The State of South Carolina
In The Court of Appeals

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

Appellate Case No. 2020-000983
Civil Action No. 2017-ALJ-17-0237-CC

Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County, Williamsburg County School District, Clarendon School District Two, Florence School District One, Florence School District Three, Sumter County School District, Clarendon County Hospital District, Lee County School District, and Clarendon School District One,. ..... Appellants/Respondents,

v.

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

of whom

Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC, Diversified Services, LLC, are ..... Respondents/Appellants.

FINAL BRIEF OF RESPONDENTS/APPELLANTS FARMERS TELEPHONE COOPERATIVE, INC., FTC COMMUNICATIONS, LLC AND FTC DIVERSIFIED SERVICES, LLC

Willian E. DuRant, Jr.
1170 Old West Liberty St., Suite 1
Sumter, SC 29150
(803) 774-5323

Miles E. Coleman
Nelson Mullins Riley & Scarborough, LLP
2 W. Washington St., 4th Floor
Post Office Box 10084
Greenville, SC 29601
(864) 250-2300

Bryson M. Geer
John C. von Lehe, Jr.
Nelson Mullins Riley & Scarborough, LLP
151 Meeting Street, 6th Floor
Post Office Box 1806
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Respondents/Appellants Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC

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INTRODUCTION

South Carolina law is clear that property used to provide telephone service to rural areas of the State is exempt from property taxation. *See* S.C. Code Ann. § 12-37-220(B)(10) ("[N]otwithstanding any other provisions of law, the property of telephone companies and rural telephone cooperatives operating in this State ***used in providing rural telephone service*** . . . shall be exempt from such property taxation[.]") (emphasis added). Initially, the South Carolina Department of Revenue ("SCDOR") did not exempt the taxpayers' property at issue—property that is used to provide rural telephone service—because the taxpayers themselves were not rural telephone cooperatives but, rather, were only subsidiaries of one. However, following a court decision that clarified that subsidiaries qualify for any exemption that their single member (here, a cooperative) qualifies for, the taxpayers wrote SCDOR requesting the exemption, seeking a refund of the property taxes already paid, and protesting SCDOR's proposed property tax assessments. Ultimately, the taxpayers and SCDOR entered a settlement agreement that applied the exemption and provided for a refund by way of either a payment or future credits toward property tax.

Several counties and other political subdivisions sought to reopen and unwind the Settlement Agreement by challenging it in a contested case hearing before the Administrative Law Court ("ALC"). Although the ALC's ability to reopen a taxpayer settlement is limited to specific circumstances not present here, and although the ALC's jurisdiction over property tax disputes is limited to reviewing "Department Determinations" that were not present here, the ALC nevertheless proceeded to consider this suit. Its exercise of jurisdiction rested on a jurisdictional analysis that disregarded and effectively rewrote the relevant statutory texts, substituted the court's own policy preferences for the plain meaning of the text, and resulted in an outcome that conflicts with and disrupts the application of other statutes.

The ALC's analysis of the merits was likewise deeply flawed. For example, although the Rural Telephone Service Exemption states in unqualified and categorial language that property

"used in providing rural telephone service . . . shall be exempt," the ALC substituted its own judgment for that of the Legislature and determined that such property could (and here would) be only *partially* exempt. Similarly, although the Code does not specify the precise means, method, or format by which a taxpayer seeks an exemption, and although the taxpayers had repeatedly sought the exemption (and SCDOR recognized they had done so), the ALC created its own, novel requirements to conclude the taxpayers had not properly applied for or claimed the exemption. These requirements lack foundation in the relevant statutes' texts and contradict Supreme Court precedent. Further, they are contrary to SCDOR's interpretation of the statute—an interpretation the ALC should have deferred to, but did not based on an erroneous articulation of the doctrine of agency deference that inserted a new "requirement" into the analysis.

The ALC's ruling should be reversed because the court lacked subject matter jurisdiction over this suit and, further, because the court's analysis rests on multiple reversible errors of law.

STATEMENT OF THE ISSUES ON APPEAL

1. **Subject matter jurisdiction.** Did the ALC err by exercising subject matter jurisdiction over this action based on a flawed jurisdictional analysis that (a) contradicts and disregards the relevant statutory text, (b) rests on the ALC's admittedly subjective policy view of whether certain agency decisions *should* be reviewable by the ALC, and (c) resulted in an outcome that conflicts with and disrupts the application of other statutes?

2. **Effect of the settlement agreement.** Did the ALC err by reopening and negating a statutorily-authorized settlement agreement despite the absence of any of the statutory factors necessary to reopen and permit judicial review of the settlement and despite the fact that, by doing so, the ALC effectively rewrote the relevant Code sections and gave political subdivisions a veto power over a State agency's ability to enter negotiated settlements?

3. **Partial vs. complete exemption.** Did the ALC err by concluding that the taxpayers' property used in providing rural telephone service was only partially exempt from property taxation, when the exemption statute says nothing about partial exemption, but, instead, categorically states that such property is exempt?

4. **Applying for the exemption.** Did the ALC err by ruling the taxpayers failed properly to apply for the exemption in some of the tax years at issue, particularly when that ruling is dependent on novel requirements imposed by the ALC but not found in the relevant statute; is contrary to binding precedent; and is contrary to SCDOR's interpretation of the statute?

5. **Claiming the exemption.** Did the ALC err by ruling one of the taxpayers failed timely to claim the exemption in certain tax years because, although the taxpayer submitted a timely

written request to SCDOR for a refund (a request SCDOR deemed sufficient to claim the exemption), the taxpayers did not file amended tax returns until several years later, even though the "timely" filing of amended returns is not required by the statute at issue or by Supreme Court precedent?

STATEMENT OF THE CASE

On July 10, 2017, Clarendon County commenced this proceeding by filing a request for a contested case hearing challenging the terms of a Settlement Agreement that had been executed January 8, 2017 between SCDOR and three taxpayers: Farmers Telephone Cooperative, Inc. ("Farmers Co-op); FTC Communications, LLC ("FTCC"); and FTC Diversified Services, LLC ("Diversified") (collectively "Taxpayers" or the "Farmers Entities"). *See* Request for Contested Case Hr'g (filed July 10, 2017) (R. 242). In the settlement, SCDOR and Taxpayers had agreed that all property owned by FTCC and Diversified and used to provide rural telephone service was exempted from property taxation during certain years pursuant to the Rural Telephone Service Exemption, while property not used to provide rural telephone service was not exempt. *See id.* at Ex. A (R. 3533-3540); *see also* S.C. Code Ann. § 12-37-220(B)(10).

Twelve other political subdivisions moved to intervene in the case. *See* Mot. to Intervene (R. 251, 305, 311, 317, 323, 329 and 335). Six of them also filed Supplements to the Request for a Contested Case Hearing, challenging SCDOR's Supplemental Certifications that had been provided to them regarding FTCC's and Diversified's assessed property tax liability for certain of the tax years at issue.[1] *See* Lee Cnty. Suppl. to Request for Contested Case Hr'g (filed July 26, 2017) (R. 293); Consolidated Suppl. to Request for Contested Case Hr'g (filed July 17, 2020) (R. 257). The ALC granted these motions adding the moving entities as Petitioners (collectively the

[1] The Amended Final Order uses the term "Supplemental Certifications" to refer to the revised property tax assessments that SCDOR provided to the Taxing Entities on July 12, 2017. *See*, *e.g.*, Am. Final Order at 3 n.2 (R. 9); *see also id*. at 36, 44–51 (R. 42, 50-57). For the sake of simplicity and consistency, this Brief will likewise use that term to refer to those assessments.

"Taxing Entities") and adding the Farmers Entities as Respondents. *See* Consent Order (filed Sept. 1, 2017) (R. 238); Consent Order (filed Sept. 25, 2017) (R. 234).

On December 15, 2017, the Farmers Entities moved to dismiss the proceeding for lack of subject matter jurisdiction, and on December 18, 2017, the Taxing Entities moved for partial summary judgment. *See* Mot. to Dismiss (R. 392); Mot. for Partial Summ. J. (R. 421). The ALC conducted a hearing on both motions on February 13, 2018 and denied them both. Order Denying Mot. to Dismiss (filed April 3, 2018) (R. 201); Order Denying Mot. for Summ. J. (filed April 3, 2018) (R. 217). After discovery was completed, SCDOR filed a Motion for Partial Summary Judgement on May 9, 2019 on the basis that it had entered a binding settlement agreement with the Farmers Entities for tax years 2010–2015 and that under the law, that settlement was enforceable and could not be reopened. *See* Respondent's Mot. for Partial Summ. J. (filed May 9, 2019) (R. 814). The Court held a hearing on May 14, 2019 and granted the motion, in part, finding that the settlement agreement was binding between the parties to the agreement. *See* Pre-Trial Conf. Tr. at 30:7–19 (R. 1496:7-19). The Court declined to rule on the effect of that settlement as to the Taxing Entities. *Id.*

The ALC conducted a contested case hearing in this matter on May 20–24, 2019, the Honorable Ralph K. Anderson, III presiding. The parties presented testimony from nine witnesses, including four experts, and entered 190 exhibits into evidence, 56 of which were introduced at trial. *See* Trial Tr. ("Tr.") (R. 1514-2587); *see also* Farmers Entities' Exhibits and Witness Lists (filed May 7, 2019) (R. 4185-4198); SCDOR's Exhibits and Witness Lists (filed May 7, 2019) (R. 4199-4207); Taxing Entities' Exhibits and Witness Lists (filed May 7, 2019) (R. 4208- 4219).

Judge Anderson issued a Final Order on February 24, 2020, concluding (i) that all of FTCC's property at issue qualified for the Rural Telephone Service Exemption and was entitled

to receive the exemption for tax years 2014–18, but not for tax years 2010–13, (ii) that all of Diversified's property at issue qualified for the Rural Telephone Service Exemption and was entitled to receive the exemption for tax year 2018, but not for tax years 2013–17, and (iii) that although all of FTCC's and Diversified's property at issue qualified for the exemption, it was entitled to an exemption for only 75% of its value during the qualifying years. Final Order at 1, 83–84 (R. 110, 192-193). The Taxing Entities and the Taxpayers both filed Motions to Reconsider. *See* Taxing Entities' Mot. to Reconsider (filed March 5, 2020) (R. 1018-1033); Farmers Entities' Mot. to Reconsider (filed March 5, 2020) (R. 924-1017). The ALC subsequently rescinded his Final Order, *see* Order (filed March 18, 2020) (R. 108), and, on June 6, 2020 signed an Amended Final Order that was filed four days later. Am. Final Order (filed June 10, 2020) (R. 7-107). The Amended Final Order, like the Final Order before it, concluded that all property at issue owned by FTCC and Diversified qualified for the exemption, but only 75% of the value of the assets were exempt, and that the assets were entitled to this exemption only in 2014–18 for FTCC and 2018 for Diversified. *Id*. at 99–100 (R. 105-106). The Farmers Entities, the Taxing Entities, and SCDOR each appealed from the Amended Final Order. On November 10, 2020, SCDOR filed a Motion to Withdraw its Cross-Appeal. *See* S.C. Dep't of Revenue's Mot. to Withdraw its Cross-Appeal (R. 1214).

STATEMENT OF THE FACTS[2]

I. Farmers, FTCC, and Diversified.

The General Assembly enacted the Rural Telephone Service Exemption in 1957 to encourage and assist telephone providers to supply telephone services to rural, high-cost areas in

[2] The Amended Final Order contained extensive Findings of Fact, *see*, *e.g.*, Am. Final Order at 12–36 (R. 18-42), some of which are not relevant to the questions before this Court. Accordingly, this Statement of the Facts and the Argument herein only recite and rely on the facts relevant to the resolution of the issues presented in this appeal.

which the provision of such service would otherwise be cost-prohibitive. *See* Tr. 454:17- 455:6 and 538:4–20 (R. 1967:17- 1968:6 and 2051:4-20); Am. Final Order at 19 (R. 25). Farmers Co-op, which provides rural telephone services in South Carolina, was incorporated in 1952 and has been granted the exemption by SCDOR every year since its inception for 100% of the value of all of its assets. *See* Tr. 467:23- 468:21 (R. 1980:23- 1981:21); Am. Final Order at 4, 19, and 26 (R. 10, 25, and 32).

Like other providers of that era, Farmers Co-op initially provided only voice telephone service to rural communities through analog technology that relied on mechanical switching and copper wire lines. Tr. 537:21- 538:3 (R. 2050:21- 2051:3). As technology and consumer demand evolved, Farmers Co-op expanded from providing only voice telephone service to also providing its customers access to internet, internet protocol television, and security services. *Id*. at 455:7–15 (R. 1968:7-15); 538:21- 539:20 (R. 2051:21- 2052:20); 542:10- 543:3 (R. 2055:10- 2056:3). These additional services were provided over the already existing voice telephone infrastructure. *Id.* at 543:4–14 (R. 2056:4-14).

