

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EC-23, SUB 50

In the Matter of)	
Blue Ridge Electric Membership)	
Corporation,)	
)	
Complainant)	CHARTER
v.)	COMMUNICATIONS
)	PROPERTIES, LLC’S ANSWER
Charter Communications Properties, LLC,)	TO AMENDED VERIFIED
)	PETITION FOR RELIEF
Respondent.)	
_____)	

Respondent Charter Communications Properties, LLC (“Charter”) respectfully submits its Answer to the September 27, 2017 Amended Verified Petition for Relief (“Amended Petition”) filed by Blue Ridge Electric Membership Corporation (“BREMC” or “Cooperative”).

ANSWER TO AMENDED PETITION

11. With regard to the five new issues identified by BREMC, Charter responds as follows:

- j. Indemnity. Charter admits the allegations contained in the first sentence of paragraph 11(j) of the Amended Petition. Charter denies the second sentence of paragraph 11(j) because it omits that Charter generally agreed to the indemnification provisions listed, except to the extent of BREMC’s negligence or intentional misconduct. Charter admits the allegations contained in the third sentence of paragraph 11(j). The remaining allegations of paragraph 11(j) are legal

conclusions to which no response is required. To the extent a response is deemed required, Charter denies all other allegations contained in paragraph 11(j). BREMC offers no basis – nor is there one – to justify the proposition that Charter should be responsible for claims or losses that arise from BREMC’s own negligence. The FCC has repeatedly found such one sided indemnity provisions unreasonable.¹ Charter requests the Commission to conclude that an indemnification requirement must be reciprocal to be reasonable.

- k. Reservation of Space. The allegations of paragraph 11(k) are legal conclusions to which no response is required. To the extent a response is deemed required, Charter denies the allegations contained in Paragraph 11(k). Charter already occupies space on BREMC’s poles only so long as BREMC does not require that space for its electric business. It is not reasonable for BREMC to restrict Charter’s ability to attach to existing poles (or increase substantially Charter’s costs of doing so) by requiring 72 inches of vertical clearance on all poles, rather than the clearance requirements under applicable safety codes, including where BREMC has no development plan or likely use for the additional space it would require.

¹ See *Cable Television Ass’n of Georgia v. Georgia Power Co.*, 18 FCC Rcd 16333, ¶ 31 (2003); see, e.g., *Re Progress Energy Carolina, Inc.*, Docket No. E-100, Sub 101, 240 P.U.R. 4th 533 (N.C. Util. Comm. 2005) (requiring parties to use a mutual indemnity provision in their interconnection standard agreement).

1. Recovery of Space. The allegations of paragraph 11(l) are legal conclusions to which no response is required. To the extent a response is deemed required, Charter does not generally dispute that a pole attachment agreement should include reasonable terms and conditions allowing BREMC to recover space on its poles for its core electrical business. Without reviewing BREMC's specific proposal for this term, Charter is without knowledge or information sufficient to determine whether the parties have a dispute.
- m. Overlapping. With respect to the first sentence of paragraph 11(m), Charter admits that it uses overlapping to add aerial facilities to its network, but denies that it uses the existing cable to support its new facilities, as Charter's aerial strand supports both the existing cables and any new cables overlapped to the strand. Charter denies the allegation in the second sentence of paragraph 11(m) that its overlapping activity materially affects wind and ice loads on BREMC's poles. Charter overlaps small diameter, lightweight cables, which contribute only minimally to the loading on BREMC's poles. Charter admits the allegations in the third sentence of paragraph 11(m). The allegations of the fourth sentence of paragraph 11(m) are legal conclusions to which no response is required. To the extent a response is deemed required, Charter denies the remaining allegations of paragraph 11(m). It is not reasonable for BREMC to require that Charter follow BREMC's full permitting process before overlapping

its facilities. Overlapping based on reasonable before or after-the-fact notice is the industry norm. Consistent with industry practice, the FCC has found a separate permit requirement to be “unjust and unreasonable on its face.”²

- n. Unauthorized Attachment Fee. Charter admits the allegations of the first two sentences of paragraph 11(n). Charter denies the remaining allegations of paragraph 11(n). Charter submits that a reasonable term for unauthorized attachments would allow BREMC to charge either compensatory back rent for alleged unpermitted attachments or a penalty, but not both. The FCC has determined that an unauthorized attachment fee of five times the current annual rental fee per pole for each unauthorized attachment that is either self-reported or discovered as part of a joint inspection is reasonable.³ If the pole owner discovers an unauthorized attachment in an inspection in which the pole occupant has declined to participate, the FCC has approved an additional \$100 sanction per pole as appropriate. These fees are imposed in lieu of any amounts recoverable for unpaid fees. Charging five times the current annual rental fee per pole already contemplates that violations may not be discovered immediately, and compensates utility companies accordingly. The unauthorized attachment term approved by the FCC is just and reasonable and eliminates the

² See *Cable Television Assoc. of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 22287 ¶ 13 (2003).

³ See *2011 Pole Rate Order*, 26 FCC Rcd. at 5291 ¶ 115.

incentive for attachers to simply hope their unauthorized attachments are not discovered.

REQUESTED RELIEF

Charter denies that BREMC is entitled to relief in this proceeding, either as prayed for in this Amended Petition or otherwise.

GENERAL DENIAL

Charter denies each and every allegation of fact, conclusion of law, or other matter contained in BREMC's Amended Petition not specifically admitted herein.

Respectfully submitted, this 16 day of October, 2017.



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CERTIFICATE OF SERVICE

I certify that a copy of Charter Communications Properties LLC's Answer to Amended Verified Petition for Relief has been served by electronic mail on counsel of record in this proceeding.

This the 16th day of October, 2017.



*Attorney for Charter Communications
Properties LLC*