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	)	ORDER REQUIRING BLUE RIDGE ELECTRIC MEMBERSHIP CORPORATION TO RESPOND TO CHARTER COMMUNICATIONS PROPERTIES, LLC'S ANSWER TO COMPLAINT AND COUNTERCLAIMS

BY THE CHAIRMAN: On November 30, 2016, Blue Ridge Union Electric Membership Corporation (BREMC) filed a Verified Petition for Relief (Petitioner) against Charter Communications Properties, LLC, (Charter) in the above-captioned docket pursuant to G.S. 62-350 seeking to resolve certain issues in dispute between BREMC and Charter.

On February 1, 2017, Charter filed its Answer to Complaint and Counterclaims. Pursuant to the Certificate of Service, a copy of the Answer and Counterclaims were served on the Petitioner on January 31, 2017.

WHEREUPON, the Chairman finds that good cause exists to require the Petitioner to review the Answer and Counterclaims of Charter and to file responses to said answer and counterclaims on or before March 1, 2017. Further, the Commission finds that good cause exists to direct the Clerk to serve this Order upon the Petitioner by electronic mail, delivery confirmation requested.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of February, 2017.

NORTH CAROLINA UTILITIES COMMISSION

Paige J. Morris

Paige J. Morris, Deputy Clerk

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STATE OF NORTH CAROLINA
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DOCKET NO. EC-23, SUB 50

Blue Ridge Electric Membership Corporation, Complainant v. Charter Communications Properties, LLC, Respondent.	)	**CHARTER COMMUNICATIONS PROPERTIES, LLC'S ANSWER TO COMPLAINT AND COUNTERCLAIMS**

Respondent Charter Communications Properties, LLC ("Charter") respectfully submits this Answer to the November 30, 2016 Verified Complaint and Petition for Relief ("Complaint") filed by Blue Ridge Electric Membership Corporation ("BREMC" or "Cooperative") and files counterclaims to address additional disputed issues.

PRELIMINARY STATEMENT

BREMC's premature Complaint against Charter was filed in the midst of what Charter considered to be on-going and cooperative negotiations for a new pole attachment agreement ("Agreement"). BREMC's failure to fully engage with Charter led to a Complaint that misstates Charter's positions, reneges on agreed-to terms and includes issues that Charter did not dispute at all. Even after the Complaint was filed, Charter reached out to BREMC in an effort to narrow the issues, but, to no avail. As a result, Charter has little choice but to file this Answer and Counterclaim.[1]

[1] Charter remains willing to try and negotiate the agreement terms and conditions. One area where the parties will likely require Commission assistance relates to the excessive pole attachment rate that BREMC seeks to impose on Charter. Pole attachment rates are also the subject of 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

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In order to provide its services, Charter maintains and installs attachments on cooperatively-owned poles throughout the state, including on poles owned by BREMC. Owing to a variety of economic, environmental, aesthetic, local zoning and right-of-way restrictions, cable operators do not have a practical alternative to relying on existing utility pole networks owned by electric and telephone utilities in any given locality to construct their communications networks. Courts, legislatures and administrative agencies have long recognized this reality. As the United States Supreme Court observed, "[c]able television operators, in order to deliver television signals to their subscribers, must have a physical carrier for the cable; in most instances, underground installation of the necessary cables is impossible and impractical. Utility company poles provide, under such circumstances, virtually the only practical medium for the installation of television cables." *FCC v. Florida Power Corp.*, 480 U.S. 245, 247 (1987).[2] Once cable operators have constructed their aerial networks on existing pole infrastructure, they are essentially captive because it would be prohibitively expensive and impractical (or impossible) to rebuild those networks underground or install their own poles. As a result, pole owners, including BREMC, have

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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). Charter is willing to await the outcome of those cases in order to determine the appropriate rate formula to apply in this case.

[2] *See also Georgia Power Co. v. Teleport Commc'ns Atlanta, Inc.*, 346 F.3d 1033, 1036 (11th Cir. 2003) (noting "lack of alternatives to these existing poles"); *Alabama Power Co. v. FCC*, 311 F.3d 1357, 1362 (11th Cir. 2002), *cert. denied*, 540 U.S. 937 (2003) (utilities are "the owner of . . . 'essential' facilities" for cable operators); *Southern Co. v. FCC*, 293 F.3d 1338, 1341 (11th Cir. 2002) ("As a practical matter, cable companies have had little choice but to" attach "their distribution cables to utility poles owned and maintained by power and telephone companies."); *Southern Co. Servs., Inc. v. FCC*, 313 F.3d 574, 576-77 (D.C. Cir. 2002) ("Since building new poles was prohibitively expensive, cable operators instead leased existing space from utilities . . . .").

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superior bargaining power over cable companies when negotiating pole attachment agreement rates, terms and conditions.[3]

The North Carolina General Assembly recognized that pole owning cooperatives have superior bargaining power over attachers and passed N.C.G.S. § 62-350 to stem abuses related to pole attachments rates, terms and conditions. *See* N.C.G.S. § 62-350(a) (requiring cooperatives to allow communications service providers to use cooperatively-owned poles "at just, reasonable and nondiscriminatory rates, terms and conditions adopted pursuant to negotiated or adjudicated agreements."). When parties are unable to reach agreement through negotiation, they may seek assistance from the Commission which is vested with authority to resolve disputes over pole attachment rates, terms and conditions.

In addition to answering BREMC's Complaint, Charter asks the Commission to reject the pole attachment rates imposed by BREMC as unjust and unreasonable, inconsistent with the public interest, and in violation of N.C.G.S. § 62-350, and set rates calculated in accordance with the widely used (including in North Carolina), fully compensatory cable pole attachment rate formula specified by Congress and implemented by the Federal Communications Commission throughout much of the Nation. Charter also requests that any over-payments made since 90 days after negotiations began on April 20, 2015 related to a new pole attachment agreement be returned, with statutory interest.

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[3] *See Heritage Cablevision Assocs. of Dallas, L.P. v. Texas Utils. Elec. Co.*, 6 FCC Rcd. 7099, ¶ 14 (1991) (When passing the federal Pole Attachment Act "Congress was concerned with abusive conduct by the utilities. For example, the relevant Senate report refers to testimony received in committee concerning: 'the local monopoly in ownership or control of poles' by the utilities; the 'superior bargaining position' enjoyed by utilities over cable operators in negotiating rates, terms and conditions for pole attachments; and allegations of 'exorbitant rental fees and other unfair terms' demanded by the utilities in return for the right to lease pole space. As the Senate report and case law bear out, Congress clearly acted to protect cable operators from anticompetitive conduct by utilities.") (internal citation omitted).

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ANSWER TO COMPLAINT

For its Answer to the Complaint, Charter states and alleges as follows:

PARTIES

1. Charter is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in Paragraph 1 of the Complaint and therefore denies those allegations. Answering further, Charter admits that BREMC owns utility poles in its service coverage area and operates for the benefit of its electric customers.

2. Charter is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in Paragraph 2 of the Complaint and therefore denies those allegations.

3. Charter admits the allegations of Paragraph 3 to the extent that it defines Charter as a Delaware limited liability company, and a communications service provider. Charter's mailing address is 12405 Powerscourt Drive, St. Louis, Missouri, 63131. Charter further states that it uses utility poles, ducts and/or conduits owned and/or controlled by BREMC to provide communications services in Alleghany, Ashe, Caldwell, and Watauga counties in North Carolina.

BACKGROUND

4. Paragraph 4 of the Complaint states legal conclusions to which no response is required. Answering further, to the extent a response is deemed required, Charter admits that the federal Pole Attachment Act, 47 U.S.C. § 224, granted the Federal Communications Commission jurisdiction to ensure the rates, terms and conditions for pole attachments are just and reasonable and that the 1996 amendments to the Act granted both

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cable and telecommunications service providers an affirmative right of nondiscriminatory access to poles, ducts, and conduits owned or controlled by utilities.

