

LAW OFFICE OF CHARLOTTE MITCHELL

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September 21, 2017

J. L. Jarvis
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603 – 5918

**Re: Blue Ridge Electric Membership Corporation's Opposition to Charter
Communications Properties LLC's Motion for Temporary Stay, NCUC Docket
No. EC-23, Sub 50**

Dear Ms. Jarvis:

Enclosed herewith, please find, for filing on behalf of Blue Ridge Electric Membership Corporation in the above-referenced docket, Blue Ridge Electric Membership Corporation's Opposition to Charter Communications Properties LLC's Motion for Temporary Stay. Should you have any questions or comments, please do not hesitate to call me. Thank you in advance for your assistance and cooperation.

Regards,

/s Charlotte Mitchell

4815-1013-4589, v. 1

OFFICIAL COPY

Sep 21 2017

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EC-23, SUB 50

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

**BLUE RIDGE ELECTRIC
MEMBERSHIP CORPORATION,
Petitioner,**

v.

**CHARTER COMMUNICATIONS
PROPERTIES LLC,
Respondent.**

**BLUE RIDGE ELECTRIC
MEMBERSHIP CORPORATION'S
OPPOSITION TO CHARTER
COMMUNICATIONS PROPERTIES
LLC's MOTION FOR TEMPORARY
STAY**

NOW COMES Blue Ridge Electric Membership Corporation ("BREMC"), by and through undersigned counsel, and respectfully submits to the North Carolina Utilities Commission (the "Commission") this opposition to Charter Communications Properties LLC's Motion for Temporary Stay filed by Charter Communications Properties LLC ("Charter") in this docket on September 18, 2017 ("Motion for Stay").

INTRODUCTION

Charter's late-found Motion to Stay is, unfortunately, a transparent attempt to avoid its discovery obligations and to prevent electric cooperatives, such as BREMC, from vindicating their right to have disputes over pole attachments resolved by the commission on a "case-by-case" basis, as the plain language of N.C.G.S. § 62-350 ("Section 62-350") requires.

Charter asserts that the alleged “overlap” between the this case and four other pending cases¹ justifies a staying any further action on BREMC’s petition to have the Commission approve just and reasonable rates, terms, and conditions for a pole attachment agreement to govern Charter’s attachments to BREMC’s poles. Motion for Stay at p. 2. That assertion, however, runs contrary to the plain language of the statute, which requires case-by-case decisions, the Commission’s prior rulings, and the positions Charter has taken in this and other cases.

The timing of Charter’s motion is also telling. This case has been on-going for months. If Charter really believed the alleged “overlap” between cases warranted a stay, Charter could have moved for a stay at any time, including after the end of hearing in the other cases when the record there was closed. But Charter did not move then, nor did it move when the Commission entered an order on July 7, 2017, adopting Charter’s proposed procedural schedule and commencing discovery.² Instead, Charter waited until

¹ The following cases pending before the Commission involve disputes between Charter (or its affiliate) and electric cooperatives regarding pole attachments: *Time Warner Cable Southeast LLC v. Jones-Onslow Electric Membership Corporation*, Docket No. EC-43, Sub 88; *Time Warner Cable Southeast LLC v. Surry-Yadkin Electric Membership Corporation*, Docket No. EC-49, Sub 55; *Time Warner Cable Southeast LLC v. Carteret-Craven Electric Membership Corporation*, Docket No. EC-55, Sub 70; and *Union Electric Membership Corporation v. Time Warner Cable Southeast LLC*, Docket No. EC-39, Sub 44.

² On June 7, 2017, the Commission issued in this docket its Order Establishing Procedural Schedule (the “Procedural Order”), establishing discovery guidelines, establishing deadlines for the pre-filing of testimony, and setting the matter for hearing. Ordering paragraph 1.f of the Procedural Order requires parties to serve answers to discovery requests to which they have not objected within 21 days of the service of such request.

BREMC noticed the deposition of Charter's witnesses³ and was forced to file a Motion to Compel Charter to produce documents Charter had promised BREMC for more than a month.