FTCC was organized as a single-member LLC of Farmers Co-op in South Carolina in 2009 to provide wireless telephone services. *See* Am. Final Order at 4 (R. 10). Over time, FTCC, like other telecommunications carriers providing wireless services, has migrated through the evolution and development of various generations of wireless technology. *See* Tr. 576:20- 577:3 (R. 2089:20- 2090:3). Today, FTCC's primary business is providing wireless telephone service. *Id.* at 458:25- 459:11 (R. 1971:25- 1972:11). An additional, but minor, part of its business (which is not at issue here) is providing operator and answering services to some customers. Tr. 459:18- 460:17 (R. 1972:18- 1973:17); Am. Final Order at 4 (R. 10).

Diversified was organized as a limited liability company in South Carolina in 2012, and, like FTCC, is a single-member LLC of Farmers Co-op. Am. Final Order at 4 (R. 10). Diversified

provides landline telephone service as well as internet, internet protocol television, and security services to regions within Farmers Co-op's general service area where Farmers Co-op cannot by Federal Communications Commission ("FCC") regulation provide service. *Id.*; *see also* Tr. 462:17 to 463:18 (R. 1975:17- 1976:18). Both FTCC and Diversified serve small, poor, rural communities with populations ranging from 380 people (in Greeleyville) to 38,000 people (in Sumter). Tr. 550:18- 551:7 (R. 2063:18- 2064:7).

With the addition of non-voice services (*e.g.*, internet, text messages, internet protocol television, etc.), data traverses the Farmers Entities' existing networks; however, voice calls take priority over these other data transmissions. *Id.* at 549:21- 550:17 (R. 2062:21- 2063:17). Indeed, the FCC mandates that when customers pick up their phones, they *must* receive a dial tone and be able to place a call 99.999% of the time. *Id*. at 548:22- 549:20 (R. 2061:22- 2062:20) and 757:1- 758:9 (R. 2270:1- 2271:9). This mandate, known as the "five nines of reliability," underscores the most important aspects of a telephone network: accessibility and reliability for voice calls. The Farmers Entities have built the network to meet this mandate. *See id.* at 580:12-18 (R. 2093:12-18) and 766:8-767:3 (R. 2279:8- 2280:3). Voice telephone service remains the primary business of FTCC and Diversified, a fact reflected both by their revenues and the number of telephone accounts (as compared to internet, television, or security accounts) maintained by their customers. *See* Tr. at 496:3-23 (R. 2009:3-23); Trial Ex. 187 (R. 4149); Trial Ex. 169 (R. 3978).

II. FTCC and Diversified's 2010–16 property tax returns and assessments.

In 2010, 2011, and 2012, FTCC timely filed property tax returns. *See* Am. Final Order at 5 (R. 11). FTCC did not initially specifically seek,[3] and SCDOR did not apply, any tax exemption

[3] FTCC listed all of its assets in its original returns just as Farmers Co-op did in order to apply for the exemption. As will be discussed later herein, the tax returns contain no instructions or section in which one could apply for the exemption or list exempt assets. *See* Part IV.A, *infra.*

pursuant to the Rural Telephone Service Exemption. SCDOR issued proposed property tax assessments allocating the assessed amounts among the Taxing Entities. *Id*. The Taxing Entities issued property tax bills. *Id.* FTCC paid them. *Id*.

However, following the South Carolina Supreme Court's ruling in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011), which indicated that single-member LLCs could qualify for the Rural Telephone Service Exemption just as their single members (such as Farmers Co-op) do, FTCC applied for the exemption for tax year 2012 and protested SCDOR's proposed assessment because it did not exempt FTCC's property. Am. Final Order at 5–6 (R. 11-12). In response, SCDOR issued a revised assessment for 80% of the originally assessed amount, advised the relevant Taxing Entities of FTCC's protest, and provided them with a copy of the revised assessment. *Id.* The Taxing Entities then issued a revised property tax bill, which FTCC paid. *Id*. FTCC subsequently wrote to SCDOR to also request the property tax exemption for FTCC's property used to provide rural telephone services for tax years 2010 and 2011 and requested a refund for those years. *Id*. at 6 (R. 12).[4]

FTCC followed a similar practice in succeeding years, as did Diversified (which was organized in 2012).[5] Specifically, in 2013, 2014, and 2015, FTCC and Diversified filed property

[4] FTCC has sought the exemption only for assets used in providing rural telephone services, including, but not limited to, wireless towers (including monopole structures, lattice structures, and guidewire structures throughout the wireless network), radios and antennas connected to the towers, and equipment banks that house various electronic elements used in bringing the wireless signal to a mobile telephone switching office. *See* Tr. 569:6- 572:20 (R. 2082:6- 2085:20) and 806:24 to 808:1 (R. 2319:24- 2321:1). Farmers' CFO testified that FTCC's assets at issue were used to provide rural telephone service for the tax years at issue. *Id.* at 495:24– 496:7 (R. 2008:24-2009:7). After the 2017 settlement between the Farmers Entities and SCDOR, *see infra*, FTCC segregated certain assets as non-exempt (*i.e.*, claiming no exemption for them because they were not used in providing rural telephone service), namely operator and answering services. *See* Tr. 480:5- 482:6 (R. 1993:5- 1995:6).

[5] Diversified has sought the exemption only for its landline assets, which are the same type of assets as Farmers Co-op has, and which Farmers' CFO testified are used to provide rural telephone

tax returns listing all of their assets, which SCDOR understood and treated as an application for exemption. Tr. at 477:20- 478:6 (R. 1990:20- 1991:6); Ingram Dep. at 34:5- 35:15 (R. 1313:5-1314:15). They also protested SCDOR's proposed assessments because they did not apply the rural telephone service exemption to their property used to provide rural telephone services. Am. Final Order at 6–8 (R. 12-14). In each of those years, SCDOR responded by issuing revised assessments for 80% of the originally assessed amounts, informing the relevant Taxing Entities of the protests, and providing them with a copy of the revised assessments. *Id*. In each year, the Taxing Entities issued tax bills for 80% of the originally assessed amount and FTCC and Diversified paid these taxes. *Id*.

In 2016, FTCC and Diversified filed property tax returns, and SCDOR subsequently notified the Taxing Entities in writing that FTCC and Diversified's property had an assessed value of $0 and was "under appeal." *Id*. at 8 (R. 14).

III. SCDOR's and the Farmers Entities' settlement.

From the time of Farmer's first letter to the Department in the summer of 2012 until the end of 2016, the parties engaged in extensive discussions and negotiations over whether FTCC and Diversified qualified for the exemption. *See generally* Trial Ex. 20-22, 24-28, 32-34, 76-93 (R. 2774-2782, 2785-2823, 2858-2891, 3281-3596). After the Department determined that a settlement was advisable, the Director approved the settlement,[6] and SCDOR and the Farmers

service for the tax years at issue. *See* Tr. 572:18-20 (R. 2085:18-20); 803:15- 806:13 (R. 2316:15-2319:13); and 496:13–23 (R. 2009:13-23). Unlike Farmers Co-op, Diversified has certain assets that are not used to provide rural telephone service. Therefore, like FTCC, after the 2017 settlement with SCDOR, Diversified segregated these non-exempt (*i.e.* claiming no exemption for them because they were not used in providing rural telephone service), namely internet service provider equipment and the head end for internet protocol television and assets related to security services. *Id.* at 574:8–14 (R. 2087:8-14).

[6] Milton Kimpson, the Department's then-General Counsel, stated that he was "confident [he] advised the Director [then Rick Reames] of this settlement agreement and that the Director

Entities entered into the settlement on January 8, 2017.

Under the Settlement Agreement, the parties agreed that property used by FTCC to provide wireless phone services and by Diversified to provide land-line telephone services qualifies for the property tax exemption under S.C. Code Ann. § 12-37-220(B)(10). Trial Ex. 91 (Settlement Agreement) at §2.1 (R. 3547). They also agreed that certain other property that was not used to provide rural telephone service (but was instead used only to provide internet, internet protocol television, security, operator, or answering services) was not exempt. *See* nn.4–5, *supra*. In addition, FTCC and Diversified agreed to file amended property tax returns for the tax years at issue so that SCDOR could calculate the value of exempt and non-exempt property and then issue revised assessments (a/k/a "Supplemental Certifications," in the language of the Amended Final Order), which it would send to the appropriate county auditors. Trial Ex. 91 (Settlement Agreement) (R. 3547).

Per the agreement, FTCC and Diversified subsequently filed amended property tax returns for each applicable year. Final Am. Order at 11 (R. 17)[7] On June 14, 2017, SCDOR certified final

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approved [it] before the Department Representative signed it…." Tr. Ex. 147, Aff. of Milton Kimpson ("Kimpson Aff.") at ¶4, 7 (R. 3900-3901). While Reames did not have a specific memory of their meeting, he testified Kimpson's practice was to always seek his authorization for settlements and his own practice to review and approve or not approve all settlements after their meeting, and he believes they followed this procedure here. Trial Ex. 141, Rick Reames Aff. ("Reames Aff.") at ¶7 (R. 3897). He was not aware of any contested tax cases being settled during his tenure without his approval. *Id.* at ¶6; *see also* Tr. at 674:19- 675:11 (R. 2187:19- 2188:11) (Farmers' attorney testifying he understood Reames had approved the settlement and that the parties memorialized this fact in the agreement); Trial Ex. 91, Settlement Agreement at §3.2 (R. 3533) (warranty that "the individuals executing the Agreement have the legal authority to do so."); *see also* S.C. Rev. Pr. #06-2 (R. 4138-4148). No evidence contradicted this testimony or suggested that it was not truthful and credible.

[7] In tax years 2017 and 2018, FTCC and Diversified filed property tax returns requesting the exemption, which SCDOR granted. *See* Am. Final Order at 8–9 (R. 14-15); Trial Ex. 52 (FTCC's 2017 Tax Return) (R. 3036); Trial Ex.73 (Diversified's 2017 Tax Return) (R. 3228); Trial Ex. 54 (FTCC's 2018 Tax Return) (R. 3068); Trial Ex. 75 (Diversified's 2018 Tax Return) (R. 3257); Tr. 197:14–21 (R. 1710:14-21). SCDOR provided the Taxing Entities with revised assessments for

revised assessments for FTCC for tax years 2010–15 and for Diversified for tax years 2013–15. *Id*. at 11–12 (R. 17-18). The same day, SCDOR notified the Taxing Entities that the Farmers Entities' dispute regarding their property taxation had been resolved and that, pursuant to the settlement agreement between them, FTCC and Diversified would be subject to the Rural Telephone Service Exemption just as Farmers Co-op had been in the past. *See id*. at 9–10 and 12 (R. 15-16 and 18). On July 6, 2017, SCDOR certified FTCC's and Diversified's final revised assessments for tax year 2016, provided the Taxing Entities with a revised notice of the Settlement Agreement, and, a few days later, provided the Taxing Entities with Supplemental Certifications for the revised property tax assessments. *Id*. at 6, 12 (R. 12, 18). Four days later, Clarendon County filed the request for a contested case hearing that precipitated this appeal. *See* Statement of the Case, *supra*.

STANDARD OF REVIEW

Appeals from the ALC. Appeals from the ALC are governed by the Administrative Procedures Act. *Murphy v. S.C. Dep't of Health & Envtl. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 194 (2012). An appellate court may reverse or modify an ALC decision if the appellant's substantive rights have been prejudiced because the ALC's findings, conclusion, or decision are in violation of statutory provisions, are made on an unlawful procedure, are affected by other error of law, are clearly erroneous, are arbitrary or capricious, or are characterized by an abuse of discretion or an unwarranted exercise of discretion. *Id*.; *see also* S.C. Code Ann. § 1-23-610(B).

Subject Matter Jurisdiction. A challenge to a court's subject matter jurisdiction is a question of law that may be raised at any time. *State v. Laney*, 367 S.C. 639, 649, 627 S.E.2d 726, 732 (2006); *Martin v. Paradise Cove Marina, Inc*., 348 S.C. 379, 384, 559 S.E.2d 348, 351 (Ct.

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the 2017 tax year and with utility certifications for FTCC and Diversified for the 2017 and 2018 tax years. *See* Trial Ex. 129 (R. 3839); Trial Ex. 130 (R. 3843); Trial Ex. 91 (Settlement Agreement) (R. 3533).

