BEFORE THE STATE OF NORTH CAROLINA UTILITIES COMMISSION RALEIGH

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Blue Ridge Electric	Membership
Corporation,	
	Complainant,
	V.
Charter Communica	ations Properties,
	Respondent.

DOCKET NO. EC-23, SUB 50

RESPONSIVE TESTIMONY

)

OF

PATRICIA D. KRAVTIN

Submitted on Behalf of

Charter Communications Properties, LLC

October 30, 2017

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1		I. INTRODUCTION, QUALIFICATIONS AND SUMMARY
2	Q.	Please state your name, position and business address.
3	A.	My name is Patricia D. Kravtin. I am principal and owner of Patricia D. Kravtin
4		Economic Consulting, a private practice specializing in the analysis of
5		communications and energy regulation and markets. My business address is 500
6		Atlantic Ave., Unit 19A, Boston, Massachusetts, 02210.
7	Q.	On whose behalf is this testimony being presented?
8	A.	My testimony is offered on behalf of Charter Communications Properties, LLC
9		("Charter").
10 11	Q.	Can you please summarize the details of your educational background and professional experience?
12	A.	I received a B.A. with Distinction in Economics from the George Washington
13		University. I studied in the Ph.D. program in Economics under a National
14		Science Foundation Fellowship at the Massachusetts Institute of Technology
15		(M.I.T.), completing all course requirements for the Ph.D. degree and passing oral
16		and written examinations in my chosen fields of study: government regulation of
17		industry, industrial organization, and urban and regional economics. My
18		professional background includes a wide range of consulting experiences in
19		regulated industries. Between 1982 and 2000, I was a consultant at the national
20		economic research and consulting firm of Economics and Technology, Inc. (ETI)
21		in that firm's regulatory consulting group, where I held positions of increasing
22		responsibility, including Senior Vice President/Senior Economist. Upon leaving
23		ETI in September 2000, I began my own consulting practice specializing in
24		telecommunications, cable, and energy regulation and markets. A detailed

1	resume summarizing my training, previous experience, and prior testimony and
2	reports is provided as Exhibit PDK-1 to this testimony.

Please describe your experience of particular relevance to this proceeding.

3

Q.

4	A.	Over the course of my career, I have been actively involved in a number of state
5		and federal regulatory commission proceedings involving rates charged by
6		utilities in exchange for access to poles, ducts, conduits, and rights-of-way. Many
7		of the proceedings in which I have served as an expert have involved the
8		calculation of just and reasonable pole attachment rental rates. Through the
9		course of my involvement in these proceedings, I have substantial experience in
10		applying regulated rate formulas.

11 I have served as an expert on pole attachment matters in proceedings involving 12 investor-owned electric utilities ("IOUs"), non-profit consumer-owned utilities 13 (cooperatives or "Coops"), municipally owned utilities, as well as incumbent local 14 exchange carriers ("ILECs"). I have testified before various state (and provincial) 15 regulatory commission including this Commission, the Connecticut Department 16 of Public Utility Control, the New Hampshire Public Utilities Commission, the 17 Kentucky Public Service Commission, the Arkansas Public Service Commission, 18 the Public Utilities Commission of Texas, the New Jersey Board of Public 19 Utilities, the Virginia Corporation Commission, the Ohio Public Utilities 20 Commission, the Massachusetts Department of Telecommunications and Cable, 21 the Wisconsin Public Service Commission, the Georgia Public Service 22 Commission, the South Carolina Public Service Commission, the Public Service 23 Commission of the District of Columbia, the New York Public Service

	Commission and the Ontario Energy Board. I have also testified on these and
	related matters before state and federal courts in Maryland, Florida, New York,
	California, Tennessee, Washington, and North Carolina.
	In addition, I have submitted reports on pole attachment rates, terms and
	conditions in numerous proceedings before the Federal Communications
	Commission ("FCC"), including its seminal 2010 pole rulemaking proceedings,
	Implementation of Section 224 of the Act; A National Broadband Plan for our
	<i>Future</i> , as well as its 2007 predecessor. ¹
	I have been actively involved in the area of broadband deployment, having
	testified extensively on the matter. In addition to having authored a number of
	reports on the subject, I participated as a grant reviewer for the Broadband
	Technology Opportunities Program ("BTOP") administered by the National
	Telecommunications and Information Administration ("NTIA").
Q.	Are you familiar with the rules governing pole attachment rates in North Carolina?
A.	Yes. I am familiar with the applicable law, North Carolina statute, N.C.G.S.
	§ 62-350, as enacted in 2009, and amended in 2015, ² to address potential abuses
	of third party communications attachers by pole-owning electric membership
	Q. A.

¹ See Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, WC Docket No. 07-245, Order & Further Notice of Proposed Rulemaking, 25 FCC Rcd 11864 (2010); Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments, WC Docket No. 07-245, Notice of Proposed Rulemaking, 22 FCC Rcd 20195 (2007).

² It is my understanding that Section 62-350 as amended "deleted an express reference to the federal pole attachment rate methodology." However, it is my further understanding it states "the Commission may consider any evidence presented by a party, including any methodologies previously applied." *See Blue Ridge EMC Electric Membership Cooperation v. Charter Communications Properties LLC*, N.C.U.C. Docket No. EC-39, Sub 44, Answer to Complaint and Counterclaims at 12 (filed January 31, 2017) ("Charter Answer and Counterclaims"), *citing* SB 88.N.C. Session Law 2015-119 § 7 (2015).

13	Q.	What is the purpose of your testimony?
12		relating to Union Power EMC.
11		submitted responsive testimony before this Commission on pole related matters
10		Carteret-Craven, Jones-Onslow, and Surry-Yadkin EMCs. On June 15, 2017, I
9		direct testimony before this Commission on pole related matters relating to
8		subsidy from the pole owner to the attacher." ⁶ On May 30, 2017, I submitted
7		compensation" ⁵ and "a reasonable means of allocating costs without creating a
6		those two cases found the FCC Rate to provide "just and reasonable
5		involving Rutherford EMC (2013) and the Town of Landis (2010). ⁴ The Court in
4		brought pursuant to this statute before the North Carolina Business Court
3		consistent with the public interest. ³ In particular, I participated in prior litigation
2		providers have access to poles at just and reasonable rates, terms, and conditions
1		corporations ("EMCs") and municipal utilities, and to ensure communications

A. I was asked by counsel for Charter to offer my opinions on matters relating to the
pole attachment rental rates Blue Ridge Electric Membership Corporation ("Blue
Ridge" or "BREMC") charges Charter and to respond to direct testimony filed by
BREMC on October 16, 2017, specifically the testimony of Mr. Wilfred Arnett,
and to a more limited extent Mr. Gregory Booth. In particular, I was asked to
present specific calculations of the maximum just and reasonable pole attachment

³ See id. at 12.

⁴ See Time Warner Entertainment – Advance/Newhouse P'ship vs. Town of Landis, No.10 CVS 1172, 2014 WL 2921723 (N.C. Sup. Ct. June 24, 2014); Rutherford Elec. Membership Corp. v. Time Warner Entertainment – Advance/Newhouse P'ship, No. 13-CVS-231, 2014 WL 2159382 (N.C. Super. Ct. May 22, 2014), aff'd 771 S.E.2d 768 (N.C. Ct. App. 2015).

⁵ See Charter Answer and Counterclaims at 13, *citing Rutherford*, 2014 WL 2159382 at *9.

⁶ See Charter Answer and Counterclaims at 14, *citing Landis*, 2014 WL 2921723 at *10.

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rental rates that BREMC may charge Charter, and of the resulting overcharges
due to be refunded to Charter for the relevant true-up period, ⁷ pursuant to the
applicable law, N.C.G.S. § 62-350 ("Section 62-350").
My testimony will explain why in my opinion, as an economist with substantial
experience in determining just and reasonable rates for pole attachment rentals, an
economically appropriate just and reasonable rate that pole owning EMCs in
North Carolina such as Blue Ridge may charge communications providers for
pole attachment rentals (and accordingly serve as the basis of overcharges due to
be refunded to Charter) should be calculated using the FCC Rate methodology-
as implemented by the FCC pursuant to §224(d) of the Communications Act of

- 1934 ("Act" or "Section 224")⁸ and as adopted by the overwhelming majority of 11 12 states certified to regulate pole attachments-rather than the outlier TVA method
- 13 employed by BREMC witness Mr. Wilfred Arnett. In support of my opinion, my
- 14 testimony explains the underlying history and continued strong economic and
- 15 public policy rationale for the FCC Rate and its proportionate cost-based
- 16 allocator, as juxtaposed against the many shortcomings of the highly flawed TVA
- 17 method.
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Q. Please summarize your testimony.

19 A. The approach I have taken in determining maximum just and reasonable rates for 20 BREMC pole attachments pursuant to Section 62-350—the widely accepted FCC 21 Rate methodology—adheres closely to the key economic and public policy

⁷ I understand the relevant true up period to be from the present date back to the date immediately following expiration of the 90-day negotiation period triggered by Charter's written request, or the termination of the prior pole agreement, whichever is later.

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1	principles of effective pole rate regulation. First and foremost among these
2	considerations are the essential facility characteristics of third party pole
3	attachments, the economic principles of cost causation and subsidy-avoidance
4	underlying cost-based rates, and the public interest benefits that ensue from the
5	efficient and productive use of surplus capacity on the pole owner's existing
6	utility pole network. By contrast, the TVA approach employed by BREMC
7	suffers from a number of flaws that from an economic and public policy
8	standpoint are at odds with effective pole regulation in North Carolina pursuant to
9	Section 62-350. This testimony addresses and fully explains these and related
10	points in the following sections:
11	Purpose of Effective Pole Attachment Rate Regulation: The purpose of effective
12	pole regulation is to protect cable and other communications attachers, for whom
13	utility poles are essential bottleneck facilities, from being charged per unit
14	attachment rates far in excess of a cost-based, competitive market level rate and
15	from other harmful monopoly type practices of pole owning utilities. Because
16	third party attachers generally occupy otherwise vacant space on a pole and their
17	attachment does not displace or preclude another, the true economic cost of
18	attachment is very low. (In the situations where surplus space does not presently
19	exist, under a routine process referred to as make ready, attachers separately
20	reimburse the owner up to the full costs of replacing the pole in order to
21	accommodate their attachment). Accordingly, charging excessively high
22	recurring pole attachment rates operate akin to a non-cost based tax on

⁸ See 47 U.S.C § 224(d), 47 C.F.R. § 1.1409(e)(1).

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communications and broadband services, and like a tax, creates a number of
 distorting impacts on the market for communications services to the overall
 detriment of the public good.

4 Applicability of Effective Pole Rate Regulation to EMCs: From an economic and 5 public policy perspective, the same structural market conditions underlying the 6 need for effective economic regulation of pole attachments apply to EMCs such 7 as Blue Ridge regulated pursuant to Section 62-350 as they do to IOUs 8 historically subject to Section 224 regulation in North Carolina. EMCs use the 9 same type of plant, technology, and production techniques to provide electricity 10 service to subscribers in the same basic manner and under the same basic 11 operating conditions as IOUs. EMCs and IOUs have the same inherent 12 opportunity and incentive to leverage their monopoly ownership and control over 13 the existing distribution network of poles to extract excessive rates and impose 14 other unreasonable terms and conditions of access on communications attachers 15 requiring access.

16 The Recommended Widely Accepted FCC Rate Formula Methodology: The FCC 17 Rate formula produces efficient, predictable, easy to administer, cost-based just 18 and reasonable rates that are subsidy-free and fully compensatory to the pole 19 owner. The FCC Rate, adopted by the overwhelming majority of states that 20 regulate pole attachments, is widely used and accepted. The FCC Rate has 21 received strong endorsements by NARUC and the National Association of State 22 Utility Consumer Advocates ("NASUCA"), national associations representing the 23 NCUC's peer state regulators and public advocates respectively, as the

1	appropriate pole attachment rate formula for all manner of pole owners (including
2	electric cooperatives). Even Blue Ridge's own national association, the National
3	Rural Electric Cooperative Association ("NRECA"), has published a pole-owner
4	"Toolkit" relied upon repeatedly by Mr. Arnett that acknowledges the FCC Rate
5	is "unimpeachable." ⁹ The FCC Rate is so widely adopted because it is based on a
6	direct cost allocation methodology, which closely tracks the cost-based rate that a
7	competitive market (if one existed) would produce, providing many important
8	benefits to consumers. For the pole owner and its electric customers (who also
9	benefit as consumers of communications services), the FCC Rate encourages an
10	efficient use of resources by facilitating the occupancy of surplus space on the
11	utility's existing network of poles-where the attacher's use is fully subordinate
12	to that of the utility who can reclaim the space for its core service at any time.
13	The FCC Rate, by design, and in practice, provides a source of contribution to
14	recovery of the utility's electric cost of service for this subordinate use of excess
15	space on utility poles, over and above the true "but for" costs caused by the
16	attacher and recovered by the utility in make ready and other direct reimbursable
17	fees charged to the attacher. Because the state's IOUs use the FCC Rate in setting
18	communications attachment rates, applying that same methodology to EMCs will
19	serve to bring pole rates across the state into harmony, thereby minimizing market
20	distortions and non-cost based rate incongruities for access to utility poles.

⁹ See NRECA Pole Attachment Toolkit at 5, attached as Exhibit PDK-2 to this testimony. My copy of Exhibit PDK-2 came from the publicly filed exhibit in the Rutherford trial, in which I appeared as an expert witness. While this copy is marked "Confidential," I understand it was offered by Rutherford EMC and admitted into the public record by the court. (That document is also attached as a publicly filed exhibit in he Exhibit to Direct Testimony of Wilfred Arnett, WA-16)

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1	Economic Rationale for the FCC Rate's Proportional Cost Allocator: The
2	defining feature of the FCC Rate formula is its use of a "proportionate" or direct
3	cost allocator, i.e., one that allocates costs attributable to both usable and unusable
4	space on the pole based on the attacher's direct occupancy of space in proportion
5	to the total space on the pole which is available for attachments. This type of
6	direct cost-based allocator is very commonly applied to leasing arrangements in
7	other sectors of the economy, for example, commercial and residential real estate.
8	The direct cost-based allocator has been historically relied on by state and federal
9	regulators in cost allocation applications, including by this Commission. ¹⁰ By
10	allocating the attacher's fully allocated share of the costs of the entire pole in
11	direct proportion to a reasonable allocation of usable space occupied (over and
12	above any make ready and other direct reimbursement fees paid by the attacher),
13	the FCC Rate assures full compensation for the costs associated with both the
14	usable and unusable space on the pole attributable to the attacher. It simply does
15	so in a way most closely aligned in the economic sense with how costs of pole
16	attachments are actually incurred. Again, this is no different conceptually than
17	how an owner of an office building would allocate the costs of the common space
18	(e.g., lobby, elevator, parking garage, open space) to itself or other tenants
19	directly occupying varying amounts of square footage. The owner charges a
20	tenant occupying one floor of space a much smaller, proportional share of
21	common overhead than it allocates to itself or another tenant with a larger, multi-
22	floor footprint. And the single floor tenant would not be charged the share of

¹⁰ See, e.g., Order Addressing Collocation Issues, Docket No. P-100, Sub 133j, (Dec. 28, 2001), at 273. Attached to this testimony as Exhibit PDK-3.