As BREMC outlined in its Motion to Compel, BREMC worked with Charter to resolve Charter's objections to BREMC's data requests, served on July 6, 2017, and agreed to give Charter more than the twenty-one business days allowed under the Procedural Order to respond. However, when Charter repeatedly failed to honor its months-long string of vague promises that its production of documents would be forthcoming, and defaulted on its promise to deliver the documents by September 15, 2017, BREMC informed Charter it had no choice but to file a motion to compel. Only then, after BREMC filed its motion to compel and noticed Charter's deposition did Charter file its Motion to Stay.⁴

Charter's request that the Commission issue an order suspending the procedural schedule and staying this case until the Commission issues final decisions in the pending pole attachment cases amounts to nothing more than an attempt to avoid its discovery and other obligations in prosecuting this case and to deprive BREMC of its statutory right to recourse under Section 62-350. For these reasons, the Commission should deny Charter's request.

³ After attempting to arrange dates for the deposition of Charter's witnesses, but getting not commitment from Charter's counsel as to available dates, BREMC served Charter with a notice of deposition on September 14, 2017, setting the deposition for September 25th, but offering to reschedule to accommodate Charter and its counsel. *See* Notice of Deposition and E-mail from Matthew Tilley to Aaron George, attached hereto as **Exhibit A**.

⁴ Despite its promises, Charter did not make any further production until yesterday, September 20, 2017. BREMC is currently assessing whether that production is complete.

ARGUMENT

A. BREMC Has a Statutory Right to Have Its Disputes Adjudicated by the Commission.

Charter's assertion that this case should be decided by the outcome of other pending cases, involving other cooperatives, ignores the statutory language and this Commission's prior rulings. Section 62-350 allows either party involved in the negotiation of a pole attachment agreement to initiate proceedings to resolve disputes before the Commission and directs that the Commission "adjudicate disputes" on a "case-by-case basis." N. C. Gen. Stat. § 62-350(c).

With respect to the statutory directives and the impact of decisions made in proceedings initiated pursuant to the statute, the Commission has concluded:

In G.S. 62-350, the General Assembly granted this Commission exclusive authority to resolve pole attachment rate disputes between communications service providers and municipalities or membership corporations organized under Chapter 117 of the General Statutes, that own or control poles, ducts or conduits, but which are exempt from regulation under Section 224 of the Communications Act of 1934, as amended." Further, the General Assembly directed the Commission to "adjudicate disputes arising under this [statute] on a case-by-case basis." G.S. 62-350(c).

As a consequence of these directives, any decision reached in this docket regarding the rate, and/or the ratemaking methodology, be it the Federal Cable Rate or some other methodology, will be based upon the unique facts and circumstances present in this docket. ***Furthermore, in each subsequent pole attachment dispute that is filed with the Commission, the Commission will be required to examine the unique facts and circumstances in that case*** and make its decision based upon those unique facts and circumstances as a consequence of these directives. ***As a result, the Commission's ultimate decision in this docket will not and cannot establish a precedent in future pole attachment rate dispute resolution proceedings with regard to core and salient issues raised by and addressed in this docket.*** Nor can the Commission's decision in other dockets which are also being litigated at this time or will be litigated at some future time establish a precedent that will be applied in some future docket.

See Order Denying Petitions to Intervene and Granting Limited Amici Curiae Status, N.C.U.C. Docket No. EC-43, Sub 88, August 9, 2016, p. 8 (emphasis added). Thus, in light of the clear language of the statute and the Commission’s previous discussion of the impact of decisions made in any given pole attachment dispute resolution proceeding, the Commission should disregard Charter’s argument that the “overlap” between issues raised in the instant proceeding and in the cases pending before the Commission dictates a stay of this case.

The facts and circumstances regarding Charter’s attachments to BREMC’s poles, and evidence related to same, are unique to BREMC and distinct from the information involved in the other pending proceedings. The other cases involve four electric membership corporations with unique operating characteristics, service territory conditions, and history of dealings with communications providers. Charter itself acknowledges that the information to be produced in discovery in the instant proceeding is “distinct from the information produced by TWC in the earlier cases.” Motion for Stay, fn. 5. As the Commission has noted, it is “required to examine the unique facts and circumstances in [the] case and make its decision based upon those unique facts and circumstances as a consequence of [the statutory] directives.” *Id.* It must do so in this case.