App. 2001). Because the ALC is a statutory creation, its subject matter jurisdiction is defined (and limited) by statute. *See Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. Control*, 403 S.C. 576, 585, 743 S.E.2d 786, 791 (2013) ("The General Assembly has the authority to limit the subject matter jurisdiction of a court it has created; therefore, it can prescribe the parameters of the ALC's powers."); *S.C. Dep't of Consumer Affairs v. Foreclosure Specialists*, 390 S.C. 182, 184, 700 S.E.2d 468, 469 (Ct. App. 2010) (rejecting the argument that "the ALC has inherent powers" and holding instead that the ALC does not have the authority to exceed its statutorily granted powers). Accordingly, the determination of the scope of the ALC's subject matter jurisdiction is a matter of statutory interpretation decided without deference to the lower court. *See Foreclosure Specialists*, 390 S.C. at 184, 700 S.E.2d at 469 ("The scope of the power of the ALC is a question of law, which we review *de novo*."); *see also Capital City Ins. Co. v. BP Staff, Inc*., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (noting questions of subject matter jurisdiction are decided without deference to the lower court).

Statutory interpretation. The interpretation of a statute—including a tax exemption statute—is a matter of law that an appellate court may decide de novo. *See CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 ("Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below.") (citing *City of Rock Hill v. Harris*, 391 S.C. 149, 152, 705 S.E.2d 53, 54 (2011)); *see also Multi-Cinema Ltd. v. S.C. Tax Comm'n*, 292 S.C. 411, 413, 357 S.E.2d 6, 7 (1987) ("The usual rules of statutory construction apply to the interpretation of a tax statute."). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." *Grimsley v. S.C. Law Enforcement Div*., 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012). The best evidence of legislative intent is the plain language of the statute. *Perry v. Bullock*, 409 S.C. 137, 140, 761 S.E.2d 251, 253 (2014). "When interpreting the plain meaning of

a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation." *Grimsley*, 396 S.C. at 281, 721 S.E.2d at 426. If the term at issue is not defined in the statute, the court must "look to its usual and customary meaning." *Perry*, 409 S.C. at 140–41, 761 S.E.2d at 253. Statutory exemptions "will not be strained or liberally construed in the taxpayer's favor." *Frank R. Mead, III v. Beaufort County Assessor*, 419 S.C. 125, 140, 796 S.E. 2d 165, 173 (Ct. App. 2016) (citing *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881).

Agency deference. When a suit involves the interpretation of statutes whose administration has been vested in a particular administrative agency, courts, including the ALC, should defer to the agency's interpretation of the statute unless there is a compelling reason to differ:

> [O]ur deference doctrine provides that courts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations "unless there is a compelling reason to differ." . . . Accordingly, the deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons. We defer to an agency interpretation unless it is "arbitrary, capricious, or manifestly contrary to the statute."

Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 34–35, 766 S.E.2d 707, 718 (2014) (citations omitted). This deferential posture toward the agency's view is true even when—indeed, *particularly* when—a statute is silent or ambiguous regarding the disputed issue. *Id*. at 33, 766 S.E.2d at 717 ("If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then *must* give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference.") (citation omitted) (emphasis added).

ARGUMENT

I. The ALC lacked subject matter jurisdiction to consider and rule in this proceeding.

The ALC erred by entertaining the contested case hearing that gave rise to the Amended Final Order and to this appeal. Subject matter jurisdiction is "the court's power to hear and

determine a particular class of cases." *Whaley v. CSX Transp., Inc*., 362 S.C. 456, 474, 609 S.E.2d 286, 295 (2005) (citing and summarizing the holding in *Dove v. Gold Kist, Inc*., 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994)). Because the ALC is "an agency of the executive branch of government" and a creature of statute, its subject matter jurisdiction is defined and limited by statute; its jurisdiction is not coextensive with the courts of the State's judicial branch. *Video Gaming Consultants, Inc. v. S.C. Dept. of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000); *see also Amisub*, 403 S.C. at 585, 743 S.E.2d at 791 ("The General Assembly has the authority to limit the subject matter jurisdiction of a court it has created; therefore, it can prescribe the parameters of the ALC's powers."); *Foreclosure Specialists*, 390 S.C. at 184, 700 S.E.2d at 469 (rejecting the argument that "the ALC has inherent powers" and holding the ALC does not have the authority to exceed its statutorily granted powers).

It is undisputed that the ALC's only jurisdiction over challenges to SCDOR's property tax assessments, exemptions, and refunds is limited *solely* to proceedings that arise from and challenge a "Department Determination."[8] *See* S.C. Code Ann. § 12-60-2130 ("A property taxpayer or the local governing body who disagrees with the department determination may request a contested case hearing before the Administrative Law Court if he files an action within thirty days of the date of the department's determination."); S.C. Code Ann. § 12-60-2150(H) (same as to refund claims); *see also* Am. Final Order at 40, 42 (R. 46, 48) (noting the issuance of a Department Determination is a "prerequisite" to the bringing of a contested case hearing to challenge a property tax assessment); Order Denying Mot. to Dismiss at 8 (R. 208); Taxing Entities' Resp. to the Mot. to Dismiss (filed Jan. 23, 2018) at 5 (R. 573) (conceding the ALC's jurisdiction over property tax

[8] The term Department Determination is not capitalized in the Revenue Procedures Act but is capitalized herein to denote it is a defined statutory term.

disputes is limited to those in which SCDOR has issued a Department Determination).

Accordingly, the critical jurisdictional question in the instant proceeding is whether SCDOR ever issued any Department Determination relating to the Farmers Entities' property tax assessments or claims. As explained more fully below, SCDOR did not. None of the documents on which the Taxing Entities' arguments and the ALC's jurisdictional analysis rest—namely, the Settlement Agreement and the Supplemental Certifications[9]—were Department Determinations that could be challenged in a contested case hearing. The ALC's erroneous decision to the contrary rests on a flawed analysis that (i) diverges from and ignores the relevant statutory text, rendering much of it mere surplusage; (ii) rests not on the language of the Code sections granting jurisdiction but, rather, on the ALC's own policy view of whether certain agency decisions *should* be contestable by Taxing Entities and reviewable by the ALC; and (iii) results in an outcome that conflicts with and disrupts the application of other statutes.

A. The ALC's erroneous jurisdictional analysis diverges from and ignores the statutory text.

The errors of the ALC's jurisdictional analysis are evident against the backdrop of a proper understanding of what constitutes a Department Determination and the situations in which such

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[9] The Taxing Entities argued below that both types of documents constitute Department Determinations. *See*, *e.g.*, Lee Cnty. Suppl. to Request for Contested Case Hr'g (filed July 26, 2017) (R. 293); Consolidated Suppl. to Request for Contested Case Hr'g (filed July 17, 2017) (R. 257). The ALC relied only on the Supplemental Certifications as the supposed basis for its jurisdiction. *See* Am. Final Order at 39, 45, 51 (R. 45, 51, 57).

The Taxing Entities' arguments were broader than the ALC's decision in another respect, namely their argument that the Supplemental Certifications constitute Department Determinations not only under §§ 12-60-2130 and -2150 (discussed below) but also under § 12-4-535, which allows SCDOR, as part of its investigation and prosecution of errant county officials, to "issue a department determination directing the appropriate county official to comply with all applicable state law . . . ." *See* S.C. Code Ann. § 12-4-535(A). The ALC correctly concluded that SCDOR's decisions relating to the Farmers Entities' did not constitute "Department Determinations" under § 12-4-535. Am. Final Order at 39–40 n.30 (R. 45-46). If the Taxing Entities reassert this erroneous argument on appeal, the Farmers Entities will respond to it at the appropriate time.

determinations can arise. Accordingly, the analysis that follows first sets out the characteristics of a Department Determination and the statutory context in which it can arise, and thereafter explains the ways in which the ALC's statutory interpretation and application erred and diverged from this statutory framework.

1. "Department Determinations" regarding property tax assessments, refunds, and exemptions arise only in a particular procedural context.

A Department Determination is statutorily defined as "the final determination within the department from which a person may request a contested case hearing before the Administrative Law Court." S.C. Code Ann. § 12-60-30(10).[10] The definition contains two elements, both of which are necessary: a decision must be final *and* it must be one for which there is statutory authorization to seek ALC review. *See id*.[11] Not surprisingly, then, every time the Revenue Procedures Act refers to a Department Determination, it specifically and clearly identifies the precise procedural context in which such a final decision may be issued and it expressly indicates the specific parties who may seek ALC review of the decision. *See*, *e.g*., S.C. Code Ann. §§ 12-60-450(D)–(E), -510(B), -920(G), -1310, -1330, -2130, and -2150.

As regards property tax assessments, refunds, and exemptions, the South Caroline Code outlines the process leading up to a Department Determination. First, when (as here) the property

[10] After the instant litigation was underway, the definition was amended by 2018 Act No. 265, Section 8.B, and now reads, "'Department determination' means the final determination within the department from which *a taxpayer* ***or*** *a local governing body, as applicable,* may request a contested case hearing before the Administrative Law Court." S.C. Code Ann. § 12-60-30(10) (new text italicized). No change was made to the provisions regarding settlements, and no statute permits local governing bodies to request a contested case hearing regarding a settlement.

[11] Stated differently, not every final SCDOR decision is a Department Determination. For example, if a division of SCDOR determines there is a deficiency in a taxpayer's payments, that "division decision," if not protested though the intra-agency review process, "will become final" and cannot be reviewed by the ALC. *See* S.C. Code Ann. § 12-60-410 and -420; *see also id*. § 12-60-30(13) ("'Division decision' means a decision by a division of the department that affects the rights or obligations of a person *for which no specific appeals rights are provided* by this act.") (emphasis

at issue belongs to a utility, the Department assesses the value of the property and sends a proposed assessment to the taxpayer. *Id*. §§ 12-4-540(A); 12-60-410; 12-60-420(A).[12] As part of its review and assessment, the Department has exclusive authority to determine any property tax exemptions and to decide whether any refunds are due for property it determines is exempt. *Id*. §§ 12-4-710; 12-60-2150(A). If the Department grants a property tax exemption, it is required to "certify the exemption to the auditor's office in the county in which the property is located." *Id*. § 12-4-730. Upon receipt of the certification, the county auditor "shall void any tax notice applicable to the property." *Id*. Neither the decision to grant an exemption or refund nor the certification effectuating that decision are referred to in the Code as Department Determinations, nor do the Code sections cited above grant local governing bodies any right of appeal in regard to an assessment, a decision to grant an exemption or refund, or a certification.

Taxpayers, in contrast, *are* expressly authorized to seek intra-agency review of the decisions or assessments. Specifically, a taxpayer who disagrees with a proposed assessment or who disputes the Department's denial of an exemption or refund may challenge the proposed assessment or decision by filing a written protest with SCDOR within ninety days of the decision or assessment. *Id.* §§ 12-60-450(A); 12-60-2110; 12-60-2120(A)(1), (B)(1); 12-60-2150(E).

A taxpayer's protest is conducted as described in section 12-60-450. *See id*. §§ 12-60-2120(D); 12-60-2150(F). The taxpayer and SCDOR are required to stipulate the facts or issues on

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added); Am. Final Order at 48 (R. 54) (acknowledging that if a Division Decision is not protested through the administrative process, it cannot be appealed to the ALC).

[12] While counties have the authority to determine taxes as to certain property (such as commercial residential, and agricultural properties) (S.C. Code Ann. § 12-37-90), the Department values the property of manufacturers, utilities, and other listed businesses (§ 12-5-450) and has exclusive jurisdiction to grant exemption requests (except for the homestead exemption), *see id*. § 12-4-710.

which they agree, and they "may attempt to settle the case." *Id*. § 12-60-450(D)(1).[13] If the case is *not* settled, then SCDOR must issue a Department Determination. *Id.* § 12-60-450(E)(1); *see also* Trial Ex. 184 at III (B)(1) (S.C. Rev. Proc. #06-2) (R. 4143) (stating that after a protest is filed by a taxpayer, the Department will review the file and either agree with the taxpayer and close the file or, if it disagrees with the taxpayer's position, will draft a determination setting forth all facts, issues, and support for all or part of the proposed assessment). A Department Determination that is adverse to a taxpayer must be in writing and must comply with the following requirements:

> (a) be sent by first class mail or delivered to the taxpayer;
>
> (b) explain the basis for the department's determination;
>
> (c) inform the taxpayer of his right to request a contested case hearing; and
>
> (d) if a proposed assessment was protested, explain that the taxes will be assessed in thirty days and payment demanded unless the taxpayer requests a contested case hearing.

Id. § 12-60-450(E)(2)(a)–(d).[14] *See also* Ruple Dep. at 23:8 to 25:25 and 28:7–13 (R. 1382:8-

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[13] The Department is authorized by law to compromise disputes with taxpayers and to enter into written agreements with taxpayers regarding a tax liability, and such agreements, if approved by the Director, are final and conclusive and may not be reopened absent fraud, malfeasance, or misrepresentations. *Id*. § 12-4-320(3) and (4); *see also* Part II, *infra*.