5. Paragraph 5 of the Complaint states a legal conclusion to which no response is required. Answering further, to the extent a response is deemed required, Charter admits that the federal Pole Attachment Act, 47 U.S.C. § 224, does not subject cooperatively organized utilities to the pole attachment jurisdiction of the Federal Communications Commission.

6. Paragraph 6 of the Complaint states a legal conclusion to which no response is required. Answering further, to the extent a response is deemed required, Charter admits that North Carolina General Statute Section 62-350 governs the attachments of cable and telecommunications service providers to poles of North Carolina's member-owned cooperatives.

7. Paragraph 7 of the Complaint states a legal conclusion to which no response is required. Answering further, to the extent a response is deemed required, Charter states that Section 62-350 speaks for itself.

8. Charter admits the allegations of Paragraph 8 of the Complaint that it entered into a pole attachment license agreement with BREMC in 2003 to use BREMC's poles to provide communications services to customers within BREMC's territory. Charter further admits that the parties have worked collaboratively to ensure their systems are maintained safely.

9. Charter admits the allegations of Paragraph 9 of the Complaint to the extent that it states the parties have been engaged in ongoing negotiations over a new pole

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attachment license agreement since April 2015 and further admits that some issues remain unresolved.

10. With respect to Paragraph 10 of the Complaint, Charter admits that 90 days have elapsed since negotiations began in April 2015, but denies BREMC's allegations in other respects. Charter submitted a redline of the agreement to BREMC in May 2015 and the parties have since discussed the proposed revisions both in person and through written electronic correspondence. Charter denies that the parties are at an impasse on certain issues and therefore denies in part the allegations of Paragraph 10 of the Complaint as described further in Paragraph 11 of the Complaint.

ISSUES IN DISPUTE

11. **Terms and Conditions of New Pole Attachment License Agreement**. Paragraph 11 states legal conclusions to which no response is required. To the extent a response is deemed required, Charter denies these allegations. With regard to the specific issues identified by BREMC, Charter responds:

a. Disputed Invoices. Charter admits the allegations of the first three sentences of Paragraph 11(a) of the Complaint. Charter denies the remaining allegations of Paragraph 11(a) of the Complaint.

b. Permit Application and Fee. Charter admits that Charter and BREMC agree attachments should continue to be permitted, reviewed, and poles will be made ready to accommodate attachments in accordance with engineering plans the parties agree upon as alleged in Paragraph 11(b) of the Complaint. Charter denies the remaining allegations of Paragraph 11(b) of the Complaint.

c. Certification of Pole Attachment. Charter admits that its pole attachments must be of sound engineering design and comply with safety specifications as alleged in the first sentence of Paragraph 11(c) of the Complaint, but disagrees with the remaining allegations regarding confirmation and certification in the first, second and fourth sentence of the Paragraph 11(c). Charter is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding BREMC's position and reasoning as

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stated in the third, fifth and sixth sentences of Paragraph 11(c) of the Complaint and therefore Charter denies those allegations. Charter denies the remaining allegations of Paragraph 11(c) of the Complaint.

d. Maintenance and Transfers. Charter admits the points of agreement and disagreement alleged in the first two sentences of Paragraph 11(d) of the Complaint, but denies the allegations in the third and fourth sentence. Charter admits the points of agreement and disagreement alleged in the fifth, sixth and seventh sentences of Paragraph 11(d) of the Complaint, *i.e.,* the parties agree that a permit for an attachment transfers with an existing attachment when an attachment is transferred to a replacement or relocated pole, Charter is responsible for the cost associated with transferring those attachments, but that the parties disagree over the consequences of failure to timely complete the transfer. Charter denies the remaining allegations of Paragraph 11(d) of the Complaint.

e. Non-Compliant Attachments. Charter admits that the parties agree that Charter must develop a plan for corrective action and disagrees over the timeline and course of that plan, and denies all other allegations of Paragraph 11(e) of the Complaint.

f. Insurance. Charter admits to the first sentence of Paragraph 11(f) of the Complaint that Charter should be obligated to provide insurance coverage and that the parties disagree to the extent of the insurance coverage. Charter denies the allegations of the second sentence of Paragraph 11(f) of the Complaint. Charter is without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in the third, sixth, and seventh sentences of Paragraph 11(f) of the Complaint and therefore denies those allegations. The fourth and fifth sentences of Paragraph 11(f) of the Complaint state legal conclusions to which no response is required. To the extent a response is deemed required, Charter denies these allegations.

g. Rights and Obligations in the Event of Default. Charter admits only the first sentence of Paragraph 11(g) of the Complaint that the parties agree a new pole attachment agreement must establish remedies for default, and denies all other allegations of Paragraph 11(g) of the Complaint.

h. Right to Withhold Consent. Charter admits all allegations of Paragraph 11(h) of the Complaint and that BREMC may not withhold consent where otherwise limited by law.

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i. Confidentiality. Charter admits that the parties disagree whether the new pole attachment agreement should be treated as confidential and denies all other allegations of Paragraph 11(i) of the Complaint.

12. **Methodology for Calculating Pole Attachment Fee**. Charter admits only the first sentence of Paragraph 12 of the Complaint, that the parties have been unable to agree on a methodology for calculating the annual pole attachment rate. Answering further, Charter denies the allegations of the second sentence of Paragraph 12 of the Complaint. The second and third paragraphs of Paragraph 12 of the Complaint state legal conclusions to which no response is required. To the extent a response is deemed required, Charter denies these allegations. The last sentence of Paragraph 12 of the Complaint contains no allegations.

REQUESTED RELIEF

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

GENERAL DENIAL

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

COUNTERCLAIM

I IDENTIFICATION OF THE PARTIES

1. Counter-Complainant Charter is a Delaware limited liability company and its mailing address is 12405 Powerscourt Drive, St. Louis, Missouri, 63131. Charter is a cable operator under federal law, 47 U.S.C. § 522(5), and a communications service provider under state law, N.C.G.S. § 62-350(e). Charter provides cable television, broadband Internet access, voice-over-Internet-protocol and other communications services to residents throughout North Carolina. In order to provide its services, Charter

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must attach its facilities to existing poles in North Carolina, including poles owned by BREMC and other membership corporations.

2. The names and addresses of the authorized representatives for Charter in this proceeding, and the persons to whom communications on behalf of Charter should be sent, are:

Marcus W. Trathen
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Wells Fargo Capitol Center
150 Fayetteville Street, Suite 1700
Raleigh, NC 27601
(919) 839-0300
mtrathen@brookspierce.com

Gardner F. Gillespie
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(202) 747-1900
ggillespie@sheppardmullin.com
ageorge@sheppardmullin.com
cross@sheppardmullin.com

3. Counter-Respondent BREMC is an electric membership corporation organized and operating under the provisions of Article 2 of Chapter 117 of the North Carolina General Statutes. On information and belief, BREMC has its principal place of business at 1216 Blowing Rock Boulevard NE, Lenoir, North Carolina, 28645. The Cooperative owns or controls poles in the areas where it provides service in North Carolina. On information and belief the counsel for the Cooperative are as follows:

Charlotte A. Mitchell
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P.O. Box 26212
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II. JURISDICTION

4. The Commission has jurisdiction over this matter pursuant to N.C.G.S. § 62-350.

5. Section 62-350 gives the Commission "exclusive jurisdiction over proceedings arising under this section" to "adjudicate disputes arising under this section on a case-by-case basis." N.C.G.S. § 62-350(c).

6. Charter brings these counterclaims pursuant to Section 62-350 to resolve disputes concerning the rate for attachments to utility poles owned by BREMC, as well as other pole attachment issues. Charter has paid all disputed fees for the use of the Cooperative's poles.

