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

---

BRIEF OF APPELLANTS-RESPONDENTS

Walter H. Cartin, SC Bar #78405
Katon E. Dawson, Jr., SC Bar #101167
PARKER POE ADAMS & BERNSTEIN LLP
1221 Main Street, Suite 1100 (29201)
Post Office Box 1500
Columbia, South Carolina 29202
(803) 255-8000 / (803) 255-8017 (fax)
waltcartin@parkerpoe.com
katondawson@parkerpoe.com

Madison Felder, SC Bar # 100606
PARKER POE ADAMS & BERNSTEIN LLP
110 East Court Street, Suite 200
Greenville, South Carolina 29601
(864) 577-6362 / (864) 242-9888 (fax)
madisonfelder@parkerpoe.com

Attorneys for Appellants-Respondents

Of Counsel:

Michael E. Kozlarek, SC Bar #69330
KOZLAREK LAW LLC
Post Office Box 565
Greenville, South Carolina 29601
(864) 527-5941
michael@kozlareklaw.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

STATEMENT OF ISSUES ON APPEAL

I. **DID THE ADMINISTRATIVE LAW COURT ERR IN FINDING FTCC AND DIVERSIFIED WERE ELIGIBLE FOR THE EXEMPTION FOR CERTAIN TAX YEARS?**

II. **DID THE ADMINISTRATIVE LAW COURT ERR IN FINDING FARMERS TELEPHONE COOPERATIVE INC.'S PROPERTY IS ELIGIBLE FOR THE EXEMPTION?**

III. **DID THE ADMINISTRATIVE LAW COURT ERR IN RULING TAXPAYERS SATISFIED THE ANNUAL EXEMPTION APPLICATION REQUIREMENT SET FORTH IN SECTION 12-4-720(C) OF THE SOUTH CAROLINA CODE FOR TAX YEARS 2014, 2015, AND 2016 BY FILING AMENDED PROPERTY TAX RETURNS IN FEBRUARY OF 2017?**

IV. **DID THE ADMINISTRATIVE LAW COURT ERR IN FINDING THAT THE SOUTH CAROLINA DEPARTMENT OF REVENUE'S FAILURE TO COMPLY WITH THE JUNE 1ST NOTIFICATION REQUIREMENT SET FORTH IN SECTION 12-4-710 OF THE SOUTH CAROLINA CODE DOES NOT CAUSE THE DEPARTMENT TO LOSE ITS AUTHORITY TO GRANT THE EXEMPTION?**

V. **DID THE ADMINISTRATIVE LAW COURT ERR IN RULING TAXING ENTITIES DO NOT HAVE STANDING TO REQUEST A CONTESTED CASE HEARING PURSUANT TO SECTION 12-4-535 OF THE SOUTH CAROLINA CODE?**

STATEMENT OF THE CASE

This matter arises from Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County, (collectively, the "Counties"), 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 (collectively with the Counties, "Taxing Entities") challenge of the South Carolina Department of Revenue's ("DOR") determinations that Farmers Telephone Cooperative, Inc. ("Farmers"), FTC Communications, LLC ("FTCC"), and FTC Diversified Services, LLC ("Diversified," and collectively with Farmers and FTCC, "Taxpayers") are entitled to a property tax exemption for certain real and personal property used in providing rural telephone

service pursuant to the Rural Telephone Service Exemption, S.C. Code Ann. § 12-37-220(B)(10) (the "Exemption") for tax years 2010 through 2018 ("Years in Dispute").

The Exemption provides the following:

> [T]he 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 the that tax district was to the total property of such company or cooperative as of December 31, 1973, in that tax district.

S.C. Code Ann. § 12-37-220(B)(10). The Exemption operates to exempt from *ad valorem* property taxation a telephone company's or rural telephone cooperative's property which is used to provide "rural telephone service." The Exemption does not define any of the operative terms such as "used," "rural," or "telephone service."

DOR determined that Taxpayers are entitled to the Exemption for the Years in Dispute, in part, because the property at issue was used to provide rural telephone service. Taxing Entities requested the Administrative Law Court ("ALC") hold a contested case hearing to challenge DOR's determinations that Taxpayers are entitled to the Exemption for the Years in Dispute. The central issue raised to the ALC was whether Taxpayers' property at issue qualified as being used for rural telephone service. Taxing Entities argued that the property is used to provide a multitude of services, including wireless services and broadband/internet services (such as streaming videos from Netflix)—not for the provision of rural telephone service as contemplated by the General Assembly when the Exemption was enacted in 1978.

A hearing on the merits was held before the ALC on May 20–24, 2019. The ALC issued a Final Order on February 24, 2020. Subsequently, both Taxpayers and Taxing Entities timely filed Motions for Reconsideration with the ALC. In response to the issues raised in the Motions for Reconsideration, the ALC issued an Amended Final Order on June 10, 2020. The Amended Final Order found (1) seventy-five percent (75%) of FTCC's and Diversified's landline telephone assets and wireless telephone assets qualified for the Exemption; (2) FTCC timely applied for, and is entitled to, the Exemption for tax years 2014–2018; (3) FTCC failed to timely apply for or claim the Exemption in tax years 2010–2013; (4) Diversified failed to properly apply for the Exemption in tax years 2013–2017 and, therefore, cannot receive the Exemption; and (5) Diversified timely applied for the Exemption in tax year 2018 and is entitled to it for that year. (Order 99; R. 105). The ALC declined to find that any portion of Farmers' property was not eligible for the Exemption.

In response to the Amended Final Order, both Taxing Entities and Taxpayers timely filed a notice of appeal.

STATEMENT OF FACTS

I. SUMMARY OF RELEVANT TAX PROCEDURES

All property in South Carolina is subject to taxation unless specifically exempted. *Long Cove Home Owners' Ass'n, Inc. v. Beaufort Cty. Tax Equalization Bd.*, 327 S.C. 135, 142, 488 S.E.2d 857, 861 (1997). Although all property is presumed taxable, the South Carolina Constitution grants certain exemptions from *ad valorem* property taxation and permits the General Assembly to enact additional statutory exemptions. *See* S.C. Const. Art. X, § 3. For most property tax exemptions, including the Exemption at issue in this case, the General Assembly requires property owners to file an application for exemption with DOR within a fixed time period.

Utilities and certain other taxpayers are required to file annual property tax returns with DOR ("Annual Filers"). *See* S.C. Code Ann. §§ 12-37-970 & 12-4-540(A)(1). Taxpayers are

Annual Filers. With respect to Annual Filers, the South Carolina Supreme Court has noted, "[t]axpayers may apply for exemptions separately from their tax returns, thereby filing two forms instead of one. Or, as most taxpayers do, they may apply for an exemption on their tax returns." *TNS Mills, Inc. v. South Carolina Department of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998). Thus, there are two ways for an Annual Filer taxpayer to apply for a property tax exemption: (1) the taxpayer can file a separate application for an exemption; or (2) the taxpayer can request the exemption on its timely filed annual property tax return.

After a taxpayer has filed its application for exemption, (1) DOR must determine "on an annual basis" whether the property qualifies for exemption, and (2) DOR must communicate its determination to the appropriate county official "by June first of each year." S.C. Code Ann. § 12-4-710. If DOR determines the property is exempt, then DOR is required to certify the exemption to the impacted county auditor. S.C. Code Ann. § 12-4-730. Upon receipt of an exemption certification from DOR, the county auditor must void any tax notice applicable to the exempt property. *Id.*

DOR's exemption determination is a department determination that triggers statutory appeal rights. *See* S.C. Code Ann. §§ 12-60-2130 & 12-60-2150(H). These statutory appeal rights are codified in the South Carolina Revenue Procedures Act (the "SCRPA") and accrue to both the taxpayer who filed the application for exemption and any local governmental entities affected by the department determination. *Id.* To appeal, the taxpayer or governmental entity must request a contested case hearing before the ALC within thirty days of the "department determination." *Id.*

The SCRPA outlines the process for seeking a refund based on a property tax exemption. If the taxpayer fails to timely file an application for exemption, then a refund is not available. S.C. Code Ann. § 12-60-1750.

The General Assembly enacted the Exemption in 1978. The Exemption operates to exempt from *ad valorem* property taxation a telephone company's or rural telephone cooperative's property which is used to provide "rural telephone service."

II. TAXPAYERS

Taxpayers in this case are comprised of three entities: Farmers, FTCC, and Diversified. Farmers is a rural telephone cooperative that was incorporated in South Carolina in 1952. (Stip. of Facts ¶ 1; R. 4221). Farmers provides landline service, wireless service, broadband/internet service, television service, and security services in South Carolina. (Tr. 538:23–539:7; R. 2052–53). Historically, the property Farmers owns and uses to provide rural telephone service in South Carolina has been exempted from *ad valorem* property taxation under the Exemption. (Tr. 124:15–20; R. 1637). FTCC and Diversified are both wholly owned subsidiaries of Farmers. (Tr. 458:25–459:3 & 462:19–21; R. 1971–72 & 1974).

FTCC was organized as a limited liability company in South Carolina on July 1, 2009. (*Id.* at ¶ 2; R. 4221). FTCC's primary function is to provide wireless data and voice services. (Tr. 459:18–21; R. 1972).

Diversified was organized as a limited liability company in South Carolina on July 1, 2012. (*Id.* at ¶ 3; R. 4221). Diversified provides landline telephone service, television service, internet service, and security services. (Stip. of Facts ¶ 4; R. 4221).

Together, Taxpayers operate an integrated modern telecommunications network. (Tr. 406:18–407:1; R. 1919–20). 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; R. 3903). 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). (Tr. 804:8–

806:13; R. 2317–19). In addition, 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.

III. TAXPAYERS' EXEMPTION APPLICATION HISTORY

A. Tax Years 2010 and 2011 — FTCC

For tax years 2010 and 2011, FTCC submitted its property tax returns and supplemental data to DOR. DOR issued proposed assessments valuing FTCC's property at $2,356,910 and $2,799,110, respectively. (Trial Exs. 9, 10, 13, & 14; R. 2638, 2663, 2675, & 2700). DOR then allocated the assessed value of FTCC's property to each of the Counties. Once the Counties received DOR's allocations, each County sent a property tax bill to FTCC. In 2010 and 2011, FTCC paid its tax bills without protest. (Tr. 474:1–475:7; R. 1987–88).

B. Tax Year 2012 — FTCC

In 2012, FTCC filed its property tax return and DOR issued a proposed assessment valuing FTCC's property at $3,024,480. (Trial Exs. 18 & 19; R. 2738–73). However, on October 11, 2012, FTCC sent a letter to DOR protesting the 2012 proposed assessment and alleging that FTCC's property should have been exempted pursuant to the Exemption. (Trial Ex. 22; R. 2779). As a result of the protest, DOR issued a revised proposed assessment representing 80% of the original assessment. (Trial Ex. 23; R. 2783).

On December 28, 2012, FTCC sent another letter to DOR in which it requested a refund for tax years 2010 and 2011 for certain property that it claimed to be exempt under the Exemption. (Stip. of Facts ¶ 13; R. 4222; Trial Ex. 15; R. 2703). This was the first time FTCC had made a written request for a refund based on the Exemption. (Tr. 686:3–687:4; R. 2199–200).

