

COMMONWEALTH OF PENNSYLVANIA

HOUSE OF REPRESENTATIVES

Agriculture and Rural Affairs Committee

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Public Hearing on  
House Bills 1868 and 1869  
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Room 8E-B East Wing  
Main Capitol Building  
Harrisburg, Pennsylvania

Monday, September 11, 1995

Met, pursuant to notice, at 10:05 a.m.

BEFORE:

REPRESENTATIVE RAYMOND BUNT, Chairman  
REPRESENTATIVE SCOT CHADWICK  
REPRESENTATIVE DICK HESS  
REPRESENTATIVE ED KREBS  
REPRESENTATIVE STEVE MAITLAND  
REPRESENTATIVE LEROY ZIMMERMAN  
REPRESENTATIVE WILLIAM LLOYD  
REPRESENTATIVE ANTHONY COLAIZZO  
REPRESENTATIVE JOHN GORDNER  
REPRESENTATIVE SARA STEELMAN  
REPRESENTATIVE DAN SURRA

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## P R O C E E D I N G S

CHAIRMAN BUNT: Good morning. I apologize for our tardiness here this morning. I know Mr. Lloyd likes to open up his meetings when he chairs them at 10:00 sharp, and I apologize to my esteemed colleagues on the other side.

Good morning. I am Representative Ray Bunt, and as Chair of the House Ag and Rural Affairs Committee, I'd like to call to order this public hearing on House Bills 1868 and 1869. The Committee is well represented here today; and before we go any further, I'd like to ask each member of the Committee to introduce themselves for the benefit of the others in attendance.

REPRESENTATIVE ZIMMERMAN: I am Leroy Zimmerman from Lancaster County.

REPRESENTATIVE CHADWICK: I am Scot Chadwick from Bradford and Susquehanna Counties.

REPRESENTATIVE GORDNER: John Gordner from Columbia County.

REPRESENTATIVE LLOYD: Bill Lloyd, Somerset County.

REPRESENTATIVE COLAIZZO: Anthony Colaizzo, Washington County.

REPRESENTATIVE SURRA: Dan Surra, Elk and Clearfield Counties.

1                   **REPRESENTATIVE STEELMAN:** Sara Steelman from  
2                   Indiana and Cambria Counties.

3                   **CHAIRMAN BUNT:** Okay; thank you. We do have  
4                   three or four other members of the Committee here in  
5                   Harrisburg today. There is a conflict with some other  
6                   meetings and hearings that are being held. They will be  
7                   coming in, going out, and some of the members here will  
8                   be coming in and going out, but we hope to be able to get  
9                   through the hearing with all the testimony today.

10                  The purpose of this hearing is to hear  
11                  testimony on a pair of related house bills, House Bill  
12                  1868, which amends Act 515 of 1966, and House Bill 1869,  
13                  which amends Act 319 of 1974, and that is commonly known  
14                  as the Clean and Green Act.

15                  Both of these original acts allow for covenants  
16                  between landowners and taxing authorities, whereby, in  
17                  very simple terms, a landowner receives reduced real  
18                  estate taxes in return for agreeing to keep land in  
19                  certain approved uses for a specific period of time.  
20                  Should the landowner break this covenant by changing the  
21                  land to a non-approved use, then the land is subject to  
22                  back taxes and interest.

23                  These bills would allow the construction of  
24                  telecommunication towers on land subject to agreements  
25                  under these respective Acts without such action

1 constituting a change of use resulting in a payment of  
2 these rollback taxes.

3 Concern about this issue was brought to my  
4 attention by representatives of the telecommunications  
5 industry and Representative Charles Dent of Lehigh  
6 County, and we will begin today by hearing their  
7 testimony.

8 As a side bar, if I could just explain to you  
9 that these two Acts preceded the technology that we have  
10 today for telecommunications and cellular. The whole  
11 growth of the space industry has just opened up many,  
12 many opportunities and new technologies that actually did  
13 not precede these Acts. These Acts preceded it. So this  
14 is not an attempt by the prime sponsor, which is myself,  
15 or Representative Dent or the industry or any members of  
16 this Committee to open these covenants up to any  
17 additional forms of development, if you will. This is to  
18 take advantage of the technology that absolutely exists  
19 today, is going to continue to grow, and perhaps maybe  
20 the technology that is available today will not be  
21 available in 10, 15 or 20 years, and perhaps maybe then  
22 we won't even need this, but we need to grow with the  
23 industry and we have to make changes that are available  
24 today.

25 I would like to invite to the stand

1 Mr. Dale Carey of Cellular One to lead off today's  
2 proceeding.

3 Mr. Carey, you can start when you're ready,  
4 please.

5 MR. CAREY: I would like to suggest, if I  
6 could, if Joseph Fitzpatrick could start out this  
7 morning.

8 CHAIRMAN BUNT: Mr. Fitzpatrick can join you.

9 MR. FITZPATRICK: Good morning, Committee  
10 members. First off, I'd like to thank you for scheduling  
11 us this morning. My name is Joe Fitzpatrick. I am a  
12 lifelong Pennsylvania resident, having spent most of my  
13 life residing and working in the Lehigh Valley, educated  
14 in Commonwealth universities, as our statement of  
15 testimony indicates.

16 In the Lehigh Valley, I live in that nether  
17 zone between suburban sprawl and verdant farmlands, and  
18 the proposed legislation that is before you this morning  
19 has arisen out of some very real and practical  
20 experiences that I've had as a private attorney, outside  
21 counsel in Pennsylvania to Cellular One, which is one of  
22 the major cellular telephone carriers in suburban and  
23 rural Pennsylvania.

24 As you see from your hearing packages, Bell  
25 Atlantic NYNEX Mobile systems also has a witness this

1 morning with a prepared statement. They were gracious  
2 enough to testify despite the fact that Cellular One and  
3 Bell Atlantic NYNEX Mobile go head to head in many parts  
4 of Pennsylvania.

5 The reason I bring this up at the outset of my  
6 testimony is that this is indeed legislation that would  
7 benefit the cellular and communications industry  
8 generally. It would benefit all rural Pennsylvanians and  
9 particularly farmers, generally, and I think that a show  
10 of support within private industry from competitors is  
11 perhaps the most dramatic way to underscore the  
12 widespread benefits so the Committee and the House  
13 understands this is not special interests at issue.

14 The legislation, as Representative Bunt  
15 outlined, is fairly similar. Both Bill 1868 and 1869  
16 almost mirror each other exactly just allowing for some  
17 small distinctions between Act 515 and 319. Mr. Carey,  
18 who is Regional Sales Rep for Cellular One, can tell you  
19 about some specific instances in the state which have led  
20 to our overtures for these, we believe, fairly minor  
21 amendments to 515 and 319.

22 The cellular industry has boomed in the last  
23 decade. It is no longer limited to car phones. It is no  
24 longer a toy for the rich. It is something that every  
25 Pennsylvanian has had some contact with in the last few

1 years. I'm sure that members of this Committee rely on  
2 those services from time to time.

3 In proceeding to the Ag Committee this morning,  
4 I think it is important that it be understood that  
5 Cellular One, Vanguard Cellular, understands, respects  
6 and wants to see the preservation of Acts 319 and 515.  
7 Pennsylvania needs them. The agricultural industry, the  
8 aesthetic beauty, the environment of the Commonwealth  
9 depend on them. And all that being said, we are asking  
10 for a small exception, which is wholly attributable to  
11 advances in technology, as Representative Bunt outlined  
12 in his opening comments.

13 As presently exists, public utilities with  
14 eminent domain power can locate their facilities on  
15 farms, woodlands and open space subject to covenants  
16 without penalty to the farmer or the open woodland owner.  
17 For purposes of this proceeding, I am in no way  
18 suggesting that the cellular telecommunications providers  
19 are public utilities. However, technology is such that  
20 the number of rural users have dramatically increased in  
21 recent years. The FCC, which awards licensure and  
22 operating areas to cellular carriers, is aware of this,  
23 and you have two companies before you today who provide  
24 those services throughout rural Pennsylvania; and yet, in  
25 spite of the technological and physical advances, one



1 reality remains. That is that we need to have poles at  
2 engineered intervals throughout rural parts of the state  
3 in order to provide service to rural parts of the state.

4 I think it is fair to state that the provision  
5 of cellular telecommunications to rural and agricultural  
6 Pennsylvania is truly not just a communications issue,  
7 but an issue of public safety and public well being. Our  
8 farmers are utilizing these services both in their cars  
9 and in portable phones on an increasing basis. Police,  
10 ambulance, EMS service, and even the car-pooling mother  
11 or dad with a bunch of Little Leaguers rely on it in the  
12 event of a breakdown or just a change in schedule.  
13 Without the poles, without the control buildings in the  
14 rural parts of the state where this issue under Acts 319  
15 and 515 covenants arise, it's a certainty that rural  
16 Pennsylvanians won't have the same access to and  
17 advantages of cellular telecommunications that are  
18 enjoyed currently in the urban and suburban areas where  
19 it is fair to say it is somewhat easier to locate these  
20 cell sites.

21 I'll conclude in a moment and turn it over for  
22 a couple of practical comments to Mr. Carey, but I would  
23 state that as you all know, individual counties are  
24 delegated with the authority and enforcement power of  
25 Acts 319 and 515 and specifically the determination of

1 when a rollback tax and interest is or is not due. There  
2 is some inconsistency in this. I see it as a rural real  
3 estate practitioner. There have been a couple of  
4 specific examples Mr. Carey will speak to, but even where  
5 there is a determination that under the strict language  
6 of the statutes there is a change in use because of a  
7 pole and a control building, the assessors we've spoken  
8 to have been sympathetic, would like to see farmers and  
9 rural property owners have access to cellular services.  
10 Quite frankly, the farmers would like the rental income  
11 that derives from placing a pole and a control building  
12 on a farm or a wooded area occupying a very small area of  
13 land.

14 The conditions in the proposed legislation are  
15 quite simple that in no event should the land area on any  
16 farm or woodland property subject to a covenant exceed a  
17 half an acre; that not more than one tower ever be  
18 located on such tract of land; that the cell site area  
19 would be accessible; and that essentially, this is not a  
20 subdivision for sale. It is not a conveyance or  
21 subdivision of a tract of land as contemplated under the  
22 Municipalities Planning Code. It is a leased or licensed  
23 area where a cell site and only a cell site can operate.