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1	overhead associated with adjacent, vacant floors in the building available for rent
2	and/or future occupancy by the owner. Indeed, it would seem nonsensical for the
3	owner to assign common costs to tenants occupying vastly different amounts of
4	square footage on an equal per capita basis, even though all tenants need access to
5	and use of the lobby, elevator, etc. Mr. Arnett's criticisms of the FCC Rate are
6	not based on objective economic reasoning or the application of well-established
7	economic public policy principles. Mr. Arnett's belief that the FCC Rate is
8	inappropriate for Blue Ridge and his various criticism reflect his (and the pole
9	owner's) subjective notion that the FCC Rate produces too low a cost allocation
10	percentage and resultant pole attachment rate to be "fair" or subsidy-free to the
11	utility pole owner in relation to the benefits received by the communications
12	attacher. Mr. Arnett's criticisms are readily dismissed when evaluated in the
13	context of the common and widespread application of direct cost-based allocators
14	of common costs throughout the economy and in other regulatory contexts, and
15	against the objective pubic interest criteria that underlie the economic cost-based
16	regulation of poles. Plain and simple: non-cost based factors such as benefits
17	received or value to attachers are not economic costs to the pole owner that should
18	be included or recovered in regulated rates for an essential facility such as poles.
19	Calculation of Pole Attachment Rates for BREMC Under Recommended FCC
20	Rate: Applying data provided by BREMC, I have estimated the maximum just
21	and reasonable pole attachment rates under the recommended FCC Rate formula,
22	expressed annually, for the relevant unit of cost, i.e. per foot of occupied space.
23	My calculations apply the widely used, long standing, generically applicable FCC

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1	space, height, and appurtenance presumptions designed to further streamline the
2	formula process, reduce regulatory administrative burden, and deter "results-
3	driven" manipulation of the formula's data inputs. Otherwise, my calculations
4	rely on BREMC-provided cost data and hence produce rates strictly based on cost
5	and operating conditions specific to BREMC. The rates calculated range from
6	\$5.18 based on 2016 costs, \$5.20 based on 2015 costs, and \$5.22 based on 2014
7	costs. ¹¹ The just and reasonable rates I have calculated using the FCC Rate are
8	very closely in line with the average pole attachment rates that Charter pays IOUs
9	in North Carolina. For 2016, I understand that the average rate paid to IOUs
10	statewide by Charter was \$7.20 for electric IOUs, and \$3.24 for the ILECs. The
11	regulated, cost-based attachment rates charged by North Carolina IOUs provide
12	an economically appropriate benchmark for the just and reasonableness rates
13	applicable to BREMC.
14	Calculation of Overcharges Paid by Charter to BREMC: The amounts paid by
15	Charter to BREMC for communications attachments for the rate years 2015 to
16	2017 were based on a per pole rate of \$26.64, which Charter paid subject to true-
17	up and credit for any amounts overpaid." It is my understanding, that under
18	Section 62-350, Charter is entitled to a refund to begin no earlier than 90 days
19	from the date it requests to negotiate a rate if the rate it has been paying is in
20	excess of a just and reasonable rate. ¹² The overpayments I have calculated are

¹¹ See Exhibit PDK-4 to this testimony.

¹² I understand the relevant true up period to be from the present date back to the date immediately following expiration of the 90-day negotiation period triggered by Charter's written request, or the termination of the prior pole agreement effective at the end of the then current term, whichever is later. I

1	based on the difference between the rates Charter actually paid BREMC per
2	attachment over the applicable true up period and the maximum just and
3	reasonable rates calculated under the FCC Rate and more aligned with a
4	competitive cost-based market benchmark and IOU benchmark rates. The
5	difference between the just and reasonable amounts due from Charter for the
6	period 2015 – 2017 and the invoiced amounts Charter actually paid BREMC on a
7	per attachment basis is \$1,010,251. I have also calculated overpayments to
8	include an additional source of overcharges, based on my understanding that
9	whereas Charter was invoiced and paid BRMEC on a per attachment, Charter's
10	agreement with BREMC stipulated that it pay on a per pole basis. Total
11	overcharges, including those resulting from BREMC applying a per pole rate of
12	\$26.64 to a higher count of attachments, is \$ 1,092,205.
13	The TVA Board resolution relied upon by Mr. Arnett was the product of a deeply
14	flawed and one-sided process that resulted in an outlier approach and excessive
15	rates. The TVA approach does not legitimize Blue Ridge's charging of
16	extraordinarily high rates of \$26.64 for its pole attachment fee. TVA developed
17	its resolution by soliciting input only from its pole-owning customers who stood
18	to benefit from the highest possible pole attachment rates and the trade association
19	whose mission is to advocate on behalf of TVA's customers in matters involving
20	the TVA. TVA's biased and defective process resulted in a methodology
21	undermined by false premises and unreasonable allocations that are not cost-based
22	in the economic sense. The end result is an untested outlier formula yielding

understand the applicable true up date is August 25, 2015, and that Charter has paid invoices received from

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1		widely varying and unpredictable rates—some as high as \$85 per pole for TVA's
2		customers—unmoored from any economic cost-causation principles or public
3		interest considerations. In this case, Mr. Arnett manipulated the TVA's already
4		flawed formula further to produce rates that are even more unjust and
5		unreasonable by his selective, inappropriate, and unsupported substitutions of data
6		for the presumptive inputs that Mr. Arnett himself relied upon in the Carteret-
7		Craven, Jones-Onslow, Surry-Yadkin, and Union Power cases. ¹³ Although Mr.
8		Arnett refers in his testimony to the TVA allocation of 28.44% (based on reliance
9		on the TVA's presumptions regarding pole height, minimum attachment height,
10		space occupied by the attachment, and the percent of the pole investment account
11		that consists of items that are not used or useful for pole attachments, he actually
12		has relied on an allocation of 41.16% for 2016 which is about 45 percent higher
13		than the already excessive "standard" TVA allocation.
14	II.	PURPOSE OF EFFECTIVE POLE ATTACHMENT RATE REGULATION
15	Q.	Please describe the purpose of pole attachment regulation historically.
16	A.	The primary purpose of pole attachment rate regulation historically, and
17		continuing into the present day, is about protecting cable operators and other
18		communications attachers against potential abuse by pole-owning utilities that
19		control access to a vital input of production needed by those attachers.
20		Fundamental to pole rate regulation is recognition of the fact that note owning

- 20 Fundamental to pole rate regulation is recognition of the fact that pole-owning
- 21 utilities, by virtue of historical incumbency, own and control existing pole plant to

BREMC through August of this year (2017).

¹³ See Exhibits to Direct Testimony of Wilfred Arnett in Docket Nos. EC-43, Sub 88; EC-49, Sub 55; EC-55, Sub 70; and EC-39, Sub 44, WA-5 to WA Exhibit Nos. 4-7.

1	which cable operators and other communications attachers have no practical
2	alternative but to attach. In the absence of effective pole regulation, pole-owning
3	utilities are in a position to limit access to these essential bottleneck facilities
4	and/or to extract excessive monopoly rents. ¹⁴

5 6 Q.

What is the economic harm from pole owners charging excessive monopolylevel rates?

7 A. In many respects, excessively high pole attachment rates operate like a non-cost 8 based tax on the final or "downstream" communications and broadband services 9 bought by consumers. Just like a tax, excessively high rates for the required pole 10 attachment input artificially raise the costs to communications companies of doing 11 business in North Carolina, and have a number of distorting impacts on the 12 market for communications services. Ultimately, high pole attachment rates 13 result in higher prices for communications services which in turn serve to reduce 14 consumers' demand for and/or ability to pay for these services, especially new 15 and enhanced service offerings, than would otherwise exist with pole attachment 16 rates set at more true economic cost-based levels more akin to those a competitive market would produce.¹⁵ Because many poles can be required to serve an 17 18 individual broadband customer, and this is especially the case in less densely

¹⁴ See NCTA v. Gulf Power, 534 U.S. 327, 330 (2002) ("Since the inception of cable television, cable companies have sought the means to run a wire into the home of each subscriber. They have found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles. Utilities, in turn, have found it convenient to charge monopoly rents.")

¹⁵ In a competitive market, defined as one with many buyers and sellers none of which large enough to control prices, prices are bid down closer to incremental or marginal costs of production, and input owners are not able to sustain charging rents too far in excess of a normal level of compensation for the use of their productive capacity.

1		populated areas, the impact of a pole attachment rate set in excess of a more
2		competitive, just and reasonable level can be quite significant. ¹⁶
3		In addition, all else being equal, higher pole rates serve to discourage
4		communications companies from making additional investment in the state and
5		their ability to roll out, or continue to expand advanced broadband service
6		offerings-services increasingly required by North Carolina residents, businesses,
7		and government alike. From a resource utilization perspective, high pole rates
8		further harm the overall economy of the state by discouraging use of otherwise
9		surplus space on the utility's existing network of poles, resulting in a potential
10		loss in the productive capacity of the existing pole network to levels below that
11		most efficient.
12 13 14	Q.	Are there any correspondingly negative economic impacts on the pole owner and its electricity customers from pricing essential pole attachments closer to the competitive level?
15	A.	No, there are not. There are several reasons why this is so. First, the true
16		marginal costs of pole attachments not already recovered in make ready or other
17		direct reimbursement fees paid to the pole owner by the attacher (over and above
18		the recurring rental rate) are very small, as is the magnitude of pole attachment

1	revenues relative to total electricity revenues of the utility. ¹⁷ Second, the FCC
2	methodology builds in two layers of cost recovery to ensure against cross-subsidy
3	or other economic harm to the pole owner or its customers from the presence of
4	communications attachments on the utility's poles.

5 Through the normal and routine process of make ready, communications attachers 6 pay for the total out-of-pocket costs to rearrange wires on the pole or to install 7 taller and/or stronger poles as may be required to accommodate their attachment. 8 Yet these poles remain fully owned by the electric utility who now enjoys the 9 benefit of the space to realize additional revenues from third party rentals, to use 10 for its needs, and/or to realize savings to its own capital upgrade program. Under 11 the FCC Rate methodology, communications attachers continue to pay fully 12 allocated rental rates—which by design recover well in excess of marginal 13 costs—to attach to all poles, including the poles *attachers paid* to replace. 14 Given these circumstances, any impact on electricity rates resulting from the 15 hosting of communications attachments will be negligible-if not decidedly 16 positive due to the fully allocated nature of the recurring rental rate providing 17 contribution to the recovery of the utility's overhead costs in combination with the

18 attachers' payment of make ready and other direct reimbursement fees.

¹⁷ For BREMC, total pole attachment revenues in 2016 (of which Charter-related revenues is just a portion) amounted to only *****BEGIN CONFIDENTIAL***** electric revenues *****BEGIN CONFIDENTIAL*** CONFIDENTIAL*** CONFIDENTIAL***** See BREMC Response to Charter's First Set of Data Requests, No. 9.

1	Q .	Does the same need for effective pole rate regulation exist today as existed at
2		the time pole rate regulation was enacted decades ago?

3	A.	Yes. If anything, preventing a pole-owning electric utility from charging
4		excessive, overly compensatory rates to the detriment of the consuming public
5		(which include BREMC's own members), has taken on heightened significance in
6		recent years, with the increased opportunity and interest of pole owning utilities to
7		directly compete with communications attachers in the broadband market. ¹⁸ In
8		addition, control of the essential bottleneck pole facility effectively affords the
9		electric utility a powerful gatekeeper role with respect to the roll-out and
10		availability of new advanced communications and broadband services and
11		applications in its service area. The increasing importance of broadband in recent
12		years on all aspects of societal and economic well being has been widely and
13		repeatedly recognized by policymakers at the state and federal level, and has only
14		reinforced the critical role that effective pole attachment regulation continues to
15		play in the present time. While true as a general matter across all areas, this is
16		especially so in areas where the economic conditions for broadband deployment
17		are the most unfavorable, i.e., lower population densities resulting in higher
18		construction costs per capita and a lower number of subscribers per pole over
19		which to spread the cost burden. ¹⁹

¹⁸ See, e.g., Roanoke Connect, Roanoke-Chowan News Herald, 10/19/2017 (attached as Exhibit PDK-5 to this testimony).

¹⁹ These points are emphasized in the FCC's National Broadband Plan, which recommends rates for pole attachments be set as low and as close to uniform as possible (in the vicinity of the current FCC Rate) to support the goal of broadband deployment, and particularly in less densely populated or rural areas where the "impact of these rates can be particularly acute." *See Connecting America: The National Broadband Plan*, March 16, 2010, at 110, *available at* http://www.broadband.gov/plan/#read-the-plan. *See also Protecting and Promoting the Open Internet*, GN Docket No. 14-28, FCC's Report & Order on Remand, Declaratory Ruling, & Order, 30 FCC Rcd. 5601 ¶ 478 (2015) ("The Commission has repeatedly

1	Q.	How is pole rate regulation distinct from traditional electric utility rate of
2		return or cost of service ratemaking?

3	A.	From an economic perspective, effective pole rate regulation is more properly
4		focused on constraining the rents that utilities are permitted to charge attachers for
5		access to the essential pole facility to per unit cost levels more in line with what a
6		competitive market (if such a market existed) would produce for one foot of
7		occupancy of otherwise vacant space on the owner's existing pole network-yet
8		ensure against cross-subsidy. The FCC Rate's fully allocated cost methodology
9		demonstrably does so, especially in conjunction with make ready and other direct
10		reimbursement fees paid by communications attachers. Any increase to the pole
11		attachment rate to recover additional "value" or "benefit" to the attacher over and
12		above costs that have a strong demonstrable economic cost causative linkage to
13		the per unit direct cost of attachment (such as occurs with a per capita attribution
14		of pole costs) will result in excessive rates and contribution under a just and
15		reasonable standard (indeed a subsidy to the utility's core electric business).
16		Excessive rates will have distorting impacts on both the demand for and supply of
17		communications services (with no significant offsetting benefits for electricity

recognized the importance of pole attachments to the deployment of communications networks, and we thus conclude that applying these provisions will help ensure just and reasonable rates for broadband Internet access service by continuing pole access and thereby limiting the input costs that broadband providers otherwise would need to incur."). FCC Chairman Pai recently declared that "[t]o bring the benefits of the digital age to all Americans, the FCC needs to make it easier for companies to build and expand broadband networks. We need to reduce the cost of broadband deployment, and we need to eliminate unnecessary rules that slow down or deter deployment." *Infrastructure Month at the FCC*, FCC Blog (Mar. 30, 2017), *available at* https://www.fcc.gov/news-events/blog/2017/03/30/infrastructure-month-fcc (last accessed May 29, 2017). It is my understanding that the state of North Carolina is in the process of developing its own broadband plan with particular emphasis on ensuring affordable, advanced broadband access across the state but particularly in sparsely populated and economically distressed areas. *See* Charter Complaint at 11, citing the North Carolina Department of Information Technology, State Broadband Plan Progress Report (Dec. 1, 2015). *See also* Exhibit PDK-6 containing excerpts of comments presented in the federal broadband proceedings and the North Carolina State Broadband Plan Progress Report.

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1 services) that is detrimental to economic and societal well being, including that of 2

BREMC's own members, in the manner described above.

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III. **APPLICABILITY OF EFFECTIVE POLE RATE REGULATION TO EMCS**

5 **Q**. Historically, cooperatives and municipally owned utilities have not been 6 subject to Section 224 pole rate regulation in North Carolina. Does their 7 different organizational structure and form of ownership affect the need for the type of effective pole rate regulation as designed and implemented for 8 **IOUs pursuant to Section 224?** 9

10 No, it does not. The economic and practical reality facing communications A. 11 providers requiring access to the utility's existing monopoly-owned and 12 controlled network of poles holds universally true for all manner of utilities, 13 regardless of their organizational structure and form of ownership (i.e., investor-14 owned, cooperatively owned, or municipally owned). From an economic and 15 public policy perspective, the same structural market conditions underlying the 16 need for effective economic regulation of pole attachments apply as much to 17 EMCs such as Blue Ridge regulated pursuant to Section 62-350 in North Carolina 18 as they do to investor-owned utilities ("IOUs") in the state historically subject to 19 FCC Section 224 regulation. EMCs in North Carolina use the same type of pole 20 plant, technology, and production techniques to provide electricity service to 21 subscribers and in the same basic manner and under the same operating conditions 22 as IOUs. Structurally, IOU and EMC owned poles are largely if not entirely 23 indistinguishable, and it is not uncommon for IOU and EMC-owned poles to be 24 adjacently located, especially in areas where their pole networks have been built 25 under joint ownership arrangements.

1	Moreover, EMCs and IOUs have the same inherent opportunity and incentive to
2	leverage their monopoly ownership and control over the existing distribution
3	network of poles (to which communications providers have found it essential to
4	attach) to extract excessive rates and impose other unreasonable terms and
5	conditions of access. Similar to their IOU counterparts, the entry-or even the
6	prospect of entry-of cooperatives into convergent telecommunications and
7	broadband markets in recent years, such as just recently announced by Roanoke
8	Electric Cooperative, ²⁰ provides a heightened incentive for these cooperatives to
9	charge excessive pole attachment rates.
10	If anything, EMCs have a lower cost structure than IOUs because of their tax-
11	exempt status and ability to access lower interest borrowing. ²¹ (In addition to its
12	ability to borrow at relatively low interest rates, BREMC has access to a
12 13	ability to borrow at relatively low interest rates, BREMC has access to a substantial amount of retained earnings in the form of patronage capital. ²²) If a
12 13 14	ability to borrow at relatively low interest rates, BREMC has access to a substantial amount of retained earnings in the form of patronage capital. ²²) If a free market for pole attachments existed (which it does not), one would expect to
12 13 14 15	ability to borrow at relatively low interest rates, BREMC has access to a substantial amount of retained earnings in the form of patronage capital. ²²) If a free market for pole attachments existed (which it does not), one would expect to see rates for EMC pole attachments set at lower levels than those charged by
12 13 14 15 16	 ability to borrow at relatively low interest rates, BREMC has access to a substantial amount of retained earnings in the form of patronage capital.²²) If a free market for pole attachments existed (which it does not), one would expect to see rates for EMC pole attachments set at lower levels than those charged by IOUs. Over the past decade or so, this has not been the case nationally, as
12 13 14 15 16 17	 ability to borrow at relatively low interest rates, BREMC has access to a substantial amount of retained earnings in the form of patronage capital.²²) If a free market for pole attachments existed (which it does not), one would expect to see rates for EMC pole attachments set at lower levels than those charged by IOUs. Over the past decade or so, this has not been the case nationally, as cooperatives exempt from the pricing constraints mandated in Section 224 have

²⁰ See "Roanoke Connect," op. cit.