[14] After the instant litigation commenced, subsection 12-60-450(E)(2) was amended by 2018 Act No. 265, Section 8.C, and now reads as follows:

> (2) A department determination must be in writing and must:
>
> (a) be sent by first class mail or delivered to the taxpayer *and any affected county*;
>
> (b) explain the basis for the department's determination;
>
> (c) inform the taxpayer *and any affected county* of the right to request a contested case hearing; and
>
> (d) if a proposed assessment was protested, explain that the taxes will be assessed in thirty days and payment demanded unless the taxpayer *or any local governing body* requests a contested case hearing.

S.C. Code Ann. § 12-60-450(E)(2) (new text italicized). The ALC's jurisdictional analysis relied (as it should have) on the statute in force at the time the action was commenced, because a later statutory amendment cannot retroactively supply jurisdiction missing at the time the suit began.

1384:25 and 1387:7-13) (testimony of SCDOR's 30(b)(b)(6) witness stating a Department Determination would contain the basic facts of the situation, a summary of the Department's position, a summary of the taxpayer's position, and the supporting statutory or case law that would support the Department's position). Either the taxpayer or the local governing body may request a contested case hearing before the ALC if they disagree with the Determination. *Id*. §§ 12-60-2130 and -2150(H).

In sum, the process of valuing, assessing, and determining exemptions and refunds applicable to a utility's property taxation contains numerous decisions that can become final but from which a local government body has no right of appeal. Rather, a local government's right to seek a contested case hearing challenging such a decision arises if, and only if, the taxpayer protests the decision, does not subsequently settle with SCDOR, and the intra-agency protest concludes with a Department Determination that is characterized by certain mandatory criteria.

2. Neither the Settlement Agreement nor the Supplemental Certifications are Department Determinations.

The Taxing Entities sought a contested case hearing, asserting that both the Settlement Agreement and the Supplemental Certifications issued by SCDOR pursuant to the settlement are Department Determinations. *See* Lee Cnty. Suppl. to Request for Contested Case Hr'g (R. 293); Consolidated Suppl. to Request for Contested Case Hr'g (R. 257). The ALC agreed as to the Supplemental Certifications and proceeded to exercise jurisdiction over this matter. As explained more fully below, however, neither the Settlement Agreement nor the Supplemental Certifications were Department Determinations that could give rise to a contested case hearing over which the

See, *e.g*., Order Denying Mot. to Dismiss (April 3, 2018) at 11 (R. 211); Am. Final Order at 41, 49 (R. 47, 55). No similar change was made regarding settlements, and affected counties still do not receive notice of settlements between SCDOR and a taxpayer.

ALC had jurisdiction.[15]

First, the Settlement Agreement is not a Department Determination. Neither the Revenue Procedure Act nor Revenue Procedure #06-2 require the Department to issue a Department Determination when a taxpayer and the Department settle a case. Rather, the Act presents them as *alternative* and mutually exclusive outcomes for a taxpayers' protest. *See* S.C. Code Ann. § 12-60-450(D)–(E). This is evident from the fact that the statute mentions settlement at all. If, as the Taxing Entities claim, the settlement of a taxpayer's protest is identical to or indistinguishable from a Department Determination, then section 12-60-450(D)(1), which specifically authorizes settlement of a protest, is a pointless redundancy. The fact that the Legislature specifically authorized and discussed settlement separate from and in addition to a Department Determination indicates they are different things. Any interpretation to the contrary would render a portion of the statute redundant or meaningless—an interpretation not permitted in this context or any other. *See CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 (declining to interpret a statute in a manner that rendered as surplusage any word, clause, sentence, provision, or part as the "General Assembly obviously intended [the statute] to have some efficacy; or the legislature would not have enacted it into law") (citation omitted) (alteration in original).

Further, the Revenue Procedures Act defines and describes Department Determinations in a way that differentiates them from settlement agreements. Under the Act, a Department Determination is a final, unilateral determination or decision made *by* SCDOR and issued *to* the taxpayer. *See* S.C. Code Ann. § 12-60-30(10) (defining a Department Determination as "the final

[15] The ALC relied only on the Supplemental Certifications as the supposed basis for its jurisdiction. *See* Am. Final Order at 44–45, 51 (R. 50-51, 57). Nevertheless, this brief will also discuss the Settlement Agreement in the event this Court is inclined to consider whether that document has jurisdictional significance.

determination *within the department* from which a person may request a contested case hearing before the Administrative Law Court") (emphasis added); *id*. § 12-60-450(D)(2) and (E) (describing a Determination as being *made by* SCDOR and delivered *to* the taxpayer). A settlement agreement is the complete opposite of this; it is an agreement negotiated by and agreed upon by all parties (here, SCDOR and the Farmers Entities) regarding a disputed matter, not a decision made and issued by one party (SCDOR) to the other (the Farmer Entities).

The ALC's attempt to construe the Supplemental Certifications as Department Determinations fares no better. The Code plainly distinguishes between Department Determinations on the one hand, and assessments and certifications on the other, and the express language of the relevant statutes refers to Department Determinations—not assessments or certifications—as triggering a right of appeal. The certification process by which SCDOR notifies a county of property tax exemptions for taxpayer property in the county's jurisdiction cannot be characterized as a Department Determination. The law is clear that these certifications are merely notices to a county for which the county has no right to object. *See* S.C. Code Ann. § 12-4-730 (stating that once a county receives the certification from SCDOR "the auditor shall void any tax notice applicable to the property" and providing no mechanism for the county to object). No other point in the property assessment procedure allows a local government body to challenge, protest, or appeal an SCDOR assessment, and it would be nonsensical to infer such a right from *these* assessments but not from others that might be equally unsatisfactory to a county. *See*, *e.g*., *id*.; *id*. §§ 12-60-420(A) (noting a taxpayer but not a local government may protest a proposed assessment); 12-60-450(A) (same); 12-60-470(E) (same regarding refund decision); 12-60-1730 (same as to assessments and denial of exemption); 12-60-2120(A)(1), (B)(1) (same); 12-60-2150(E) (same as to refund decision).

Further evidence that the Supplemental Certifications are not Department Determinations is found in the fact that the certifications were not prepared by SCDOR counsel. Department Determinations are prepared by the "department representative," who is "the person appointed by the department to prepare the department's determination and represent the department at the contested case hearing." S.C. Code Ann. § 12-60-30(11); *see also* Ruple Dep. at 29:3–8 (R. 1388:3-8) (stating the department representative represents SCDOR before the ALC and thus would be someone from the Office of General Counsel). The Supplemental Certifications, in contrast, were issued by SCDOR's property division (not the department representative), and thus cannot be Department Determinations. *See* Ruple Dep. at 57:19–25 (R. 1412:19-25).

Finally, neither the Settlement Agreement nor the Supplemental Certifications constitute Department Determinations because they do not contain the language required by § 12-60-450(E)(2) informing the taxpayer of his right to request a contested case hearing within thirty days. *See* Trial Ex. 91 (Settlement Agreement) (R. 3533); Trial Ex. 129 (Supplemental Certifications) (R. 3839); Trial Ex. 130 (Supplemental Certifications) (R. 3843). The ALC sought to brush this absence aside by explaining that these requirements apply only to *some* Determinations, namely those that are adverse to the taxpayer, and that because the settlement and certifications at issue here were not (according to the ALC) adverse to the Farmers Entities, the requirements of section 12-60-450(E)(2) could be ignored. *See* Am. Final Order at 49 (R. 55). The ALC fails to acknowledge, however, that the settlement and certifications *were* adverse to the Farmers Entities, in part, because they did not provide all the relief the Farmers Entities had sought. For example, FTCC and Diversified had requested an exemption for all of their assets, but the settlement and

certifications carved out some assets that did not receive the exemption.[16] Further, the Settlement Agreement included an elongated refund payment (in which payment of any refunds could be stretched out over several years via credits to tax bills versus payments to the taxpayers) that were less favorable than what the Farmers Entities had sought. *See* Trial Ex. 91 (Settlement Agreement) at § 2.4 (R. 3538-39). Accordingly, because they are at least partially adverse to the taxpayer, the Settlement Agreement or the Supplemental Certifications can be Department Determinations *only* if they comply with the specific requirements of section 12-60-450(E)(2). They did not comply, and they are not Department Determinations.

In sum, then, neither the Settlement Agreement nor the Supplemental Certifications are Department Determinations that can give rise to a contested case hearing.

3. The ALC's jurisdictional analysis contradicts or disregards the relevant statutory text.

As explained above, the ALC's subject matter jurisdiction over SCDOR decisions pertaining to property tax assessments, exemptions, and refunds arises only when those decisions are contained in a Department Determination, and no such determination was ever made here. The ALC's contrary conclusion rests on an erroneous jurisdictional analysis that contradicts or disregards the relevant statutory text.

First and most fundamentally, the ALC incorrectly reasons that because it has jurisdiction over *some* disagreements between a county government and SCDOR, it has jurisdiction over *all* disagreements between a county government and SCDOR. *See* Am. Final Order at 39 ("This case

[16] While the Farmers Entities agreed with the Department that certain assets were used only to provide non-exempt services and would not be exempt, they continued to believe that the assets used to provide security services were voice-related services that should be exempt; however, for purposes of the settlement, they agreed to compromise on this issue and receive no exemption for those assets. Trial Ex. 91 (Settlement Agreement) at § 2.1 (R. 3538); Tr. at 543:4–14 (R. 2056:4-14) and 616:6–17 (R. 2130:6-17).

involves a county government contesting a Department decision; generally, this Court is authorized to hear such cases pursuant to sections 12-60-2130 and 12-60-2150 of the South Carolina Code (2014) and section 1-23-600(A) of the South Carolina Code. . . . Therefore, this Court has subject matter jurisdiction over this matter.") (citations and footnotes omitted). This sweeping overgeneralization wrongly assumes the ALC has jurisdiction over *any and every* dispute between a local government entity and SCDOR—a view that lacks any limiting principle, is contrary to the statutes discussed above, and has been rejected by the courts. *See*, *e.g.*, *Amisub*, 403 S.C. at 592–97, 743 S.E.2d at 795–97 (holding that although the ALC had jurisdiction over "contested case" proceedings generally, and over some DHEC licensing decisions specifically, the ALC did *not* have jurisdiction over DHEC licensing decisions that the CON Act did not make appealable to the ALC); *Cooper v. S.C. Dept. of Probation, Parole & Pardon Servs*., 377 S.C. 489, 495–96, 661 S.E.2d 106, 109 (2008) (noting the ALC's jurisdiction over *some* parole-related matters did not mean the ALC has jurisdiction over *all* parole-related matters).

The ALC compounded the foregoing error by interpreting the statutory definition of Department Determination—a critical aspect of the jurisdictional analysis—in a way that renders the majority of the definition mere surplusage. At the time this matter commenced, the Revenue Procedures Act defined a Department Determination as "the final determination within the department from which a person may request a contested case hearing before the Administrative Law Court." S.C. Code Ann. § 12-60-30(10); *see also* n.10, *supra* (noting the definition was amended in 2018). The ALC erroneously concluded that half of that definition was meaningless and redundant, and could be disregarded for purposes of determining what constitutes a Department Determination. *See* Am. Final Order at 43 ("I find the phrase 'from which a person may request a contested case hearing" is simply an affirmation of the finality of the decision and not a requisite

for a 'department determination.'"). Under the ALC's interpretation, *every* SCDOR decision at *any* level of the agency that becomes final in *any* way is transmuted into a Department Determination. Not only is this view flatly inconsistent with the Code sections discussed above, *see* Part I.A.1, *supra*, it also renders half of the statutory definition a nullity—an interpretive method and result that South Carolina's courts have repeatedly rejected. *See*, *e.g.*, *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881; *Lightner v. Hampton Hall Club, Inc*., 419 S.C. 357, 798 S.E.2d 555 (2017) (analyzing a provision in the Revenue Procedures Act and specifically rejecting an interpretation that "renders the words 'and a dispute' in the statute meaningless and thereby violates our rules of statutory interpretation"); *Hinton v. S.C. Dept. of Probation, Parole & Pardon Servs*., 357 S.C. 327, 343, 592 S.E.2d 335, 341 (Ct. App. 2004) (noting the "rule" that "we should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless") (citation omitted).

Contrary to the ALC's view, not every final SCDOR decision is a Department Determination, and the Revenue Procedures Act plainly permits a local government body to appeal only certain property tax decisions that meet the statutory definition and requirements of a Department Determination—a definition and requirements not satisfied here. *See* Part I.A.1 and I.A.2, *supra*. The ALC's jurisdictional analysis conflicts with and nullifies the express language of the Act and destroys a taxpayer's right to settle a case with SCDOR without seeking county approval. Thus, the ALC's ruling should be reversed because it lacked subject matter jurisdiction over this proceeding.