Unlike the position it now takes, which is that a decision made in one case is applicable to and binding on the parties to another, Charter (specifically, its affiliate TWC) has taken the exact opposite position throughout the course of the other cases. There, TWC argued against what it deemed to be the issuance of an “advisory opinion” in one case as being inconsistent with the statutory mandate that issues in dispute be

adjudicated on a *case-by-case basis*. See Time Warner Cable’s Opposition to Cooperatives’ Joint Motion for Adoption of Procedural Schedule, Docket Nos. EC-43, Sub 88, EC-49, Sub 55, EC-55, Sub 70, and EC-39, Sub 44, October 28, 2016, at p. 2 (emphasis added). Additionally, TWC opposed requests to intervene in those cases, again noting that the “purpose of Section 62-350 [is] to resolve specific disputes between two parties, and the statutory authority conferred by the General Assembly to the Commission to is resolve those disputes on a case-by-case basis.” Time Warner Cable Southeast LLC’s Opposition to Petition to Intervene of ElectriCities of North Carolina, Inc., Docket No. EC-43, Sub 88, July 12, 2016, at p. 6.

Charter has already suggested that the Commission stay this case, but neither the Commission nor BREMC—which has a direct interest in seeing that the parties get under contract sooner, rather than later—have agreed. In its Answer to Complaint and Counterclaims, filed in this docket on January 31, 2017 (“Charter’s Answer”), Charter indicted that it was “willing to await the outcome of [the pending] cases in order to determine the appropriate rate formula to apply in this case.” Charter’s Answer, fn 1. Later, when conferring with counsel for BREMC in May regarding the development of a procedural schedule, Charter’s counsel proposed staying the proceeding until final decisions were reached in the four pending cases. BREMC did not agree to Charter’s proposal. Notwithstanding, in its Response to BREMC’s Motion for Procedural Schedule filed on May 31, 2017 in this docket (“Charter’s Motion for Procedural Schedule”), Charter suggested the Commission could stay this case pending the outcome in its other proceedings. Charter’s Motion for Procedural Schedule, fn 2. The

Commission, however, did not take Charter up on that suggestion then. Nevertheless, Charter has decided to ask again.

Although Charter alleges in its Opposition to BREMC's Motion for Leave to Amend Petition, filed in this docket on September 18, 2017 ("Charter's Opposition to Motion for Leave"), that "BREMC (like the other EMCs) seeks to discourage communications providers from relying on their statutory rights[,]" by requesting that the instant proceeding be stayed until final decisions are issued in the pending cases, it is Charter that seeks to deprive BREMC of its statutory right to recourse and adjudication of its disputes with Charter. Charter's Opposition to Motion for Leave, p. 2. The Commission should see Charter's requests and allegations for what they are—an attempt to avoid prosecuting this case and to deprive BREMC of its right to recourse under the statute—and reject Charter's motion for a stay.

B. Continued Prosecution of This Proceeding in Accordance with the Procedural Schedule Does Not Prevent the Parties from Negotiating Once Decisions Are Issued in the Pending Cases.

If the Commission issues final decisions in the pending cases while this case proceeds in accordance with the Procedural Schedule, nothing prevents the parties from negotiating in light of such decisions or filing motions for summary judgement based on the undisputed facts of the case between Charter and BREMC, as contemplated by the Procedural Order. Procedural Order, ordering paragraph 1.k. In fact, such an outcome would be consistent with that for which Time Warner Cable ("TWC"), Charter's affiliate, advocated in the pending cases. Specifically, in the pending cases, TWC argued as follows:

There is no room under the statute for the Commission to treat these related cases as rulemakings with the goal of simply specifying general

terms and conditions that might be reasonable in pole attachment agreements or without factual evidence of the practical effect of one term or another. In other words, the statute does not allow for advisory opinions. Nor does the statute provide for determination of broad theoretical rate-making principles outside of facts related to what ranges of rates would result from application of various methodologies and facts demonstrating what rates are charged by the Cooperatives to other parties and by other utilities in North Carolina. TWC believes that the Commission can accommodate its statutory mandate, however, by allowing TWC and the Cooperatives to take discovery to establish the key underlying facts and then to file single cross-motions for summary judgment addressing those issues that are appropriate for summary resolution.

See Time Warner Cable Southeast LLC's Motion for Procedural Schedule, N.C.U.C. Docket Nos. EC-55, Sub 70, EC-43, Sub 88, EC-49, Sub 55, and EC-39, Sub 44, October 21, 2016, pp 2-3 (emphasis added). In short, the parties do not need a stay to negotiate settlement if Charter is truly willing to do so.