²¹ As an EMC, Blue Ridge does not need to access capital equity markets. Its sole source of external capital funding is through debt and borrowed at relatively low interest rates. In 2016, BREMC's cost of debt was only *****BEGIN CONFIDENTIAL***** 014286), about *****BEGIN** 014286), about ******* 014286), about ****** 014286), about ******* 014286), about ****** 014286), about

²² For example, as of year end 2016, the RUS Form 7 shows BREMC to have of approximately *****BEGIN CONFIDENTIAL***** **CONFIDENTIAL***** in accumulated Patronage Capital, further evidenced by a *****BEGIN CONFIDENTIAL***** **CONFIDENTIAL***** ratio of

1	been free to raise rates to higher and higher levels vis-à-vis those set for IOUs
2	whose attachment rates have been subject to federal or state regulation.

3 4	Q.	How do you address the fact that cooperatives have historically been excluded from the definition of "utility" in the Federal Pole Attachment Act?
5	A.	While cooperatives have historically been excluded from the definition of

6	"utility" in Section 224 and, therefore, exempt from direct FCC pole regulation
7	because of federal-state jurisdictional issues, their exemption does not in any
8	meaningful way refute the applicability of the structural market conditions facing
9	communications attachers needing access to poles owned by cooperatives. Any
10	notion that the market dynamics would be different in the case of a cooperatively
11	owned utility is belied by the monopoly level rate increases put forward by
10	accorrectives around the country and here in North Caroline in resent years

12	cooperatives	around the	country and	here in No	orth Carolina	in recent years.

13

13	By specifically subjecting EMCs to state regulatory oversight of pole attachments
14	pursuant to Section 62-350, the North Carolina General Assembly, as a growing
15	number of states nationwide have done in recent years, correctly recognized that
16	the compelling reasons for regulatory oversight of pole attachments are not

- 17 dependent on the organizational Charter of the pole-owning utility. To this very
- point, the present exclusion of municipal and cooperatively-owned utilities from 18
- 19 the FCC pole attachment rules governing other electric utilities was identified by
- 20 the FCC in the open meetings leading up to the release of its seminal National

Total Margins & Equities as Percent of Total Assets ***BEGIN CONFIDENTIAL*** ****END CONFIDENTIAL***.

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1	Broadband Plan Policy Framework as a "critical gap," for which it offered
2	specific recommendations for "coherent and uniform" pole rate regulations. ²³
3	Indeed, the same legislative history Mr. Arnett cites as a reason the FCC Rate
4	should not be used for cooperatives today, see Direct Testimony of Wil Arnett at
5	36, also states that, at the time, "cooperative utilities charge the lowest pole rates
6	to CATV pole users." See WA Ex. No. 23 (S. Rep. No. 95-580 at 18 (1977)). As
7	shown below, Blue Ridge now charges among the highest pole rates to Charter
8	anywhere in the state, many multiples higher than the rates Charter pays to IOUs
9	in North Carolina. The nascent state of the cable industry and the historic
10	exclusion of coops from rate regulation almost forty years ago based on
11	conditions extant at the time in no way undermines the economic and public
12	policy appropriateness of the FCC Rate or its applicability to Blue Ridge today.
13	Finally, it is the prevailing position, not just among the FCC, but among state
14	regulators and other public interest oriented organizations, that the public would
15	be best served by having all types of pole-owning utilities, including cooperatives
16	use the FCC Rate. Mr. Arnett's opinions, including his references to a very few

²³ See FCC News Release, "FCC Identifies Critical Gaps in Path to Future Universal Broadband (November 18, 2009) https:/apps.fcc/gov/edocs_public/attachmatch/DOC-294706A1.pdf; FCC Meeting Slides, "National Broadband Plan Policy Framework, December 16, 2009 – FCC Open Meeting, at 14, ("Amend section 224 to establish a consistent framework for al poles, ducts, and conduits"), and PDK Ex. 6: final National Broadband Report, sent to Congress on March 10, 2010, http://www.fcc.gov/ at 130-131 ("RECOMMENDATION 6.5: Congress should consider amending Section 224 of the Act to establish a harmonized access policy for all poles, ducts, conduits and rights-of-way. Even if the FCC implemented all of the recommendations related to its Section 224 authority, additional steps would be needed to establish a comprehensive national broadband infrastructure policy ... due to exemptions written into Section 224, a reformed FCC regime would apply to only 49 million of the nation's 134 million poles. In particular, the statute does not apply in states that adopt their own system of regulation and exempts poles owned by cooperatives, municipalities and non-utilities. The nation needs a coherent and uniform policy for broadband access to privately owned physical infrastructure. Congress should consider amending or replacing Section 224 with a harmonized and simple policy that establishes minimum standards throughout the nation although states should remain free to enforce standards that are not inconsistent with federal law.")

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IV. <u>THE RECOMMENDED WIDELY ACCEPTED</u> <u>FCC RATE METHODOLOGY</u>

outlier formulas, should be considered against the majority of state jurisdictions

that have adopted the FCC Rate²⁴ or some close variant of it (e.g., the nearby state

of Kentucky)²⁵—a number of those having jurisdiction over cooperatives—along

with the unbiased assessments of organizations representing the public interest,

cable customers, utility customers, and other stakeholders who have analyzed the

9Q.Please provide an overview of the FCC methodology you are recommending10apply to pole attachment rates charged by BREMC to Charter.

issue of pole attachment rates.

11 A. Under the FCC Rate formula I am recommending, the recovery of the cost of the

12 pole attachment is based upon the fundamental economic principle of cost-causer

13 pays. ²⁶ The utility recovers all such costs including a normal (reasonable) return

- 14 on capital that would not be borne by the utility *but for* the attacher for the
- 15 relevant unit of service, i.e., pole attachment. Under well-established economic
- 16

principles and corresponding legal principles of just compensation, rates designed

²⁴ See Exhibit PDK-7 for a listing of states that have adopted the FCC formula or a close variant of it.

²⁵ See Kentucky Public Service Commission ("KPSC") Admin. Case No. 251, September 17, 1982, attached as Exhibit PDK-8 The KPSC formula follows closely the FCC Cable methodology but varies in these two key respects: First, the KPSC formula reflects net bare pole costs limited to the type and size deemed more likely used for the provision of a cable attachment, i.e., poles with heights of 35, 40, and 45 feet and develops separate per unit net bare pole costs and space allocation factors for poles designated as two and three user poles as follows: Two users poles presume electric and cable attachers on poles 35- 40 feet tall, and three user poles presume electric, cable, and telco attachers on poles 40 - 45 feet tall. Second, the KPSC treats the 3.33 feet of safety space as unusable space, resulting in a proportionate usable spacebased cost allocator of 1/8.17% for the two user poles (37.5 feet average height less 6 feet buried less 20 feet clearance less 3.33 safety = 8.17%), and 1/13.17 for the three user poles (42.5 feet average height less 6ft buried less 20 feet clearance less 3.33 safety = 13.17 feet).

²⁶ The fundamental economic principle of cost causation holds that the entity causally responsible—i.e., the entity but for whose existence or action a cost would not have been incurred, in this case, the pole attacher—is attributed those costs reasonably attributable to the attachment, and conversely, is not attributed costs directly attributable to the costs of providing the utility's core electric service (for which the attacher is not causally responsible).

in this manner prevent any potential situation of cross-subsidy between the utility
pole owner and the communications attacher.

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3 Pursuant to Section 224, the FCC Rate formula is required to produce a rate 4 falling within a range of reasonableness bounded by marginal or "but for" costs at 5 the lower end of the range, and fully allocated costs (defined as costs that would 6 exist regardless of the attachment) at the upper end of the range. Specifically, the 7 FCC Rate calculates a maximum annual pole attachment rent for cable companies 8 by taking the sum of the actual capital costs and operating expenses of the utility 9 attributable to the *entire* pole, expressed on an annual basis, and apportioning 10 those costs to the attacher based on the percentage of the usable space on the pole 11 that is occupied by the attacher. As so defined, the FCC Rate produces a fully 12 allocated rate at the *upper* bound of the range of reasonableness. The FCC Rate 13 allocates to an attacher its fair, just and reasonable proportionate share of the *full* 14 set of ongoing utility operating and capital costs (including a return on capital) 15 associated with the *entire* pole. It is *not* a marginal cost formula. The FCC Rate is designed to produce an efficient rate, yet one that substantially exceeds the true 16 17 marginal costs of pole attachments, which, on a recurring basis, are exceedingly small – estimated in the order of magnitude of \$1.00.²⁷ It does so using a 18 19 proportionate or occupancy-based cost allocation factor. The FCC Rate

²⁷ Estimates of the marginal costs of pole attachments, i.e., the lower end of the Section 224 just and reasonable range of rates, have been calculated by myself and others at fractions of the FCC Rate, falling generally in the \$1.00 to \$1.50 range. *See* Report of Patricia D. Kravtin submitted August 16, 2010, Attachment A to Comments filed by the National Cable and Telecommunications Association, *Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Docket No. 07-245, Notice of Proposed Rulemaking, 22 FCC Rcd 20195 at 31-25; *see also Implementation of Section 224 of the Act. A National Broadband Plan for Our Future*, WC Docket No. 07-245, Order & Further Notice of Proposed Rulemaking, 25 FCC Rcd. 11864, Appendix A "Pole Attachment Rates" (2010).

1		methodology allocates to an attacher its fair, just and reasonable proportionate
2		share of the <i>full</i> set of ongoing utility operating and capital costs (including a
3		return on capital) associated with the entire pole.
4	Q.	Operationally, how does the FCC Rate methodology work?
5	A.	The FCC Rate consists of the following three major components: (1) the net
6		investment per bare pole, (2) a carrying charge factor (CCF) comprised of a full
7		range of operating and capital costs, including a return on capital, 28 and (3) a
8		space allocation factor used to attribute to an attacher its share of the total pole
9		costs as derived in the first two components of the formula. The first two
10		components calculate the pool of utility costs associated with the entire pole to be
11		allocated to attachers, whereas the third component provides the basis by which
12		the utility's pole-related costs are allocated to a given attaching entity. These
13		three components are multiplied in a simple straightforward manner.
14		Expressed as an equation, the FCC Rate formula is as follows:
15		FCC Rate Formula =
16 17		<i>Net Bare Pole Cost (NBP) x Carrying Charge Factor (CCF) x Space Allocation Factor (SAF)</i>
18		Where the SAF = Space Occupied by Attacher / Usable Space on Pole
19		Using the widely accepted FCC presumptions of a 37.5-foot joint use pole, with
20		13.5 feet of usable space, 24 feet of unusable space, ²⁹ and 1 foot of space
21		occupied by the attacher, the cost allocation factor-applicable to the costs of the

²⁸ The five elements of the carrying charge factor include: maintenance, administrative and general, depreciation, taxes, and rate of return (cost of capital).

 $^{^{29}}$ This corresponds to 18 feet above ground clearance and 6 feet of below ground support.

1		entire pole—is $1/13.5$ share or 7.41% . ³⁰ As with any presumptive value in the
2		formula, to the extent there is actual (or statistically significant) utility or attacher
3		specific data to support the use of alternative space presumptions those can be
4		used in lieu of the FCC's established space presumptions subject to Commission
5		oversight. So, for example, if actual data exists to support use of a 35-foot joint
6		use pole with 11 feet of usable space and 24 feet of unusable space, the space
7		allocation factor would be 1/11 share or 9.09%. The allocation of the costs of the
8		entire pole under the FCC Rate using FCC space presumptions is illustrated
9		graphically in Exhibit PDK-9 to this testimony.
10 11 12	Q.	In your calculations you have relied on the all the FCC presumptive values, which have been adopted also by TVA, including instances where Mr. Arnett has used values based on BRMEC specific data. Can you explain why you
13 14		have chosen to rely on the presumptive values and not the BRMEC specific data.
13 14 15	A.	have chosen to rely on the presumptive values and not the BRMEC specific data.Yes. First of all, I note that the "FCC presumptive values" have been adopted by
13 14 15 16	A.	have chosen to rely on the presumptive values and not the BRMEC specific data.Yes. First of all, I note that the "FCC presumptive values" have been adopted by the TVA, so they are also the "TVA presumptive values." To the best of my
13 14 15 16 17	А.	 have chosen to rely on the presumptive values and not the BRMEC specific data. Yes. First of all, I note that the "FCC presumptive values" have been adopted by the TVA, so they are also the "TVA presumptive values." To the best of my knowledge, TVA has not given any guidance as to what information to use to
13 14 15 16 17 18	А.	 have chosen to rely on the presumptive values and not the BRMEC specific data. Yes. First of all, I note that the "FCC presumptive values" have been adopted by the TVA, so they are also the "TVA presumptive values." To the best of my knowledge, TVA has not given any guidance as to what information to use to rebut any of the presumptions except for the number of attaching entities on an
13 14 15 16 17 18 19	A.	have chosen to rely on the presumptive values and not the BRMEC specific data. Yes. First of all, I note that the "FCC presumptive values" have been adopted by the TVA, so they are also the "TVA presumptive values." To the best of my knowledge, TVA has not given any guidance as to what information to use to rebut any of the presumptions except for the number of attaching entities on an average pole. Indeed, I am not aware that TVA has allowed any of the wholesale
13 14 15 16 17 18 19 20	A.	have chosen to rely on the presumptive values and not the BRMEC specific data. Yes. First of all, I note that the "FCC presumptive values" have been adopted by the TVA, so they are also the "TVA presumptive values." To the best of my knowledge, TVA has not given any guidance as to what information to use to rebut any of the presumptions except for the number of attaching entities on an average pole. Indeed, I am not aware that TVA has allowed any of the wholesale power customers that it regulates to rebut any other presumptions. While Mr.
13 14 15 16 17 18 19 20 21	A.	have chosen to rely on the presumptive values and not the BRMEC specific data. Yes. First of all, I note that the "FCC presumptive values" have been adopted by the TVA, so they are also the "TVA presumptive values." To the best of my knowledge, TVA has not given any guidance as to what information to use to rebut any of the presumptions except for the number of attaching entities on an average pole. Indeed, I am not aware that TVA has allowed any of the wholesale power customers that it regulates to rebut any other presumptions. While Mr. Arnett purports to rely on the TVA rate method, therefore, he is really way out in
 13 14 15 16 17 18 19 20 21 22 	A.	have chosen to rely on the presumptive values and not the BRMEC specific data. Yes. First of all, I note that the "FCC presumptive values" have been adopted by the TVA, so they are also the "TVA presumptive values." To the best of my knowledge, TVA has not given any guidance as to what information to use to rebut any of the presumptions except for the number of attaching entities on an average pole. Indeed, I am not aware that TVA has allowed any of the wholesale power customers that it regulates to rebut any other presumptions. While Mr. Arnett purports to rely on the TVA rate method, therefore, he is really way out in front of even TVA, and we have no way to know whether TVA would accept the
 13 14 15 16 17 18 19 20 21 22 23 	A.	have chosen to rely on the presumptive values and not the BRMEC specific data. Yes. First of all, I note that the "FCC presumptive values" have been adopted by the TVA, so they are also the "TVA presumptive values." To the best of my knowledge, TVA has not given any guidance as to what information to use to rebut any of the presumptions except for the number of attaching entities on an average pole. Indeed, I am not aware that TVA has allowed any of the wholesale power customers that it regulates to rebut any other presumptions. While Mr. Arnett purports to rely on the TVA rate method, therefore, he is really way out in front of even TVA, and we have no way to know whether TVA would accept the methods he uses to rebut the presumptions. I also note that while Mr. Arnett has

³⁰ See 47 C.F.R. § 1.1418.