B. The ALC's jurisdictional analysis rests on the court's own policy views rather than on the plain language of the jurisdiction-granting statutes.

The ALC's jurisdictional analysis was further defective because it rests on an impermissible foundation, namely the judge's subjective policy opinion that local government

bodies *should* be able to challenge SCDOR property tax exemption, refund decisions, and settlements, regardless of whether those decisions or settlements satisfy the statutory criteria to be Department Determinations. *See* Am. Final Order at 46–47 (R. 52-53) (opining it was "troublesome" that the language of the relevant statutes limit the Taxing Entities' right to appeal a SCDOR decision); *see also id*. at 50 (R. 56) (noting it was "difficult to believe" the General Assembly really meant what the language of the statute says).

It is axiomatic that a judge's own views of what the law *should* permit cannot trump what the plain language of the law actually *does* permit. *See Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005) ("The legislature's intent should be ascertained primarily from the plain language of the statute. . . . 'Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.'") (citations omitted) (alteration in original); *Busby v. State Farm Mut. Auto. Ins. Co*., 280 S.C. 330, 337, 312 S.E.2d 716, 720 (Ct. App. 1984) ("This court has no legislative powers. In the interpretation of statutes our sole function is to determine and, within constitutional limits, give effect to the intention of the legislature. We must do this based upon the words of the statutes themselves. To do otherwise is to legislate, not interpret. The responsibility for the justice or wisdom of legislation rests exclusively with the legislature, whether or not we agree with the laws it enacts"). The ALC's jurisdictional ruling in the instant proceeding rested on the court's view of what the law *should* say or what the General Assembly *meant* to say, not on what the law actually says. Accordingly, the ruling is erroneous and reversible. *See Smith v. Wallace*, 295 S.C. 448, 452, 369 S.E.2d 657, 659 (Ct. App. 1988) (reversing the lower court's ruling because, although the reasoning employed by the lower court was a "logical" policy, it was inconsistent with the statutory language).

The ALC's analysis was further tainted by the court's subjective and unfounded fears that, if the court interpreted the statutes as written, it would enable SCDOR intentionally and maliciously to "manipulate" and "circumvent" local governing bodies' statutory rights. *See* Am. Final Order at 48 (R. 54); *id*. at 46 (R. 52) (predicting SCDOR would pose a "danger" to "another branch of government"). The ALC's fears are misguided. It wrongly assumes SCDOR would, if given the chance, act with malign intent to deprive local governments of their statutory rights by titling Determinations as Settlement Agreements. This assumption is not only unsupported, it directly contradicts the judicial doctrine that a State agency is presumed to act honestly and in good faith. *See Garris v. Governing Bd. of S.C. Reinsurance Facility*, 333 S.C. 432, 444, 511 S.E.2d 48, 54 (1998) ("Agency officials or members who adjudicate a matter are presumed to be honest, fair, and unbiased."). Further, even assuming *arguendo* there was reason to think SCDOR would engage in wrongful conduct, Code section 12-4-320(4) would provide a remedy as it allows settlement agreements to be reopened if SCDOR engages in "fraud, malfeasance, or misrepresentation." *See* Part II, *infra*. Such wrongful conduct was not alleged, nor did the ALC make any factual findings of any such conduct. *Id.* Furthermore, even if that check on SCDOR did not exist, the proper solution is for the *Legislature* to amend the law and authorize ALC review of such settlements, not for the ALC—a division of the Executive Branch—to effectively amend the law by quasi-judicial fiat.

The ALC's jurisdictional analysis rests not on what the law says but on what the ALC thought it should say. This strays from well-settled principles of statutory interpretation, and the ALC's subjective opinions and fears are no basis upon which to deviate from the plain language of the relevant statutes, which does not provide the ALC with jurisdiction over this action.

C. The ALC's conclusion unnecessarily places Code sections 12-60-450, -2130 and -02150 in conflict with Code section 12-4-320.

The flaws of the ALC's jurisdictional analysis are further evidenced by the fact that the

exercise of jurisdiction in this case rests on reasoning that creates a conflict between the relevant statutes in the Revenues Procedure Act and another Code section. This conflict could, and should, be avoided by a proper interpretation of the statutes at issue—an interpretation that would leave the ALC without jurisdiction over this matter. Specifically, the ALC concluded the Supplemental Assessments (*i.e.*, the final revised assessments that were issued pursuant to the Settlement Agreement) were Department Determinations. But any ruling that purports to transmute a settlement or the results of a settlement into a Department Determination that is reviewable by the ALC would nullify Code section 12-4-320(4), which gives SCDOR the right to enter settlements with taxpayers that are final and conclusive and cannot be reopened by administrative or judicial action except in cases involving wrongful conduct such as fraud. Furthermore, it denies taxpayers their statutory right to settle property tax matters with SCDOR.

This Court should not construe these statutes in a way that nullifies one of them (here, the statute authorizing settlements and shielding them from being reopened). *See In the Interest of Shaw*, 274 S.C. 534, 539, 265 S.E.2d 522, 524 (1980) (stating that if the provisions of two statutes can be construed so that both can stand, the Court will so construe them because the repeal of a statute by implication is disfavored and is a last resort only where there is irreconcilable conflict between the two) (*citing City of Spartanburg v. Blalock*, 223 S.C. 252, 75 S.E.2d 361 (1953)).

All settlement agreements with protesting taxpayers are followed by certifications to the affected counties as to the assessed property values. Accordingly, interpreting those certifications to be Determinations would allow any settlement to be reopened once the certification is issued. This conflict between the statutes, however, can be avoided by a proper statutory interpretation. Specifically, the statutes can be viewed harmoniously (without repealing any) by interpreting "department determination" in §§ 12-60-2130 and -2150(H) to mean the Department

Determinations issued by SCDOR per § 12-60-450(E) (*i.e*. only when a taxpayer has filed a protest, and SCDOR does not settle that matter with the taxpayer but instead issues a determination to the taxpayer), not settlement agreements or certifications. *See Shaw*, 274 S.C. at 539, 265 S.E.2d at 524.

In conclusion, the Legislature has vested authority to make decisions regarding property tax matters for certain taxpayers with the Department, and the Legislature has chosen to allow appeals only in certain limited and specifically defined circumstances, namely, when a Department Determination has been issued. No such determination was issued here, and the ALC thus lacked jurisdiction over this proceeding.

II. The ALC's ruling effectively reopened a settlement despite a statutory prohibition on doing so except in specific situations not present (or even alleged) here.

Even if the ALC had subject matter jurisdiction over this suit (and as explained above, it did not), the ALC's ability to exercise that jurisdiction is limited when, as here, the effect of the suit would be to reopen or disrupt a settlement between the Department and a taxpayer. Stated differently, the ALC's *general* authority (if any) under the Revenue Procedures Act is limited by the *specific* restrictions placed on that authority by Code section 12-4-320. Accordingly, the Taxing Entities may not challenge, and the ALC may not alter, the terms of the Settlement Agreement for the settled tax years (*i.e*., 2010 to 2015). The ALC erred by making rulings that reopened a statutorily-authorized settlement agreement despite the absence of any of the statutory factors that allow for such reopening, and despite the fact that, by doing so, the ALC effectively rewrote the relevant Code sections to give political subdivisions a veto power over a State agency's ability to enter negotiated settlements and a taxpayer's ability to rely upon that settlement.

Under South Carolina law, the Department is expressly authorized to compromise disputes with taxpayers and to enter into written agreements with taxpayers regarding a tax liability. *See* S.C. Code Ann. § 12-4-320(3) and (4). Such agreements, if approved by the Director, are final and

conclusive and "may not be reopened by administrative or judicial action or otherwise, except in cases of fraud, malfeasance, or misrepresentation." *Id*. § 12-4-320(4).

In 2017, SCDOR and the Farmers Entities entered into a settlement agreement regarding an alleged property tax liability. *See* Trial Ex. 91 (Settlement Agreement) (R. 3533-3540). The Settlement Agreement was approved by the Director. Trial Ex. 147, Kimpson Aff. (R. 3900-3901); Reames Dep. at 25:23- 26:25 (R. 1462:23- 1463:25); Trial Ex. 141, Reames Aff. (R. 3897-99); Tr. at 674:19- 675:11 (R. 2187:19- 2188:11); Trial Ex. 91 at 7, Settlement Agreement at §3.2 (R. 3539); *see also* n.6, *supra*; and S.C. Rev. Pr. #06-2 (R. 4138-4148). The ALC ruled that the agreement was binding as between the Department and the Farmers' Entities. *See* Pre-Trial Conf. Tr. (dated May 14, 2019) at 30:7-19 (R. 1496:7-19); Am. Final Order at 44 (R. 50). Because the Taxing Entities have not alleged, and the ALC did not find, any fraud, malfeasance or misrepresentation, then under the plain and express meaning of section 12-4-320(4), the Settlement Agreement may not be reopened.

Despite this statutory bar, and despite the absence of any of the requisite factors that would justify reopening the settlement agreement, the ALC did exactly that, issuing rulings that undid the Department's decisions for the tax years that had been settled. The ALC's explanation for ignoring the statutory prohibition was that section 12-4-320 does not (according to the ALC) authorize the Department to enter a settlement "that binds third parties," *i.e*., the Taxing Entities, and that such settlements would deprive local governments of due process and would "negate" their ability to request contested case hearings. *See* Am. Final Order at 52, 55, 56 (R. 58, 61, 62). These assertions are incorrect for at least four reasons, each of which is discussed below.

First, the ALC's view that the statute does not authorize settlements that bind third parties misses the mark because the ALC's focus is far too narrow. Even if section 12-4-320 does not

itself expressly authorize SCDOR to enter settlements that "bind" third parties, that section operates in conjunction with other sections of Title 12, which collectively give the Department the exclusive authority to assess and determine the value of a utility's property, to determine whether any exemptions apply to it, to decide whether any refunds are due, and to issue certifications to counties who "shall" comply with them. S.C. Code Ann. §§ 12-4-540(A); 12-4-710; 12-4-730; 12-60-410; 12-60-420(A); 12-60-2150(A).[17] The Code does not permit a county to challenge any of these decisions, and a county's compliance with SCDOR's certification is mandatory, not optional. *See generally* Part I.A, *supra*. Accordingly, the fact that section 12-4-320 does not itself expressly authorize the Department to compel or constrain local government action as part of its settlement of a taxpayer's liability is of no moment because adjacent statutes and chapters authorize such compulsion or constraint.

Second, while the ALC correctly stated the general proposition that settlement agreements are treated and interpreted like contracts, the ALC's attempt to apply that rule was both incomplete and incorrect. Incomplete because it failed even to mention the South Carolina cases holding a contract can, in appropriate circumstances, bind a third party who did not sign it, and incorrect because it failed to recognize that this proceeding is such a case. Well-established precedent indicates that, in suitable situations, one who did not sign a contract may nevertheless be bound by it. *See*, *e.g.*, *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288–89, 733 S.E.2d 597, 600–01 (Ct. App. 2012). One such situation is when, as here, a non-signatory's rights are dependent on or derivative of a signatory's rights. *See id*. at 288–90, 733 S.E.2d at 600–02 (noting a non-signatory may in some instances be bound based on its "significant relationship" or "close relationship" to a

[17] *See also id*. § 12-4-520(1) and (5) (noting the Department "shall formulate and prescribe rules to govern" county assessors in the discharge of their duties and "shall require county auditors to place" certain properties on the assessment rolls).

signing party); *see also Lipcon v. Underwriters at Lloyd's, London*, 148 F.3d 1285, 1299 (11th Cir. 1998) (holding that because the non-signatories' interests were "completely derivative of" and "predicated upon" the signatories' interests, the non-signatories were bound by the contract); *Pritzker v. Merrill Lynch*, 7 F.3d 1110, 1122 (3d Cir. 1993) (holding non-signatories to an agreement may be bound if they have "directly-related" interests to a signatory or have a "direct or derivative" relationship with a signatory); *Barrowclough v. Kidder, Peabody & Co*., 752 F.2d 923 (3rd Cir. 1993) (contingent beneficiaries to a deferred compensation plan, who were non-signatories to an agreement between the primary beneficiary and the defendant, were compelled to comply with that agreement because their claims were derivative of the primary beneficiary); *Smith Barney, Inc. v. Henry*, 775 So.2d 722 (Miss. 2001) (compelling decedent's beneficiary to arbitrate claim for negligent management of decedent's funds); *Jansen v. Salomon Smith Barney, Inc*., 776 A.2d 816 (N.J. App. Div. 2001) (compelling decedent's beneficiaries to arbitrate claims that were derivative of the decedent's rights).[18]

Here, as explained above, the Taxing Entities' ability to request and receive property tax payments from a utility are completely dependent on, derivative from, and subject to the Department's exclusive authority and right to value the property, determine any exemptions, and decide if any refunds are due. The Taxing Entities have no independent right to make or challenge those decisions. Accordingly, once the Department makes those decisions, whether by settlement or otherwise, the Taxing Entities are bound by statute to comply.