C. Staying the Instant Proceeding Will Remove Incentive for Charter to Negotiate and Will Prejudice BREMC.

In response to Charter's argument that the Commission's decisions in the pending cases will promote a settlement or a narrowing of the issues in the instant case, staying the case provides no assurance that settlement of disputed issues would be possible and may actually make settlement harder to achieve due to the fact that a complete record has not been developed.

Charter asserts that BREMC "filed its Petition prematurely in the middle of what Charter considered to be on-going, cooperative and productive negotiations for a new pole attachment agreement." Motion for Stay, p. 7. However, as BREMC noted in its Verified Petition for Relief, filed in this docket on November 30, 2016 ("BREMC's Petition"), BREMC, not Charter, initiated the negotiation of a new pole attachment agreement. BREMC's Petition, paragraph 9. In recognition of the pressing need to be

under contract with Charter, BREMC attempted for more than one year, to negotiate with Charter. In December 2015, BREMC provided a draft to Charter to which Charter provided no response until September 2016, and when Charter did finally respond in September 2016, it refused to accept BREMC's proposal regarding rate and refused to offer an alternative. Due to Charter's foot-dragging, non-responsiveness and, with respect to certain terms and conditions, refusal to negotiate, BREMC had no choice but resort to initiation of this proceeding in the interest of securing a contract with Charter.

Moreover, on September 8, 2017, counsel for BREMC sent counsel for Charter an email agreeing to engage in settlement discussions if Charter would agree that proposals made during such discussions were compromise negotiations, and, therefore, not admissible as evidence. *See* Email Communication from BREMC counsel to Charter counsel, attached hereto as **Exhibit B**. However, instead of responding to that request, Charter filed its Motion for Stay.

This experience leads to the conclusion that Charter is not actually interested in negotiations, but instead has raised the possibility of compromise only to secure a stay, without any actual commitment or assurance that doing so will facilitate meaningful discussions.

Charter also asserts that a temporary stay will not prejudice BREMC, as it will be able to submit testimony and proceed to a case specific hearing on any issues the parties are not able to resolve based on the Commission's guidance from the pending cases. But here again, Charter indicates a preference for delay rather than working toward a contract with BREMC. As described in greater detail below, the safety violations existing on

BREMC's system underscore the exigent need for BREMC to enter into a contract with Charter, which BREMC has a right to secure through this proceeding.

D. The Need to Resolve Outstanding Safety Violations Is a Smokescreen for Charter's Desire to Avoid Prosecuting this Case and Further Delay Contracting with BREMC.

Charter's argument that it requires a stay of the case to address its outstanding safety violations on BREMC's poles is a mere smokescreen. BREMC has not asserted any claim against Charter for those safety violations, and they are not a part of this dispute. BREMC has also repeatedly stated that it will work with Charter to develop a plan to resolve those violations—something Charter conveniently fails to mention in its Opposition.

On August 24 and 25, 2017, BREMC loaded into the National Joint Utilities Notification System ("NJUNS") 3,428 tickets identifying safety violations identified during the most recent audit of pole attachments conducted by BREMC. The audit was conducted in the normal course of business by BREMC. The time required to develop the tickets was extensive, due to the number of violations identified and the work associated with identifying the location of the violations and options for remedying the violations. Far from a litigation "gotcha" tactic, which Charter alleges to be the case, BREMC has worked diligently to prepare the notices and provide them to Charter, outside of the confines of the instant proceeding. With respect to Charter's assertions that a temporary stay would allow the parties to focus their "finite" resources on working cooperatively to address conditions in the field identified in BREMC's audit of safety violations, BREMC has assured counsel for Charter, on more than one occasion, that BREMC is willing to work with Charter to establish a reasonable timeframe for Charter

to submit corrective action plans for these violations and to perform the work to remedy them. *See* Email Communication from BREMC counsel to Charter counsel, attached hereto as **Exhibit B**. The safety violations were identified by BREMC during the normal course of business, and notifications were provided to Charter accordingly. The violations were identified, and will be corrected with BREMC's cooperation, separate and apart from the instant proceeding. BREMC understands and respects Charter's concerns regarding the resources that will be necessary to correct the thousands of violations noted in the audit and, again, has committed to work with Charter on this process. However, the Commission must not allow Charter to hide behind its responsibilities related to correcting these violations in order to avoid litigating this case and to delay further contracting with BREMC. In fact, the existence of these violations underscores the necessity to move forward with the case in the interest of entering into a contract that clearly and unambiguously protects BREMC from this very situation, as expeditiously as possible.