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1	FCC – and he relies on a specific FCC decision about how rebutting that
2	presumption regarding appurtenances may be accomplished – he has selectively
3	chosen not to follow the FCC's guidance on how to rebut other presumptions.
4	Second, the FCC presumptive values are widely used, generically applicable
5	values that had held up well over the test of time. Their use is designed to further
6	streamline the formula process, reduce regulatory administrative burden, and
7	deter "results-driven" manipulation of the formula's data inputs such as would
8	appear Mr. Arnett has done in his TVA Rate calculations. For these reasons, and
9	to avoid the time and resources required to properly scrutinize and independently
10	validate "actual" utility values the utility may choose to present, in my opinion,
11	the Commission would be well served to adopt the FCC presumptions and apply
12	them generically and consistently. Such scrutiny is required because the utility
13	generally has all the leverage with respect to the decision to provide "actual" data
14	in lieu of the presumptive values, and will be incented to substitute actual values
15	only if the use of "actual" values result in a higher rate – as in this case.
16	For example, in his calculation of the 2016 FCC Cable Rate, Mr. Arnett applies a
17	BRMEC specific value for the appurtenance factor of 87.41% rather the
18	presumptive value of 85% that I have relied on in my calculations. The effect of
19	doing so would be to increase the FCC rate by \$0.15, from \$5.18 to \$5.33, or
20	about a 3% increase to the regulated rate. However, Mr. Arnett chose to apply
21	the FCC default rate of return of 11%, despite the availability of a BREMC
22	specific value for rate of return of ***BEGIN
23	CONFIDENTIAL*** *********************************

1		014258). Had Mr. Arnett correspondingly used the BRMEC specific rate of
2		return figure for the FCC default value, the regulated rate would have decreased
3		from \$5.33 to \$4.18 by \$1.15, or about a 22% decrease. Unlike Mr. Arnett, I
4		have consistently applied the FCC determined values, including the exceedingly
5		generous rate of return of 11% that works greatly to the gain of the utility and
6		much more than makes up for any small differences between other FCC
7		presumptions and BREMC specific data that may work to the gain of the attacher.
8		Of course, Mr. Arnett has applied his methods for rebutting the presumptions in
9		calculating his TVA rate, as well. And the result is a rate that is 45 percent higher
10		than the high rate that Blue Ridge would obtain under TVA's presumptions.
11		V. <u>ECONOMIC RATIONALE FOR THE FCC RATE'S</u>
12		PROPORTIONAL COST ALLOCATOR
12 13 14 15 16 17	Q.	PROPORTIONAL COST ALLOCATOR The defining feature of the FCC Rate methodology is its third component, i.e., the space allocation factor used to allocate the annual costs attributable to the entire pole as determined by the first two components of the formula. Could you describe this component and its underlying economic and public policy rationale in more detail?
12 13 14 15 16 17 18	Q. A.	PROPORTIONAL COST ALLOCATORThe defining feature of the FCC Rate methodology is its third component,i.e., the space allocation factor used to allocate the annual costs attributableto the entire pole as determined by the first two components of the formula.Could you describe this component and its underlying economic and publicpolicy rationale in more detail?Yes. As illustrated graphically in Exhibit PDK-9, the cost allocator embodied in
12 13 14 15 16 17 18 19	Q. A.	PROPORTIONAL COST ALLOCATOR The defining feature of the FCC Rate methodology is its third component, i.e., the space allocation factor used to allocate the annual costs attributable to the entire pole as determined by the first two components of the formula. Could you describe this component and its underlying economic and public policy rationale in more detail? Yes. As illustrated graphically in Exhibit PDK-9, the cost allocator embodied in the FCC Rate, also referred to as the "space allocation factor," assigns the
12 13 14 15 16 17 18 19 20	Q. A.	PROPORTIONAL COST ALLOCATORThe defining feature of the FCC Rate methodology is its third component,i.e., the space allocation factor used to allocate the annual costs attributableto the entire pole as determined by the first two components of the formula.Could you describe this component and its underlying economic and publicpolicy rationale in more detail?Yes. As illustrated graphically in Exhibit PDK-9, the cost allocator embodied inthe FCC Rate, also referred to as the "space allocation factor," assigns thecommon or indirect cost of "unusable space" on the pole in the same proportion
12 13 14 15 16 17 18 19 20 21	Q. A.	PROPORTIONAL COST ALLOCATOR The defining feature of the FCC Rate methodology is its third component, i.e., the space allocation factor used to allocate the annual costs attributable to the entire pole as determined by the first two components of the formula. Could you describe this component and its underlying economic and public policy rationale in more detail? Yes. As illustrated graphically in Exhibit PDK-9, the cost allocator embodied in the FCC Rate, also referred to as the "space allocation factor," assigns the common or indirect cost of "unusable space" on the pole in the same proportion as it assigns the direct costs of "usable space." The assignment of common or
12 13 14 15 16 17 18 19 20 21 22	Q. A.	PROPORTIONAL COST ALLOCATOR The defining feature of the FCC Rate methodology is its third component, i.e., the space allocation factor used to allocate the annual costs attributable to the entire pole as determined by the first two components of the formula. Could you describe this component and its underlying economic and public policy rationale in more detail? Yes. As illustrated graphically in Exhibit PDK-9, the cost allocator embodied in the FCC Rate, also referred to as the "space allocation factor," assigns the common or indirect cost of "unusable space" on the pole in the same proportion as it assigns the direct costs of "usable space." The assignment of common or indirect costs of how direct costs are assigned is a widely accepted
 12 13 14 15 16 17 18 19 20 21 22 23 	Q. A.	PROPORTIONAL COST ALLOCATORThe defining feature of the FCC Rate methodology is its third component, i.e., the space allocation factor used to allocate the annual costs attributable to the entire pole as determined by the first two components of the formula. Could you describe this component and its underlying economic and public policy rationale in more detail?Yes. As illustrated graphically in Exhibit PDK-9, the cost allocator embodied in the FCC Rate, also referred to as the "space allocation factor," assigns the common or indirect cost of "unusable space" on the pole in the same proportion as it assigns the direct costs of "usable space." The assignment of common or indirect costs on the basis of how direct costs are assigned is a widely accepted methodology, with a longstanding history of use in state and federal regulatory
 12 13 14 15 16 17 18 19 20 21 22 23 24 	Q. A.	PROPORTIONAL COST ALLOCATOR The defining feature of the FCC Rate methodology is its third component, i.e., the space allocation factor used to allocate the annual costs attributable to the entire pole as determined by the first two components of the formula. Could you describe this component and its underlying economic and public policy rationale in more detail? Yes. As illustrated graphically in Exhibit PDK-9, the cost allocator embodied in the FCC Rate, also referred to as the "space allocation factor," assigns the common or indirect cost of "unusable space" on the pole in the same proportion as it assigns the direct costs of "usable space." The assignment of common or indirect costs of how direct costs are assigned is a widely accepted methodology, with a longstanding history of use in state and federal regulatory cost allocation manuals and other regulatory applications, including by this

1	Q.	Please describe other regulatory applications of the cost allocation
2		methodology embodied in the FCC Rate.

3	А.	One prime example is Part 64 of the FCC rules, and its state counterparts. ³¹ Part
4		64 rules established specific cost allocation guidelines to deal with the allocation
5		of costs between regulated and non-regulated activities and in particular so as to
6		prevent the cross-subsidization of the latter. These rules, however, have general
7		applicability and have been frequently applied to a wide range of regulatory cost
8		applications at the state and federal level. The Part 64 rules instruct utilities to
9		adhere to the following hierarchy of cost assignment, of which the FCC pole
10		formula methodology adheres: first, where there is a strong causal or
11		demonstrable, observable link to the provision of the service at issue, those costs
12		are assigned on that basis. In the pole attachment context, this strong cost causal
13		link is the attachment's physical occupancy of one foot of usable space on the
14		pole - occupancy that actually excludes another attachment from being made in
15		that usable space; second, common costs that do not have such a direct or
16		demonstrable cost causal link, are to be allocated "based upon an indirect, cost-
17		causative linkage to another cost categoryfor which a direct assignment or
18		allocation is available." See 47 C.F.R. \$ 64.901(b)(3). In the pole attachment
19		context, the FCC methodology assigns the common costs associated with the
20		unusable space on the pole on the same basis, i.e., in the same ratio (1 foot
21		occupied space/13.5 feet total usable feet on the pole), as the assignment of direct

³¹ See, e.g., Commission Rule R9-2 (adopting FCC Uniform System of Accounts for telephone companies; requiring submission of cost allocation plans); Rule R8-27 (adopting FERC Uniform System of Accounts for electric utilities); Rule R19-1 (requiring Electric Membership Corporations to file cost allocation manuals updated within 30 days of any significant change),

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costs associated with the usable space on the pole (and characterized by a strong
 cost causal linkage) was made.

Q. Does the per capita methodology adhere to this widely accepted cost allocation principles embodied in the Part 64 Rules and its state counterparts?

6	A.	No it could not. The per capita methodology, at its core, relies on an "equal
7		benefits" theory – that while on first blush and without a fuller and more
8		thoughtful understanding of the underlying economics and public interest
9		implications may, as Mr. Arnett opines "feel" or "seem" like it would be "fair."
10		However, Mr. Arnett's sentiment is simply not grounded in sound cost allocation
11		principles. The per capita methodology produces an inherently arbitrary
12		assignment of costs, that is grossly unfair, unjust, unreasonable, and at odds with
13		key economic development goals in the state and the overall well-being of its
14		citizens. This is particularly the case in lower density areas when there are
15		relatively few attachers, as is the case here and as typically characterizes EMC
16		service areas; there is simply no cost rationale for charging a single attacher,
17		occupying the same one foot of space on the pole, and imposing the same cost
18		burden on the utility, a pole rate multiples higher than would be charged that
19		attacher if additional third party attachers happened to be present on the pole.
20 21 22	Q.	You mentioned above a previous matter before this Commission that applied costing principles akin to that underlying the FCC Rate's proportionate use cost allocator. What case are you referring to?
23	A.	I am referring to a 2000 Collocation case involving the charges incumbent
24		telephone companies ("ILECs") could recover from competitive local providers

25 ("CLPs), requiring interconnection to the ILEC's central office facilities. In

13	Q.	In addition to its widely used applications in the regulatory arena, are there
12		foot used and recommended by Sprint."33
11		by the Commission considerably less reasonable than the allocation per square
10		square footage] makes the per capita proposals of BellSouth and Verizon adopted
9		on the reasoning of the Public Staff, who argued that "the vast difference [in
8		methodology proposed by the ILECs, relying, among other economic rationale,
7		In adopting this methodology, the Commission rejected the per capita
6		that it is appropriate to pro rate security costs on the basis of square footage." 32
5		security costs, the Commission ruled in "agree[ment] with the CLPs and Sprint
4		under the FCC Rate. With regard to the setting of recurring charges to recover
3		basis, akin to the proportionate based allocator used to allocate common costs
2		associated with central office security services on per square foot of occupancy
1		particular, I am referring to the Commission's decision to allocate common costs

Q. In addition to its widely used applications in the regulatory arena, are there
 applications of the FCC Rate's proportionate cost allocation methodology
 found in the broader economy?

16 Absolutely. The FCC Rate's use of a proportionate cost allocation methodology A. 17 is similar to that commonly used in leasing arrangements throughout the 18 economy, in which costs associated with common space of the facility are 19 allocated to individual tenants on the basis of the tenant's direct occupancy of 20 space on the shared facility. Perhaps the most familiar and often cited example is 21 real estate. For example, a tenant leasing one floor of space in a ten-story office 22 building where the landlord occupied the other nine stories of office space would 23 appropriately be charged a proportionate or one-tenth share of the common space

³² See, Exhibit PDK-5, Order Addressing Collocation Issues, op. cit. at 273.

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costs (*i.e.*, lobby, elevator, garage, grounds). The tenant would *not* be charged
one-half of the common costs of the office building such as would occur under a
per capita formula where the landlord would bear the other one-half of the
common costs despite occupying nine-tenths of the "usable" space of the
building. Indeed, it would be nonsensical to assign common costs to the tenants of
this building on an equal per capita basis.

7 The same concepts applies to tenants leasing residential apartments or those 8 owning condominiums (where residents who occupy a 2000 square foot unit are 9 assessed a proportionately higher monthly fee to cover costs of common space 10 and expenses than those occupying a 500 square foot unit), malls (where anchor 11 department stores pay proportionately more toward common costs of the mall 12 such as concourses, parking lots and access roads than a tenant with a small store-13 front, and airport terminals (where airlines pay fees to the airport authority based 14 on the number of gates they occupy, not their mere presence in a terminal). Yet 15 another example, under IRS rules for home office expenses, taxpayers are allowed 16 to deduct a percentage of total costs of their home based upon the dedicated 17 square footage as a percentage of the total square footage of their home. A person 18 working out of one small room in their home is allowed to claim as a cost and 19 therefore deduct proportionately less of the total costs of their home than a person 20 who entire first floor is devoted to their office.

³³ See, Id. at 271.

1	Q .	What about the concern that an occupancy-based cost allocator does not
2		provide the utility with the appropriate cost recovery of the entire pole?

3	A.	Like under all of these above-mentioned familiar leasing examples, the
4		occupancy-based cost allocator provides appropriate cost recovery for the entire
5		facility. It is a common misunderstanding of the FCC Rate, because it uses an
6		occupancy-based (i.e., direct cost) allocator, to assume incorrectly that the
7		formula either does not assign, or that it under assigns, the costs of unusable (i.e.,
8		common) space to the attacher. Such a misunderstanding confuses the type of
9		allocator used to assign total facility costs (i.e., an occupancy-based one) with the
10		underlying facility costs being assigned (i.e., the total costs of the facility). By
11		allocating the attacher's fully allocated share of the costs of the entire pole in
12		proportion to a reasonable allocation of usable space occupied—over and above
13		any make ready or other directly reimbursable fees paid by the attacher ³⁴ —the
14		FCC Rate assures that the pole owner is fully compensated for the costs directly
15		and indirectly attributable to the communications attacher. It simply does so in a
16		manner most closely aligned in the true economic sense with how the costs of
17		pole attachments are actually incurred.

18 Q. Please explain.

A. The FCC Rate's proportionate-based allocation methodology is most closely
aligned with the manner in which the pole owner actually incurs costs, because, as
an economic matter, the costs associated with space on the pole do *not* vary

³⁴ In the true economic sense, make-ready costs are in large measure the *only* incremental costs of pole attachments and constitute a very important, yet often overlooked, component of the FCC methodology in that the methodology allows for full recovery of these costs *in addition to* the fully allocated formula-based rental rate.

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1	according to the number of attaching entities but rather to the economic utilization
2	of pole capacity. Attachers generally occupy otherwise vacant space on a pole
3	such that their attachment does not displace or preclude another. Moreover, in
4	those instances where there is not surplus space on the pole, the process of make-
5	ready-the total costs of which the pole owner can recover through additional
6	charges to the attachers up to and including the full costs of pole replacement—
7	readily allows the pole owner to access more space to accommodate an additional
8	attachment.

- 9Q.In addition to greater consistency with fundamental economic principles of10cost causation, does the direct occupancy-based cost allocation methodology11used in the FCC Rate have other supporting economic and policy rationale?
- A. Yes, the FCC Rate's proportionate cost allocator has a number of other very
 positive attributes. These include:
- 14 Competitive and Technological Neutrality: The FCC Rate is not inherently 15 biased or in favor of any one industry or competitor over another. It can be, and 16 has been, readily applied in uniform fashion across different utilities, different 17 areas of the state and country, and different types of broadband providers using 18 different technological platforms. See, e.g., Exhibit PDK-7. Its reasonableness 19 does not depend upon any particular technology or presence of any particular 20 number of facilities- based entities. This feature is particularly significant given 21 the highly dynamic, increasingly convergent communications marketplace where 22 providers offer varying bundles of video, voice, and internet services using wired 23 and wireless technology. In North Carolina, where IOUs are subject to Section 24 224 regulation, setting attachment rates charged by EMCs such as Blue Ridge
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1	pursuant to the same FCC Rate formula that regulates IOU pole attachment rates
2	offers the added advantage of bringing rates paid by communications providers
3	across the state into harmony for access to utility poles—an essential facility
4	whose inherent homogeneity in production (in more layman's terms "a pole is a
5	pole") makes them largely indistinguishable across utilities regardless of a
6	utility's organizational structure. Ensuring that rates across the state and across
7	utilities are based on the same regulatory principles will serve to minimize market
8	distortions and non-cost based rate incongruities of the type discussed above.
9	Best Mimics a Competitive Market Outcome: As previously noted, there is no
10	competitive market for pole attachments. However, the FCC Rate establishes a
11	proxy for such pricing that assures the utility a compensatory rate without any
12	subsidy flowing to the attachers. The FCC Rate better approximates the outcome
13	of a competitive market by producing a lower, more efficient rental rate
14	corresponding to the actual cost of the unit of service being produced, i.e., one
15	foot of otherwise surplus pole space on the utility's existing pole network. In a
16	competitive market, such as would result if there were multiple competing pole
17	owners with surplus pole space to rent, the price for attachments would be driven
18	down towards marginal cost. Lower input rates in turn allow for lower rates to
19	end users in the final services market, in this case the market for broadband and
20	other communications services—with its resultant benefits to consumers
21	(including BREMC's own members) of a greater array of innovative and
22	advanced service offerings and at lower rates. However, while the rate produced
23	by the FCC Rate comes closer to this objective competitive market standard, as

1	explained more fully below, it is a fully allocated cost rate that exceeds the true
2	marginal cost and thus fully ensures against cross-subsidy.

