exemptions by the June 1st deadline each year. (Trial Tr. 52–97). According to Mr. Anthony, Clarendon’s budgeting process spans a four-month period, beginning in March and ending in June of each year. (Trial Tr. 56:12–13). Because of competing interests among constituent groups, identifying the most important issues to Clarendon as a whole, and allocating the budget to address these issues, takes considerable time and resources. (Trial Tr. 56:20–25). Finalizing Clarendon’s budget requires three separate council readings, as well as a public hearing, for the budget to be fully approved. (Trial Tr. 65:7–22).

According to Mr. Anthony, timely notification of property tax exemptions is important because Clarendon’s budget becomes finalized upon the council’s final reading in mid-June of each year. (Trial Tr. 66:2–7). Ad valorem property tax revenues account for approximately 75% of Clarendon’s overall revenue. (Trial Tr. 67:15–18). Finalization of Clarendon’s budget in June is necessary in order for Clarendon to have an effective budget beginning no later than July 1. (Trial Tr. 66:8–21). Without a finalized and effective budget beginning on July 1, Clarendon would be without authorization to contract for goods and services and would, thus, be incapable of making many needed operational decisions throughout the year. (Trial Tr. 66:8–67:9). Mr. Anthony testified that, had the Department timely notified Clarendon about the property tax exemption, Clarendon would have been able to revise and adjust its budget prior to being finalized by council readings and a public hearing. (Trial Tr. 80:21–81:10).

C. The Taxpayers' Property Tax Returns

For tax years 2010 and 2011, FTCC submitted its property tax returns and supplemental data to the Department. The Department issued proposed assessments valuing FTCC's property at \$2,356,910 and \$2,799,110, respectively. (Trial Exs. 9, 10, 13, & 14). The Department then allocated the assessed value of FTCC's property to each of the Counties. Once the Counties received the Department's allocations, each County sent a property tax bill to FTCC. In 2010 and 2011, FTCC paid its tax bills without protest. (Trial Tr. 474:1–475:7).

In 2012, FTCC filed its property tax return and the Department issued a proposed assessment valuing FTCC's property at \$3,024,480. (Trial Exs. 18–19). However, on October 11, 2012, FTCC sent a letter to the Department protesting the 2012 proposed assessment on the ground that FTCC's property should have been exempted pursuant to section 12-37-220(B)(10). (Trial Ex. 22). According to the Department's utility assessment coordinator, Taylor Ingram, no taxpayer had ever requested the Rural Telephone Service Exemption on assets used to provide wireless cellular services, and no other taxpayer is currently benefitting from the Rural Telephone Service Exemption on assets used to provide wireless cellular services. (Ingram Dep. Designations 38:20–39:5; 100:20–101:4). As a result of the protest, the Department issued a revised proposed assessment representing 80% of the original assessment. (Trial Ex. 23). The Department then sent a memorandum to the respective county auditor for each Taxing Entity advising that FTCC had protested the 2012 assessment. (Trial Ex. 94).

On December 28, 2012, FTCC sent another letter to the Department in which it requested a refund for tax years 2010 and 2011 for certain property that it claimed to be exempt under section 12-37-220(B)(10). (Stip. of Facts ¶ 13) (Trial Ex. 15). This was the first time FTCC had made a written request for a refund based on the Rural Telephone Service Exemption. (Trial Tr. 685:3–686:4).

On April 30, 2013, FTCC filed a property tax return for tax year 2013. (Stip. of Facts ¶ 14) (Trial Ex. 31). On January 14, 2014, the Department issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of \$3,928,850. (Stip. of Facts ¶ 14). (Trial Ex. 35). The Department allocated the assessed value to the counties of Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg. (Stip. of Facts ¶ 14).

On or about April 30, 2013, Diversified filed a property tax return for tax year 2013. (Stip. of Facts ¶ 15) (Trial Ex. 55). On January 15, 2014, the Department issued a Proposed Assessment to Diversified for tax year 2013. (Stip. of Facts ¶ 15) (Trial Ex. 56). The Department determined Diversified's property had an assessed value of \$2,943,310. (Stip. of Facts ¶ 15). The Department allocated the assessed value to the counties of Clarendon, Florence, Lee, Sumter, and Williamsburg. (Stip. of Facts ¶ 15).

In a letter dated February 18, 2014, FTCC and Diversified protested the proposed assessments from the Department for tax year 2013 because the assessments did not exempt FTCC's and Diversified's properties from ad valorem taxation pursuant to section 12-37-220(B)(10). (Stip. of Facts ¶ 16) (Trial Ex. 79). As a result of the protest, on February 27, 2014, the Department issued a revised proposed assessment to FTCC and Diversified representing 80% of each entities' original 2013 property tax assessment. (Stip. of Facts ¶ 17) (Trial Ex. 57). The Department also sent a Memorandum to the county auditors for the Taxing Entities advising that FTCC and Diversified had protested the 2013 assessments. (Stip. of Facts ¶ 17). (Trial Exs. 99–102). As a result of the protest, FTCC and Diversified were billed for 80% of the assessments, which they paid. (Stip. of Facts ¶ 17).

On April 25, 2014, Diversified filed a property tax return for tax year 2014. (Stip. of Facts ¶ 18) (Trial Ex. 60). On August 12, 2014, the Department issued a Proposed Assessment to Diversified, proposing a property tax assessment of \$2,767,670 against Diversified's property

for tax year 2014. (Stip. of Facts ¶ 18) (Trial Ex. 61). The Proposed Assessment included a Distribution Report, in which the Department allocated the assessed value to the counties of Clarendon, Florence, Lee, Sumter, and Williamsburg. (Stip. of Facts ¶ 18).

On April 28, 2014, FTCC filed a property tax return for tax year 2014. (Stip. of Facts ¶ 19) (Trial Ex. 39). On August 12, 2014, the Department issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of \$4,379,100. (Stip. of Facts ¶ 19) (Trial Ex. 40). The Department allocated the assessed value to the counties of Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg. (Stip. of Facts ¶ 19).

In a letter dated November 6, 2014, FTCC and Diversified protested the proposed assessments from the Department for tax year 2014 because the assessments did not exempt FTCC's and Diversified's properties from ad valorem taxation pursuant to Section 12-37-220(B)(10). (Stip. of Facts ¶ 20) (Trial Ex. 81). As a result of the protest, on December 16, 2014, the Department issued a revised proposed assessment to FTCC and Diversified representing 80% of each entity's original 2014 property tax assessments. (Stip. of Facts ¶ 21) (Trial Exs. 41 & 62). The Department also sent a Memorandum to the county auditors for the Taxing Entities advising that FTCC and Diversified had protested the 2014 assessments. (Stip. of Facts ¶ 21) (Trial Exs. 103–105). As a result of the protest, FTCC and Diversified were billed for 80% of the assessments, which they paid. (Stip. of Facts ¶ 21).

On April 24, 2015, FTCC filed a property tax return for tax year 2015. (Stip. of Facts ¶ 22) (Trial Ex. 44). On August 24, 2015, the Department issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of \$4,306,020. (Stip. of Facts ¶ 22) (Trial Ex. 45). The Department allocated the assessed value to the counties of Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg. (Stip. of Facts ¶ 22).

On April 24, 2015, Diversified filed a property tax return for tax year 2015. (Stip. of Facts ¶ 23) (Trial Ex. 65). On August 24, 2015, the Department issued a proposed assessment to Diversified for tax year 2015. (Stip. of Facts ¶ 23) (Trial Ex. 66). The Department determined Diversified's property had an assessed value of \$2,556,670. The Department allocated the assessed value to the counties of Clarendon, Florence, Lee, Sumter, and Williamsburg. (Stip. of Facts ¶ 23).

In a letter dated October 8, 2015, FTCC and Diversified protested the proposed assessments from the Department for tax year 2015 because the assessments did not exempt FTCC's and Diversified's properties from property tax pursuant to Section 12-37-220(B)(10). (Stip. of Facts ¶ 24) (Trial Ex. 86). On October 26, 2015, the Department issued a revised proposed assessment to FTCC and Diversified representing 80% of the original 2015 property tax assessments. (Stip. of Facts ¶ 25) (Trial Exs. 46 & 67). As a result of the protest, FTCC and Diversified were billed for 80% of their respective assessments for tax year 2015, which they paid. (Stip. of Facts ¶ 24).

On April 25, 2016, FTCC and Diversified filed property tax returns for tax year 2016. (Stip. of Facts ¶ 26). On August 16, 2016, the Department sent a memorandum to the county auditors for the Taxing Entities with utility certifications for the 2016 tax year. (Stip. of Facts ¶ 26). The certifications for FTCC and Diversified for tax year 2016 noted the status as "under appeal," (Stip. of Facts ¶ 26), but contained no description of what the "appeal" involved. (See Trial Ex. 114).

On April 25, 2017, FTCC and Diversified filed property tax returns for tax year 2017. (Stip. of Facts ¶ 27). On April 23, 2018, FTCC and Diversified filed property tax returns for tax year 2018. (Stip. of Facts ¶ 28).

D. The Settlement Agreement

On January 8, 2017, the Department, FTCC and Diversified entered into an agreement (the “Settlement Agreement”), wherein the Department granted FTCC and Diversified the Rural Telephone Service Exemption for tax years 2010 through 2016.¹ (Stip. of Facts ¶ 36) (Trial Ex. 91). In the Settlement Agreement, the Department and the Taxpayers agreed that property used to provide FTCC’s wireless cellular service and Diversified’s landline telephone service qualified for the ad valorem property tax exemption pursuant to section 12-37-220(B)(10). *Id.* Additionally, they agreed that the property FTCC and Diversified used to provide other services is not exempt from ad valorem property taxes at any level. *Id.* Further, they agreed FTCC and Diversified would file amended property tax returns for every applicable year to allow the Department to calculate and certify revised assessments to the applicable counties. *Id.* Moreover, once the Department made its revised assessments, the Department would certify the final assessments for the applicable years. *Id.* The re-assessments would exempt the property used to provide FTCC’s wireless cellular service and Diversified’s landline telephone service from ad valorem property taxation under section 12-37-220(B)(10). *Id.* After each County received the certified final assessments, the Settlement Agreement would require each county to calculate a revised property tax amount for each tax year. *Id.* For each year, FTCC and Diversified would either make payment in a timely manner if additional taxes were owed or, if an overpayment was determined,

FTCC and Diversified agree to provide the counties an option to refund or credit the overpayment over the three property tax years immediately succeeding the property tax year in which the overpayment is determined. The forgoing provision shall not prevent FTCC, Diversified, and a county from mutually agreeing to refund an overpayment in another manner or in a different time period.

(Trial Ex. 91 §§ 2.1–2.4).

¹ Diversified did not exist until 2012, and therefore was only granted the exemption beginning in 2013.

Following the Settlement Agreement, FTCC and Diversified filed revised PT-427 Forms for tax years 2010 through 2016 on January 20, 2017. (Trial Ex. 92). The revised Forms made two primary changes to the original forms: (1) segregating the assets by line of business and (2) inserting a typewritten label of “exempt” near the top right hand corner for only the assets being claimed as exempt pursuant to the Rural Telephone Service Exemption. The Department reviewed the amended Forms for FTCC and Diversified and calculated revised assessments. In the revised assessments, the Department exempted assets reported as being used in FTCC’s wireless cellular service and assets reported as being used in Diversified’s landline telephone service under section 12-37-220(B)(10). (Trial Exs. 12, 17, 30, 43, 48, 59, 64, & 69).

On June 14, 2017, the respective county auditors for Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County received notice of the Settlement Agreement in a memo from the Department. (Stip. of Facts ¶ 48). (Trial Exs. 115–119). Also on June 14, 2017, the Department certified the final revised assessments to FTCC for tax years 2010 through 2015, and for Diversified for tax years 2013 through 2015. For FTCC, the final revised assessments proposed a property tax assessment of \$236,490 for tax year 2010; \$290,560 for tax year 2011; \$308,630 for tax year 2012; \$373,570 for tax year 2013; \$392,790 for tax year 2014; and \$411,910 for tax year 2015. (Stip. of Facts ¶¶ 39–44). For Diversified, the final revised assessments proposed a property tax assessment of \$2,717,450 for tax year 2013; \$2,547,140 for tax year 2014; and \$2,287,440 for tax year 2015. (Stip. of Facts ¶¶ 45–47). On June 21, 2017, Clarendon County received a copy of the Settlement Agreement, which was dated January 8, 2017.

Thereafter, in memoranda dated July 6, 2017, regarding “Utility Appeal Resolution Certification[s],” the Department told Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County, in relevant part:

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

(Trial Exs. 124–28). The Department also attached to the memoranda the Utilities Supplemental Certifications (“Supplemental Certifications”) for FTCC for tax years 2010 through 2016 and for Diversified for tax years 2013 through 2016. The Supplemental Certifications provided that the Taxpayers were entitled to substantial refunds for tax years 2010 through 2016.

On July 6, 2017, the Department certified the final revised assessments to FTCC and Diversified for tax year 2016. (Trial Exs. 124–128). For FTCC, the final revised assessment proposed a property tax assessment of \$588,670 for tax year 2016. (Stip. of Facts ¶ 49). For Diversified, the final revised assessment proposed a property tax assessment of \$2,287,440 for tax year 2016. (Stip. of Facts ¶ 50). Also, the County Auditor for each County received a revised notice of the Settlement Agreement in a memo from the Department dated July 6, 2017 (Stip. of Facts ¶ 51).

On July 10, 2017, Clarendon County filed a request for a contested case hearing challenging certain property tax exemptions granted by the Department to FTCC and Diversified. On July 14, 2017, Florence County, Lee County, Sumter County, Williamsburg County, and Williamsburg County School District moved to intervene in this action. Thereafter, Clarendon School District Two, Florence School Districts One and Three, Sumter School District, and Clarendon Hospital District moved to intervene. The Court added Farmers as a Respondent on August 15, 2017. On September 1, 2017, this Court issued a consent order allowing Florence County, Lee County, Sumter County, Williamsburg County, and Williamsburg County to intervene. On September 20, 2017, Lee County School District moved

to intervene, and was allowed to join this action by consent order issued September 26, 2017. On October 3, 2017, Clarendon School District One moved to intervene, and was allowed to join this action by consent order issued October 5, 2017.

On August 16, 2017, the Department certified the final assessments to FTCC and Diversified for tax year 2017. (Trial Ex. 129). On August 24, 2017, the Department certified the revised final assessment to FTCC and Diversified for tax year 2017. (Trial Ex. 130). The Taxing Entities filed additional supplements challenging the Department's Certifications for tax year 2017, which granted FTCC and Diversified the Rural Telephone Service Exemption. On August 15, 2018, the Department certified the final assessments to FTCC and Diversified for tax year 2018.² On August 23, 2018, the Department certified the revised final assessment to FTCC and Diversified for tax year 2018.³ On September 10, 2018, the Taxing Entities filed additional supplements challenging the Department's Certifications for tax year 2018, which also granted FTCC and Diversified the Rural Telephone Service Exemption. In summary, the Taxing Entities properly and timely filed a request for contested case hearing in this matter relating to each tax year from 2010 through 2018.

E. Originally Filed Property Tax Returns, Claims for Refund, and Protests

In order to fully analyze the Taxing Entities' procedural arguments, it is necessary to include a more detailed discussion about the tax returns and the protests filed by the Taxpayers. Mr. Ingram, who oversees the property tax return process for the Department, testified as to the substance of the Taxpayers' original property tax returns for tax years 2010 through 2016. (*See generally* Trial Tr. 149:20–167:20). In his role as utility assessment coordinator, Mr. Ingram is responsible for reviewing property tax returns of utility companies, including, specifically, telephone companies and rural telephone cooperatives. (Trial Tr. 101:7–13). When reviewing

² See Consolidate Supplement to Request for Contested Case Hearing, filed September 10, 2018 with the Administrative Law Court.

³ *Id.*

property tax returns, Mr. Ingram reviews the returns to ensure they have been filed timely and to make a determination regarding the property's assessed value. (Trial Tr. 100:12–25). Mr. Ingram relies almost entirely on the documentation submitted by taxpayers and is unable to personally investigate how taxpayers are using their property. (Ingram Dep. Designations 63:5–64:22). As such, he relies on taxpayers providing accurate information. *Id.*

Mr. Ingram reviewed the original returns for the Taxpayers and stated that he could not tell from the face of those returns whether any property was being claimed as exempt. Specifically, Mr. Ingram stated that “[u]pon receipt of this return, there would have been no indication that they were asking for any sort of exemption on any property.” (Trial. Tr. 131:13–15). And, when asked about the classification for “rural” or non-rural property provided on the Taxpayer’s original returns, Mr. Ingram admitted that this too was insufficient to determine whether the property was exempt or non-exempt. (Trial Tr. 160:23–161:1; *see also* Trial Tr. 166:20–167:20 (stating that the mere inclusion of the word “rural” on Form PT-427 was insufficient to claim the Rural Telephone Service Exemption)). Essentially, Mr. Ingram testified that the information contained in the Taxpayers’ original returns was not sufficient to alert the Department to whether an exemption was being claimed.

After the Taxpayers filed claims for refund for tax year 2010 and 2011, asserting FTCC’s eligibility for the Rural Telephone Service Exemption, the property tax division of the Department denied the Taxpayers’ request on August 22, 2012, stating “[b]ased on the information we have received, FTC Communications, LLC does not qualify for the rural telephone service exemption for property tax purposes.” (Trial Ex. 21) (Trial Tr. 129:10–130:17). According to testimony of Taylor Ingram and Charles Brewer, the property tax division of the Department determined wireless cellular assets were not eligible for the Rural Telephone Service Exemption. (Trial Tr. 130:11–17; 135:21–136:1) (Brewer Dep. Designations 39:1–41:3).

On January 15, 2014, the property tax division of the Department sent a letter to the Taxpayers' counsel titled "Appeal Settlement Notification" which informed the Taxpayers that the Department was "not making any changes to the methodologies and procedures we currently utilize for the valuation and assessment of the utility company under protest." (Trial Ex. 21). The letter related to FTCC's protest for tax year 2012 and it also informed the Taxpayers' counsel that "[i]f you disagree with this decision, please notify us in writing by January 30, 2014. If we do not have a written protest from you by this date, we will consider the appeal resolved and notify the respective counties of the final assessment." (Trial Ex. 21). The letter required a response within fifteen days of when it was written or else the Taxpayers' protest would be considered "resolved." The Taxpayer's tax attorney, Jeffrey Allen, testified as to the unusual nature of this letter and stated he had never received a letter like this in his eight years of practice and had never heard of anyone receiving a letter like this before. (Trial Tr. 691:18–691:22).

By January 2015, the Department's litigation section had become involved in the ongoing dispute between the Department and the Taxpayers. On February 18, 2015, Bill Condon, Counsel for Litigation for the Department, requested additional information needed to support the Taxpayers' claims for eligibility for the Rural Telephone Service Exemption. (Trial Exs. 82 & 83). Mr. Allen stated that this information was requested by the Department because, by looking at the face of the Taxpayers' tax returns, the Department was unable to determine what assets were being claimed as exempt. (Trial Tr. 692:23–694:4).

II. History of Telecommunications Networks

In order to determine whether the Rural Telephone Service Exemption applies to the property at issue in this case, it is important to understand the history of the telecommunications

industry.⁴ Joe Moss II testified for the Taxing Entities as an expert in areas of telecommunications, including, but not limited to, communications and infrastructure involving landline telephone, broadband internet, streaming services, television, wireless cellular, security services, and other communication or media-related services. Mr. Moss is an engineer who graduated from North Carolina State University with a Bachelor of Science in Engineering Operations, and he holds a professional engineering license in both North Carolina and South Carolina. (Trial Tr. 241:11–242:23). Mr. Moss has spent his entire career in the telecommunications industry and has over thirty seven years of experience in this field, including experience with landline telephone networks and wireless cellular networks. (See Trial Ex. 131). Mr. Moss testified in great detail about the history and evolution of telecommunications networks.

George Wyatt testified for the Taxpayers as an expert in the area of telecommunications. Mr. Wyatt is an engineer who graduated from Clemson University in 1982. (Trial Tr. 716:17–20). Mr. Wyatt holds active professional engineering licenses in sixteen states. Mr. Wyatt generally agreed with Mr. Moss’s testimony describing the history and evolution of telecommunications networks, (Trial Tr. 830:2–11), which is integral to this case. From the experts’ testimonies, this Court concludes the following relevant facts concerning the history of telecommunications networks.

The earliest telephone networks were deployed, predominately in the 1930s and 1940s, using pairs of metallic (most often copper) wires to transmit voice calls over long distances between end-users. (Trial Tr. 266:24–267:18; 272:21–24). The wires established an actual physical connection carrying electric current from one telephone user to another user. (Trial Tr. 266:8–269:20). The physical connection began in the telephone handset of the initial user,

⁴ While a general overview of the history of the telecommunications networks is provided in this section, more detailed findings related to telecommunications networks are discussed throughout this Order.

travelled along the metallic telephone wires which were carried by utility poles, and was directed into a central switching office. *Id.* At the central switching office, the wires were physically connected to another set of metallic wires, which sent the electric current back out from the central switching office and to another telephone customer, ultimately ending in the opposite user's handset. *Id.* In the earliest networks, switching was performed by humans at the central switching office who physically disconnected and reconnected pairs of wires into the switchboard. (Trial Tr. 267:15–24). This purely physical network design required a continuous, unbreakable physical connection between the two end-users to allow the transmission of electricity. (Trial Tr. 268:12–20). Each pair of wires could handle only a single voice telephone call at a time. (Trial Tr. 273:17–276:12). This type of network design is known as a “circuit-switched network.” (Trial Tr. 280:21–282:21). This type of network remained the standard architecture through the 1980s. (Trial Tr. 272:24–25).

As technology advanced, the network infrastructure became more and more efficient at delivering and receiving voice calls. (Trial Tr. 279:21–286:16). Over time, the humans at the central switching office were replaced by mechanical switches, which were then replaced by electronic switches, but the connection remained physical. (Trial Tr. 271:9–12; 274:2–5). The first major advance in network design and infrastructure technology was the introduction of digital systems in the early 1980s. (Trial Tr. 273:17–275:1). Engineers were able to configure already existing pairs of metallic wires to concurrently carry up to 24 separate, dedicated channels of voice calls, allowing twelve simultaneous phone calls over the same equipment that could formerly provide only a single call. (Trial Tr. 274:23–275:8). This technology was initially deployed in the portion of networks built between the central switching office and various remote terminals. (Trial Tr. 275:10–21). The portion of the network from the remote terminal to

each customer location still required a discrete pair of copper wires for each user. (Trial Tr. 276:5–12).

Modern telecommunications networks have become even more efficient thanks to the implementation of fiber-optic cable systems in the late 1980s. (Trial Tr. 276:15–277:18; 395:7–11). Fiber optic cables transmit light rather than electricity and are capable of transmitting orders of magnitude more telephone calls and other data, in the form of bits (ones and zeroes), than prior circuit-switched systems. (Trial Tr. 276:13–277:18). Moreover, fiber optic systems are capable of sending data in slices known as “packets” through the network simultaneously with other data packets from other users. (Trial Tr. 279:12–286:16). Unlike prior systems, which had dedicated pairs of copper wire to deliver voice calls and later on had dedicated channels on those copper wires, fiber-optic systems can handle traffic from thousands of different sources simultaneously. (*Id.*) The computer equipment installed along the lengths of fiber-optic cable throughout modern networks reassembles packets and sends them on to their destination via internet protocol, or “IP”, addresses. (Trial Tr. 280:12–15). This type of network design is known as a “packet-switched network.” (Trial Tr. 279:21–286:16). Modern networks are generally designed with four distinct areas or levels, each scaling downward in size as you move further from the core: the core network, the access network, the edge network, and the “last mile” connecting from the edge network out to the subscriber’s premises. (Trial Tr. 293:9–295:3). Equipment scales down in size, speed, and capability as you move from the core network out to the customer’s location. *Id.* Although a modern network consists of many technologically advanced components from earlier networks, the unbroken physical connection from one user to another user remains.

Further, different advances in technology have also enabled the deployment of cellular towers which have led to the proliferation of mobile phones. (Trial Tr. 286:18–290:7). Cellular

networks operate using radio spectrum to transmit data between a customer's cellular phone and cell towers. (Trial Tr. 286:18–288:4). The cell towers are deployed in a patchwork, or mesh design, in a geographical area allowing an end-user to make a voice call while traveling between multiple towers with minimal interruptions in service. *Id.* The cell towers are, in turn, connected to a landline network via a “backhaul” system that allows data collected by the tower to be transmitted over landline networks. (Trial Tr. 288:15–16). Consequently, cellular networks are heavily dependent on connectivity to “backbone” landline telecommunications networks. (Trial Tr. 288:10–24; 743:3–12; 805:20–23).

Technological progress has led to dramatic changes in how customers access, use, and send information. The implementation of modern telecommunications network design has coincided with the growth of broadband internet access and cellular internet access. (Trial Tr. 273:17–279:17). Due in large part to the massive data-carrying capacity of fiber-optic landline communication systems, subscribers demand, and telecommunications companies provide, more and more data transport capacity each year. Trial Tr. 367:12–368:8; 616:17–617:8; 848:18–25; 854:22–24; 991:19–992:9) (Trial Exs. 134, 151, & 156).

III. The Taxpayers' Property

The Taxpayers operate a modern telecommunications network. (Trial Tr. 406:18–407:1). The network is an interconnected system of components consisting of a web of equipment that stretches for miles across six counties in South Carolina. (Trial Ex. 154). Physically, the network consists of fiberoptic cables, copper wires, routers, multiplexers, lasers, cell towers, radio antenna arrays, customer premises equipment (such as modems and cable boxes), and end user equipment (such as computers and tablets). (Trial Tr. 804:8–806:13). In addition, the Taxpayers own certain real property located across six counties in South Carolina where the component pieces of the network are located, housed, and physically interconnected. The network functions

by transmitting data in the form of light emitted by lasers. (Trial Tr. 276:20–25). The light travels on fiberoptic cable spans that are interconnected with various routers and multiplexers in between. (Trial Tr. 394:16–395:11). The light is ultimately converted into information and then either delivered to a subscriber or to some other location via an internet protocol address or “IP Address.” (Trial Tr. 279:18–283:8). In some instances, the information is not physically transmitted but rather is transmitted between a cellular tower and an end user’s cellular device. (Trial Tr. 288:18–289:16). These landline and wireless component parts, when connected, allow the Taxpayers to provide their subscribers with a full range of telecommunications services.

The Parties disagree as to which telecommunications services are included in the meaning of “rural telephone service” under Section 12-37-220(B)(10). However, the parties agree that landline voice calls are within meaning of “rural telephone service.” The Parties also disagree about how the network is actually used. The dispute about use centers around a fundamental disagreement about how to properly measure the use of the network.

The Taxpayers contend that the use of the network should be measured by financial metrics such as revenues or by time-based metrics such as “minutes of use.” The Taxpayers argue, based on these metrics, that the network is used predominantly for providing voice services and the entire network should therefore be exempt from ad valorem property taxation pursuant to the Rural Telephone Service Exemption.

On the other hand, the Taxing Entities contend neither financial metrics nor time-based metrics are appropriate for the technology actually used to deliver services. Instead, the Taxing Entities argue that the only appropriate measurement is the industry standard measure of network utilization: bandwidth. The term bandwidth, when referring to a telecommunications network, refers to the data transfer rate of information transmitted through the network. (Trial Tr. 318:18–319:4). Because data on packet-switched networks consists of bits, bandwidth is usually stated as

a certain multiple of bits per second, such as kilobits per second, megabits per second, or gigabits per second (Trial Tr. 329:19–330:13). The Taxing Entities assert, based on network utilization measured by bandwidth, that the network is used only incidentally to provide voice telephone service and is instead used predominantly to provide data-intensive services such as television service, internet service, and cellular data service. Consequently, the Taxing Entities argue that the Taxpayers’ use of the network for voice services is merely de minimis and is insufficient to qualify the Taxpayers’ property for the Rural Telephone Service Exemption.

The Taxpayers presented evidence in the form of financial records showing revenues by line of business. (Trial Tr. 495–97). For example, Jeff Lawrimore testified as to the amount of revenue associated with voice services versus all other services provided by the Taxpayers. Mr. Lawrimore has been the Taxpayers’ Chief Financial Officer (“CFO”) since 1998. (Trial Tr. 452:5–453:4). In his capacity as CFO, Mr. Lawrimore testified that for fiscal year 2017, FTCC’s revenue associated with voice services accounted for approximately 75 percent of its total revenue, and Diversified’s revenue associated with voice services accounted for approximately 58% of its total revenue. (Trial Tr. 497). Although this type of revenue information seems probative on the surface, it does not account for how the underlying property is actually used, particularly given the undisputed fact that all of the Taxpayers’ property is interconnected and used to provide the full range of services provided by the Taxpayers. (Trial Tr. 288:18–21; 303:13–22; 314:5–8; 543:4–14). The Taxpayers’ financial records only establish how the Taxpayers bill their subscribers, but it does not show how the Taxpayers actually physically use their property.