CONCLUSION

For each of the reasons set forth above, BREMC requests that the Commission issue an order denying Charter's Motion for Stay.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

This the 21st day of September, 2017.

/s/ Charlotte A. Mitchell

Charlotte A. Mitchell
NC Bar # 34106
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(919) 260-9901
cmitchell@lawofficecm.com

Debbie W. Harden
NC Bar # 10576
Matthew F. Tilley
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(704)- 331-4943
dharden@wcsr.com
matthew.tilley@wcsr.com

ATTORNEYS FOR BLUE RIDGE
ELECTRIC MEMBERSHIP
CORPORATION

CERTIFICATE OF SERVICE

The undersigned certifies that she has served a copy of the foregoing **BLUE RIDGE ELECTRIC MEMBERSHIP CORPORATION'S OPPOSITION TO CHARTER COMMUNICATIONS PROPERTIES LLC'S MOTION FOR TEMPORARY STAY** upon the parties of record in this proceeding, or their attorneys, by electronic mail as follows:

Marcus W. Trathen
Brooks Pierce
Wells Fargo Capital Center
150 Fayetteville Street, Suite 1700
Raleigh, N.C. 27601
(919)-839-0300
mtrathen@brookspierce.com

Gardner F. Gillespie
J. Aaron George
Carrie A. Ross
Sheppard Mullin Richter & Hampton
2099 Pennsylvania Ave. NW, Suite 100
Washington D.C. 20006
(202)-747-1900
ggillespie@sheppardmullin.com
ageorge@sheppardmullin.com
cross@sheppardmullin.com

This 21st day of September, 2017.

/s/Charlotte A. Mitchell

Charlotte A. Mitchell

EXHIBIT A

OFFICIAL COPY

Sep 21 2017

Tilley, Matthew

From: Tilley, Matthew
Sent: Thursday, September 14, 2017 5:53 PM
To: 'Aaron George'; Carrie Ross
Cc: Harden, Debbie (DHarden@wcsr.com); 'Charlotte Mitchell'; Tilley, Matthew (Matthew.Tilley@wcsr.com)
Subject: Deposition Notice
Attachments: BREMC-30b6 Notice to Charter.pdf

Aaron,

Attached please find a deposition notice for Charter's corporate deposition. In order to preserve our rights, the notice sets the deposition for 9:30 a.m. on September 25th in Raleigh. As we discussed, we are willing to move the deposition to October 4th or 5th, which I understand are move convenient for you, provided Charter will consent to moving Blue Ridge's testimony deadline back one week, to October 18th, so that we will have time to receive the transcript(s). I realize you have not checked whether Charter's witnesses are available on those dates, so let me know when you speak with them and we can make arrangements.

Best regards,
Matthew

Matthew F. Tilley
Womble Carlyle Sandridge & Rice, LLP
One Wells Fargo Center
301 South College Street; Suite 3500
Charlotte, NC 28202
Office: 704.350.6361
Fax: 704.444.9961
wcsr.com



STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EC-23, SUB 50

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

BLUE RIDGE ELECTRIC
MEMBERSHIP CORPORATION,
Petitioner,

v.

CHARTER COMMUNICATIONS
PROPERTIES LLC,
Respondent.

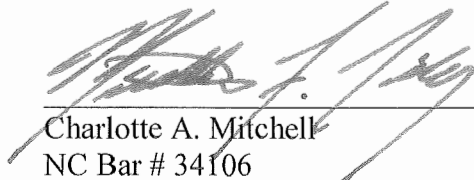
NOTICE OF DEPOSITION
OF
CHARTER COMMUNICATIONS, LLC

TO: COUNSEL FOR CHARTER COMMUNICATIONS PROPERTIES

PLEASE TAKE NOTICE that on Monday, September 25, beginning at 9:30 a.m. at the law offices of Womble Carlyle Sandridge & Rice, LLP, 555 Fayetteville Street, Suite 1100, Raleigh, North Carolina, Petitioner, Blue Ridge Electric Membership Corporation, shall take the deposition of Respondent, Charter Communications Properties, LLC, through one or more officers, directors, or agents designated to testify on its behalf regarding the topics identified in Exhibit A, attached hereto. The deposition shall be recorded by audio, video, and/or stenographic means, and shall continue from day to day until completed.