3	Produces Fully Compensatory Subsidy-Free Rates: The FCC Rate formula
4	produces rates that are subsidy-free by objective economic standards, and fully
5	compensatory to the pole owner. As well established in the economic and
6	regulatory literature, marginal costs are defined as the additional costs caused by,
7	or that "but for" the attachment, would not exist for the pole owner. From an
8	economic perspective, as long as the pole owner recovers its marginal costs of
9	hosting communications attachments, there can be no valid claim of cross
10	subsidy, or similar finding pursuant to just compensation principles, that the pole
11	owner or its customers are worse off from hosting the attachment. ³⁵ While pole
12	owners often cite to cost savings enjoyed by communications providers vis-à-vis
13	the cost of constructing their own stand-alone networks, as widely acknowledged,
14	the construction of duplicative parallel pole networks would be practically and
15	economically infeasible. Even if such parallel networks were feasible, a
16	competitive market outcome produces a price closer to the marginal cost of the
17	good or service being produced, and specifically excludes—as does the related
18	legal principle of just compensation—the consideration of any uncaptured value
19	to the buyer of a hypothetical alternative.

³⁵ It is a central and well-established tenet of economics that rates that recover the marginal costs of production are economically efficient and subsidy-free. For a subsidy to occur, the utility must have unrecovered costs that *but for* the attacher would otherwise not exist. This is decidedly *not* the case for pole attachments. Since make ready charges alone essentially cover the marginal costs of attachment, the utility will not bear a higher cost as a result of the attacher.

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1	Pole owners similarly often cite to additional unrecovered costs of pole
2	attachments, as do Messrs. Arnett and Booth. Mr. Arnett asserts there are
3	additional "but for" costs not recovered in the annual rental rate, that should be
4	separately recoverable from the attacher in addition to the rental and existing
5	make ready and other direct fees. Mr. Arnett's claim is further expanded on by
6	Mr. Booth who suggests there are a number of "but for" costs purportedly
7	unrecovered in the rental rate. See Direct Testimony of Wil Arnett at 46-47,
8	Direct Testimony of Gregory Booth at 33-41. Such claims are simply not true.
9	The fully allocated costs recovered in the FCC Rate include an expansive set of
10	costs, including a host of costs that would exist for BREMC regardless of whether
11	there were any third party communications attachers occupying space on the
12	utility's poles. ³⁶ In addition, the formula provides for a very generous recovery of
13	capital costs, especially for an EMC that has a zero cost of equity. ³⁷ The FCC
14	Rate, in fact, allows BREMC to recover through the rental rate ongoing costs that
15	are much more than the marginal cost for a third-party communications attacher's
16	use of otherwise vacant space on utility poles. This is especially the case when

³⁶ For example, the FCC Rate formula includes the entirety of costs booked to Administrative and Generalrelated Accounts 920 to 930, covering a wide expanse of overhead costs such as administrative and general salaries including officer salaries, office supplies and expenses including telephone and court-related expenses, outside services employed including attorney fees and audit expenses, property insurance, injuries and damages, employee pensions and benefits including health insurance related expenses, and miscellaneous general expenses including general advertising, bank service fees, association dues, etc. Distribution Plant Maintenance-related costs included in Account 593 for overhead lines also contain a number of sub-accounts that include non-pole related expenses such as repairing grounds, cleaning insulators, sampling, testing, changing, purifying and replenishing insulating oil, etc.

³⁷ For the past several decades, the FCC Rate has included a default value for the rate of return element of the carrying charge factor based on an overall weighted cost of debt plus equity of 11.25%. The default value is currently set at 11%, but is being reduced by the FCC over the next several years but is still an exceedingly high 9.75%, a value between two and two and a half times BREMC's actual average cost of debt of *****BEGIN CONFIDENTIAL*****

1	you take into account that under the FCC methodology in addition to receiving
2	annual formula rental payments based on a cost causative allocation of fully
3	allocated costs, BREMC will also receive make-ready payments and other direct
4	reimbursement fees cover any out-of-pocket costs it could potentially incur in
5	connection with hosting a communications attachment in the event there is not
6	already existing surplus space on its poles. ³⁸ In addition to its inclusion of fully
7	allocated costs unrelated to poles, the FCC Rate builds in additional contribution
8	to the pole owner by providing capital cost recovery that under a true "but for"
9	cost standard would either be excluded entirely, or included but at a very minimal
10	level. Indeed, had the FCC Rate been designed to set rates based on the lower
11	"but for" standard of costs, the rate formula would have included a much smaller
12	set of costs, and the rates produced by that formula would be a fraction of the
13	fully allocated cost-based rate.
14	Moreover, in addition to the excess contribution over "but for" costs built into the
15	fully allocated cost-based FCC Rate, the FCC methodology already allows for
16	additional recovery of true "but for" costs. Consider especially the fact that cable

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attachers regulated under Section 62-350 are typically occupying at most one

³⁸ Under the FCC methodology, the utility is able to charge the communications attacher additional up front or non-recurring make-ready charges, to fully reimburse the pole owner for any out-of-pocket or true "but for" costs the utility incurs to make the pole capable of hosting the attachment, which include the entire cost of rearrangements, pole modifications, or the cost of total replacements as necessary to accommodate the attachment to the extent space is not already available on a pole as vacant or surplus space. *Plus* as pole owner, BREMC retains full ownership of the enhanced asset value of any and all improvements to their pole property (including the creation of additional space for the utility to rent or occupy) fully funded by those make-ready charges. Where poles have been changed-out to taller and/or stronger poles, BREMC will get the full value of the upgraded asset for its own use, and it also gets the recurring revenue stream in the form of rent from the attacher who paid to replace that pole, as well as from others.

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1	foot ³⁹ of otherwise surplus space on the utility's existing network of poles that
2	would go unused, and that the utility is able to impose make-ready charges, over
3	and above the rental rate, to recover any actual out-of-pocket costs (e.g., for pole
4	change-out or rearrangement) incurred by the utility in order to accommodate the
5	communications attachment. As an attacher, Charter enjoys none of the rights of
6	telephone joint owners, including the right to specified amounts of space on
7	utility's poles. The attacher's use of pole space is fully subordinate to that of the
8	utility who can reclaim the space for its core service at any time. ⁴⁰ Mr. Arnett, in
9	fact, agreed in a recent deposition that the limited categories of true "but-for"
10	costs are best addressed specifically in the pole attachment agreement, not
11	through a general catch-all provision that could lead to more disputes. See PDK-
12	10 (Excerpts of June 13, 2017 Deposition of Wilfred Arnett ("Arnett Depo.") at
13	197:4-206:1). Unlike the more generalized types of administrative costs that
14	Messrs. Arnett and Booth assert would not exist "but for" the presence of Charter
15	attachments, make-ready costs and the other direct fees are directly linked to time
16	and pole specific activities attributable to an individual attacher, and as such, are
17	readily tracked and documented. Also, it is the pole owners themselves that

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³⁹ A communications attachment occupies a small fraction of the space used by the utility itself in the provision of its core electric service, and has correspondingly small weight and clearance (both horizontal and vertical) requirements *vis-à-vis* the electric service. The assignment of 1 foot of usable space to an individual attachment is already a generous space allocation from an economic cost causation perspective given my understanding that the typical third party communications attachment on the pole actually takes up only a few inches.

⁴⁰ In this key respect, third party pole attachment is a lower grade of service, one by design, does not involve capital expenditures on the part of the utility to accommodate the service, since any such investment would be subject to the make ready process and associated fees imposed on the attacher. In many respects, this is akin to interruptible electric service. It is my understanding the Commission has set lower rates for that service commensurate with its limitations of service.

1	determine the level of make-ready charges, and such charges may also include
2	certain corporate or administrative cost loadings. ⁴¹
3	What Messrs. Arnett and Booth are essentially proposing here is adoption of a
4	rate structure that allows the pole owner to charge rates using the best of both cost
5	standards. They would have the Commission apply the higher fully allocated cost
6	standard to set the recurring rate, but in addition, apply the lower "but for"
7	standard to a comprehensive set of generalized, unspecified, and unquantified cost
8	add ons-seemingly over and above the true "but for" costs included in make-
9	ready and other direct fees. Finally, both Mr. Arnett and Mr. Booth's assertions
10	of unrecovered costs are made without any supporting factual or empirical
11	documentation; similarly undocumented claims of "but for" expenses by pole
12	owners have been rejected by regulators. ⁴²
13	As widely recognized and clearly stated by the FCC, "under economic and legal
14	principles, a given service (e.g., access to poles) is not subsidized by other
15	services (e.g., electric service) if the rate for that service covers all the costs
16	caused by that service"—as the FCC Rate indisputably does. The FCC Rate has

⁴¹ Whatever small amount of incremental cost relating to corporate-related administrative costs that may not be captured in those make-ready charges are more than compensated for in the multitude of administrative costs recovered in the FCC rate that have nothing to do with poles or pole attachments, and again in other sources of excess recovery built into the FCC Rate such as the high cost of capital recovery.

⁴² See Implementation of Section 224 of the Act, Report & Order & Order on Reconsideration, 26 FCC Rcd 5240 ¶ 189-190 (April 7, 2011), aff'd sub nom. Am. Elec. Power Serv. Corp. v. FCC, 708 F.3d 183 (D.C. Cir. 2013) ("April 2011 Order"). The FCC explained that electric utility pole owners "did not provide any cost study, let alone one that might demonstrate that pole owners incur capital costs outside the make-ready context solely to accommodate third-party attachers" and further stating and noting that utilities provided "only an anecdotal assertion of additional capital costs that would not be incurred 'but for' communications attachers." The FCC also explained that it had invited utility pole owners to submit evidence to support claims that they had put in taller poles for third parties but that, in response, electric utilities did not provide any cost study, let alone one that might demonstrate that pole owners incur capital costs outside the make-ready context solely to accommodate third parties but that, in response, electric utilities did not provide any cost study, let alone one that might demonstrate that pole owners incur capital costs outside the make-ready context solely to accommodate third party-attachments.

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1	been repeatedly found by regulatory agencies and by the courts, including the
2	U.S. Supreme Court, to produce rates that are just, reasonable and fully
3	compensatory to the utility. ⁴³ Pole owners often advocate for the use of per capita
4	based allocation approaches such as that recently employed by TVA for its
5	wholesale customer pole owners that allocate costs associated with unusable
6	space on the pole on a per entity basis. They do so for the very reason that these
7	approaches produce higher rates. ⁴⁴ However, as discussed in more detail in the
8	section of my testimony addressing the inherent and numerous flaws in the TVA
9	approach used by BREMC to calculate pole attachment rates applicable to
10	Charter, rates produced using those approaches do not correspond to the actual
11	incurrence of costs by the pole owner, and add complexity, arbitrariness, and
12	contentious to the process.
13	Provides Straightforward, Consistent, and Predictable Rates: The FCC Rate
14	provides for the most straightforward, consistent and predictable formula
15	application-qualities of utmost importance to firms in making business decisions
16	to invest in new technology and to roll out new services. The overarching

⁴³ See, e.g., Amendment of Commission's Rules and Policies Governing Pole Attachments, CS Docket No. 97-98, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103 ¶¶ 15-25 (2001); FCC v. Florida Power Corp., 480 U.S. 245, 253-54 (1987) (finding that it could not be "seriously argued, that a rate providing for the recovery of fully allocated cost, including the cost of capital, is confiscatory."); Alabama Power Co. v. FCC, 311 F.3d at 1363, 1370; Detroit Edison Co. v. Michigan Public Serv. Comm'n, Nos, 203421, 203480, slip op., at 3-4 (Mich. Ct. App. Nov. 24, 1998), affirming Consumers Power Co., Detroit Edison Co., Setting Just and Reasonable Rates for Attachments to Utility Poles, Ducts and Conduits, Case Nos. U-010741, U-010816, U-01083 1, Opinion & Order (Mich. Pub. Serv. Comm'n Feb. 11, 1997), appeal denied, 461 Mich. 853, 602 N.W.2d 386, 1999 Mich. LEXIS 3252, 1999 WL 711854 (Mich.); In the Matter of Trenton Cable TV, Inc. v. Missouri Public Serv. Co., PA-81-0037, ¶ 4 (rel. Jan. 25, 1985) ("Since any rate within the range assures that the utility will receive at least the additional costs which would not be incurred but for the provision of cable attachments, that rate will not subsidize cable subscribers at the expense of the public.").

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1	concept underlying the FCC Rate methodology, and one of the key reasons
2	behind its widespread adoption, is that it can be applied in a very straightforward
3	manner. The data inputs used in the FCC Rate are recorded in the FERC uniform
4	reporting system for IOUs, FCC uniform reporting requirements for telephone
5	companies, and the equivalent reporting system used by the Rural Utilities
6	Service ("RUS") for cooperatives. In fact, the accounts imposed by the RUS on
7	all cooperatives that utilize RUS loans-as do virtually all cooperatives-are the
8	same as those used by FERC by IOUs. Accordingly, the FCC Rate can be
9	updated annually with a minimum of private, administrative effort, and little, if
10	any, regulatory involvement.
11	Easy and Least Costly to Administer: From a regulatory or administrative
11 12	Easy and Least Costly to Administer: From a regulatory or administrative perspective, the FCC Rate is the easiest and least costly cost-based methodology
11 12 13	Easy and Least Costly to Administer: From a regulatory or administrative perspective, the FCC Rate is the easiest and least costly cost-based methodology to implement and administer, as it engenders fewer areas of contention due to the
11 12 13 14	Easy and Least Costly to Administer: From a regulatory or administrative perspective, the FCC Rate is the easiest and least costly cost-based methodology to implement and administer, as it engenders fewer areas of contention due to the formula's simplicity and the straightforward nature of its data inputs, especially
11 12 13 14 15	Easy and Least Costly to Administer: From a regulatory or administrative perspective, the FCC Rate is the easiest and least costly cost-based methodology to implement and administer, as it engenders fewer areas of contention due to the formula's simplicity and the straightforward nature of its data inputs, especially when the FCC's widely accepted and commonly applied presumptive values for
11 12 13 14 15 16	Easy and Least Costly to Administer: From a regulatory or administrative perspective, the FCC Rate is the easiest and least costly cost-based methodology to implement and administer, as it engenders fewer areas of contention due to the formula's simplicity and the straightforward nature of its data inputs, especially when the FCC's widely accepted and commonly applied presumptive values for joint use pole characteristics are used. In particular, the FCC Rate's
11 12 13 14 15 16 17	Easy and Least Costly to Administer: From a regulatory or administrative perspective, the FCC Rate is the easiest and least costly cost-based methodology to implement and administer, as it engenders fewer areas of contention due to the formula's simplicity and the straightforward nature of its data inputs, especially when the FCC's widely accepted and commonly applied presumptive values for joint use pole characteristics are used. In particular, the FCC Rate's proportionate, occupancy-based cost allocation methodology makes data
11 12 13 14 15 16 17 18	Easy and Least Costly to Administer: From a regulatory or administrative perspective, the FCC Rate is the easiest and least costly cost-based methodology to implement and administer, as it engenders fewer areas of contention due to the formula's simplicity and the straightforward nature of its data inputs, especially when the FCC's widely accepted and commonly applied presumptive values for joint use pole characteristics are used. In particular, the FCC Rate's proportionate, occupancy-based cost allocation methodology makes data requirements much easier to satisfy as compared with other "per capita" type
 11 12 13 14 15 16 17 18 19 	Easy and Least Costly to Administer: From a regulatory or administrative perspective, the FCC Rate is the easiest and least costly cost-based methodology to implement and administer, as it engenders fewer areas of contention due to the formula's simplicity and the straightforward nature of its data inputs, especially when the FCC's widely accepted and commonly applied presumptive values for joint use pole characteristics are used. In particular, the FCC Rate's proportionate, occupancy-based cost allocation methodology makes data requirements much easier to satisfy as compared with other "per capita" type approaches that require information on the number of attaching entities to

⁴⁵ As with any formulaic approach, the accuracy and integrity of the formula depends on the accuracy and integrity of the underlying data inputs used to run the formula. It is very important therefore that the data used in the formula be subject to careful scrutiny and held to a high standard as to reliability, accuracy, consistency, and ability to be verified and replicated. The FCC and majority of state regulators with jurisdiction over poles have found the FCC Rate to best achieve this objective.