24 The farmers that we're dealing with have a  
25 basic dilemma and that is suffering the penalty of a

1 rollback tax if they enter into this lease coupled with  
2 the loss of rental income over many, many years, which is  
3 truly a boon to many of our farmers.

4 With that being said, I'd ask Mr. Carey to make  
5 a few comments on the practical and operational aspects  
6 of this problem. Thank you.

7 MR. CAREY: Good morning. I'm Dale Carey. I'm  
8 from the Pocono Mountain region of Pennsylvania, a Temple  
9 University graduate, and the Regional Sales Manager for  
10 our Eastern Mid-Atlantic Region of Pennsylvania.

11 One of the situations that has arisen for us is  
12 as the cellular industry has grown and as the popularity  
13 of phones has increased tenfold probably in the last  
14 three or four years, it has required us to place our cell  
15 sites and to build out our system at a much greater pace  
16 than had been previously administered.

17 One of the difficulties that we've had in doing  
18 this is because of the way that the cell sites need to be  
19 engineered now in very precise locations, very particular  
20 as far as an engineering standpoint goes, it has required  
21 us to really start to build out our systems in the rural  
22 areas, whereas before, obviously, with the more  
23 concentration of people, we started in the urban areas or  
24 urban areas for our company and moved out from there.

25 As Joe spoke to a little bit ago, one of those

1 difficulties is we go out to the locations here, and they  
2 must be in certain locations from an engineering  
3 standpoint, and we run across some roadblocks and some  
4 difficulties in the way things are interpreted in  
5 different counties.

6 One of the things that Joe spoke to was we had  
7 an instance in the Lehigh County area where the assessor  
8 in that particular area decided he was sympathetic to the  
9 farmer, but, by the same token, was not going to give  
10 them any kind of an exemption.

11 On the other hand, in the Susquehanna area, we  
12 went in. It was a small area. That assessor looked at  
13 it a little different way and gave the exemption to the  
14 farmer.

15 One of the biggest things from a business  
16 standpoint is as our business grows and as our client  
17 base grows in a different kind of base, we want to  
18 provide the same level of service to our rural areas as  
19 we do to our urban areas. We can't do that today with  
20 the ease that we wish we could simply because of some of  
21 the statutes and some of the things spoken to here in 319  
22 and 515, and that's really probably our biggest concern.

23 We have fire companies, municipalities, EMS,  
24 emergency service people, that, quite frankly, really  
25 need this service in the rural areas. That's where it is

1 most important, in the areas where there is a limited  
2 communications arena, and they're having some difficulty  
3 now really being able to communicate and offer that  
4 service.

5 I guess just to conclude from my standpoint  
6 from a business end, this is very important to us from a  
7 public safety arena and really from where our growing  
8 segment is, which is emergency service and housewives and  
9 things of that nature, and it is a very important piece  
10 to us.

11 CHAIRMAN BUNT: Thank you. Mr. Carey, will you  
12 folks be available for some questions from the Committee?

13 MR. CAREY: Absolutely.

14 CHAIRMAN BUNT: Mr. Zimmerman?

15 REPRESENTATIVE ZIMMERMAN: No questions.

16 CHAIRMAN BUNT: Mr. Chadwick?

17 REPRESENTATIVE CHADWICK: No questions.

18 CHAIRMAN BUNT: Mr. Lloyd?

19 REPRESENTATIVE LLOYD: Thank you, Mr. Chairman.  
20 How much money does a farmer make if he agrees to have a  
21 tower placed on his property?

22 MR. FITZPATRICK: I might be best to answer  
23 that. It's fair to say that the rental rates vary from  
24 one site to another, from one area of the state to  
25 another, and I'm only speaking now for Vanguard, which is

1 Cellular One. We have a contingent here, including the  
2 Real Estate Director. The range in the state, depending  
3 on region, is anywhere from \$500 upward towards as much  
4 as \$1,000 in certain key areas a month.

5 What the Committee members should understand is  
6 that at least as far as Vanguard goes, the basic rental  
7 terms are typically a five-year initial term with as many  
8 as nine five-year renewals. So a farmer who allows a  
9 pole with a control building, which our prototype control  
10 building is 12 by 20, a farmer who allows those  
11 improvements on his land on wooded areas subject to the  
12 covenant is looking at a 40 to 50-year space of time.

13 Under our business arrangements -- we're not  
14 secretive about it -- there is an escalator clause in the  
15 lease after five years. Again, that is a negotiated  
16 escalator. But in many instances, the cell site rentals  
17 become a very major part of the farmer or woodland area,  
18 property owner's income, the kind of income that helps  
19 pay a mortgage, take care of farm expenses, educate kids.

20 REPRESENTATIVE LLOYD: I think there is a  
21 technological need to try to accommodate this. I guess  
22 I'm a little bit skeptical as to whether most of my  
23 constituents are going to use this, but I do realize if  
24 it is going to be viable to the network across the state,  
25 you have to be able to drive down the interstate highway

1 in rural areas and use the system. So I understand the  
2 need for that and I understand, from an engineering  
3 standpoint, you just can't put these anyplace. They have  
4 to be at certain locations. But I'm a little bit  
5 concerned that we are going to open up farmers and the  
6 Clean and Green program to a lot of criticism if on the  
7 one hand we say to the farmer, "You get a lower  
8 assessment because we want to value farm land," but on  
9 the other hand, "We're going to give you \$1,000 a month  
10 in income without any penalty."

11 I can certainly understand some folks who  
12 aren't in Clean and Green looking at that and saying  
13 that's not fair. At the very least, that income ought to  
14 be an offset or there ought to be a rollback of the taxes  
15 on the half acre where the tower is located.

16 MR. FITZPATRICK: Actually, we are sensitive to  
17 that dilemma that legislators or somebody conducting a  
18 quick analysis of where Clean and Green is going might  
19 make. We are representing the telecommunications  
20 industry here, and, as you stated, even if a farmer is  
21 not using it, per se, in his truck or in his family car,  
22 if you have a major highway running through your county  
23 or your district, either you do or you don't have cell  
24 service.

25 Mr. Carey hit the nail on the head when he said

1 that we need pinpoint precision location of these towers  
2 so that they can function in a grid.

3 I'm not answering your question how do you  
4 resolve that dilemma. However, we're trying to tell the  
5 Agriculture Committee that here is a very low impact  
6 income opportunity for farmers who need the benefits of  
7 Clean and Green, and we believe that it is such a  
8 negligible impact that the downside is minimal.

9 REPRESENTATIVE LLOYD: Except the amount of  
10 money can be a fairly substantial amount of money.

11 MR. FITZPATRICK: I gave you, Representative, a  
12 pretty full range. I think you're more likely to see the  
13 numbers of, say, \$900 or \$1,000 a month in a more rural  
14 built-up area where real estate values are taxed more  
15 heavily and likely assessed more heavily because of the  
16 building improvements associated with the pole and the  
17 control building. In rural areas it tends to be on the  
18 lower end of that spectrum.

19 REPRESENTATIVE LLOYD: Let me approach this  
20 from a different direction. In the last session, we  
21 passed a law creating some exemptions from Clean and  
22 Green, and it was designed to take care of the situation  
23 actually out in the same part of the state where a local  
24 farmer wanted to donate his land for I think it was a  
25 fire hall or an ambulance -- I think it was an ambulance



1 building -- and we created an exemption which says that  
2 you may donate your land or part of your land for those  
3 purposes or you may donate it to a municipality or a  
4 local government or you may donate it to a non-profit  
5 corporation for recreation purposes, but we did not  
6 automatically say that the rollback of taxes is  
7 suspended. On the contrary, what we said was that it was  
8 up to the local taxing jurisdiction whether or not it  
9 wanted to give the rollback of taxes.

10 The second exemption which we created in recent  
11 years -- and I think it was about two sessions ago at the  
12 request of the Grange, and I think Senator Helfrick was  
13 the sponsor of the legislation -- we said that if you've  
14 got your farm under Clean and Green and you want to put a  
15 farm market on the corner of your farm -- and I think  
16 that it's two acres we said you may use -- that the two  
17 acres or whatever you use for the farm market, that that  
18 portion is subject to the rollback in taxes, but that the  
19 rest of your farm is not.

20 So there we've got two different models, one of  
21 which it is up to the local taxing jurisdiction, the  
22 other of which you pay the rollback in taxes in your case  
23 it would be on a half acre, which then avoids the  
24 argument that there is some kind of unjust enrichment  
25 here of the farmer; and if he ends up making more money

1 paying the rollback taxes on a half acre, which my guess  
2 is he would, that's money in his pocket. But it seems to  
3 me that it is hard to justify giving a lease or an  
4 easement for a cellular tower on a better plane than  
5 using part of the farm for my own farm stand or giving it  
6 to a local fire company.

7 MR. FITZPATRICK: We understand and respect  
8 that issue as well as the possible inconsistency of  
9 treatments of different uses on land subject to Clean and  
10 Green. Again, speaking only for Vanguard Cellular, I  
11 don't think that a rollback on the affected area used by  
12 the cell site is objectionable. We tried to present this  
13 in its initial form as cleanly as we could, but that is  
14 certainly to our company a fair approach to this issue.

15 REPRESENTATIVE LLOYD: I think that probably  
16 would be the simpler thing to do since we within the last  
17 couple sessions have amended the law to give that  
18 treatment to farm stands.

19 Another question just in the language. You  
20 talk about the tract of land being accessible. What does  
21 that mean?

22 MR. FITZPATRICK: Quite simply, because -- and  
23 this situation occurs particularly on large farms or  
24 large wooded areas. Because the telecommunications  
25 engineers pinpoint where the pole or tower has to go, the

1 photogrammetric data that they use will reveal that it  
2 maybe is at a high elevation or a low elevation and not  
3 readily accessible. We want to make sure simply that a  
4 service van can get out to the site. We don't want to  
5 landlock in an accessible piece of property.

6 That language actually, I believe, was a  
7 modification through staff here in the House. The key  
8 point as far as Vanguard Cellular is concerned is that we  
9 have an accessible area not to exceed a half an acre.

10 REPRESENTATIVE LLOYD: But you're not talking  
11 about -- you've got a half acre out in the middle of my  
12 field where you've got your tower. Are you talking about  
13 building a road through my field?