C. Tax Year 2013 — FTCC and Diversified

On April 30, 2013, FTCC filed a property tax return for tax year 2013. (Stip. of Facts ¶ 14; R. 4222; Trial Ex. 31; R. 2833). On January 14, 2014, DOR issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of $3,928,850. (Stip. of Facts ¶ 14; R. 4222; Trial Ex. 35; R. 2892).

On or about April 30, 2013, Diversified filed a property tax return for tax year 2013. (Stip. of Facts ¶ 15; R. 4223; Trial Ex. 55; R. 3091). On January 15, 2014, DOR issued a Proposed Assessment to Diversified for tax year 2013. (Stip. of Facts ¶ 15; R. 4223; Trial Ex. 56; R. 3108). DOR determined Diversified's property had an assessed value of $2,943,310. (Stip. of Facts ¶ 15; R. 4223).

In a letter dated February 18, 2014, FTCC and Diversified protested the proposed assessments from DOR for tax year 2013 because the assessments did not exempt FTCC's and Diversified's properties from *ad valorem* taxation pursuant to the Exemption. (Stip. of Facts ¶ 16; R. 4223; Trial Ex. 79; R. 3293). As a result of the protest, on February 27, 2014, DOR issued a revised proposed assessment to FTCC and Diversified representing 80% of each entities' original 2013 property tax assessment. (Stip. of Facts ¶ 17; R. 4223; Trial Ex. 57; R. 3113). FTCC and Diversified were then billed for 80% of the assessments, which they paid. (Stip. of Facts ¶ 17; R. 4223).

D. Tax Year 2014 — FTCC and Diversified

On April 25, 2014, Diversified filed a property tax return for tax year 2014. (Stip. of Facts ¶ 18; R. 4223; Trial Ex. 60; R. 3125). On August 12, 2014, DOR 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; R. 4223; Trial Ex. 61; R. 3143).

On April 28, 2014, FTCC filed a property tax return for tax year 2014. (Stip. of Facts ¶ 19; R. 4223; Trial Ex. 39; R. 2908). On August 12, 2014, DOR issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of $4,379,100. (Stip. of Facts ¶ 19; R. 4223; Trial Ex. 40; R. 2938).

In a letter dated November 6, 2014, FTCC and Diversified protested the proposed assessments from DOR for tax year 2014 because the assessments did not exempt FTCC's and Diversified's properties from *ad valorem* taxation pursuant to the Exemption. (Stip. of Facts ¶ 20; R. 4223; Trial Ex. 81; R. 3365). As a result of the protest, on December 16, 2014, DOR issued a revised proposed assessment to FTCC and Diversified representing 80% of each entity's original 2014 property tax assessments. (Stip. of Facts ¶ 21; R. 4223; Trial Exs. 41 & 62; R. 2943 & 3148). FTCC and Diversified were then billed for 80% of the assessments, which they paid. (Stip. of Facts ¶ 21; R. 4223).

E. Tax Year 2015 — FTCC and Diversified

On April 24, 2015, FTCC filed a property tax return for tax year 2015. (Stip. of Facts ¶ 22; R. 4224; Trial Ex. 44; R. 2954). On August 24, 2015, DOR issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of $4,306,020. (Stip. of Facts ¶ 22; R. 4224; Trial Ex. 45; R. 2982).

On April 24, 2015, Diversified filed a property tax return for tax year 2015. (Stip. of Facts ¶ 23; R. 4224; Trial Ex. 65; R. 3160). On August 24, 2015, DOR issued a proposed assessment to Diversified for tax year 2015. (Stip. of Facts ¶ 23; R. 4224; Trial Ex. 66; R. 3176). DOR determined Diversified's property had an assessed value of $2,556,670.

In a letter dated October 8, 2015, FTCC and Diversified protested the proposed assessments from DOR for tax year 2015 because the assessments did not exempt FTCC's and Diversified's properties from property tax pursuant to the Exemption. (Stip. of Facts ¶ 24; R. 4224; Trial Ex. 86;

R. 3473). On October 26, 2015, DOR issued a revised proposed assessment to FTCC and Diversified representing 80% of the original 2015 property tax assessments. (Stip. of Facts ¶ 25; R. 4224; Trial Exs. 46 & 67; R. 2987 & 3181). FTCC and Diversified were then billed for 80% of their respective assessments for tax year 2015, which they paid. (Stip. of Facts ¶ 24; R. 4224).

F. Tax Year 2016 — FTCC and Diversified

On April 25, 2016, FTCC and Diversified filed property tax returns for tax year 2016. (Stip. of Facts ¶ 26; R. 4224). On August 16, 2016, DOR sent a memorandum to the county auditors for Taxing Entities with utility certifications for the 2016 tax year. (*Id.*; R. 4224). The certifications for FTCC and Diversified for tax year 2016 noted the status as "under appeal," (*Id.*; R. 4224), but contained no description of what the "appeal" involved. (*See* Trial Ex. 114; R. 3730).

IV. DOR ANALYSIS OF TAXPAYERS' ELIGIBILITY FOR THE REQUESTED EXEMPTIONS.

Beginning in 2012, DOR's staff undertook an internal analysis of FTCC's requests for the Exemption.[1] Based on the information received, it was unclear to DOR what specific property (for both FTCC and Diversified) Taxpayers were claiming as exempt. Mr. Taylor Ingram—DOR's utility assessment coordinator and who oversees the property tax return process for DOR—reviewed the original returns for Taxpayers and could not tell from the face of those returns whether any property was being claimed as exempt. Specifically, Mr. Ingram concluded that upon receipt of the tax return, there was no indication that Taxpayers were asking for any sort of exemption on any property. (Tr. 151:13–15; R. 1664). The tax returns did not provide information sufficient for DOR to determine whether the property was exempt or non-exempt. (Tr. 160:23–161:1; R. 1673–74; *see also* Tr. 166:20–167:20; R. 1679–80).

[1] Diversified's returns were not yet an issue. Diversified did not exist until 2012, and therefore was only granted the exemption beginning in 2013. (Stip. of Facts ¶¶ 2 & 15; R. 4221–22).

On August 22, 2012, DOR denied FTCC's request for the Exemption, 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; R. 2777; Tr. 129:10–130:17; R. 1642–43). After discussing the matter internally, DOR's experienced property tax staff initially determined wireless cellular assets were not eligible for the Exemption. (Tr. 129:6–130:17 & 135:21–136:1; R. 1642–43 & 1648–49; Brewer Dep. Designations. 39:1–41:3; R. 1251–53). According to Mr. Ingram, no similarly situated taxpayer had ever requested the Exemption on assets used to provide wireless cellular services, and no other taxpayer in the entire state was receiving the benefit of the Exemption on assets used to provide wireless cellular services. (Ingram Dep. Designations 38:20–39:5 & 100:20–101:4; R. 1316–17 & 1364–65).

On January 15, 2014, the property tax division of DOR sent a letter to Taxpayers' counsel titled "Appeal Settlement Notification," which informed Taxpayers that DOR 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; R. 2777). The letter related to FTCC's protest for tax year 2012 and it also informed 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; R. 2777).

Despite being initially rebuffed, Taxpayers continued to pursue their protest with DOR. On February 18, 2015, Bill Condon, DOR's Counsel for Litigation, requested additional information needed to support Taxpayers' claims for eligibility for the Exemption. (Trial Exs. 82 & 83; R. 3388–3466). Taxpayers' counsel, Mr. Jeffery Allen, stated that this information was requested by

DOR because, by looking at the face of Taxpayers' tax returns, DOR was still unable to determine what assets were being claimed as exempt. (Tr. 692:23–694:4; R. 2205–07).

V. THE SETTLEMENT AGREEMENT AND THE REVISED TAX ASSESSMENTS

On January 8, 2017, DOR, FTCC, and Diversified entered into an agreement (the "Settlement Agreement"), wherein DOR granted FTCC and Diversified the Exemption for tax years 2010 through 2016.[2] (Stip. of Facts ¶ 36; R. 4226; Trial Ex. 91; R. 3533–40). In the Settlement Agreement, DOR and Taxpayers agreed that property used to provide FTCC's wireless cellular service and Diversified's landline telephone service qualified for the Exemption. (*Id.*; R. 4226 & 3533–40). 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.*; R. 4226 & 3533–40). Further, they agreed FTCC and Diversified would file amended property tax returns for every applicable year to allow DOR to calculate and certify revised assessments to the applicable counties. (*Id.*; R. 4226 & 3533–40). Moreover, once DOR made its revised assessments, DOR would certify the final assessments for the applicable years. (*Id.*; R. 4226 & 3533–40).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 the Exemption. (*Id.*; R. 4226 & 3533–40). 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.*; R. 4226 & 3533–40). 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, the Settlement Agreement stated:

---

[2] Diversified did not exist until 2012, and therefore was only granted the exemption beginning in 2013. (Stip. of Facts ¶¶ 2 & 15; R. 4221–22).

> 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; R. 3538). None of the Taxing Entities were party to the Settlement Agreement. None of the Taxing Entities had any opportunity to review or comment on the Settlement Agreement.

Following the execution of the Settlement Agreement, FTCC and Diversified filed revised PT-427 Forms for tax years 2010 through 2016 on January 20, 2017. (Trial Ex. 92; R. 3541). 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 Exemption. DOR reviewed the amended Forms for FTCC and Diversified and calculated revised assessments. In the revised assessments, DOR 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 the Exemption. (Trial Exs. 12, 17, 30, 43, 48, 59, 64, & 69; R. 2670, 2733, 2828, 2949, 2993, 3120, 3155, & 3192).

On April 25, 2017, FTCC and Diversified filed property tax returns for tax year 2017. (Stip. of Facts ¶ 27; R. 4224). On April 23, 2018, FTCC and Diversified filed property tax returns for tax year 2018. (*Id.* at ¶ 28; R. 4224).

On June 14, 2017, DOR 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; R. 4226–27). 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. (*Id.* at ¶¶ 45–47; R. 4227).

Also on June 14, 2017, the respective county auditors for each of the Counties received notice of the Settlement Agreement in a memorandum from DOR. (Stip. of Facts ¶ 48; R. 4227; Trial Exs. 115–119; R. 3734–88). On June 21, 2017, Clarendon County received a copy of the Settlement Agreement, which was dated January 8, 2017. (Clarendon Cty. Req. Cont. Case Hr'g (July 10, 2017); R. 242). Thereafter, in memoranda dated July 6, 2017, regarding "Utility Appeal Resolution Certification[s]," DOR told the Counties, in relevant part:

> Per the signed settlement agreement, both [FTCC and Diversified] will now be subject to the Rural Telephone Service 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; R. 3799–3838). DOR 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. (*Id.*; R. 3799–3838). The Supplemental Certifications provided that Taxpayers were entitled to substantial refunds for tax years 2010 through 2016.

On July 6, 2017, DOR certified the final revised assessments to FTCC and Diversified for tax year 2016. (Trial Exs. 124–128; R. 3799–3838). For FTCC, the final revised assessment proposed a property tax assessment of $588,670 for tax year 2016. (Stip. of Facts ¶ 49; R. 4227). For Diversified, the final revised assessment proposed a property tax assessment of $2,287,440 for tax year 2016. (*Id.* at ¶ 50; R. 4227). Also, the County Auditor for each of the Counties received a

revised notice of the Settlement Agreement in a memorandum from DOR dated July 6, 2017 (*Id.* at ¶ 51; R. 4227).