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1	audit data or statistically significant sample data needed to verify the number of
2	attaching entities are often not available or are costly or time consuming to obtain.
3	Most Widely Used and Time-Tested Formula: And finally, a particularly key
4	advantage of the FCC Rate is that it is the most widely used and time-tested rate
5	methodology. The longstanding and widespread use of the FCC Rate is not just
6	due to its federal mandate, but its widespread adoption by the overwhelming
7	majority of states that regulate pole attachments. See Exhibit PDK-7. In adopting
8	the FCC Rate, the majority of state regulators have found the FCC Rate's
9	proportionate cost allocation methodology to best promote market efficiency,
10	resource utilization, and other public interest benefits including a greater array
11	and adoption of advanced communications and broadband services at lower
12	prices. Moreover, from a practical perspective, there is a substantial body of
13	federal and state precedent interpreting and applying the FCC Rate which further
14	enhances the ease by which attachers, utilities, and the Commission can rely upon
15	it thereby minimizing administrative and litigation costs. As noted above, the
16	FCC Rate is already being used in North Carolina in setting rates for IOUs under
17	FCC jurisdiction and therefore is easily reproducible by cooperatives across the
18	state.
19	I would also add that the FCC Rate has been endorsed by key national
20	organizations representing public utility commissioners, including NARUC, and

- 22 NASUCA. In a 2001 Ad Hoc Committee Report on Pole Attachments (attached
- 23 as Exhibit PDK-11), the NARUC committee concluded and specifically

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organizations representing consumers of both cable and utility services, including

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1	recommended that cooperatives be regulated and required to follow the FCC Rate
2	methodology, having reasoned that "[t]he necessity of providing [cooperatives] an
3	exemption from pole attachment rules has diminished considerably," and
4	"[i]slands of regulatory exception will only serve to segregate market
5	development."46 In 2008, NARUC issued a "Resolution Governing Pole
6	Attachment Policy" (also attached in Exhibit PDK-12) that highlighted the
7	importance of adopting "technology-neutral pole attachment policies" to facilitate
8	broadband deployment, "in accordance with FCC rules," without distinction to
9	type of utility ownership. ⁴⁷ Perhaps the strongest of public interest endorsements
10	for applying the FCC Rate to cooperatives is that of the National Association of
11	State Utility Consumer Advocates, a group whose very Charter is to represent
12	consumer interests, including cable, telephone and utility ratepayers. NASUCA
13	has consistently supported the FCC Rate, including in its most recent publicly
14	submitted comments on the matter (provided in Exhibit PDK-13), urging the FCC
15	to apply the FCC Rate uniformly as the best way to balance interests of the
16	various consumer constituencies. ⁴⁸

. .

⁴⁶ See Ad Hoc Group of the 706 Federal/State Joint Conference on Advanced Services, *Pole Attachments*, Presented at the 2001 NARUC Summer Meetings in Seattle, Washington, July 2001, Exhibit PDK-11.

⁴⁷ The 2008 NARUC Resolution made specific note of the "mutual and long-standing commitment [of state commissions] to adopt in conjunction with the FCC policy to facilitate the deployment of advanced service by removing barriers and promoting technology neutral solutions." *See* Exhibit PDK-12.

⁴⁸ Reply Comments of The National Association of State Utility Consumer Advocates in FCC Docket 07-245, filed April 22, 2008, at 1-2, 5 ("This rate was upheld against challenges that it was confiscatory. Thus, this is the rate that should be used for all pole attachments, regardless of the exact service provided over the attachment, and regardless of the identity of the attacher. Equally importantly, the Commission must not increase the rate paid by broadband service providers because this would be contrary to 'the nation's commitment to achieving universal broadband deployment and adoption.''). *See* Exhibit PDK-13.

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1		VI. <u>INVALID CRITIQUES OF THE FCC RATE</u>
2 3	Q.	Mr. Arnett asserts a number of criticisms of the FCC Rate in general and more specifically as it is applied to Blue Ridge. How do you respond?
4	A.	Mr. Arnett's criticisms of the FCC Rate are familiar ones, expressed repeatedly
5		over the years by electric utilities seeking to obtain the highest possible pole
6		attachment rate from regulators and courts. See Direct Testimony of Wil Arnett at
7		41-35. These arguments have been asserted by IOUs subject to pole rate
8		regulation, and in more recent years, by cooperatively owned utilities as they have
9		increasingly engaged in behavior akin to their IOU counterparts and come under
10		the scrutiny of state regulators as in North Carolina.
11		None of Mr. Arnett's criticisms are economically valid, and have been rejected by
12		the FCC, the overwhelming majority of state regulators who have adopted the
13		FCC Rate, and state and federal courts, including state and appellate courts in
14		North Carolina and the U.S. Supreme Court. Mr. Arnett fails to identify these
15		other authorities, which are identified and summarized in the attached Exhibit
16		PDK-7. Most of Mr. Arnett's arguments have already been addressed above. I
17		will briefly address a few other points raised by Mr. Arnett.
18		The FCC Rate is fully compensatory to pole owners and is not a subsidized rate.
19		Mr. Arnett's assertion that the FCC Rate is a subsidized rate appears to be based
20		on the notion that to be subsidy-free, a rate must reflect the benefits received or
21		value to the attacher (e.g., cost savings). Mr. Arnett's use of the word "subsidy"
22		is at odds with the established, objective economic definition of subsidy and the
23		related legal principle of just compensation. These principles, as described in the
24		economics literature and upheld by courts, hold that as long as the pole owner

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1	recovers its marginal costs, there can be no valid claim of cross-subsidy. Under
2	cost based regulation, it is the costs incurred by the pole owner that should be
3	used in setting rates. The attacher's hypothetical avoided costs of constructing its
4	own poles or of going underground are not properly considered as "costs" to the
5	pole owner or properly recoverable from the attacher. See Direct Testimony of
6	Wil Arnett at 42-43, 45. In the same way, the other possible or perceived benefits
7	received by the attacher mentioned repeatedly by Mr. Arnett are not "costs" to the
8	pole owner or a "subsidy" to the attacher and do not justify artificially high pole
9	rates. See e.g., Id. at 40) As explained above, in combination with make ready
10	and other direct fees, the FCC Rate provides a fully allocated cost recovery to the
11	pole owner at multiples of the pole owner's marginal cost and hence there can be
12	no valid claim of a subsidy to the attacher.

13 The FCC Rate's presumptive 7.41% proportionate share of costs is economically 14 appropriate, if not high, in relation to the pole owner's true economic costs. Mr. 15 Arnett takes issue with the FCC Rate's recovery of what he perceives to be "only 16 a small fraction of the annual costs to own and maintain the poles." See Direct 17 Testimony of Wil Arnett at 38. Again, Mr. Arnett's conclusions are based on his 18 incorrect adherence to what he refers to as "benefits received principles," or his 19 personal sense of whether a rate may "bear ... resemblance to being equitable" or "seem like a fair sharing of costs" or "sound like a subsidy" rather than the 20 21 proper, objective, and economic cost-based standard. See Direct Testimony of 22 Wil Arnett at 38, 42. Mr. Arnett defines a subsidized rental rate according to his 23 personal standard of whether that rate reflects "the benefits derived" rather than

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1	the correct economic definition for determining subsidy, which is strictly based on
2	whether the rate reflects the cost to the pole owner. The economic concept of
3	subsidy has nothing to do with the benefits derived by the attacher. See Id. at 40.
4	When compared against the objective benchmark of the true economic costs to the
5	owner of hosting a third party attachment, i.e., the marginal costs of hosting
6	which are very low, the presumptive 7.41% allocation factor is actually high,
7	especially taking into account the additional recovery the pole owner receives
8	from the attacher in make ready and other direct fees.
9	The FCC Rate allocates an economically appropriate percentage of the costs
10	associated with the unusable or common space on the pole. Mr. Arnett opines
11	that having cable companies to pay for only 7.4% of the annual costs associated
12	with the common space (a/k/a "support space" or "unusable space") "makes no
13	sense at all." See Id. at 39. I could not more strongly disagree. From an
14	economics cost causation perspective, it makes perfect sense to allocate indirect
15	or common costs at the same percentage as direct costs. As explained above, the
16	proportionate cost allocation methodology is widely used in other regulatory cost
17	applications, and is commonly found outside the regulatory arena as well-a
18	primary example being real estate rental markets, as illustrated by Congress'

example of the 10 story apartment building, but as noted above, there are many
other such examples one can cite to in the broader economy. Again, Mr. Arnett
cites to an attacher's benefit from the common space as the basis upon which to
allocate costs. As in the real estate application, of course all tenants "need access
to and make use of the common space of the building, but that concept of benefit

1	that applies to all tenants does not drive their relative allocations of common
2	costs. Rather, as described above, their relative allocations of common costs are
3	proportional to their allocations of direct cost, and based upon their relative
4	square foot occupancy of space. It is entirely appropriate, fair and equitable from
5	an economic standpoint that a tenant occupying 7.4% the total square footage of
6	rental space pays 7.4% of the common costs, and the same is true for attachers.
7	The FCC Rate properly allocates safety space as usable to the electric utility.
8	Contrary to Mr. Arnett's claims, the space on the pole designated as "safety
9	space" is usable by the pole-owning utilities—but not by attachers. Accordingly,
10	pursuant to cost causation principles, it is not reasonably or logically reclassified
11	as space usable to attachers. Doing so serves only to provide excess recovery for
12	the pole owner. As acknowledged by Mr. Arnett (see Direct Testimony of Wil
13	Arnett at 14), pole owners can and do place attachments within the safety space.
14	These include not only streetlights and other security lights as mentioned by Mr.
15	Arnett, but a host of other revenue-generating attachments. ⁴⁹ Contrary to Mr.
16	Arnett's belief (see Direct Testimony of Wil Arnett at 15-16), the pole owner's
17	ability to place attachments within the safety space (regardless of whether it is a
18	stated "practice" of the utility) and to realize revenues from such placement, is
19	what is the most relevant from an economic cost perspective: It dictates the

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⁴⁹ Attachments routinely made in this space by utilities include streetlights, private floodlights, traffic signals, fire and police call boxes and alarm signal wires, municipal communications systems, transformers and grounded conductors as well as a utility's own communications fiber.

- proper treatment of this space for purposes of cost attribution as directly usable
 space by the pole owner.⁵⁰
- 3 4

VII. <u>CALCULATION OF POLE ATTACHMENT RATES FOR BREMC</u> <u>UNDER RECOMMENDED FCC RATE FORMULA</u>

- 5Q.Have you calculated just and reasonable pole attachment rates that BREMC6may charge Charter based on the recommended FCC Rate formula?
- 7 A. Yes, I have. Those rates, which I have calculated for the relevant years at issue in
- 8 this proceeding for BREMC are provided in Table 1 below.

9 Q. Can you describe how those rates were calculated?

- 10 A. Yes. Applying data provided by BREMC in discovery, I have estimated the
- 11 maximum just and reasonable pole attachment rates (annual, per foot of occupied
- 12 space) under the FCC Rate for the years at issue in this proceeding. My
- 13 calculations, as summarized in Table 1 below, apply the widely used FCC
- 14 presumptive values for usable and unusable space and total pole height as
- 15 described earlier,⁵¹ but rely strictly on cost data specific to BREMC. Supporting
- 16 rate calculations are provided in Exhibit PDK-4. As shown in Table 1 on the
- 17 following page, the just and reasonable rates for BREMC range from **\$5.18** for
- 18 the 2017 rate year to **\$5.22** for 2015.

⁵⁰ To the extent the pole owner needs to place an attachment within the required safety clearances, it can order the attacher to relocate its attachment at the attacher's expense, or, if necessary, require the attacher either to remove its attachment or pay the costs for installation of a taller pole.

⁵¹The FCC presumptive values apply a total pole height for an average joint use pole of 37.5 feet, with 13.5 feet of usable space (inclusive of the 40 inches of so-called "safety space"), and 24 feet of unusable space, comprised of 6 feet underground support and 18 feet of above grade clearances.

Table	1
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CALCULATION OF JUST & REASONABLE RATE UNDER RECOMMENDED FCC RATE FORMULA - BLUE RIDGE EMC				
Rate Year	2017	2016	2015	
Cost Data for Year Ending	2016	2015	2014	
	BEGIN CONFIDENTIAL			
Net Bare Pole Cost x				
Carrying Charge Factor x				
	END CONFIDENTIAL			
Space Allocation Factor =	7.41%	7.41%	7.41%	
Max. Pole Attachment Rate	\$5.18	\$5.20	\$5.22	

2 Q. In your opinion, would rates higher than those presented in Table 1 above be 3 just and reasonable rates for BREMC to charge Charter?

4 A. No, they would not. For the many reasons described in this testimony, rates set

5 any higher than the maximum just and reasonable rates calculated based on the

6 widely accepted FCC Rate in my opinion would fail to serve the ultimate

7 purposes of effective pole rate regulation embodied in Section 62-350. By

8 objective economic standards, rates calculated using the FCC Rate are cost-based,

- 9 subsidy-free, and fully compensatory to the pole owner. Rates set higher than this
- 10 level are inefficiently high vis-à-vis well established economic cost standards and
- 11 contrary to the public interest.

1

Q. Is it a valid concern that the rates you have calculated using the FCC Rate are lower than rate levels Charter has been paying EMCs such as Blue Ridge for cable attachments?

- 15 A. No, it is not. That the rate levels calculated using the FCC Rate are lower than the
- 16 rate levels previously imposed on the attaching entities by the cooperatives, or
- 17 other so-called "market benchmark" rates set by other monopoly pole owners, is
- 18 not a valid economic or public policy concern. Any such "market" rates do not
- 19 reflect "free market" rates at all, but rather rates set in an unbalanced market

1		environment where the pole owner has an inordinate amount of leverage and can
2		use that leverage to impose excessively high monopoly rates.
3 4 5	Q.	In your opinion, what would be a more appropriate benchmark for just and reasonable rates that Blue Ridge may charge Charter pursuant to Section 63-250?
6	A.	The more appropriate benchmark for just and reasonable pole attachment rates for
7		BREMC would be the average rates that Charter and other communications
8		providers pay IOUs in North Carolina subject to Section 224 regulation. As noted
9		above, operationally, cooperatives use the same type of plant, technology, and
10		production techniques to provide electricity service to subscribers and in the same
11		basic manner as IOUs. Indeed, it is not uncommon for IOU and EMC-owned
12		poles to be adjacently located, especially in areas where their pole networks have
13		been built under EMC-ILEC joint ownership arrangements, or to have contiguous
14		or overlapping territories with IOUs, as appears to be the case with Blue Ridge
15		and Duke Energy.
16 17	Q.	How do the rates you have calculated for BREMC compare to the average rates Charter pays IOUs in North Carolina?
18	А.	The just and reasonable rates I have calculated for BREMC are very closely in

- 19 line with the average pole attachment rates that Charter pays IOUs in North
- 20 Carolina, as shown in Table 2 below.
- 21

Table 2

Average Pole Attachment Rates Charter Paid Investor Owned Utilities 2015-2017			
	2015	2016	2017
Electric	\$6.64	\$7.20	\$7.26
Telco	\$3.38	\$3.24	\$2.52

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1	VIII.	CALCULATION OF OVERCHARGES PAID BY CHARTER TO BREMC
2 3	Q.	What is your understanding of Charter's entitlement to a refund of amounts paid to BREMC in excess of just and reasonable rates under Section 62-350?
4	A.	It is my understanding that under Section 62-350, Charter is entitled to a refund
5		for the applicable true up period if the rate it has been paying is in excess of a just
6		and reasonable rate. I further understand the applicable true-up period for
7		purposes of calculating that refund is from the present date back to the date
8		immediately following expiration of the 90-day negotiation period triggered by
9		Charter's written request, or the termination of the prior pole agreement effective
10		at the end of the then current term, whichever is later. ⁵²
11 12 13	Q.	Can you describe the process by which you calculated the amount of overcharges paid by Charter to BREMC for pole attachments for the applicable true-up period.
14	A.	Yes. For the reasons described in this testimony, it would be unjust and
15		unreasonable for calculations of overpayments to be based on the excessively
16		high monopoly level rates unilaterally imposed on Charter by BREMC, ⁵³ or some
17		other monopoly level rate. These include rates calculated using alternative
18		approaches such as recently employed by TVA for its wholesale customer pole
19		owners and used by BREMC to calculate proposed rates/or that have been set in
20		reference to rates charged by other unregulated pole owning utilities or any other
21		arbitrary criteria designed to maximize revenues or otherwise promote the special

⁵² See Charter Answer and Counterclaims at 3, 12-13. I understand the applicable true up date is August 25, 2015, and that Charter has paid invoices received from BREMC through August of this year (2017).