Moreover, such revenue information can be easily manipulated as shown by testimony from the Taxpayers’ witnesses. Through most of the tax years in dispute in this case, the Taxpayers required every subscriber to have a landline telephone in order to subscribe to internet

access, even if the customer never used the landline or did not request the service. (Trial Tr. 516:12–517:18; 617:22–618:11). As explained by Mr. Lawrimore and Mr. Erwin,⁵ until as recently as 2018, the Taxpayers required all subscribers to pay for a landline telephone in order to boost the Taxpayers’ universal service fund subsidies from the federal government. *Id* Thus, the amount of revenue and the number of subscribers to landline telephone service has been intentionally and artificially inflated. Consequently, the Taxpayers’ revenue broken down by line of business is not an accurate proxy for how their property is physically used. Regulatory and business incentives, which have absolutely nothing to do with how the property is physically used, have distorted these figures. Regardless of how the billings are characterized, the actual, physical use of the property is the relevant criterion under section 12-37-220(B)(10) to determine whether the property is exempt.

The Taxpayers also presented utilization evidence in the form of both minutes of use and data, but only for FTCC and not for Diversified. (Trial Ex. 151). Based on the Taxpayers’ calculations for FTCC only, the percentage of network utilization for voice ranged from a low of 14% in 2018 to a high of 96% in 2010. (Trial Ex. 151). These numbers were calculated by converting the actual recorded minutes of use for all FTCC’s cellular subscribers for each year into a data equivalent by multiplying by a data transfer rate and then dividing the data attributable to voice by the total amount of data. (Trial Tr. 588:2–591:20). At the hearing on the merits, the Taxing Entities’ expert witness, Mr. Moss, testified convincingly that these calculations were flawed due to a failure to properly convert bits to bytes. (Trial Tr. 372:15–379:9). Because a byte is made up of eight bits, a failure to convert a sum of bits to bytes in the denominator would understate the amount of data in the denominator by a factor of eight, significantly skewing the percentage of data attributable to voice services. (Trial Tr. 333:22–

⁵ Mr. Erwin is the Taxpayers’ Chief Executive Officer and has been employed with the Taxpayers since 1988. (Trial Tr. 532:19–534:1).

334:5). After correcting for this conversion error, Mr. Moss testified that the percentage of network utilization attributable to voice services (for FTCC only) was 73.07% for 2010; 36.9% for 2011; 20.9% for 2012; 11.96% for 2013; 6.99% for 2014; 4.24% for 2015; 4.84% for 2016; 2.96% for 2017; and 1.94% for 2018. (Trial Tr. 378:23–379:9). Mr. Moss’s analysis establishes a clear downward trend towards less and less utilization for voice services over time.

The Taxpayers also produced an alternative set of calculations that calculated the percentage of network utilization for voice by converting the recorded data use of all FTCC subscribers into minutes of use and then dividing the minutes of use attributable to voice services by the total minutes of use. Although based on questionable assumptions, these calculations yielded percentages of network utilization for voice ranging from a low of 90.8% in 2018 to a high of 99.9% in 2010. At the hearing, Mr. Moss testified that these numbers were calculated correctly, but were theoretically unsound. (Trial Tr. 411:20–412:24; 414:2–417:20). As explained by Mr. Moss, “minutes of use” is a measure of how long a particular piece of network equipment, such as a telephone set or a port, is in use. *Id.* Mr. Moss also explained that, in the industry, data usage is typically measured by the total amount of data (measured in kilobytes) that is sent and received by a particular subscriber, without any consideration for how long any piece of network equipment, such as a television or a laptop computer, is in use. *Id.* Because equipment uses a variable amount of bandwidth depending on its use, there is not a constant bandwidth conversion rate that can be used to convert data consumption to minutes of use. *Id.* As Mr. Moss explained, “the issue is the denominators are not consistent . . . the math here assumes that one minute at 56 kilobits is equal to one minute at one gigabit, which is 1,000 times 1,000 more.” (Trial Tr. 417:9–17). In conclusion, I find the Taxpayers’ minutes of use analysis unreliable.

Mr. Moss testified for the Taxing Entities concerning the use of the Taxpayers' property, (Trial Tr. 257:9–380:11), how modern telecommunications networks are designed, constructed, and used. (Trial Tr. 267:7–300:2). Mr. Moss also testified as to certain detailed network information produced by the Taxpayers during discovery. (Trial Tr. 302:2–380:11). Mr. Moss testified that the industry standard measurement for designing a modern telecommunications network and for determining the utilization of a telecommunications network is bandwidth. (Trial Tr. 318:18–325:2). Similarly, witnesses for the Taxpayers also admitted that bandwidth is the key constraint on a modern network (Trial Tr. 619:17–621:5).⁶ Although the Taxpayers dispute whether bandwidth is the appropriate measure for network utilization, this Court finds Mr. Moss's testimony persuasive on this point. Consequently, this Court finds that bandwidth is the industry standard measure of network utilization and design.

Using the data provided by the Taxpayers, Mr. Moss developed a detailed set of calculations estimating the percentage of the Taxpayers' overall network utilization (measured by bandwidth utilization) that was attributable to voice telephone services versus all other services provided by the Taxpayers. Mr. Moss expected to find that less than 10% of the Taxpayers' overall network utilization was attributable to voice services, but his calculations found that less than 5% of the Taxpayers' overall network utilization was attributable to voice for any of the tax years in dispute. (Trial Ex. 134). Specifically, Mr. Moss concluded the Taxpayers' network was utilized for the provision of voice services no more than 4.75% for tax year 2010; 3.16% for tax year 2011; 2.19% for tax year 2012; 1.80% for tax year 2013; 1.32% for tax year 2014; 1.01% for tax year 2015; 0.83% for tax year 2016; 0.64% for tax year 2017; and 0.45% for tax year 2018, establishing a clear downward trend towards less and less

⁶ The evidence shows the Taxpayers routinely file bandwidth information about their network with the United States Department of Agriculture as evidence of need for additional loan funding ("USDA"). (See Trial Exs. 156–160) (Trial Tr. 585:14–588:1) (stating that "bandwidth/broadband is the buzz word. This is what the federal government emphasizes in its funding efforts.").

utilization for voice services over time. This trend is consistent with the Taxpayers' internal records, which confirm that despite slow or negative growth in the Taxpayers' number of subscribers during the years in dispute, the demand for data services has continued to grow aggressively. (Trial Ex. 156).

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, this Court concludes the following as a matter of law:

I. Standard of Review

This court reviews contested case actions *de novo*. *Marlboro Park Hosp. v. S.C. Dep't of Health & Env'tl. Control*, 358 SC 573, 579, 595 S.E.2d 851, 854 (Ct. App. 2004). Generally, the petitioner bears the burden of proof by a preponderance of the evidence. *See Nat'l Health Corp. v. S.C. Dep't of Health & Env'tl. Control*, 298 SC 373, 379, 380 S.E.2d 841, 844 (Ct. App. 1989). However, in cases involving exemptions, the burden is on claimants to prove their rights to an exemption by bringing themselves clearly within the conditions imposed by the statute. *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (citing *York County Fair Assoc. v. South Carolina Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967)); *see also Asmer v. Livingston*, 225 S.C. 341, 82 S.E.2d 465, 466 (1954) (stating that a refund of taxes is solely a matter of governmental grace, and taxpayers seeking such relief must bring themselves clearly within the terms of the statute authorizing a refund).

II. General Findings

A. This Court Has Subject Matter Jurisdiction To Hear and Rule on this Contested Case.

This Court has jurisdiction over this case pursuant to sections 12-4-535, 12-60-2130, and 12-60-2150(H) of the South Carolina Code. Each of these statutes grants this Court the authority

to hear cases in which either a county or local governing body⁷ contests a “department determination.” This Court concludes that the Department’s decision to exempt the Taxpayers’ assets from ad valorem property taxation was final once the Department issued the Supplemental Certifications⁸ to the Taxing Entities. As such, the Supplemental Certifications are reviewable department determinations.

Section 12-4-535(A) states that “[t]he department may issue a department determination directing the appropriate county official to comply with all applicable state law relating to the valuation, assessment, or taxation of property.” In the event “the county disagrees with . . . the department determination . . . the county governing body by resolution may request a contested case hearing before the Administrative Law Court.” S.C. Code Ann § 12-4-535(C).

Section 12-60-2130 provides that a “local governing body who disagrees with the department determination may request a contested case hearing before the Administrative Law Court if he files an action within thirty days of the date of the department’s determination.” S.C. Code Ann. § 12-60-2130. Similarly, section 12-60-2150(H) states that a “local governing body who disagrees with the department determination may request a contested case hearing before the Administrative Law Court by filing the request within thirty days of the date of the department determination.” S.C. Code Ann. § 12-60-2150(H).

A “department determination” is defined as “the final determination within the department from which a person may request a contested case hearing before the Administrative Law Court.” S.C. Code Ann. § 12-60-30(10). “Determination” is not defined in the statutes, but “[w]here a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.” *Lee v. Thermal Eng’g Corp.*, 352 S.C. 81, 91–92,

⁷ “Local governing body” is not defined in Title 12. However, it is defined in Title 6, which governs local government. In Title 6, “local governing body” is defined to mean “the governing body of a county, municipality, or special purpose district.” S.C. Code Ann. § 6-1-300 (2004).

⁸ This Court does not derive its jurisdiction over the parties from the challenge of the Settlement Agreement, but rather the Taxing Entities’ challenge of the Supplemental Certifications.

572 S.E.2d 298, 303 (Ct. App. 2002). “Determination” has been generally defined as “the resolving of a question by argument or reasoning.” Merriam Webster, <http://www.merriam-webster.com/dictionary/determination> (last visited Aug. 1, 2019).

The Department’s decision to exempt the Taxpayers’ assets from property tax necessarily involved a “determination” by the Department, since factual and legal reasoning were necessary to reach such a finding. The Department’s decision to exempt the Taxpayers’ assets from property tax became the Department’s “final” determination once the Supplemental Certifications were sent to the Taxing Entities. Not only did the Department admit that its decision was final once it sent the Supplemental Certifications, but the Supplemental Certifications were necessary in order for the Taxing Entities to generate revised tax bills exempting the Taxpayers’ assets. (Trial Tr. 106:2–14). Once the Taxing Entities received the Supplemental Certifications, the Settlement Agreement purported to then require the Taxing Entities to calculate a revised property tax amount for each tax year, and issue refunds to the Taxpayers accordingly. (Trial Ex. 91 § 2.4). Therefore, this Court finds that once the Supplemental Certifications were sent to the Taxing Entities, the Department had made its final decision to exempt the Taxpayers’ assets from property tax and a reviewable “department determination” had been issued.

This Court does not find persuasive the Department’s argument that no “department determination” was issued because no specific document was ever prepared and issued by an attorney from within the Department’s Office of General Counsel. The Department’s argument is based upon Rule 8, SCALC, which requires that a party be represented by an attorney in proceedings before the Administrative Law Court.

“‘Department representative’ means the person appointed by the department to prepare the department’s determination and represent the department at the contested case hearing.” S.C.

Code Ann. § 12-60-30(11). The Department has argued that section 12-60-30(11) requires that department determinations be specifically prepared and issued by an attorney from within the Office of General Counsel. (See, e.g., *Ruple Dep. Designations* 55:17–20). The Department bases this interpretation of 12-60-30(11) on the theory that the individual phrase “represent the department at the contested case hearing” requires a “department representative” to be an attorney who provides the Department’s legal representation at contested case hearings. (See *Ruple Dep. Designations* 58:5–19). This interpretation not only contradicts the relevant statutes and the Department’s published guidance on the issue, but it also attempts to force a construction of the statute that would impermissibly expand the statute’s operation beyond its plain and ordinary meaning.

This Court is charged with interpreting statutes in a manner that ascertains and effectuates the intent of the legislature, and in doing so, words must be given their “plain and ordinary meaning **without resort to subtle or forced construction to limit or expand the statute’s operation.**” *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (emphasis added) (quoting *Sloan v. Hardee*, 371 S.C. 495, 498–99, 640 S.E.2d 457, 459 (2007)). In addition, “the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.” *Id.* (quoting *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)). And, although statutes must be read so “that no word, clause, sentence, provision or part shall be rendered surplusage or superfluous,” it is improper to “concentrate on isolated phrases within the statute.” *Id.* (quoting *State v. Sweat*, 379 S.C. 367, 376–77, 665 S.E.2d 645, 650–51 (Ct. App. 2008), *aff’d*, 386 S.C. 339, 688 S.E.2d 569 (2010)).

As previously stated, a “department determination” is defined as “the final determination within the department from which a person may request a contested case hearing before the

Administrative Law Court.” S.C. Code Ann. § 12-60-30(10). In South Carolina Revenue Procedure #06-2, “department determination” is defined as follows:

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

(SC Rev. Proc. #06-2, II(B)) (emphasis added). Therefore, the Department’s own Revenue Procedure undermines its argument that a particular form is required.

This Court believes the Department’s interpretation strains the plain language of the Act. This Court finds it difficult to believe that the General Assembly, by using the term “represent” in a definition, meant to delegate the decision making process and all responsibility for drafting department determinations to only the Department’s attorneys. A more logical interpretation of section 12-60-30(11) is that a “department representative” is any individual within the Department who is tasked with preparing a final decision of the Department, and will also stand behind the positions asserted within that department determination at a contested case hearing by providing testimony explaining the Department’s positions.

This Court is not aware of any authority which requires an attorney to prepare a department determination or that the phrase “represent the department at the contested case hearing” translates to “provides legal representation to the Department at the contested case hearing.” Neither the statutes nor Revenue Procedure #06-2 require a department determination to be produced in a specific form, prepared by an attorney, or issued from the Department’s Office of General Counsel. Instead, a “department determination” only requires that a final determination be made within the Department. Any interpretation which seeks to condition the issuance of a “department determination” on being prepared by an attorney from within the Office of General Counsel does not comport with the overall statutory scheme. Therefore, this

Court rejects Respondents' argument that a "department determination" must necessarily be prepared by an attorney within the Office of General Counsel and be specifically labeled a "department determination."

This Court also rejects Respondents' argument that no department determination was issued because the Supplemental Certifications were "division decisions" rather than department determinations. "'Division decision' means a decision by a division of the department that affects the rights or obligations of a person for which no specific appeals rights are provided by this act." S.C. Code Ann. § 12-60-31(13). Additionally, the second sentence of the statute defining a division decision states that a "[d]ivision decision includes the refusal to expunge or satisfy a lien." S.C. Code Ann. § 12-60-31(13). The Department's final determination to exempt the Taxpayers' assets from ad valorem taxation is not equivalent to the Department's refusal to expunge or satisfy a lien. A division decision applies only to matters in which there is no right to appeal. The facts of this matter do not present such a case.

Again, there is no legal requirement that a department determination be issued from a specific place within the Department. A "department determination" only requires a "final determination *within* the department." S.C. Code Ann. § 12-60-30(10) (emphasis added). Nothing forecloses a final determination made within some lower level of the Department from becoming a department determination. In fact, under the Department's interpretation, any decision made by the Department, but not directly by the Director, could be considered a "division decision." Permitting the Department, or any other administrative agency, to prevent a county or local governing body from exercising its statutory right to appeal by simply labeling its final determination as a "division decision" would completely eliminate the statutory rights to appeal which have been afforded by the General Assembly. Under this interpretation, a party's right to appeal could be easily manipulated by mere labels, and there would be circumstances

where a county or local governing body would have no right to appeal a decision made by the Department even though that decision had a substantial and adverse impact on the county or other local governing body.

Similarly, permitting the Department to subjectively categorize its decisions by the use of labels such as “division decision” would create situations where a county’s or local governing body’s right to seek review of a legal determination made by the Department would be arbitrarily conditioned on the actions of a taxpayer. Specifically, a county or local governing body could request a contested case hearing under sections 12-4-535, 12-60-2130, or 12-60-2150 where a taxpayer chose not to settle a property tax issue with the Department, but, instead, forced the Department to issue a department determination. Yet, under the same scenario—indeed, the exact factual scenario of this case—a county or local governing body could be precluded from seeking review under those same statutory sections because a taxpayer and the Department entered into a settlement agreement, and the Department subsequently issued supplemental certifications labeled as “division decisions.” Under both circumstances, the county or local governing body’s obligations are affected. However, the Respondents’ interpretation makes the county’s or local governing body’s right to review entirely dependent on the Department’s and a taxpayer’s actions.

For example, testimony from the Taxpayers’ tax attorney, Jeffrey Allen, illustrates the danger of adopting the Respondents’ interpretation. During the hearing of this matter, Mr. Allen admitted that on the first draft of the Settlement Agreement, the Taxpayers included a provision which required the Department to issue a “department determination.” (See Trial Tr. 699:9–16). Mr. Allen explained that the Taxpayers wanted to include this provision in order to ensure those potentially affected by the exemption of the Taxpayers’ assets had a right to appeal. (Trial Tr. 708:1–4). However, the Department disagreed, and according to Mr. Allen’s testimony, the

Department specifically decided not to include the provision requiring the issuance of a department determination in order to foreclose any right of appeal. (Trial Tr. 708:4–6).

Under Respondents’ interpretation, had the Taxpayers decided not to settle the matter in their favor, and thus not receive the ad valorem property tax exemption under the Settlement Agreement, only then would the Taxing Entities have the right to appeal. The Department’s decision not to label its final determination as a “department determination” does not shield the Department’s decision from judicial review. Either way, the outcome of the Department’s final determination to exempt the Taxpayers’ assets from ad valorem property tax is the same. Thus, this Court rejects any interpretation of the statutes which arbitrarily conditions the Taxing Entities’ right to seek review solely on the actions of the Taxpayers or the Department.

Further, this Court concludes that the General Assembly intended counties and local governing bodies to have some form of review for the final decisions made by the Department which affect those counties and local governing bodies. In addition to the reasons explained above, an interpretation of the relevant statutes which would allow the Department to circumvent these statutorily granted rights merely because of the label the Department gives to its own decisions would lead to a result that is plainly absurd. *See Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) (“The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.”); *South Carolina Coastal Council v. South Carolina Ethics Com’n*, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991) (“The interpretation of a . . . statute should support the statute and should not lead to an absurd result.”).

The Department’s own testimony illustrates the absurd result created by such an interpretation. In the 30(b)(6) deposition of the Department, the Department’s designee was asked to consider a hypothetical in which a settlement agreement took \$50,000,000 of tax

revenue off of a county's books as a result of a disputed issue being resolved by settlement agreement between a taxpayer and the Department. (Ruple Dep. Designations 79:22–80:14). The Department's official position: if the \$50,000,000 disputed issue was resolved by a settlement agreement and no "department determination" was issued from within the Office of General Counsel, then the county would have no right to appeal that decision. (Ruple Dep. 80:8–14).

If this Court were to agree with Respondents' arguments, then the Court would also have to question why the General Assembly bothered drafting the right for a local governing body to seek review under sections 12-4-535, 12-60-2130, and 12-60-1250. Here, the Department's determination to exempt the Taxpayers' assets from property tax, as finalized by the Supplemental Certifications sent to the Taxing Entities, was the Department's final decision. Thus, despite Respondent's attempts to classify the Department's final decision as something other than a "department determination," this Court finds that the facts, circumstances, and statutory scheme indicate that the Supplement Certifications were reviewable "department determinations."

Respondents also argue the Court lacks subject matter jurisdiction to hear this case because the Department has exclusive and absolute authority to determine property tax exemptions and the exclusive authority to appraise and assess telephone-related property. See S.C. Code Ann. §§ 12-4-540(A)(1)(f) & 12-4-710. Their argument is based upon the language of section 12-4-540, which provides: "The department has the sole responsibility for the appraisal, assessment, and equalization of the taxable values. . . ." However, if that language carried such an implication, there should be no mandatory right for review whatsoever. In fact, even a taxpayer would not be entitled to request review of the determination affecting the taxpayer. Nevertheless, all the parties concede a taxpayer's right to challenge the Department's determinations under sections 12-4-540 and 12-4-710 of the South Carolina Code.

Moreover, under Respondents' interpretation of section 12-4-540, the General Assembly must have intended to treat the Taxing Entities differently than the Taxpayers, resulting in preclusion of review for the Taxing Entities, but not the Taxpayers. Even though they rely upon the same sections of the Revenue Procedure Act, neither the Taxpayers nor the Department challenge a taxpayer's right to protest an assessment. Generally, if the General Assembly intended to preclude review of the Department's decisions regarding exemptions, that authority would be explicitly set forth. *See Ross*, 404 S.C. at 64, 744 S.E.2d at 551 ("To claim that [a statute] is a jurisdictional issue is something altogether different, for the Legislature would have used more exacting language had it intended . . . to forever divest the circuit court of jurisdiction."). Yet, here no such intent is even inferentially set forth in section 12-4-540, much less explicitly set forth.

To the contrary, the General Assembly specifically recognized a local governing body's right to contest the Department's determinations in sections 12-4-535, 12-60-2130, and 12-60-2150. Sections 12-60-2130 and 12-60-2150 both generally provide that a local governing body or taxpayer "who disagrees with the department determination may request a contested case hearing before the Administrative Law Court." Indeed, both sections 12-60-2130 and 12-60-2150 treat the right of governing bodies to seek review equal with the right of taxpayers. Section 12-4-535 adds further emphasis to the right of the Taxing Entities to seek review of the Department's determination. It explicitly grants local governing bodies, and thus the Taxing Entities, the right to seek review if they "disagree" with the department determination regarding "the valuation, assessment, or taxation of property." Importantly, in both these provisions, the local governing bodies do not have to even assert that they were harmed by the Department's decision. The statute provides that they may request review based simply upon an assertion that they disagree with the determination made by the Department.

Here, the Taxing Entities' request for contested case hearing meets the purpose that is plainly set forth in the statutes. The Taxing Entities disagree with the Department's interpretation of section 12-37-220(A)(10), under which FTCC and Diversified were granted exemptions, and the Taxing Entities have properly invoked the jurisdiction of this court to resolve that dispute.

B. The Settlement Agreement Does Not Prevent This Court From Ruling in this Contested Case.

Respondents also argue this Court is deprived of jurisdiction by section 12-4-320(4). In pertinent part, section 12-4-320 provides that the Department may do the following:

[E]nter into a written agreement with a person with regard to a tax liability. If the agreement is approved by the director, it is final and conclusive and the case may not be reopened by administrative or judicial action or otherwise, except in cases of fraud, malfeasance, or misrepresentation.

S.C. Code Ann. § 12-4-320(4).

At the outset of this discussion, this Court wants to make clear that this Court is not questioning the ability of the Department and a taxpayer to enter into an enforceable settlement agreement resolving a taxpayer's disputed tax liability. This Court finds, as it already has in response to the Department's Motion for Partial Summary Judgment, that the Department's authority to do so is explicitly set forth in section 12-4-320(4). When the Department and a taxpayer enter into a settlement agreement resolving a disputed tax liability, then that settlement agreement is "final and conclusive" with respect to the Department and the taxpayer, absent fraud, malfeasance, or misrepresentation.

However, that is a fundamentally different issue than the issue presently before this Court. In this case, the question is not whether the Settlement Agreement is final and conclusive with respect to the Department and Taxpayers. Instead, the question is whether the Settlement Agreement is final and conclusive—and, thus, not subject to be reopened by administrative or judicial action—with respect to the Taxing Entities who were not parties to the Settlement

Agreement. Had the Taxing Entities been parties to the Settlement Agreement, then section 12-4-320 would, in most situations, apply, and the Settlement Agreement would be enforceable against the Taxing Entities.

For the reasons explained more fully below, this Court finds that the Settlement Agreement is unenforceable against the Taxing Entities because the Settlement Agreement, as a contract, improperly attempts to bind non-parties, and there is no evidence that the Settlement Agreement was ever approved in the precise manner prescribed by section 12-4-320(4). In addition, the evidence presented in this case by way of affidavits, deposition testimony, witness testimony at the hearing, and the jointly submitted exhibits lead this Court to further conclude that a “settlement agreement” contemplated by section 12-4-320, and binding upon the Taxing Entities, was never created.

1. The Settlement Agreement Improperly Attempts to Bind Non-Parties.

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

prerequisite to formation of the contract is lacking.”) (citing *Shealy v. Fowler*, 182 S.C. 81, 188 S.E. 499 (1936)).

Section 12-4-320(4) permits the Department to “enter into a written agreement with a person.” The intent of such language is to bind the Department and the person entering the written agreement to any and all final determinations contained in the agreement. The statute does not permit the Department to “enter into a written agreement with a person” **that binds third-parties who are otherwise strangers to the settlement agreement**. Absent clear authorization from the General Assembly permitting the Department to enter into settlement agreements binding third-parties, such a contract is unenforceable.

The Department attempts to bind the Taxing Entities to the following terms of the Settlement Agreement:

Payments or Refunds. After the counties receive the certified final assessments for the Audit Period, **each respective county then will calculate a revised property tax amount for each tax year.** . . . If the net adjustment to property taxes for the Audit Period for FTCC or Diversified results in an overpayment of property taxes, FTCC and Diversified agree to provide the counties an option to refund or credit the overpayment over the three property tax years immediately succeeding the property tax year in which the overpayment is determined.

(Trial Ex. 91 § 2.1) (emphasis added). As section 2.1 of the Settlement Agreement explains, the Taxing Entities are allegedly obligated to issue refunds to the Taxpayers for tax years extending as far back as 2010. Yet, the only parties to the Settlement Agreement were the Department and the Taxpayers. (See Trial Ex. 91; Trial Tr. 696:19–697:3).

The record of this case provides no evidence that the Taxing Entities, either as a whole or any individual member thereof, consented to the terms of the Settlement Agreement. Neither the Taxing Entities nor any individual local governing body signed the Settlement Agreement. There is no acknowledgement on the face of the Settlement Agreement that any local governing body was even made aware of the Settlement Agreement prior to its execution, nor is there any

witness testimony indicating that the Department and the Taxpayers requested the Taxing Entities' input.

Put plainly, the Settlement Agreement is unenforceable against the Taxing Entities because neither the Taxing Entities nor any individual member of the Taxing Entities assented to its terms. *See, e.g., Edens*, 271 S.C. at 364, 247 S.E.2d at 436; *Drafts*, 276 S.C. at 54, 275 S.E.2d at 577; *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct. App. 2010); *Prestwick Golf Club, Inc. v. Prestwick Ltd. Partnership*, 331 S.C. 385, 390, 503 S.E.2d 184, 187 (Ct. App. 1998). The General Assembly simply could not have intended to give the Department the authority to bind the Taxing Entities with a secret settlement agreement.

2. *There is No Evidence the Director Approved the Settlement Agreement.*

In order for a “final and conclusive” settlement agreement to be created, direct approval by the Director is required. S.C. Code Ann. § 12-4-320(4) (“If the agreement is approved by the director, it is final and conclusive[.] . . .”). The record here is void of any evidence showing that the Director himself actually approved the Settlement Agreement. Throughout this case, neither the Department, the Taxpayers, nor the then-acting Director, Rick Reames, III, were able to offer any evidence that the Director approved the Settlement Agreement. Not only does this lead the Court to find that the Settlement Agreement is unenforceable against the Taxing Entities, but the Court also finds that this “settlement agreement” is not entitled to the deference set forth in section 12-4-320(4).

As an initial matter, the Director did not sign the Settlement Agreement, nor is there an acknowledgement in the document that the Director approved the Settlement Agreement. The Department was unable to offer any evidence proving the Director approved the Settlement Agreement. Additionally, the affidavits that have been submitted, as well as the testimony from the depositions and the hearing, contradict the Department's assertion that “the witnesses with

first-hand knowledge of the execution of the Settlement Agreement uniformly testified the Settlement Agreement was approved by the Director.” (Dep’t’s Mem. Supp. Mot. Partial Summ. J. 7).

Rick Reames, III, was the Director for the Department at the time the Settlement Agreement was entered into between the Taxpayers and the Department. (Trial Ex. 141 ¶ 2). His affidavit and deposition testimony do not show he approved the Settlement Agreement. Mr. Reames did not state he recalls approving the Settlement Agreement. Instead, Mr. Reames has been adamant that he has no specific recollection of any of the facts and circumstances surrounding the Settlement Agreement. Mr. Reames’ affidavit illustrates this point:

I do not have a specific recollection at this time of meeting with the then General Counsel for Litigation to authorize the settlement of a matter involving Farmers Telephone Cooperative, Inc. and its wholly owned LLCs, FTC Communications, LLC and FTC Diversified Services, LLC (collectively, “Farmers”) in a property tax matter related to the qualification of certain Farmers’ assets for the rural telephone exemption.