14 MR. FITZPATRICK: No, sir. We're not talking  
15 about public road frontage, if that's your issue.

16 REPRESENTATIVE LLOYD: No, no. I'm talking  
17 about you're going to build a lane? I'm just trying to  
18 understand whether --

19 MR. FITZPATRICK: We want the ability to have  
20 either a compacted farm lane or a gravel driveway from  
21 the public road to the cell site, whether that is 100  
22 yards or 1,000 yards.

23 REPRESENTATIVE LLOYD: That's in addition to  
24 the half acre; that's separate from the whole issue of  
25 the half acre?

1 MR. FITZPATRICK: That is how it reads now.  
2 Typically, that is not what is encountered, I might add.

3 REPRESENTATIVE LLOYD: The final concern that I  
4 have is really one which was raised by the Department of  
5 Agriculture, and that is whether this sets a precedent  
6 for a whole host of other requests to create exemptions  
7 from Clean and Green.

8 I know from sitting on the Farmland  
9 Preservation Board that we have been inundated with  
10 requests from people who wanted to do things on land  
11 which has been preserved through some kind of  
12 conservation easement. One of the examples which comes  
13 to my mind was somebody wanted to put his sand mound for  
14 his on-lot sewage system -- his land wouldn't pass for a  
15 sand mound, but the farmer next-door, who was under the  
16 conservation easement, his land would pass; and we said  
17 no, we didn't think that was consistent with the  
18 easement. And I can see all kinds of requests.

19 What is your view on how we avoid setting a  
20 precedent?

21 MR. FITZPATRICK: I think that this request is  
22 distinguishable from some of the others, because, one, it  
23 is aimed at obtaining county by county uniformity in the  
24 enforcement of the Clean and Green laws, and secondly,  
25 there is -- and I'm not trying to stand up here like I'm

1 a social engineer bringing salvation to the rural areas  
2 of the Commonwealth. These are for-profit companies.  
3 There is no question about that. But it still comes down  
4 to an issue of public convenience, public communication,  
5 and public safety -- there is a uniform benefit enjoyed  
6 by all Pennsylvanians, urban and rural, all the traveling  
7 public, as you mentioned in your earlier comments, and it  
8 is not on an ad hoc, farm by farm or case by case basis  
9 where you're trying to make a little loophole or have a  
10 county assessor look the other way or make a case  
11 specific determination. This is an issue of public  
12 communication, public convenience, and enforcement  
13 uniformity at the county level. That's how I would  
14 distinguish it.

15 REPRESENTATIVE LLOYD: Thank you.

16 MR. FITZPATRICK: Thank you, sir.

17 CHAIRMAN BUNT: Before we move on, I would like  
18 to recognize the Majority Whip of the House of  
19 Representative from Lancaster County. Representative  
20 John Barley has joined us today. Also, two members of  
21 the Ag Committee; from Bedford County, Representative  
22 Dick Hess; and from Adams County, Representative Steve  
23 Maitland.

24 Mr. Colaizzo?

25 REPRESENTATIVE COLAIZZO: No questions.

1 CHAIRMAN BUNT: Mr. Surra?

2 REPRESENTATIVE SURRA: No questions.

3 CHAIRMAN BUNT: Madam Steelman?

4 REPRESENTATIVE STEELMAN: Thank you, Mr.

5 Chairman. I had a couple of questions. If you could  
6 help me understand a little bit better the tax situation  
7 that is experienced by someone who owns land that is not  
8 in Clean and Green and this person is approached by your  
9 company and agrees to lease them part of -- say they own  
10 five suburban acres and they lease a half acre to you,  
11 you put up the communications building on the site. Who  
12 pays the increase in taxes as a result of that  
13 improvement to that piece of land? The property owner is  
14 responsible for that?

15 MR. FITZPATRICK: Yes, Representative. In  
16 answering that question, let me make one point of  
17 information that I think is important. Although these  
18 amendments have evolved so that there is a maximum of  
19 one-half acre, in literally dozens of cell sites in the  
20 last couple of years, there has been no cell site  
21 approaching that size.

22 In fact, if you look at Mr. Carey's prepared  
23 testimony, he has attached Exhibit A, which shows a 100  
24 foot square area, 10,000 square feet. That is really  
25 just a construction easement area so that the trucks and

1 equipment can get in.

2 Typically, these cell sites run between 3,000  
3 and 5,000 square feet, so we're really talking more like  
4 a ninth or an eighth of an acre for the operating cell  
5 site.

6 I think that's important so that the Committee  
7 fully understands. We're not talking about a half acre  
8 as a rule. That was an upward limit, if you will, which  
9 evolved in the discussion process on these amendments.

10 In answer to your questions in urban and  
11 suburban areas, those properties are subject to interim  
12 tax assessment increases and permanent tax assessment  
13 increases by virtue of putting new improvements on the  
14 property. In addition to assessing the improvements in  
15 those areas, the property owners not subject to the  
16 covenants are also subject to possible increases because  
17 there is a rental income opportunity presented.

18 Again, what might be good in Allegheny County  
19 isn't necessarily the same in Lackawanna or Chester or  
20 Clearfield or wherever we are, but the assessors do  
21 increase property values in those instances.

22 REPRESENTATIVE STEELMAN: Thank you.

23 MR. FITZPATRICK: You're welcome.

24 REPRESENTATIVE STEELMAN: No further questions.

25 CHAIRMAN BUNT: Representative Maitland?

1                   REPRESENTATIVE MAITLAND: Thank you, Mr.  
2 Chairman. I don't really have a question for the  
3 testifiers, but I would like to bring the Committee's  
4 attention to the most recent "Scientific American." It  
5 is their "Technology for the 21st Century" issue, and  
6 there is an article on wireless technologies that I'll  
7 copy for the Committee. But it addresses some of Mr.  
8 Lloyd's arguments, I believe. He made a comment that he  
9 wasn't sure if his constituents would use this service.

10                   In 1983, some industry analysts predicted that  
11 fewer than a million Americans would be using cellular  
12 services by the Year 2000, and currently, 20 million  
13 Americans do use them, and there is a 50 percent growth  
14 in the use of cellular services by Americans every year,  
15 and it is projected that by the Year 2001, three-quarters  
16 of the households in this country will use wireless  
17 services. Additionally, they're going more and more  
18 beyond voice communication into data transmission, soon  
19 it will be video, and everything else.

20                   So I think this legislation that we're dealing  
21 with today will have long-lasting, reaching impacts into  
22 the future of our economy. I think this is very  
23 important legislation that needs to be passed.

24                   Finally, I'd just like to say that this is all  
25 governed by computers and computer chips, and therefore,



1 every 18 months, the size of this hardware that is  
2 required shrinks by about half. So where currently you  
3 have towers, air-conditioned shacks, and computer  
4 stations, eventually that is going to be replaced by even  
5 smaller transmission towers, and ultimately, some of  
6 these cellular stations will ultimately be the size of  
7 something like a smoke detector.

8 So I think that the impact on agriculture of  
9 this legislation is going to be very short term in  
10 nature, maybe 20, 30 years out, and then the need for  
11 this kind of land requirement will vanish as the  
12 technology grows.

13 CHAIRMAN BUNT: It think we all recognize that  
14 we're trying to take care of today's technology and make  
15 provisions for it, but in 10, 15, 20 years, we may not  
16 even have a need for these towers. There may be some  
17 other new technology that comes into play, and we're not  
18 talking about a structure that is going to be here  
19 forever. We're talking about something that ultimately  
20 will revert back to the Clean and Green, but we're trying  
21 to take advantage and make provisions for today's  
22 technology.

23 Representative Hess?

24 REPRESENTATIVE HESS: No questions.

25 CHAIRMAN BUNT: Thank you, Mr. Fitzpatrick and

1 Mr. Carey. We enjoyed your testimony very much today.

2 MR. FITZPATRICK: Thank you, Representative  
3 Bunt.

4 MR. CAREY: Thank you.

5 CHAIRMAN BUNT: The next individual to testify  
6 today is Thomas C. Blum, Director of Government Affairs  
7 for Bell Atlantic NYNEX Mobile.

8 Mr. Blum, you may take a seat and you may start  
9 at your convenience.

10 MR. BLUM: Thank you very much. My name is  
11 Thomas Blum, and I'm the Director of Government Affairs  
12 for Bell Atlantic NYNEX Mobile.

13 I have pre-submitted testimony. Actually, I  
14 was wondering how I could say everything I wanted to say  
15 in the ten minutes that was allotted to me, but my  
16 competitors have basically covered everything I wanted to  
17 cover. So the only thing that I'm going to say is that I  
18 do support basically what they said. I do think they pay  
19 a little more than we do to farmers for the use of their  
20 premises, but I don't want to say how much in front of my  
21 competitors, but we pay a little less than they do.

22 One of the positive things about the bill is  
23 that it does limit the towers to one per location, which  
24 means the multiplicity of telecommunication providers are  
25 going to have to share that tower. So that to me means

1 less towers.

2 Now, we have shared towers with other companies  
3 and even with our competitors, but if we don't have to,  
4 the idea is, "Well, I'm here first and I'm not going to  
5 share it with you." But in this case, this basically  
6 forces us to do that, and I think that's good, because  
7 that will result in less towers, not more towers. So  
8 there is a benefit here that wasn't discussed.

9 Other than that, I'd like to open it up if  
10 there are any questions.

11 CHAIRMAN BUNT: That begs an obvious question.  
12 Is there reciprocity that is shared amongst you folks  
13 currently?

14 MR. BLUM: Yes, there is. We basically keep a  
15 count of, "I gave you one. Now you owe me one."  
16 Sometimes it gets two or three on one side, and then we  
17 say, "Wait a second. You've got three of mine and I've  
18 got two of yours."

19 There are some choice locations. In some areas  
20 there is a high mountain peak or maybe even AT&T has a  
21 communications tower, a microwave station, and we would  
22 co-locate on that, but then AT&T, obviously, is in the  
23 wireless communications business now and they keep a  
24 track record, too, so they want to locate on one of ours.  
25 It's a lot easier that way. It's a lot less costly.

1 Occasionally we find a place where we can't put  
2 a tower for whatever reasons, aesthetics mostly, and  
3 we'll go to the local fire department and we'll locate on  
4 their tower. We've done that. So we are very sensitive  
5 to the towers and the fact that not everybody wants these  
6 things in their backyard. Of course, not everybody wants  
7 a fire station in their backyard; at 2:00 in the morning  
8 to have a fire engine come screaming out and wake you up,  
9 but we need fire stations, and obviously we need  
10 communication towers.