[18] In contrast, where a non-signatory's rights or claim is *not* dependent on or derivative of a signatory's rights, duties, and obligations, the non-signatory will not be bound (at least, not on that basis) by the contract. *See*, *e.g*., *Malloy v. Thompson*, 409 S.C. 557, 762 S.E.2d 690 (2014). Here, however, even if the Taxing Entities' rights were not derivative of SCDOR's, their argument would still fail as they are not being bound to the settlement agreement by the agreement itself but rather, as discussed above, by operation of law.

Third, the ALC is simply incorrect that section 12-4-320 (which authorizes settlements and shields them from being reopened) conflicts with or somehow "negates" sections 12-60-2130 and -2150 (which authorize a contested case hearing if a taxpayer's protest is resolved by a Department Determination rather than a settlement). *See* Am. Final Order at 55 (R. 61). There is no conflict between these statutes because they address different things: settlements and Department Determinations. *See* Part I.A, *supra* (explaining the distinction). Accordingly, when section 12-4-320 (dealing with settlements) is properly interpreted and applied, and when sections 12-60-2130 and -2150 (dealing with Department Determinations) are properly interpreted and applied, they have no effect on one another whatsoever. Rather, the supposed conflict the ALC identified arises only under its erroneous interpretation of sections 12-60-2130 and -2150 and is resolved simply by interpreting the statutes according to their plain language.

Fourth, the ALC's ruling that taxpayer settlements deprive local governments of their due process rights, *see* Am. Final Order at 54–55 (R. 60-61), rests entirely on the incorrect premise that local governments have due process rights. They do not. *See Ex parte Lexington Cnty*., 314 S.C. 220, 226–27, 442 S.E.2d 589, 593 (1994) ("In *State of South Carolina v. Katzenbach*, 383 U.S. 301 (1966), the United States Supreme Court held that the word 'person' in context of the Due Process Clause cannot be expanded to encompass the states of the union. It is equally obvious that the Due Process Clause cannot be expanded to include any other lesser governmental entity."); *Hibernian Soc. v. Thomas*, 282 S.C. 465, 472–73, 319 S.E.2d 339, 343–44 (holding a city is not a "person" with rights under S.C. Const. art. 1, § 3, which contains the State's due process and equal protection clauses).[19]

[19] The error of the ALC's argument is particularly pronounced in this context because it wrongly assumes that due process protects the State *from itself*. The Taxing Entities, like all political subdivisions, are creations of the State. *Georgetown Cty. v. Davis & Floyd, Inc*., 426 S.C. 52, 59–

In sum, the ALC's jurisdiction (if any) to hear cases of this sort is limited by the specific restrictions of Code section 12-4-320. To the extent the ALC's ruling reopened and disturbed the effect of the Settlement Agreement for the settled years of 2010 to 2015, such reopening is statutorily forbidden, and the ALC's ruling should be reversed.[20]

III. The ALC erred by analyzing the relative cost and use of the Farmers Entities' exempt property and by concluding it was entitled to only a partial exemption.

Even assuming the ALC had jurisdiction over cases of this type, and even assuming the exercise of that jurisdiction was not precluded by the 2017 settlement, the ALC's analysis and conclusions regarding the application of the Rural Telephone Service Exemption were nevertheless erroneous. One of the ways the ALC erred was in its unsupported conclusion that the Rural Telephone Service Exemption (which categorically states that property used in providing rural telephone service is exempt) actually provides only a *partial* exemption for qualifying property. More specifically, he erroneously concluded that the property at issue—property that all parties, as well as the ALC, agree is used to provide rural telephone services—is entitled only to a partial

60, 824 S.E.2d 471, 475 (Ct. App. 2019) ("[T]he County is a creature of the state. Political subdivisions of the state have no ancestor other than the state and its citizens, nor do they possess a separate sovereignty."). The Due Process clause, however, only protects *private* entities from government action; it does not protect one arm of the State from another. *See State v. Quin*, 430 S.C. 115, 131 and n.11, 843 S.E.2d 355, 363 and n.11 (2020) (Few, J., concurring) ("[T]he State complains the trial court 'denied the State its due process right to be heard.' . . . However, the State is not protected by the Due Process Clause. . . . the Fourteenth Amendment certainly does not protect one arm of the State (prosecutors) from another arm (courts)."); *see also Hibernian Soc.*, 282 S.C. at 472, 319 S.E.2d at 343 ("Equal protection functions to protect the citizen from the state. [] It does not protect the state, in the form of a political subdivision, from itself.") (citations omitted). Other jurisdictions have held similarly. *See White v. White*, 884 N.W.2d 1, 6 (Neb. 2016) ("The County has no right to due process. . . . A county, as a creature and political subdivision of the State, is neither a natural nor an artificial person"); *City of Reno v. Washoe Cnty.*, 580 P.2d 460, 463 (Nev. 1978) ("[T]he City, as a political subdivision of the State, may not raise the issues of taking of property without due process of law . . . as against the State, its creator.").

[20] If this Court reverses the ALC and upholds the settlement between the Farmers Entities and SCDOR for tax years 2010–2015, then the remaining issues on appeal (*i.e.*, sections III–V) would be moot as to those tax years but would still need to be addressed as to tax years 2016–2018.

exemption from property taxation because it is *also* used to provide other, non-voice telephone services. *See* Am. Final Order at 56–71 (R. 62-77). As explained more fully below, the ALC's conclusion and ruling diverged from the plain language of the statute and imposed new requirements and conditions with no basis in the statutory text.

In relevant part, the rural telephone exemption statute provides an exemption from property taxation for property "*used in providing rural telephone service*. . . ." S.C. Code Ann. § 12-37-220(B)(10) (emphasis added). The statute contains no requirement that, to be exempt, the property must be used "exclusively," "primarily," or even "substantially" to provide rural telephone service. Rather, it simply requires that the property be "used" to provide such service. Similarly, the exemption does not contain any limitations or restrictions prohibiting the property from being used for other purposes. If the Legislature had intended for the exemption to apply only to property used exclusively, primarily, or substantially for the provision of telephone services, it would have said so. Indeed, in other South Carolina property tax exemption statutes, the Legislature imposed such limitations *expressly*.[21]

Likewise, when the Legislature intends for a particular or partial treatment to apply to dual-use assets, it says so directly. For example, the pollution control exemption statute explicitly discusses how the exemption will apply and be calculated for "equipment that serves a dual purpose." S.C. Code Ann. § 12-37-220(A)(8) (providing that for assets used for both production

[21] *See*, *e.g.*, S.C. Code Ann. § 12-37-220(A)(1) (property tax exemption for property of the State and other political subdivisions "if the property is ***used exclusively*** for public purposes" and Tax Commission and county assessor must "determine whether such property is ***used exclusively*** for public purposes. . . ." (emphasis added); *id*. § 12-37-220(B)(16)(a) (property tax exemption for "the property of any religious, charitable, eleemosynary, educational, or literary society, corporation, or association, when the property is ***used by it primarily*** for the holding of its meetings and the conduct of the business of the society, corporation, or association. . . .") (emphasis added); *id*. § 12-37-220(A)(4) (property tax exemption for "all property of charitable trusts and foundations ***used exclusively*** for charitable and public purpose. . . .") (emphasis added).

and pollution control, the value eligible for exemption is "the difference in the cost between this equipment and equipment of similar production capacity or capability without the ability to control pollution."). The Legislature did not include any such discussion or requirement in the Rural Telephone Services Exemption, and the ALC erred by imposing one where the statutory text has none. *See Hodges v. Rainey*, 341 S.C 79, 85, 533 S.E.2d 578, 581 (2000) ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will."); *State v. Leopard*, 349 S.C. 467, 471, 563 S.E.2d 342, 344 (Ct. App. 2002) ("[A] court cannot rewrite the statute and inject matters into it which are not in the legislature's language.").

Applying the clear language of the exemption statute to the assets at issue here shows that the assets should be 100% exempt from property taxation. The undisputed evidence established that FTCC's and Diversified's assets at issue are "used to provide rural telephone service"—*i.e.*, used to make available to rural customers the ability to communicate telephonically by voice if, when, and as needed—even if they are also used to provide other services, and even if customers use those other services more frequently, for more minutes, or in greater bandwidth amounts than voice calls. *See*, *e.g.*, Tr. 383:9 to 384:4 (R. 1896:9- 1897:4); 396:10- 397:4 (R. 1909:10- 1910:4); 437:11–20 (R. 1950:11-20); 726:1–16 (R. 2239:1-16); and 756:5–25 (R. 2269:5-25).[22]

Just as a cable television provider is providing a customer with cable television service whether the customer ever turns his television on and watches it, so too is a telephone provider providing telephone service whether a customer ever picks up the phone. The service in both cases is providing the ability for the customer to use the television or telephone, and the providers' assets

[22] As previously stated, the Farmers Entities did not seek the exemption for property used solely to provide internet, internet protocol television, security, operator, and answering services in this case as they had previously agreed in the Settlement Agreement such property was not used to provide telephonic voice communications. *See* Am. Final Order at 21, 64–65 (R. 27, 70-71).

in both cases are being used to provide the availability of such service whether the customer makes use of it or not. FTCC's and Diversified's customers recognize value in, and pay fees for, the availability of telephone service even when they only have need or such services in emergencies. *See* Tr. at 580:12–18 (R. 2093:12-18); 757:1- 759:4 (R. 2270:1- 2272:4); and 766:8- 767:3 (R. 2279:8- 2280:3). Indeed, even the Taxing Entities' expert agreed without reservation that FTCC's and Diversified's assets were, in fact, being used to provide rural telephone service. *See id.* at 406:18-407:1 (R. 1919:18- 1920:1); 434:11–23 (R. 1947:11-23); *see also id.* at 800:11–17 (R. 2213:11-17).

Instead of applying the law as written and finding that FTCC's and Diversified's property "used to provide rural telephone service" is exempt, the ALC created its own novel method that has never been applied by SCDOR or any court to any taxpayer applying for the Rural Telephone Service Exemption. After deciding that only a partial exemption could be obtained for dual use assets, the ACL further concluded that a proper measure of the use of FTCC's and Diversified's assets for the exempt purpose (*i.e.* voice rural telephone service) versus the non-exempt purposes (*i.e.* internet, internet protocol television services, texting, etc.) would be the cost to build a voice-only rural telephone network. *See* Am. Final Order at 71 (R. 77).[23]

Although the Taxing Entities' expert did speculate that some costs could be saved by the taxpayers if they only provided voice services because he believed the capacity required of some equipment would diminish, *see* Tr. at 980:22- 982:7 (R. 2493:22- 2495:7), he conceded that he had not pulled *any* pricing information or otherwise researched at all the *actual* cost-savings, if

[23] Although the basis or origin of the ALC's novel method is unknown, it is possible the court was attempting to duplicate the method used under the pollution control statute previously discussed, which expressly provides for a cost-based method that looks at the cost of the machinery that performs pollution control (*i.e.* the exempt purpose) versus the cost of the machinery used only for production. S.C. Code Ann. § 12-37-220(A)(8). No such language is found in the Rural Telephone Service Exemption statute.

any, that could be realized from making this change. *Id*. at 1021:24- 1022:11. (R. 2534:24-2535:11).[24] Farmers, on the other hand, presented evidence that all assets currently in place would still be needed if non-voice services were discontinued. Tr. at 980:25- 981:20 (R. 2493:25-2494:20) and 1022:14- 1023:10 (R. 2535:14- 2536:10).

The ALC effectively ignored Farmers' testimony that their assets would remain the same if used only for voice-services and dismissed the fact that the Taxing Entities' expert had not researched the issue because he had thirty-seven years of experience and because his testimony was the only testimony in the record on this issue. Am. Final Order at 71, n.54 (R. 77). He then stated that any shortcomings in the evidence would be weighed against the taxpayers. *Id.* at 71–72 and n.55 (R. 77-78). In an apparent nod to Farmers' testimony refuting the only specific cost-savings example the expert provided, he then abruptly, with no factual or expert opinion support, concluded that a voice-only network would cost 25% less than the current network and thus the exemption should be limited to 75% of the cost of FTCC and Diversified's assets. *Id.* at 71 (R. 77).