(Trial Ex. 141 ¶ 7) (emphasis added). In fact, Mr. Reames’ recollection of the Settlement Agreement was so unclear at the time he submitted his affidavit, the most assertive statement Mr. Reames could formulate to show he knows anything about the Settlement Agreement was put in a footnote on the last page. In that footnote he states:

I do recall discussing within the Department issues related to a parent company with wholly owned subsidiaries and the impact of *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011) on state and local taxes. **It is possible that this could have been** in conjunction with a discussion regarding approval of the Farmers settlement.

(Trial Ex. 141 n.1) (emphasis added). Even with a chance to review information relevant to this case prior to his deposition, Mr. Reames’ recollection of the Settlement Agreement did not improve by the time he was deposed, as shown by the following deposition excerpts:

- A. Yeah. I was involved in approving or disapproving [settlement agreements], in every case that I’m aware of.
- Q. And you are not specifically aware of doing that in this particular case.

A. **I don't recall it.**

(Reames Dep. Designations 26:24–27:3) (emphasis added).

Q. [D]o you think you could have articulated what the specific material terms of the settlement were, prior to your engagement by Farmers?

A. Well, **I didn't and still don't recall having the conversation with Milton⁹ about this specific settlement.**

(Reames Dep. Designations 28:13–19) (emphasis added). The record clearly shows that Mr. Reames, as the Director whose approval of the Settlement Agreement was required, has no specific recollection of approving the Settlement Agreement.

Respondents also referenced testimony provided by Jeffrey Allen to show the Director provided his approval of the Settlement Agreement. However, in his affidavit and at the hearing of this matter, Mr. Allen stated he had no personal knowledge as to whether the Director actually approved the Settlement Agreement. (Trial Tr. 697:4–8) (Trial Ex. 140 ¶ 6).

Respondents also relied on the Affidavit of Milton G. Kimpson. In that affidavit, Judge Kimpson stated: “I am confident that, as the General Counsel for Litigation, I advised the Director of this settlement agreement and that the Director approved the settlement agreement before the Department Representative signed it on behalf of the Department.” (Trial Ex. 147 ¶ 7). However, the qualification that “I am confident that” an event took place does not give rise to the conclusion that Judge Kimpson specifically remembers the Director giving his approval of the Settlement Agreement—this testimony is something less than what is needed to prove an event actually occurred. Having “confidence” that something happened is different than having a specific, personal recollection. Because a witness can only testify regarding facts in his or her personal knowledge, Rule 602, SCRE, this evidence is unpersuasive.

Had Judge Kimpson wanted to remove all doubt, he could have done so—he chose not to do so. Judge Kimpson's affidavit contains no specific factual information showing that he

⁹ At the time the Settlement Agreement was entered into between the parties, Milton G. Kimpson was the Department's General Counsel for Litigation. Now, he is a South Carolina Administrative Law Court Judge.

remembers the Director approving this particular settlement agreement. Judge Kimpson's apparent inability to specifically recall Mr. Reames giving his direct approval of the Settlement Agreement, together with Mr. Reames' inability to recall ever meeting with Judge Kimpson to approve the Settlement Agreement, (Trial Ex. 141 ¶ 7), leaves open the question as to whether Mr. Reames, as the Department's Director, actually gave his required approval of the Settlement Agreement.

The Department has not offered a single witness, or other evidence of any kind, which shows that anyone involved in the Settlement Agreement specifically remembers Mr. Reames giving his direct approval of the Settlement Agreement. The Department's claim that all witnesses with first-hand knowledge of the Settlement Agreement have "uniformly testified" that the Director approved the Settlement Agreement is incorrect and unsupported by the evidence in this case. Accordingly, this Court finds that Respondents have not proven that the Director approved the Settlement Agreement.

Moreover, the Department points to the combination of Revenue Procedure #06-2 and a boilerplate provision in the Settlement Agreement stating the Department's representative had legal authority to enter into the Settlement Agreement as *prima facie* evidence that it was approved by the Director. Irrespective of whether or not the Settlement Agreement was approved by the Director, the Department's position that following Revenue Procedure #06-2 proves statutory compliance is without merit. Section 12-4-320(4) clearly requires the Settlement Agreement be approved by the Director, and there is no statutory exception for another representative of the Department to do so in the Director's place.

The Department's official position is that when a revenue procedure is in conflict with statutory law, the revenue procedure is invalid and the terms of a statute control. Amelia Ruple,

one of the 30(b)(6) witnesses designated by the Department, offered the following on the Department's behalf:

- Q. [T]his Revenue Procedure, to the extent inconsistent with a statute, would be invalid? Is that a fair statement?
- A. If it's inconsistent with the statute, then the terms of the statute would be controlling, yes.
- Q. So if we wanted to look to what the law was, we would look to what the plain language of the statute said over what this Revenue Procedure said about a particular topic?
- A. Correct.

(Ruple Dep. Designations 69:22–70:8).

The terms on the face of section 12-4-320(4) and Revenue Procedure #06-2 are in direct conflict. Section 12-4-320(4) only applies to settlement agreements approved by the Director, whereas Revenue Procedure #06-2 allows:

The Department's General Counsel for Litigation **or his designee** will review the settlement and advise the Director **or his designee** who may authorize the settlement. If the settlement is rejected, the Department's General Counsel for Litigation, **or his designee**, the Director, **or his designee** may make changes which would make it acceptable.

(Trial Ex. 184 § III(C)(3)) (emphasis added). According to Revenue Procedure #06-2, both the Director and the Department's General Counsel for Litigation can completely abdicate their responsibilities by naming two individuals, respectively, as their "designees." Essentially, Revenue Procedure #06-2 permits the General Counsel's designee to review and advise the Director's designee of the settlement agreement's terms, and **the Director's designee** can then turn around and authorize the settlement agreement **without ever having received explicit approval from the Director**. The statute on which the Department relies states clearly and unambiguously that only the Department's Director can approve the settlement agreement—there is no statutory authority to delegate the decision to a "designee."

As confirmed by the Department, if a statute and a revenue procedure conflict, the statute's terms govern. Thus, the Department's argument that the Settlement Agreement was

prima facie approved by the Director because Revenue Procedure #06-2 was allegedly followed fails. Section 12-4-320(4) does not permit the Director's designee to approve settlement agreements. Only the Director can do so.

Finally, as further evidence that the Director did not approve the Settlement Agreement, the record shows the Department failed to comply with the statutory reporting requirements governing settlement agreements. Section 12-4-380 requires that "[w]ithin thirty days of final settlement, the department shall report to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee, the details of all tax liabilities **reduced by order of the director.**" S.C. Code Ann. § 12-4-380 (emphasis added). According to Respondents' argument that the Settlement Agreement is shielded from judicial review by section 12-4-320(4), the Settlement Agreement must be approved by the Director and thus would fit squarely within this reporting requirement because the Settlement Agreement reduces property tax liabilities. The evidence shows that the Department failed to report the details of the Settlement Agreement to either the Chairman of the Senate Finance Committee or the Chairman of the House Ways and Means Committee.

On or about March 18, 2019, counsel for the Taxing Entities submitted a Freedom of Information Act Request ("FOIA Request") to Hugh K. Leatherman, Chairman of the South Carolina Senate Finance Committee, requesting information relevant to the Settlement Agreement and section 12-4-380. (Trial Ex. 171). On or about April 29, 2019, counsel for the Taxing Entities received a letter from Kenneth M. Moffit, Assistant Clerk of the South Carolina Senate, in response to the March 18, 2019, FOIA Request. (Trial Ex. 174). In that letter, Mr. Moffitt stated that "[f]ollowing a search of the records maintained by Senator Leatherman and the Senate Finance committee, it was determined that neither Senator Leatherman nor the Senate Finance Committee staff have any records responsive to your request." (Trial Ex. 174).

On or about March 18, 2019, counsel for the Taxing Entities submitted a FOIA Request to G. Murrell Smith, Jr., Chairman of the South Carolina House of Representatives Ways and Means Committee, requesting information relevant to the Settlement Agreement and section 12-4-380. (Trial Ex. 172). On or about April 26, 2019, counsel for the Taxing Entities received a letter from Richard L. Pearce, Legal Counsel for the Offices of Clerk and Research/Constituent Services, in response to the March 18, 2019, FOIA Request. (Trial Ex. 173). In that letter, Mr. Pearce stated that “[a]fter consulting with staff, our offices have not located any documents specifically related to your requested information.” (Trial Ex. 173).

Not only is the Department unable to show that it complied with section 12-4-380, but the Department’s official position, as provided by one of the Department’s designated 30(b)(6) witnesses, is that the Department has not reported the details of a single settlement agreement within at least the last five years. (Ruple Dep. Designations 54:4–13). According to the Department, section 12-4-380 allegedly does not apply because the Settlement Agreement was “approved” and not “ordered” by the Director. (Ruple Dep. Designations 51:14–54:3). When asked to point to a statute that gave the Director the authority to “order” the reduction of a tax liability, the Department’s designee could not point to a single statute or regulation that provided this authority. (Ruple Dep. Designations 53:9–54:3). This interpretation of section 12-4-380, which renders it nullified surplusage, should be rejected because it leads to an absurd result. See *Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) (“The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.”); see also *Enos v. Doe*, 308 S.C. 295, 305, 669 S.E.2d 619, 623 (Ct. App. 2008) (“A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law.”).

This Court finds that not only is the Settlement Agreement unenforceable against the Taxing Entities, but also that a “settlement agreement,” as that term is understood within section 12-4-320(B), was never consummated.

3. *The Settlement Agreement is Unenforceable Under South Carolina Law.*

In addition, the Settlement Agreement is unenforceable because it requires the Department to grant ad valorem property tax exemptions in violation of South Carolina law. South Carolina Courts interpret Settlement Agreements by applying the law of contracts. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) (“In South Carolina jurisprudence, settlement agreements are viewed as contracts.”) (citing *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 177, 557 S.E.2d 708, 711 (Ct. App. 2001); *Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass’n*, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001)). A basic tenant of contract law is that contracts requiring the performance of an illegal act are unenforceable. Restatement (First) of Contracts § 512 (1932). The general rule in South Carolina is that courts “will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 33, 644 S.E.2d 663, 673 (2007) (citing *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 555, 606 S.E.2d 752, 758 (2004)).

The ad valorem property tax exemptions granted by the Department in this case are unlawful because the Taxpayers failed to timely apply for the exemptions,¹⁰ the Department failed to timely grant the exemptions,¹¹ the Department failed to timely notify the Counties of the granted exemptions,¹² and the Taxpayers’ property is not eligible for the Rural Telephone Service Exemption.¹³ Because the Department’s promise to grant the Rural Telephone Service

¹⁰ See *infra* Part III.

¹¹ See *infra* Part III.

¹² See *infra* Part III.

¹³ See *infra* Part IV.

Exemption to the Taxpayers is illegal under South Carolina case law and statutes, the Settlement Agreement is unenforceable. *See Simpson*, 373 S.C. 14, 33, 644 S.E.2d 663, 673.

III. Findings as to Procedural Requirements

On June 14, 2017, and July 6, 2017, the Department issued directives to the County Auditors of the Taxing Entities ordering refunds to the Taxpayers of the property taxes paid by the Taxpayers for tax years 2010 through 2016. (Trial Exs. 115–123). Subsequently, on August 16, 2017, and August 24, 2017, the Department issued additional certifications requiring granting of the Rural Telephone Service Exemption for tax year 2017. (Trial Exs. 129 & 130). On August 15, 2018, and August 23, 2018, the Department issued additional certifications requiring granting of the Rural Telephone Service Exemption for tax year 2018.¹⁴ The basis for the Department’s actions is its determination that “the property used in FTCC’s wireless cellular service and Diversified’s landline telephone service qualifies for the exemption in S.C. Code Ann. § 12-37-220(B)(10).” (See Trial Ex. 91 § 2.1.) The Department’s decision granting the Rural Telephone Service Exemption was in writing, and, when joined with the Supplemental Certifications and subsequent certifications from the Department, imposed a retroactive refund liability for tax years 2010 through 2017. Such a directive is prohibited as a matter of law where the taxpayer failed to comply with the statutory application requirements and the Department failed to comply with the statutory determination and notification requirements. *See* S.C. Code §§ 12-4-710 & 12-4-720.

A. The Exemptions Granted by the Department are Illegally Retroactive Because the Taxpayers Failed to Timely Apply for the Exemptions.

A retroactive refund of property taxes can be obtained only if the statutory requirements are satisfied. When deciding if a refund is due, the requirements to obtain the refund must be strictly construed against the taxpayer. *Asmer v. Livingston*, 225 S.C. 341, 344, 82 S.E.2d 465,

¹⁴ See Consolidated Supplement to Request for Contested Case Hearing, filed September 10, 2018, with the Administrative Law Court.

466 (1954) (finding that the weight of authority holds that refund statutes “are to be strictly construed against the taxpayer”). Thus, the statutory demands for obtaining a property tax refund cannot be broadly applied; instead, strict application is mandatory. *Id.* (“A refund of taxes is solely a matter of governmental grace, and any person seeking such relief must bring himself clearly within the terms of the statute authorizing same.”).

The refund statutes clearly state “a property taxpayer may seek a refund of property taxes paid and assessed by the [D]epartment by filing a claim for refund with the [D]epartment if . . . the taxpayer believes the property is exempt” but only “[s]ubject to the limitations in Section 12-60-1750, and within the time limitation of Section 12-54-85(F)].” S.C. Code §12-60-2150(A).

The limitations of section 12-60-1750 state that “[n]otwithstanding any other provision of law, **no refund of property taxes must be given** for a property tax exemption requiring an application, **unless the application was timely filed.**” S.C. Code §12-60-1750(1) (emphasis added). Thus, the question is whether an application is required to obtain a Rural Telephone Service Exemption, and if so, whether the application was timely filed.

Section 12-4-720(A) imposes on taxpayers a duty to file an application for property tax exemptions. In pertinent part, section 12-4-720(A)(1) states that “[e]xcept as otherwise provided, any property owner whose property may qualify for property exemption shall file an application for exemption with the department within the period provided in Section 12-54-85(F) for claims for refund.” Section 12-4-720(A)(3) lists numerous property tax exemptions which are excluded from this application filing requirement. However, the Rural Telephone Service Exemption is not one of the listed exceptions. Thus, in order to receive the Rural Telephone Service Exemption, a taxpayer must file an application for the exemption.

Furthermore, section 12-4-720 allows for an alternative filing requirement that is only applicable to taxpayers who must file annual property tax returns with the Department. *See* S.C.

Code Ann. § 12-4-720(C) (“A taxpayer who is required to file property tax returns with the department shall claim any exemption on the return each year the property is exempt.”); *see also* *Bradley v. Doe*, 374 S.C. 622, 634, 649 S.E.2d 153, 160 (Ct. App. 2007) (“Under the rules of statutory interpretation, use of words such as ‘shall’ or ‘must’ indicates the legislature’s intent to enact a mandatory requirement.”). South Carolina law requires the Taxpayers to file annual property tax returns by April 30th of the tax year because they are classified as utilities. S.C. Code Ann. §§ 12-37-970; 12-4-540. The Department’s witness, Charles Brewer, a retired program manager and certified appraiser employed by the Department from 1998 until June of 2018, agreed that Section 12-4-720(C) requires “every year you’re going to claim an exemption, it has to be claimed on the property tax returns for that year.” (Brewer Dep. Designations 59:16–22).

Further, “[i]f a taxpayer files a property tax return listing property as exempt, that listing is considered an application for exemption from property taxes.” S.C. Code § 12-4-720(B). In addition, although a taxpayer typically is only required to file an application for exemption once, that general rule is not the case for taxpayers required to file annual property tax returns with the Department—such filers must file the application for exemption every year on the tax return. *See* S.C. Code §12-4-720(D) (stating that “[e]xcept for the requirement in subsection (C) [the provision requiring taxpayers who file annual property tax returns with the Department to claim the exemption on the returns each year], the owner is not required to file more than one application for each exemption”).

Applying the principles above, utility taxpayers, like the Taxpayers in this case, must clearly claim property tax exemptions on their timely filed annual property tax returns, which are due by April 30th of the tax year. Failure to do so by the annual property tax return deadline disqualifies such a taxpayer from being granted a property tax exemption for the tax year. “One

is estopped to claim an exemption with respect to property included in the list of taxable properties and for which no exemption has been claimed before the taxing officers.” *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (citing 84 C.J.S. Taxation § 226 (1954)). The Department’s designated 30(b)(6) witness testified that in a situation where a taxpayer protested the denial of an exemption for several tax years but the annual property tax returns never indicated what specific property was exempt, “it would then be a factual question as to whether the returns adequately requested the exemption.” (Ruple Dep. Designations 89:3–89:16).

Moreover, a taxpayer cannot simply file amended property tax returns after the original property tax returns are due and claim property tax exemptions on the amended returns, thereby circumventing the timely application requirements of S.C. Code Ann. §§ 12-60-2150(A); 12-60-1750(1); and 12-4-720. This approach was attempted by the taxpayer in *TNS Mills* and struck down as unlawful by the South Carolina Supreme Court. *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998). In *TNS Mills*, the taxpayer failed to claim property tax exemptions for pollution control equipment on the face of its originally filed property tax returns for tax years 1986 through 1991. *Id.* at 616, 474. In 1992, over six years after the first tax year in dispute, the taxpayer in *TNS Mills* filed amended property tax returns with the Department claiming property tax exemptions for pollution control equipment for each of tax years 1986 through 1991. *Id.* Similarly, in this case Taxpayers failed to claim the Rural Telephone Service Exemption on its originally filed property tax returns for tax years 2010 through 2016 and then, in 2017, seven years after the first tax year in dispute, Taxpayers filed amended property tax returns with the Department claiming the Rural Telephone Service Exemption on Form PT-427 for each of tax years 2010 through 2016. As explained by the Supreme Court in *TNS Mills*, “The circuit court failed to recognize the distinction between

amended returns and applications for exemptions. [S.C. Code Ann. Section 12-37-975] may allow the Department to accept an amended tax return, but to interpret it to allow them to grant a retroactive exemption effectively writes the deadlines for applying for an exemption out of the Code.” *Id.* at 624–25, 478. The Supreme Court further clarified “the circuit court’s interpretation creates an absurd distinction; the deadlines for applying for exemptions would apply to taxpayers who applied on separate forms, but the deadlines would not apply to taxpayers who applied on their tax returns.” *Id.* In summary, the question here is not whether the Taxpayers’ amended property tax returns complied with the statutory requirement to file an application for exemption. Rather, the question here is whether the Taxpayers’ originally filed property tax returns satisfy this requirement.

B. The Exemptions Granted by the Department are Illegally Retroactive Because the Department Failed to Timely Grant the Exemptions and Failed to Timely Notify the Counties of the Granted Exemptions.

The text of section 12-4-710 requires the Department to meet two annual deadlines: (1) the Department must determine if property qualifies for exemption on an annual basis, and (2) the Department must provide notice of its annual exemption determinations by June 1st of each year. S.C. Code § 12-4-710 (“[T]he department shall determine if any property qualifies for exemption from local property taxes under Section 12-37-220 in accordance with the Constitution and general laws of this State. **This determination must be made on an annual basis and the appropriate county official so advised by June first of each year by the department.**”) (emphasis added). Property tax exemptions must be resolved by the annual deadline and notice of the resolution must be provided to the affected counties.

The Code requires the Department to make annual determinations concerning exemptions and to notify the appropriate county officials of what property was exempted from taxation by June first. S.C. Code Ann. § 12-4-710 (Supp. 1992). The interpretation advanced by TNS would negate the purpose of notifying county officials by June first because the information given them would be worthless; the amount of exempted property, would change every time the

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

TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 624–25, 503 S.E.2d 471, 478 (1998) (emphasis added). This statute imposes a duty on the Department to prohibit granting retroactive exemptions as a means to protecting the budget-making process of counties and local taxing districts.

As stated above, Mr. Anthony testified on behalf of the Taxing Entities and explained practically why the June 1st deadline matters. With specific respect to Clarendon County (“Clarendon”), 75% of Clarendon’s annual budget is funded from ad valorem property tax revenues. (Trial Tr. 67:10–18). Not only do these tax revenues account for a substantial majority of Clarendon’s total annual budget, but counties are required to have their budgets finalized by June 30th of each year. As Mr. Anthony also explained, finalizing of Clarendon’s budget is an extended process, which spans approximately four months, three council readings, and a public hearing before the budget is officially finalized. (Trial Tr. 65:7–66:7).

Finalization of the Clarendon’s budget in June is necessary in order for Clarendon to have an effective budget beginning no later than July 1. (Trial Tr. 66:8–21). Without a finalized and effective budget beginning on July 1, Clarendon would be without authorization to contract for goods and services and would, thus, be incapable of making many needed operational decisions throughout the year. (Trial Tr. 66:8–67:9). Mr. Anthony testified that, had the Department timely notified Clarendon about the property tax exemption, Clarendon would have been able to revise and adjust its budget prior to being finalized by council readings and a public hearing. (Trial Tr. 80:21–81:10).

Instead, however, the Department failed to timely grant the exemptions and notify the Taxing Entities of the granted exemptions. As explained by our Supreme Court in *TNS Mills*, “allowing the Department to grant exemptions after the [June 1st deadline] would negate the benefits of” the statutory scheme put in place by the General Assembly “as part of an overall plan to enable counties and school districts to plan budgets for each fiscal year.” 331 S.C. 611, 624–25, 503 S.E.2d 471, 478 (1998).

C. Specific Findings By Tax Years

The Department on December 28, 2012 received a claim for refund from FTCC seeking a refund of property taxes paid for tax years 2010 and 2011 and seeking utilization of the Rural Telephone Service Exemption for 2012. Further, FTCC filed protests of assessments on property owned by FTCC for tax years 2012 through 2016. The protests asserted FTCC was entitled to the Rural Telephone Service Exemption for each of the protest years. Similarly, Diversified filed challenges to assessments on property owned by Diversified for tax years 2013 through 2016. Diversified also asserted it was entitled to the Rural Telephone Service Exemption for each of the years protested.

The Department took no action on the refund and took no action on the protests until January 8, 2017 when it signed the Settlement Agreement. Subsequently, the Department formally granted the Rural Telephone Service Exemption to FTCC’s wireless property and to Diversified’s landline property for tax years 2010 through 2015 (June 14, 2017) and 2016 (July 6, 2017) by issuing the Supplemental Certifications. In doing so, the Department granted FTCC’s refund claim for 2010 and 2011 and granted FTCC the exemption for the protested tax years of 2012 through 2016. In addition, the Department granted Diversified the exemption for the protested tax years of 2013 through 2016. Finally, although no protests were filed nor refund claims made for tax year 2017 or 2018, both FTCC and Diversified were granted the Rural

Telephone Service Exemption for tax year 2017 and 2018. Thus, the Taxpayers traveled three distinct procedural routes to secure the Department's granting of the Rural Telephone Service Exemption: the claim for refund route for 2010 and 2011, the filing of protests route for 2012 through 2016, and a third route involving neither refund claims nor protests for 2017 and 2018. Under any of these routes, the exemption should have been denied.

1. Tax Years 2010 and 2011

The evidence shows that the Taxpayers timely filed property tax returns consisting of Forms PT-420, PT-427, and PT-429 for each of tax years 2010 and 2011. However, a close examination of each of the original returns filed by the Taxpayers for tax years 2010 and 2011 reveals the Taxpayers did not clearly claim the Rural Telephone Service Exemption on the face of the returns or any of the accompanying schedules. (Trial Exs. 9 & 13). In fact, Mr. Allen testified that there is no place on a Form PT-427 where a taxpayer can list the property as exempt, but that a taxpayer could nevertheless write in the word "exempt" on the form. (Trial Tr. 689:2–18).

The Taxpayers allege that merely writing the word "rural" into a column on Form PT-427 or PT-429, as applicable, was sufficient to claim the Rural Telephone Service Exemption. (Brewer Dep. Designations 17:3–16). However, this argument misconstrues the very nature of the Rural Telephone Service Exemption and must be rejected as an unreasonable reading of the statute. The Rural Telephone Service Exemption is an exemption for all property used in providing rural telephone service, regardless of whether each particular piece of property is, in fact, located in a rural area. Property located within the jurisdictional boundaries of a municipality may still eligible for the Rural Telephone Service Exemption, with the exception of millage imposed by that municipality. Therefore, merely classifying property as "rural" on Form PT-427 or PT-429 is insufficient to claim the Rural Telephone Service Exemption.

The Department's witness Taylor Ingram confirmed this insufficiency in his testimony. Mr. Ingram testified that merely writing in the word "rural" on the originally filed Form PT-427 did not convey to the Department that the Taxpayers were claiming that particular property as exempt under the Rural Telephone Service Exemption. (Trial Tr. 167). Another of the Department's witnesses, Charles Brewer, also testified that simply writing in "rural" on Form PT-427 would not be sufficient to inform the Department how property was being used. (Brewer Dep. Designations 42:14–43:16).

The Department and the Taxpayers both recognized in the language of their own Settlement Agreement that the current filings did not contain sufficient information to accurately inform the Department of the use of the Taxpayers' property. Specifically, section 2.2 of the Settlement Agreement states the following:

2.1 Amended Property Tax Returns. FTCC and Diversified shall file amended property tax returns with appropriate supplemental data with the Property Division for every applicable year during the Audit Period so that the Property Division may calculate and certify to the applicable counties a revised assessment.

(Trial Ex. 91 § 2.1) (emphasis added).

Given the forms provided by the Department for the tax years in dispute in this case, the Taxpayers could have satisfied the statutory application requirements by filling out separate Forms PT-427 or Form PT-429, as applicable. On the applicable forms, the Taxpayers could have segregated (a) the property they were claiming as exempt from (b) the property they were not claiming as exempt, and clearly identify on the face of the form that the Taxpayers were claiming the exemption.

This is in fact what the Department and the Taxpayers agreed to do *after* entering into the Settlement Agreement in this case. (*Compare* Trial Ex. 9 with Trial Ex. 11; *Compare* Trial Ex. 13 with Trial Ex. 16). **These amended forms PT-427 were submitted on January 20, 2017,**

(Trial Ex. 92), **which is clearly beyond the statutory due date of April 30th of the respective tax year for each of tax years 2010 and 2011.** See S.C. Code Ann. § 12-30-970.

Applying these principles to the undisputed facts shows the Taxpayers did not claim, on its original PT-420, PT-427, or PT-429 forms, the Rural Telephone Service Exemption for tax years 2010 and 2011. Having not done so, the Taxpayers have not met the requirements of section 12-4-720 and failed to timely file the exemption application each year. Accordingly, no refunds can be issued to FTCC for 2010 and 2011 under section 12-4-720.

Moreover, the grant of exemptions for tax years 2010 and 2011 are also unlawful because the Department failed to comply with the annual determination and notice requirements. The Taxpayers have not produced any evidence that the Department made its determination granting property tax exemptions for tax years 2010 or 2011 on an annual basis for those tax years. Rather, the evidence in this case clearly shows the Department did not make its determination until July of 2017 when the Department issued the Supplemental Certifications to the Taxing Entities. July 2017 is clearly beyond the statutory mandate for tax years 2010 and 2011, rendering the exemptions void under Section 12-4-710.

The Taxpayers have also not produced any evidence of notification from the Department to the Taxing Entities that property tax exemptions were granted for tax years 2010 or 2011 by June first of each of those years. The General Assembly and our Supreme Court prohibits the Department from granting property tax exemptions in 2017 with no prior notice to the Counties for a refund payment relating to tax years 2010 and 2011. Such retroactive property tax exemptions are prohibited by the annual deadlines contained in section 12-4-710. See *TNS Mills*, 331 S.C. 611, 503 S.E.2d 471.

2. *Tax Years 2012 Through 2016*

Similar to tax years 2010 and 2011, the evidence for tax years 2012 through 2016 shows the Taxpayers filed original property tax returns which failed to clearly claim the exemption. (Trial Exs. 18, 31, 39, 44, 49, 55, 60, 65, and 70). The Taxpayers eventually filed amended forms PT-427 on January 20, 2017, (Trial Ex. 92); however, this is clearly beyond the statutory deadline of April 30th of the respective tax year for each of tax years 2012 through 2016.

Applying these principles to the undisputed facts shows the Taxpayers did not claim the Rural Telephone Service Exemption on the original returns for tax years 2012 through 2016. Having not done so, the Taxpayers failed to meet section 12-4-720's requirement to timely file applications for exemptions each year. Accordingly, no refund can be issued to Taxpayers for 2012 through 2016 under section 12-4-720.