11 I think this will help to limit the  
12 proliferation of towers in the future, and to me, that's  
13 very important, especially in rural areas.

14 CHAIRMAN BUNT: Representative Zimmerman?

15 REPRESENTATIVE ZIMMERMAN: Nothing.

16 CHAIRMAN BUNT: Representative Chadwick?

17 REPRESENTATIVE CHADWICK: Thank you, Mr.  
18 Chairman.

19 First of all, let me say that I support this  
20 proposal. In fact, I rather think that opposing this is  
21 a little bit like standing on a beach and putting your  
22 hands out trying to stop a tidal wave. I think this is  
23 coming, but I do want to address an issue raised by Mr.  
24 Lloyd.

25 Should we require a farmer who is receiving the

1 benefits of Clean and Green to kick back some of the  
2 profits he makes from the location of this facility on  
3 Clean and Green land? Does that seem fair to you?

4 MR. BLUM: I will not give you a company  
5 position, because I don't know if we have a company  
6 position on this. I've never been asked that question  
7 before. But I can give you my personal position on this.

8 I'm very much supportive of farmers. I see  
9 farmland around us where I live going up for various  
10 reasons, subdivisions, and stuff like that, and anything  
11 we can do to keep farmland farmland is okay with me; and  
12 I think the fact that someone may get a little bit of  
13 money on this, we're not talking about enrichments where  
14 they're going to go out and trade in their Fords and buy  
15 Mercedes-Benzes or these new Hummer vehicles they're  
16 talking about. It's not that much money.

17 REPRESENTATIVE CHADWICK: Well, Cellular One,  
18 maybe.

19 MR. BLUM: Well, maybe Cellular One.  
20 Hopefully, they'll be able to afford one of our low-  
21 priced cellular phones and maybe send their kids to  
22 college or help to offset the college fund, but we're not  
23 talking about a major enrichment here where somebody is  
24 going to carry bags of money to the bank. That's not  
25 what it is. It's not that much. So I would support it

1 personally for that reason. I don't think it is a major  
2 enrichment, and I think it's just an extra fund that  
3 hopefully will keep the farmland as farmland and keep it  
4 in the family.

5 REPRESENTATIVE CHADWICK: Thank you, sir.

6 CHAIRMAN BUNT: Representative Gordner?

7 REPRESENTATIVE GORDNER: No questions.

8 CHAIRMAN BUNT: Representative Lloyd?

9 REPRESENTATIVE LLOYD: Thank you, Mr. Chairman.  
10 A couple of technical questions that I neglected to ask  
11 the previous witness maybe you can answer for me.

12 This legislation makes reference to wireless or  
13 cellular. I understand what cellular is. What is  
14 contemplated by the term "wireless"?

15 MR. BLUM: Well, basically, we used to call  
16 ourselves cellular, and that's what we had our licenses  
17 from the FCC issued as cellular licenses. They recently  
18 changed that and put everyone together in a common type  
19 of category called commercial mobile wireless services or  
20 commercial mobile radio services. So our licenses have  
21 changed to be a CMRS license, and other wireless people  
22 in there would be wireless radio services; such as paging  
23 would be a wireless radio service, which could also co-  
24 locate on the tower. They don't use as much power or  
25 don't need as high a tower as we do. Specialized mobile

1 radio services would fit into that category, possibly  
2 police and EMF.

3 If we have a tower in a very choice location,  
4 maybe the State Police or the local police or EMF would  
5 also want to co-locate on that tower. And I think this  
6 gives them the right to do that. So it opens it up to  
7 all wireless technologies.

8 REPRESENTATIVE LLOYD: The second technical  
9 question is that there is a third statute, the Preserving  
10 Land for Open Air Space Act of 1967, which allows the  
11 state and allows counties to purchase land for  
12 conservation purposes. There is in that statute a  
13 section somewhat similar to what is in Clean and Green  
14 and the covenant act dealing with utilities.

15 You did not propose to amend that. I'm  
16 assuming that you don't see any -- and this would really  
17 be on land that the government has paid something to the  
18 property owner, either has purchased the land or has  
19 purchased some kind of restriction on the land. You  
20 don't see any need to create this same exemption in that  
21 statute?

22 MR. BLUM: Well, I think you've just  
23 demonstrated that I don't have a monopoly on good ideas.  
24 I think that's a great idea, and I certainly will talk to  
25 my competitors and several other people in the industry

1 to see. There are possibly a lot of choice locations  
2 that the government has that we would want to co-locate  
3 with them.

4 REPRESENTATIVE LLOYD: These would be lands  
5 where, for example, prior to the creation of the State  
6 Farmland Preservation program, I assume that this was a  
7 legal authority for some counties to move forward with  
8 their own conservation. We have in my part of the state  
9 the Western Pennsylvania Conservancy. You have in the  
10 eastern part of the state the Brandywine Conservancy, and  
11 I'm sure there are others, which have gone out and  
12 purchased open spaces. I don't know whether they would  
13 be for or against what you're suggesting. My staff  
14 happened to discover this in doing the research, and I  
15 wanted to find out what your view on that was.

16 Just a couple other comments. I think \$6,000  
17 to \$12,000 a year is a good bit of money, and I just  
18 would suggest that a few months ago there was a  
19 suggestion about that amount of money might be an  
20 appropriate increase in compensation for some folks, and  
21 some people in the public thought that was a good bit of  
22 money.

23 The second comment I would make on that is I  
24 have a lot of constituents who don't make \$12,000 a year  
25 or who barely make \$12,000 a year.



1           The third thing is, and I think there will be  
2           some testimony later today from a witness suggesting that  
3           a rollback on the one-half acre is not an unreasonable  
4           thing to ask for, because that is consistent with what is  
5           done for the farmer's own farm stand and would seem to me  
6           then takes away this argument that somehow there is  
7           unjust enrichment. The last witnesses indicated that  
8           they might be able to agree to something like that. So I  
9           would hope as we move along maybe you would be able to  
10          think through that and agree to it as well.

11           The final comment I would have is it is really  
12          interesting listening to the discussion about how  
13          everything is going to be transmitted by cellular and  
14          wireless, because I thought a couple years ago it was all  
15          going to be transmitted by fiber optics and that that's  
16          why we needed to do that. But now I understand why the  
17          telephone companies aren't speeding along to implement  
18          fiber optics.

19           Thank you.

20           MR. BLUM: Could I possibly comment? I thought  
21          your comment about \$6,000 to \$12,000 is not necessarily a  
22          lot of money, but to some people it is a lot of money,  
23          and I agree, but it is a subjective issue. But I think  
24          to a lot farmers who are thinking about closing down  
25          their farms and getting out of the business, \$6,000 to

1 \$12,000 a year could make a difference; and I think that  
2 is more positive I think than it is negative, but that's  
3 my subjective. I can't prove that.

4 REPRESENTATIVE LLOYD: I understand that. The  
5 problem is, though, explaining to all the people who own  
6 property on which they pay tax and who may be laid off  
7 from a job or may be a senior citizen not able to pay  
8 increased school taxes, why it is that somebody else who  
9 has gotten a tax break, doesn't pay as much per acre as  
10 the other person does, should then also get, without any  
11 kind of a penalty at all, should also get \$6,000 to  
12 \$12,000 a year. It's a question of -- it's not a  
13 question that you have to go back and explain. It's a  
14 question that we have to go back and explain to our  
15 constituents why that is fair.

16 Thank you.

17 CHAIRMAN BUNT: Thank you.

18 Representative Colaizzo?

19 REPRESENTATIVE COLAIZZO: No questions.

20 CHAIRMAN BUNT: Representative Surra?

21 REPRESENTATIVE SURRA: Yes. I'm glad  
22 Representative Lloyd testified that he thought \$12,000 a  
23 year was a lot of money, because I was going to make the  
24 same comment.

25 In your opinion, how would this affect any

1 local ordinances dealing with towers, height and  
2 setbacks? Would this law in your opinion make those null  
3 and avoid or would townships still be able to -- I think  
4 they would.

5 MR. BLUM: I see nothing in the law that has  
6 any exceptions to that or overweighs any decisions of the  
7 counties. The laws that we'd have to comply with, the  
8 FAA height for airplanes and lighting and whatever else  
9 would be there, still exists, and obviously, there are  
10 many environmental laws that would still apply. If it's  
11 an Indian burial ground or something like that, we  
12 couldn't locate on there. I think the law is what it is.  
13 It doesn't preempt any of the existing statutes that are  
14 put there for the protection of the public.

15 REPRESENTATIVE SURRA: Thank you.

16 CHAIRMAN BUNT: Representative Steelman?

17 REPRESENTATIVE STEELMAN: No questions.

18 CHAIRMAN BUNT: Representative Maitland?

19 REPRESENTATIVE MAITLAND: Yes.

20 CHAIRMAN BUNT: And before you proceed, if  
21 you'd supply that book to our staff, we'll make sure that  
22 we make copies for all the members of the Committee.

23 REPRESENTATIVE MAITLAND: Will do. I'd just  
24 again like to address one of Mr. Lloyd's comments about  
25 fiber optics, and that is --

1 CHAIRMAN BUNT: You can't argue with a book,  
2 Representative Lloyd.

3 REPRESENTATIVE LLOYD: Just read the PUC report  
4 on why they're not implementing fiber optics, and now we  
5 know why, because they're going to do cellular.

6 REPRESENTATIVE MAITLAND: Well, they can all be  
7 interconnected, and you can attach a base station for  
8 wireless to fiber optics or to coaxial cable and just  
9 transmit from one to another, but in developing  
10 countries, they're going with wireless stations as  
11 opposed to land lines because they're faster, cheaper,  
12 and more economical in the classic sense of the word  
13 "economy." You can just set up these towers so much  
14 faster than you can lay wire. It is more efficient.

15 CHAIRMAN BUNT: Representative Hess, you need a  
16 book.

17 REPRESENTATIVE HESS: It's in the book. No  
18 questions.

19 CHAIRMAN BUNT: Mr. Blum, thank you very much.  
20 We appreciate it.

21 MR. BLUM: Thank you.

22 CHAIRMAN BUNT: To answer some of the questions  
23 we have about local government, Elam Herr, Director of  
24 Legislation, who represents that Pennsylvania State  
25 Association of Township Supervisor.