On August 16, 2017, DOR certified the final assessments to FTCC and Diversified for tax year 2017. (Trial Ex. 129; R. 3839). On August 24, 2017, DOR certified the revised final assessment to FTCC and Diversified for tax year 2017. (Trial Ex. 130; R. 3843). Taxing Entities filed additional supplements challenging DOR's Certifications for tax year 2017, which granted FTCC and Diversified the Exemption.

On August 15, 2018, DOR certified the final assessments to FTCC and Diversified for tax year 2018.[3] On August 23, 2018, DOR certified the revised final assessment to FTCC and Diversified for tax year 2018.[4]

On September 10, 2018, Taxing Entities filed additional supplements challenging DOR's Certifications for tax year 2018, which also granted FTCC and Diversified the Exemption.

VI. REQUEST FOR A CONTESTED CASE

On July 10, 2017, Clarendon County filed a request for contested case hearing challenging property tax exemptions granted by the Department to FTCC and Diversified. After Clarendon County filed a request for a contested case hearing, the other Taxing Entities intervened in the action. The ALC also added Taxpayers as Respondents on August 15, 2017.

VII. THE CONTESTED CASE HEARING

A hearing on the merits was held on May 20–24, 2019. Both Taxing Entities and Taxpayers presented expert witness testimony to the ALC regarding the meaning of the term "telephone service," as it would have been understood in 1978.

---

[3] (*See* Consol. Supp. Req. Cont. Case Hr'g (Sept. 10, 2018); R. 257).

[4] *Id.*

Mr. Joe Moss, II testified for Taxing Entities concerning the use of Taxpayers' property, (Tr. 257:9–380:11; R. 1770–1893), and how modern telecommunications networks are designed, constructed, and used. (Tr. 267:7–300:2; R. 1780–1813).[5] Mr. Moss is a telecommunications 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. (Tr. 241:11–242:23; R. 1754–55). Mr. Moss testified that when the Exemption was enacted by the General Assembly in 1978, rural telephone service, as with any telephone service, was understood to mean "voice service over a landline network that's . . . routed to the public switch telephone network." (Tr. 259:18–21; R. 1772; Order 15; R. 21). In other words, telephone service referred to "just voice service" that was delivered from one user to another user over a pair of copper wires." (Tr. 260:17–23 & 388:15–23; R. 1773 & 1901).

Mr. Moss's testimony provided context as to the history of the development of telephone networks to assist the ALC's analysis of the Exemption's meaning of telephone service at the time it was enacted in 1978. According to Mr. Moss, the earliest telephone networks, which were deployed predominately in the 1930s and 1940s, used a one-to-one physical connection (most often copper wires) to complete a telephone call over long distances between end-users. (Tr. 266:24–267:18 & 272:21–24; R. 1779–80 & 1785; Order 12; R. 18). The wires established an actual physical connection carrying electric current from one telephone user to another user. (Tr. 266:8–269:20; R. 1779–82). Mr. Moss testified that this type of network design is known as a

[5] Mr. George Wyatt, who is also an telecommunications engineer, testified on behalf of Taxpayers. (Tr. 716:17–20; R. 2229). The ALC expressly found Mr. Moss "to be very credible." (Order 15; R. 21). In comparison to Taxpayers' expert, the ALC explicitly found that "Mr. Moss was more convincing and credible than Mr. Wyatt based upon the breadth of knowledge, detail, and candor in which he testified." (*Id.*; R. 21).

"circuit-switched network," and it remained the standard architecture through the 1980s. (Tr. 272:24–25 & 280:21–282:21; R. 1785 & 1793–95). He testified that telephone service provided through a landline network that is terminated into the public switch telephone network is referred to as POTS—plain old telephone service. (Tr. 268:21–269:11; R. 1781–82; Order 13; R. 19).

Mr. Moss explained that the first major advance in network design and infrastructure technology was the introduction of digital systems in the early 1980s. (Tr. 273:17–275:1; R. 1786–88). Mr. Moss testified that 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. (Tr. 274:23–275:8; R. 1787–88). This technology was initially deployed in the portion of networks built between the central switching office and various remote terminals. (Tr. 275:10–21; R. 1788). The portion of the network from the remote terminal to each customer location still required a discrete pair of copper wires for each user. (Tr. 276:5–12; R. 1789).

According to Mr. Moss, modern telecommunications networks have become even more efficient thanks to the implementation of fiber-optic cable systems in the late 1980s. (Tr. 276:15–277:18 & 395:7–11; R. 1789–90 & 1908). 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.*; R. 1789–90 & 1908). 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. (Tr. 286:18–290:7; R. 1799–1803). Cellular technology did not become available to the public until 1983, (Tr. 246:25–247:1; R. 1759–60; *see*

also Tr. 286:20–22; R. 1799), over five years after the Exemption was enacted. Cellular networks operate using radio spectrum to transmit data between a customer's cellular phone and cell towers. (Tr. 286:18–288:4; R. 1799–1800). 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.*; R. 1799–1800). 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. (Tr. 289:15–16; R. 1802). Consequently, cellular networks are heavily dependent on connectivity to "backbone" landline telecommunications networks. (Tr. 289:10–24, 744:3–12, & 806:20–23; R. 1802, 2257, & 2319).

According to Mr. Moss, technological progress has led to dramatic changes in how customers access, use, and send information and the implementation of modern telecommunications network design has coincided with the growth of broadband internet access and cellular internet access. (Tr. 273:17–279:17; R. 1786–92). Due in large part to the massive data-carrying capacity of fiber-optic communication systems, subscribers demand, and telecommunications companies provide, more and more data transport capacity each year. (Tr. 367:12–368:8, 616:17–617:8, 848:18–25, 854:22–24, & 991:19–992:9; R. 1880–81, 2129–30, 2361, 2367, & 2504–05; Trial Exs. 134, 151, & 156; R. 3861, 3902, & 3904).

Mr. Moss also testified as to certain detailed network information produced by Taxpayers during discovery. (Tr. 302:2–380:11; R. 1815–93). Mr. Moss stated that the industry standard measurement for designing a modern telecommunications network and for determining the utilization of a telecommunications network is bandwidth. (Tr. 318:18–325:2; R. 1831–38; Order 20; R. 26).

Similarly, witnesses for Taxpayers also admitted that bandwidth is the key constraint on a modern network. (Tr. 619:17–621:5; R. 2132–34).[6] Indeed, the ALC concluded that "[b]andwidth is the industry standard for measuring the capacity of modern packet switched networks." (Order 20; R 26).

Using the data provided by Taxpayers, Mr. Moss developed a detailed set of calculations estimating the percentage of Taxpayers' overall network utilization (measured by bandwidth utilization) that was attributable to voice telephone services versus all other services provided by Taxpayers. Mr. Moss expected to find that less than 10% of Taxpayers' overall network utilization was attributable to voice services, but his calculations found that **less than 5% of Taxpayers' overall network** utilization was attributable to voice for any of the tax years in dispute. (Trial Ex. 134; R. 3861). Specifically, Mr. Moss concluded 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 utilization for voice services over time. (*Id.*; R. 3861). This trend is consistent with Taxpayers' internal records, which confirm that despite slow or negative growth in Taxpayers' number of subscribers (for all services) during the years in dispute, the demand for data services has continued to grow aggressively. (Trial Ex. 156; R. 3904).

[6] 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; R. 3904–68; Tr. 585:14–588:1; R. 2098–2101 (stating that "bandwidth/broadband is the buzz word. This is what the federal government emphasizes in its funding efforts.")).

VIII. THE AMENDED FINAL ORDER

After conducting a trial on the merits, the ALC concluded FTCC and Diversified qualified for only a partial exemption under the Exemption for the tax years in dispute. Specifically, the ALC ruled 75% of FTCC's and Diversified's landline telephone assets and wireless telephone assets qualified for the Exemption.

In addition to the findings related to the substantive requirements of the Exemption, the ALC found the following for the tax years in dispute: (1) FTCC timely applied for, and is entitled to, the exemption for tax years 2014–2018; (2) FTCC failed to timely apply for or claim the exemption in tax years 2010–2013; (3) Diversified failed to properly apply for the exemption in tax years 2013–2017 and, therefore, cannot receive the exemption; and (4) Diversified timely applied for the exemption in tax year 2018 and is entitled to it for that year. (Order 99; R. 105).

However, notwithstanding the fact that expert witness testimony showed that Farmers, FTCC, and Diversified operated a unified, completely interconnected network of property, and notwithstanding testimony showing that all of Taxpayers' interconnected property was used for a variety of non-exempt purposes, the ALC declined to find that any portion of Farmers' property was not eligible for the exemption.

STANDARD OF REVIEW

The ALC heard this matter and issued its Amended Final Order containing its findings of fact and conclusions of law pursuant to the contested case review authority granted by section 1-23-600 of the South Carolina Code. "The court of appeals may reverse or modify the decision only if substantive rights of the appellant [have] been prejudiced because the [ALC's] decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law." *S.C. Dep't of Corr. V. Mitchell*, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008).

The South Carolina Supreme Court summarized the following standard of review for an appeal of a decision by the ALC as follows:

> In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, looking at the entire record on appeal, that evidence from which reasonable minds could reach the same conclusion as the ALC. *Hill v. S.C. Dept. of Health & Envtl. Control,* 389 S.C. 1, 9-10, 698 S.E.2d 612, 617 (2010). However, the Court may reverse the decision of the ALC where it is in violation of a statutory provision or it is affected by an error of law. *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue,* 399 S.C. 313, 316, 731 S.E.2d 869, 870-71 (2012).

Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014).

ARGUMENTS

As a preliminary matter, it is essential that Taxing Entities establish the proper framework for the property taxation and exemption process.

A. The Property Tax Assessment Process for Taxpayers.

All property in South Carolina is subject to taxation unless specifically exempted. *Long Cove Home Owners' Ass'n, Inc.*, 327 S.C. at 142, 488 S.E.2d at 861; *see also* S.C. Const. Art. III, § 29; S.C. Const. Art. X; S.C. Code Ann. §§ 12-37-210 ("All real and personal property in this State . . . ***shall be*** subject to taxation." (emphasis added)); S.C. Code Ann. § 12-37-220. Thus, the Court must begin its analysis by assuming that the property at issue in this case is taxable.

All taxable property must be valued at its true value in money. S.C. Code Ann. § 12-37-930. To determine any property's taxable value, the property must be valued and assessed. S.C. Const. Art. III, § 29. DOR assesses and values the property of certain classes of taxpayers,[7]

[7] Other taxpayers' property is valued and assessed by other entities. For example, county assessors value and assess residential real property. *See* S.C. Code Ann. §§ 12-37-90(h) & 12-4-540(A)(1). For the purpose of this general description of the taxation process, Taxing Entities will describe

including Taxpayers in this case. *See* S.C. Code Ann. § 12-4-540(A)(1). Each year, these taxpayers must file property tax returns with DOR. *See* S.C. Code Ann. § 12-37-970. DOR uses these property tax returns to develop a "property tax assessment" for each taxpayers' property. *Id.* The "property tax assessment" must set forth the value of the taxpayers' property "for annual property tax purposes arrived at by multiplying the fair market value or special use value of the property by the appropriate assessment ratio." S.C. Code Ann. § 12-60-30(19). DOR is required by law to provide the property tax assessment in writing to the taxpayers. S.C. Code Ann. §§ 12-4-540(A)(1) & 12-4-540(F).