III. BACKGROUND

A. Regulation of Pole Attachment Access and Rates

7. As discussed above, cable operators must rely on existing utility pole networks, including those owned and operated by BREMC, to construct their cable networks.

8. The United States Supreme Court has found that cable operators' dependence on the use of existing pole infrastructure has led to abuses by utilities. Specifically, while cable operators have found it "essential" to lease pole space from

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utilities, "[u]tilities, in turn, have found it convenient to charge monopoly rents." *Nat'l Cable & Telecomms. Ass'n, Inc. v. Gulf Power Co.*, 534 U.S. 327, 330 (2002).

9. Cable operators' dependence on existing poles and utilities' corresponding abuses of their "superior bargaining power" to impose monopolistic rates, terms and conditions led to the federal Pole Attachment Act nearly 40 years ago. Pub. L. No. 95-234, 92 Stat. 33 (1978) (47 U.S.C. § 224). Section 224 of the federal Pole Attachment Act gives the Federal Communications Commission ("FCC") authority to regulate pole attachment relationships between cable operators and investor-owned electric ("IOUs") and telephone companies, including the IOUs in North Carolina. 47 U.S.C. § 224(b)(1). Congress directed the FCC to "regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable." *Id.*

10. Congress exempted poles owned by cooperatively-organized and municipal utilities from regulation under Section 224. 47 U.S.C. § 224(a)(1). These utilities were excluded because Congress believed that those rates would remain low because of local control. S. Rep. No. 95-580, at 16-18 (1977).

11. But, in the absence of regulation, cooperatively-organized and municipal pole owners subjected attachers to the same abusive practices that led the Congress to regulate IOUs.

12. To stem these abuses, the General Assembly enacted N.C.G.S. § 62-350 in 2009.

13. Section 62-350 requires pole owning municipal utilities and membership cooperatives to allow communications service providers access to their poles, ducts, and

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conduits, at just, reasonable, and nondiscriminatory rates, terms and conditions adopted pursuant to negotiated or adjudicated agreements. N.C.G.S. § 62-350(a).

14. To that end, Section 62-350 provides a mechanism for resolving disputes between communications service providers and municipal utilities and membership cooperatives in the event the parties are unable to reach agreement within 90 days of a request to negotiate reasonable rates, terms and conditions or if either party believes there is an impasse. *Id.* § 62-350(c).[4] To perfect its right to seek resolution of a dispute, the communications service provider must pay any undisputed fees related to the use of poles, ducts, or conduits which are due and owing under a preexisting agreement with the municipality or membership cooperative.

15. The statute, as amended in 2015, directs the Commission to resolve disputes arising under Section 62-350 on a case-by-case basis, consistent with the public interest and necessity to derive just and reasonable rates, terms, and conditions. *Id.* The Commission may consider any evidence or ratemaking methodologies offered or proposed by the parties. *Id.* Although the 2015 amendments to Section 62-350 deleted an express reference to the federal pole attachment rate methodology applicable to IOUs in the state, the General Assembly emphasized that "the Commission may consider any evidence presented by a party, including any methodologies previously applied." S.B. 88, N.C. Session Law 2015-119 § 7 (2015).

16. Upon resolution of a dispute, the Commission shall apply any new rate adopted retroactively to the date immediately following the expiration of the 90-day

[4] The General Assembly amended Section 62-350 in June 2015 to reassign exclusive jurisdiction from the North Carolina Business Court, which had raised concerns about its rate-setting authority, to the Commission. *See An Act to Assign Pole Attachment Disputes to the North Carolina Utilities Commission*, S.B. 88, N.C. Session Law 2015-119 (2015).

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negotiation period. N.C.G.S. § 62-350(c). If the dispute and new rate arises in the context of a negotiation for the continuation of an existing agreement, the Commission shall apply the new rate retroactively to the date immediately following the end of the existing agreement. *Id.*

B. North Carolina Business Court Decisions Under Section 62-350

17. The Business Court resolved two cases arising under Section 62-350 prior to its amendment in June 2015. One case addressed the reasonableness of pole attachment rates imposed by a membership cooperative. *See 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). The other addressed pole attachment rates, terms, and conditions imposed by a municipal utility. *See Time Warner Entertainment-Advance/Newhouse P'ship v. Town of Landis*, No. 10-CVS-1172, 2014 WL 2921723 (N.C. Sup. Ct. June 24, 2014).

18. In *Rutherford*, after extensive discovery and a four day trial, the Business Court rejected the methodologies proposed by the cooperative and its experts, concluding that the methodologies were not supported by competent evidence. *See Rutherford*, 2014 WL 2159382, at *12-16. In so doing, the court rejected the cooperative's proposed rates—ranging from $15.50 to $19.65—as unjust and unreasonable. *Id.* Instead, the court found that a rate calculated under the FCC's "Cable Rate" formula provided just and reasonable compensation to the cooperative. *Id.* at *9. The court reasoned that the Cable Rate formula offers "an analytical structure that is well-understood, widely used, and judicially sanctioned," and that the state's reliance on established FCC precedent would "provide helpful guidance to parties involved in future negotiations over just and reasonable pole

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attachment rates, terms, and conditions." *Id*. at *10. The North Carolina Court of Appeals affirmed the Business Court's decision. *See* 771 S.E.2d 768.

19. Similarly, in *Landis*, the Business Court rejected the methodologies proposed by the Town and its expert as irrational and unsupported, concluding that the Town's proposed $18.00 rate was unjust and unreasonable. *See Landis*, 2014 WL 2921723, at *12-13. The court again found that a rate calculated under the Cable Rate formula provided just and reasonable compensation to municipally owned utilities in North Carolina. *See id.* at *10. Referencing the reasoning of its *Rutherford* decision, the court explained that the Cable Rate formula "provides a reasonable means of allocating costs without creating a subsidy from the pole owner to the attacher." *Id*.

20. As the Business Court recognized, the Cable Rate formula is straightforward, relies on costs kept in the normal course and forms the basis of most pole attachment rates across the nation, including for the more than one hundred thousand attachments to poles owned by IOUs in North Carolina. Regulatory agencies, federal and state courts (including the Business Court) and the United States Supreme Court have all concluded that the Cable Rate formula is fully compensatory to pole owners and does not result in subsidies to attachers. *See, e.g. Florida Power Corp.*, 480 U.S. at 254 (rejecting a Takings Clause claim because it could not "seriously be argued, that a rate providing for the recovery of fully allocated cost, including the actual cost of capital, is confiscatory" and holding the Cable Rate formula compensates utilities for the "fully allocated cost" of pole attachments); *Alabama Power*, 311 F.3d at 1372 (rejecting an as-applied Fifth Amendment challenge and holding the Cable Rate formula provides just compensation to pole owners); *Gulf Power Co. v. United States*, 998 F. Supp. 1386 (N.D. Fla. 1998), *aff'd*,

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187 F.3d 1324 (11th Cir. 1999) (affirming that the Pole Attachment Act provides a process for obtaining just compensation); *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, 26 FCC Rcd 5240, 5322 (2011) ("We find no evidence in the record that supports the utilities' assertions that the lower-bound telecom formula results in rates so low that it forces electric ratepayers to subsidize third-party attachment rates."), *aff'd sub nom. Am. Elec. Power Serv. Corp. v. FCC*, 208 F.3d 183 (D.C. Cir. 2013) (hereinafter "2011 Pole Rate Order"); *Rutherford*, 2014 WL 2159382, at *9 (rejecting the cooperative's subsidy arguments and concluding that "the FCC Cable Rate formula actually leaves the utility and its customers better off than they would be if no attachments were made to their poles."); *Landis*, 2014 WL 2921723, at *10 (same). The Cable Rate formula also provides a uniform and consistent methodology for all types of utilities because it utilizes costs specific to each utility and relies on essentially the same system of accounts used by membership cooperatives. *Rutherford*, 2014 WL 2159382, at *10.