1 Elam, good morning and welcome.

2 REPRESENTATIVE BARLEY: Mr. Chairman?

3 CHAIRMAN BUNT: Yes, Mr. Barley.

4 REPRESENTATIVE BARLEY: Would you mind if I  
5 would just share a comment -- I have to go on to another  
6 meeting -- for the benefit of the Committee that may or  
7 may not come out?

8 CHAIRMAN BUNT: Please.

9 REPRESENTATIVE BARLEY: And I apologize for not  
10 being able to review all the testimony ahead of time.

11 Along the line of what Representative Lloyd  
12 mentioned, in some of the rural areas, the question of  
13 whether or not the local constituency will utilize the  
14 services of cellular phones may be questionable.  
15 However, a rather -- I don't know that I'd want to say  
16 unique, but a situation that I don't know we would  
17 necessarily tend to think of, in many of these rural  
18 areas, at least in some communities, we have the plain  
19 folk, Amish and other kinds of sects, and in some of  
20 those areas there are several farms adjacent, which when  
21 the volunteer firemen or ambulance people are out there,  
22 they are relying strictly on their cellular phones to  
23 communicate, because they do not have the overland wire  
24 telephone service, and in some cases they have to drive,  
25 if it's firemen wanting to call in and let their employer

1 know that they are going to be an hour or two hours late,  
2 they have to actually travel maybe a mile or so or have  
3 someone do that to relay a message. So we have a lot of  
4 those blind areas in the rural parts of Pennsylvania  
5 where the cellular phones really do benefit the emergency  
6 management people.

7 I just wanted to point that out. I guess I  
8 could have waited and pointed that out when we got on the  
9 floor of the House, but I thought it was something that I  
10 thought maybe would be a benefit to the Committee. I  
11 tend to think Representative Lloyd's idea of the half  
12 acre or whatever being withdrawn from the preferential  
13 tax consideration does certainly make some sense, for  
14 whatever that is worth.

15 We've gone through recently in Lancaster County  
16 a reassessment. And Representative Zimmerman I think  
17 could attest to the number of questions that have arisen,  
18 because it is really the first time ever Clean and Green  
19 will be utilized in our county to any extent, and so many  
20 of these issues we're familiar with just because we're  
21 answering constituents' questions; and not unlike what  
22 Representative Lloyd was saying, they will come up.  
23 Again, it's for the greater good of the community that  
24 these towers would be located; and so to that extent,  
25 there is an offset.

1 For whatever that is worth, I thought it is a  
2 perspective that maybe wouldn't come out with some of the  
3 other folks.

4 CHAIRMAN BUNT: Added information is worth it  
5 to all of us. Thank you, Mr. Barley.

6 REPRESENTATIVE BARLEY: Thank you, Mr.  
7 Chairman.

8 CHAIRMAN BUNT: Elam, you may proceed.

9 MR. HERR: Thank you, Mr. Chairman. First of  
10 all, I want to apologize. It is that time of the year  
11 where the pollen count seems to overrule my immune  
12 system, so if you'd bear with me. You will also notice  
13 that the agenda stated that either Linda Blake or I would  
14 be here. Well, Linda happens to have the flu, so I'm the  
15 one you're going to have to put up with.

16 As was stated, I am Elam Herr. I am Director  
17 of Legislation with the State Association of Township  
18 Supervisors. I've been there since 1976. This law came  
19 into being prior to when I started with the Association,  
20 and my predecessor worked with the legislature when it  
21 was drafted and implemented. So any amendments to this  
22 law has an effect on our Association and our amendments,  
23 and that is one reason why we're here today.

24 You have our written testimony before you. I  
25 will not read it for you. You can do that at your

1 leisure, but a few points I feel must be brought to the  
2 forefront. Some of them have already been voiced by  
3 Representative Lloyd and others.

4 As was stated earlier, the cellular telephone  
5 industry has grown and probably has grown a lot faster  
6 than most of us and even the industry contemplated, but  
7 it has grown and it has created some problems not only  
8 within the industry, but also to the municipalities and  
9 the citizens those local elected officials represent.

10 One of the concerns that we hear frequently in  
11 the office at this particular time, not so much dealing  
12 with the Clean and Green, but the idea that these towers  
13 are sprouting up in different locations, is the aesthetic  
14 value that we see, these towers up to 200 feet high  
15 outside one's windows.

16 So people are very concerned of what is  
17 happening out there in the community, not only from the  
18 urban aspect of where people would first think that this  
19 issue would come about, but also into the rural aspect  
20 where all of a sudden in a field of corn that might be  
21 six, seven feet high, you have a 200-foot tower standing.

22 House Bills 1868 and 1869 attempt to provide  
23 one solution to this problem of locating the towers. And  
24 why not place the towers in an uninhabited farmland where  
25 the land is adequate and presumably won't bother anyone?



1 Well, that is a nice statement to make, but there is that  
2 concern with the community that is out there. Not all  
3 rural Pennsylvania today is what we think it is or what  
4 it was 20, 30 years ago where you had the nice rolling  
5 countryside and no houses and no development.

6 The Clean and Green Act of '74 and Act 515 of  
7 '66 were created to enable farmers to enter into  
8 agreements with local governments that would provide them  
9 with preferential real estate tax assessments based on  
10 the value of the land for agriculture and open space  
11 purposes instead of the fair market value that would be  
12 placed upon them for other uses.

13 Representative Barley just made a good comment  
14 about Lancaster County and what is happening due to a  
15 reassessment that is taking place down there and the cost  
16 of agricultural land. The farming community has  
17 indicated that the assessed values that are being placed  
18 on this land is just totally outlandish and as such are  
19 considering going in the Clean and Green for the first  
20 time.

21 Now, if you realize, Lancaster County is one of  
22 the foremost, if not the foremost, agricultural county in  
23 the state, and it's only today in 1995 that the county is  
24 really getting into Clean and Green, the preferential  
25 assessments. Why? Because assessments in this

1 Commonwealth have not kept up with what is happening out  
2 there in the real world.

3 When we come back into the issue of 1868 and  
4 1869, if a farmer splits off or transfers any portion of  
5 the land under a Clean and Green covenant for a non-  
6 agricultural purpose, the farmer immediately becomes  
7 subject to rollback taxes.

8 Presently, except for some of the exceptions  
9 Representative Lloyd has mentioned, if you take your land  
10 out of Clean and Green, you're subject to the rollback  
11 taxes for seven years. That is the penalty provision.  
12 The idea behind it was we're going to give you an  
13 assessment benefit, a break, up front. If you get out of  
14 that Clean and Green, then you're going to pay back to  
15 the communities, the school districts for getting out.

16 Under Section 8(d) of the Act, a landowner may  
17 apply up to a maximum of two acres of land under Clean  
18 and Green toward direct commercial sales of  
19 agriculturally related products and activities without  
20 subjecting the entire tract to the rollback taxes.  
21 That's what Representative Lloyd spoke about earlier when  
22 he was saying you could use two acres for farm-related  
23 commercial activities, the farm market, whatever; take  
24 two acres out. That area, the two acres, is subject to  
25 the rollback taxes, but not the entire tract; and we

1 support that, and we supported it when it was put into  
2 it. You're allowing the farmer to use his property for  
3 farm-related activities.

4 So we question why, if Clean and Green Act  
5 penalties apply to any other deviation from the approved  
6 agricultural and forest land uses, there should be a  
7 blanket exemption to allow for the placement of cellular  
8 communication towers. We believe that such an  
9 abandonment of agricultural use should be treated no  
10 differently under this Act than any other commercial,  
11 non-agricultural use.

12 We do not oppose the concept of allowing a  
13 farmer to lease farmland to locate cellular towers, nor  
14 do we oppose making some provision for the farms locked  
15 into Clean and Green restrictions. We do believe that  
16 the land taken out of the approved farm uses and leased  
17 at a profit to the farmers for commercial purposes, the  
18 placement of a cellular tower, must at least be subject  
19 to rollback taxes and the fair market value assessment  
20 for that particular area.

21 It is a matter of principle. Cellular towers  
22 are not public utilities. They represent a valuable for-  
23 profit service and convenience to those who subscribe to  
24 their services. A farmer who enters into a lease with a  
25 cellular telephone company has now entered into a rental

1 agreement with a non-agricultural, commercial entity.

2 It is no longer fair to tax that parcel of land  
3 at a preferential assessment rate attributable to  
4 agricultural land uses. The parcel should be rightfully  
5 assessed at its new value and taxed at that rate; and  
6 since the covenant preserving the land for agricultural  
7 use has, in effect, been broken, the rollback penalty  
8 should apply. The remaining land should be allowed to  
9 continue under the Clean and Green preferential  
10 assessment as long as the land remains in agricultural  
11 uses.

12 As I stated earlier, when you took the two  
13 acres out, that went through the rollback. The remaining  
14 land stayed in Clean and Green. I'm suggesting the same  
15 thing for this particular type of legislation.

16 Our other concern is if we make an exception  
17 for cellular towers, what will be next? There is nothing  
18 special about a cellular tower that would justify such an  
19 exemption that could not apply, say, to radio or  
20 television towers. They are not a public utility, as was  
21 stated earlier. They are regulated by the FCC at the  
22 present time, and as such, it is a concern that we may  
23 have that although we are specifically in these two  
24 pieces of bill looking very narrowly, that that exemption  
25 could be expanded in the future.

1 In summation, we're saying that we agree to  
2 allow the use to take place within Clean and Green  
3 agreements without losing preferential value on the  
4 entire farm as long as the tract of land applied to this  
5 use is subject to rollback taxes and reassessed at a fair  
6 value for the term of the lease.

7 We believe this represents a fair and equitable  
8 alternative to the severe penalties that would apply  
9 otherwise.

10 Two other comments I would like to make. One,  
11 a question was asked earlier. The legislation addresses  
12 the issue of a half acre where the tower and any  
13 facilities would be. One of the other questions asked  
14 was the lanes. There have been situations where fairly  
15 long lanes have been needed to get to where the tower is.  
16 I have one in the township I live in in East Hempfield  
17 Township in Lancaster County where there is a cellular  
18 tower. The lane is over 2,500 feet long. Now, granted,  
19 it is only a single lane. It is still dirt covered, but  
20 it is not used for farming purposes. So the issue of  
21 just being a half acre is something that has to be  
22 considered.