[SIGNATURE ON FOLLOWING PAGE]

This the 14th day of September, 2017.



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ATTORNEYS FOR BLUE RIDGE ELECTRIC
MEMBERSHIP CORPORATION

EXHIBIT A

DEFINITIONS

1. “*Charter*” shall mean Respondent, Charter Communications Properties, LLC, its agents, employees, attorneys, and any person acting on its behalf.
2. “*BREMC*” shall mean Petitioner, Blue Ridge Electric Membership Corporation, its agents, employees, attorneys, and any person acting on its behalf.

TOPICS FOR EXAMINATION

1. The deponent’s preparation for the deposition, including any and all documents reviewed in connection therewith.
2. Charter’s responses to BREMC’s First Set of Data Requests, including Charter’s efforts to identify, review, and produce documents, data, and records responsive to those data requests.
3. Charter’s pole attachment agreements and joint use agreements for utility poles in North Carolina, South Carolina, Virginia, and Tennessee, in effect from 2011 to present.
4. Charter’s franchise agreements in North Carolina.
5. Any and all claims made against Charter, Charter Communications, Inc. (“Charter Communications”), or any of Charter Communications’ subsidiaries, or predecessors in interest, as a result of incidents in North Carolina since 2008 in which Charter’s aerial facilities came into contact with vehicular traffic, bicycles, or pedestrians.
6. The reasons and bases for Charter’s proposed rate methodology in this case.
7. Each pole attachment rate Charter has paid, contracted for, or has been charged by the entities identified in response to BREMC’s Data Request Number 5.
8. Any and all inventories or audits of attachments by Charter, Charter Communications, or any of Charter Communications’ subsidiaries, or predecessors in interest, to poles in North Carolina from 2011 to present, including all discrepancies identified as a result of such inventories or audits and all amounts charged or assessed against Charter as a result.
9. Any and all agreements between Charter and BREMC for attachments to BREMC’s poles, including the parties’ course of conduct thereunder.
10. The number and type of Charter’s attachments to BREMC’s poles.

11. Charter's installation, service, maintenance, inspection, and modification of attachments to BREMC's poles.

12. Charter's coordination and administration of its attachments to BREMC's poles, including Charter's use of the NJUNS system and the processes by which Charter applies for new attachments and responds to requests for transfer or modification of attachments.

13. Charter's conduct in response to BREMC's requests to transfer, modify, or correct attachments to BREMC's poles.

14. Training, safety, and engineering practices followed by Charter's employees, contractors, and other vendors in connection with making, maintaining, inspecting, or modifying Charter's attachments to BREMC's poles.

15. Any and all contracts between Charter and other entities to make, maintain, inspect, or modify attachments to BREMC's system made or in effect since 2011, including the parties' course of performance thereunder and all efforts by Charter to ensure compliance with the terms of those agreements.

16. Charter's cable, video, telephone, voice, internet, and broadband offerings to customers within the BREMC service territory, including all policies and other factors affecting Charter's determination whether to expand (or not expand) such services to new customers therein.

17. Any and all document retention policies that govern (i) documents reflecting communications between Charter and BREMC and (ii) documents and records concerning Charter's attachments to BREMC's poles.

18. Charter's corporate structure, including its relationship to Charter Communications and any of Charter Communications' subsidiaries, successors, predecessors or affiliates that operate or do business in North Carolina.

19. All applications submitted for Charter's attachments to BREMC's poles since 2011, including any permits issued for such attachments.

CERTIFICATE OF SERVICE

The undersigned certifies that she has served a copy of the foregoing was served upon the parties of record in this proceeding, or their attorneys, by electronic mail as follows:

Marcus W. Trathen
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
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Gardner F. Gillespie
J. Aaron George
Carrie A. Ross
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ageorge@sheppardmullin.com
cross@sheppardmullin.com

This 14th day of September, 2017.



Matthew F. Tilley

EXHIBIT B

Tilley, Matthew

From: Tilley, Matthew
Sent: Friday, September 08, 2017 3:20 PM
To: 'Aaron George'; Charlotte Mitchell; Carrie Ross
Cc: Harden, Debbie
Subject: RE: Charter Responses to BREMCDR1

Aaron,

Thank you again for this e-mail. With respect to the notices of violation, as we have said, BREMC is willing to work with Charter to establish a reasonable timeframe for Charter to submit Correction Plans for these violations and to perform the work to remedy them.