C. Low and Uniform Rates Serve the Public Interest

21. Access to utility poles on just, reasonable and nondiscriminatory rates, terms and conditions is essential to the expansion of broadband and other advanced services throughout North Carolina, particularly in rural areas.

22. In its 2010 National Broadband Plan, the FCC found that "[t]he cost of deploying a broadband network depends significantly on the costs that service providers incur to access conduits, ducts, poles and rights-of-way on public and private lands." National Broadband Plan (2010) at 109, *available at* https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf (last visited January 30, 2017) (finding that "the expense of obtaining permits and leasing pole attachments and rights-of-way can

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amount to 20% of the cost of fiber optic deployment"). The National Broadband Plan concluded that the impact of higher pole attachment rates "can be particularly acute in rural areas, where there often are more poles per mile than households." *Id.* at 110. To promote broadband deployment, the National Broadband Plan recommended that the FCC establish rates for pole attachments "that are as low and close to uniform as possible." *Id.* at 110.

23. At the legislature's direction, North Carolina's Broadband Infrastructure Office is developing the state's own broadband plan. Consistent with the National Broadband Plan, the state's progress report released in December 2015 found that communities "in sparsely populated or economically distressed areas . . . continue to find themselves on the wrong side of the digital divide." *See* North Carolina Department of Information Technology, State Broadband Plan Progress Report (Dec. 1, 2015) at 5, *available at* https://ncbroadband.gov/wp-content//uploads/2016/02/Broadband-Plan-Progress-Report-12-1-2015.pdf (last visited January 30, 2017). The report further identified "infrastructure cost" as one of the key challenges to broadband deployment in the state, particularly given the "significant infrastructure upgrades" necessary to keep pace with evolving technologies and demands for data. *See id.* at 4-5.

24. Consistent with the recommendations of the National Broadband Plan and the state's broadband objectives, low and uniform pole attachment rates throughout North Carolina (regardless of whether the poles are owned by IOUs, municipal utilities, or

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membership cooperatives) will promote the expansion of broadband in rural areas and facilitate the infrastructure upgrades needed in the coming years.

IV. THE PARTIES' DISPUTE

25. Charter depends on access to the poles owned by BREMC to deliver its services to its customers. Charter is attached to approximately 26,000 poles owned by the Cooperative.

26. ***The Parties' Pole Attachment Agreement***. Prior to and after the enactment of Section 62-350, Charter has attached its facilities to BREMC's poles pursuant to a pole attachment agreement executed by BREMC and Charter in 2003. Ex. 1 ("Agreement"). The Agreement was for a three-year term, continuing for not more than two successive one-year terms or until terminated by either party by providing written notice at least 120 days prior to the end of any period. *Id.* Art. 2.1.

27. The Agreement provided for a per-pole, annual attachment fee of $15.00 beginning in 2003, and increasing by $1.00 each year until reaching a $23.00 per pole attachment fee in 2008, charged quarterly. *Id*. Arts. 4.1, 4.2 & Exhibit C. In 2003, when the Agreement was signed, BREMC's rates were not subject to regulation under Section 62-350 or any other federal or state authority. Indeed, a decision by the United States Court of Appeals for the Fourth Circuit ruled that it did not have sufficient basis to assert jurisdiction over pole rates charged by North Carolina electric cooperatives, having determined that the state legislature or courts should resolve the issues presented. *Time Warner Entertainment-Advance/Newhouse P'ship v. Carteret-Craven Elec. Membership Corp.*, 506 F.3d 304, 3015 (4th Cir. 2007) ("[I]f any regulation or compulsion is to be applied to pole-attachment agreements, it should be done by the North Carolina legislature,

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the North Carolina Utilities Commission, [or] the North Carolina state Courts."). Therefore, Charter had little choice but to accept the rates imposed by BREMC if Charter wanted to attach to BREMC's poles and provide its services.

28. ***The Parties' Negotiations and Dispute***. On April 20, 2015, BREMC sent Charter a proposed new attachment agreement and the parties began negotiations. The negotiations were suspended while the North Carolina General Assembly considered amendments to N.C.G.S. § 62-350. Negotiations resumed again in October 2015, and drafts were exchanged and terms discussed over the next year.

29. In 2015 and 2016 BREMC charged and Charter paid an annualized rate of about $25 per attachment, while the parties continued to negotiate the agreement and the rates. BREMC's current rate is approximately five times the rate established by the evidence in the *Rutherford* case as the highest average IOU cost-based rate in North Carolina.

30. On November 22, 2016, Charter received an invoice for back rent that BREMC claims is owed for alleged unpermitted attachments discovered in an inventory that BREMC recently performed. Charter requested data to support the number of alleged unpermitted attachments. No such data has yet to be provided. Only days later, Charter received notification that BREMC had filed its Complaint with the Commission.

31. Despite Charter's efforts to keep negotiations on track and narrow the issues before the Commission, BREMC has refused to negotiate and now the parties are at an impasse. *See* N.C.G.S. § 62-350(c). That impasse, as well as the expiration of the 90-day

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period following the initiation of negotiations, gives the Commission jurisdiction to resolve the parties' dispute regarding a just and reasonable pole attachment rate.

V. JUST AND REASONABLE RATES

32. BREMC urges the Commission to calculate rates using a methodology adopted by the Tennessee Valley Authority ("TVA") in February 2016. The TVA, which was established by Congress in 1933 to bring electric power to rural areas of the Southeast, is a wholesale and retail electric provider. TVA has no authority over BREMC.

33. In deciding to regulate, for the first time, the pole attachment rates of its wholesale electric customers, the TVA sought only the input from its electric customers—including a large number of cooperative utilities who would benefit from high pole attachment rates. Not surprisingly, the rate formula it adopted allocates an excessive portion of pole costs to each attacher, based on a rate methodology advocated by the Tennessee Valley Public Power Association, ("TVPPA") an association representing public power utility pole owners. TVA was candid in admitting its focus was solely on keeping pole attachments rates as high as possible in support of low electric rates. *See* TVA Board Resolution *available at* https://www.tva.com/file_source/TVA/Site%20Content/About%20TVA/Guidelines%20and%20Reports/tva_determination_on_regulation_of_pole_attachments.pdf (last visited January 30, 2017).[5] Because pole attachment revenues received by cooperative and municipal utilities that purchase power from TVA are allegedly used to offset electric rates, the TVA unreasonably relied on a methodology intended to result in excessive pole

[5] The TVA Board Resolution noted that it seeks "to ensure that electric systems are operated for the benefit of electric consumers and that electric rates are kept as low as feasible." TVA, Determination on Regulation of Pole Attachments, February, 2016.

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attachment rates. The TVA formula relies heavily on a recommended formula of the American Public Power Association—a national association of public power entities—that has never been accepted by any regulatory authority.

34. TVA conducted no public proceeding and did not seek (or receive) input from any party other than the TVPPA and its utility members. Indeed, TVA proceeded in secret, treating the issue as "Confidential and Business Sensitive," with no public notice that it was even considering regulating the pole attachment rates of its wholesale customers. *See* TVA Proposed Board Resolution labeled as "TVA Restricted Information—Confidential and Business Sensitive."[6] While TVA met with the TVPPA and TVA's individual wholesale customers, it did not consult any party that attaches its facilities to its customers' poles or any member of the public who would benefit from increased extension of broadband.

35. Charter requests that the Commission reject BREMC's request to use the TVA's flawed formula, determine that the rates charged by BREMC are unjust and unreasonable, and instead apply the Cable Rate formula, which is used to calculate rates for the vast majority of poles in the State of North Carolina.