23 The second thing is we raised a question  
24 concerning the issue of other ordinances. I realize that  
25 this legislation, both bills, do not address the issue of

1 zoning, height restrictions or anything like that, and  
2 I'm not indicating that it does address those issues.  
3 What we are saying is we do not want legislation like  
4 this to be used potentially down the road by a cellular  
5 company to say since the legislature has given us this  
6 exemption, that we are exempt from other local  
7 ordinances.

8 I will tell you for a fact that some cellular  
9 organizations have implied that they have the same rights  
10 and privileges as a public utility, although we will  
11 disagree with that because of the rulings of the FCC at  
12 the present time. That is not to say something won't  
13 change in the future.

14 Ladies and gentlemen, I appreciate your being  
15 able to put up with my hay fever, but again, it is that  
16 time of the year. I will try and attempt to answer any  
17 questions that you may have.

18 CHAIRMAN BUNT: Thank you. We have been joined  
19 by Representative Ed Krebs from Lebanon County, as well.

20 Mr. Zimmerman, do you have a question?

21 REPRESENTATIVE ZIMMERMAN: No.

22 CHAIRMAN BUNT: Mr. Krebs, I know it is unfair,  
23 but do you have any questions?

24 REPRESENTATIVE KREBS: No questions.

25 CHAIRMAN BUNT: Mr. Gordner?

1 REPRESENTATIVE GORDNER: No questions.

2 CHAIRMAN BUNT: Mr. Lloyd?

3 REPRESENTATIVE LLOYD: No questions.

4 CHAIRMAN BUNT: Mr. Colaizzo?

5 REPRESENTATIVE COLAIZZO: No questions.

6 CHAIRMAN BUNT: Madam Steelman?

7 REPRESENTATIVE STEELMAN: No questions.

8 CHAIRMAN BUNT: Mr. Maitland?

9 REPRESENTATIVE MAITLAND: No.

10 CHAIRMAN BUNT: Mr. Hess?

11 REPRESENTATIVE HESS: No.

12 MR. HERR: Thank you.

13 CHAIRMAN BUNT: On the agenda today, it also  
14 indicated Linda Blake was joining you today.

15 MR. HERR: No. Last week when we were  
16 finalizing, we flipped a coin who was going to be  
17 healthier this week to do it. I lost.

18 CHAIRMAN BUNT: Thank you.

19 Okay. We are proceeding along pretty good here  
20 this morning. The next individual to testify is John J.  
21 Bell, Esquire. John is counsel for Governmental Affairs  
22 for the Pennsylvania Farm Bureau.

23 Good morning and welcome.

24 MR. BELL: Good morning, Mr. Chairman, members  
25 of the Committee. It is once again a pleasure to be here

1 before this Committee and talk about some legislative  
2 issues. As Mr. Chairman mentioned, my name is John Bell,  
3 and I'm here representing the Pennsylvania Farm Bureau.  
4 The Pennsylvania Farm Bureau is a statewide general farm  
5 organization with a membership in the Commonwealth of  
6 nearly 26,000 farm families, and we very much appreciate  
7 the opportunity to appear before you and discuss these  
8 two bills, House Bills 1868 and 1869.

9 I am not going to read my entire prepared  
10 statement. I believe many of the factual items that were  
11 included in the beginning of my statement have already  
12 been addressed by other witnesses, and I won't belabor  
13 the Committee by repeating what has already been stated.  
14 So I will pick up my testimony, I believe, on page 2 of  
15 my prepared text.

16 As you all pretty well understand, these bills  
17 will provide farmers who are enrolled under Act 319 or  
18 Act 515 with the opportunity, and that's what we are  
19 trying to do, provide farmers with the opportunity to  
20 receive a supplemental source of income on their farms  
21 which will help maintain ultimately their business and  
22 their continuing in business even though the activity  
23 which is being allowed under this legislation is not  
24 agriculturally related. We think that is a very good  
25 idea, and we strongly support the opportunity that is



1 provided to farmers under these bills to perform  
2 activities on Act 515 and 319 farms which will generate a  
3 secondary -- and I emphasize the word "secondary" --  
4 source of income without rollback tax consequences.

5 This afternoon you will be hearing some  
6 testimony on milk pricing in the Commonwealth, and I  
7 believe you will hear some testimony which will hopefully  
8 give you some insights on the income or, maybe more  
9 importantly, lack of income which is being generated on  
10 farms today.

11 It has been very difficult for many  
12 Pennsylvania farmers in recent years to financially  
13 maintain their farm operations because of low prices and  
14 continuously increasing production costs. Many farm  
15 families have needed a second source of income in order  
16 to overcome the depressed financial conditions on their  
17 farms, and many farmers themselves have been forced to  
18 obtain a full-time job in addition to farming full time  
19 in order to make ends meet.

20 We certainly believe it is in the  
21 Commonwealth's best interest to provide farm families who  
22 sincerely want to maintain their farms and maintain their  
23 farm businesses with the ample opportunity to perform  
24 supplemental activities on their farms which will bolster  
25 farm income. Families who cannot financially make ends

1 meet will be forced often to sell off their farms. Farm  
2 sales can often lead to subdivision, as was mentioned,  
3 and non-agricultural development of farmland; and the  
4 loss of farms to development not only hurts the economic  
5 welfare of Pennsylvania agriculture, which continues to  
6 be an important aspect of the Commonwealth's economy, it  
7 will also adversely affect the quality of life that  
8 residents of rural Pennsylvania have enjoyed for so many  
9 years.

10 I believe that is one of the primary reasons  
11 why the common taxpayer is willing to provide a tax break  
12 to farmers and to farmlands, because they appreciate the  
13 fact that those farms exist. They appreciate the fact  
14 that there is a farm next to a development rather than an  
15 industrial complex or a condo complex.

16 We do support House Bills 1868 and 1869 and  
17 believe that the bills are a positive step in increasing  
18 the chances that farm families will be able to continue  
19 ownership and operation of their farms. We question,  
20 however, why the proposed allowance of Act 515 and 319  
21 land for wireless or cellular telecommunications is the  
22 only step that is proposed to be taken. Why should other  
23 supplemental income activities not be allowed on Act 515  
24 and 319 farms if these activities will help the farm  
25 business to continue and will not materially change the

1 makeup of the farm or the quantity or character of  
2 agricultural production that is taking place on that  
3 farm?

4           Why should a farm family be subject to rollback  
5 taxes for conducting supplement commercial enterprises on  
6 the farm such as farm tours, bed and breakfast  
7 operations, quilting and craft shops, bakeries, picnic  
8 and campground operations, petting zoos, hayrides, small  
9 vehicle repair shops, small woodworking and welding  
10 shops, small sawmill operations, and other activities  
11 which you may well see on farms in order for the farm  
12 family to maintain their business if these enterprises  
13 will help the farm family maintain their business and not  
14 affect the farm's production capability? Given the  
15 strict interpretations which have been historically  
16 applied to Act 515 and 319, a farm family's attempt to  
17 conduct any of the enterprises that I mentioned I believe  
18 would trigger rollback tax consequences.

19           Pennsylvania Farm Bureau would encourage this  
20 Committee to consider expanding the scope of supplemental  
21 income activities authorized to be performed on Act 515  
22 and Act 319 farms beyond what is proposed in House Bills  
23 1868 and 1869.

24           We realize in making that statement that we  
25 must proceed with caution in drafting any legislation to

1 significantly expand the range of activities that would  
2 not trigger rollback tax consequences. We certainly do  
3 not want to create a piece of legislation that will allow  
4 those who do not intend sincerely to generate their  
5 primary source of income from farming to avoid tax  
6 responsibilities because of loosely drafted exceptions to  
7 rollback tax requirements, but we do feel that a farm  
8 family needing additional financial help to continue farm  
9 operations should be able to perform needed income-  
10 producing activities that do not materially affect the  
11 integrity of the farm or historic production practices.

12 We are willing to work with this Committee and  
13 with any members of this Committee in drafting effective  
14 but conservative legislation that will accomplish these  
15 objectives.

16 Again, I thank you for the opportunity and my  
17 organization thanks you for the opportunity to testify  
18 before you and share our views, and certainly, I am  
19 available for any questions.

20 CHAIRMAN BUNT: Thank you, Mr. Bell.

21 Mr. Zimmerman?

22 REPRESENTATIVE ZIMMERMAN: No questions.

23 CHAIRMAN BUNT: Mr. Krebs?

24 REPRESENTATIVE KREBS: No questions.

25 CHAIRMAN BUNT: Mr. Gordner?

1 REPRESENTATIVE GORDNER: No questions.

2 CHAIRMAN BUNT: Mr. Lloyd?

3 REPRESENTATIVE LLOYD: Thank you, Mr. Chairman.

4 Mr. Bell, under the state constitution, was it  
5 necessary or is there some language which specifically  
6 authorizes -- I guess authorize is the word I'm looking  
7 for -- the implementation of Clean and Green legislation  
8 or is it just assumed that taxing anything at its use  
9 complies with the uniformity clause?

10 MR. BELL: Well, it is my understanding -- and  
11 it has been a little bit of time since I've looked at the  
12 constitution, but it is my understanding that there are  
13 provisions in the constitution which recognize that  
14 special tax provisions can be authorized or enacted for  
15 agricultural land and I believe open space land.

16 REPRESENTATIVE LLOYD: I looked at your laundry  
17 list of additions that you'd like to make to the bill,  
18 and I don't know whether the folks who are pushing these  
19 bills would see that as something that would slow down  
20 this process or not, but that's for them to decide. Some  
21 of these things strike me as they don't constitute  
22 anything other than just using my farm as a farm. I want  
23 to give a farm tour. To my way of thinking, I don't see  
24 why that ought to be a violation or trigger a rollback;  
25 and if it does, then I could certainly support some

1 change in the law to make sure it didn't.

2 A bed and breakfast, that's a little closer a  
3 call, I guess, but as long as I'm still actively farming  
4 and what I'm selling is an experience that you come and  
5 you stay overnight and you enjoy the farm, that doesn't  
6 bother me.