Further, those exemptions are also unlawful because the Department failed to comply with the annual determination requirement and the annual notification requirement. As to the first step—the Department making its determination—the evidence in this case has shown the Department did not make its determination until July 2017 when the Department issued the Supplemental Certifications to the Taxing Entities. July 2017 is clearly beyond the statutory mandate for tax years 2012 through 2016, rendering the exemptions void under Section 12-4-710.

As to the second step—notifying the appropriate county official by June first of each year of all annual property tax exemptions granted for that tax year—both the Taxpayers and the Department argue the 80% notices sent from the Department to the county auditors is sufficient. This argument is unpersuasive for several reasons.

First, the 80% notices were never sent before the annual June 1st deadline, rendering them late under the law. (See, e.g., Trial Ex. 94 (80% Notice for tax year 2012 dated October 16,

2012); Trial Ex. 99 (80% Notice for tax year 2013 dated February 27, 2014); Trial Ex. 103 (80% notice for tax year 2014 dated December 16, 2014); and Trial Ex. 110 (80% Notice for tax year 2015 dated October 26, 2015)).

Second, the text of the 80% notices does not provide notice that the Department granted any exemption. Taylor Ingram confirmed that 80% notices do not necessarily contain the basis of what the dispute involves. (Ingram Dep. Designations 47:8–48:9) (“Q. And as far as the counties know, it could be any type of dispute? A. Yes.”). At most, the evidence in this case has shown the 80% notices provided notice that an exemption had been applied for and that the matter was still in dispute between the Department and Taxpayers. Consequently, the very information required to be provided under section 12-4-710¹⁵—specifically, whether a property tax exemption had been granted—is completely absent from the 80% notices. Not only did the 80% notices not provide notice of exemptions granted by the Department, the 80% notices did not even provide dollar amounts of the taxable property in dispute. As confirmed by several witnesses, a reader of the 80% notices would have had no way of knowing whether a small, partial exemption was in dispute or whether the dispute involved a 100% exemption. (Trial Tr. 132:23–133:6, 227:16–228:11) (Brewer Dep. Designations 48:9–49:21).

Third, even if this court were to construe the 80% notices as being timely sent by the Department and as containing sufficient information to put the Taxing Entities on notice that property tax exemptions had been granted, the 80% notices would still be insufficient under section 12-4-710 because they were not sent to the “appropriate county official.” This phrase is not defined in the statute, so this court must determine who the appropriate county official is.

County auditors are generally independently elected officials who are not employees of a county or otherwise answerable to a county. S.C. Code Ann. § 4-9-60. (*See also* Trial Tr. 58:25–

¹⁵ Section 12-4-710 clearly and unambiguously requires the Department to determine whether property is exempt under section 12-37-220, and that “[t]his determination must be made on an annual basis and the appropriate county official so advised by June first of each year by the department.”

59:20; 61:18–62:8) (Ruple Dep. Designations 83:7–23). At all times relevant to this dispute, there was no law requiring them to provide any notice to the counties. Second, even if the county auditors were employees of a county or otherwise answerable to a county, they would not be the appropriate county official under section 12-4-710. As explained by the Supreme Court in *TNS Mills*, the legislative purpose of the annual deadlines in section 12-4-710 is to protect the budgets of counties, school districts, and other taxing entities. County auditors do not set budgets for counties, school districts, or other taxing entities. (Trial Tr. 58:1–59:20; 61:18–65:24; 84:3–23). Thus, the appropriate county official must at least be an official with authority to affect governmental budgets, such as a member or representative of county council or a county administrator. Even if a county auditor desired to act on information received pursuant to section 12-4-710, a county auditor would have no legal authority to do so. If counties had notice of all property tax exemptions granted by June 1st of each year, the respective leaders of the counties and any affected local taxing districts could have amended their budgets prior to the statutory budget deadline of June 30th.

The legislature prohibits the Department from granting property tax exemptions in 2017 with no prior notice to the Taxing Entities for a refund payment relating to tax years 2012 through 2016. Such retroactive property tax exemptions are prohibited by the annual deadlines contained in section 12-4-710 as explained by *TNS Mills*.

3. *Tax Years 2017 and 2018*

The exemptions granted by the Department for tax year 2017 in this case are unlawful because the Department failed to comply with the statutory notice requirements of section 12-4-710. Here, none of the County Auditors received an notice related to tax year 2017 on or before the June 1, 2017, deadline. Tax year 2017 involved protests because the Department had already

granted the Rural Telephone Service Exemption to Taxpayers. Consequently, the Department did not send 80% notices for tax year 2017.

The legislature prohibits the Department from granting a property tax exemption in August of 2017 (after the June 1st deadline) with no prior notice to the Taxing Entities for a refund payment relating to tax year 2017. Such retroactive property tax exemptions are prohibited by the one-year rule of section 12-4-710 as explained by our Supreme Court in *TNS Mills*.

IV. Findings as to Substantive Requirements

In South Carolina, the use of property is fundamental to the ad valorem tax treatment of the property. S.C. Const. Art X, § 1 (“assessment of all property shall be equal and uniform in the following classifications: (1) All real and personal property owned by or leased to manufacturers, utilities and mining operations and used by the manufacturer, utility or mining operation, in the conduct of such business”). The use of property is also essential to determining whether property is exempt from *ad valorem* property tax. In fact, at least twenty of the statutory exemptions from *ad valorem* taxation that have been enacted by the General Assembly are explicitly based on use of the property. See S.C. Code Ann. § 12-37-220. The Rural Telephone Service Exemption is no exception. It explicitly applies only to property that is “used in providing rural telephone service.” S.C. Code Ann. § 12-37-220(B)(10).

A. The Taxpayers’ Eligibility for the Rural Telephone Service Exemption is Dependent on Use of the Property.

To determine whether the Taxpayers’ are eligible for the Rural Telephone Service Exemption, the Taxpayers bear the burden of clearly establishing they met each of the requirements of the exemption statute for each tax year in dispute. *TNS Mills, Inc. v. S.C. Dep’t of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998). In order to receive the Rural Telephone Service Exemption, section 12-37-220(B)(10) explicitly requires that the property be

used in providing “rural telephone service.” No case law exists interpreting this use requirement, and the General Assembly did not define “rural telephone service.” Consequently, it is necessary for this Court to construe the meaning of “rural telephone service.” Because section 12-37-220(B)(10) grants a tax exemption, this Court is required to narrowly construe its terms against the Taxpayers. *E.g., CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citing *Southeastern Kusan, Inc. v. South Carolina Tax Com’n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981)).

This Court concludes that “telephone service” as used in section 12-37-220(B)(10) includes only those services related to the voice communication services provided via the Taxpayers’ landline telephone network. In making this determination, the critical inquiry is what the General Assembly meant and intended by its use of the term “rural telephone service” at the time section 12-37-220(B)(10) was enacted in 1978. *See* Antonin Scalia & Bryan A. Garner, *Reading Law* 78 (2012) (“Words must be given the meaning they had when the text was adopted.”); *see also* *South Carolina v. United States*, 199 U.S. 437, 448 (1905) (discussing the meanings of written instruments and stating “[t]hat which it meant when adopted it means now”). This Court does not agree with the Taxpayers’ argument that “rural telephone service” includes all types of communication services, irrespective of the form those communications take or the medium in which those communications are exchanged.

The Taxing Entities argue that the amount of property the Taxpayers claim as the basis for a property tax exemption, far exceeds the amount of the Taxpayers’ property which is actually used to provide “rural telephone service.” Specifically, the Taxing Entities argue that a large portion of the Taxpayers’ property is used to provide services other than “telephone service” as that term was intended by the General Assembly when section 12-37-220(B)(10) was enacted in 1978. In addition, the Taxing Entities argue that the wireless cellular service provided

by the Taxpayers is not “rural telephone service” under section 12-37-220(B)(10). For the reasons discussed more fully below, this Court agrees with the Taxing Entities and finds that the Taxpayers’ property used to provide services other than landline telephone services does not qualify for the Rural Telephone Service Exemption.

1. *“Telephone Service” is Limited to Voice Communication Services Through a Landline Telephone Network*

The term “telephone service” as used in section 12-37-220(B)(10) includes only those services related to the voice communication services provided via the Taxpayers’ landline telephone network. The meaning of the term “telephone service” as used in section 12-37-220(B)(10) is dictated by what those words meant to the General Assembly in 1978. *E.g., Alltel Communications, Inc. v. South Carolina Dept. of Revenue*, 399 S.C. 313, 320, 731 S.E.2d 869, 873 (2012). (“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.”).¹⁶ In order to apprehend the General Assembly’s intent in 1978, it is essential to ascertain not only the commonly understood definition of “telephone service” in 1978, but also the legislative history surrounding section 12-37-220(B)(10)’s enactment. *See, e.g., In re Hospital Pricing Litigation, King v. AnMed Health*, 377 S.C. 48, 59, 659 S.E.2d 131, 137 (2008) (discussing the statute’s history and surrounding legislative facts to interpret the proper meaning of the statute’s terms).

“Telephone service” is not defined in section 12-37-220(B)(10) or in any other South Carolina statutes dealing with taxation, but “[w]here a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.” *Lee Thermal Eng’g Corp.*, 352 S.C. 81, 91–92, 572 S.E.2d 298, 303 (Ct. App. 2002). This Court was unable to locate any dictionary definitions for “telephone service.” However, after review of

¹⁶ Although not completely irrelevant to the inquiry before this Court, today’s industry or commonly understood definitions of “telephone service” are not critical to this Court’s analysis.

definitions for “telephone” found in dictionaries published in the 1970s and 1980s, it is clear that when section 12-37-220(B)(10) was enacted in 1978, a “telephone” was commonly understood as an instrument used for communicating sounds, especially those of one’s voice, across long distances via a physical connection, such as a wire.¹⁷

It is important to understand the context in which section 12-37-220(B)(10) became law. The Taxing Entities’ expert testified that, in 1978, “telephone service” was understood by the telecommunications industry as “voice traffic over a pair of copper wires.” (Trial Tr. 388:15–23; *see also* Trial Tr. 259:17–21 (stating that in 1980, “telephone service” meant “voice service over a landline network that’s terminated into . . . the public switch network”)). On the other hand, the Taxpayers’ expert testified that “telephone service” simply meant the provisioning of the ability to communicate between parties over a distance. (Trial Tr. 726:15–16). The Taxpayers’ expert even went so far as to include internet service, email, streaming video services like Netflix, and deer trail camera service within his definition of “telephone service.” (Trial Tr. 834:22–839:1).

In 1978, “telephone service” was not the only available method through which communication could occur over long distances. (*E.g.*, Trial Tr. 728:5–729:8, 822:3–7 (the Taxpayers’ expert discussing the ability to send television and data across its microwave wireless network in the 1950s and 1960s)). Considerable time at the hearing of this matter was spent by both the Taxing Entities and the Taxpayers discussing the number of different telecommunication technologies that existed when section 12-37-220(B)(10) was enacted and that have come into existence since 1978. While this Court agrees that other telecommunication

¹⁷ *See* Webster’s New Collegiate Dictionary (1973), (1975), (1979), (1980) & (1982) (defining “telephone” as “an instrument for reproducing sounds at a distance; specifically: one in which sound is converted into electrical impulses by wire”); The American Heritage Dictionary (1985) (defining a “telephone” as “an instrument that directly modulates carrier waves with voice or other acoustic source signals to be transmitted to remote locations and that directly reconverts received waves into audible signals, especially such an instrument connected to others by wires”); The Oxford English Dictionary (2d) (1989) (defining a “telephone” as “an apparatus for reproducing sound, especially that of the voice, at a great distance, by means of electricity; consisting, like the electric telegraph, of transmitting and receiving instruments connected by a line or wire which conveys the electric current”).

technologies, such as the ability to send television or data signals across wireless networks, existed in 1978, this fact only further illuminates the General Assembly’s intent by choosing to use the term “telephone service.” The General Assembly’s use of the word “telephone” preceding “service,” rather than another term known in 1978 such as “telecommunication,” shows a clear intent to limit the type of communication services covered by the application of section 12-37-220(B)(10) to only voice services which occurred through a telephone landline network.

This Court finds that the Taxpayers’ proposed definition of “telephone service” is far more expansive than how that term was intended by the General Assembly in 1978 and is much more consistent with a definition for “telecommunication.”¹⁸ Interpreting section 12-37-220(B)(10) in such a manner would ignore the 1978 plain and ordinary meaning of “telephone” and would result in an improperly forced construction in order to expand the statute beyond its intended operation. *See CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2001) (stating that words must be given their “plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation”). Had the General Assembly intended to provide a property tax exemption for the property used in providing “telecommunication”—or any other type of communication—services it could have done so. However, the General Assembly chose to specifically use “**telephone** service,” thus limiting the types of communication services which are covered by section 12-37-220(B). Practically, in 1978, a telephone was incapable of providing anything other than voice communication service from one user directly to another user.

¹⁸ See The American Heritage Dictionary (1985) (defining “telecommunication” as the science and technology of communication by electronic transmission of impulses, as by telegraphy, cable, telephony, radio, or television; a message transmitted by means of telecommunication”); The Oxford English Dictionary (2d) (1989) (defining “telecommunication” as “[c]ommunication over long distances by electrical means such as by telegraphy, telephone, or broadcasting”).

In summary, “telephone service” was understood within the industry, and was commonly defined, in 1978 to encompass only voice communication services which were communicated through a telephone and transmitted by a physical connection (i.e., a wire) to another telephone user. There was no evidence presented to this Court to support an inference that the General Assembly intended to include any other communication services within the commonly understood meaning of “telephone service.” Therefore, this Court finds that section 12-37-220(B)(10) provides a property tax exemption only to the Taxpayers’ property used in providing voice communication services through a landline telephone network.

With that said, this Court stresses that the law does not dictate that taxpayers must continue to use 1978 technology in order to qualify for the Rural Telephone Service Exemption. Statutory “[d]rafters of every era know that technological advances will proceed apace and that the rules they create will one day apply to all sorts of circumstances that they could not possibly envision.” Scalia & Garner, *supra*, at 86. However, in order for section 12-37-220(B)(10) to properly apply to technologies not contemplated at the time the statute was enacted, the new technology must fit squarely within the statute’s intended purpose.¹⁹ The intent of the General Assembly in 1978 was to promote the advancement of telephone service in rural areas throughout South Carolina. In so doing, the General Assembly contemplated that telephone service would be provided via telephone wires of some sort. In earlier times, telephone wires were primarily made of copper. (*E.g.*, Trial Tr. 265:24–266:1; 267:7–23). As technology

¹⁹ See generally *Prater v. Reichman*, 135 Tenn. 485, 187 S.W. 305, 306 (1916) (refusing to apply a statute to a new technology—the automobile—because it was “the product of a civilization advanced much beyond the date of our exemption legislation . . . and a different class of vehicle altogether . . . [and] [i]t was invented to meet the needs of a different class of citizenship from that intended to be protected by the exemption statutes”); *People v. Gilbert*, 414 Mich. 191, 197, 324 N.W.2d 834, 837 (1982) (“A failure to consider whether the Legislature understood the meaning of a term quite differently when a statute was enacted than it is understood today would allow a statute to be construed in a manner which extends its intended scope.”); *Apple Inc. v. Superior Court*, 56 Cal. 4th 128, 150, 292 P.3d 883, 896 (2013) (holding that “[h]aving thoroughly examined [the statute’s] text, purpose, and history, we are unable to find the clarity of legislative intent or consistency with the statutory scheme necessary to conclude that the Legislature in 1990 intended to bring the enormous yet unforeseen advent of online commerce . . . within the coverage of the Credit Card Act”).

progresses, these copper telephone wires have been replaced by fiber optic cables. (*E.g.*, Trial Tr. 394:16–395:11). This is the type of technological advancement which fits squarely within the plain meaning and intend purpose of section 12-37-220(B)(10). The General Assembly intended to physically connect citizens in rural areas to essential services. Whether that is done using copper wire or fiberoptic cable, the physical connection remains the same.

Moreover, to the extent Respondents have argued that the term “telephone service” is in anyway ambiguous, this Court is guided by South Carolina’s policy on interpreting tax statutes.²⁰ Where a statute provides a tax exemption, South Carolina courts have a long standing policy of “strictly construing tax exemption statutes against the taxpayer.” *E.g.*, *CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881. In other words, the “statutory language will not be strained or liberally construed in the taxpayer’s favor.” *Southeastern Kusan, Inc. v. South Carolina Tax Com’n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981). To include other communication services, such as internet, email, video streaming, etc., within the meaning of “telephone service” as that term was intended in 1978 would require more than a liberal construction in the Taxpayers’ favor. It would require this Court to interpret section 12-37-220(B)(10) in a manner which directly conflicts with the statute’s plain language.

Accordingly, this Court finds that the Taxpayers’ property used to provide services other than “telephone service” is not property which is eligible to receive the Rural Telephone Service Exemption pursuant to section 12-37-220(B)(10).

²⁰ This Court is aware of the Supreme Court’s analysis in *Alltel Communications, Inc.*, where the Court found the term “telephone company” ambiguous with respect to its application to Alltel, Inc. because the company “use[d] radio waves, and not landlines, to transmit communications.” 399 S.C. at 320–21, 731 S.E.2d at 873. However, if this case supports any argument it is that of the Taxing Entities. “The earliest laws ‘were designed to accommodate the original technology, which required the use land rights-of-way to place telephone poles and run telephone wires.’” *Id.* at 319 n.3, 731 S.E.2d at 872 n.3 (quoting William J. Quirk & Fred A. Walters, *A Constitutional and Statutory History of the Telephone Business in South Carolina*, 51 S.C. L. Rev. 290, 293 (2000)). And, although the Court resolved the ambiguity in favor of the taxpayer in that case, the Court’s decision to do so was based on South Carolina’s correlating policy of resolving ambiguities in favor of a taxpayer when the statute seeks to impose taxation. *Id.* at 321, 731 S.E.2d at 874.

2. *Wireless Cellular Service is Not Within the Meaning of “Rural Telephone Service.”*

Having concluded that the General Assembly intended to create a property tax exemption for the property used in providing “telephone service,” it is important to examine whether wireless cellular service falls within that definition. After reviewing the evidence presented, as well as the legislative history of section 12-37-220(B)(10), this Court finds that the property used by the Taxpayers to provide wireless cellular services does not qualify for the Rural Telephone Service Exemption. A tax exemption for the property used to provide wireless cellular service is inconsistent with the General Assembly’s intended purpose of section 12-37-220(B)(10). Not only did the Taxpayers fail to present any evidence that wireless cellular service was within the contemplation of the General Assembly in 1978, but the evidence presented shows that the technology used by the Taxpayers to provide wireless cellular service is fundamentally different than the technology available in 1978. Additionally, the same financial incentives that were intentionally granted by the General Assembly in order to develop a landline telephone network in the rural areas of South Carolina are not necessary for the provision of wireless cellular service within those same rural areas.

First, the technology used to provide wireless service—like the property used by the Taxpayers today—was not practically available in 1978, and the Taxpayers failed to present any evidence that the General Assembly contemplated wireless cellular service at the time section 12-37-220(B)(10) was enacted. For the Taxing Entities, Mr. Moss testified that when he began working as a telecommunications engineer in 1980, wireless cellular systems did not exist. (Trial Tr. 286:20–21). At that time, the only wireless systems operational for one user to communicate directly with another user were what Mr. Moss referred to as a “radio telephone system.” (Trial Tr. 287:4). These wireless systems were not available for practical use by the public, operated completely differently than the wireless cellular services of today, and never became

commercially viable. (Trial Tr. 287:2–15). In fact, the very first wireless cellular system was not deployed in the United States until 1983. (Trial Tr. 288:2–4). However, even that version of wireless cellular service was vastly different than what is in existence today because the only capability available was the provision of voice service. Trial Tr. 288:7–8). Today, on the other hand, the Taxpayers’ “wireless” property is used to provide a significant number of other non-voice services.

Although the Taxpayers’ presented evidence at the hearing that a wireless network was available in some capacity as early as the 1950s, this network was in no way comparable to the wireless cellular network of today. Instead, the Taxpayers’ expert, Mr. Wyatt, presented testimony explaining the existence of AT&T’s wireless microwave network which was responsible for carrying information and television signals in some capacity. (See Trial Tr. 728). However, as Mr. Wyatt explained, “[i]t wasn’t pick up the cell phone wireless.” (Trial Tr. 729:6–8). Not only did the Taxpayers fail to present any evidence that the General Assembly contemplated the use of wireless cellular service within the enactment of section 12-37-220(B)(10), but the Taxpayers failed to present any evidence that a viable wireless cellular network even existed in 1978.

Additionally, it is clear from the evidence presented and the legislative history of the Rural Telephone Service Exemption that exempting the property used in providing wireless cellular service would be inconsistent with the General Assembly’s intended purpose of section 12-37-220(B)(10). First, the enactment of section 12-37-220(B)(10) was intended to promote the development of rural infrastructure in South Carolina. The initial capital investment of developing a landline network, especially in rural areas where telephone users are spread far apart, was then and is now a capitally intensive endeavor. (Trial Tr. 513:15–23, 514:15–23). In fact, as Mr. Lawrimore testified, the landline telephone services provided by the Taxpayers are

not profitable. (Trial Tr. 513:22–25). Without a property tax exemption for the property used to provide rural landline telephone service, or some other substantive financial incentive, companies would have been unable able to provide landline telephone service to rural users because doing so necessarily required erecting telephone poles and running wire in order to service each rural user.

However, the same financial incentives necessary for the development of a rural landline telephone network are not necessary for the development of a wireless cellular network. The competitive landscape within the wireless cellular industry shows that wireless providers are capable of profitably operating within the rural areas of South Carolina. The record shows that many, if not all, major wireless cellular companies provide wireless coverage to their respective customers within the Taxpayers’ geographic service area. (Trial Tr. 518:18–519:6). Competition among wireless cellular providers is extensive throughout the same area serviced by the Taxpayers (Trial Tr. 555:13–25). Yet, there was no evidence presented that any other wireless cellular provider receives a property tax exemption for property used in providing wireless cellular service. The profitability of the wireless business, even in rural areas, eliminates the needs for such incentives. As Mr. Lawrimore testified, the Taxpayers’ wireless business is not only profitable, but the profit margin generated from the Taxpayers’ wireless business accounts for essentially all of Farmers’ and the Taxpayers’ consolidated net income. (Trial Tr. 514:6–14).

Second, the purpose of developing a rural landline telephone network was to provide a physical connection of communication between an isolated rural user and the rest of the developed world. While this Court agrees that there is some element of wireless cellular service that provides rural users with the ability to communicate with other users, it is undisputed that a significant majority of the Taxpayers’ property used to provide wireless cellular service operates to provide services other than rural telephone service. (Trial Tr. 378:23–379:9). Not only that,

but unlike a rural landline telephone network, which necessarily has a rural, South Carolina user on one end of the connection, many users of the Taxpayers' wireless property are neither rural users nor South Carolina residents. (Trial Tr. 291:22–292:17; 445:23–446:9; 638:14–639:10; 778:8–22).

For these reasons, this Court finds that the Taxpayers' failed to meet their burden and failed to establish that the Taxpayers' property used to provide wireless cellular service is property used in providing "rural telephone service" within the meaning of section 12-37-220(B)(10). Accordingly, only Farmers' property which is used in providing voice communication services through Farmers' landline telephone network is properly exempted from ad valorem taxation under section 12-37-220(B)(10).

B. Analysis of the Taxpayers' Property

1. The Taxpayer's Property is Incapable of Being Analyzed Separately.

After over 5 years of administrative appeal in this matter and an additional 2 years of litigation, including extensive discovery, no Party to this case was capable of delineating specific items of property that were used in providing rural telephone service from specific items of property that were not used in providing rural telephone service. Rather, multiple witnesses testified that all of the network property owned by the Taxpayers was used in an interconnected manner to deliver all of the various services the Taxpayers provide. (Trial Tr. 288:18–21, 303:13–22, 314:5–8, 543:4–14). As explained above, all of the property owned by the Taxpayers is treated as if it is owned directly by Farmers for property tax purposes. See S.C. Code Ann. § 12-2-25. This provision of the tax law is fundamental to the Taxpayers' request for the Rural Telephone Service Exemption in this case. Consequently, the factual issue becomes fairly straightforward: is Farmers' and the Taxpayers' interconnected network of property, as a whole, used in providing rural telephone service?

The only delineation of exempt versus non-exempt property provided by Taxpayers was based on cost information broken down by service lines. This information was provided by the Taxpayers to the Department **after** entering into the Settlement Agreement. It is unclear from the testimony at the hearing what standard was used by the Taxpayers to determine whether to list property on the “exempt” Form PT-427 or on the “taxable” Form PT-427. The Department’s witnesses understood any listing of cost information on the “exempt” PT-427 to be a listing of property that was used exclusively to provide telephone service; whereas, the Taxpayers’ witnesses understood the Rural Telephone Service Exemption to apply to property that was used **to any extent** in providing rural telephone service. (Trial Tr. 498–499; Brewer Dep. Designations 48:3–6; Ingram Dep. Designations 71:22–72:6). Consequently, the breakdown provided by Taxpayers in its post-Settlement Agreement amended returns does not provide any evidence as to how Taxpayers’ interconnected property was actually used.

Consistent with the analysis above, the key question becomes whether the Taxpayers’ interconnected network of property was used to provide voice telephone service. Testimony at trial confirms that voice telephone services utilize the very same IP-based backbone as the non-exempt services including internet, cable television, security, and other data-intensive services. (Trial Tr. 288:17–21, 308:2–5, 314:5–8, 844:6–845:7, 859–860). All of the property and all of the advanced equipment comprising the Taxpayers’ network is designed to work together over an IP-based backbone that stretches for miles across more than six counties in this State. Because of the inability to segregate specific assets by use and the interconnected nature of Taxpayers’ property, the use of Taxpayers’ Property in the aggregate must be examined and analyzed to determine if Taxpayers’ property meets the use requirement of the statute. Consequently, the proper analysis involves quantifying the percentage of the entire interconnected network that is

utilized for voice services²¹ and comparing that to the percentage of the entire interconnected network that is utilized for all services.

2. *Bandwidth Utilization is the Only Appropriate Metric for Determining Whether the Taxpayers' Property Was Used in Providing Rural Telephone Service.*

Because of the interconnected nature of Taxpayers' property, the technology that is used to deliver the service impacts the Court's selection of the appropriate metric for measuring whether the property is used in providing rural telephone service.

The Court is not limited to measuring how the property was used based on measurements that were technologically available in 1978 (i.e. time use, minutes of use, ehrlang, etc.). Based on undisputed expert testimony, all information travels over taxpayer's IP-based infrastructure (its property) as bits (ones and zeros). (Trial Tr. 334:1–10). These bits combine to form bytes, which can be combined to form ever larger amounts of data in sizes that are common in today's modern economy, such as kilobytes, megabytes, gigabytes, etc.

After weighing the evidence and the testimony of the experts in this case, this court determines it is not appropriate to measure the extent to which property that is designed to transmit bits is used to deliver voice telephone service by looking at "minutes of use" or other time-based measurements. Rather, the appropriate measure to use is bandwidth, which is the measure utilized in the industry and the measure upon which modern telecommunications networks are designed and provisioned. (Trial Tr. 314:11–325:1).

Although minutes of use may be an appropriate benchmark or metric for circuit-switched networks, minutes of use are not relevant for the technology actually used by the Taxpayers during the years in dispute here—packet-switched networks. The experts disagree whether minutes of use is appropriate for use in this case; however, this court is persuaded by the

²¹ The voice services examined included not only landline telephone calls, but cellular telephone calls as well.

testimony of Mr. Moss on this subject. Experts agree minutes of use was a valid metric in 1978 and remains a valid metric for network switches and other pieces of equipment where the number of access lines or the amount of available radio spectrum for a particular cell tower is a limiting factor. As Mr. Moss explained, the vast majority of the property comprising Taxpayers' network during the years in dispute is made up of fiber-based equipment that can carry orders of magnitude more data than older copper wire based systems. (Trial Tr. 277:16–18). In other words, for the vast majority of the Taxpayers' network, the number of lines or connections (and thus, the minutes those lines are in use) is irrelevant to network function, design, or performance. Rather, the size and speed of the data traveling over the equipment is the limiting factor (bandwidth), not the number of physical connections. If anything, minutes of use is appropriate only for switches used in the public telephone switch network ("PTSN"). However, as confirmed by Taxpayers witnesses, Taxpayers do not own any of the telephone switches they utilize for switching voice calls on their networks. (Trial Tr. 613:1–10). Consequently, Taxpayers have not claimed the Rural Telephone Service Exemption for any switches.