While DOR may value Taxpayers' property, the actual tax payments are ultimately received by local governmental entities, such as counties, school districts, and hospitals. (*See* Stip. of Facts ¶¶ 31 & 35; R. 4225–26). Taxing Entities are all local governmental entities that receive, and rely on, the actual tax payments made by Taxpayers. (*Id.*; R. 4225–26). For example, Clarendon County's chief financial officer testified at trial that *ad valorem* property tax revenues comprise 75% of Clarendon County's annual operating budget. (Tr. 67:15–18; R. 1580). Because Taxing Entities are undeniably impacted by decisions regarding property tax assessments, the General Assembly has established certain statutory notification requirements and protections for Taxing Entities.

No later than August 15th of each year, DOR must send "assessment certifications" of its property tax assessments to the appropriate county auditors. S.C. Code Ann. § 12-37-970 ("The Department of Revenue shall forward the assessments prepared as a result of the returns submitted pursuant to this section to the appropriate local taxing authorities no later than August fifteenth of

---

the process applicable to the class of taxpayers required to file annual property tax returns with the Department, which includes Taxpayers in this case.

the applicable tax year."). The county auditors use the assessment certifications to calculate the taxpayers' tax bill. S.C. Code Ann. § 12-39-180. The county auditors communicate the taxpayers' calculated tax liability to the county treasurer no later than September 30th of each year. *See* S.C. Code Ann. § 12-39-150. The county treasurer then sends actual tax bills to the taxpayers, which begins the *ad valorem* property tax collections process. *See, e.g.,* S.C. Code Ann. §§ 12-45-40, 12-45-60, 12-45-70, 12-49-10 *et. seq*. Every step of the statutory process is carefully timed and dictated to ensure order, predictability and stability.

B. The Protest Process for Taxpayers

If, however, the taxpayers disagree with DOR's written property tax assessment, the General Assembly has established a protest process. Article 9 of the SCRPA provides the procedural framework for all *ad valorem* property tax disputes in South Carolina. *See* S.C. Code Ann. §§ 12-60-10–12-60-3390.

If the taxpayers disagree with DOR's written property tax assessment, the taxpayers can file a written protest with DOR within ninety days of the date of the property tax assessment. S.C. Code Ann. §§ 12-60-1730 & 12-60-2110. If a taxpayer has filed a protest, DOR's property tax certification sent to the county auditor (or a subsequently issued "supplemental assessment certification") will indicate that a protest is pending. If DOR does not expect the protest to be resolved by December 31st, the certification will instruct the County Auditor to "adjust the property tax assessment of property under protest to 80% of the protested property tax assessment." S.C. Code Ann. § 12-60-2140(A). However, the certification will not normally contain any explanation regarding the substance of the protest, nor will it contain specific details regarding the amount of value at issue. (Tr. 227:16–228:11; R. 1741). Once the auditor adjusts the value to 80% of the protested property tax assessment, the county treasurer will issue an "80% tax bill" to the taxpayers. The taxpayers are required to pay the 80% tax bill. S.C. Code Ann. § 12-60-2140(A).

Depending on whether the final determination in the dispute results in a higher or lower property tax assessment relative to the 80% "adjusted property tax assessment," the taxpayers may owe additional tax or the taxpayers may be entitled to a refund of its overpayment. S.C. Code Ann. §§ 12-60-2140(B) & (C).

C. Property Tax Exemption Applications for Utilities Like the Farmers Entities.

Although all property is presumed taxable, the South Carolina Constitution grants certain exemptions from *ad valorem* property taxation and permits the General Assembly to enact additional statutory exemptions. *See* S.C. Const. Art. X, § 3. The South Carolina Constitution also requires the General Assembly to establish procedures for applying for property tax exemptions. *Id.* The General Assembly codified the property tax exemption process in Title 12, Chapter 4, Article 7 of the South Carolina Code. *See* S.C. Code Ann. §§ 12-4-710–12-4-750. For most property tax exemptions, including the Exemption in this case, the General Assembly requires property owners to file an application for exemption with DOR within a fixed time period.

As stated earlier, the General Assembly requires utilities and certain other taxpayers to file annual property tax returns with DOR ("Annual Filers"). *See* S.C. Code Ann. §§ 12-37-970; 12-4-540(A)(1). Taxpayers are Annual Filers. Aside from these specific classes of taxpayers, no other taxpayers have a legal obligation to file annual property tax returns with DOR. With respect to Annual Filers, the South Carolina Supreme Court has noted, "[t]axpayers may apply for exemptions separately from their tax returns, thereby filing two forms instead of one. Or, as most taxpayers do, they may apply for an exemption on their tax returns." *TNS Mills, Inc.*, 331 S.C. at 618, 503 S.E.2d at 475; *see also* S.C. Code Ann. § 12-4-720(B) ("If a taxpayer files a property tax return listing property as exempt, that listing is considered an application for exemption from property taxes."). Thus, there are two ways for an Annual Filer taxpayer to apply for a property

tax exemption: (1) the taxpayer can file a separate application for an exemption; or (2) the taxpayer can request the exemption on its timely filed annual property tax return.

After a taxpayer has filed its application for exemption, DOR first determines whether the taxpayer qualifies for the exemption. The law states plainly: "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 statutory language is clear: (1) DOR must determine "on an annual basis" whether the property qualifies for exemption, and (2) DOR must communicate its determination to the appropriate county official "by June first of each year." If DOR determines the property is exempt, it is required to certify the exemption to the impacted county auditor. S.C. Code Ann. § 12-4-730. Upon receipt of an exemption certification from DOR, the county auditor must void any tax notice applicable to the exempt property. *Id.*

DOR's exemption determination is a department determination that triggers statutory appeal rights. *See* S.C. Code Ann. § 12-60-2130 & 12-60-2150(H). These statutory appeal rights are codified in the SCRPA and accrue to both the taxpayer who filed the application for exemption and any local governmental entities affected by the department determination. *Id.* To appeal, the taxpayer or governmental entity must request a contested case hearing before the ALC within thirty days of the "department determination." *Id.*

D. Seeking a Refund Based on a Property Tax Exemption.

The SCRPA outlines the process for seeking a refund based on a property tax exemption. As referenced earlier, taxpayers must file an application for exemption for certain exemptions, including the Exemption. S.C. Code Ann. § 12-4-720. If the taxpayer fails to timely file an application for exemption, then a refund is simply not available. S.C. Code Ann. § 12-60-1750 ("Notwithstanding any other provision of law, no refund of property taxes must be given: (1) for a property tax exemption requiring an application, unless the application was timely filed.").

At its irreducible base, the case is about whether Taxpayers complied with the process for obtaining an exemption and were substantively and procedurally entitled to receive the Exemption for tax years 2010 to 2018. Taxing Entities assert that the answer to this question is an unchangeable "no," and they ask that the Court find Taxpayers are not entitled to the Exemption for any of the Years in Dispute.

I. THE ALC ERRED IN FINDING FTCC AND DIVERSIFIED WERE ELIGIBLE FOR THE EXEMPTION.

A. Taxpayers are Not Eligible for the Exemption Because their Use of the Property for an Exempt Purpose is De Minimis.

In South Carolina, the use of property is fundamental to the property's *ad valorem* tax treatment. *See* S.C. Const. Art X, § 1. At least twenty of the statutory exemptions from *ad valorem* taxation are explicitly based on how property is used. *See* S.C. Code Ann. § 12-37-220. The Exemption is no exception.

To determine whether Taxpayers are eligible for the Exemption, Taxpayers bear the burden of clearly establishing they met each of the requirements of the Exemption for each tax year in dispute. *TNS Mills, Inc.*, 331 S.C. at 618, 503 S.E.2d at 475. To be eligible to receive the Exemption, the property must be used in providing "rural telephone service." S.C. Code Ann. § 12-37-220(B)(10). However, the Exemption does not define "rural telephone service."

Tax exemptions are to be narrowly construed against 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)). Because the Exemption grants a tax exemption, the Court is required to narrowly construe its terms against Taxpayers. *See id.*

Taxing Entities assert that "telephone service" (as used in the Exemption) includes only those services related to the voice communication services provided via Taxpayers' landline

telephone network. The critical inquiry is what the General Assembly meant and intended by its use of the term "rural telephone service" when the Exemption was enacted in 1978. *See, e.g., Alltel Communications, Inc. v. South Carolina Dept. of Revenue*, 399 S.C. 313, 320, 731 S.E.2d 869, 873 (2012); *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"); Antonin Scalia & Bryan A. Garner, *Reading Law* 78 (2012) ("Words must be given the meaning they had when the text was adopted.").

A large portion of Taxpayers' property is used to provide services other than "telephone service" as that term was intended by the General Assembly when the Exemption was enacted in 1978. In addition, the wireless cellular service provided by Taxpayers is not "rural telephone service" within the meaning of the Exemption.

1. "Telephone Service" is Limited to Voice Communication Services Provided Through a Landline Telephone Network

The term "telephone service" as used in the Exemption includes only those services related to the voice communication services provided via Taxpayers' landline telephone network. The meaning of the term "telephone service" is dictated by what those words meant to the General Assembly when the Exemption was enacted in 1978. *E.g., Alltel Communications, Inc.*, 399 S.C. at 320, 731 S.E.2d at 873 ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature."). In order to understand 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 the Exemption'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 a statute's history and surrounding legislative facts to interpret the proper meaning of the statute's terms).

Taxing Entities' expert testified that, in 1978, "telephone service" was understood by the telecommunications industry as "voice traffic over a pair of copper wires." (Tr. 388:15–23; R. 1901; *see also* Tr. 259:17–21; R. 1772 (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, Taxpayers' expert testified that "telephone service" simply meant the provisioning of the ability to communicate between parties over a distance. (Tr. 726:15–16; R. 2239). 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." (Tr. 834:22–839:1; R. 2347–52). The General Assembly could not possibly have intended to provide an exemption for internet service, email, or Netflix in 1978.

In 1978, "telephone service" was not the only available method through which communication could occur over long distances. (*E.g.,* Tr. 728:5–729:8 & 822:3–7; R. 2241–42 & 2335). Both Taxing Entities and Taxpayers spent considerable time at the hearing discussing the different telecommunication technologies that existed when the Exemption was enacted and that have come into existence since 1978. However, the General Assembly's use of the word "telephone" preceding "service," rather than another, broader term that was in use in 1978 (such as "telecommunication") shows a clear intent to limit the type of communication services covered by the application of the Exemption to only voice services which occurred through a telephone landline network.

Had the General Assembly intended to provide a property tax exemption for the property used in providing "telecommunication" services—or any other type of communication—it could have done so by using that term. However, the General Assembly chose specifically to use "**telephone** service," thus limiting the types of communication services which are covered by the

Exemption. Practically, in 1978, a telephone was incapable of providing anything other than voice communication service from one user directly to another user.

Testimony at trial clearly showed that "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. (Tr. 388:15–23 & 259:17–21; R. 1901 & 1772). There was no evidence presented to the ALC to support any inference that the General Assembly intended to include any other telecommunication services within the commonly understood meaning of "telephone service."

Further, 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. To include other communication services, such as internet, email, video streaming, and deer cameras within the meaning of "telephone service" as that term was intended in 1978 would require more than a liberal construction in Taxpayers' favor. It would require this Court to interpret the Exemption in a manner which directly conflicts with the Exemption's plain language. The Exemption provides a property tax exemption only to Taxpayers' property used in providing voice communication services through a landline telephone network.