7 Quilting and craft shops start to get a little  
8 bit closer to the line. Bakeries, depending upon what  
9 you mean by bakeries, could go, in my view, over to the  
10 other side of the line. The same thing with picnic and  
11 campground operations. Petting zoos, assuming we're  
12 talking about farm animals, once again, it seems like  
13 something that is consistent with my operating a farm.  
14 Hayrides is the same thing.

15 A vehicle repair shop, assuming that is for  
16 commercial, it's like I hang out my shingle and I do car  
17 inspections and so forth and I fix people's cars rather  
18 than as a repair shop for my own vehicles only, seems to  
19 me to be off in the area of competition.

20 One of the concerns that I have is if we're  
21 going to draft an amendment to address the kind of things  
22 that you're talking about, that we not create a situation  
23 in which -- and I can take you right down the road, right  
24 down Route 31 east of Somerset, and I can envision a  
25 garage that has a sign hanging out there that they do

1 inspections. That guy pays property tax on that garage  
2 and on the land on which the garage is located. I would  
3 not want to create a situation in which on the other side  
4 of the road there is a farm and the farmer can build a  
5 garage and hang out his shingle and he doesn't have to  
6 pay property tax; he pays property taxes as though that  
7 were still a farm. I'm not sure whether that would be  
8 consistent with the constitution, and I would think that  
9 we'd want to look at that pretty carefully. But I do  
10 think it creates an element of unfairness.

11 I understand there is going to be a major push  
12 this fall to move legislation on non-profits and to try  
13 to make clear when a non-profit is tax-exempt and when  
14 they're not tax-exempt, and that has been debated for a  
15 number of years, trying to get everybody on the same  
16 page. At the same time, we're trying to fix a problem  
17 there for people who are objecting to competition for  
18 non-profits, and on the other hand, we go over and we  
19 allow farmers to do some things that their neighbors, who  
20 are not farmers, get taxed at a different rate for  
21 essentially the same type of facility.

22 MR. BELL: Okay. I think in response to your  
23 concerns -- and I believe some of them carried to their  
24 extreme can be very legitimate concerns -- I think you  
25 need to keep in mind that the current provisions of Clean

1 and Green are fairly clear and fairly broad as they apply  
2 to rollback tax consequences. Where any landowner in  
3 Clean and Green uses any portion of the landowner's  
4 property for an ineligible use -- and that can be the  
5 size of this table -- rollback tax consequences apply to  
6 the entire farm.

7 So if under the list that I provided in my  
8 prepared statement, if a county assessor would decide  
9 that a hayride operation is not a direct farming  
10 practice, that county assessor could, in my humble  
11 opinion, potentially assess rollback tax consequences.

12 Historically, the courts have interpreted  
13 activities which are not directly related to agriculture  
14 against the landowner even where those activities are  
15 being performed for a very limited period of time.

16 I believe there was a case in Montgomery County  
17 where the farmer -- and I don't know all the facts, but  
18 the farmer allowed his farm or a portion of his farm to  
19 be used for a day, and I'm assuming a day in which there  
20 really wasn't a whole lot of production occurring on the  
21 area where this activity was being performed, to be used  
22 as a folk festival. The court decided that case, even if  
23 it was one day, that one day was sufficient to trigger  
24 rollback tax consequences.

25 I recognize your concern about the garage or



1 welding shop where that farmer is using the farm as a  
2 smoke screen for conducting the garage. And certainly in  
3 that situation, I know I wouldn't support that and I  
4 don't believe my Association would support that. I guess  
5 it becomes a matter of degree.

6 When I'm talking about a bakery, I'm talking  
7 about a small operation that may support a quilt or craft  
8 enterprise in which the quilting or crafting is done by  
9 the farm family or a couple of farm families to generate  
10 some supplemental income.

11 I certainly wouldn't want to see any of those  
12 activities that I listed as being the primary or the sole  
13 source of income from that farm, and that's why in my  
14 prepared statement I recognize that we need to proceed  
15 with caution in drafting legislation as it applies to  
16 supplemental sources of income. We would not want to see  
17 the supplemental source of income be the primary source  
18 of income. However, we do feel it is very meritorious if  
19 we can provide an opportunity for a quilting operation to  
20 occur on the farm or some other operation to occur on the  
21 farm which will get farmers through some difficult  
22 financial times and difficult financial periods and  
23 maintain the farm and ultimately maintain that farm an  
24 open space. It works to the benefit of not only farmers,  
25 but everyone.

1 REPRESENTATIVE LLOYD: I appreciate your  
2 amplification of that, and I think we would have to be  
3 pretty careful in drawing the line. I guess my emphasis  
4 would be where you stated you're willing to work with us  
5 to draft conservative legislation, and my emphasis would  
6 be on the word "conservative."

7 Thank you, Mr. Chairman.

8 CHAIRMAN BUNT: Thank you. Mr. Bell, I believe  
9 I have one question. When you indicate the drafting of  
10 conservative legislation as well, you're talking about an  
11 expansion of the current bill. Is that what you're  
12 talking about?

13 MR. BELL: Yes.

14 CHAIRMAN BUNT: As to your remarks on the  
15 legislation a heard some earlier testimony  
16 about the acc ou see that as being  
17 subjected to r ons as well?

18 MR. at's a good question, and I  
19 think it depends on the situation. I mean, a farmer who  
20 is given this opportunity, you know, with rights have to  
21 come responsibilities; and while we're providing the  
22 farmer with the , receive a supplemental  
23 source of incom eeds to take some  
24 responsibility in assuring that location of a wireless or  
25 cellular communications site or the area or means of

1 access does not disrupt his farm operation.

2 I guess the bottom line to your question is I  
3 would hate to see there be an evaluation of how much  
4 square footage of an access road is subject to rollback  
5 taxes. Certainly, if there is going to be an amendment  
6 to these bills that would impose a limited form of  
7 rollback taxes, I would encourage this Committee to limit  
8 its effect to the area which is being leased rather than  
9 the access points, because you may have a situation where  
10 -- and I'd hate to see this -- you may have a situation  
11 where a farmer and the cellular company would agree to  
12 having reasonable access, and you do see that type of  
13 provision in oil and gas leases. The question of where  
14 that access occurs is left open, and the reasonable types  
15 of access could change from year to year depending on the  
16 problem.

17 CHAIRMAN BUNT: But you indicate it would  
18 restrict the opportunity of the farm. Does that same  
19 restriction exist on a lane to enter the farm or a tree  
20 row separating various parcels within the farm?

21 MR. BELL: If that road, I guess, is  
22 established and it is specifically established as the  
23 point of access, it probably doesn't, assuming that the  
24 farmer and the cellular company can agree as to a  
25 specific point of access. But where there isn't

1 agreement, the farmer, unfortunately, may not have  
2 thought this problem through, and what may seem to be a  
3 quick or reasonable form of access to a farmer may not be  
4 a reasonable form of access to the cellular company.

5 I don't know if I've answered your question,  
6 but there isn't a situation where in every case an  
7 identifiable road is established.

8 CHAIRMAN BUNT: I'd appreciate perhaps maybe if  
9 you folks and the Township Supervisor Association and the  
10 industry get together and perhaps maybe think about that  
11 a little bit as the access road, because we presently  
12 have utilities and have access to their  
13 phone lines, to the es, and I don't know if  
14 it involves an improved situation all the time.

15 I guess we have to clarify what access means,  
16 but to me it meant some unimprovement, some compacted  
17 dirt, if you will, to access these stations. So perhaps  
18 maybe we can further define that.

19 MR. BELL: At least in my understanding of  
20 common law and the interpretation of courts, the courts  
21 have applied to the term "access," they've applied the  
22 term generically to recognize that the cellular company  
23 or the utility would have, quote, "reasonable access."  
24 While that is understood in theory, that may not be well  
25 understood in fact.

1 CHAIRMAN BUNT: So we need to define  
2 accessibility versus access and what forms of development  
3 constitute access.

4 MR. BELL: Okay.

5 CHAIRMAN BUNT: Thank you very much.

6 REPRESENTATIVE STEELMAN: Mr. Chairman, I have  
7 some questions.

8 CHAIRMAN BUNT: I'm sorry. I apologize.  
9 Representative Steelman?

10 REPRESENTATIVE STEELMAN: Thank you, Mr.  
11 Chairman.

12 Mr. Bell, I'm afraid when I looked at your  
13 testimony and the extensions that you are suggesting that  
14 we might consider making to these bills, which are very  
15 specifically drafted with regard to cellular  
16 communication towers, I was inevitably reminded of the  
17 adage that if you let the camel's nose into the tent, the  
18 rest of the camel is likely to follow before very long.  
19 Because it seems to me, as Representative Lloyd said,  
20 that as you go through this list, you're moving farther  
21 and farther away from uses that are congruent with an  
22 agricultural operation, and you're also moving into  
23 larger and larger areas of commercial operation in and of  
24 themselves.

25 I would like to focus on two questions. One of

1       them is about the idea of a bed and breakfast operation  
2       on a farm. Now, would you be suggesting that someone who  
3       has a working farm that receives a preferential  
4       assessment under Clean and Green, who decided to open up  
5       a bed and breakfast in the farmhouse, should not as a  
6       result see any increase in their property taxes even  
7       though they're now providing this commercial service?

8               MR. BELL: I'll answer your question by stating  
9       that Clean and Green or Act 515 assesses land and not  
10       necessarily buildings to lands. I would think in order  
11       to operate a bed and breakfast the farmer would need to  
12       expand his current house or create another housing  
13       structure, so the county and the township and the school  
14       district would be able to assess those additional  
15       structures or those expansions which would need to occur.

16              Also, I think in response to your comments,  
17       which predicated your first question, and as I've stated  
18       to Representative Lloyd, the list of activities that I am  
19       suggesting in the prepared statement is not a list of  
20       activities which are conducted in a vacuum. They are  
21       conducted for the purpose of supplementing necessary  
22       income for the primary income of farming in order to  
23       maintain the farming business. And again, I am not  
24       advocating that these activities be conducted in  
25       legislation that would allow such activities without some

1 parameters being placed on those activities.

2 I'm also reminded of statements that a number  
3 of farmers have made to me, some of which have been  
4 critical of the Farmland Preservation program, and I'm  
5 certainly not one of those critics. They've stated to me  
6 if you all are very serious about farmland preservation,  
7 the best way to preserve farmland is to give farmers a  
8 profitable price for their operation. Well,  
9 unfortunately, due to a number of economic factors, that  
10 hasn't been the case in recent years.