36. The federal Pole Attachment Act directs the FCC to regulate pole attachment rates based on the costs of the pole owner to make attachment space available to cable operators. 47 U.S.C. § 224(b)(1). Under Section 224(d), a rate is just and reasonable if it falls within a zone of reasonableness between the incremental and fully

[6] Despite the "Confidential and Business Sensitive" designation the Proposed Board Resolution is publicly available on TVA's website, visit https://www.tva.com/file_source/TVA/Site%20Content/About%20TVA/Guidelines%20and%20Reports/tva_determination_on_regulation_of_pole_attachments.pdf (last visited January 30, 2017).

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allocated costs of providing attachments: "[A] rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space . . . which is occupied by the pole attachment by the sum of operating expenses and actual capital cost of the utility attributable to the entire pole, duct, conduit, or right-of-way." *Id.*§ 224(d)(1).

37. On the low end of the range a rate is reasonable if it covers the utility's incremental costs caused by the attacher. These costs consist primarily of the make-ready charges that attachers typically pay to accommodate their attachments. *See* Ex. 1 Art. 5 (requiring Charter to pay for any modifications necessary to the poles and related facilities to accommodate Charter's attachment).

38. On the high end of the range the formula allows a utility to recover from the attacher a portion of its fully allocated costs, i.e., those costs the pole owner incurs notwithstanding the attachments. This fully-allocated upper bound range is the Cable Rate formula.[7]

39. The Cable Rate formula derives the maximum allowable pole attachment rate by determining the annual cost of owning and maintaining (the carrying charges) a bare utility pole (the net bare pole investment) and then multiplying these costs by a space allocation factor based on the amount of usable pole space the attacher uses. The FCC Cable Rate formula can be expressed as follows:

> Maximum Rate = Space Factor x Net Cost of a Bare Pole x Carrying Charge Rate

[7] As applied, the Cable Rate formula not only provides for the recovery of fully allocated costs but also for recovery of all make-ready and other incremental costs.

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40. Under the Cable Rate formula, the cable operator pays for the costs of the entire pole in proportion to the usable space it uses for its attachments. For example, an average pole of 37.5 feet contains 13.5 feet of usable space (i.e., on this typical pole, 6 feet is buried under ground for stability and there is 18 feet of clearance to the lowest attachment and thus 24 feet is considered unusable). In addition, a typical cable attachment is assigned one foot of usable space. As a result, under the Cable Rate formula, the cable attacher is assigned 1/13.5 or 7.4 percent of the annual costs of each pole it occupies. *Amendment of Rules and Policies Governing Pole Attachments*, 15 FCC Rcd 6453, 6529, Appendix C-2 (2000) ("*Fee Order*"); *Implementation of Section 703(e) of the Telecommunications Act of 1996*, 16 FCC Rcd 12103, 12108, 12174, & Appendix D-2 (2001) ("*Reconsideration Order*") (affirming use of rebuttable presumptions of 1 foot of occupied space and 13.5 feet of total usable space).

41. As discussed above, the Cable Rate methodology is widely accepted because it has been found to fully compensate the pole owner. *See e.g., Florida Power Corp.*, 480 U.S. at 254 (holding the Cable Rate formula compensates utilities for the "fully allocated cost" of pole attachments). Indeed, nearly every state that has "reverse preempted" the FCC to self-regulate pole attachments, uses the Cable Rate formula or a close proxy to determine maximum just and reasonable pole attachment rates.[8] The nearby states of Kentucky and Ohio, for example, either have adopted a rate methodology based largely on the FCC method (Kentucky), or have adopted the FCC rate methodology wholesale (Ohio). *See Adoption of a Standard Methodology for Establishing Rates for*

[8] Twenty-one states are certified to self-regulate pole attachments. *See* 47 U.S.C. § 224(c)(allowing states to regulate pole attachments upon certification); *States That Have Certified That They Regulate Pole Attachments*, Public Notice, WC Docket No. 10-101, 25 FCC Rcd 5541, 5541-42 (2010).

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Cable Television Pole Attachments, 49 P.U.R. 4th 128, No. 251 (Ky. PSC 1982); *Re: Columbus & Southern Electric Co.*, 50 P.U.R. 4th 37 (Pub. Util. Comm. Oh. 1982).

42. Aligning BREMC's rates with the prevailing rates charged in North Carolina (and elsewhere in the United States) would promote consistency, uniformity, and predictability in rates across the state. Consistent, uniform, and predictable rates, in turn, would serve the public interest and necessity by reducing competitive incongruities, market distortions, and market disputes that negatively affect communications service providers' investment decisions to expand their networks and services, while promoting broadband investment, particularly in rural areas. *See Rutherford*, 2014 WL 2159382, at *10; *see also 2011 Pole Rate Order*, 26 FCC Rcd at 5244 ¶ 157; National Broadband Plan at 110.

43. By contrast, utilizing the TVA methodology requested by BREMC would have an adverse impact on the social and economic development of the areas served by BREMC because it would hinder the expansion of broadband access.

VI. OVERLASHING

44. Charter requests that the Commission find BREMC's proposed requirement that Charter submit an application and application fee in order to overlash to be unjust and unreasonable.

45. Overlashing is a routine practice that involves tying communications wires to existing, supportive strands already attached to poles. Overlashing allows cable operators to replace old or non-functioning cables, or expand the capacity of existing facilities in an efficient and non-disruptive manner. "[O]verlashing . . . facilitates and expedites installing infrastructure essential to providing cable and telecommunications services to American communities. Overlashing promotes competition [and helps] provide

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diversity of services over existing facilities, fostering the availability of telecommunications services to communities, and increasing opportunities for competition in the marketplace."[9]

46. The FCC has rejected attempts to impose permitting requirements for overlashing as "unjust and unreasonable on [their] face." *See Cable Television Assoc. of Ga. v. Ga. Power Co.*, Order, 18 FCC Rcd 22287 ¶ 13 (2003); *see also Amendment of Commission's Rules and Policies Governing Pole Attachments,* Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12141 ¶ 73 (2001). Indeed, Charter overlashes its own facilities throughout North Carolina (on investor-owned utility poles subject to FCC jurisdiction) without pole owner approval or incident.

47. Charter requests that the Commission determine it is reasonable for Charter to overlash its attachment(s) without applying for a permit in order to ensure that its customers are served in an efficient manner.

VII. UNAUTHORIZED ATTACHMENT FEE

48. Charter requests that the Commission determine that BREMC may charge either compensatory back rent for alleged unpermitted attachments or a penalty, but not both. Moreover, BREMC seeks to impose a penalty on other breaches of contract.

49. While Charter does not reject a penalty for attachments it makes without a permit (although in the vast majority of cases, poor record-keeping and outdated processes

[9] *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments,* Report and Order, 13 FCC Rcd 6777, 6807 ¶ 62 (1998).

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usually account for so-called "unauthorized attachments"), any penalty must be just and reasonable. Charter does reject any penalty for other breaches.

50. The FCC's "unauthorized attachment" penalty for unpermitted attachments is followed in many jurisdictions and Charter believes it is a reasonable solution. Specifically, the FCC allows a pole owner to impose "an unauthorized attachment fee of five times the current annual rental fee per pole if the pole occupant does not have a permit and the violation is self-reported or discovered through a joint inspection." *2011 Pole Rate Order*, 26 FCC Rcd. at 5291 ¶ 115 (emphasis added). An additional $100 per pole sanction is allowed "if the violation is found by the pole owner in an inspection in which the pole occupant has declined to participate." *Id.* The $100 fine is intended to encourage cooperation between the utility and the attacher to conduct a joint audit. These fees are imposed "in lieu of any amounts recoverable for unpaid fees." *Mile Hi Cable Partners v. Pub. Serv. Co.*, 15 FCC Rcd 11450, 11459 (Cable Serv. Bur. 2000).