In response to your offer to engage in settlement negotiations, BREMC is willing to see if the parties can negotiate an Agreement, provided (a) the negotiations, and any proposals made during the negotiations, will not be used or admitted in the proceedings before the Commission, and (b) all terms of the agreement are on the table.

Please let me know if this is acceptable.

Thanks,
Matthew

Matthew F. Tilley
Womble Carlyle Sandridge & Rice, LLP
Office: 704.350.6361
Fax: 704.444.9961

From: Aaron George [mailto:ageorge@sheppardmullin.com]
Sent: Tuesday, August 29, 2017 7:09 PM
To: Charlotte Mitchell; Carrie Ross
Cc: Harden, Debbie; Tilley, Matthew
Subject: RE: Charter Responses to BREMCDR1

EXTERNAL EMAIL: Open Attachments and Links With Caution.

Charlotte:

Following up on our conversations yesterday and today, when I contacted my client representative in the Lenoir office (Mike Mullins) about collecting the documents responsive to data requests 43-45 and 51, I was surprised to learn that he is currently swamped by approximately 3,400 NJUNS tickets BREMC (or its contractor USS) submitted on Friday, identifying nearly 5,000 alleged noncompliance issues identified in the 2015-2016 audit.

As I mentioned, and to be sure we are on the same page, Charter cannot process such a massive number of tickets in 30 days, as suggested by the response request date on each ticket. Nor is it obligated to address all of these issues in such a short time frame. Consistent with Sections 11.1 and 11.2 of the parties' agreement, Charter is already working diligently to assess the tickets and develop an action plan to confirm the identified noncompliance issues in each ticket, confirm Charter's responsibility for them, identify the resources/crews it needs to deploy for each ticket, and to develop an

appropriate remediation schedule. To do so, Charter will need more detailed information about each ticket, such as the standards that are allegedly not met, the proposed remediation, the proposed sequencing of work, and whether it involves a secondary or mainline attachment. I understand BREMC intends to supply additional detail, but we have not yet seen it.

Charter's local construction team will also need sufficient time to develop an actionable and realistic plan after it receives this supporting detail. This is a massive undertaking that will require dedicated resources at the local level to coordinate and address each ticket. Charter's initial assessments indicate it will cost more than \$500,000, which does not account for expensive fixes like pole change-outs, or additional issues identified in the 2015-2016 audit that BREMC has not yet submitted through NJUNS. Developing and executing the action plan also will require open and good faith coordination between Charter, BREMC, and other attaching entities. For example, based on Charter's limited review over the past two days, it has already found several issues with the tickets. For one pole, the ticket's proposed remediation (lowering the attachment) would actually lead to other noncompliance issues and require a pole change-out. For another, Charter cannot perform the proposed correction until the phone company moves its facilities. Issues like these will require the affected parties to work together to ensure the work is performed in an orderly and cost-effective manner.

With respect to the litigation, BREMC must understand that submitting thousands of NJUNS tickets in a single day puts severe pressure on the local construction personnel who must address them – and who are the same folks who already have to take time away from their day jobs to locate and collect documents, sit for depositions, and prepare testimony. As I mentioned in our discussion, Charter is willing to devote the necessary resources and work with BREMC to bring its plant into compliance with applicable standards. If BREMC shares that goal, then it seems the parties should focus on developing an effective plan for doing so, rather than diverting resources to litigation that Charter believes was premature in the first instance. To that end, I reiterate the proposal I made in July (and again yesterday) that the parties re-engage in discussions related to the agreement to see if we can narrow or eliminate the issues that ultimately must be submitted to the Commission.