In sum, the ALC created a novel basis for calculating the value of exempt property that (a) has no basis in the rural telephone exemption statute or case law, (b) taxpayers had no notice could be used, (c) neither party asserted at trial should be used; and (d) was computed based on pure speculation from an expert as well as an arbitrary discount by the court to supposedly correct for the complete refuting of the only specific testimony provided on the cost.

Because the Rural Telephone Service Exemption categorically states that property used in

[24] The only concrete example the expert gave was that a landline provider could replace its 10 gigabit per second line card with one that has a 1 gigabit per second capacity. *Id.* at 984:13-18 (R. 2497:13-18). However, Farmers CEO testified that this would not be possible for Diversified because the amount of voice traffic on Farmers' network would require at least two 1 gigabit cards, which would cost more than one 10 gigabit card. *Id*. at 1036:24- 1037:16 (R. 2549:24- 2550:16) (Farmers' CEO testifying two 1 gigabit cards cost $228,000 while one 10 gigabit card costs $150,000).

providing rural telephone service "shall be exempt," S.C. Code Ann. § 12-37-220(B)(10), and provides no authority whatsoever for prorating the taxpayer's assets based on the cost to provide only the exempt service, FTCC's and Diversified's property used to provide such services should be completely exempted. This is particularly true here, where neither party presented this issue. *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579, 205 L.Ed.2d 866 (2020) (holding that courts are assigned "the role of neutral arbiter of matters the parties present" and should "rely on parties to frame the issues for decision"). The ALC erred by ruling the Rural Telephone Service Exemption could, and here would, provide only a partial exemption (using his novel cost basis method) for property used to provide telephone service to rural customers.[25]

IV. The ALC erred by ruling the taxpayers failed properly to apply for the Rural Telephone Service Exemption in some of the tax years at issue.

Even assuming the ALC properly exercised jurisdiction over this matter, it nevertheless erred in its analysis and conclusions, including its conclusion that FTCC and Diversified failed to apply for the exemption for some of the tax years at issue. As explained more fully below, the ALC's ruling is particularly problematic because it rests on the court's imposition of novel requirements that are not found in the statute; is contrary to *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998); is contrary to SCDOR's instructions to taxpayers; and is contrary to SCDOR's interpretation of the statute—an interpretation worthy of deference.

[25] The ALC also asserted that Farmers Co-op provides certain non-exempt services such as internet and television. Am. Final Order at 69. (R. 75). However, he agreed that Farmers Co-op's tax returns were not appealed nor at issue in this case, and thus this issue was not before the Court. The ALC then made a further dicta-esque and erroneous statement that, in his opinion, the Department should not have granted Farmers Co-op a 100% exemption every year and that doing so was a "misuse of the exemption." *Id.* This also was not before the court. Nonetheless, all of the arguments set forth in this section as to why the ALC's failure to apply the exemption statutes as written and exempt 100% of FTCC's and Diversified's assets used to provide rural telephone service was erroneous would also apply to Farmers Co-op's assets.

A. The ALC erroneously imposed requirements and conditions that are not found in the statutes requiring taxpayers to apply for exemptions and are contrary to both binding precedent and SCDOR's instructions to taxpayers.

The Code indicates, and the parties all agree, that a taxpayer seeking a tax exemption must timely file an application. *See*, *e.g.*, S.C. Code Ann. §§ 12-4-720 and -730 and § 12-60-1750. But beyond stating that a taxpayer "shall file an application" within three years from the date the taxpayer's return was filed, *see id*. § 12-4-720(A)(1), the Code is remarkably silent regarding the method, means, format, form, terms, procedure, or any other details regarding applications for an exemption. One method to apply is to file "a property tax return listing the property as exempt," but the Code does not mandate (or even imply) that that is the *only* method to apply. *See id*. § 12-4-720(B) (stating only that the listing in such a return "is considered an application for exemption from property taxes"); *see also TNS Mills*, 331 S.C. at 618, 503 S.E.2d at 475 (stating taxpayers are not required to request the exemption on their tax returns). Not surprisingly, then, the ALC observed that "the exact method and timeline for applying for an exemption is somewhat unclear." Am. Final Order at 74 (R. 80).[26]

Despite the dearth of any statutory requirements as to how a taxpayer should apply for an exemption, the ALC hasted to supply its own, ruling that (i) the *only* way for the Farmers Entities to apply was to list the property as exempt on either their original or a timely-filed amended tax returns, *see id*. at 77 and n.64 (R. 83); (ii) the Farmers Entities' original returns were not sufficiently explicit in seeking the exemption, *id*. at 77–80 (R. 83-86); (iii) FTCC's amended returns were adequate to constitute an application for the exemption but Diversified's were not, in the ALC's view, precise enough in their request, *see id*. at 85–87 (R. 91-93); and (iv) none of the

[26] A few pages later, however, the ALC seems to take the opposite position, stating that "the clarity with which the statute indicates how to apply for an exemption" should have alerted the Farmers Entities of the proper way to apply. *See* Am. Final Order at 79 n.66 (R. 85).

other correspondence, protests, discussions, or other steps taken by the Farmers Entities to request the exemption constituted an application, *id*. at 77 n.64 (R. 83).

The first and, perhaps, most apparent error in the ALC's rulings is that they impose requirements not found in statute and, as a result, deprive Diversified and FTCC of an exemption to which they were entitled.[27] The Code nowhere requires that an application for an exemption must take the form of a tax return, much less a return that contains specific or particular wording or that would signal to *a judge* that the return sought an exemption. The Code requires merely that a taxpayer "shall file an application," *i.e.*, a request seeking the exemption be applied to its property. Moreover, the South Carolina Supreme Court has recognized that taxpayers are not required to request the exemption on their tax returns. *See TNS Mills*, 331 S.C. at 618, 503 S.E.2d at 475 (stating that while most taxpayers apply for exemptions on their tax returns, they may apply separately). In fact, while certain tax returns (such as the return for manufacturers) contain instructions to list the exempt property, *see*, *e.g.*, Trial Ex. 178 (R. 3982), SCDOR's tax return form for telephone cooperatives (*i.e.* PT-429), which is used by Farmers Co-op, contains no place for the taxpayer to separately list exempt property (only a place for listing all assets). *See*, *e.g.*, Trial Ex. 3 at 4 (R. 2591). It does have a heading that says "Exempt Property," but the form states "Leave Blank," indicating that SCDOR will make that determination. *Id.* And the SCDOR tax return for utilities (*i.e.* PT-427), which is used by FTCC and Diversified, does not even have a

[27] The ALC did not dispute Diversified and FTCC's entitlement to the exemption. *See* Am. Final Order at 87 (R. 93) (finding that "Diversified sufficiently claimed an exemption on their 2018 tax return such that their tax return qualifies as an application for the exemption."); *id.* at 99 (R. 105) ("[T]he Court concludes that FTCC timely applied for, and is entitled to, the exemption as set forth for tax years 2014-2018."). Rather, the ALC ruled that Diversified's amended returns for tax years 2013 to 2017 were not, in the ALC's view, sufficiently precise in their request for the exemption and thus did not constitute an application for the exemption. *Id*. at 86–87 (R. 92-93). The ALC further ruled that FTCC did not qualify for the exemption for tax years 2010 to 2013 because it determined FTCC filed outside the timeframe the ALC discerned from the statute. *Id.* at 87–89 (R. 93-95).

column or place for either party to list exempt property. *See* Trial Ex. 9 at 4 (R. 2641).

The ALC's imposition of additional and heightened requirements that are found nowhere in the statutes, are contrary to case law, and are contrary to SCDOR instructions to utility taxpayers, was an error of law that prejudiced FTCC and Diversified and warrants reversal. *See Harris v. Anderson Cnty. Sheriff's Office*, 381 S.C. 357, 363, 673 S.E.2d 423, 426 (2009) (reversing lower court's ruling that, "by judicial fiat," had "impose[d] requirements nowhere found in the statute"); *Ex parte Moore*, 352 S.C. 508, 510–11, 575 S.E.2d 561, 562 (2003) (reversing lower court's ruling that had "create[d] a condition not imposed by statute"); *Bryant v. City of Charleston*, 295 S.C. 408, 411, 368 S.E.2d 899, 900 (1988) ("Appellants contend the Circuit Court erred by imposing additional qualifications for annexation beyond the statutory requirement of mere contiguity . . . . We agree.").

The ALC's analysis further erred by failing to acknowledge the effect of the numerous ways in which the Farmers Entities had repeatedly requested SCDOR apply the rural telephone exemption to their property, all of which constitute applications for exemption. The evidence showed, for example, that in July 2012, FTCC wrote the Department to request the exemption for the 2012 tax year. *See* Trial Ex. 20 (Letter from Baltenbach to Crowe dated July 26, 2012) (R. 2774) ("As a cooperative, Farmers Telephone is exempt from taxes on property located in rural areas. Since FTC Communications, LLC, is now under the Farmers Telephone Cooperative, Inc.'s umbrella, they should not have been assessed for county taxes."). FTCC again wrote the Department on December 28, 2012, requesting a property tax exemption for the 2010 and 2011 tax years. *See* Trial Ex. 15 at 3 (Letter from Allen to SCDOR dated Dec. 28, 2012) (R. 2705) (stating that "[t]he exemption in S.C. Code § 12-37-220(B)(10) should have applied to all of FTC[C] property allocated to a county because it was a single-member LLC disregarded for South

Carolina tax purposes and its assets were used to provide rural telephone service" and containing lengthy discussion of the basis of the exemption request). The Farmers Entities subsequently filed multiple protests that sought the exemption. *See* Am. Final Order at 5, ¶ 11 (R. 11); *id*. at 6, ¶ 16 (R. 12); *id*. at 7, ¶ 20 (R. 26); *id*. at 8, ¶ 24 (R. 14). And beginning in August 2012 "the Department and Farmers Entities entered discussions regarding whether FTCC and Diversified qualified for the Rural Telephone Service Exemption." Am. Final Order at 84 (R. 90). The foregoing facts are undisputed, and, in light of the exceedingly non-specific statutory requirement to "apply" for or request an exemption, as well as the express acknowledgment of other application methods in *TNS Mills* and the instructions and lack of guidance to utility taxpayers in the SCDOR utility tax returns, it was reversibly implausible for the ALC to conclude that Diversified (in tax years 2013–2017) and FTCC (in tax years 2010–2013) never applied when, in fact, (a) they timely and repeatedly requested the exemption in writing, (b) SCDOR understood and accepted the applications as timely-filed,[28] and (c) the Farmers Entities engaged SCDOR in extensive discussions from 2012 through 2017 regarding these applications for and their eligibility to receive the exemption.[29]

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[28] *See* Ingram Dep. at 45:1–22 (R. 1323:1-22) (testimony of the Department's utility assessment coordinator that he believed FTCC and Diversified's claims for exemption made for tax years 2012–2018 were timely filed); *see also* Part V, *infra* (regarding timeliness of claims).

[29] Even if there was authority for the proposition that a taxpayer should claim the exemption on a return, FTCC and Diversified did so. As to the original returns, they listed their property exactly as the forms instruct and exactly as Farmers Co-op had always done. Tr. at 473:20- 474:24 (R. 1986:20- 1987:24), 477:20- 478:6 (R. 1990:20- 1991:6) and 480:23- 481:8 (R. 1993:23- 1994:8); Trial Ex. 3 at 3-4 (R. 2590-91). As to the amended returns, the ALC agreed FTCC properly listed its exempt and non-exempt assets Am. Final Order at 85-86 (R. 91-92), but incorrectly found that Diversified did not as to tax years 2013–2016 and its original 2017 return because its "Voice" heading for property used for voice telephone services did not also use the word "exempt." *Id.* at 86–87 (R. 90-91). Diversified used the heading "Voice" to indicate exempt property used to provide voice services and the headings "Video," "ISP," and "WiFi" to indicate non-exempt property used only for those services on its PT-427 forms as these are the categories the Settlement Agreement provided would be exempt and non-exempt and thus would allow SCDOR to calculate

B. The ALC's erroneous refusal to defer to the Department's interpretation rests on the ALC's incorrect understanding and application of deference doctrine.

The Farmers Entities and the Department argued before the ALC that, for decades, Farmers Co-op has always listed all of its assets on its distribution forms with its property tax returns, and the Department has always viewed this listing in conjunction with Farmers Co-op's annual report filed with the SCPSC as a request for exemption, which the Department has always granted. *See* Tr. 123:19- 126:8 (R. 1636:19- 1639:8), 468:1–21 (R. 1981:1-21) and 470:20- 471:2 (R. 1983:20-1984:2); Ingram Dep. at 31:14–18 (R. 1310:14-18) and 33:7–25 (R. 1312:7-13); Trial Ex. 3 at 3-4 (R. 2590-91). FTCC and Diversified filed original tax returns that looked no different than the returns filed by Farmers Co-op and which listed their assets in the same way. *See* Tr. 474:13- 475:5 (R. 1987:13- 1988:5) and 478:1–6 (R. 1991:1-6). Accordingly, if Farmers Co-op's returns were adequate to apply for and claim the exemption, so too FTCC's and Diversified's original returns were sufficient to apply for and claim the exemption. The Department agreed this was sufficient to request the exemption. *See* Tr. 199:19- 200:13 (R. 1712:19- 1713:13) (Department's Utility Assessment Coordinator testifying that FTCC and Diversified continued to file their returns listing all their assets and that the Department understood that FTCC and Diversified were requesting the exemption). The ALC, however, refused to defer to the agency's view. *See* Am. Final Order at 80–84 (R. 86-90).