51. Charter requests that the Commission determine that a reasonable unauthorized attachment fee is consistent with the FCC's approach and that unauthorized attachment fees may be applied only to attachments made without a permit and no other breaches.

VIII. INDEMNITY REQUIREMENTS

52. Charter requests that the Commission find BREMC's demand that Charter indemnify BREMC for any liability, loss or damage that may arise on account of BREMC's own negligence to be unjust and unreasonable.

53. There is no reasonable justification for Charter to be liable for claims that arise from BREMC's own negligence. The FCC has found such one-sided indemnity

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provisions unreasonable, holding reciprocal indemnification provisions to be preferable because each party would assume the "responsibility for losses occasioned by its own misconduct." *Cable Television Ass'n of Georgia v. Georgia Power Co.*, 18 FCC Rcd 16333, ¶ 31 (2003). This Commission also favors mutual indemnity provisions for the same reason. *See, e.g.*, *Re Progress Energy Carolina, Inc.*, Docket No. E-100, Sub 101, 240 P.U.R. 4th 533 (NC Util. Comm. 2005) (requiring parties to use a mutual indemnity provision in their interconnection standard agreement).

54. Charter requests that the Commission determine that an indemnification requirement must be reciprocal to be reasonable, and cannot require an attaching entity to indemnify the pole owner for claims or losses that arise from the pole owner's own negligence.

IX. REQUESTED RELIEF

WHEREFORE, the Counter- Complainant Charter requests that the Commission issue an order granting the following relief:

1. Finding BREMC's monthly pole attachment rate of $2.02 for July 2015, through December 2015 to be unjust and unreasonable;

2. Finding BREMC's monthly pole attachment rate of $2.22 for 2016 unjust and unreasonable;

3. Finding that, consistent with the public interest and precedent, BREMC's pole attachment rate should be based on its pole-related costs in the same manner as IOUs in the state and in the manner previously determined to be just and reasonable by the North Carolina Business Court;

4. Adopting a just and reasonable rate for Charter's attachments to BREMC's

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utility poles based on its pole related costs and the rates paid by IOUs in North Carolina;

5. Applying the new rate adopted as a result of this proceeding retroactively to the date immediately following the expiration of the 90-day negotiating period triggered by BREMC's April 20, 2015 request for negotiations under Section 62-350;

6. Providing for statutory interest under North Carolina law for all overpayments made by Charter to BREMC starting after expiration of the 90-day negotiating period triggered by BREMC's April 20, 2015 request for negotiations under Section 62-350;

7. Requiring BREMC to pay Charter the total sum of the overpayments plus statutory interest or allow Charter to take a credit against future pole attachment fees in those amounts;

8. Finding that it is reasonable for attachers to overlash their own attachment(s) without applying for a permit;

9. Finding that a reasonable unauthorized attachment penalty must be consistent with the FCC's approach;

10. Finding that an indemnification requirement must be reciprocal to be reasonable, and that Charter cannot be required to indemnify BREMC against liability, loss or damages arising from BREMC's own negligence or willful misconduct;

11. Assessing the costs of this proceeding to BREMC; and

12. Awarding Charter such other relief as the Commission deems just, reasonable and proper.

Respectfully submitted, this 31st day of January, 2017.

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CERTIFICATE OF SERVICE

I certify that a copy of Charter Communications Properties, LLC's Answer to Complaint and Counterclaims has been served by electronic mail on counsel of record in this proceeding.

This 31st day of January, 2017.

/s/ Marcus Trathen
Marcus W. Trathen

Attorney for Charter Communications Properties, LLC

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EXHIBIT 1

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POLE ATTACHMENT LICENSE AGREEMENT

Between

Blue Ridge Electric Membership Corporation
("Owner")

and

Charter Communications Holding Company, LLC d/b/a Charter Communications
("Licensee")

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POLE ATTACHMENT LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is effective this 1st day of January, 2003 (the "Commencement Date") by and between Blue Ridge Electric Membership Corporation a North Carolina having its principal offices at 1216 Blowing Rock Boulevard, N.E., Lenoir, North Carolina, 28645 (hereinafter called "Owner") and Charter Communications Holding Company, LLC d/b/a Charter Communications, a limited liability company with its local offices at 755 George Wilson Road, Boone, NC, 28607 (hereinafter called "Licensee").

WHEREAS, Licensee proposes to transmit lawful communications signals to residents in Alleghany, Ashe, Caldwell and Watauga counties in the state of North Carolina as depicted in Exhibit "A" (the "Service Area") attached hereto and made a part hereof by reference and desires to place and maintain aerial cables, wires and associated facilities and equipment on the poles of Owner in the area to be served, and

WHEREAS, Owner is willing to permit, to the extent it may lawfully and contractually do so, the attachment of said aerial cables, wires, and facilities (the "Attachment(s)") to its poles subject to the terms and conditions of this Agreement in the Service Area.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions herein contained the parties hereto do hereby mutually covenant and agree as follows:

ARTICLE 1
SCOPE OF AGREEMENT

1.1 Subject to the provisions of this Agreement, Owner agrees to issue to Licensee for the Attachments of Licensee's facilities to Owner's poles for the purpose of providing any and all lawful communications signals a revocable, non-exclusive license(s) hereinafter referred to as "Permit(s)" authorizing the attachment of Licensee's Facilities to Owner's poles. This Agreement governs the fees, charges, terms and conditions under which Owner issues such Permits to Licensee. This Agreement is not in and of itself a license, and before making any attachment to any Utility Pole, Licensee must apply for and obtain a Permit for each pole to which it desires to attach.

1.2 This Agreement supersedes all previous agreements between Owner and Licensee for the attachment of Licensee's facilities to the poles of Owner in the Service Area. This Agreement shall govern all existing Licenses, Permits, and other forms of permission for pole attachments of Licensee's facilities to Owner's Poles in the Service Area as well as all Permits issued subsequent to execution of this Agreement.

1.3 No use, however extended, of Owner's pole or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in such poles except as expressly provided by this Agreement.

1.4 Nothing contained in this Agreement shall be construed to require Owner to construct, retain, extend, place, or maintain any pole or other facilities not needed for Owner's own service requirements.

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1.5 Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against Owner entering into agreements with other parties regarding the poles covered by this Agreement, provided such agreements do not violate or infringe upon the attachment rights granted to Licensee in this Agreement. The rights of Licensee shall at all times be subject to any existing agreement(s) or arrangement(s) between Owner and other licensees with attachments to Owner's poles.

1.6 Nothing contained in this Agreement shall be construed to require Owner to grant a Permit where Owner has a reasonable basis for believing that placement of Licensee's Facilities would interfere with Owner's present service requirements, or Owner's bona fide development plan that reasonably and specifically projects a need for the space in the provisions of Owner's business needs, or the use of Owner's facilities by other parties, or create a hazardous or unsafe condition. Notwithstanding the foregoing, Owner shall not arbitrarily deny or condition any Permit based upon Licensee's status as a provider of broadband cable communications services.

ARTICLE 2
TERM OF AGREEMENT

2.1 This Agreement shall continue in force and effect for a period of three (3) years from and after the Commencement Date. The Agreement shall automatically extend on the same terms and conditions, except for the fees stated in Exhibit "C", for a period of not more than two (2) successive one year terms or until either party provides written Notice to the other that they desire to cancel the Agreement in which case the Agreement shall terminate at the end of the then current term or extension period as the case may be. The written Notice to cancel the Agreement must be given not less than one hundred twenty (120) days prior to the expiration of the then current term. All days referenced herein are calendar days.

2.2 If this Agreement has not been extended prior to the end of the initial three (3) year or any successive term, then Licensee shall remove its attachments from the poles of Owner within one hundred eighty (180) days of the end of such term or within a reasonable time thereafter provided Licensee is continuing to diligently remove such attachments until complete removal from Owner's facilities is achieved.