Best,
-Aaron

Aaron George |
SheppardMullin | Washington
202.747.2196 | ext. 22196

From: Charlotte Mitchell [<mailto:cmitchell@lawofficecm.com>]
Sent: Monday, August 28, 2017 3:26 PM
To: Aaron George <ageorge@sheppardmullin.com>; Carrie Ross <CRoss@sheppardmullin.com>
Cc: Harden, Debbie <DHarden@wcsr.com>; Tilley, Matthew <Matthew.Tilley@wcsr.com>
Subject: RE: Charter Responses to BREMCDR1

Aaron and Carrie:

I am emailing to follow up on our conversation of today. As we discussed on the call, given that testimony filing deadlines that are quickly approaching and that we will likely need to schedule depositions in the near term, we need to review the documents next week. It is my understanding that you all will let us know in the next day or two whether the documents responsive to data requests 43-45 and 51 will be available then and the volume of documents that are responsive to these requests. Additionally, we understand that responses to data requests 21 and 41 are being handled by mapping personnel but that you are awaiting authorization to provide responses to the requests. You indicated that you will keep us apprised of the status of those responses, particularly in light of the exigencies of the proceeding.

Please let me know if I misunderstood any of your explanation. Thank you again for your time today.

Regards,

Charlotte

From: Aaron George [<mailto:ageorge@sheppardmullin.com>]
Sent: Thursday, August 24, 2017 7:46 PM
To: Charlotte Mitchell <cmitchell@lawofficecm.com>; Carrie Ross <CRoss@sheppardmullin.com>
Cc: Harden, Debbie <DHarden@wcsr.com>; mtilley@wcsr.com
Subject: RE: Charter Responses to BREMCDR1

Charlotte, thank you for following up. We have been working this week on getting answers to your questions.

For requests 43-45 and 51, the records can be inspected at the Lenoir office. We understand some of the records may currently be housed in another office. We are working to get a better understanding of what is there and what it will take to get everything in one place. In any event, it will take some time to collect all of the documents in a manner in which they could be copied/inspected. Feel free to give me a call tomorrow as it may be easier to talk through the logistics of arranging for someone to inspect/copy the materials.

We are working with Charter's mapping folks to run programs designed to extract data responsive to Requests 21 and 41. After further consultation with the client, it turns out this will be more efficient (and likely more useful) than an inspection. We will keep you updated on this process.

-Aaron

Aaron George |
SheppardMullin | Washington
202.747.2196 | ext. 22196

From: Charlotte Mitchell [<mailto:cmitchell@lawofficecm.com>]
Sent: Thursday, August 24, 2017 11:50 AM
To: 'Marcus W. Trathen' <MTRATHEN@brookspierce.com>; Aaron George <ageorge@sheppardmullin.com>; Carrie Ross <CRoss@sheppardmullin.com>; Gardner Gillespie <GGillespie@sheppardmullin.com>
Cc: Harden, Debbie <DHarden@wcsr.com>; mtilley@wcsr.com
Subject: RE: Charter Responses to BREMCDR1

All:

I am following up on my email of last week.

Please provide a response to my question related to volume of documents responsive to each request at your earliest convenience and location at which the documents will be available so that we can plan accordingly.

Also, in accordance with the Nondisclosure and Protective Agreement between Charter and Blue Ridge EMC, attached are Attachment A pages executed by Wil Arnett, Greg Booth, John Coffey and Lee Layton.

Finally, we are continuing to review Charter's responses to BREMCDR1 and will be in touch in the near term with any concerns related to adequacy of responses.

Please let me know if you have any questions.

Thank you,

Charlotte

From: Charlotte Mitchell
Sent: Friday, August 18, 2017 8:43 AM
To: 'Marcus W. Trathen' <MTRATHEN@brookspierce.com>; Aaron George (ageorge@sheppardmullin.com) <ageorge@sheppardmullin.com>; Carrie Ross <CRoss@sheppardmullin.com>; Gardner Gillespie (GGillespie@sheppardmullin.com) <GGillespie@sheppardmullin.com>
Cc: Harden, Debbie <DHarden@wcsr.com>
Subject: Charter Responses to BREMCDR1

All:

Although the responses and documents produced are still under review by BREMC, I am emailing to follow up on several of the responses BREMC received to the first set of data requests propounded to Charter. Specifically, in response to BREMCDR1-21, 41, 43, 44, 45, and 51, Charter responded that it would make documents available for inspection by BREMC at a mutually agreed upon time and place.

Please let us know, at your earliest convenience, the volume of documents for each request so that we can either schedule the review next week, or alternatively, have a complete set of copies made or electronically transmitted to us next week to be received next week. Also, please confirm that all the documents will be available for inspection at either Charter's Hickory or Lenoir offices.

Thank you,

Charlotte

Charlotte A. Mitchell

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