11 It would be nice to manipulate the economy in a  
12 way that would guarantee farmers a very good return on  
13 their production. That's just not reality in recent  
14 years. And what we are looking for are avenues which  
15 will provide a secondary -- and again, I emphasize the  
16 word "secondary" -- source of income, which will  
17 ultimately maintain the primary income business of  
18 farming.

19 REPRESENTATIVE STEELMAN: Moving away from the  
20 difficult philosophical question as to whether it is the  
21 business of government to guarantee anyone a profit on a  
22 business that they choose freely to take up, I would like  
23 also to address this question of what do we mean by  
24 supplemental income. You're saying that we ought to  
25 expand the opportunities of farmers to engage in various

1 income-producing opportunities as long as -- and I think  
2 I've heard you say this twice now -- as long as those are  
3 supplemental and not primary income-producing activities.

4 Who is going to do the auditing? Who  
5 determines when a supplemental income from, say, a  
6 sawmill or the bed and breakfast operation becomes the  
7 primary income? Does the farmer have to keep a running  
8 tally of what's going on through the year and when his  
9 supplemental income threatens to overtake his primary  
10 income close down the supplemental operation until he has  
11 made more money selling his farm products?

12 I think we're getting into a maze of  
13 accountancy here that is not -- I mean, I don't think the  
14 system is even set up to handle it, and I can't imagine  
15 how we would.

16 MR. BELL: Well, I will state that current law,  
17 the current Clean and Green statute, places the  
18 responsibility upon the landowner himself or herself to  
19 notify the county assessor's office when an ineligible  
20 use occurs. So I would think we could apply the same  
21 principle in placing upon the landowner the  
22 responsibility of identifying when a supplemental source  
23 of income becomes a primary source of income, which leads  
24 me to, I guess, a question that may need to be answered.  
25 What are we talking about when we're talking about



1 income? Are we talking about net income or gross income?

2 I think in many situations, although the bed  
3 and breakfast may become the primary source of the  
4 farmer's net income -- that could happen -- it will  
5 definitely not be the case that the bed and breakfast  
6 will be the primary source of the farmer's gross income.

7 Many farms generate a fair amount of gross  
8 income but don't provide a fair amount of net income.

9 CHAIRMAN BUNT: I could be wrong, but I think  
10 we're talking apples and oranges here. I think in the  
11 view of the prime sponsor and the majority of the members  
12 of the Committee, we're viewing the entire cellular  
13 industry, whether it is as defined or not, in our mind,  
14 we're saying it's a utility for all practical purposes,  
15 the same as telephone, electricity, water and sewer; and  
16 under the PUC, I believe, eminent domain, they would have  
17 that utilitarian use of that ground that has a covenant.  
18 But in this particular instance, the cellular industry  
19 does not. They have elected not to have eminent domain.  
20 But still, we're all of the general opinion that they  
21 are, for all practical purposes, a utility, and in some  
22 areas of the Commonwealth the only utility available.

23 So I don't want to deviate too much and too far  
24 from where we're at on this legislation. I understand  
25 where you're coming from, but I think we all, if we own a

1 farm and we make application through 319 or 515,  
2 understand exactly what it is. It is a covenant.

3 MR. BELL: I appreciate your comments.

4 CHAIRMAN BUNT: And we give up something to  
5 enter into that covenant in order to get something, which  
6 is a reduced taxation.

7 Now, by adding the cellular industry and the  
8 construction of towers and shacks, we then create an  
9 income-producing aspect of that availability of that  
10 utilitarian use on that half acre, which makes it income-  
11 producing; they get income. We're now going to be  
12 looking at a rollback of taxation on that half acre.

13 Now, I don't know if we want to get into a new  
14 use, as you aspire us to pursue, perhaps, with an auto  
15 repair shop. And everybody will decide what constitutes  
16 an auto repair shop. If I fix it for myself, it's not a  
17 repair shop. If I fix it for my next-door neighbor or  
18 member of my church, it is not. If I put a shingle out,  
19 it is. If I put a little sign out that I sell homemade  
20 quilts, most farm people will produce or know how to  
21 produce quilts and will make them available for their  
22 friends or their relatives, what have you, but there are  
23 other people who, once they put a quilt sign up, means  
24 that they can go out in the commercial market or the  
25 wholesale market and buy quilts from all over. Then they

1 need a building to put it up, and then they have flashing  
2 lights and what have you.

3 We really don't want to get into this, Mr.  
4 Bell.

5 MR. BELL: I understand that, Mr. Chairman. I  
6 don't think my suggestion to this Committee is a  
7 suggestion which needs to be --

8 CHAIRMAN BUNT: A bed and breakfast doesn't  
9 involve building an addition on a house or a new separate  
10 unit either. In my opinion, if you wanted to have a bed  
11 and breakfast with the existing facility that you're  
12 living in and somebody is living upstairs and you're  
13 charging them rent, it's a fine line. I would agree with  
14 Mr. Lloyd; it's a fine line. But once you build a new  
15 addition or a new construction to accommodate that, then  
16 it constitutes a new use, in my opinion.

17 MR. BELL: I don't want this testimony that I'm  
18 presenting to be a thorn in the side of anyone here. I  
19 don't want this Committee, if it feels compelled to move  
20 House Bills 1868 and 1869 with some tweaking, I don't  
21 want to discourage the Committee from doing so. I would  
22 like to see this Committee, though, if it would be  
23 compelled to move these bills without consideration of my  
24 suggestions in the context of these bills, I would still  
25 like to see this Committee at least consider the

1 possibility of other legislation that would try to expand  
2 the scope or at least identify clearly that some of these  
3 supplemental activities, maybe not all of the ones that  
4 I've listed, are definitely permitted to be performed.

5 REPRESENTATIVE STEELMAN: Thank you, Mr.  
6 Chairman, for reinforcing my conviction that these  
7 extension are well beyond even the underlying sense of  
8 the bills that we're discussing today. I have no further  
9 questions.

10 CHAIRMAN BUNT: For the opportunity of those  
11 who have provided previous testimony, either Mr. Herr or  
12 Mr. Fitzpatrick, if anybody would like an additional  
13 moment to expand on some of the testimony that they've  
14 heard.

15 Mr. Fitzpatrick?

16 MR. FITZPATRICK: Thank you, Representative  
17 Bunt. I will take one minute just for two points of  
18 clarification. The first is on the issue of  
19 accessibility and the use of the term "accessible" in  
20 both proposed amendments.

21 Mr. Bell raised some issues, which, as a fellow  
22 member of the Bar, I find interesting from an easement  
23 law and common law standpoint. But I just would suggest  
24 to the Committee that it really isn't and doesn't get as  
25 complicated as that.

1           The cellular companies, on average, there are  
2 requirements that they inspect their facilities, but  
3 basically, these are about monthly checkups of an  
4 unmanned facility to make sure that the door lamp light  
5 bulb is working, that the local youth haven't deposited  
6 their Budweiser cans inside the fence, and just to make  
7 sure that the computer and telephone switching equipment  
8 is working. These are unmanned facilities. It doesn't  
9 require a lot by way of access.

10           Whether it is a farmer's property, whether it's  
11 a supermarket or shopping center, whether it's a suburban  
12 residence, their van, be it a Caravan or an Aerostar,  
13 goes in the driveway and departs at some point to go to  
14 the cell site. It's just not a big issue; and if the  
15 proper drafting requires, I think maybe that "area not to  
16 exceed one-half acre" simply be recharacterized as "an  
17 accessible area not to exceed."

18           I just don't want to get off on a tangent,  
19 because it isn't a big deal. It's a matter of contract  
20 and lease between the property owner and the cellular  
21 companies.

22           The second point was on these exceptions, if  
23 cellular and wireless communications receive this limited  
24 exception, will other similar entities try to pile on? I  
25 would just note -- I sound like I'm in a court of law --

1 a case decided by our Commonwealth Court in 1976, which  
2 is still very good law, which was the Pennsylvania Public  
3 Utility Commission versus WVCH, addressed this issue.  
4 It's not a new one.

5 In that case, WVCH, which is an AM-FM radio  
6 station located in Middletown, attempted to piggyback on  
7 some prior case law whereby Commonwealth Court  
8 acknowledged that although cellular phone companies are  
9 not public utilities as a defined statutory term, they  
10 are, as Representative Bunt pointed out, indeed utilities  
11 accessible to the public, an important part of the  
12 communication network. So our Commonwealth Court has  
13 already nipped that issue in the bud.

14 I realize the legislature and the judiciary  
15 have two different functions, but that is not a new  
16 topic, and radio and TV stations do not enjoy and haven't  
17 enjoyed at least in this arena the same treatment that  
18 the communication industry, specifically cellular, has  
19 enjoyed.

20 That's my only points of clarification. I  
21 thank you for your extra time.

22 CHAIRMAN BUNT: Thank you, Mr. Fitzpatrick. I  
23 think we will try and make an attempt to define access or  
24 accessibility. I think Elam Herr picked it up, and we'll  
25 try to define that.

1           In addition, Gwen Bower is here. She is the  
2       Legislative Liaison for the Department of Agriculture.  
3       The Department of Ag did not request to testify here  
4       today. They did send me a letter. They do not oppose  
5       the provisions in these measures, but they did have a  
6       specific item that they thought perhaps maybe we ought to  
7       take a look at.

8           The term "split-off" that is used within the  
9       context of the bill is used to describe the transaction  
10      in question. They would like to see us define that or  
11      change the word "split-off" and use the word "lease"  
12      instead. So perhaps maybe we can sit down and discuss  
13      that.

14          A copy of the Department of Ag's letter should  
15      be provided to all those who testified, and I'll instruct  
16      staff to do so. We'll see if we can further define that  
17      as well. The bottom line is, "Therefore, the term  
18      "lease" rather than "split-off" is preferable" within the  
19      context of the Bill.

20          That concludes this session. We will meet  
21      again at 1:30 p.m., but more as an informational meeting  
22      on milk pricing. Thank you.

23          (Whereupon, at 11:50 p.m., the public hearing  
24      was concluded.)

25                               \*\*\*

## C E R T I F I C A T E

I hereby certify, as the stenographic reporter,  
that the foregoing proceedings were taken  
stenographically by me, and thereafter reduced to  
typewriting by me or under my direction; and that this  
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Sandra Milus Brown

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