2. Wireless Cellular Service is Not Within the Meaning of "Rural Telephone Service."

The property used by Taxpayers to provide wireless cellular services does not qualify for the Exemption. There is no evidence in the Record supporting the contention that the General Assembly had wireless cellular service in mind in 1978. Additionally, the financial incentives that were intentionally granted by the General Assembly in order to develop a landline telephone

network in rural areas 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 Taxpayers today—was not practically available in 1978, and Taxpayers, who bore the burden of proof in this matter, failed to present any evidence that the General Assembly contemplated wireless cellular service at the time the Exemption was enacted. Taxing Entities' expert testified that when he began working as a telecommunications engineer in 1980, wireless cellular systems did not exist. (Tr. 286:20–21; R. 1799). 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." (Tr. 287:4; R. 1800). 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. (Tr. 287:2–15; R. 1800). In fact, ***the very first wireless cellular system was not deployed in the United States until 1983***. (Tr. 288:2–4; R. 1801). 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. (Tr. 288:7–8; R. 1801). Today, on the other hand, Taxpayers' "wireless" property is used to provide a significant number of other non-voice services, such as internet access and streaming video.

Although 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, 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. (Tr. 728; R. 2241). However, as Mr. Wyatt explained, "[i]t wasn't pick up the cell phone wireless." (Tr. 729:6–8; R. 2241). Not only did Taxpayers fail

to present any evidence that the General Assembly contemplated the use of wireless cellular service within the enactment of the Exemption, but Taxpayers failed to present any evidence that a viable wireless cellular network (akin to what Taxpayers also offer) even existed in 1978.

Additionally, it is clear from the evidence presented and the legislative context of the Exemption that exempting the property used in providing wireless cellular service would be inconsistent with the General Assembly's intended purpose of the Exemption. First, the enactment of the Exemption 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. (Tr. 513:15–23 & 514:15–23; R. 2026–27). Taxpayers' Chief Financial Officer, Mr. Jeff Lawrimore, testified that the landline telephone services provided by Taxpayers are not profitable. (Tr. 513:22–25; R. 2026). 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 Taxpayers' geographic service area. (Tr. 518:18–519:6; R. 2031–32). Competition among wireless cellular providers is extensive throughout the same area serviced by Taxpayers. (Tr. 555:13–25; R. 2068). Taxpayers did not present any evidence 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. (*See* Tr. 514:6–14; R. 2027).

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 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 Taxpayers' property used to provide wireless cellular service operates to provide services other than rural telephone service. (Tr. 378:23–379:9; R. 1891–92). 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 Taxpayers' wireless property are neither rural users, nor South Carolina residents. (Tr. 291:22–292:17, 445:23–446:9, 638:14–639:10, & 778:8–22; R. 1804–05, 1958–59, 2151–52, & 2291). For these reasons, Taxpayers' property used to provide wireless cellular service is not property used in providing "rural telephone service" within the meaning of the Exemption.

3. Taxpayer's Property Must be Analyzed as a Single, Consolidated Network.

After over five years of administrative appeal in this matter and an additional two years of litigation, including extensive discovery, Taxpayers were incapable[8] of meaningfully delineating

[8] 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 Taxpayers to the Department **after** entering into the Settlement Agreement. It is unclear from the testimony at the hearing what standard was used by 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, Taxpayers' witnesses understood the Exemption to apply to property that was used **to any extent** in providing rural telephone service. (Tr. 498–499; R. 2011–12; Brewer Dep. Designations 48:3–6; R. 1260; Ingram Dep. Designations 71:22–72:6; R. 1340–41). Consequently, the breakdown provided by Taxpayers in its post-

specific items of their telecommunications network that were used in providing rural telephone service[9] 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 Taxpayers was used in an interconnected manner to deliver all of the various services Taxpayers provide. (Tr. 288:18–21, 303:13–22, 314:5–8, & 543:4–14; R. 1801, 1816, 1827, & 2056). Because the property cannot be separated by use, the question becomes fairly straightforward: is Taxpayers' interconnected network of property, as a whole, used in providing rural telephone service?

Testimony at trial confirmed that voice telephone services utilize the very same IP-based backbone as the non-exempt services including internet, cable television, security, and other data-intensive services. (Tr. 288:17–21, 308:2–5, 314:5–8, 844:6–845:7, & 859–860; R. 1801, 1821, 1827, 2357–58, & 2372–73). All of the property and all of the advanced equipment comprising 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 Exemption.

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

Measuring bandwidth utilization is the only way to determine how Taxpayers' property is actually used. Because of the interconnected nature of Taxpayers' property, the technology that is used to deliver the service dictates the appropriate metric for measuring whether the property is

---

Settlement Agreement amended returns does not provide any evidence as to how Taxpayers' interconnected property was actually used.

[9] Taxing Entities intend to use the term here as it has previously been defined.

used in providing rural telephone service. The parties disagreed about the appropriate metric for measuring network usage. Taxing Entities argued that bandwidth utilization was the only appropriate metric for measuring Taxpayers' telecommunications network, while Taxpayers argued that minutes of use, cost, and revenue allocation were more appropriate metrics.[10] After considering the expert witness testimony, the ALC correctly concluded that bandwidth was the appropriate metric for measuring how Taxpayers' network was actually used:

> Recognizing the interconnected nature of the Taxpayers' network, I find that the best way to calculate relative use of Taxpayers' network for exempt and non-exempt services is to use bandwidth as a common denominator. Based upon Mr. Moss' estimation, which I found most credible, the relative use of Farmers Entities' network for voice telephone service was no more than 5% for any of the tax years in dispute.

(Order 66–67; R. 72–73).

Each service provided by Taxpayers uses bandwidth at a different rate. (Tr. 518:2–5; R. 2031). For example, a voice telephone call uses less bandwidth than watching a show on Netflix. (*Id.*; R. 2031). By determining how much bandwidth is used by particular services, the Court can

---

[10]"'Minutes of use' is a term of art in the telecommunications industry that is used to measure ability of the network to efficiently divide its limited number of connections between a certain number of subscribers." (Order 21–22; R. 27–28). The Court ultimately determined that "'[m]inutes of use' is no longer an appropriate measure of how a modern network like the Farmers Entities' network is being utilized, particularly when the network is being used for non-telephone services that are not measured using minutes of use." In contrast to "minutes of use," the Court found that "[a]nother way to measure the use of the network is to determine what portion of property (infrastructure) is used to provide telephone service and determine the cost of that portion of the property." (Order 24; R. 30). Ultimately, using this method, the Court found that "the cost of building a landline-only network with lower capacity equipment would be significantly lower than (1) the cost of the current network (with all of its attendant services) or (2) scaling up an existing network." (Order 25; R. 31). Further, the Court discussed that another way to measure relative use of the network "is to determine how much revenue each service produces." (Order 26; R. 32). However, the Court concluded that although this type of information may seem probative on the surface, "Taxpayers' financial records only establish how Taxpayers bill their subscribers and bundle their services, not how Taxpayers physically use their property[,]" and, "[t]his practice artificially inflates the revenue (as a proxy for use) coming from voice subscribers." (*Id.*; R. 32).

determine exactly how Taxpayers use their property and whether that use qualifies for the Exemption.

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

Taxing Entities' expert, Mr. Moss, provided a careful and thorough analysis of how Taxpayers used their interconnected network. He determined Taxpayers' network was used less than 5% for voice services for each of the tax years in dispute. (Trial Ex. 134; R. 3861). Mr. Moss used information produced by Taxpayers during discovery, including maps of Taxpayers' core network, makes and models of actual networking equipment used in Taxpayers' network, core data utilization numbers from Taxpayers' computer systems for tax years 2017 and 2018, minutes of use and data provided by 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; R. 3861).

Using this information, Mr. Moss reached the following conclusions regarding how much of Taxpayers' network was utilized for voice calls for each of the tax years in dispute:

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%

(Tr. 371:16–372:14; R. 1884–85; Trial Ex. 134; R. 3861). Taxpayers' network was used only 4.75% for voice calls in 2010. By tax year 2018, Taxpayers' interconnected network was only used 0.45% for voice call traffic. Again, the ALC specifically found that the author of this analysis, Mr. Moss, was more credible and more persuasive than Taxpayers' expert. Clearly, the use for voice services is *de minimis*.

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

Taxpayers' *de minimis* use of their property for an exempt purpose renders them ineligible to receive the Exemption. South Carolina courts have not interpreted any property tax exemption where the use required by the statute is not an exclusive use. However, this Court 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 a machine substantially "used in manufacturing" was entitled to the sales tax exemption where 35% of the waste it treated was actually manufacturing waste.

Although this is 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; *see, e.g.*, *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 (internet, video streaming, etc.). The evidence shows Taxpayers' interconnected network is only incidentally used in providing voice services.

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.

Courts in other jurisdictions have found usage of property to be *de minimis* when such use amounted to approximately 2%,[11] 5–10%,[12] and 7%[13] of the relevant measure. Those courts also

---

[11] *Aero Air Inc. v. Department of Revenue*, 1980 WL 2042 (Oregon Tax Court 1980) (holding "to exempt the total facility from taxation because approximately [2%] 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.").

[12] *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).

[13] *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

found usage of property to be beyond *de minimis* when such use amounted to one-third.[14] This Court has held that property used 35% for a statutorily prescribed use is used "substantially" for that use.

Mr. Moss estimated that Taxpayers' network was used no more than 5% for any of the tax years in dispute for the delivery of voice services. Such *de minimis*, and annually declining, use is not sufficient to qualify for the Exemption. Consequently, even if Taxpayers had timely applied for the Exemption and DOR had timely granted the Exemption and timely notified the Counties of its actions, 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.

B. Taxpayers Failed to Establish Every Element of the Exemption and Were, Therefore, Ineligible for the Exemption.

Taxpayers had the burden of proving their rights to the Exemption by bringing themselves clearly within the conditions imposed by the statute. *TNS Mills*, 331 S.C. at 618, 503 S.E.2d at 475; *York Cty. Fair Assoc. v. S.C. Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967)). Taxpayers failed to present any evidence regarding crucial elements of the Exemption and are, therefore, ineligible to receive the Exemption.

Section 12-37-220(B)(10) states:

> [T]he 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***

7% of the taxpayers's total expenses for the year and less than 7% of the taxpayer's total revenues for the year and was therefore *de minimis*).

[14] *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).

> ***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 the that tax district was to the total property of such company or cooperative as of December 31, 1973, in that tax district.

S.C. Code Ann. § 12-37-220(B)(10) (emphasis added). Clearly, the amount of property that was exempt at the end of 1973 is crucial to analyzing what portion of Taxpayers' property can be exempted now.

The ALC found that there was no evidence in the record to establish what proportion of Farmers' property was exempt in 1973. (Order 68–69; R. 74–75). The ALC specifically concluded that "***the evidence did not establish the specific nature of Farmers' property that was exempted as of December 31, 1973***." (Order 68; R. 74) (emphasis added). The ALC also stated that "discerning what portion Taxpayers are entitled to carry forward is clouded by Taxpayers' failure to identify DOR's original determination of what proportion of property was exempt in 1973. . . ." (Order 69; R. 75).

The Record, which Taxpayers bore the burden of developing, is devoid of any information supporting this essential element of the Exemption. Therefore, Taxpayers failed to meet their burden of bringing themselves clearly within the explicit conditions imposed by section 12-37-220(B)(10) and are not entitled to the Exemption.