ARTICLE 3
SPECIFICATIONS

3.1 Licensee's Attachments on Owner's poles covered by this Agreement shall be placed and maintained at all times in accordance with the requirements, specifications, rules and regulations of the latest edition of the National Electrical Safety Code (the "NESC") and subsequent revisions thereof, any governing authority having jurisdiction, and this Agreement including the Rules and Practices of Owner for Attachments (the "Rules") as set forth in Exhibit "B" attached hereto and made a part hereof by reference.

3.2 The Rules may be reasonably changed by Owner from time to time, provided that any changes or additions to such Rules are based on considerations of safety or industry engineering standards, upon written notification from Owner to Licensee and Licensee agrees to make such changes or alterations in its new Attachments or when maintenance of its facilities is performed

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on existing Attachments provided that during maintenance operations which normally would not involve a pole changeout, the changes can be made on the existing pole provided that such changes are consistent with the terms and conditions of this Agreement. Such notification will be in the manner specified in the Rules.

3.3 Owner may specify in the Rules procedures consistent with industry standards for Licensee or Owner to place identification tags on Licensee's facilities to identify the property of Licensee.

3.4 Any inquiries or complaints to Licensee by persons other than Licensee or Owner or their employees, contractors, and agents with regard to Licensee's facilities that are attached to Owner's poles and its rights and obligations under this agreement shall be responded to within a commercially reasonable time and factual answers given to Complainant.

3.5 Licensee acknowledges that other users have been granted and others may hereafter be granted rights similar to those granted in this Agreement, and that this Agreement is not an exclusive contract for the grant of those rights. Licensee's use of Owner's poles shall not interfere with the rights or operations of such users. Licensee shall not move, remove, adjust or change the attachments of others without the specific written consent of the other party and of Owner.

ARTICLE 4
ATTACHMENT FEES

4.1 Licensee shall pay a fee in the amount stated in Exhibit "C", attached hereto and made a part hereof by reference, for each attachment to each pole to which Licensee has one or more Attachments. (the "Attachment Fee"). In addition, Licensee shall pay the Attachment Fee for any poles for which the Make Ready Construction Work has been completed in accordance with Article 5 but the Permit has not been issued because Licensee's work is not done, such fees to begin on the first day of the month that follows the month during which Licensee was notified that the Make Ready Construction Work was complete. Provided however, in the event Licensee elects not to make an Attachment to any poles for which the Make Ready Construction Work has been completed and Licensee gives Owner notice of such election within forty-five (45) days after the Make Ready Construction Work was completed, then Licensee shall not owe any Attachment Fee for such poles.

4.2 On or about the first day of each January, April, July and October, Owner shall invoice Licensee one quarter (1/4) of the Attachment Fee and other charges due Owner that have not been previously invoiced including previous quarters' pro rata payments that may not have been invoiced. Licensee shall pay any invoice within thirty (30) days of receipt thereof. Interest shall accrue on the unpaid Attachment Fees and charges at twelve percent (12%) per annum.

4.3 Owner may apply any monies received from Licensee to any current or past due item at Owner's discretion.

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4.4 Invoices shall be paid to Owner at the following address:

Blue Ridge EMC
P.O. Box 112
Lenoir, NC 28645-0112

The above address is subject to change from time to time upon Notice to Licensee.

4.5 At intervals of not less than three (3) years, an actual inventory of attachments may be made by Owner or Owner's representative at the expense of Licensee. Owner agrees that the expense to Licensee shall be the normal market cost for such service and that work done at the same time for the benefit of Owner will not be charged to Licensee. If the attachment inventory is made for the benefit of more than one Licensee, then each Licensee shall pay its proportionate share of the cost, such cost to be allocated based on the number of attachments identified in the inventory. If there is any difference in the number of attachments found by the inventory and the number invoiced in the most recent billing, correction will be made by retroactive billing to the later-occurring of the Commencement Date or the most recent actual inventory. Inventory results will be made available to all Licensees included in the inventory.

ARTICLE 5
PROCESS FOR PERMITTING ATTACHMENTS

5.1 The Rules provide procedures for implementing the process for permitting Attachments.

5.2 A Make Ready process (described in the "Rules") must be followed for all proposed Attachments, except to Secondary Poles which follow the procedures in Article 6.

5.3 To obtain a Permit, Licensee shall make Application (the "Application") following the procedures in the Rules. Licensee shall at the same time pay the non-refundable Application Fee stated in Exhibit "C". Licensee's Application shall be accompanied by Licensee's construction plans and drawings (the "Licensee's Construction Plans") which, will, at a minimum, contain the information specified in the Rules. Owner will not process the Application until the Application Fee is paid.

5.4 Within thirty (30) days after the receipt of the Application and Application Fee, Owner shall notify Licensee of the charges for engineering the required changes and modifications to Owner's poles and related facilities in order to accommodate Licensee's Attachments (the "Make Ready Engineering Fee"), if any, such changes and modifications being the "Make Ready Construction Work". If circumstances beyond Owner's control, including but not limited to the workload due to pending Applications, prevent Owner from responding within such thirty (30) day period, the timeframe shall be extended provided that Owner is diligently processing the Application and has notified Licensee of such need for additional time.

5.5 After receipt of the Make Ready Engineering Fee, Owner will begin the make ready engineering that includes preparing engineering plans (the "Make Ready Engineering Plans") for the Make Ready Construction Work. Licensee and Owner shall work together in good faith to resolve any design and engineering issues and Licensee shall revise its plans as necessary. If engineering determines that it is not feasible to Permit a pole or poles due to safety

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considerations and generally applicable industry engineering standards, Owner may remove such poles from consideration for Permitting. After the Make Ready Engineering Plans are complete, Owner shall notify Licensee of Owner's Cost of the Make Ready Construction Work (the "Make Ready Construction Cost Estimate") and shall provide Licensee a good faith estimate of the timeframe required to complete the Make Ready Construction Work. Owner shall provide Licensee with a copy of the Make Ready Engineering Plans which specify how and where Licensee's Attachments are to be made on Owner's poles.

5.6 Licensee shall pay Owner the amount specified in the Make Ready Construction Cost Estimate and after receipt of such payment, Owner shall proceed with the Make Ready Construction Work as a part of its normal work schedule. Owner will make reasonable efforts to complete Make Ready Construction Work within sixty (60) days after payment for such work is received. Licensee will not be entitled to priority, advancement or preference over other work to be performed by owner in the ordinary course of Owner's business. Owner may give consideration to a request by Licensee for an expedited construction schedule. Licensee will be responsible for additional costs incurred by Owner if the work is expedited. Procedures for requesting expedited work may be established by Owner in the Rules.

5.7 When the Make Ready Construction Work is complete, Owner shall notify Licensee and Licensee shall then have the right to make the specified attachments in accordance with the Make Ready Engineering Plans and the specifications provided in this Agreement. Licensee shall, at its own expense, make attachments in such manner as not to interfere with the service of Owner or others who are attached to Owner's poles nor shall Licensee make any changes to the attachments of others unless authorized by Make Ready Engineering Plans.

5.8 Licensee shall complete Licensee's Work within one hundred twenty (120) days of receipt of notification that the Make Ready Construction Work is complete. Such timeframe shall be extended by Owner provided that Licensee makes a written request for such extension and is diligently pursuing its Work. If Licensee's work for any Attachment is not complete within the one hundred twenty (120) day period or its extension, then Owner may terminate it's approval for Licensee's Attachment and Licensee shall have no further right to place that Attachment except by following the procedures specified above for new attachments.