Additionally, Mr. Moss provided convincing criticism of minutes of use as a metric for network design or function. (Trial Tr. 314:16–325:1) Mr. Moss reviewed user manuals and other publications from the manufacturers of the specific models of network equipment identified by the Taxpayers as being used in their network. Mr. Moss was not able to recall any specific instances where these publications mentioned minutes of use as a limitation or a meaningful specification. Brad Erwin, testifying for the Taxpayers, asserted that these publications contained numerous references to minutes of use and provided highlighted excerpts of these publications to the Court for review. After further review of these publications, this Court was not able to locate any references to "minutes of use" or "ehrlang."

In addition, the Taxpayers' expert Mr. George Wyatt testified that erlangs, centum call seconds, and minutes of use were all interchangeable terms measuring network utilization based on time. (Trial Tr. 729:15–731:17). However, Mr. Wyatt also testified that he had not used the terms erlangs or centum call seconds in about six or seven years at the time of his deposition. (Trial Tr. 848:2–17). Mr. Moss testified that he had never, in 40 years of working as a telecommunications engineer, used minutes of use as a metric for network capacity.

Mr. Moss testified that the best measure for determining the extent to which the Taxpayers' property is used to provide telephone service is the measure universally used in the industry—bandwidth. (Trial Tr. 314:11–24, 409:7–25). The Taxpayers' expert actually agreed that bandwidth is a good metric to describe a transport rate and that minutes of use is not a constraining factor when discussing transport capacity of a telecommunication system. (Trial Tr. 849:1–17). Transport capacity measures the amount of data traveling over the network over a given period of time. By comparing the amount of data that is processed by the equipment on the network attributable to voice telephone service versus the amount of data processed in the aggregate, a reasonable estimate of the percentage the network was actually used for voice telephone service can be reached for each of the tax years in dispute.

C. The Evidence Shows the Use of Taxpayers Property for Providing Rural Telephone Service During Tax Years 2010 Through 2018 Was Merely De Minimis.

As explained above, the Taxpayers provided an analysis of network utilization as measured by both minutes of use and also as measured by bandwidth utilization. However, the Taxpayers only provided this analysis for FTCC and not for Diversified. As explained above, the proper analysis in this case is dictated by section 12-2-25, which requires this Court to take into account all property owned by FTCC and by Diversified as if they were owned by Farmers. This Court cannot separate the two, as all the property is treated for tax purposes as being owned by

the same owner, Farmers. Indeed, it is nearly impossible to disaggregate the property of the three entities.

Moreover, the Taxing Entities' expert discovered a glaring mathematical error in the Taxpayers' calculations that, once corrected, significantly reduced the percentage network utilization attributable to voice telephone service. (See Trial Tr. 411–419). The Taxing Entities' expert, Mr. Moss, strongly disagreed with the Taxpayers' methodology for converting measured data consumption into minutes of use. Mr. Moss did not disagree with the math used by the Taxpayers, (*e.g.*, Trial Tr. 370:20–373:9); rather, Mr. Moss disagreed with the whole concept of converting data to minutes of use without a uniform data transfer rate. (*Id.*; 414:10–415:16). In short, Mr. Moss testified that minutes of use for voice telephone calls can be converted into a data equivalent because all minutes of telephone voice usage utilize approximately the same rate of bandwidth on the network. (Trial Tr. 417:14–16). By multiplying the minutes of use by the bandwidth utilization rate for voice services, a reasonable estimate of network utilization is produced. (See *generally* Trial Tr 327:1–353:25). However, the same process cannot be used to convert the total amount of data delivered to customers into a minutes of use equivalent.

The total amount of data utilized on the network consists of emails, streaming video services, television service, security services, telephone calls, and various forms of data transmission, and each consumes bandwidth at significantly different rates. (Trial. Tr. 412:2–417:20). According to Mr. Moss, this calculation is inherently flawed because minutes of use merely measures the amount of time a piece of equipment is in use at the edge of the network; whereas, data consumption measures the amount of data actually delivered to a device on the edge of the network. (Trial Tr. 411:6–413:8).

As explained above, minutes of use only applies to certain specific pieces of the network where bottlenecks exist. (Trial Tr. 407:14–25). This metric is not a meaningful measure of the

use of the network as a whole given the modern network design used by the Taxpayers is based on packetized data transmissions sent over the common core fiber network. (*Id.*).

The Taxpayers also provided testimony that the network is used for over fourteen million hours per year for voice telephone conversations (Trial Tr. 493:10–22). In a vacuum, these numbers seem substantial. However, due to the immense amount of data the Taxpayers' network is capable of transmitting and the relatively small amount of data required to transmit voice telephone calls over a packet-switched, IP-based network, these numbers shrink to negligible sums when compared to the other data that transverses the network. (Trial Ex. 134).

Mr. Moss provided a careful and thorough analysis of the use of the Taxpayers' interconnected network and determined the network was used less than five percent for voice services for each of the tax years in dispute. (Trial Ex. 134). Mr. Moss used information produced by the Taxpayers during discovery, including maps of the Taxpayers' core network, makes and models of actual networking equipment used in the Taxpayers' network, core data utilization numbers from the Taxpayers' computer systems for tax years 2017 and 2018, minutes of use and data provided by the Taxpayers for FTCC's customers for each of tax years 2010 through 2018, average length of telephone calls and average number of telephone calls per subscriber, and numbers of subscribers to each of Farmers, FTCC, and Diversified for each of tax years 2010 through 2018. (Trial Ex. 134). Mr. Moss also assumed all voice calls delivered over Taxpayers' network were provided using the industry standard rate of 56 kilobits per second. (Trial Tr. 340:4–341:10). Using this information, Mr. Moss was able to calculate that only .64% of Taxpayers' aggregate network was utilized for the delivery of voice services during tax year 2017 and only .45% for tax year 2018. (Trial Ex. 134) (Trial Tr. 371:16–372:14).

Mr. Moss did not have access to the core data utilization numbers from Taxpayers' computer systems for tax years 2010 through 2016. (Trial Tr. 351:19–352:23). These are the

numbers that comprised the denominator of his calculation. However, Mr. Moss was able to estimate these amounts for tax year 2010 through 2016 using IP-based communications traffic growth rates published by Cisco. (Trial Tr. 352:24–354:3; 363:19–370:16). These reports, known as Visual Networking Index or “VNI” reports, are published by Cisco using real-world data. (*Id.*). From the reports, Mr. Moss extracted growth rates specific to North America for IP traffic. (*Id.*). Using these growth rates, Mr. Moss was able to estimate the total core data utilization for Taxpayers’ network for tax years 2010 through 2016. (Trial Ex. 134) (Trial Tr. 371:16–372:14). The results of Mr. Moss’s calculations are summarized below.

Tax Year	2010	2011	2012	2013	2014	2015	2016	2017	2018
% of Network Utilization Attributable to Voice	4.75%	3.16%	2.19%	1.80%	1.32%	1.01%	0.83%	0.64%	0.45%
% of Network Utilization Attributable to all other traffic	95.25%	96.84%	97.81%	98.20%	98.68%	98.99%	99.17%	99.36%	99.55%
Totals:	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Although Mr. Wyatt agreed that publications from Cisco are reliable and generally relied upon by engineers in the telecommunications industry (Trial Tr. 855:11–25), Mr. Wyatt criticized Mr. Moss’s use of North American averages to estimate prior year data utilization for Taxpayers Network. (Trial Tr. 798:11–800:5, 991:3–15). Mr. Wyatt reviewed census records and found that population in Taxpayers’ service area had been declining by about five percent during the tax years in dispute in this case, thus implying that the North American growth rates used by Mr. Moss were too high for Taxpayers’ service area. (Trial Tr. 798:11–800:5, 991:3–15). However, had Mr. Moss actually used a lower growth rate for his calculations, the lower growth rate would have caused his calculated denominator to be larger for tax years 2010 through 2016

than he originally calculated, which would have reduced his estimates for the percentage utilization attributable to voice services for those years to even smaller percentages. Based on this criticism, this court finds Mr. Moss's calculations over-estimated the actual growth rate of data utilization for tax years 2010 through 2016, in favor of the Taxpayers.

Mr. Wyatt also criticized Mr. Moss's use of a 56 kilobit per second transfer rate for voice calls. Mr. Wyatt testified that Taxpayers actual rate is closer to 200 kilobits per second, consisting of two 100 kilobit per second streams, one in each direction, for each call. Mr. Wyatt testified that after accounting for overhead, the rate is 95.2 kilobits per second in both directions, summing to a total of 190.4 kilobits per second for a voice call. (Trial Tr. 792:16–19). Although Mr. Moss disagreed that a voice call would typically utilize all of the 190.4 kilobit per second transmission rate, Mr. Moss applied the 190.4 kilobit per second transfer rate in a revised version of his calculations.

Mr. Wyatt also criticized Mr. Moss's calculations for "double-counting" data transmissions multiple times as the data traverses through Taxpayers' network but not also double counting the data attributable to voice calls multiple times. In response, Mr. Moss had already included a multiplier of 3.0938 for tax year 2018 and 3.3125 for tax years 2010 through 2017. This multiplier was intended to account for the discrepancy in the data singled out by Mr. Wyatt. (Trial Ex. 134). At trial, Mr. Wyatt testified that a reasonable multiplier would be 4. (Trial Tr. 788:14–20). Mr. Moss applied a multiplier of 4 in a revised version of his calculations.

After addressing the transmission rate issue and the alleged double-counting issue, Mr. Moss provided a revised set of calculations, summarized below. The court notes that Mr. Moss did not (a) reduce the North American growth rates used in his calculations or (b) remove network utilization attributable to cellular voice services which do not qualify as rural telephone

service, so his revised calculations continue to overstate the percentage of Taxpayers' network utilization that is attributable to rural telephone service.

Tax Year	2010	2011	2012	2013	2014	2015	2016	2017	2018
% of Network Utilization Attributable to Voice	19.12%	12.65%	8.70%	7.18%	5.25%	4.01%	3.13%	2.38%	1.79%
% of Network Utilization Attributable to all other traffic	80.88%	87.35%	91.30%	92.82%	94.75%	95.99%	96.87%	97.62%	98.21%
Totals:	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

D. De Minimis Use in Providing Rural Telephone Service is Insufficient to Qualify for the Rural Telephone Service Exemption.

South Carolina courts have not interpreted any property tax exemption where the use required by the statute is not an exclusive use. However, the South Carolina Court of Appeals has held in a case interpreting a sales tax exemption which applied to “machines used in manufacturing” that the exemption applies so long as the machines are “substantially” used in manufacturing. *Hercules Contractors & Engineers, Inc. v. S.C. Tax Comm'n*, 280 S.C. 426, 440, 313 S.E.2d 300, 309 (Ct. App. 1984). In *Hercules*, the court held that a waste treatment facility that treated both manufacturing waste and ordinary municipal waste was nevertheless a machine “used in manufacturing” where only 35% of the waste it treated was actually manufacturing waste.

Although a case of first impression in South Carolina, the prevailing rule in other jurisdictions is “in the absence of an exclusivity requirement, it is the primary, as distinguished from an incidental, use of the property that determines the question whether it is exempt from taxation.” 84 C.J.S. Taxation § 278; *City of York v. York County Bd. of Equalization*, 266 Neb.

297, 664 N.W.2d 445 (2003) (“The primary or dominant use, and not an incidental use, is controlling in determining whether property is exempt from taxation.”); *American Museum of Fly Fishing, Inc. v. Town of Manchester*, 151 Vt. 103, 557 A.2d 900 (1989) (“Before a property is entitled to tax-exempt status as a public use, it must meet certain criteria, as follows: . . . (2) the primary use must directly benefit an indefinite class of persons who are part of the public.”). Here, Taxpayers’ primary use of its property is providing data transmission services. The evidence shows Taxpayers’ interconnected network is only incidentally used in providing voice services.

This construction of the Rural Telephone Service Exemption is consistent with the venerable legal maxim *de minimis non curat lex* (“the law cares not for trifles”), which is “part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept.” *Wisconsin Dept. of Rev. v. William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992); *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 618, 112 S.Ct. 2160, 2168 (1992); *Hudson v. McMillan*, 503 U.S. 1, 8–9 (1992); *Ingraham v. Wright*, 430 U.S. 651, 674 (1977); *Abbot Laboratories v. Portland Retail Druggists Assn., Inc.*, 425 U.S. 1, 18 (1976); *Industrial Assn. of San Francisco v. United States*, 268 U.S. 64, 84 (1925). In addition, *de minimis non curat lex* is consistent with the overriding principle of statutory construction applicable to tax exemptions—that tax exemption statutes are to be strictly construed against the grant of the exemption. *John D. Hollingsworth On Wheels, Inc. v. Greenville County Treasurer*, 276 S.C. 314, 278 S.E.2d 340 (1981) (“The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption.”).

Thus, at a minimum a taxpayer must be required to show that its use of the property is beyond a mere *de minimis* use to qualify for outright property tax exemption for the property.

Other jurisdictions agree with this approach. The Supreme Court of Wisconsin has specifically held, in interpreting a statutory exemption for property “used to cut trees, to transport trees, to transport trees in logging areas or to clear land of trees for the commercial use of forest products” that “*de minimis* uses of the property are not sufficient to invoke this exemption.” *Village of Lannon v. Wood-Land Contractors, Inc.*, 267 Wis.2d 158 (2003). Applying the holding of *Village of Lannon* here, *de minimis* uses of Taxpayers’ property for providing rural telephone service are not sufficient to invoke the exemption.

Cases from other jurisdictions have found usage of property to be *de minimis* when such use amounted to approximately two percent,²² five to ten percent,²³ and seven percent²⁴ of the relevant measure. Cases from other jurisdictions have also found usage of property to be beyond *de minimis* when such use amounted to one-third.²⁵ As explained above, the South Carolina Court of Appeals has held that property used 35% for a statutorily prescribed use is used “substantially” for that use. After reviewing cases from other jurisdictions on this topic, it is clear the percentage use of the Taxpayers interconnected network for voice services for years 2010 through 2018 is merely *de minimis* and consequently does not clearly establish taxpayer’s right to the property tax exemption.

²² *Aero Air Inc. v. Department of Revenue*, 1980 WL 2042 (Oregon Tax Court 1980) (holding “to exempt the total facility from taxation because approximately two percent of the facility’s square footage is used for ostensible manufacturing is a more liberal extension of [the statute] than this court is willing to make.”)

²³ *People v. Haring*, 8 N.Y.2d 350, 207 N.Y.2d 673, 170 N.E.2d 677, 678, 681 (N.Y. 1960) (holding farm property on which a religious organization produced food to feed “students, teachers, workers and members of the religious body” did not lose tax exemption due to selling “a small part (5% to 10%) of the farm produce,” characterized as incidental and insubstantial,” as surplus);

²⁴ *Marist Brothers of New Hampshire v. Town of Effingham*, 171 N.H.305 (2018) (holding that income from off-season rentals of property known as “Camp Marist” amounted to approximately seven percent (7%) of the taxpayers’s total expenses for the year and less than seven percent (7%) of the taxpayer’s total revenues for the year and was therefore *de minimis*)

²⁵ *Ocean County v. Dover Township*, 3 N.J. Tax 434 (1981) (holding that the use of one-third of a building for a private commercial tenant is beyond *de minimis* such that the exemption for property “used for public purposes” does not apply)

The Taxpayers have failed to provide any credible evidence of the percentage utilization of their interconnected network of property. Rather, this Court must rely solely on the thorough and detailed analysis performed by Mr. Moss.

Based on extensive testimony, Mr. Moss estimates that the Taxpayers' network was used no more than 5% for any of the tax years in dispute for the delivery of voice services. Even after adjusting his analysis in favor of the Taxpayers to account for two criticisms raised by the Taxpayers' expert, Mr. Moss determined the property would have been used for voice services no more than 19.12% for tax year 2010, 12.65% for tax year 2011, 8.7% for tax year 2012, 7.18% for tax year 2013, 5.25% for tax year 2014, 4.01% for tax year 2015, 3.13% for tax year 2016, 2.38% for tax year 2017, and 1.79% for tax year 2018. Such *de minimis*, and annually declining, use is not sufficient to qualify for the Rural Telephone Service Exemption. Consequently, even if Taxpayers had timely applied for the Rural Telephone Service Exemption and the Department had timely granted the exemption and timely notified the Counties of its grant for each of tax years 2010-2018, Taxpayers would nevertheless have been ineligible due to the *de minimis* use of the property for the statutorily exempt use for each of the tax years in dispute.

CONCLUSION

The court finds that Farmers' failure to timely apply for the Rural Telephone Service Exemption renders the exemption inapplicable for tax years 2010–2017. The court further finds the Department's failure to timely grant the Rural Telephone Service Exemption and its failure to notify the Counties renders its grants void for tax years 2010–2017. The court further finds Farmers' failed to carry their burden of proof establishing their property was used beyond a *de minimis* extent in providing rural telephone service for tax years 2010–2018, resulting in the exemptions being invalidated for each of tax years 2010–2018.

ORDER

IT IS THEREFORE ORDERED that the exemptions previously granted by the Department to Farmers are invalidated and void. This Court orders the Department to issue revised Supplemental Certifications consistent with this order.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Clarendon County, Florence County, Lee) Docket No. 17-ALJ-17-0237-cc
County, Sumter County, Williamsburg)
County, Williamsburg County School)
District, Clarendon School District Two,)
Florence School District One, Florence)
School District Three, Sumter County School)
District, Clarendon County Hospital District,)
Lee County School District, and Clarendon)
School District One,)

Petitioners,)

vs.)

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

Respondents.)

FARMERS' RESPONSE TO TAXING
ENTITIES' PROPOSED ORDER

Farmers Co-Op, FTCC and Diversified¹ respond herein to the Taxing Entities' Proposed Order ("TE's Order"). Because of page limitations on the responses, Farmers cannot respond to all points of disagreement and relies on its and the Department's Proposed Orders on any issues not addressed herein.

I. THE BURDEN OF PROOF IS ON THE TAXING ENTITIES AS PETITIONERS.

The Taxing Entities appear to claim that the burden of proof is on the taxpayer as to all issues. This is not supported by South Carolina law. As even the Taxing Entities agree, the burden of proof is generally on the petitioner. *See* TE's Order at p. 25. The Taxing Entities' reference to case law supporting that a taxpayer must bring himself within the conditions imposed by an exemption statute is a rule of statutory construction and does not shift the burden of proof. *See Frank R. Mead, III v. Beaufort Cty. Assessor*, 419 S.C. 125, 140, 796 S.E. 2d 165, 173 (Ct. App. 2016); *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). The Taxing Entities cite no cases to the contrary, and all cases cited are ones where the taxpayer was the petitioning party.

¹ Farmers will use the same abbreviations for party names as were used in its Proposed Order.

II. THIS COURT LACKS JURISDICTION REGARDING THE TAXING ENTITIES' REQUEST FOR CONTESTED CASE HEARING.

The Taxing Entities contend that the Court derives its jurisdiction from their challenge of the supplemental certifications and not the Settlement Agreement. TE's Order at p. 26, n. 8. They cite three statutes as the basis of this jurisdiction: §§12-4-535(A), 12-60-2130 and 12-60-2150(H). However, none of these statutes apply here. First, the Taxing Entities misunderstand §12-4-535. They interpret it as granting an additional "right to seek review if they 'disagree' with any department determination regarding 'the valuation, assessment, or taxation of property.'" *Id.* at p. 34. However, this reading ignores much of the statute's language, which, if read, shows that it addresses the Department's authority to issue a determination to a county official directing him/her "to comply with all applicable state law relating to the valuation, assessment, or taxation of property" and provides a right to request a contested case hearing to counties if he/she disagrees with that determination or to the Department if the county official fails to comply or files a response disagreeing with the determination. S.C. Code Ann. §12-4-535. It also allows counties to request a department determination on any state law regarding the valuation, assessment, or taxation of property, which the Department may then, in its discretion, issue. *Id.* These types of department determinations, which reflect the Department's supervisory role in county property tax matters, are not at issue here.

While §§12-60-2130 and 12-60-2150 do provide a right to a contested case hearing where the Department has issued a determination regarding a specific taxpayer, they also do not apply to this case as a certification is not a Department determination. The Taxing Entities assert that the Court should look at the dictionary definition of "determination," which is defined as "the resolving of a question by argument or reasoning," and then argue that "[t]he Department's decision to exempt the Taxpayers' assets from property tax 'became the Department's 'final' determination once the Supplemental Certifications were sent to the Taxing Entities.'" TE's Order at p. 27. This is inconsistent with the specific

language in §§12-60-2130 and 2150 as well as the statutory scheme. The Legislature could easily have said “certification” if it intended taxing entities to have a form of review for all Department decisions affecting them as they suggest. Certifications are issued every time an exemption is decided, whether decided in the normal course upon application or decided later via department determination, settlement or a court decision. However, the Legislature used the phrase “department determination,” which the statutory scheme, long-standing Department policy and procedure and Department witnesses’ testimony made clear, is a document issued by the Department’s Office of General Counsel when a tax controversy exists. Farmers’ Order at pp. 42-48. Furthermore, the statutes addressing the Department’s authority to both determine property tax exemptions and settle tax disputes do not mention any right of approval or appeal by the taxing entities. *See* S.C. Code Ann. §§12-4-710 and 12-4-320(3) and (4).

In addition, a certification does not even meet the Taxing Entities’ suggested definition. A certification is a notice to a county of the amount to be assessed on certain property, not the answering of a question by argument or reasoning. *See* *Ruple Dep.* at 57:19-25 and <http://dictionary.cambridge.org/us/dictionary/english/certification> (last visited Oct. 29, 2019) (defining certification as “the process of earning an official document, or the act of providing an official document, as proof that something has happened or been done”). And, in fact, as to the tax years of 2010-2015, the certifications followed a settlement, which is the resolution of a disagreement by compromise not the answering of a question by argument or reasoning. *See* *Ruple Dep.* at 91:23-92:22 and 100:15-22; Cambridge, <http://dictionary.cambridge.org/us/dictionary/english/settlement> (last visited Oct. 29, 2019) (defining settlement as “an official agreement that ends an argument”).²

² The Taxing Entities also point to a statement in S.C. Rev. Pr. #06-02 that “If a document is consistent with this definition, it will be deemed to be a Department determination even though it may be entitled a final agency determination or some other name.” TE’s Order at p. 29. However, Department determination and final agency decision are comparable phrases, both of which involve the answering of a question by argument or reasoning, whereas they are dissimilar to certification (notice to county of assessment amount) or settlement (compromise of a disputed claim).

Finally, the statutory scheme as a whole and public policy also support Farmers' interpretation of these statutes. If the Court adopts the Taxing Entities' interpretation, no taxpayer would ever be able to rely upon a settlement with the Department because, as previously stated, a taxing entity could always seek to appeal it once the certification was issued (which would also be inconsistent with §12-4-320, which clearly states that settlements approved by the Director cannot be reopened). Thus, no property tax disagreement concerning Department assessed property could be settled without county approval. Taxing entities would be under tremendous pressure from school districts and others not to settle cases and not to agree to Department exemption decisions as they would mean less money for them. Cases would be tremendously difficult to settle, and taxpayers would be placed in danger of not getting independent and unbiased settlements. In addition, taxing entities could appeal every certification effectively hamstringing the Department from carrying out its statutory duty to assess property taxes and determine exemptions. This would upset the entire statutory scheme, which is premised upon the Department being an independent voice in tax matters involving county property. The Legislature gave the Department sole responsibility to grant or deny county property tax exemptions and to resolve tax controversies and did not give the taxing entities a right of approval or appeal.

III. THE SETTLEMENT AGREEMENT PROPERLY IMPACTS THE TAXING ENTITIES BY OPERATION OF LAW AND CANNOT BE UNDONE AS IT WAS APPROVED BY THE DIRECTOR.

A. The Settlement Agreement Impacts the Taxing Entities by Operation of Law.

The Taxing Entities claim that the Settlement Agreement cannot bind them because they were not parties to it. First, they were not parties to that agreement because they were not necessary parties thereto. Under South Carolina law, the Department has sole authority to determine exemptions and to settle tax disputes involving property it assesses such as utility property. S.C. Code Ann. §§12-4-710 and 12-4-320(3) and (4). Neither requires that the Department obtain approval of the counties before deciding

an exemption request or before settling an exemption dispute. In fact, no statute provides taxing entities with any role whatsoever with respect to determining exemptions or settling cases regarding requests for exemption. Thus, the Taxing Entities were not necessary parties to that agreement.

Additionally, the Taxing Entities are not “bound” by the settlement agreement itself but must comply with the exemption decision agreed upon therein by operation of law. As with the granting of all property tax exemptions (whether by decision of the Department, compromise or settlement between the Department and the taxpayer, or decision of a court), taxing entities are required to recognize the certifications that confirm the grant or denial of an exemption by operation of law. *See* S.C. Code Ann. §§12-4-730 and 12-60-2140(C); Farmers’ Order at p. 50.³

B. The Settlement Agreement Cannot be Undone as the Director Approved It.

The Court has previously ruled in connection with the Department’s Motion for Summary Judgment that the undisputed evidence established the existence of a binding Settlement Agreement as between the Department and Farmers thus leaving open only its effect on the Taxing Entities. Under §12-4-320, the Department is authorized to compromise disputes with taxpayers and to enter into written agreements with taxpayers regarding a tax liability, and such agreements, if approved by the Director, are final and conclusive and may not be reopened absent fraud-like conduct. S.C. Code Ann. §12-4-320(3) and (4). The Taxing Entities appear to agree that this statute protects a settlement from being reopened by a third party but assert that the record is “void of any evidence” supporting that Reames, the Department’s Director at the time, approved the settlement. TE’s Order at p. 38. The testimony and evidence presented at trial showed otherwise.

³ The Taxing Entities complain that they should not be affected by an agreement to which they were not a party. However, third parties are often affected by such agreements. For example, consider a person who enters a loan agreement and then contracts with another party. The second contract forces him into bankruptcy such that he cannot pay back the loan. The lender is impacted by the second contract (to which it was not a party) as it now cannot get paid, but the lender had no right to be a party to that contract even though he is directly impacted by it.

Under Rule 406 of the South Carolina Rules of Evidence, evidence of a habit or practice is admissible to show action in conformity with that habit or practice. SCRE, Rule 406. *See also State v. Brown*, 344 S.C. 70, 74, 543 S.E. 2d 552, 555 (2001) (describing habit as “conduct that is ‘situation-specific’ or ‘specific, particularized conduct capable of almost identical repetition’” and finding evidence regarding defendant’s practice of always carrying a gun properly admitted because it described “a pattern of specific, particularized conduct” that is admissible to show he “acted in conformity with this pattern of behavior on the night in question.”) (citations omitted). In addition to a written revenue procedure detailing the Department’s settlement procedures, not one but two credible witnesses (Reames and Kimpson) testified (consistent with that procedure) that the Department’s procedures and practice was for the General Counsel for Litigation to always obtain the Director’s approval or non-approval of all settlements, for the two of them to have a personal discussion about all proposed settlements, that the General Counsel always obtained approval before entering a settlement on behalf of the Department, and that they followed this procedure in the Farmers case. S.C. Rev. Pr. #06-2; Tr. Ex. 147, Kimpson Aff. at ¶¶5-7; Reames Dep. at 25:23-26:25; and Tr. Ex. 141, Reames Aff. at ¶¶4-7. Moreover, Reames testified that he was not aware of any case being settled during his tenure without his approval, and Kimpson testified that he is “confident [he] advised the Director of this settlement agreement and that the Director approved the settlement agreement before the Department Representative signed it on behalf of the Department.” Reames Dep. at 25:2-11; Tr. Ex. 141, Reames Aff. at ¶6; Tr. Ex. 147, Kimpson Aff. at ¶7. This compelling evidence showed “a pattern of specific, particularized conduct” that is admissible to show that Kimpson and Reames “acted in conformity with this pattern” as to the Farmers settlement. As the Taxing Entities presented no evidence to the contrary and the witnesses were trustworthy and credible, this undisputed evidence establishes that the Director approved the

Settlement Agreement.⁴

The Taxing Entities also argue that the Department's failure to comply with a reporting requirement under §12-4-380 somehow shows the Director did not approve the settlement. TE's Order at p. 43. The Department's witness testified that it has not reported any settlements within the last five years because it interprets the statute to require reports of only tax liabilities that have been reduced by order by the Director (as the statute reads) and not tax disputes settled by the Department and approved by the Director. *See* Ruple Dep. at 51:14-52:15 and 54:4-13. Reducing a tax liability (i.e. a bad debt) certainly is different than settling a tax dispute. But whether the Department is correct on its interpretation is not at issue as the Taxing Entities are not seeking to compel the Department to report settlements, and it has no bearing on the factual issue of whether the Director approved the settlement.

IV. THE FARMERS' ASSETS QUALIFY FOR THE RURAL TELEPHONE SERVICE EXEMPTION.

Even if the Taxing Entities are entitled to appeal the Department's grants of exemption to Farmers, it does not matter because the assets are, in fact, exempt. The Taxing Entities assert two main arguments: (1) that telephone service means voice communication provided via a landline network and thus wireless assets do not qualify; and (2) that using bandwidth measurements shows that Farmers' assets are used only minimally for voice telephone services and thus none of Farmers' assets qualify.