C. FTCC and Diversified are not Entitled to the Exemption for 75% of the Property in Dispute.

The ALC erred in concluding that 75% of FTCC's and Diversified's property was eligible for the Exemption. The ALC reached this conclusion by rejecting the values proposed by both Taxing Entities and Taxpayers and adopting a completely different valuation method. The ALC specifically stated "that, in light of the facts of this case, the cost of establishing a network to

provide for rural telephone service is the most accurate way to capture the use of the network for property tax purposes for Diversified and FTCC." (Order 71; R. 77). After discussing the cost method of valuation, the ALC concluded: "I find that a voice-only network would cost 25% less than the current network. Accordingly, I find that 75% of Diversified and FTCC's assets are used to provide rural telephone service and thus are exempt." (*Id.*; R. 77).

The ALC may choose a value different than the specific values proposed by the parties. *See generally Charleston County Assessor v. University Ventures, LLC*, 427 S.C. 273, 831 S.E.2d 412 (2019); *Smith v. Newberry County Assessor*, 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002); *Hearn v. Laurens County Assessor*, No. 2013-000753, 2014 WL 368912 (S.C. Ct. App. July 23, 2014). However, in each case where this practice has been upheld, it is clear that the court must choose a value within the ***range of values supported by evidence in the record***. *Smith*, 350 S.C. at 579; 567 S.E.2d at 505 (concluding that when two experts prepare different valuations of the same property, it creates a range, and an ALC's adjustment of the value will be upheld if that value falls within the range of values presented by the experts); *but see Hearn*, 2014 WL 3685912, *1 (holding that the ALC erred when it chose a different value from that provided by the only available expert testimony "***when there was no range from which to choose***") (emphasis added). Based on the Record in this case, the ALC's value falls outside of the range of cost-method-derived values supported by any evidence.

The Parties submitted a great deal of evidence regarding the overall use of the network and how that use might impact the exemption status. However, only one witness presented any definite testimony regarding the cost of building a voice-only network: Mr. Joe Moss. Regarding the cost of a voice-only network, the ALC noted that "Mr. Moss's estimation that building a voice-only network would be between fifty to sixty percent cheaper is probative." (Order 71; R. 77). Mr.

Wyatt, the expert for Taxpayers, did not render an opinion regarding the cost of a voice only network. Further, Mr. Brad Erwin, Farmers' CEO, provided very limited testimony, speaking to only ***one component*** of a massive telecommunications network—a processing card used in a router. (Tr. 1036:24–1037:16; R. 2549–50). As the ALC noted in the Order, the Farmers Entities' network includes wireless towers, miles of fiber optic cable, routers, and much, much more. (Order 19–21; R. 25–27). Mr. Erwin expressed no fact testimony regarding any other portion of the Farmers Entities' vast, interconnected network. It is, therefore, impossible to make any supportable conclusions about the cost to build an entire voice-only network based on Mr. Erwin's testimony.

As to the cost of a voice-only network, Mr. Moss was the only witness that provided any relevant testimony. Based on Mr. Moss's testimony that a voice-only network could be constructed for about 50 to 60% cheaper than Taxpayers' network, the ***maximum amount*** of Taxpayers' property that could possibly be exempt using the ALC's cost method is 50% and the ***minimum amount*** of Taxpayers' property that could be exempt using the ALC's cost method is 40%.

Taxing Entities believe that none of Taxpayer's property should be exempt and respectfully ask this Court to rule accordingly. However, if this Court adopts the ALC's cost method of valuation, the only evidence in the Record of any cost method valuation shows that, at very most, only 50% of Taxpayers' property could be exempted.

II. THE ALC ERRED IN GRANTING A RETROACTIVE REFUND TO TAXPAYERS FOR TAX YEARS 2014, 2015, AND 2016.

The ALC erred in finding that Taxpayers where entitled to a refund based on the exemption because they filed amended tax returns for Tax Years 2014, 2015 and 2016. Following the execution of the Settlement Agreement, Taxpayers filed amended property tax returns for the referenced Tax Years. (Stip. of Facts ¶ 37; R. 4226). For the first time, these amended returns identified certain property as "exempt" and certain property as taxable. (Trial Ex. 92; R. 3541).

Mr. Taylor Ingram, the DOR employee responsible for analyzing Taxpayers' returns, testified that prior to receiving the amended returns, DOR had no way of knowing what portions of Taxpayers' property was taxable and what was exempt. (Tr. 151:13–15; R. 1664). Nevertheless, the ALC concluded that the amended returns provided a basis for allowing Taxpayers to claim a refund. Specifically, the ALC stated that "**under the facts of this case** Taxpayers could timely **apply** for an exemption in two ways: (1) list the property as exempt on the original return or (2) list the property as exempt on an amended return timely filed pursuant to section 12-54-85(F)." (Order 77; R. 83) (emphasis in original). The ALC's conclusion that an amended return satisfies the annual application requirement of section 12-4-720(C) is erroneous.

A. Taxpayers Failed to Comply with the Annual Exemption Application Requirement of Section 12-4-720(C).

Here, Taxpayers did not timely apply for the Exemption for Tax Years 2014–2016. Taxpayers can only get a refund of property taxes if they satisfied the statutory requirements. 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, 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 Ann. § 12-60-2150(A).

Section 12-60-1750 states 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 Ann. §12-60-1750(1) (emphasis added). Thus, the question is whether an application is required to obtain the Exemption, and if so, whether the application was timely filed.

Section 12-4-720(A) imposes a duty on taxpayers 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 Exemption is not one of the listed exceptions. Thus, in order to receive the Exemption, a taxpayer must file a timely application for the Exemption.

Furthermore, section 12-4-720 mandates an alternative filing method that is only applicable to taxpayers who must file annual property tax returns with DOR. *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***." (emphasis added)). South Carolina law requires Taxpayers to file annual property tax returns no later than April 30th. S.C. Code Ann. §§ 12-37-970; 12-4-540. Mr. Charles Brewer, a retired DOR program manager employed by the DOR from 1998 until June of 2018, confirmed 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; R. 1270). Thus, DOR itself recognizes this requirement.

In addition, "[i]f a taxpayer files a property tax return listing property as exempt, that listing is considered an application for exemption from property taxes." S.C. Code Ann. § 12-4-720(B). Although a taxpayer typically is only required to file an application for exemption once, that general rule does not apply to taxpayers required to file annual property tax returns with DOR. Such "Annual Filers" must file the application for exemption every year on their tax return. *See* S.C. Code Ann. § 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 return each year], the owner is not required to file more than one application for each exemption").

Utility taxpayers, like 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 a taxpayer from being granted a property tax exemption for the tax year. DOR's 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; R. 1442).

B. Taxpayer's Failure to Comply with the Annual Exemption Application Requirement Cannot Be Cured by Taxpayers' Filing of Amended Returns.

Here, Taxpayers failed to indicate on their original returns for Tax Years 2014–2016 what property they claim is exempt. (Tr. 151:13–15 & 160:23–161:1; R. 1664 & 1673–74). Taxpayers 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 sections 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. *See TNS Mills, Inc.*, 331 S.C. 611, 503 S.E.2d 471. 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, 503 S.E.2d at 474. In 1992, over six years after the first tax year in dispute, the taxpayer in *TNS Mills* filed amended property tax returns with DOR claiming property tax exemptions for pollution control equipment for each of tax years 1986 through 1991. *Id.* The circuit court allowed the taxpayer to claim the exemption, and the Supreme Court reversed. *Id.* at 616, 503 S.E.2d at 474.

As explained by the Supreme Court in *TNS Mills*, "[t]he circuit court failed to recognize the distinction between amended returns and applications for exemptions. [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, 503 S.E.2d at 478 (emphasis added).

Similarly, Taxpayers failed to claim the Exemption on its originally filed property tax returns for tax years 2010 through 2016. (Trial Exs. 9, 13, 18, 31, 39, 44, 49, 55, 60, 65, & 70; R. 2638, 2675, 2738, 2833, 2908, 2954, 2998, 3091, 3125, 3160, & 3197; Tr. 151:13–15 & 160:23–161:1; R. 1664 & 1673–74). Then, in 2017, ***seven years after the first tax year in dispute***, Taxpayers filed amended property tax returns with DOR claiming the Exemption on Form PT-427 for each of tax years 2010 through 2016. (Trial Ex. 92; R. 3541). The ALC's decision to allow Taxpayers to claim the Exemption when they failed to timely apply for it was an error.

C. The Annual Exemption Application Requirement is Consistent with the Overall Statutory Scheme Governing Property Tax Exemptions.

As explained by the Supreme Court in *TNS Mills*:

> [A]n interpretation allowing retroactive exemptions would not fit with the procedural scheme set out by the General Assembly. 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. 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.

331 S.C. at 620–21, 503 S.E.2d at 476.

Fundamentally, the ALC's interpretation of sections 12-4-720(A)(1) and 12-4-720(C) renders the annual June 1st notification requirement in section 12-4-710 of no benefit to the very entities the General Assembly designed it to protect—counties and school districts. The very same legislative act that amended the time requirements for filing for property tax exemptions in section 12-4-720(A)(1) and enacted the exception requiring annual applications for exemption from annual filers in section 12-4-720(C) ***also re-codified verbatim the annual June 1st deadline for the Department to notify county officials of DOR's exemption determinations***. *See* 1995 S.C. Act No. 125, Section 1 and Section 2. Thus, the General Assembly must have intended the amended timelines for applying for exemptions to be read together with the annual June 1st deadline, rather than interpreting such amended timelines as repealing the June 1st deadline by implication.

Moreover, Taxing Entities' interpretation of the exception contained in section 12-4-720(C) only applies to taxpayers that are required to file property tax returns with DOR, which

includes large businesses such as manufacturers, utilities, railroads, and airlines.[15] Because large business such as manufacturers, utilities, railroads, and airlines are significant sources of revenue for local governmental entities, the General Assembly requires these businesses to apply for exemptions annually on their original returns. Exemptions granted for such large businesses can have a high dollar impact on local governmental entities. Consequently, it is evident the General Assembly intended for the budgets of local governments to be protected from retroactive refund liabilities caused by this special class of taxpayers. As such, Taxing Entities ask that the Court reverse the ALC's decision which would allow Taxpayers to claim a refund based on the Exemption for Tax Years 2014–2016.

III. THE ALC ERRED IN FINDING THAT DOR'S FAILURE TO COMPLY WITH THE JUNE 1ST NOTIFICATION REQUIREMENT SET FORTH IN SECTION 12-4-710 OF THE SOUTH CAROLINA CODE DOES NOT CAUSE DOR TO LOSE ITS AUTHORITY TO GRANT THE EXEMPTION.

The General Assembly carefully constructed a legislative scheme that affords substantive rights to both taxpayers and the local governmental entities that depend on tax revenues for their viability. Section 12-4-710 is one such statute that is intended to protect local governmental entities. It mandates that "the department shall determine if any property qualifies for exemption from local property taxes under section 12-37-220 in accordance with the Constitution and general laws of this State. This determination ***must be made on an annual basis and the appropriate county official so advised by June first of each year by the department.***" In this case, DOR failed to comply with this legislatively mandated deadline, and, therefore, Taxpayers were not entitled to receive the Exemption.

[15] It is noteworthy that Taxing Entities' construction would not apply to any nonprofit entities, veterans, or individuals applying for an exemption—these taxpayers would still be able to file within the three year limitations period provided by the general rule of section 12-4-720(A)(1).