⁵³ The same would apply to the calculation of any potential underpayments by Charter due BREMC.

1	interests of the pole owner in contrast to just and reasonable rates more aligned
2	with a competitive market or regulated IOU benchmark rate.
3	Accordingly, the overpayments I have calculated as due Charter are based on the
4	difference between the rates Charter actually paid BREMC over the relevant true
5	up period and the maximum just and reasonable rates that a correct application of
6	the FCC Rate produces. The amounts paid by Charter to BREMC for
7	communications attachments for the years 2015 to 2017 were based on a per pole
8	attachment rate of \$26.64, which Charter paid subject to true-up and credit for any
9	amounts overpaid.
10	As shown in Table 3 on the following page, the difference between the maximum
10 11	As shown in Table 3 on the following page, the difference between the maximum just and reasonable amounts that should have been due to BREMC from Charter
10 11 12	As shown in Table 3 on the following page, the difference between the maximum just and reasonable amounts that should have been due to BREMC from Charter annually for the years 2015-2017 and the invoiced amounts Charter actually paid
10 11 12 13	As shown in Table 3 on the following page, the difference between the maximum just and reasonable amounts that should have been due to BREMC from Charter annually for the years 2015-2017 and the invoiced amounts Charter actually paid BREMC on a per attachment basis over this period totaled some \$1,010,251. The
10 11 12 13 14	As shown in Table 3 on the following page, the difference between the maximum just and reasonable amounts that should have been due to BREMC from Charter annually for the years 2015-2017 and the invoiced amounts Charter actually paid BREMC on a per attachment basis over this period totaled some \$1,010,251. The overcharge amounts presented in Table 3 do not include any interest component
10 11 12 13 14 15	As shown in Table 3 on the following page, the difference between the maximum just and reasonable amounts that should have been due to BREMC from Charter annually for the years 2015-2017 and the invoiced amounts Charter actually paid BREMC on a per attachment basis over this period totaled some \$1,010,251. The overcharge amounts presented in Table 3 do not include any interest component as would be economically appropriate to reflect the time value of money over the
10 11 12 13 14 15 16	As shown in Table 3 on the following page, the difference between the maximum just and reasonable amounts that should have been due to BREMC from Charter annually for the years 2015-2017 and the invoiced amounts Charter actually paid BREMC on a per attachment basis over this period totaled some \$1,010,251. The overcharge amounts presented in Table 3 do not include any interest component as would be economically appropriate to reflect the time value of money over the span of years that Charter paid BREMC in excess of just and reasonable rates.
10 11 12 13 14 15 16 17	As shown in Table 3 on the following page, the difference between the maximum just and reasonable amounts that should have been due to BREMC from Charter annually for the years 2015-2017 and the invoiced amounts Charter actually paid BREMC on a per attachment basis over this period totaled some \$1,010,251. The overcharge amounts presented in Table 3 do not include any interest component as would be economically appropriate to reflect the time value of money over the span of years that Charter paid BREMC in excess of just and reasonable rates. Had interest been applied, the amounts owed Charter would be significantly

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Table	3
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CALCULATION OF OVERCHARGES			
IN RELATION TO JUST AND REASON	IABLE AMOUN	TS UNDER FC	C RATE
Rate Year	2017	2016	2015
Cost Year	2016 ¹	2015	2014
Rate paid by Charter ²	\$26.64	\$26.64	\$26.64
Just and Reasonable Rate ³	<u>\$5.18</u>	\$5.20	<u>\$5.22</u>
Excess Paid by Charter x	\$21.46	\$21.44	\$21.42
No. of Attachments ² x	27,674	26,301	26,301
% of Year Applicable ⁴ =	41.92%	100.00%	35.07%
Overcharges	\$248,891	\$563,805	\$197,555
Total Overcharges	\$1,010,251		
¹ Charter Invoices.			
² Exhibit PDK-4.			
³ True up period began August 25, 2015, 90 days from the trigger date of May 26,2015			

2 I have also calculated overpayments to include an additional source of

3 overcharges, based on my understanding that whereas Charter was invoiced and

- 4 paid BRMEC on a *per attachment*, Charter's agreement with BREMC stipulated
- 5 that it pay on a *per pole* basis. Total overcharges, including those resulting from
- 6 BREMC applying a *per pole* rate of \$26.64 to a higher count of attachments, is
- 7 \$1,092,205.

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8IX.THE OUTLIER TVA APPROACH IS HIGHLY FLAWED AND WAS9DEVELOPED EXPRESSLY TO SERVE THE LIMITED INTERESTS OF ITS10POLE OWNING CUSTOMERS IN CHARGING THE HIGHEST POSSIBLE11POLE ATTACHMENT RATES

Q. Mr. Arnett uses the TVA approach for calculating pole attachment rates for Blue Ridge. What is your overall opinion of the TVA approach?

- 14 A. The TVA approach is marred by a deeply flawed process that led to adoption of
- 15 an uneconomic, untested, unpredictable, and unreasonable rate methodology that

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1		serves only to advance TVA's customers' interests in obtaining the highest
2		possible pole attachment rates from communications attachers.
3	Q.	In what respect was the TVA process flawed?
4	A.	It is my understanding that the TVA began exploring a pole attachment rate
5		methodology in 2015. ⁵⁴ In a manner that would be highly irregular for a public
6		regulatory agency, TVA solicited only the input of the local power companies
7		who purchase power from the TVA, most of whom are rural electric cooperatives,
8		and their association, the Tennessee Valley Public Power Association
9		("TVPPA"). ⁵⁵ According to its website, TVPPA's mission is to "serve as an
10		effective advocate for our members' interests with the TVA." ⁵⁶ It appears
11		TVA's members and other cooperative associations contacted other advocates for
12		electric cooperatives, including Mr. Arnett and to my understanding, one of the
13		other cooperatives' attorneys in the related proceedings. ⁵⁷ TVA did not solicit
14		input from any other stakeholders, including advocates for the public interest or
15		the third-party attachers who would be required to pay any new pole attachment
16		rate. As far as I am aware, there is no evidence of a public notice on TVA's
17		website (where it posts public notices of other business), ⁵⁸ and it is my
18		understanding that TVA did not even notify the public or cable operators of its

⁵⁴ See Exhibit PDK-10 (Arnett Depo. at 112:1-116:18).

⁵⁵ See TVA Proposed Board Resolution and Memorandum to the Board of Directors, dated January 22, 2016 (Attached as Exhibit PDK-14).

⁵⁶ See <u>http://www.tvppa.com/about/</u>

⁵⁷ See Exhibit PDK-10 (Arnett Depo. at 112:1-116:18, discussing two TVA cooperatives who had contacted him); Exhibit PDK-15 (email thread between T. Magee and J. Brogden dated February 20, 2015 re: TVA Pole Attachment Questions).

⁵⁸ See <u>https://www.tva.gov/Newsroom/Press-Releases</u> (the first item listed as of the date of this report is a press release from June 8, 2017, soliciting public comment on proposed rule changes).

1		consideration of a new pole attachment rate requirement for its customers until it
2		was adopted by the Board. Accordingly, TVA's analysis of the issue was
3		informed only by information and proposals supplied by its customers who stood
4		to benefit the most from an excessively high pole attachment rate, and their
5		advocates, and who would have no incentive to provide the TVA with any
6		information or perspective other than that supporting their own biased views.
7 8 9	Q.	Does the process under which the TVA developed its pole rate resolution bear any resemblance to the manner in which the FCC developed the FCC Rate?
10	A.	Not in the least. The FCC's pole attachment rate methodologies have been
11		developed through public and fully considered notice and comment rulemakings
12		under the federal Administrative Procedures Act. The FCC's most recent
13		rulemaking (culminating in the 2011 Order) ⁵⁹ considered the viewpoints,
14		arguments, and evidence supplied by hundreds of interested parties over several
15		years. ⁶⁰ The FCC considered the viewpoints of large and small cable operators,
16		investor-owned utilities, telephone companies, and public interest groups alike. It
17		also considered comments and evidence submitted by the North Carolina
18		Association of Electric Cooperatives, NRECA, the American Public Power
19		Association ("APPA"), and more than a dozen other rural electric cooperatives or
20		their state associations.

⁵⁹ April 2011 Order.

⁵⁹ April 2011 Order.

⁶⁰ My understanding is that interested parties filed over 640 comments, reply comments, letters, and notices of ex parte meetings over the course of the FCC's deliberations in WC Docket No. 07-245. *See* <u>https://www.fcc.gov/ecfs/search/filings?date_received=%5Bgte%5D1900-01-01%5Blte%5D2011-04-11&proceedings_name=07-245&sort=date_disseminated,DESC</u> (limiting filings to the date range from the docket's opening to the release of the 2011 Pole Order).

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In defense of TVA, Mr. Arnett states that "TVA fully consider[ed] the FCC **O**. formula before adopting its own rate formula?" Does TVA's consideration 2 of the FCC methodology negate your concerns about process? 3

1

4 No, it does not. While TVA may have considered some undisclosed information A. 5 about the FCC methodology, it was far from well-informed. TVA's rejection of 6 the FCC Rate, for example, was based on a number of patently false premises 7 likely supplied by its customers or their advocates, and without the benefit of any 8 information from other stakeholders, a complete record, or an open debate to better inform its findings.⁶¹ Those false premises include a number of the same 9 10 assertions made by Mr. Arnett in this proceeding. Principal among these 11 falsehoods is that the FCC Rate is a subsidized rate that does not appropriately 12 compensate pole owners. As recapped in the preceding section of this testimony, 13 such a claim is simply untrue under an objective economic definition of subsidy 14 or the legal principle of just compensation. TVA, to my knowledge, did not 15 attempt to justify its conclusion in light of these economic principles or judicial 16 findings that the FCC Rate is not confiscatory-of which it may not be aware 17 given the limited input it received. Second, TVA asserted that pole owners take 18 the interests of attaching entities into account in making their capital investment decisions. While a common anecdotal argument of pole owning utilities, the 19 20 evidence I am aware does not support that claim. The evidence I have seen is that 21 utilities install taller or stronger poles to meet the operational needs of their own 22 core electric business such as required to accommodate load growth or to 23 maintain reliable electric service, or based on requirements of their joint-use

⁶¹ See Exhibit PDK-14, Attachment B "Summary of Consideration and Comments Related to Recommendation to TVA Board February 2016."

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9 Q. What was the outcome of TVA's insular process?

Testimony of Wil Arnett at 11.

10 The outcome of the TVA's process—a process guided by biased one-sided input A. 11 and that allowed for misinformation—was the adoption of a highly flawed outlier 12 rate approach-one that is among the most extreme of which I am aware. By its 13 own admission, TVA adopted a rate specifically designed to advance its 14 interpretation of its statutory imperative to keep electric rates as low as feasible.⁶³ 15 As such, it adopted a methodology that by design does not take into account the 16 essential facility nature of the pole attachment and the potential harm to 17 communications attachers who need access to that essential facility to provide service, or the interest of the consuming public. I saw nothing in the TVA's 18 19 description of its approach indicating that it took into account consideration of the economic and public policy principles underlying effective pole rate regulation. 20

agreements with other pole owners.⁶² Nor does it appear the power companies

provided any empirical evidence to the TVA that would support such a claim.

refutation, is that the FCC Rate only recovers costs of the space occupied in the

acknowledges that the FCC Rate also allocates the costs of the unusable space at

the same proportionate share as it allocates costs of the usable space. See Direct

The third principal myth that the TVA took as gospel, despite its obvious

usable space. Even Mr. Arnett refutes this claim in his testimony. He

⁶² Evidence from other proceedings I have been involved in, including information from actual construction planning documents and guidelines, indicates pole investment and placement decisions are first and foremost driven by the needs of the core electric service. If and when they build taller/stronger poles it is for their own network integrity or for joint users, not third-party cable attachers like Charter, who pay for taller/stronger poles when they are needed for Charter's attachments.

⁶³ See Exhibit PDK-14, Attachment A, "Determination by the TVA Board," at 1.

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Nor did I see anything acknowledging its own potential anticompetitive motives
and conflict, as evidenced by TVA's announcement of a "strategic plan" to
deploy its own fiber optic network for commercial purposes. ⁶⁴
What aspects of the TVA approach are most problematic economically?
Aside from the egregiously high rates produced by the approach which I address
below, there are several features of the TVA method which stand out as being in
stark conflict with the core economic principles of cost causation underlying
effective pole rate regulation. The first non-cost based feature is the TVA's use
of a per capita allocation to assign the costs of the common space equally among
attachers. The TVA makes no distinction between the pole owner who has total
ownership rights and control over the pole network specifically designed and
operated to provide electricity, and a third party attacher with extremely
subordinate rights of access to the facility. As explained above, a per capita
approach bears no relation to the actual incurrence of cost to the owner of hosting
an attachment, and to assign costs on an equal per capita basis to attachers makes
no sense economically. The second non-cost based feature is the TVA's
assignment of 100% of the costs associated with the safety space to
communications attachers on the premise that it is unusable to the utility and

Q.

A.

- 19 solely for the benefit of communications. As recapped above, this premise is
- 20 patently false. Not even the flawed APPA formula, another industry-driven
 21 formula designed to serve the self-interest of its public power company members,
- 22 goes so far as to exclude the pole owner from even a per capita share of the costs

⁶⁴ See TVA Press Release, "TVA Directors Approve \$300M Strategic Fiber Plan," May 11, 2017, available at https://www.tva.gov/Newsroom/Press-Releases/TVA-Board-Approves-300-Million-Strategic-Fiber-

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of the safety space. See Direct Testimony of Wil Arnett at 26-28. The third	Ğ ₹
feature that stands out as decidedly non-cost based is the TVA's allowance of an	
annual escalator to be used in lieu of the pole owner's updating of the formula to	Ö
reflect the most recent annual costs—even if pole costs go down that year. This	
feature allows the pole owner to arbitrage to its sole benefit whatever rate is	<u>~</u>

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Q. Mr. Arnett refers to a handful of approaches that he asserts are similar to the TVA. Does the existence of a few similar approaches justify adoption of the TVA resolution in North Carolina?

higher: the already high one produced by updating the formula, or an even higher

one produced by applying the Handy Whitman new utility construction index to

12 A. Absolutely not. To the contrary, that Mr. Arnett can point to a very few, similar 13 outlier approaches that have very limited applicability or national credibility 14 hardly justifies the adoption of the TVA resolution by the NCUC for Blue Ridge 15 in this proceeding. If anything, the approaches Mr. Arnett cherry-picks only serve 16 to highlight the extreme outlier nature of the TVA. Over the years, disgruntled 17 with the low, competitive level rates produced by the FCC Rate, pole owners and 18 their advocates have come up with and tried to gain traction for a number of 19 theories that would fetch them a much higher monopoly-rate level, typically in the 20 range of \$30 or more. In the Business Court cases, the pole owners presented as 21 many as four alternative approaches to justify the high rates they hoped to charge,

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the preceding year's rate.⁶⁵

⁶⁵ See Exhibit PDK-14, Attachment A, at 2.

1	none of which prevailed. ⁶⁶ Blue Ridge have now turned to yet another approach,
2	the TVA approach, which yields rates even higher than the rates rejected as unjust
3	and unreasonable by the Business Court.