A. The Rural Telephone Service Exemption Statute Applies to Wireless Services.

The Taxing Entities agree that the rural telephone service exemption applies to landlines using different technology than was used in 1978 (including fiber optics and digital technology) but contend

⁴ The Taxing Entities also argue that there is a conflict because S.C. Rev. Pr. #06-2 allows the director *or* his designee to approve settlements whereas §12-4-320(4) requires the Director to approve a settlement in order to prevent it from being reopened. TE's Order at pp. 41-42. This argument is meritless. While #06-2 does allow the Director to appoint a designee to approve settlements (and such settlements would not be protected), that is not an issue here. Reames testified unequivocally that he *never* appointed a designee to approve any settlement, and no evidence suggested otherwise. Reames Dep. at 29:10-12. Thus, the potential situation of the Director approving a designee is not the situation before the Court.

that wireless technology goes too far and is not “telephone service.” TE’s Order at pp. 60-69. This is an illogical argument; wireless is simply the next generation of technology for allowing people to communicate over a distance, which both experts agreed is what telephone service is. There is no logical basis for saying that fiber optics and digital technology are acceptable, but wireless technology is not. The Taxing Entities’ attempt to explain this arbitrary “line in the sand” by saying that wireless does not comport with two purposes of the exemption statute: (1) its alleged purpose as a financial incentive to provide only landline telephone service to rural areas; and (2) its alleged purpose to provide a “physical connection” of communication between an isolated rural user and the rest of the developed world.

As to the first contention, the Taxing Entities cite nothing to support that the Legislature cared what type of technology was used to provide telephone service to rural areas. And, in fact, the Taxing Entities agree in another portion of their order that the purpose was simply “to promote the advancement of *telephone service* in rural areas throughout South Carolina.” TE’s Order at p. 64 (emphasis added). As previously stated, the engineering experts agreed that, at a minimum, “telephone service” means allowing two persons to communicate by voice over a distance without regard to the technology used. Hr’g Tr. at 259:13-23, 395:10-396:4, 434:22-435:1, 436:11-20 and 578:14-579:7. *See also id.* at 900:7-12 (testimony of Farmers’ expert in economic and policy regarding telecommunications that there is a high degree of substitution between wireless and landline services and that from an economic perspective, they are indistinguishable, and, thus, wireless service is “telephone service”). If the purpose of the statute is to promote telephone service in rural areas, then wireless does this just as well as landline. It is for this very reason that both the FCC and the SCSPSC treat wireless and landline as equivalent services for universal funding, and FTCC receives funding for purposes of extending wireless services in rural areas. *Id.* at 553:24-554:3 and 584:14-586:23. *See also* Op. S.C. Atty Gen., 2017 WL 6629071, at *4 (Dec. 20, 2017) (“[R]egardless of whether wireless service is considered facilities-based or radio-based, both

wireless providers and wireline providers ensure the widespread availability of affordable local exchange service.”); *In Re Petition of S.C. Tel. Coal.*, Order No. 2016-22 (Pub. Serv. Comm’n of S.C. Jan. 26, 2016), at 36 (“Wireless and landline voice telecommunications services are substitute services.”); *City of Jefferson v. Cingular Wireless, LLC*, 2005 WL 1384062, at *5 (W.D. Mo. June 9, 2005) (“The mobile telephone . . . is the functional equivalent of land line based telephones, which have existed for more than a hundred years.”).⁵

As to whether incentives are needed, the Taxing Entities argue that the wireless industry is competitive in rural South Carolina and assert that many major wireless providers serve customers in Farmers’ geographic area. TE’s Order at p. 68. However, the testimony at trial showed that these other carriers are not serving all customers in Farmers’ geographic area because “[t]hey can’t meet their profit requirements in these high costs, low penetration areas. There’s not enough density of customers for them to be able to meet their metrics for profitability.” Hr’g Tr. at 555:11-18. While the wireless industry may be competitive in general, rural areas still do not have full coverage. Farmers’ CEO explained:

[Farmers’] mission as a cooperative . . . is to provide service where no one else does, and that’s what we do in the wireless arena as well. We provide coverage, wireless coverage, to areas that no other competitor provides to on the scale that we do. Yes, Verizon is in our market place. T-Mobile’s in portions of our marketplace, and Sprint is in our marketplace. I would contend that Verizon probably has a level equivalent to 80 percent of the coverage we have, T-Mobile 50 percent, and Sprint 10 percent.”

Id. at 554:13-25. Thus, financial incentives are still needed for wireless assets so that wireless service will reach all rural areas. In addition, Farmers Coop potentially would not exist without FTCC’s profits. *Id.*

⁵ This interpretation is also consistent with other South Carolina and federal statutes defining telephone service broadly. *See* S.C. Code Ann. §33-46-20(5)(defining “telephone service” as “the providing of communication service including, but not limited to, the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity or the electromagnetic spectrum between the transmitting and receiving apparatus”); 7 U.S.C.A. §924 (providing similar definition for telephone service under the Rural Electrification Act). *See also City of Jefferson*, 2005 WL 1384062, at *3 (finding that ordinance taxing persons “engaged in the business of supplying telephone and telephonic service” applied to wireless telephone service even though such service did not exist when the ordinance was adopted as being connected to a wire is not an essential characteristic of a telephone).

at 559:7-23. Thus, even if the purpose of the statute was only to encourage landline service, applying the exemption to Farmers' wireless assets would still comport with this purpose as the wireless business is allowing the landline business to continue to operate.

The Taxing Entities also argue that the purpose of developing a rural telephone network was to provide a physical connection of communication between an isolated rural user and the rest of the world and claim that many users of FTCC's wireless network are neither rural users nor South Carolina residents. TE's Order at p. 68. They cite nothing that would support the bald assertions that the Legislature was focused either on a "physical connection" or only on rural South Carolina residents, and Farmers is not aware of any such support. The statute states only that the exemption applies to assets used in providing rural telephone service, and without further evidence of legislative intent, it is not limited as the Taxing Entities suggest but rather is agnostic as to technology and user.⁶

B. Farmers Assets are Used to Provide Rural Telephone Service.

The Taxing Entities' argue that bandwidth (versus minutes of use) was the better measure of traffic on a telephone network and that bandwidth measurements show that the FTCC and Diversified networks are used substantially more for data than for voice. As previously argued, the exemption statute contains no requirement that the property be used to any particular extent to provide rural telephone service and no limitations prohibiting it from being used for other purposes. Other South Carolina property tax exemption statutes do contain such limitations showing that the Legislature knows how to do so and chose not to here. Farmers' Order at pp. 54-55. Given this, inserting a requirement of some level of use into the statute where none exists is

⁶ As Farmers' CEO explained, it is important to have the ability to use wireless communication within rural areas no matter the user. Hr'g Tr. 556:3-15 (Farmers' service area has "multiple hurricane evacuation routes through [its] network which again relate to the importance of wireless communications on those paths as people...try to leave from danger[.]" and its network has been impacted by three hurricanes and one flood in the last five years).

improper. *State v. Leopard*, 349 S.C. 467, 471, 563 S.E.2d 342, 344 (Ct. App. 2002)(holding that when the language of the statute is clear, "a court cannot rewrite the statute and inject matters into it which are not in the legislature's language."). Additionally, inserting a requirement raises a whole host of problems to solve particularly where the assets at issue are used for more than one purpose. How much use is sufficient (primary, substantial, etc.) and what percentage of use constitutes the level chosen? How will the use be measured (engineering experts discussed bandwidth and minutes of use as measures at trial, but neither accounts for the key component of access/availability)? And as the Department has pointed out, there are many other approaches that could be used to measure use, including a unit valuation approach using either a cost approach or an income approach.⁷ See Dept's Order at pp. 50-51. Such issues are the type of public policy decisions best left to the Legislature to decide. *Hampton v. Hadley*, 403 S.C. 395, 403-04, 743 S.E.2d 258, 262-63 (2013).

More importantly, these decisions are not necessary to decide this case. The question here is whether Farmers' assets are "used to provide rural telephone service." What the Taxing Entities fail to address is that the undisputed evidence showed that they were *used* (defined as "employed in accomplishing") to provide the ability for people to communicate with each other over distance. Whether assets are being so used is not dependent on how much a customer uses the network or for what purpose the customer uses the network. Rather the focus of the plain language of the

⁷ Farmers presented evidence regarding the substantial revenues earned by voice telephone services, which would reflect substantial use of the assets for that purpose under such a test. Farmers' Order at §A(4). While the Taxing Entities accuse Farmers of "intentionally and artificially inflat[ing]" these figures (TE Order at p. 22) by requiring internet and IPTV customers to also have landline telephone services, a review of the testimony shows the insinuation of wrongful conduct is meritless. See Hr'g Tr. at 515:12-516:23 and 616:18-617:11. Although no longer the case, in years past, Farmers could only provide internet and IPTV services in rural areas if those customers had a landline telephone as that service allowed the provision of other services to be economically feasible. *Id.* Moreover, the Taxing Entities presented no evidence showing that there was a large number (or, in fact, any number) of customers who had internet or IPTV services that would not have purchased landline services but for the requirement. And that requirement is no longer necessary as universal funding is now available for internet as well. *Id.* at 617:3-11.

statute is on whether the assets are being employed to provide “telephone service,” i.e. the *ability* for people to communicate over distance. Customers are paying for and receive value from having telephone service (for example, to be able to make a 911 call) whether they ever use it or not. And the Taxing Entities’ expert agreed without reservation with Farmers’ expert that the Farmers’ assets were, in fact, being used to provide rural telephone service. Farmers’ Order at §C(4).⁸

Moreover, the bulk, if not all, of the Farmers’ assets are necessary even if voice is the only service provided. Farmers’ Order at §C(5). Farmers incurs significant capital costs to provide landline service but only minimal or incremental additional costs to add the equipment needed to provide non-telephone services Hr’g Tr. at 512:15-513:6, 1026:18-24 and 1028:12-1029:8. The fact that voice telephone service requires the bulk of the assets at issue in order to be provided comports with even the Taxing Entities’ most restrictive view of the legislative intent behind the exemption statute, and, thus, the Farmers’ assets should be deemed to qualify for the exemption.

V. THE PROCEDURAL ARGUMENTS RAISED BY THE TAXING ENTITIES ARE WITHOUT MERIT.

A. The Settlement Agreement is Not Unlawful.

The Taxing Entities argue that the Settlement Agreement is unenforceable because it requires the Department to grant property tax exemptions in violation of South Carolina law. TE’s Order at p. 45. They claim that the contract violates state law because Farmers failed to timely apply for the exemption, the Department failed to timely grant the exemptions, the Department failed to notify the Counties of the granted exemptions and that Farmers’ property is not eligible for the exemption. The Taxing Entities are misapplying the general legal principle that contractual provisions that violate state law or public policy

⁸ Farmers would also point the Court to the arguments in Farmers’ Proposed Order regarding the importance of minutes of use in a telephone network, which in this case, reflect that the assets were substantially used for voice telephone services. *See* Farmers’ Order at pp. §§A(5) and C(4) and pp. 57-58. Even the Taxing Entities’ bandwidth measure reflects the importance of time. Hr’g Tr. at 1033:14-1034:2 (Farmers’ CEO’s testimony).

will not be enforced. The two cases cited by the Taxing Entities are typical of the application of this principle and deal with arbitration provisions. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 33, 644 S.E.2d 663, 673 (2007); *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 555, 606 S.E.2d 752, 758 (2004). In *Simpson*, the South Carolina Supreme court evaluated whether an arbitration provision violated state law or public policy by preventing the consumer from receiving the mandatory statutory remedies to which she may be entitled in her underlying claims as well as whether allowing the weaker party to waive these statutory remedies was counter to public policy. *Simpson*, 373 S.C. at 30, 644 S.E.2d at 671. It concluded that the arbitration provision was “an unconscionable waiver of statutory rights” and thus unenforceable. *Id.*; *see also Carolina Care Plan*, 361 S.C. at 555, 606 S.E.2d at 758 (also examining an arbitration provision). This is obviously vastly different from the issue here involving whether an entire settlement agreement is invalid because it contains claims that certain statutory requirements were not met, and Farmers is aware of no case applying this rule to attempt to void an entire settlement on this basis. If that could be done then no case involving an allegation of a violation of statutory law could be settled as one would always have to determine whether the statute, in fact, had been violated; otherwise the settlement agreement could be argued to violate the law as the Taxing Entities claim here. And it is difficult to imagine a case that the Department could settle that would not involve a statutory issue. Such an application of this principle would lead to absurd results, and as no case appears to have followed such an approach, this Court should also decline to do so.

B. Farmers Complied with all Statutory Requirements.

Even if the Taxing Entities could undo the settlement, Farmers would still prevail as it complied with all statutory requirements.

1. Farmers Timely Applied for the Exemption.

First, Farmers timely applied for the exemption within three years. Amazingly, the Taxing

Entities completely gloss over the three-year timeframe for filing applications for exemption. They barely discuss §12-54-85(F) and §12-4-720(A) and fail to explain that under these statutes, a taxpayer has three years from the time its return is filed to file an application for exemption. *See* Farmers' Order at pp. 68-71 (for full discussion). In addition to Farmers' prior arguments regarding the plain language of the statutes, the legislative history confirming that the Legislature intended to extend the deadline and the fact that the Department's longstanding policy allows exemptions to be claimed within the three year period (*see id.*), Farmers would also note that the law recognizes that taxpayers may claim exemptions via several different methods.

More specifically, although the language of §12-4-720(C) provides that a taxpayer who is required to file property tax returns "shall claim any exemption on the return each year the property is exempt," the statute indicates that this is not the *only* way that a taxpayer can apply for an exemption. Subsection (B) provides that a filed property tax return listing property as exempt is considered an application for exemption from property taxes thus suggesting that there are ways to claim the exemption other than by listing the property as exempt on the property tax return. *See also TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (noting that taxpayers may apply for exemptions separately from their tax returns). This coupled with the fact that §12-4-720(A)(1) specifically allows a taxpayer to file an application for a property tax exemption within three years shows that there are multiple avenues to file an application for exemption. If the only way was by claiming it on the return when it was filed, this would render subsection (A)(1) meaningless. *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 (holding that a court "must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous" as the legislature obviously intended the statute to have some effect or it would not have enacted it.).

Additionally, the Taxing Entities misunderstand §12-4-720(C), which they interpret as negating certain taxpayers' right to file an application for exemption within three years. This statute requires taxpayers who are required to file a return each year to claim exemptions on their return each year the assets are exempt. Such taxpayers are also required, as all taxpayers are, to provide a whole host of information such as amount of revenue, expenses, deductions, etc. in their returns. If a taxpayer erroneously omits any of this other required information, it is not precluded from filing an amended return, filing a protest or making a claim for refund. Likewise, the requirement that certain taxpayers include a list of exemptions on their returns does not negate their rights to these other statutory remedies, including the right to file amended returns, the right to file protests, the right to file refund claims and the right to claim exemptions within three years.

Finally, the Department, the agency in charge of making exemption determinations, determined that Farmers had properly applied for the exemption even if it was required to apply for it via its annual return. *See* Dept's Order at pp. 53-59; Farmers' Order at pp. 77-79.

2. The Department Timely Granted Farmers' Exemption Requests.

The Department timely granted Farmers' exemption requests. The Taxing Entities' argument that the decisions were untimely is based on the June 1st deadline in §12-4-710. In addition to the arguments previously made by Farmers that this statute is trumped by the later enacted three year statutes, that even if that deadline were not trumped, the Department's compliance therewith should be excused based on its longstanding practice as well as the impossibility of compliance, and that the counties received notice on an annual basis that the Department was processing the claims for exemption as well as the amounts at issue (*see* Farmers' Order at pp. 72-76), Farmers would submit that the statutory framework also shows that the Legislature did not intend this June 1st deadline to prevent taxpayers from being able to claim, and the Department from being able to grant, property tax exemptions after June 1st.

More specifically, all parties would surely agree that the Legislature intended for taxpayers to be able to claim exemptions and to engage in the administrative appeal process. However, under the Taxing Entities interpretation, certain taxpayers would be unable to claim exemptions. *See* S.C. Code §12-37-970 (allowing certain taxpayers to file property tax returns as late as the last day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes, which would mean that any taxpayer with an accounting period ending on or after February 28th, who timely files its returns listing its property as exempt, would never be able to claim the exemption because it is not required to file its returns until after June 1st). Also, the Taxing Entities' interpretation would not allow taxpayers an opportunity to engage in the administrative appeal process. Even if a taxpayer applied for an exemption and the Department denied the exemption request before June 1st, the taxpayer should be allowed to invoke its administrative remedies under §12-60-2120. But the appeals process, including a potential contested case hearing at the ALC and subsequent appeals, often take years to resolve, which under the Taxing Entities' interpretation would mean the exemption could not be granted as that process would finish after the June 1st deadline. This is obviously contrary to legislative intent as the statutory scheme reflects an intent that taxpayers be able to engage in a meaningful appeals process. In fact, §12-60-2140 directs the Department to notify the counties if an appeal will not be resolved by December 31st of the tax year (and issue corrected property tax assessments when the dispute is finally resolved) and thus necessarily contemplates that an appeal of an exemption may not be resolved prior to June 1st. *See also* S.C. Code Ann. §12-4-720(A)(allowing taxpayers three years after the filing of the property tax return to file their applications for exemption).

3. The Department Timely Notified the Counties.

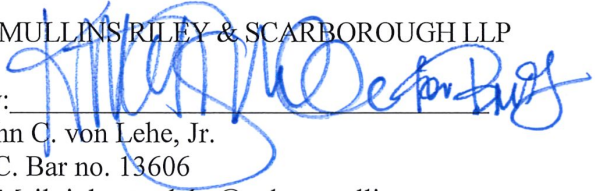
The Department also timely notified the Counties of the granted exemptions. As to the June 1st component of this issue, please *see supra* §V(B)(2). The Taxing Entities' other primary argument appears to be that the county auditors are not the appropriate officials to notify. The Department explains well why the county auditors, are, in fact the appropriate officials. *See* Dept's Order at pp. 59-60.

4. Farmers Property Qualified for the Exemption.

Finally, as previously set forth, Farmers' property qualifies for the exemption. *See supra* §IV.

Respectfully submitted,

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Charleston, South Carolina
November 1, 2019

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by electronic mail and United States mail, postage prepaid, to the following address(es):

Pleadings:

FARMERS' RESPONSE TO TAXING ENTITIES' PROPOSED ORDER

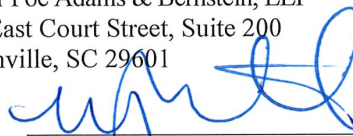
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November 1, 2019

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Clarendon County, Florence County, Lee)
County, Sumter County, Williamsburg)
County, Williamsburg County School)
District, Clarendon School District Two,)
Florence School District One, Florence)
School District Three, Sumter County)
School District, Clarendon County Hospital)
District, Lee County School District, and)
Clarendon School District One,)

Petitioners,)

vs.)

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

Respondents.)

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

**TAXING ENTITIES' RESPONSE TO
FARMERS' PROPOSED FINAL ORDER**

Petitioners (the "Taxing Entities"), by and through their undersigned counsel, hereby submit this Response to Farmers' Proposed Final Order.¹

Department Determination

The Taxpayers argue that the statutory definition of "department determination" should be disregarded because the definition is "circular" and "is not helpful to this case." (Farmers' Proposed Final Order 42 n.12). The issue of whether the Department's decision to exempt the Taxpayers' property was a "department determination" was previously ruled upon by the Court when it denied the Taxpayers' Motion to Dismiss. (*See* Order Den. Mot. Dismiss 12-16). Likewise, the Taxing Entities further addressed this argument in their Proposed Order. (*See* Taxing Entities' Proposed Order 25-33).

In addition to the findings previously made by the Court and the arguments advanced in the Taxing Entities' Proposed Order, the Taxpayers have failed to present a sufficient argument as to why the Supplement Certifications cannot be a department determination. As the statute

¹ The Taxpayers assert that the burden of proof for showing that the Taxpayers' property properly qualifies for the Exemption is on the Taxing Entities. This argument is not addressed within this Response, but, rather, in the Taxing Entities' Response to the Department's Proposed Final Order.

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defines “department determination,” the only thing required is that a final determination be made from within the Department. *See* S.C. Code Ann. § 12-60-30(10). Importantly, the Department’s official guidance on this issue states that “[i]f a document is consistent with this definition, it will be deemed to be the Department determination even though it may be entitled a final agency determination or some other name.” (SC Rev. Proc. 06-2, II(B)).

Contrary to section 12-60-30(10) and Revenue Procedure 06-2, the Taxpayers’ seek to impose a myriad of requirements on a final decision made by the Department before that decision can become a “department determination.” The Taxpayers assert that a department determination must be in writing; be sent to *the taxpayer* in a particular manner; explain the basis for the department’s determination; inform *the taxpayer* of his right to request a contested case hearing; and provide an explanation that taxes will be assessed in thirty days and payment demanded unless *the taxpayer* requests a contested case hearing. (Farmers’ Proposed Final Order 44) (emphasis added). The only place that any of these “requirements” are referenced is within section 12-60-450. Section 12-60-450 relates only to the content a *taxpayer’s* appeal must contain. There is nothing within section 12-60-450 which speaks to the requirements of a “department determination.” Accordingly, section 12-60-450 does not apply, and the Taxpayers have not set forth any other law which imposes requirements on the form, substance, place of issuance from within the Department, or the notifications to be given in order for a final decision of the Department to become a “department determination.”²

The Taxpayers also argue that the Department’s “exclusive authority to appraise and assess telephone-related property and to grant property tax exemptions regarding the same” (Farmers’ Proposed Final Order 43) denies this Court subject matter jurisdiction. To support this assertion, the Taxpayers cite to sections 12-4-540 and 12-4-710. Section 12-4-540 provides that “[t]he department has the sole responsibility for the appraisal, assessment, and equalization of the taxable values . . . of the . . . personal property owned by or leased to the following businesses and used in the conduct of their business: . . . (f) telephone[.]” S.C. Code Ann. § 12-4-540(A)(1)(f). Section 12-4-710 states that “the department shall determine if any property qualifies for exemption from local property taxes under Section 12-37-220. . . .” A more reasonable interpretation of these statutes is that only the Department, and not another state agency or other entity, has the authority to appraise and assess telephone-related property and to

² For the Taxing Entities’ full analysis on this issue, please refer to pages 25–31 of the Taxing Entities’ Proposed Order.

grant property tax exemptions. The fact that the Department has been given the sole responsibility to do a certain thing does not mean that the Department is unanswerable for improper exercises of that responsibility or that an affected party's statutory rights to appeal are completely extinguished.

Furthermore, the Taxpayers' argue that "[t]he Counties in this case did not initially view certifications as department determinations as they did not file a request for contested case hearing within thirty days of receiving certifications for FTCC and Diversified in 2016 for \$0 but rather did not file their request until July of 2017." (Farmers' Proposed Final Order 46 n.13). However, a review of the 2016 certification shows that there was no reason for the Taxing Entities to have believed that the Department had reached any kind of final decision with respect to the \$0 assessments stated on the 2016 certification. The only other relevant information provided on the face of the 2016 certification was that the assessment was "Under Appeal." (Trial Ex. 114). Thus, at the time the Counties received the 2016 certification, the Department had not yet made a final decision one way or the other, and it was entirely plausible that the Department could have ultimately decided that the Taxpayers' property did not qualify for the Exemption (as the Department staff did in the first instance).

Moreover, the Taxpayers' interpretation of "department determination" should be rejected for the simple reason that such an interpretation—which would give the Department the unfettered and unreviewable power to dictate when a county's or a local governing body's right to appeal arises—would lead to an absurd result. *See, e.g., Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000). Under the Taxpayers' interpretation, so long as the phrase "department determination" is not stamped on the final decision of the Department, then a county or local governing body would never have a right to appeal a final decision made by the Department, no matter how substantial the impact to the county or local governing body. There was evidence presented at the hearing that the Department was looking to do this very thing by labeling its final decision exempting the Taxpayers' property as a "Settlement Agreement." When Farmers' tax attorney, Jeffrey Allen, was asked why the draft of the Settlement Agreement was changed so as to not require that a "department determination" be issued, he testified that the Department did not want the counties to be able to appeal the decision. (Trial Tr. 708:1–6). Aside from the fact that the Taxing Entities were not privy to these negotiations, under the Taxpayers' and the Department's interpretation, it would not have made a difference anyway. Thus, under the Taxpayers' interpretation, the Department has both the exclusive, unreviewable

power to (1) exempt the Taxpayers' property from taxation *and* (2) decide whether or not its final decision to exempt the Taxpayers' property from taxation will be officially labeled as a "department determination." The General Assembly could not have intended an interpretation that would render sections 12-4-535(A), 12-60-2130, and 12-60-2150 meaningless.

Settlement Agreement

The Taxpayers' argue that the Settlement Agreement precludes the Taxing Entities from challenging the settlement for tax years (2010–2015). First, the Taxpayers' argue that section 12-4-320(4) gives the Department the authority to bind non-consenting third parties to a settlement agreement between the Department and a taxpayer. (Farmers' Proposed Final Order 49–50). The Taxpayers' argument is based on the Taxpayers' belief that the Settlement Agreement does not compel the Taxing Entities to do anything that they were not already compelled to do under South Carolina law once the Department issued revised certifications to the Taxing Entities. According to the Taxpayers, once the Department issued revised certifications, section 12-60-214(C) required the Taxing Entities to refund any overpayments to the Taxpayers. (Farmers' Proposed Final Order 50). However, this interpretation is entirely dependent on a conclusion that the Taxing Entities have no right to appeal or to participate in a challenge to the Department's decision to exempt the Taxpayers' property from taxation. As the Court already ruled, the Department's issuance of the Supplemental Certifications to the respective Counties was the "department determination," from which the Taxing Entities' right to appeal the Department's decision and to seek a contested case hearing arose.

The Taxpayers also argue that the Settlement Agreement precludes the Taxing Entities from challenging the settlement tax years because the Department's director (the "Director") approved the Settlement Agreement, and, therefore, the Settlement Agreement cannot be reopened pursuant to section 12-4-320(4). The Taxpayers' support this assertion primarily by arguing that the Taxing Entities failed to produce sufficient evidence showing that the Director did *not* approve the Settlement Agreement. (Farmers' Proposed Final Order 51–52 n.17). The Taxpayers seek to evade having to put forth evidence to prove their entitlement to the Exemption by arguing that the Taxing Entities have failed to prove a negative assertion. A review of the record reveals that neither the Taxpayers nor the Department put forth any direct evidence showing that the Director approved the Settlement Agreement. The records shows that (1) neither the then-acting Director, Rick Reames, nor any other individual involved with the Settlement Agreement has any personal recollection that Mr. Reames approved the Settlement

Agreement; (2) there is no direct evidence within the Settlement Agreement itself showing that Mr. Reames approved the Settlement Agreement; and (3) there is direct evidence that the Department failed to comply with section 12-4-380's statutory reporting requirements.³

The Taxpayers' further argue that the statutory reporting requirements of section 12-4-380 do not apply to the Settlement Agreement in this case because the Settlement Agreement was "approved by the director as opposed to the Director ordering the reduction of a tax liability." (Farmers' Proposed Final Order 52-53). There is nothing under South Carolina law which gives the Director the power to unilaterally order the reduction of a tax liability. The Taxpayers' interpretation would completely nullify section 12-4-380. *See Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 365, 798 S.E.2d 555, 559 (2017) ("This Court will not construe a statute in a way which . . . renders it meaningless.") (quoting *Florence County Democratic Party v. Florence County Republic Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012)); *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("[W]e must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law.") (internal quotation and citation omitted).

The Taxpayers' argument focuses entirely on the single word "order" found within section 12-4-380 and fails to acknowledge the "[w]ithin thirty days of *final settlement*" language that begins the statute. The plain language of section 12-4-380 clearly contemplates a situation where the Department settles a dispute, which results in a reduction of a taxpayer's tax liabilities. The remaining "by order of the director" language makes perfect sense when considered together with the statutory requirement that settlement agreements must be approved by the Director. *See CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 ("[T]he statute must be read as a whole and . . . [w]e therefore should not concentrate on isolated phrases within the statute[,] and, instead, "we read the statute as a whole and in a manner consonant and in harmony with its purpose.") (internal citation omitted). The fact that the Department has not issued one of these reports in the last five years is not evidence that the Settlement Agreement's details were not required to be reported, but, rather, it is evidence that the Department failed to comply with the law.