A. DOR Failed to Comply with the Annual June 1st Notification Deadline.

The ALC expressly found that DOR did not comply with section 12-4-710. The ALC concluded that DOR failed to meet section 12-4-710's June 1st deadline because, although "[t]he Department made an **initial** decision concerning the exemption annually for all tax years in question . . . the Department did not comply with its obligation to notify the counties of its initial determination by June 1st." (Order 95; R. 101) (emphasis in original). The Order also concludes that "since the Department did not send the counties notice of their exemption determination by June 1st of the year in which the Department received the exemption request, the counties did not receive notice of the exemption in time to consider them before finalizing their budgets by July 1st." (Order 96; R. 102).

The South Carolina Supreme Court has stated expressly that section 12-4-710's June 1st notification deadline is intended to benefit counties and local governments by (1) requiring DOR (as well as taxpayers) to comply with statutory deadlines so that (2) counties and local governments are afforded sufficient time in which to comply with their statutorily mandated budgeting requirements. Pertinently, our Supreme Court has held that

> [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. ***The interpretation advanced . . . 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.

TNS Mills, Inc., 331 S.C. at 620–21, 503 S.E.2d at 476 (emphasis added). And,

> [t]he 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 the 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.

Id. at 621, 503 S.E.2d at 476 (emphasis added).

Counties are required by law to have their budgets finalized by June 30th of each year. (Tr. 66:10–18; R. 1579). The June 1st notification deadline imposed by section 12-4-710 is important for local governmental entities, like Taxing Entities, because of their heavy reliance on *ad valorem* tax revenues to support their budgets. For example, ***fully 75%*** of Clarendon County's annual budget is funded from *ad valorem* property tax revenues. (Tr. 67:15–18; R. 1580). It is clear that the General Assembly intended that DOR follow the deadlines set forth in section 12-4-710 for the ***benefit of the counties, school districts, and other local taxing districts throughout the State.*** Indeed, the ALC actually agreed with Taxing Entities and stated in its Order that "the Department's failure to meet the June 1st deadline contravenes the purpose of the statutory scheme identified by the Supreme Court in *TNS Mills.*" (Order 96; R. 102). Despite agreeing with Taxing Entities' characterization of this issue, the ALC erred by concluding that DOR's failure to comply with section 12-4-710 had no impact on Taxpayers' eligibility for the Exemption.

B. The Exemption Cannot be Granted Where DOR Failed to Comply with the Notification Requirements of Section 12-4-710.

The ALC incorrectly found that there was no consequence for DOR's failure to comply with section 12-4-710. In fact, the ALC imposed no consequence on any party other than Taxing Entities for DOR's failure to follow the statutory scheme mandated by the General Assembly. Instead, the ALC shifted the burden of loss onto Taxing Entities—the very entities the General Assembly intended to protect with the mandatory deadlines imposed upon both taxpayers and DOR.

The *TNS Mills* case is clear: DOR cannot grant exemptions if it fails to meet the statutory deadline imposed by 12-4-710. The *TNS Mills* Court stated: [t]he 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 the 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*, 331 S.C. at 621, 503 S.E.2d at 476 (emphasis added). The South Carolina Supreme Court, in construing section 12-4-710, has held that any interpretation that allows DOR to approve exemptions after the deadline is inconsistent with the General Assembly's intent. *Id.*

In rejecting Taxing Entities' arguments, the ALC relied on *Johnston v. South Carolina Department of Labor, Licensing & Regulation*, 365 S.C. 293, 298, 617 S.E.2d 363, 365 (2005). In *Johnston*, the South Carolina Supreme Court held that it "will not assume the Legislature intended the [agency] to lose its power to act for failing to comply with the statutory time limit." *Johnston*, 365 S.C. 293, 298, 617 S.E.2d 363, 365 (2005). However, the circumstances surrounding the Supreme Court's decision in *Johnston* are fundamentally different than the circumstances of *TNS Mills* or this present case.

In *Johnston*, the primary issue was whether the Real Estate Appraisers Board's failure to timely provide written notice to a licensed real estate appraiser of the Board's decision to fine the appraiser and suspend his license for one year invalidated the Board's decision. 365 S.C. at 295, 617 S.E.2d at 364. After an administrative hearing where the Board determined the appraiser had violated the relevant act, the Board issued its written decision to the appraiser. *Id.* Two weeks after the Board issued its written decision, the Board mailed a copy of the notice of its decision by certified mail, return receipt requested. *Id.* However, because of a simple misprint of the zip code on the envelope addressed to the appraiser, the notice was received, and signed for, by another individual. *Id.* at 295–96, 617 S.E.2d at 264. To correct this mistake, the Board provided written notice of its decision, in person, to the appraiser approximately two weeks after the statute's

deadline for service had lapsed. *Id.* at 296, 617 S.E.2d at 264. The Supreme Court ultimately concluded that "[t]he failure of the Board to meet the deadline does not render the order a nullity." *Id.* at 297, 617 S.E.2d at 365.

As an initial matter, the overarching rule of statutory interpretation that tax exemptions are to be strictly construed against the taxpayer was not applicable to the statutes in *Johnston.*[16] Second, the Supreme Court's decision in *Johnston* was not without at least some consequence to the Board, as the ultimate holding concluded that "the order [was] valid, but *ineffective*, until it [was] served upon the appraiser." *Id.* at 297, 617 S.E.2d at 365 (emphasis in original).

Third, there was no other interested party situated similarly to Taxing Entities. The *Johnston* Board's failure to comply with the notice requirements only impacted the appraiser, as its decision to suspend the appraiser's license remained ineffective until the notice was properly served. Thus, the appraiser—the only party other than the Board—merely maintained his license for an additional two weeks before it was ultimately suspended for one year.

Further, the *Johnston* Court noted the following with respect to the General Assembly's intention in enacting the relevant statutes:

> ***There is no indication that the Legislature intended for the time limit to prevent the Board from having the ability to discipline an errant appraiser*** if the Board fails to serve notice of the written decision within the prescribed time period. Instead, the Legislature intended to speed the resolution of appraiser disciplinary cases for the benefit of all parties involved.

Id. at 297–98, 617 S.E.2d at 365 (emphasis added).

Section 12-4-710's June 1st deadline was intended by the General Assembly to protect counties and local governments like Taxing Entities—not taxpayers or DOR. *See TNS Mills*, 331

[16] *See* S.C. Code Ann. §§ 40-60-2, *et seq.*

S.C. at 621, 503 S.E.2d at 476. The effects of the Board's procedural mistake (caused by an inadvertent typographical error) in *Johnston* are not comparable to the effects of DOR's systemic disregard of section 12-4-710's June 1st deadline in this case.[17] DOR's routine failure to even attempt to comply with section 12-4-710's annual deadline must invalidate DOR's granting of the tax exemption for any tax year where no attempt of notification was made. Otherwise, the same budgets that the Supreme Court has held the June 1st deadline was intended to protect will go unprotected.

If DOR had complied with their statutory obligation to notify the Counties of its determination by June 1st of each year, Taxing Entities would have known DOR's stance on the issue and could have reacted by making budget adjustments. Instead, Taxing Entities were kept in the dark for nearly five years and were not given any actionable information about Taxpayers' exemption applications. Therefore, Taxing Entities request that the Court issue an opinion finding that DOR's failure to comply with section 12-4-710's annual deadline invalidates DOR's granting of the tax exemption for each of tax years 2010 through 2016.

IV. THE ALC ERRED BY CONCLUDING THAT FARMERS' PROPERTY IS NOT ELIGIBLE FOR THE EXEMPTION.

All of the Taxpayers (Farmers, FTCC and Diversified) are parties to this case. The ALC conducted an extensive review of how each and every aspect of Taxpayers' property was used. Indeed, the ALC found that all of Taxpayers' property was interconnected and had to be analyzed in the aggregate. (*See generally* Order 19–26; R. 25–32). Notwithstanding the fact that Farmers claimed the Exemption for every year in recent memory, the ALC even found that Farmers used its property for certain non-exempt purposes. After conducting a de novo hearing, and after finding

[17] At no point has DOR ever even attempted to comply with section 12-4-710's June 1st deadline. (Brewer Dep. Designations 30:19–31:18, 58:7–11, & 79:22–80:5; R. 1243–44, 1269, & 1282–83).

facts regarding how Farmers used its property, the ALC concluded that "although Farmers was a party to the settlement agreement, their tax returns were not appealed nor are those tax returns at issue in this case." (Order 10 n.5; R. 16). Taxing Entities assert both the facts determined by the ALC and a proper application of the *CFRE, LLC* case support a conclusion that the ALC erred by not holding that Farmers is ineligible for the Exemption.[18]

A. Taxing Entities Appealed DOR's Determination that Farmers is Entitled to the Exemption.

First, Taxing Entities appealed DOR's determination that FTCC, Diversified, and Farmers are entitled to the Exemption. This was evident in Taxing Entities' Prehearing Statement to the ALC, where Taxing Entities stated plainly that "Taxing Entities challenge the property tax exemptions granted by [DOR] to ***Farmers Telephone Cooperative, Inc.***, FTC Communications, LLC, and FTC Diversified Services, LLC ("Taxpayers") for tax years 2010 through 2017." (Taxing Entities' Prehr'g Stmnt 2; R. 369) (emphasis added). Taxing Entities argued that Farmers, FTCC, and Diversified failed to comply with the Exemption's requirements that the property must be used in providing "rural telephone service." (*Id.* at 7; R. 374 (stating that one of the issues presented for final determination was "[w]hether the Department's grants of property tax exemptions to Taxpayers . . . are void because the property is outside of the scope of the Rural Telephone Service Exemption").

Second, in over three years of litigation in this matter, Farmers has never disputed the ALC's jurisdiction over Farmers. Farmers has also never moved to be dismissed from the proceedings. To the contrary, Farmers voluntarily joined this case pursuant to a consent order. (Consent Order Allowing Taxing Entities Intervene and Confirming the Farmers Entities as

[18] Alternatively, if this Court determines that some portion of FTCC's and Diversified's property is subject to taxation, Farmers' property would also be subject to taxation in the same proportion.

Respondents (Sept. 1, 2017); R. 238). Therefore, Farmers is a party to this case and is subject to the jurisdiction of the ALC and this Court.

Third, the ALC conducted a de novo hearing. It made all of the factual findings necessary to determine whether Farmers is eligible for the Exemption based on the use of its property. More specifically, the ALC found that "Farmers, FTCC, and Diversified all share a common telephone network infrastructure, but each entity also separately owns a number of different assets. The network and assets are used by each entity to provide a variety of services, including both landline telephone service, wireless voice services, and data services." (Order 2; R. 8).

There is ample evidence in the Record showing that Farmers' property is entwined with FTCC's and Diversified's property. With regard to cellular assets, the ALC concluded, "[c]onsequently, cellular networks are dependent on the "backbone" landline networks to complete calls and transmit other data." (Order 14; R. 20). Regarding the common network infrastructure, the ALC stated, "[a]ll of the services provided by Farmers, FTCC, and Diversified (voice telephone service, wireless telephone service, internet service, television services, operator/answering services, and security alarm services) are provided using the existing, interconnected landline infrastructure." (Order 20; R. 26).