4 The first method described by Mr. Arnett as a model for the TVA, the APPA 5 formula, is not a formula approved by a court or regulator. It was developed by 6 the power industry strictly on behalf of its members so there cannot be even a 7 pretense of public interest concern. Of course, in that respect, it is true that the 8 APPA and TVA approaches are similar, because both were developed or 9 influenced largely by advocates for pole owners and geared to achieve monopoly-10 level pole rates. Mr. Arnett also discusses a formula that he refers to as the 11 "Telecom Plus" formula. The so-called "Telecom Plus" formula is none other 12 than an earlier version of the per capita-based Telecom Formula that was actually 13 passed by Congress, in 1996 which it expanded utility's obligation to provide 14 access to poles to include telecommunications carriers pursuant to the 15 Telecommunications Act of 1996. The difference between the "Telecom Plus" 16 formula (that was not enacted) and the FCC Telecom formula is that the former 17 does not apply the statutorily required application of a 2/3 factor to reduce the 18 share of common costs assigned to the attacher on a per capita basis that was 19 included in the version of the Telecom formula that become law. But like the 20 APPA formula, the "Telecom Plus" formula is not a sanctioned formula. Indeed, 21 it was rejected by Congress in favor of the version of the formula that at the time 22 was expected to produce a rate closer to the FCC Cable Rate. Even so, the FCC

⁶⁶ See, e.g., Charter Answer & Counterclaim at 13-14, citing *Rutherford*, 2014 WL 2159382, at *12-16, and *Landis*, 2014 WL 2921723, at *12-13.

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1	along with a number of state commissions have found even with the $2/3$ reduction
2	factor in the common cost allocation, the per capita allocation embodied in the
3	Telecom Formula produced excessive pole rates that had a detrimental impact on
4	broadband deployment and accessibility. The FCC in its seminal April 2011
5	Order effectively abandoned the Telecom Formula, by adding a new set of cost
6	reduction factors (.44 in rural areas such as served by Blue Ridge and .66 in urban
7	areas) to the formula that result in a cost allocation factor for the Telecom
8	Formula that is effectively equivalent to the cost allocation factor in the Cable
9	Rate formula. ⁶⁷ Mr. Arnett conveniently does not discuss the most recent history
10	with the Telecom Formula and the compelling rationale advanced in the most
11	FCC pole rulemaking proceeding for the convergence of the Telecom and Cable
12	cost allocation.

13 Mr. Arnett mentions one other example of a per capita formula, but one that 14 produces a cost allocation considerably less than the TVA and accordingly, one 15 that he does not support (Arkansas). See Direct Testimony of Wil Arnett at 33-16 35. I too believe that the Arkansas formula does not allocate costs in a just and 17 reasonable manner, but not for the same reason. Rather it is because that formula, 18 similar to the TVA, is not driven by cost causation principles. The Arkansas 19 formula as originally proposed by the Arkansas Staff in 2008 was modeled on the 20 existing Telecom formula at the time. The only change Staff made to the existing 21 Telecom formula was to treat the safety space as unusable and allocating that 22 space on a per capita basis (rather than on a proportionate basis) among all

⁶⁷ See April 2011 Order.

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1	attachers, including the utility (i.e.it presumed 10.17 feet of usable space and
2	27.33 feet of unusable space, rather than the FCC's 13.5 feet and 24 feet,
3	respectively). Otherwise, it kept the FCC Telecom formula intact, including, most
4	notably, the 2/3 cost reduction factor in recognition of the fact primary use of the
5	poles to provide electric service as reflected as well as all the FCC space and
6	height presumptions. When the Arkansas Commission reopened the pole formula
7	rulemaking seven years later, the Arkansas staff merely resubmitted its 2008
8	proposal without any additional cost rationale for doing so. Like Mr. Arnett, the
9	Arkansas Staff in merely resubmitting its 2008 proposal ignored the critical
10	developments that occurred in the landscape for broadband services and the vital
11	role they have grown to play since 2008 and the overwhelming body of evidence
12	presented in the FCC 2011 pole proceeding demonstrating the public interest
13	benefit of abandoning the per capita approach of the Telecom formula in favor of
14	the proportionate based allocation in the Cable Rate formula. Given its original
15	intent in 2008 to adopt the FCC Telecom with only the one change to reclassify
16	safety space from usable to the utility to unusable, it made no sense from a cost
17	principle perspective, not to apply that same logic to the FCC Telecom formula
18	current at the time of the 2015 rulemaking. Had the Arkansas Commission
19	applied its Staff's costing principle to the current FCC Telecom Formula, the
20	resulting cost allocation factor would have been 8.30% for three attaching entities
21	(.44 x 18.86%) or 11.86% for two attaching entities (.44 cost reduction factor x
22	26.96%). Finally, to the best of my knowledge, none of these outlier formulas,
23	including the Arkansas formula, have been used in practice, or to calculate pole

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1		rates as high as those identified by the TVA as likely to result. And Mr. Arnett
2		nowhere discusses or accounts for the many decisions of courts and state
3		regulators approving the FCC Rate. See Exhibit PDK-7.
4 5	Q.	How high are the rate levels that TVA identifies as likely to result from its approach?
6	A.	The TVA is quite open about the high rate levels its Board resolution produces.
7		This is not surprising since producing high rates was among the key drivers of its
8		approach. According to TVA's own analysis (included in Exhibit PDK-15), ⁶⁸
9		rates calculated under its approach are as high as \$85 per pole per year. Several
10		TVA rates are shown in excess of the \$70 mark, and many rates shown to exceed
11		\$45 per pole per year. The rate levels produced by the TVA approach are so high
12		that the pole owners themselves expressed concerns, with some asking for caps or
13		waivers from charging their actual computed TVA rate. ⁶⁹ These kind of
14		aberrational situations are to be expected when cost-based formulas like the FCC
15		Rate are modified in ways that stray so far from economic cost causation
16		principles.
17		TVA's highly uneconomic cost allocation percentages in the range of 40 to 50%
18		not only produce unreasonably high rates, they produce rates that can fluctuate
19		greatly based on minor year to year cost differences for a given utility as well as
20		across peer utilities for a given year. TVA's own analysis shows rates ranging
21		from \$17 to \$45 within only one standard deviation of the \$31 mean, for

⁶⁸ See Exhibit PDK-15, January 15, 2016 LPC Pole Attachment Rate Regulation at slides 5-6.

⁶⁹ See Exhibit PDK-14, January 22, 2016 Memo at 3, Attachment A at 2, Attachment B at 5-6; see also Exhibit PDK-15 (email from M. Bernauer to T. Holt re: Pole Attachment Calculation – Muscle Shoals.xlsx, dated March 7, 2016, stating "I believe the rate is too high); *id.* (email from E. Bowman to J. Brogdon

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1	customers who can be expected to have similar cost structures. This is a very
2	undesirable characteristic for a regulated rate, or for any rate for that matter, as
3	markets operate best with stable, consistent, predictable prices. The FCC Rate, by
4	contrast yields reliable and predictable rates across all types of pole owners and
5	cost structures, as would be expected given the nature of poles.
6	Moreover, with its use of a per capita allocator for unusable space and safety
7	space on the pole, TVA rates will also fluctuate widely based on the presence or
8	absence of other third party attachers—even though from an economic cost-
9	causation perspective, the costs to the pole owner of hosting a third party
10	attachment are the same whether or not there is another entity present. TVA itself
11	demonstrated how a rate could double from \$17.69 to \$34.19 based on differences
12	in the average number of entities, where the space occupied by the attacher and
13	the cost of pole ownership were held constant. ⁷⁰ This example perfectly
14	illustrates how a per-capita approach departs from sound economic cost-causation
15	principles. It shows how an attacher could pay widely varying amounts based on
16	factors (the presence or absence of other attachers) that have nothing to do with
17	the space the attacher occupies or the pole owner's underlying costs. Plus the per
18	capita allocator adds an unnecessary layer of complexity and cost from an
19	administrative and regulatory perspective, described in more detail below.
20	The FCC Rate, by contrast yields reliable and predictable rates across all types of
21	pole owners and cost structures, and does not vary with the number of attachers.

re: optional method for calculating "average number of attaching parties," dated February 6, 2016, stating the TVA rate "of about \$58 in the new model . . . would be very difficult to defend and implement")).

⁷⁰ See Exhibit PDK-15, Pole Attachment Rate Template Workshop, April – May 2016 at slide 17.

1		This is illustrated by the fact that Blue Ridge's calculated rates are all in line with
2		those paid to IOUs in the state. This is not surprising given the FCC Rate's
3		grounding in sound economic and public policy. Not only is this beneficial from
4		a cost causation perspective; from an administrative perspective, the FCC Rate is
5		by and far the simplest and least costly to administer and update annually.
6 7	Q.	Did Mr. Arnett properly calculate rates for Blue Ridge under the TVA approach as you understand it based on TVA's own calculation guidelines?
8	A.	While Mr. Arnett may have followed the TVA approach insofar as the
9		computation of the formula goes, I believe he erred in the manner by which he
10		substituted utility data in lieu of TVA presumptive values (values consistent with
1		widely accepted FCC presumptions). In this case, Mr. Arnett has modified the
12		TVA's already flawed formula further in such as way so to produce rates that are
13		even more unjust and unreasonable by making selective, inappropriate, and
4		unsupported substitutions of data for the widely applied presumptive inputs for
15		pole characteristics and appurtenances that Mr. Arnett himself relied upon in the
16		Carteret-Craven, Jones-Onslow, Surry-Yadkin, and Union Power cases.
17	Q.	Please explain.
18	A.	As discussed earlier in my testimony, the FCC presumptive values are widely
19		used, generically applicable values that had held up well over the test of time.

- 20 Their use is designed to further streamline the formula process, reduce regulatory
- 21 administrative burden, and deter "results-driven" manipulation of the formula's
- 22 data inputs such as would appear Mr. Arnett has done in his TVA Rate
- 23 calculations. As mentioned earlier in my discussion of the Cable Rate, Mr. Arnett
- 24 choose to apply a BRMEC value for the appurtenance factor (87.41% for 2016

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1	rather the presumptive value of 85%). In addition, he substituted BRMEC values
2	for pole characteristics, including pole height (36.87 feet versus the presumptive
3	value of 37.5 feet), unusable space (27.26 feet versus the 27.33 feet based on the
4	presumptive value of 24 feet plus 3.33 safety), and space occupied (1.11 feet
5	versus 1 foot). While these variations may seem small, in combination with his
6	use of a BRMEC specific number of attaching entities figure of 2.35 in lieu of the
7	presumptive number of 3.0, the effect of Mr. Arnett using these alternative data
8	inputs has a very dramatic impact on the derived space allocation factor. As
9	shown in WA Exhibit 2.3, Mr. Arnett's rate calculations use a space allocation
10	factor of 41.16%, as compared with the already excessive factor of 28.44% based
11	on the presumptive values. The result of his manipulations is to increase the
12	already-high TVA rate (based on a 28.44% allocation factor) by an incredible
13	45%. In addition to the fact that his data substitutions create a space allocation
14	factor that is multiples of any sanctioned space allocation factor ever applied to
15	regulated pole attachment rates that I am aware, Mr. Arnett's substitutions are
16	inappropriate and unjustified in a number of respects.
17	

First, he has applied his substitutions selectively in ways that demonstratively favor the EMC. This provides an unfair advantage where the EMC has the leverage over the attacher, since the EMC is in possession of the data to rebut a presumption. If allowed to make substitutions at its discretion, the EMC or its experts will be incented to choose to do so only when it produces a higher rate result, and never a lower one. As mentioned earlier, Mr. Arnett chose not to substitute the BREMC specific rate of return of 5% that was available to use,

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keeping instead the 8.5% default value set by the TVA. That substitution would
have lowered his derived rate substantially. I would also note that in the prior
Coop-related matters before this Commission in which Mr. Arnett participated,
Mr. Arnett had access to appurtenance data for at least a couple of those EMCs
that he seemingly chose not to apply. Based on my calculations applying the
actual appurtenances to those EMCs would have resulted in a lower pole rate for
two of the three for which data was available.

8 Second, as to his substitutions of the various BREMC pole characteristic input 9 figures, his values are not necessarily representative of the relevant population of 10 joint use poles. Mr. Arnett admitted in deposition questioning, that the data he 11 reviewed and relied on was not specific to those poles that had third party attachers present on them.⁷¹ A large part of the reason why presumptions are so 12 13 heavily relied upon is the significant amount of resources involved to track data at 14 the level of detail required to provide a statistically reliable rebuttal of the 15 assumptions – as required to ensure against any manipulation of the formula 16 inputs. The presumptive values were based on an extensive data collection effort 17 and have withstood the test of time as applicable to joint use poles with third party 18 attachers present on the poles.] Even the TVA process to my understanding 19 requires its Staff to vet any rebuttal of presumptive values, and to my knowledge, 20 Mr. Arnett's inputs have not been put to that scrutiny. 21 Third, I would note that Mr. Arnett's adjustment to the unusable space input to

22 account for BREMC's purported higher than average foot span resulting in the

⁷¹ See Arnett Deposition dated October 25, 2017, at pages 113-115 (attached as Exhibit PDK-10).

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1	need for attachers to attach higher on the pole to ensure ground clearance, as
2	previously recognized by the FCC, ⁷² is likely to result in the double recovery of
3	costs. This is because, as explained above, attachers pay for the complete costs
4	associated with maintaining or creating the proper amount of clearance for their
5	attachments through the make ready process.
6	Finally, with regard to Mr. Arnett's use of 1.1 for space occupied on the pole by
7	Charter in lieu of the presumptive one foot of space, Mr. Arnett is inappropriately
8	mixing a rating or contractual issue with a costing one. He does not appear to be
9	disputing the almost universally accepted presumptive value of 1 foot per
10	attachment, generally or as it applies to Charter. Rather, the basis for his 1.1
11	figure, as I understand it, is to reflect the fact that on a small percentage of poles,
12	Charter may have multiple attachments. See Direct Testimony of Wil Arnett at 21.
13	The latter is a rating and contractual issue, and is not appropriately dealt with by a
14	unilateral decision to alter the formula methodology as Mr. Arnett appears to have
15	done. In addition to confusing rating and costing issues, Mr. Arnett's
16	methodology would add yet another piece of input data to the formula that would
17	require significant resources to be able track and verify at the level of detail

- required into a formula process intended to be a streamlined non- burdensome 18
- administrative process. 19

⁷² See Amendment of Rules & Policies Governing Pole Attachments, Report & Order, 15 FCC Rcd 6453, 6472 ¶ 30 (2000).

1	Q.	Do you wish to respond to Mr. Arnett's testimony addressing the impact of
2		BREMC's proposed pole attachment rates on Charter's broadband
3		operations? (See Direct Testimony of Wil Arnet at 44-45)

4	A.	Mr. Arnett sets up a red herring argument on the important public policy issue
5		concerning the connection between pole attachment rates and Charter's
6		broadband operations. No one is suggesting that the deployment or adoption of
7		broadband service is totally dependent on the FCC Rate being used. Obviously
8		that is not the case; broadband is just too important a service and too dynamic a
9		market. Rather the policy concern for regulators is that when pole owners are left
10		to their devices, they want to charge high rates such as those produced by the
11		TVA or one of the other outlier approaches that Mr. Arnett describes. The
12		problem is those high rates will have a dampening effect on the development of
13		robust competition and as importantly, on the continuing pace and quality (i.e.,
14		higher and higher speeds) of broadband service deployment and adoption rates-
15		especially out into rural and less densely populated areas where economic
16		conditions are less favorable. ⁷³
17		As I explain above, high rates relative to their economic cost of production
18		operate just like a tax. It is a basic tenet of economics that a tax will ultimately be
19		factored into the price of the product, and will serve to discourage both the
20		provision of and demand for the product and any other good or service that relies
21		on it. This is true of any intermediate or final good or service and broadband is no
22		exception. Just think about the response to a governmental decision to levy a tax

⁷³ The 2015 Report of the North Carolina Department of Information Technology (attached to as Exhibit PDK-6) makes this point, noting its concern with the relatively low ranking of the state in regard to the deployment and adoption of the ever increasing FCC suggested threshold definition of advanced telecommunications capability.
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9	Q.	Does this conclude your responsive testimony?
8		X. <u>CONCLUSION</u>
7		many multiples of those produced by the FCC's retired approach.
6		broadband deployment and adoption. Yet the rates produced by the TVA are
5		produced rates for the critical pole attachment input the FCC found would impede
4		perspective, the FCC in 2011 abandoned its old Telecom Formula because it
3		effect of doubling, tripling, or quadrupling the price of that input. To put it into
2		important to consumers and the economic growth of the state—a tax that had the
1		on a key input used by producers in the state in providing a product that is

10 A. Yes, it does.