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exempt and non-exempt property values. *See, e.g.*, Trial Ex. 58 (R. 3113) (Diversified's 2013 amended return) and Tr. 678:12–25 (R. 2191:12-25). SCDOR knew that Diversified was claiming the exemption, saw its assets segregated into categories on the amended returns, reviewed the Settlement Agreement as to what was exempt and non-exempt, and then calculated the assessments. *See* Ingram Dep. at 34:12–18 (R. 1313:12-18) and 86:18- 87:20 (R. 1352:18-1353:20); Tr. 164:19- 165:10 (R. 1677:10-1678:10), 166:2–19 (R. 1679:2-19) and 484:3-22 (R. 1997:3-22). That a court might not understand what property is being claimed as exempt is irrelevant; the Department understood and accepted the returns, and that is sufficient.

As noted above, the Code fails to specify the mechanism, means, format, and procedure by which a taxpayer must apply for an exemption. *See* Part IV.A, *supra*. Indeed, the ALC concluded that "the exact method and timeline for applying for an exemption is somewhat unclear." Am. Final Order at 74 (R. 80). However, because *TNS Mills* indicates that methods other than the tax return are acceptable, the ALC's refusal to consider any other method is clear reversible error. *TNS Mills*, 331 S.C. at 618, 503 S.E.2d at 475. As to what additional methods are acceptable, because the statute is silent or ambiguous with respect to the specific requirements to apply for an exemption, and because SCDOR is charged with administering this statute, this issue presents a paradigmatic instance in which a court must defer to the agency's reasonable interpretation. *See Kiawah*, 411 S.C. at 32–33, 766 S.E.2d at 717.

The test to determine when a court should—and, indeed, must—defer to an agency's interpretation of a statute is well established:

> Interpreting and applying statutes and regulations administered by an agency is a two-step process. First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation. [] If the statute or regulation "is silent or ambiguous with respect to the specific issue," the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference.

Id. (citations omitted). Here, the first step is satisfied: the Code is silent or ambiguous with regard to the particulars by which a taxpayer must apply for an exemption. *See* Am. Final Order at 74 (R. 80) (noting that "the exact method and timeline for applying for an exemption is somewhat unclear"). Accordingly, the ALC must defer to the agency's interpretation as long as it is "worthy of deference." *Kiawah*, 411 S.C. at 34, 766 S.E.2d at 718.

The South Carolina Supreme Court has described and explained what sort of interpretation is worthy of deference, and each of those descriptions or explanations is extraordinarily deferential. For example, a court, including the ALC, must defer to the agency interpretation "'unless there is a compelling reason to differ'" or "unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" *Id*. at 34–35, 766 S.E.2d at 718 (citations omitted).

Here, however, the ALC purported to introduce a new requirement into the deference analysis, namely that an agency's interpretation must be "long-standing" to be entitled to deference. *See* Am. Final Order at 81 (R. 87) (stating that "a cornerstone of the deference analysis is also determining whether an agency interpretation is 'long-standing'") (citations omitted); *id*. (stating the "deference given to an agency's construction of [a] statute that is silent or ambiguous and the deference given to an agency's construction that has been uniform for many years" are both "part of the overall agency deference doctrine and are not separate principles"); *id*. at 82 (R. 88) (ruling the Department's interpretation was not entitled to deference because it was not, in the ALC's view, long-standing).

This supposed "requirement" finds no basis in the case law. Indeed, it is notably absent from the South Carolina cases articulating the agency deference doctrine. *See*, *e.g.*, *S.C. Dept. of Motor Vehicles v. Dover*, 423 S.C. 153, 168, 813 S.E.2d 538, 540 (Ct. App. 2018); *Kiawah*, 411 S.C. at 34–35, 766 S.E.2d at 718; *Trident Med. Center v. S.C. Dept. of Health & Env. Control*, 312 S.C. 341, 353, 772 S.E.2d 177, 183 –84 (Ct. App. 2015); *Savannah Riverkeeper v. S.C. Dept. of Health & Env. Control*, 400 S.C. 196, 205–06, 733 S.E.2d 903, 908 (2012) (Toal, J., concurring, for a majority of the court).[30] In the handful of cases that even mention the fact that an agency's

[30] This list is but a sampling. An electronic search for South Carolina cases discussing agency deference returns 68 appellate cases. It appears that fewer than ten of them even mention, much less rely on, the question of whether the agency's interpretation was a long-standing one.

interpretation was long-standing, that fact is not presented as an independent requirement, but, at most, as merely *one* of the ways in which to demonstrate an agency interpretation is worthy of deference.

The fact that the historic duration of the agency's interpretation is not a mandatory component of modern deference doctrine is further demonstrated by the fact that the two-step deference test used in South Carolina stems from the United States Supreme Court's ruling in *Chevron*—a case in which the Supreme Court deferred to an agency's *recent* policy position. *See Kiawah*, 411 S.C. at 33, 766 S.E.2d at 717 (citing *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc*., 467 U.S. 837, 843 (1984)); *see also Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs*., 545 U.S. 967, 981–82 (2005) ("Agency inconsistency is not a basis for declining to analyze the agency's interpretation under the *Chevron* framework . . . . [I]n *Chevron* itself, this Court deferred to an agency interpretation that was a recent reversal of agency policy.") (citing *Chevron*, 467 U.S. at 857–58).

The ALC's deference analysis further erred by asserting that an agency's interpretation is entitled to deference only when it has been memorialized in a "formal interpretation" such as a "formal ruling or publication." Am. Final Order at 82 (R. 88). No South Carolina precedent (including the case cited by the ALC) supports that position. At most, the cases stand merely for a different proposition, namely that an agency interpretation worthy of deference should be the interpretation established, adopted, or affirmed by the agency's decision-making executives or officials (as opposed to staff). *See*, *e.g*., *Neal v. Brown*, 383 S.C. 619, 682 S.E.2d 268, 270 (2009); *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005). This supposed requirement (assuming it is one) was met here. SCDOR presented its position through officials entitled to make such decisions *and by asserting it as the*

official position of the Department in this litigation.

SCDOR's interpretation[31] is particularly worthy of deference here as it is consistent with *TNS Mills*, which expressly states that a taxpayer may apply by methods other than its tax returns. *See TNS Mills,* 331 S.C. at 618, 503 S.E.2d at 475. SCDOR's acceptance of FTCC's and Diversified's applications is also consistent with its instructions to all taxpayers on the PT-429 tax return forms not to list their exempt property on the returns and with the absence of even a place to list exempt property on the PT-427 tax return forms. And no facts were presented that would support a finding that SCDOR's acceptance of these applications was arbitrary, capricious or contrary to the statute or that would provide a compelling reason to differ from its decision that the exemption applications were timely filed. To the contrary, SCDOR diligently investigated and considered the exemption request in this case over approximately four years, requesting information from the taxpayers on numerous factual and legal issues, meeting with counsel for the taxpayers and making every effort to reach a well-reasoned and supported resolution. *See, e.g.,* Tr. 662:21- 663:9 (R. 2175:21- 2176:9) and 665:14- 673:25 (R. 2178:14- 2186:25); *see also Skidmore v. Swift & Co*., 323 U.S. 134, 140, 65 S. Ct. 161, 164 (1944) (stating that the weight to be given by a court to an administrator's ruling is dependent upon "the thoroughness evident in its consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements").

In sum, the ALC's analysis and application of the agency deference doctrine was legally incorrect and prejudicial to the Farmers Entities by depriving Diversified of the exemption for tax

[31] More specifically, SCDOR's "interpretation" at issue is its acceptance of FTCC's applications for exemption in 2010–2012 via their written requests in 2012 coupled with its previously filed original tax returns for 2010–2012 and both FTCC and Diversified's subsequent applications for exemption from 2013 forward via their original returns and written requests each year.

years 2013 to 2017 and depriving FTCC of the exemption for tax years 2010 to 2013. *See* Am. Final Order at 84, 87, 89 (R. 90, 93, 95). Accordingly, the Farmers Entities respectfully request this Court reverse the ALC's rulings.

V. The ALC erred by ruling FTCC failed timely to claim the Rural Telephone Service Exemption in some of the tax years at issue.

The ALC erred by ruling FTCC failed timely to claim the exemption in certain tax years. Specifically, the ALC concluded that, although FTCC's amended returns were sufficient to *apply* for the exemption, *see* Am. Final Order at 85–86 (R. 91-92), FTCC failed to *claim* the exemption for tax years 2010 to 2013 because it did not "timely" file its amended tax returns. *Id*. at 87–91 (R. 93-97). As explained more fully below, the ALC's conclusion is erroneous because FTCC submitted a timely written request to SCDOR for a refund (a request that, in SCDOR's view, was sufficient to claim the exemption), and "timely" filing amended tax returns are not required by the statute at issue.

The Code section governing applications for property tax exemptions states that a taxpayer "shall file an application" for the exemption within three years after filing its return or two years after paying the taxes and "shall claim any exemption on the return each year the property is exempt." S.C. Code Ann. § 12-4-720(A)(1) and (C). Notably, the statute imposes a time limitation *only* on the "application" for the exemption, not on the returns that "claim" the exemption. *See id*. The ALC's analysis of these requirements, however, erroneously conflates them. In the ALC's view, the only way FTCC could apply for the exemption was through its amended returns. *Id*. at 77 (R. 83). (The error of this view was discussed in Part IV.A, *supra*.) In the ALC's analysis, then, because FTCC filed its amended returns too late to "apply" for the exemption for tax years 2010 to 2013, neither can those amended returns "claim" the exemption for those years. *See* Am. Final Order at 88–89 (R. 92-93).

The Farmers Entities have already explained the errors of the ALC's analysis regarding whether and when they applied for the exemption, *see* Part IV, *supra*, and will not repeat those arguments here. When those errors are rectified, however, and FTCC is found timely to have applied for the exemption, its amended returns—the filing of which is not time-limited by section 12-4-720(C)—are sufficient to claim the exemption for tax years 2010 to 2013. Further, this view comports with the Department's view—an interpretation that is worthy of deference, *see* Part IV.B, *supra*—that a claim for an exemption may be filed in a subsequent tax year as long as the application for exemption is filed within the proper time period. *See* Trial Ex. 137 at ¶ 20 (R. 3895); Brewer Dep. 58:12- 60:25 (R. 1269:12- 1271:25) and 62:10- 63:20 (R. 1272:10- 1273:20).

CONCLUSION

For the foregoing reasons, Farmers Co-op, FTCC and Diversified respectfully request this Court reverse the ALC's Amended Final Order.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Bryson M. Geer
SC Bar No. 13606
E-Mail: bryson.geer@nelsonmullins.com
John C. von Lehe, Jr.
SC Bar No. 5719
E-Mail: john.vonlehe@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Miles E. Coleman
SC Bar No. 78264
E-Mail: miles.coleman@nelsonmullins.com
2 W. Washington St. / Fourth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Willian E. DuRant, Jr.
SC Bar No. 1808
Attorney at Law
E-Mail: gdurant@legaloff.net
1170 Old West Liberty St., Suite 1
Sumter, SC 29150
(803) 774-5323

Attorney for Respondents/Appellants Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC, Diversified Services, LLC

June 3, 2020
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Case No. 17-ALJ-17-0237-CC

Appellate Case No. 2020-000983

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.

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

and

South Carolina Department of Revenue ..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the foregoing Final Brief of Respondents/Appellants Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC complies with Rule 211(b), SCACR.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____
Bryson M. Geer
SC Bar No. 13606
E-Mail: bryson.geer@nelsonmullins.com
John C. von Lehe, Jr.
SC Bar No. 5719
E-Mail: john.vonlehe@nelsonmullins.com

151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Miles E. Coleman
SC Bar No. 78264
E-Mail: miles.coleman@nelsonmullins.com
2 W. Washington St. / Fourth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Willian E. DuRant, Jr.
SC Bar No. 1808
Attorney at Law
E-Mail: gdurant@legaloff.net
1170 Old West Liberty St., Suite 1
Sumter, SC 29150
(803) 774-5323

Attorney for Respondents/Appellants Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC, Diversified Services, LLC

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