With respect to FTCC's services, the ALC found that "FTCC's wireless network depends upon the Farmers' core landline network to operate." (Order 20; R. 26). After examining Diversified's network, the ALC stated that "Diversified's network ultimately connects to and utilizes Farmers' core network in order to provide its telephone services." (Order 21; R. 27). The ALC found that, "[b]ecause of the interconnectedness of the Farmers Entities' network, it is practically impossible to classify certain assets as exempt or non-exempt. . . ." (Order 66; R. 72). Farmers and its property was squarely before the ALC.

The question then becomes: has Farmers used its property in accordance with the Exemption's use restrictions. The ALC made similar findings with respect to telephone services and stated that "[t]estimony at trial confirmed that voice telephone services utilize the very same IP-based backbone as the non-exempt services including internet, cable television, security, and other data-intensive services." (Order 66 n.46; R. 72). In addition, Taxpayers' own witness Mr. Brad Erwin, Farmers' CEO, confirmed in his testimony that Farmers directly provides certain non-exempt services, such as broadband internet services, television service, security services, and wireless service. (Tr. 538:21–539:7; R. 2051–52).

Despite the factual record recounted above, Farmers has claimed the Exemption on 100% of its property for every tax year in dispute in this case. The ALC's factual findings suggest, inescapably, that none of Farmers' property should be exempt from taxation for the years at issue in the case. It is undisputed that the data, security services, IP TV, and other non-exempt services provided by FTCC and Diversified are traversing Farmers' infrastructure every moment of every day. These are the very same non-exempt services the ALC relied upon to conclude that the property owned by FTCC and Diversified is only partially eligible for the Exemption. Therefore, any conclusion regarding FTCC's and Diversified's eligibility for the Exemption must equally apply to Farmers.

B. Farmers' Assets Should be Treated the Same as FTCC and Diversified's Assets under CFRE, LLC.

Under the ruling in *CFRE, LLC*, neither FTCC nor Diversified can be treated *for property tax purposes* as distinct legal entities separate from Farmers. The South Carolina Supreme Court held in *CFRE, LLC* that section 12-2-25(B)(1) "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." *CFRE, LLC*, 395 S.C. at 76, 716 S.E.2d at 882.

Taxpayers invoked *CFRE, LLC* for the proposition that property owned by the subsidiary entities of Farmers qualifies for the Exemption because those subsidiaries are disregarded as entities separate from Farmers for property tax purposes. (Order 88; R. 94). In other words, for property tax purposes, Farmers is treated as owning all of its own property and all of the property of FTCC and Diversified. Without *CFRE, LLC*, the property of both FTCC and Diversified would be ineligible for the Exemption because neither FTCC nor Diversified is a rural telephone cooperative.

However, the ALC's failure to conclude that Farmers is not eligible for the Exemption, while simultaneously making a ruling with respect to FTCC and Diversified, contravenes the *CFRE, LLC* case's core holding. A consistent application of *CFRE, LLC* to this case requires that FTCC and Diversified be disregarded as separate legal entities for ***all property tax purposes***, not just for the purpose of whether the assets of FTCC and Diversified are owned by a rural telephone cooperative. Under *CFRE, LLC*, the assets of Farmers, FTCC, and Diversified should all be grouped together and viewed as a single interconnected network. Over this single interconnected network of assets, Taxpayers deliver substantial non-exempt services. Under *CFRE, LLC*, no basis exists to treat the assets of Farmers differently from the assets of Diversified and FTCC (only partially exempted by the ALC's order) because for tax purposes all of those assets are treated as if they are owned by Farmers.

Therefore, Taxing Entities request that the Court issue an opinion finding that Farmers is not entitled to receive the Exemption on its property for the years at issue in this case. Alternatively, should the Court conclude that some proportion of FTCC's and Diversified's property is exempt, Farmers' property should only be exempted to the same extent that FTCC's and Diversified's property is exempted.

V. THE ALC ERRED BY RULING THAT TAXING ENTITIES DO NOT HAVE STANDING TO REQUEST A CONTESTED CASE HEARING PURSUANT TO SECTION 12-4-535 OF THE SOUTH CAROLINA CODE.

Taxing Entities asserted that the ALC had jurisdiction to hear their contested case under three separate statutes: sections 12-4-535, 12-60-2130, and 12-60-2150(H). The ALC agreed that it had jurisdiction under sections 12-60-2130 and 12-60-2150(H). However, the ALC concluded that it did not have jurisdiction under section 12-4-535. (Order 39 n.30; R. 45–46). Taxing Entities assert all statutory requirements of Section 12-4-535 have been met by Taxing Entities for each of the Years in Dispute, and the ALC erred in finding otherwise.

Section 12-4-535 provides counties with a right to request a contested case hearing before the ALC in response to DOR's issuance of a department determination. To achieve statutory standing pursuant to section 12-4-535, a county must comply with the requirements of both sections 12-4-535(B) and 12-4-535(C). Section 12-4-535(B) requires a county, within thirty days of the date the department determination is mailed or hand delivered, to respond in writing by first class mail or hand delivery to DOR and state its agreement or disagreement with the department determination. Section 12-535(C) requires a county to, by resolution, request a contested case hearing before the ALC within thirty days after the county disagreement notice was mailed or hand delivered. Thus, a county must both (a) deliver a written disagreement notice to DOR within thirty days of the department determination and (b) file a request for contested case hearing within thirty days of the delivery of the disagreement notice. There is no language in section 12-4-535 prohibiting a county from complying with both of the above-stated requirements simultaneously.

Here, the ALC found that the Supplemental Certifications sent to the Counties by DOR were "department determinations." (Order 45; R. 51). The only issue remaining is whether Taxing Entities complied with the timing requirements of section 12-4-535 for each tax year in dispute.

A. Tax Years 2010–2016

The initial Supplemental Certifications, specifically those covering tax years 2010 through 2016, were dated July 6, 2017, and were sent by DOR to the respective county auditors for each of Taxing Entities ("Auditors"). (Stip. of Facts ¶¶ 49–51; R. 4227). Less than thirty days later, on July 17, 2017, and on July 26, 2017, Taxing Entities made two filings with the ALC and served a copy of each on DOR by United States Mail. (*See* Consol. Supp. Req. Cont. Case Hr'g (July 17, 2017); R. 257; Lee Cty. Supp. Req. Cont. Case Hr'g (July 26, 2017); R. 293). These filings, which were both titled a "Consolidated Supplement to Request for Contested Case Hearing," (1) were in writing, (2) stated Taxing Entities disagreement with the Supplemental Certifications, (3) delivered by U.S. Mail to DOR, and (4) delivered within the required thirty day period, all in compliance with Section 12-4-535(B). (*See id.*; R. 257 & 293). Furthermore, each of these filings also served as a request for contested case hearing timely objecting to the Supplemental Certifications within thirty days of delivering the "disagreement notice" to DOR, all in compliance with Section 12-4-535(C).

B. Tax Year 2017

Subsequently, DOR mailed to the Auditors Supplemental Certifications for tax year 2017, dated August 24, 2017, but which were not received until August 28, 2017. (*See* Consol. Supp. Req. Cont. Case Hr'g, Ex. A (Sept. 25, 2017); R. 344). Less than thirty days later, on September 25, 2017, Taxing Entities filed a Consolidated Supplement to Request for Contested Case Hearing with the ALC and served a copy on DOR by U.S. Mail. (*See id.*; R. 341). This filing (1) was in writing, (2) stated Taxing Entities disagreement with the Supplemental Certifications, (3) delivered by United States Mail to DOR, and (4) delivered within the required thirty day period, all in compliance with Section 12-4-535(B). (*See id.*; R. 341). Just as they did for tax years 2010–2016,

this filing also served as a request for contested case hearing, and it was filed within thirty days of delivering the "disagreement notice" to DOR, all in compliance with Section 12-4-535(C).

C. Tax Year 2018

Subsequently, DOR mailed to the Auditors Supplemental Certifications for tax year 2018, dated August 15, 2018. (See Consol. Supp. Req. Cont. Case Hr'g, Ex. A (Sept. 10, 2018); R. 778). Less than thirty days later, on September 10, 2018, Taxing Entities filed a Consolidated Supplement to Request for Contested Case Hearing with the ALC and served a copy on DOR by U.S. Mail. (*Id.*; R. 775). This filing (1) was in writing, (2) stated Taxing Entities disagreement with the Supplemental Certifications, (3) delivered by United States Mail to DOR, and (4) delivered within the required thirty day period, all in compliance with Section 12-4-535(B). (*Id.*; R. 775). Just as in 2010–2017 above, this filing also served as a request for contested case hearing and it was filed within thirty days of delivering the "disagreement notice" to DOR, all in compliance with section 12-4-535(C).

In summary, Taxing Entities, through their duly authorized and engaged legal counsel (Stip. of Facts ¶¶ 29 & 34; R. 4225–26), requested a contested case hearing specifically objecting to the Supplemental Certifications by supplementing Taxing Entities' original request for contested case hearing on the same day and at the same time that Taxing Entities provided a written "disagreement notice" to DOR by sending a copy of the requests for contested case hearing to DOR by U.S. Mail. In effect, Taxing Entities consolidated the requirements of sections 12-4-535(B) and 12-4-535(C) into a single step and complied with both requirements simultaneously. For these reasons, Taxing Entities have established standing pursuant to section 12-4-535.

CONCLUSION

Taxing Entities respectfully ask this Court to reverse the decision of the ALC, and find:

(1) Taxpayers are not eligible for the Exemption;

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

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

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

(5) Taxing Entities had standing to request a contested case hearing pursuant to section 12-4-535 of the South Carolina Code.

Respectfully submitted,

Walter H. Cartin, SC Bar #78405
Katon E. Dawson, SC Bar #101167
PARKER POE ADAMS & BERSTEIN LLP
1221 Main Street, Suite 1100 (29201)
Post Office Box 1500
Columbia, South Carolina 29202
(803) 255-8000 / (803) 255-8017 (fax)
waltcartin@parkerpoe.com
katondawson@parkerpoe.com

Madison Felder, SC Bar # 100606
PARKER POE ADAMS & BERSTEIN LLP
110 East Court Street, Suite 200
Greenville, South Carolina 29601
(864) 577-6362 / (864) 242-9888 (fax)
madisonfelder@parkerpoe.com

Attorneys for Appellants-Respondents

Of Counsel:

Michael E. Kozlarek, SC Bar #69330
KOZLAREK LAW LLC
Post Office Box 565
Greenville, South Carolina 29601
(864) 527-5941
michael@kozlareklaw.com

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 this **Brief of Appellants-Respondents** in the above-referenced matter complies with Rule 211(b), SCACR.

Respectfully submitted,

Walter H. Cartin, SC Bar #78405
Katon E. Dawson, SC Bar #101167
PARKER POE ADAMS & BERSTEIN LLP
1221 Main Street, Suite 1100 (29201)
Post Office Box 1500
Columbia, South Carolina 29202
(803) 255-8000 / (803) 255-8017 (fax)
waltcartin@parkerpoe.com
katondawson@parkerpoe.com

Madison Felder, SC Bar # 100606
PARKER POE ADAMS & BERSTEIN LLP
110 East Court Street, Suite 200
Greenville, South Carolina 29601
(864) 577-6362 / (864) 242-9888 (fax)
madisonfelder@parkerpoe.com

Attorneys for Appellants-Respondents

Of Counsel:

Michael E. Kozlarek, SC Bar #69330
KOZLAREK LAW LLC
Post Office Box 565
Greenville, South Carolina 29601
(864) 527-5941
michael@kozlareklaw.com