Furthermore, when section 12-4-320(4) is read in context with the remainder of Chapter 4 of Title 12, it becomes apparent that the statute likely has no application to property tax

³ For the Taxing Entities' full analysis on the lack of evidence supporting a conclusion that the Director approved the Settlement Agreement, please refer to pages 35-43 of the Taxing Entities' Proposed Order.

exemptions granted by the Department and that the General Assembly did not intend for the Department to be able to bypass an affected local government's statutory appeal rights by simply entering into a settlement agreement with a property taxpayer under the auspices of section 12-4-320(4). This elimination of the Taxing Entities' statutory appeal rights via the Department's interpretation of section 12-4-320(4) can be avoided entirely by construing section 12-4-320(4) as only applying to taxes impacting state tax revenues. The property tax, unlike nearly every other type of tax administered by the Department, raises zero revenue for the State of South Carolina. The revenue from the property tax is entirely devoted to County, Municipal, and other local government use. Consequently, many of the provisions of Title 12, Chapter 4, have no readily apparent application to the property tax⁴ and could be construed to apply only to state taxes. Similarly, section 12-4-320(4) could be construed as applying only to state taxes and not to property taxes.⁵ If that were the case, section 12-4-320(4) would not serve as a bar to judicial review of property tax disputes impacting local government revenues.

Use of the Property

The Taxpayers' argue that the term "telephone service" in section 12-37-220(B)(10) is not ambiguous. However, the Court already ruled to the contrary when it denied the Taxing Entities' Motion for Partial Summary Judgment on April 3, 2018. In the Order Denying the Taxing Entities' Motion, the Court stated that "the statute is ambiguous as to what qualifies as 'telephone service' and the level of use required." (Order Den. Mot. Partial Summ. J. 9).

Telephone Service

The Taxpayers have failed to present sufficient evidence to resolve the ambiguity of what constitutes "telephone service" within section 12-37-220(B)(10). The record clearly reflects that the seasoned staff of the Department's Property Tax Division of the Department—the administrative agency charged with determining the applicability of the Exemption—either expressly believed the Taxpayers' property at issue was *not* used to provide rural telephone

⁴ See S.C. Code Ann. §§ 12-4-380 (requiring the Department to provide the details of "all tax liabilities" reduced by order of the director to the budget-making committees of the General Assembly, whose budget includes zero property tax revenue); 12-4-387 (requiring the Department to conduct audits involving "all taxes" to promote voluntary compliance "and to collect revenues *for the general fund of the State*," despite the State's budget including zero property tax revenue); 12-4-320(3) (authorizing the Department to compromise "any tax, interest, or penalty imposed by this title" despite the Department's lack of statutory authority over property taxes imposed on agricultural property, commercial property, or legal residences); and 12-4-320(7) (authorizing the Department to "enter into an installment payment agreement with a taxpayer" despite the Department's lack of statutory authority over property taxes imposed on agricultural property, commercial property, or legal residences).

⁵ For the Taxing Entities full discussion on this point, please refer to pages 19–21 of the Taxing Entities' Response and Memorandum in Opposition to the South Carolina Department of Revenue's Motion for Partial Summary Judgment filed with the Court on May 13, 2019.

service or was too unsure to make a determination one way or the other. Charles Brewer's testimony on this issue is particularly enlightening. When Mr. Brewer—a property tax management professional with over 30 years of experience at the Department—was asked about his belief regarding whether the Taxpayers' property should be exempt from taxation under the Exemption, Mr. Brewer stated that he “felt like it was huge gray area, what was rural telephone service.” (Brewer Dep. Designations 39:8–9). When asked to specifically address the Taxpayers' property used to provide wireless cellular service, Mr. Brewer stated that it was his “opinion that the rural telephone exemption was specifically designed for landlines for rural telephone service, and the wireless wasn't . . . even invented at that point. It was a different service.” (Brewer Dep. Designations 39:19–40:3). Then, when asked whether Taylor Ingram and Sandy Houck agreed with his conclusion, Mr. Brewer responded with “. . . I believe that was the consensus of Taylor and I and Sandy Houck. . . . We considered it a gray area. . . .” (Brewer Dep. Designations 41:1–6).

The Taxpayers also argue that “telephone service” is not restricted to landline telephone service because section 12-37-220(B)(10) contains no requirement related to how the telephone services are to be provided or the type of technology that must be used. (Farmers' Proposed Final Order 59). However, the General Assembly's decision to not include any restrictions within 12-37-220(B)(10) makes perfect sense when considered alongside the fact that, in 1978, there was only one plausible meaning to the term “telephone service”—voice service provided over a landline. Because “telephone service” was and today remains undefined in the statutes, the proper method of statutory construction to determine the meaning of “telephone service” is to adopt the term's plain, customary, and ordinary meaning at the time the statute was enacted. *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 99, 705 S.E.2d 28, 33 (2011) (citing *Branch v. City of Myrtle Beach*, 340 S.C. 405, 409–10, 532 S.E.2d 289, 292 (2000)). The Taxpayers' definition of “telephone service,” which means “the service of providing the ability for people to communicate over a distance,” is much broader than how “telephone service” would have been commonly understood in 1978, and for some time thereafter. In 1978, “telephone service” was commonly understood to encompass only voice communication services which were communicated through a telephone and transmitted by physical connection (i.e., a wire) to another telephone user. At that time, there were no commercially available wireless cellular devices capable of making voice telephone calls in a manner remotely similar to how “telephone service” was understood in 1978 or is understood today. There were most certainly

no available wireless cellular devices which were capable of making voice telephone calls and (simultaneously) using the internet, sending emails, or streaming videos.⁶ Thus, in 1978, the General Assembly would have had no reason to restrict “telephone service” to landline telephone service or to specify the level of use required because only landline service existed and Farmers’ technical property would have served only one specific use.

The Taxpayers also focus heavily on Joe Moss’s statement that telephone service consists of “a vocal conversation that takes place over whatever medium.” (Farmers’ Proposed Final Order 59). The Taxpayers’ use of this testimony to support the conclusion that the Taxpayers’ property used to provide wireless services should receive the Exemption is misplaced. Whether or not one can make what might be colloquially referred to as a “telephone” call over a wireless cellular device is not critically important to whether the Taxpayer’s wireless cellular property is properly exempted from taxation under section 12-37-220(B)(10). While voice communications can take place over the Taxpayers’ wireless cellular network, the evidence shows that voice communications are only a *de minimis* component of the total data and information being transferred over the Taxpayers’ wireless cellular network.

The Taxpayers further argue that the Taxing Entities’ interpretation of “telephone service” is “contrary to the longstanding administrative construction by the Department, which has considered landline telephone assets to be exempt no matter the technology used for decades.” (Farmers’ Proposed Final Order 62–63). However, the Taxing Entities’ interpretation that the Exemption does not apply to the Taxpayers’ property which is not used to provide landline telephone service is exactly the same as the Department’s longstanding interpretation. Until this case, the Department had never granted the Exemption for the property used to provide anything but landline telephone service. When confronted with the issue for the first time upon the Taxpayers’ application for the Exemption, the record shows that the Department determined that “FTC Communications, LLC does *not qualify for the rural telephone exemption* for property tax purposes” because only “‘the property of telephone companies and rural telephone cooperatives used in providing rural telephone service’ is allowed the rural telephone exemption.” (Trial Ex. 21) (emphasis added). Further, the Department has never had a policy, official or unofficial, as to whether assets other than those used to provide landline telephone service qualified for the Exemption. (See Brewer Dep. Designations 39:8–41:6; 45:3–18). Even

⁶ For the Taxing Entities’ full discussion on this point, please refer to pages 61–65 of the Taxing Entities’ Proposed Order.

well after initiation of this lawsuit, the Department has not adopted an official policy on the matter. (Ingram Dep. Designations 19:22–20:1 (“I don’t know if there is a current policy or procedure on [wireless]. Other than the Settlement Agreement that came about through this case, I’m not sure that there has been any policy or procedure set.”)).

The Taxpayers argue the Taxing Entities’ interpretation is a “frozen in time approach” that prohibits any advances in technology from qualifying for the Exemption. (Farmers’ Proposed Final Order 63). This is a straw man argument. The Taxing Entities simply argue that the term “telephone service” should be interpreted in the same manner that the General Assembly intended when it enacted section 12-37-220(B)(10) in 1978. That is, “telephone service” under section 12-37-220(B)(10) means voice communication services communicated through a telephone and transmitted by a physical connection to another telephone user. Technological advancements that take place in providing “telephone service” (e.g., the transition from copper wire to fiber optic cables) are properly considered to be property used in providing “telephone service” under section 12-37-220(B)(10). However, technological advancements which fundamentally change the nature of the service provided, such as the ability to use the internet, send emails, watch Netflix, etc., are not, as the Taxpayers argue, properly within the meaning of section 12-37-220(B)(10)’s “telephone service” simply because those things are able to be completed on a wireless cellular device.

Level of Use Required

With respect to the level of use required, the Taxpayers likewise failed to present sufficient evidence to resolve the ambiguity of section 12-37-220(B)(10). To establish that section 12-37-220(B)(10) does not require a specific level of use, the Taxpayers focus heavily on sections 12-37-220(A)(1), 12-37-220(B)(16)(a), and 12-37-220(A)(4), which provide tax exemptions to property used “exclusively” or “primarily” for a certain purpose. Although these particular statutes require property to be used exclusively or primarily for a certain purpose in order to qualify for the respective exemptions, the Taxpayers failed to establish how these sections resolve the question of the level of use required under section 12-37-220(B)(10). The Taxing Entities have not argued that the Taxpayers’ property does not qualify for the Exemption because the property is not used “exclusively” or “primarily” in providing rural telephone

service. Instead, the Taxing Entities argue that the property must be used to provide rural telephone service in more than a *de minimis* amount in relation to the property's overall use.⁷

In conjunction with the principle that tax exemption statutes are to be narrowly construed against the taxpayer, more than a *de minimis* amount of use is required in order for the Taxpayers' property to qualify for the Exemption.⁸ The Taxpayers have failed to present sufficient evidence to show that its property was used more than a *de minimis* amount in providing rural telephone service. On the other hand, the Taxing Entities' expert, Joe Moss, presented substantial credible evidence showing that the Taxpayers' property was, at most, only incidentally used to provide voice communication services of any kind. By Mr. Moss's calculations, the Taxpayers' aggregate network was utilized at a rate of less than 5.00% for all of the tax years at issue, and less than 1.00% for tax years 2016–2018, for the provision of *both* landline and wireless voice communication services. (Taxing Entities' Proposed Order 76).

This Court is bound by existing law, which requires that any ambiguity within a tax exemption statute be narrowly construed *against* the taxpayer. *E.g.*, *CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881. The Taxpayers failed to present sufficient evidence at the hearing to resolve decisively the ambiguity with respect to what constitutes "telephone service" within section 12-37-220(B)(10) and what level of use is required in order for property to be eligible for the Exemption. Moreover, the Taxpayers failed to present sufficient evidence that the property was used to provide "telephone service" in more than a *de minimis* amount. Accordingly, the Taxpayers have failed to meet their burden of showing that they are entitled to the Exemption.

Illegal Retroactive Grant of Exemption

The Taxpayers' primary argument that the Department did not illegally retroactively grant the Exemption is premised on mistaken interpretations of sections 12-4-710, 12-4-720, and 12-54-85. (*See* Farmers' Proposed Final Order 68–78). First, the Taxpayers argue that section 12-4-720(C) does not require the Taxpayers to claim the Exemption on the property tax returns each year the property is exempt. Second, the Taxpayers argue that section 12-54-85(F) allows the Taxpayers to file an application for exemption within three years from when the original property tax return was filed, even if a taxpayer failed to claim the exemption on the taxpayers'

⁷ Also, the Department has no formal policy on what level of use is required to qualify for the Exemption. (Ingram Dep. Designations 71:15–22; 72:7–17).

⁸ For the Taxing Entities' full discussion on this point, please refer to pages 78–81 of the Taxing Entities' Proposed Order.

originally filed property tax return. Third, the Taxpayers argue that section 12-4-710 does not apply because the Department is incapable of complying with the statute's mandatory deadlines.⁹

In order to accept the Taxpayers' interpretations, the Court will be required to disregard section 12-4-720(C). The Taxpayers argue that section 12-4-720(A)(1) allows the Taxpayers to file an application for exemption with the Department within the time periods allowable under section 12-54-85(F). However, neither section 12-4-720(A)(1) nor section 12-54-85(F) apply to the Taxpayers because the Taxpayers are required to file annual property tax returns with the Department. *See* S.C. Code Ann. § 12-4-720(C). Importantly, section 12-4-720(A)(1) contains the language “[e]xcept as otherwise provided any property owner whose property may qualify for property exemption shall file an application for exemption with the department within the period provided in Section 12-54-85(F).” (emphasis added). The Taxpayers argue that only the pollution control equipment exemption under 12-37-220(A)(9) is subject to this “except as otherwise provided” language and that all other property tax exemptions may be properly applied for within the time period provided in section 12-54-85(F). To accept this interpretation, the Court would be forced to disregard section 12-4-720(C), which states that “[a] taxpayer who is required to file property tax returns with the department shall claim any exemption on the return each year the property is exempt.”¹⁰ This language shows that the timeline provided under section 12-54-85(F) is *generally* applicable to taxpayers seeking to file an application for a property tax exemption. On the other hand, section 12-4-720(C) applies to the certain subset of taxpayers who are *required* to file property tax returns with the department. For those taxpayers, the claims for exemption must be made *on the return each year the property is exempt*.

The Taxpayers also argue that because section 12-4-710 conflicts with sections 12-4-720(A)(1) and section 12-54-85 that the Court should disregard the requirements imposed upon the Department because section 12-4-720(A) and section 12-54-85 were enacted after section 12-4-710. As an initial matter, repeals by implication are “not favored and will not be applied if there is *any other reasonable construction of the statute*.” *State v. Bodiford*, 282 S.C. 378, 379, 318 S.E.2d 567, 568 (1984) (emphasis added); *Pearson v. Mills Mfg. Co.*, 82 S.C. 506, 64 S.E. 407, 409 (1909) (“A later statute on a given subject, not repealing an earlier one in terms, is not

⁹ The Department also raised arguments in its Proposed Final Order addressing issues related to how the Court should interpret sections 12-4-710, 12-4-720, and 12-54-85. The Taxing Entities have responded separately to those issues in the Taxing Entities Response to the Department's Proposed Final Order.

¹⁰ Taylor Ingram testified on behalf of the Department and confirmed that taxpayers who are required to file returns annually are also required to claim property tax exemptions on their returns. (Trial Tr. 109:15–21; 109:23–110:2) (stating that “we always understood it internally to be that the exemption was applied or filed with the property tax return”).

to be taken as a repeal by implication, unless it is plainly repugnant to the former, or unless it fully embraces the whole subject-matter . . . to effect a repeal by implication on account of repugnancy, the repugnancy must not only be plain, but the provisions of the two statutes must be incapable of any reasonable reconciliation.”); *State v. Corley*, 13 S.C. 1 (1880) (“[T]o repeal a statute by implication, there must be such a positive repugnancy between the provisions of the new law and of the old, that they cannot be reconciled.”). Moreover, this argument is unavailing because there is no conflict between the statutes. Here, the Taxpayers are required to submit their returns each year because the Taxpayers are classified as utilities. *See* S.C. Code Ann. §§ 12-37-970 & 12-4-540. Because the Taxpayers are required to file property returns annually, the Taxpayers are required to claim any exemptions on the return each year the property is exempt. *See* S.C. Code Ann. § 12-4-720(C). In turn, the Department is required to determine whether the Taxpayers’ property qualifies for an exemption on an annual basis *and* notify the appropriate county official by June 1st of each year. *See* S.C. Code Ann. § 12-4-710. There is no conflict between these statutes because sections 12-4-720(A)(1) and 12-54-85(F) do not apply to taxpayers who are required to file property returns annually with the Department. In addition, this argument is unavailing because sections 12-4-720 and 12-54-85(f) were not, in fact, enacted after section 12-4-710.¹¹

Furthermore, the Taxpayers argue that deference should be given to the Department’s decision not to comply with the June 1st deadline of section 12-4-710 because “the Department presented testimony that it is not possible for the Department to make exemption determinations by the June 1st deadline.” (Farmers’ Proposed Final Order 73–74). However, the record does not

¹¹ Both Section 12-4-710, including the June 1st deadline, and Section 12-4-720 were originally enacted by 1991 S.C. Act 50, § 2. The current text of Section 12-4-710, including the June 1st deadline, was enacted by 1995 S.C. Act 125, specifically § 2A which replaced the 1991 text of Section 12-4-710, and has not been amended since. The current text of Section 12-4-720, including the general deadline for filing applications for exemption, was also enacted by 1995 S.C. Act 125, specifically §§ 2A and 2B, and has not been amended since. The current text of Section 12-54-85(f), including the general deadline for claims for refund which is the later of (a) within three years from the time the return was filed or (b) two years from the date the tax was paid, was originally enacted by 1995 S.C. Act 60, specifically §4D(1). Although Section 12-54-85(f) has been amended since 1995, none of those amendments have substantively changed the general deadline. Because all three of these statutory provisions were enacted by the same legislators during the same legislative session and became effective a mere 5 days apart (1995 S.C. Act 125 was signed by the Governor on June 7, 1995; 1995 S.C. Act 60 was signed by the Governor on June 12, 1995), these provisions should be interpreted *in pari materia* with one another and construed in such a way as to harmonize their meaning rather than resorting to a repeal by implication. *See Pullen v. Morgenthau*, 73 F.2d 281 (2nd Cir. 1934) (“It seems incredible that nine days later Congress meant, by enacting a statute dealing generally with suits in admiralty against the United States, to upset the symmetry of its original plan regarding causes of action arising out of federal control of carriers.”) (citing *Petri v. F. E. Creelman Lumber Co.*, 199 U.S. 487, 497 (1905); *United States v. Burroughs*, 289 U.S. 159, 164 (1933)). Where “both laws are passed at the same session, the presumption against implied repeal is all the stronger.” *Id.* (citing *Lewis’ Southerland, Statutory Construction* (2d Ed.) Sec. 268 at 513).

support a finding, as the Taxpayers argue, that compliance with the June 1st deadline is actually impossible. Rather, the record, at most, supports a finding that the Department has never interpreted section 12-4-710 to require the Department to meet the deadlines expressly imposed by the statute because doing so would be burdensome to the Department. (Trial Tr. 181:3–4 (Taylor Ingram stating that the June 1st deadline “is unreasonable”)); (Ruple Dep. Designations 87:11–16 (stating that “I don’t know that they comply with the last sentence” in reference to the Department’s interpretation of section 12-4-710)); (Brewer Dep. Designations 30:19–31:23 (stating that “[w]e’ve never abided by the June 1st deadline . . . [a]nd, quite frankly, I’ve never seen it before today, the statute alone)); (Brewer Dep. Designations 79:22–80:10 (confirming that he had never seen that particular statute, and that he did not “remember that ever coming up in any situation”))).

The Taxpayers cite to federal court cases from the Northern District of California and the District of Columbia to support this argument, but the South Carolina Supreme Court has held that “[a]n agency’s long-standing interpretation of a statute . . . will not be sustained if it contradicts a statute’s plain language.” *Media General Communications, Inc. v. S.C. Dep’t of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 530–31 (2010); *see also, e.g., Kiawah Dev. Partners, II v. S.C. Dep’t of Revenue*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) (stating that “our deference doctrine provides that courts defer to an administrative agency’s interpretations with respect to the statutes entrusted to its administration . . . ‘unless there is a compelling reason to differ’”). “We defer to an agency interpretation unless it is ‘arbitrary, capricious, or manifestly contrary to the statute.’” *Id.* at 34 – 35, 766 S.E. 2d 707 at 719 (quoting *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844, 104 S.Ct. at 2778 (1984)).

Here, there is compelling reason to differ with the Department’s interpretation because that interpretation is contrary to the plain language of the statute. *See* S.C. Code Ann. § 12-4-710. Although compliance with section 12-4-710 may impose an additional burden upon the Department in order to meet the June 1st deadline, these requirements are, nevertheless, expressly mandated within a statute enacted by the General Assembly. *See Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 441, 581 S.E.2d 836, 839 (stating that the Court is “bound to strictly construe the terms of the statute and to rely on the General Assembly to amend the statute where necessary”); *see also Savannah Riverkeeper v. S.C. Dep’t of Health and Env’tl Control*, 400 S.C. 196, 206, 733 S.E.2d 903, 908 (2012) (finding compelling reasons obviated any deference when DHEC failed to follow the relevant law when it issued its final decision). Therefore, the Court should reject the

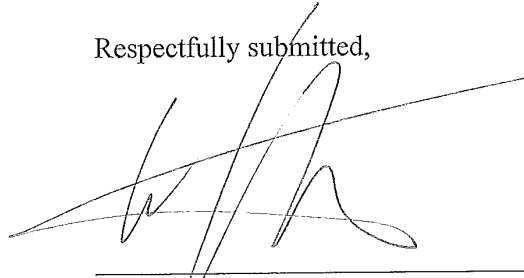
Taxpayers' argument that the June 1st deadline is inapplicable because the Department's longstanding practice is to ignore the deadline.

Standing

The Taxpayers' argument that the Taxing Entities lack standing is meritless. For one, sections 12-4-535(A), 12-60-2130, and 12-60-2150 clearly contemplate situations in which a county or local governing body may appeal final decisions made by the Department. Second, the cases cited by the Taxpayers in support of this argument are distinguishable and entirely inapplicable to the instant case. In *Georgetown County v. Davis & Floyd, Inc.*, the South Carolina Court of Appeals ruled that the Georgetown County was not permitted to sue the South Carolina Department of Transportation ("SCDOT") for the damage that occurred after SCDOT's water drainage project allegedly caused sinkholes that damaged public buildings and other property belonging to Georgetown County. *See generally* 426 S.C. 52, 824 S.E.2d 471 (2019). The Court of Appeals' statement referenced by the Taxpayers applied only in the limited context as to whether Georgetown County could maintain an inverse condemnation claim against SCDOT under the Takings Clause of the South Carolina Constitution. *Id.* at 59, 824 S.E.2d at 475. In *Hibernian Society v. Thomas*, a taxpayer was seeking the refund of taxes it paid under protest to the City of Charleston (the "City") and the County of Charleston. 282 S.C. 465, 468, 319 S.E.2d 339, 341 (1984). At first blush, the circumstances under which the case was originally brought appear similar to the present case. However, a quick review of the case shows that the Court's holding related only to the City's equal protection challenge to section 12-47-230 which requires a city, but not a county, to pay interest on the refund of taxes paid under protest. *Id.* at 472, 319 S.E.2d at 343.¹² Neither of these cases dealt with a county or local governing body's standing to bring a contested case hearing. In the present case, unlike *Georgetown County* and *Hibernian Society*, the Taxing Entities are not "suing" the Department as the Taxpayers appear to claim. Instead, the Taxing Entities sought a contested case hearing to challenge the Department's final decision to exempt the Taxpayers' property from taxation under section 12-37-220(B)(10). Sections 12-4-535(A), 12-60-2130, and 12-60-2150 provide the Taxing Entities with that right. Therefore, the Taxing Entities have standing to challenge the Department's final decision.

¹² Additionally, the language quoted by the Taxpayers that "[t]he power to 'sue and be sued' given to almost all political subdivisions does not extend to a challenge of the acts of the creator of those subdivisions" is nowhere to be found within in *Hibernian Society v. Thomas*, 282 S.C. 465, 319 S.E.2d 339 (Ct. App. 1984).

Respectfully submitted,



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Columbia, South Carolina
November 1, 2019

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused to be served the foregoing **TAXING ENTITIES' RESPONSE TO THE PROPOSED FINAL ORDER OF FARMERS TELEPHONE COOPERATIVE, INC., FTC COMMUNICATIONS, LLC, AND FTC DIVERSIFIED SERVICES, LLC; AND TAXING ENTITIES' RESPONSE TO THE PROPOSED FINAL ORDER OF THE SOUTH CAROLINA DEPARTMENT OF REVENUE** on all parties of record via electronic mail on November 1, 2019 and by depositing a copy of the same in the United States Mail, postage prepaid, and addressed as follows:

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Christine K. Davis, LPA

FILED

NOV 01 2019

SC ADMIN LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Clarendon County, Florence County, Lee)
County, Sumter County, Williamsburg)
County, Williamsburg County School)
District, Clarendon School District Two,)
Florence School District One, Florence)
School District Three, Sumter County)
School District, Clarendon County Hospital)
District, Lee County School District, and)
Clarendon School District One,)

Petitioners,)

vs.)

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

Respondents.)

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

**TAXING ENTITIES' RESPONSE TO THE
DEPARTMENTS' PROPOSED FINAL
ORDER**

FILED

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SC ADMIN LAW COURT

Petitioners (the "Taxing Entities"), by and through their undersigned counsel, hereby submit this Response to the Department's Proposed Final Order.

Burden of Proof

For the first time, after nearly two years of discovery, motions, and a full-blown contested case hearing, the Taxpayers and the Department argue in their respective Proposed Final Orders that the burden of proving whether or not the Taxpayers' property qualifies for the Rural Telephone Service Exemption (the "Exemption") is on the Taxing Entities. The Taxpayers and the Department argue that the Taxing Entities have the burden of proving that the Taxpayers' property does *not* qualify for the Exemption. This position contravenes well-settled South Carolina tax law as explicitly set forth by the South Carolina Supreme Court. This position also directly contradicts the position mutually agreed upon by the Taxpayers, the Department, and the Taxing Entities prior to, and throughout the duration of, the contested case hearing. A reversal of the burden of proof at this point would necessitate a completely new trial.

The Taxpayers' and the Departments' argument that the burden is on the Taxing Entities to prove that the Taxpayers' property does not qualify for the exemption is incorrect. *TNS Mills*,

Inc. v. S.C. Dep't of Rev., 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (“The burden is on [the taxpayers] to prove their rights to an exemption by bringing themselves clearly within the conditions imposed by the statute.”). Generally, the party asserting the affirmative issue in an adjudicatory administrative proceeding bears the burden of proof. *E.g., Leventis v. S.C. Dep't of Health & Envtl. Control*, 340 S.C. 118, 132–33, 530 S.E.2d 643, 651 (2000). This does not mean, as the Taxpayers and the Department argue, that the burden of proof for every issue rests with the Taxing Entities merely because the Taxing Entities were the original party to seek a contested case hearing.

It is the Taxpayers who are the party asserting the “affirmative issue” as to whether the Taxpayers’ property qualifies for the Exemption under section 12-37-220(B)(10). The law is clear: a taxpayer seeking a tax exemption bears the burden of proving that it qualifies for the exemption. *TNS Mills*, 331 S.C. at 618, 503 S.E.2d at 475. Thus, in this case, if the Taxpayers failed to produce any evidence that its property met the requirements of section 12-37-220(B)(10), then the Taxpayers would have failed to prove that its property qualified for the Exemption. This conclusion makes logical sense, as the alternative would require the Taxing Entities to prove a negative assertion, which is notoriously impractical and, in many instances, impossible. *See, e.g.,* 29 Am. Jur. 2d, Evidence § 173.

Even if the Court were to assume that the Taxing Entities were the party seeking the affirmative issue, this would not end the inquiry necessary to determine which party bears the burden of proving whether or not the Taxpayers’ property qualifies for the Exemption. The rule that the party asserting the affirmative issue in an adjudicatory proceeding bears the burden of proof is a *general* rule. Thus, by implication, this means that the rule is not absolute. Indeed, our Supreme Court has recognized exceptions to this general rule. *See Carmax Auto Superstores West Coast, Inc. v. S.C. Dep't of Revenue*, 411 S.C. 79, 88–89, 767 S.E.2d 195, 199–200 (2014) (holding that the Department bore the burden of proving the chosen method of accounting was reasonable when the taxpayers filed an action challenging the assessment of corporate income taxes made by the Department); *Sierra Club v. S.C. Dep't of Health and Envtl. Control*, 426 S.C. 236, 258–59, 826 S.E.2d 595, 607–08 (2019) (“Although Sierra Club[, the complaining party,] undoubtedly bore the burden of proving its case, Chem-Nuclear[, a responding party,]

nevertheless bore an overarching burden to satisfy the regulatory requirements necessary for Chem-Nuclear to earn its license.”).¹

Furthermore, the Taxpayers’ argument that “[t]here can be no question that the Taxing Entities would bear the burden in a case against only the Department challenging the Department’s settlement and its exemption decisions” is questionable at best. In order for this statement to be true, then there would be no instances where a South Carolina court properly assigned a burden of proof to the non-complaining party or properly allocated multiple burdens of proof to different parties for different issues. However, South Carolina Supreme Court case law provides otherwise. *See Carmax Auto Superstores West Coast, Inc. v. S.C. Dep’t of Revenue*, 411 S.C. 79, 88–89, 767 S.E.2d 195, 199–200; *Sierra Club v. S.C. Dep’t of Health and Envtl. Control*, 426 S.C. 236, 258–59, 826 S.E.2d 595, 607–08. A review of these cases show that South Carolina courts do not apply a blanket rule for determining which party bears the burden(s) of proof in a given case. Instead, these cases show that courts look at the specific issues to be proven, together with underlying statutory scheme, in order to allocate the burden(s) of proof in any particular case. *See generally* 411 S.C. 79, 767 S.E.2d 195.²

The issues presently before the Court do not present the “general case.” In order for the Court to decide all of the issues involved, the Court is required to determine whether the Taxpayers’ property legally qualifies for the Exemption under the requirements set forth in section 12-37-220(B)(10). As explicitly held in *TNS Mills*, the burden of proof is on the Taxpayers to show that the property qualifies for an exemption. A finding that the Taxpayers’ property does not legally qualify for the Exemption would invalidate the effect of the Settlement Agreement on the Taxing Entities and would dispose of the Taxing Entities’ procedural arguments because the Department’s decision to exempt the Taxpayers’ property from taxation would be in contravention of South Carolina law. Accordingly, the burden of proof is not on the Taxing Entities to show that the property does *not* qualify, and is instead on the Taxpayers to show that its property does qualify for the Exemption.

¹ *See also* SCALC Rule 29(B) (stating that “[i]n matters involving . . . the enforcement of administrative orders, the agency shall have the burden of proof”); SCALC Rule 29, 2019 Revised Notes (“In certain matters, such as enforcement actions, the agency has the burden of proof.”).

² The Taxing Entities are aware of the Taxpayers’ argument that an exception to this general rule exists when a statute provides otherwise. However, after carefully reviewing the cases cited above, it does not appear that there were any applicable statutes which assigned the burden of proof on a particular issue in either of the cited cases. Rather, it was the Court who determined the burden of proof based on an entire analysis of the claims asserted, all relevant issues, and the underlying statutory scheme.

In addition to this conclusion on the legal grounds stated above, the Taxpayers' and the Department's argument is surprising given that the Taxpayers, the Department, and the Taxing Entities mutually agreed upon which party bore what burden when deciding the proper mode and order of presentation of evidence at the hearing. This agreement between the parties was reflected on the record at the pre-hearing conference in accordance with Rule 43(k), SCRCF. In addition to this agreement, the Taxpayers and the Department both reiterated on the record at the contested case hearing that the burden of proving the property qualified for the Exemption was the Taxpayers' burden. Specifically, the Taxpayers stated, "we obviously have the burden of proof to show that we qualify for exemption." (Trial Tr. 709:18–20). And, in opening statements at the hearing, the Department provided the following:

. . . [T]he Department believes that, and it's already been stated and would agree with this, that ultimately the determination of whether a property owner is entitled to an exemption, that burden falls on the taxpayer. And so in this proceeding, the Department does not intend to argue or advance the case of the taxpayer. That is solely their burden in this case.

(Trial Tr. 45:19–46:2).

The Taxpayers' and the Department's attempt to completely reverse their position on this issue, if permitted, would serve to unfairly prejudice the Taxing Entities and would jeopardize the integrity of the entire contested case hearing. The Taxing Entities, the Taxpayers, and the Department spent considerable time debating the proper allocation of the specific burdens of proof in this case prior to the contested case hearing in order to, by agreement, determine the proper manner for order of presentation at hearing. Had the parties come to another agreement regarding the respective burdens of proof in this case—or at the very least, had the Taxing Entities had notice that the Taxpayers and the Department intended to disregard the agreed upon position and argue that the burden of proof was the Taxing Entities'—then the Taxing Entities would have prepared for and conducted the hearing differently. Shifting the burden at this point would require a new trial, as well as additional discovery.

Illegal Retroactive Grant of Exemption

Statutory Scheme

The Department argues that the Taxpayers were not illegally granted the Exemption because the timing limitations imposed by section 12-54-85(F)(1) apply to *all* taxpayers. However, in order for all of the relevant statutes to be given effect and for no statute to be rendered meaningless, the only possible interpretation is that section 12-54-85(F)(1) does not apply to taxpayers who are required to file annual property tax returns with the Department. The

Taxing Entities’ interpretation should be adopted by the Court because it is the only interpretation that gives effect to the entire statutory scheme without rendering any section meaningless. *See, e.g., TNS Mills, Inc. v. S.C. Dep’t of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (“[T]he statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.”) (internal citation omitted).

As the Department points out, taxpayers, like the Taxpayers in the present case, are required to submit property tax returns to the Department every year by April 30 pursuant to section 12-37-970. Section 12-4-720(C) provides that taxpayers who are required to annually file property tax returns must claim any exemption on their returns each year. Furthermore, section 12-4-710 requires the Department to annually determine if any property qualifies for exemption from local property taxes under section 12-37-220 and, if so, to notify the appropriate county official by June 1st of each year. Although the Department is required to make the initial exemption determination by June 1st of each year, section 12-37-970 gives the Department until August 15th of each year to determine the full assessed value.

The Department misconstrues the effect of section 12-4-720(C)’s requirement that certain taxpayers must claim exemptions on their returns each year the property is exempt. The Department acknowledges that “the language of section 12-4-720(C) *mandates* that a taxpayer who is required to file property tax returns ‘shall claim any exemption on the return each year the property is exempt.’” (Dept.’s Proposed Final Order 56) (emphasis added). However, the Department incorrectly concludes that “[i]f the only way to apply for an exemption was by claiming it on the return when it was filed, . . . this interpretation would render subsection (A)(1) meaningless.” (*Id.*). Application of the express terms of section 12-4-720(C) does not render section 12-4-710(A)(1) meaningless because section 12-4-720(C) only applies to taxpayers required to file annual property tax returns with the Department, whereas section 12-4-710(A)(1) does not. Limiting section 12-4-720(A)(1)’s application in this manner gives full effect to section 12-4-720.

In addition, this interpretation also avoids rendering section 12-4-710 entirely meaningless, as well. Like the Taxpayers, the Department argues that its admitted failure to comply with section 12-4-710’s June 1st deadline does not matter because (1) the deadline is inconsistent with the overall statutory framework and (2) compliance is “administratively

impossible.” In support of argument (1), the Department claims that because a taxpayer can file its property tax return as late as the last day of the fourth month after the close of the accounting period regularly employed by the taxpayer, hypothetical taxpayers with an accounting period ending on February 28th or later would never be able to claim the exemption. However, section 12-4-710 does not impose a deadline on a taxpayer’s ability to claim an exemption. The June 1st deadline is applicable only to the Department, which remains unaffected in a scenario where a taxpayer’s accounting period ends on February 28th or later. In such a scenario, where the taxpayer would not be required to file its property return until the last day of June each year, the Department would have almost an entire year to “determine if any property qualifies for exemption from local property taxes under Section 12-37-220.” *See* S.C. Code Ann. § 12-4-710. The June 1st deadline imposed upon the Department by section 12-4-710 does not create a conflict with any other statute.

In support of argument (2), the Department claims that it is impossible for the Department to resolve *all* exemption issues for a given tax year by June 1st of that tax year. The Department has presented no evidence to support that this is actually impossible.³ Also, it appears that the Department improperly conflates the requirements imposed by section 12-4-710 with a requirement that the Department “resolve all exemption issues for a given tax year.” (Dept.’s Proposed Final Order 61); (*see also id.* at 62 (stating that “it is a practical impossibility for the Department—in less than a month—to *review and determine the assessed value and any exemptions* for most of the manufacturing and utility property in the state”) (emphasis added)).

Section 12-4-710 imposes no such requirement on the Department. Section 12-4-710 simply requires that the Department “determine if any property qualifies for exemption from local property taxes under Section 12-37-220” and advise the appropriate county official by June 1st. The Department claims that its longstanding practice “has been to follow the timeline in section 12-37-970 by deciding the exemption requests and property assessments simultaneously . . . by August 15 of the applicable tax year.” (Dept.’s Proposed Final Order 63). Section 12-37-970 places the August 15th deadline only on the Departments’ assessment of the property, not the

³ (Trial Tr. 181:3–4 (Taylor Ingram stating that the June 1st deadline “is unreasonable”)); (Ruple Dep. Designations 87:11–16 (stating that “I don’t know that they comply with the last sentence” in reference to the Department’s interpretation of section 12-4-710)); (Brewer Dep. Designations 30:19–31:23 (stating that “[w]e’ve never abided by the June 1st deadline . . . [a]nd, quite frankly, I’ve never seen it before today, the statute alone)); (Brewer Dep. Designations 79:22–80:10 (confirming that he had never seen that particular statute, and that he did not “remember that ever coming up in any situation”)).

Department's exemption determinations. The deadline for exemption determinations is located within section 12-4-710, the section the Department seeks to nullify.

The Department has provided no evidence to show that analyzing property returns claiming a property tax exemption under section 12-37-220 and merely "determining if any property qualified for exemption" is impossible. The June 1st deadline makes sense for two reasons: (1) counties' budgets are required to be finalized no later than June 30th; and (2) a June 1st exemption determination deadline provides the Department with an additional two and a half months "to review and determine the assessed value" as required by section 12-37-970.

Furthermore, the Department claims that the Taxpayers' originally filed returns contained sufficient information for the Department to determine that the Taxpayers were claiming an exemption and for the Department to determine the proper assessment. However, the record shows that the originally filed returns were insufficient to do either one of these things.⁴ (Trial Tr. 167 (Taylor Ingram admitting that the Taxpayers' designation of property as "rural" did not convey to the Department that the Taxpayers were claiming the Exemption)); (Brewer Dep Designations 42:14–43:16 (Charles Brewer testifying that simply writing "rural" on Form PT-427 would be insufficient to inform the Department how the property was being used)). If the Taxpayers' originally filed returns contained sufficient information as the Department argues, it would make no sense for the Department to require the Taxpayers to submit amended PT-427 forms. Yet, the Department and the Taxpayers agreed within the Settlement Agreement that the Taxpayers' would "file amended property tax returns with appropriate supplemental data so that the Property Division may calculate and certify to the applicable counties a revised assessment." (Trial Ex. 91 § 2.1).

TNS Mills

The Department also argues that *TNS Mills* is not applicable to the instant case because of amendments to section 12-4-720 that occurred after the tax years in dispute in *TNS Mills*. This argument is without merit. First, the June 1st deadline contained in section 12-4-710 is identical

⁴ The Department also argues that it was able to determine the property tax assessments at the time the Taxpayers filed their original returns "from the return *and supplemental records*." (Dept.'s Proposed Final Order 53 (emphasis added)); *see also id.* at 55 (stating that the Department "has historically treated the combined PT-420, PT-427, and PT-429 (along with the PSC report) as the means by which a telephone company or cooperative claims the Rural Telephone Service Exemption"). However, section 12-37-970 expressly states that "[t]he assessment for property taxation of . . . the . . . equipment . . . of all other taxpayers required to file returns . . . , *must be determined* by the department *from property tax returns* submitted by the taxpayers to the department. . . ." Statutorily, the information provided on a property tax return should be sufficient for the Department to make this determination. Further, section 12-37-970 also provides that "[t]he department *by regulation shall prescribe the form of return required by this section*." (emphasis added). The Department has prescribed no such regulation.

to the June 1st deadline the Supreme Court interpreted in *TNS Mills*. Although section 12-4-710 was amended in 1995, after the tax years in dispute in *TNS Mills*, that amendment did not do away with the June 1st deadline. 1995 S.C. Act 125, §§ 2A and 2B. Rather, that amendment clarified that the Department of Revenue has no authority to grant the homestead exemption (because that exemption is solely within the jurisdiction of the applicable county auditor). The General Assembly re-enacted *verbatim* the exact same June 1st deadline language the Supreme Court interpreted in *TNS Mills*. *Id.*

Second, the substantive changes made to section 12-4-720 by 1995 S.C. Act 125 did not overturn the Court's holding in *TNS Mills*. The fundamental holding of *TNS Mills* is that the General Assembly established a system of deadlines that both taxpayers and the Department must adhere to in order for a grant of a property tax exemption to be legally valid. This holding remains the law in South Carolina. In pertinent part, the Supreme Court stated that "an interpretation allowing retroactive exemptions would not fit within the procedural scheme set out by the General Assembly . . . [because] [t]he Code requires the Department to make annual determinations concerning exemptions and to notify the appropriate county officials of what property was exempted from taxation by June first." 331 S.C. at 620–21, 503 S.E.2d at 476 (citing S.C. Code Ann. § 12-4-710).⁵ The legislative changes made in 1995 changed some of the specific deadlines that are now applicable to property tax exemption applications, but not the June 1st deadline. There is nothing in the record or in the legislative history of the applicable statutes to support the notion that these legislative changes eliminated the underlying purpose of the deadlines. Moreover, no legislative changes have been made to the June 1st deadline, so the legislative intent behind that deadline, as articulated in the *TNS Mills* case, remains fully intact.

Third, the Department further attacks *TNS Mills* and the June 1st deadline by alleging that "any taxpayer with an accounting period that ends on February 28 or later, who timely files its returns listing its property as exempt, would never be able to claim the exemption because that taxpayer is not even required to file its returns until after the June 1 deadline has passed. (Dept.'s Proposed Final Order 61). This argument completely contradicts the Department's own published guidelines regarding when taxpayers with fiscal years other than a calendar year are

⁵ The Court further stated the following: "The interpretation advanced by TNS would negate the purpose of notifying county officials by June first because the information given them would be worthless; the amount of exempted property, would change every time the Department granted a retroactive exemption. The plain language of these Code sections, when read together, show the legislature intended to set clear deadlines for applying for exemptions as part of an overall plan to enable counties and school districts to plan budgets for each fiscal year. Any interpretation allowing the Department to grant exemptions after the deadline would negate the benefit of this plan."

required to file property tax returns with the Department.” *See* S.C. Rev. Rul. #16-12 (2016). The Department’s issued guidance is directed to manufacturers specifically; however, the conclusions applicable to manufacturers regarding when their property tax returns are due pursuant to section 12-37-970 are equally applicable to “all other taxpayers required to file returns with the South Carolina Department of Revenue for purposes of assessment for property taxation.” S.C. Code Ann. § 12-37-970.

According to S.C. Rev. Rul. #16-12, a taxpayer required to file annual property tax returns with the Department that has a February 28th year end for income tax purposes must file its property tax return by June 30th of that same year. The Department argues that this would necessarily mean the taxpayer would be filing its returns *after* the June 1st deadline had already passed. However, the Department is incorrect because they are referencing the wrong tax year. As clearly shown by the chart on page 10 of S.C. Rev. Rul. #16-12, a taxpayer with an income tax year end of February 28th must file its property tax returns with the Department by June 30th 2017 *for tax year 2018*. This means the Department would have eleven months from the filing of the taxpayer’s return until the following June 1, 2018, deadline. The Department’s hypothetical taxpayer confirms that the Taxing Entities’ construction of the statutory scheme is reasonable regardless of what year end a particular taxpayer uses for income tax purposes.

Fourth, the Department further attacks *TNS Mills* and the June 1st deadline “because it would not allow the taxpayer a meaningful opportunity to engage in the administrative remedy process.” (Dept.’s Proposed Final Order 62). The Department bases this argument on another straw man argument—this time asserting that the Taxing Entities assert the June 1st deadline requires the Department to “resolve and notify the counties of all issues about property tax exemptions by June 1 of each year.” The Taxing Entities do not argue for such an expansive interpretation on section 12-4-710. Rather, the Taxing Entities merely argue that the Department (or a division within the Department) is required to make a determination of whether property is exempt from property tax (or not exempt, or partially exempt) by June 1st of the impacted tax year. Once that decision has been made and communicated to both the affected county pursuant to section 12-4-710 and the taxpayer pursuant to section 12-60-2110, if either the affected County or the affected taxpayer chooses to invoke administrative remedies, then the full administrative remedy process can proceed from there.

Farmers’ 1973 Property

The Department argues that the Court should confirm its “interpretation” that section 12-37-220(B)(10) applies to 100% of Farmers Coop’s property because this has been the way the Department has always applied the statute. However, there is no evidence in the record showing what percentage of Farmers Coop’s property was exempt in 1973, and the record is, therefore, incomplete for purposes of properly applying section 12-37-220(B)(10) to the Taxpayers’ currently owned property. It was the Taxpayers’ burden to provide this information, and it failed to do so.

In support of its argument, the Department states that “[f]or decades, Farmers Coop has claimed one hundred percent of its property as exempt . . . even though the infrastructure may also be used to provide other non-telephone services.” (Dept.’s Proposed Final Order 36). Further, “[a]lthough the Department may not have any record of what property Farmers Coop owned on December 31, 1973, its longstanding practice has been to exempt one hundred percent of Farmers Coop’s property that provides telephone service in rural areas, regardless of whether the property existed in 1973 or was acquired later.” (Dept.’s Proposed Final Order 37). If it had been done “for decades,” it seems like there would be some evidence either the Taxpayers or the Department could have provided to show what property was owned in 1973 and whether that property was exempt.

The Department’s longstanding practice of assuming that 100% of Farmers Coop’s property is exempt because Farmers Coop has always claimed 100% of its property as exempt is not an “interpretation” entitled to deference—it is a choice to assume a fact that has not been established. There is zero evidence in the record of how the Department taxed Farmers Coop in 1973. The Department admits that it has no record of what property Farmers Coop owned on December 31, 1973, and when the Taxpayers were asked to provide this information during discovery, they were also unable to produce anything showing what property Farmers Coop owned in 1973. Now, both the Department and the Taxpayers seek to shift the burden to the Taxing Entities to prove an issue that is uniquely in both the Department’s and the Taxpayers’ knowledge.

Essentially, the Department’s “interpretation” would render a significant portion of section 12-37-220(B)(10) meaningless because, without any record of what property Farmers Coop owned in 1973, the Department makes an assumption based upon a claim that is, apparently, unverifiable. This is not an “interpretation” which should be afforded any deference based on the Department’s longstanding practice. This is a failure by the Taxpayers to provide

any evidence on an issue that the Taxpayers have the burden of proving. The Taxpayers have failed to meet this burden.

Defining Rural Telephone Service

In 1978, “telephone service” was commonly understood to mean the provision of voice communication service between two users which were communicated through one user’s telephone and transmitted by an unbroken physical connection (i.e., a wire) to another user’s telephone. In 1978, this voice communication service was referred to as “plain old telephone service” (“POTS”). (Dept.’s Proposed Final Order 12). In 1978, POTS was provided through telephones which were connected by a one-to-one physical connection made using two copper wires between end-users. (*Id.*).

In an attempt to provide a definition for “telephone service,” the Department offers numerous definitions of “telephone service” and other related terms found within other titles of the South Carolina Code and the Federal Communications Act. However, the Department has failed to show how or why these statutes are in any way relevant to the definition of “telephone service” as that term is used in section 12-37-220(B)(10). Title 12 of the South Carolina Code provides no definition for “telephone service.” Accordingly, the Court “must interpret [‘telephone service’] in accordance with its usual customary meaning.” *See, e.g., Travelscape, LLC v. S.C. Dep’t of Revenue*, 391 S.C. 89, 99, 705 S.E.2d 28, 33 (2011) (citing *Branch v. City of Myrtle Beach*, 340 S.C. 405, 409–10, 532 S.E.2d 289, 292 (2000)).

Specifically, the Department cites to a definition found in Title 33 of the South Carolina Code. The Department’s reliance on this definition is misplaced for a number of reasons. First, the Department fails to cite to any authority standing for the proposition that a definition found within a completely unrelated and separate title of the South Carolina Code is applicable to the same or similar terms found within another unrelated and separate title. Each title of the Code was enacted to serve distinct purposes and to accomplish different objectives. Furthermore, section 33-46-20, which contains the Department’s relied upon definition for “telephone service,” begins by expressly limiting this definition only to that term’s use in Chapter 46 of Title 33. *See* S.C. Code Ann. § 33-46-20 (“*In this chapter . . .* (5) “Telephone service” means”) (emphasis added).

In addition, section 33-46-20’s definition of “telephone service” was enacted in 1994, nearly 20 years after the General Assembly enacted the Exemption in section 12-37-220(B)(10). When the United States Supreme Court considered a similar argument that later amended

statutes using similar language could be used to shed light on the meaning of a particular statute enacted at an earlier time, the Supreme Court completely rejected the argument, stating that a later amended statute “tells us nothing about Congress’s understanding of the language it enacted . . . in [an earlier period].” *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356, 2365–66, 204 L.E.2d 742 (2019).

Further, the Department’s well laid out legislative history of the amendments to Title 33 establishes one thing for certain: the General Assembly of South Carolina is capable of amending statutes when necessary for accomplishing the purposes and objectives of a particular statute. These amendments also show that the General Assembly was aware of technological advancements which began to occur after 1978 with the advent of wireless cellular devices in the mid-1980s. For the purposes of the Telephone Cooperative Act, the General Assembly felt it necessary in 1994 to define “telephone service” to also include all telecommunication services “including, but not limited to, the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds” which were transmitted along not only lines and wires, but also “radio, lights, [and] electromagnetic impulse.” S.C. Code Ann. §33-46-20(5). For purposes of the Rural Telephone Service Exemption, however, the General Assembly made no such change, and the Department has failed to present any evidence whatsoever for the Court to conclude that the General Assembly had any intention of applying the definitions found within Title 33 to a term found within Title 12.⁶

Use of the Property

Technological Changes

The Taxing Entities have not argued that “telephone service” can be provided only through copper wires and the technologies that existed in 1978. This is a straw man argument. Instead, the Taxing Entities simply argue that when the General Assembly enacted section 12-37-220(B)(10) in 1978, the plain and ordinary meaning of “telephone service” included only voice communication services which occurred through the use of two telephones connected to each other by an unbroken physical connection. In 1978, this physical connection was entirely made of copper wire. Today, the copper wire is being replaced more and more by fiber optic cable. This type of technological advancement fits squarely within the intended purpose of

⁶ These arguments are equally applicable to the Department’s references to federal and state laws which govern the Taxpayers’ obligations under the Universal Service Fund. The purposes and objectives Congress and state legislatures were trying to accomplish with the creation of the USF were entirely different than what the General Assembly of South Carolina was aiming to accomplish when providing a property tax exemption to South Carolina rural telephone service providers in 1978.

section 12-37-220(B)(10), and the Taxing Entities have raised no argument that the Taxpayers' fiber optic cables (as well as other appropriate technological advancements) which are used to provide rural landline telephone service do not qualify for the Exemption.

However, the Taxing Entities do argue that certain technological advancements (i.e. modern day wireless cellular devices) have fundamentally changed the nature and scope of the services provided by the Taxpayers' property to the point that the services provided by the Taxpayers' wireless cellular network do not fit within the intended purpose of section 12-37-220(B)(10). The record shows that the Taxpayers' wireless cellular property provides numerous services beyond merely voice communication services. In particular, the Taxpayers' wireless cellular property is also used to provide text messaging, internet service, email, streaming video services, etc. (Trial Tr. 834:22–839:1). Not only does the record show that the Taxpayers' wireless cellular property is used to provide services other than wireless voice communication services, but that the Taxpayers' property is used *almost entirely* for the provision of these other services. (Trial Ex. 134); (Trial Tr. 371:16–372:14).

Measure of Use

The parties' experts disagreed about the appropriate way to measure the use of the Taxpayers' property. As part of the Court's role in evaluating the testimony and determining the credibility of the witnesses, the Court observed the parties' expert witnesses and their presentation materials. Mr. Moss presented a credible, fact-based testimony about why bandwidth was the appropriate method for measuring how the network was *actually* used. Mr. Moss was thoughtful and consistent in his presentation. Mr. Moss did not contort his testimony to fit the Taxing Entities' theory of the case. Mr. Moss spoke plainly about what he believed as a telecommunications engineer long before he even knew this case existed, and why he believed it. On the other hand, Mr. Wyatt presented his case for using minutes of use as a measure of network utilization much differently. His presentation was folksy and entertaining, but he was either unable or unwilling to answer the Court's relatively straight forward questions. His testimony appeared to be crafted in response to the Taxpayers' theory of their exemption claim rather than based on opinions he independently held prior to his being hired as an expert. For example, he claimed that using a trail camera to transmit photos of a deer constituted "telephone service" (as the General Assembly understood that term in 1978). (Trial Tr. 834:22–839:1). The Taxing Entities think the choice of which testimony the Court should find credible is clear.

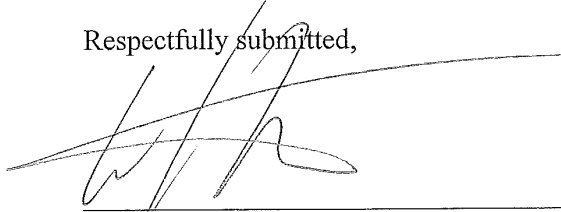
Regardless of how the Court chooses to measure use, it must still address the required level of use in section 12-37-220(B)(10). The Department incorrectly states that the Taxing Entities have requested that the Court conclude “that a property tax exemption like the Rural Telephone Service Exemption can only be granted on property where its *primary* use is for the specifically stated exempt purpose. . . .” (Dept.’s Proposed Final Order 48). The Taxing Entities have not asked this Court to impose a primary-usage requirement in order for property to qualify for the Exemption. Instead, the Taxing Entities argue that the property must be used to provide rural telephone service in more than a *de minimis* amount in relation to the property’s overall use.⁷ The Department, on the other hand, seeks for this Court to conclude that as long as the Taxpayers’ property is used to provide any level of voice communication services, then it should qualify for the Exemption, no matter how *de minimis* that amount of use may be. In support of this argument, the Department states that “if the Farmers Entities were to provide only voice telephone service, the Farmers network would consist of *virtually* the same infrastructure that is currently in place.” (Dept.’s Proposed Final Order 52) (emphasis added). However, the Taxpayers’ overall network consists of property necessary to provide non-voice communication services (e.g., wireless cellular service) but that is not necessary for the provision of landline telephone service. Neither Respondent made an effort to show what portion of the Taxpayers’ network could be used for landline services only versus the portion of the network required for other services.

With the enactment of section 12-37-220(B)(10), the General Assembly did not create a property tax exemption for all telecommunications companies. The General Assembly created a property tax exemption for the property used by telephone companies and rural telephone cooperatives to provide rural telephone service. Thus, the General Assembly tied this specific property tax exemption to only rural locations within South Carolina in order to help develop infrastructure within undeveloped rural areas. The record shows that many, if not all, national wireless cellular service providers operate within the Taxpayers’ geographic footprint and provide wireless cellular service to their customers by using the Taxpayers’ network. (Trial Tr. 518:18–519:6). Many of these customers do not live within the rural areas serviced by the Taxpayers, or even in South Carolina. (Trial Tr. 291:22–292:17; 445:23–446:9; 638:14–639:10;

⁷ For the Taxing Entities’ full analysis of this point, please refer to pages 78-81 of the Taxing Entities’ Proposed Order and pages 9–10 of the Taxing Entities’ Response to Farmers’ Proposed Final Order.

778:8-22). These were not the people the General Assembly intended to help. Respondents' interpretation simply goes too far.

Respectfully submitted,



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Columbia, South Carolina
November 1, 2019

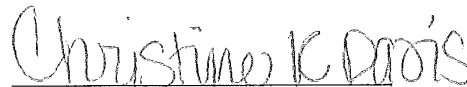
CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused to be served the foregoing **TAXING ENTITIES' RESPONSE TO THE PROPOSED FINAL ORDER OF FARMERS TELEPHONE COOPERATIVE, INC., FTC COMMUNICATIONS, LLC, AND FTC DIVERSIFIED SERVICES, LLC; AND TAXING ENTITIES' RESPONSE TO THE PROPOSED FINAL ORDER OF THE SOUTH CAROLINA DEPARTMENT OF REVENUE** on all parties of record via electronic mail on November 1, 2019 and by depositing a copy of the same in the United States Mail, postage prepaid, and addressed as follows:

Jason P. Luther, Esquire
Andrew Saleeby, Esquire
South Carolina Department of Revenue
300A Outlet Pointe Boulevard (29210)
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Sumter, South Carolina 29150


Christine K. Davis, LPA

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SC ADMIN LAW COURT

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Jun 03 2021

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,

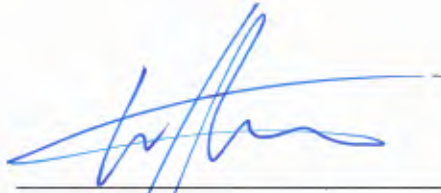
Of Which, Farmers Telephone Cooperative, Inc., FTC Communications,
LLC and FTC Diversified Services, LLC, are the Respondents-Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

[SIGNATURE PAGE FOLLOWS]

ROA 004518



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District, Clarendon County Hospital District, Lee
County School District, and Clarendon School
District One*

Columbia, South Carolina
May 14, 2021