5.9 No later than thirty (30) days after Licensee adds the last Attachment for the Permit Application, Licensee shall send to Owner a Certification (the "Certification") by an authorized representative of the Licensee that the attachments are of sound engineering design and fully comply with the Rules in this Agreement and the latest addition of the NESC and were constructed substantially as provided in the Make Ready Engineering Plans. The form of Certification is illustrated in the Rules. Within thirty (30) days of receipt of Certification Owner shall issue the Permit that will authorize Licensee's Attachments to the poles that were Certified. If Certification is not received within the thirty-day (30) period, Owner may declare the attachment an Unauthorized Attachment, hereinafter defined.

5.10 Within sixty (60) days of completion of the Make Ready Construction Work for each Application, Owner may on its own, or in response to written request of Licensee, prepare a revised estimate to reflect the actual Owner's Cost of the Make Ready Construction Work. If the revised estimate shows the actual Make Ready Construction Cost differs from the Make Ready Construction Cost Estimate, then the difference shall be refunded to Licensee or paid to Owner as the case may be.

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ARTICLE 6
SECONDARY POLE ATTACHMENTS

6.1 A Secondary Pole is a pole installed for the express purpose of providing required clearances for a service loop to a customer's location which is owned and maintained by Owner after such installation. A Secondary Pole is a pole that typically services only one customer or building as the case may be, does not have transformers or other electrical equipment on it, is located outside the main line, and supports Owner's wires with less than 500 volts. For all purposes and obligations of Licensee arising under this Article 6, a Secondary Pole shall not refer to or include a pole originally installed by Owner which otherwise fits the description herein but which is owned and maintained by the individual customer on who's private property the pole is located, as opposed to being continually owned and maintained by Owner.

6.2 When in the process of installing service for a single customer, Licensee may attach its drop wire to Owner's Secondary Pole without advanced notice to Owner or Permit first being issued providing that the Attachment otherwise meets the requirements of Article 3 and the Rules (see Exhibit "B", Section D. Supplemental Rules Regarding Licensee's Attachments) and that the procedures specified in this Article are followed.

6.3 The Attachment Fee, specified in Exhibit "C", for Secondary Pole Attachments starts in the month the Attachment was made. Licensee will notify Owner of a new Secondary Pole Attachment no later than seven (7) days after the end of the month in which the Attachment was placed by completing an "Application for Secondary Pole Attachment License", the form of which is illustrated in the Rules with the required Application Fee. If the Application for Secondary Pole Attachment is not made within such seven (7) day period, then the provisions of Article 10, apply. It is the intent that the Application for Secondary Pole Attachment accurately reflects all Attachments placed during the month. For months when no Attachments are made, Owner may provide in the Rules for Licensee to report such fact.

6.4 Owner intends to rely on Licensee's Certification on the Application for Secondary Pole Attachment that Secondary pole attachments fully comply with the requirements of this Agreement. Based on Licensee's representations, Owner will, within thirty (30) days of receipt of the Application for Secondary Pole Attachment, issue a Permit as requested.

6.5 If the Secondary Pole needs to be replaced, as a result of pole condition or height, Licensee shall not make its attachment and shall request such replacement (see Exhibit "B-9") and with such request shall pay the Secondary Pole Replacement fee as specified in Exhibit "C" provided that such replacement is necessary solely to accommodate Licensee's facilities. Following the replacement of the pole, Owner shall notify Licensee and Licensee may then make its Attachment.

6.6 Notwithstanding the provisions of Paragraph 6.4, if, prior to issuing the Permit, an inspection reveals that the pole was not a secondary pole or that the Attachment does not meet the requirements specified herein, then the provisions of Article 10 shall apply.

6.7 Attachments for Secondary Poles that are Permitted and are later found to be not in compliance with the Rules, the NESC, or other provisions of this Agreement are considered Non-Compliant Attachments and the provisions of Article 11 apply.

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6.8 If there is a question as to whether a pole is a Secondary Pole, Owner's reasonable judgment shall prevail.

6.9 Owner will not be responsible for any line clearance or tree trimming required for drop wires connected to Secondary Poles.

ARTICLE 7
OVERLASHING

7.1 Licensee's overlashing to its existing facilities shall follow the requirements specified in Article 5. The Application Fee, Make Ready Engineering Fee, and Cost of Make Ready Construction Work will apply. There shall be no additional annual Attachment Fee.

7.2 Licensee shall not permit third parties to overlash to its facilities on Owner's poles.

7.3 Licensee may not overlash to the facilities of a third party on Owner's poles.

7.4 Licensee agrees to remove existing non working cables from Owner's poles if requested to do so by Owner as part of the Make Ready Work in connection with Overlashing.

7.5 Third parties referenced in Paragraphs 7.2 and 7.3 above include any company, organization, or entity other than Licensee named on the first page of this Agreement.

ARTICLE 8
EASEMENTS AND RIGHTS-OF-WAY FOR LICENSEE'S ATTACHMENTS

8.1 Owner does not warrant or assure to Licensee any right-of-way privileges, uses or easements. Licensee shall be responsible for obtaining its own governmental permits and lawful easements from the owner(s), any lien holders, and other appropriate parties. Under no circumstances shall Owner be liable to Licensee or any other party in the event Licensee is prevented from placing and/or maintaining its attachments on Owner's poles. Accordingly, Owner's acceptance of Licensee's application and issuance of a Permit shall never be construed otherwise.

8.2 Licensee will defend and hold harmless Owner against any claims by third parties that the necessary easements were not obtained.

ARTICLE 9
MAINTENANCE AND TRANSFERS

9.1 Owner shall, at its own expense, maintain its poles in a serviceable condition in accordance with industry standards and practices and shall replace, reinforce, or repair poles as they become actually known by Owner to be unserviceable.

9.2 Licensee shall ensure that its employees, contractors, or employees of contractors are properly trained in climbing on and working on Owner's poles safely and shall specifically and

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adequately warn each and every employee of Licensee and require that its contractors warn its employees of the dangers inherent in making contact with the electrical conductors or electrical equipment of Owner before such employees are permitted to perform any work at or near any facilities belonging to Owner. Licensee shall give adequate warning to the employee by reasonable means.

9.3 Owner disclaims any warranty or representation regarding the condition and safety of the poles of Owner. Licensee expressly assumes responsibility for determining the condition of all poles to be climbed or otherwise worked on by its employees, agents, contractors, or employees of contractors whether for the placement of Attachments, maintaining or rearranging Attachments, or for other reasons. Except for performing transfer work from unserviceable poles to replacement poles, Licensee shall not permit its employees or contractors to work on poles that are unserviceable until Owner has corrected the unserviceable condition or has determined that the pole is serviceable. Licensee will notify Owner if any of Licensee employees, agents, contractors, or employees of contractors become aware of unserviceable poles or other condition, whether hazardous or otherwise, that requires the attention of Owner for evaluation and possible correction. Such notification will be provided to Owner in the manner specified in the Rules. Owner agrees that, upon written notification, it will replace any pole that has become unserviceable at Owner's Cost when Owner has actually determined that the pole in question is unserviceable for its intended purpose. All other costs of replacement necessitated by the presence of Licensee shall be born by Licensee.

9.4 Whenever it is necessary to replace or relocate a licensed pole, the Permit for the Attachment transfers to the new pole at the time of such replacement or relocation. In order to be considered a Transfer, the new pole must be located within the existing pole line. Owner agrees to notify Licensee as soon as reasonably possible in the event a Transfer of a pole on which Licensee has Attachments becomes necessary so that Licensee may plan to transfer its Attachments to any new poles in a timely manner or budget to pay Owner for the transfer of Licensee's Attachments as provided herein. Owner may transfer Licensee's attachments at the time of the pole replacement or relocation and Licensee shall pay Owner's Cost upon invoice. Owner will make a reasonable attempt to notify Licensee of such transfer and its associated cost. In the event Owner does such work, except for gross negligence or willful misconduct, Owner shall not be liable for any loss or damage to Licensee's facilities, which may result therefrom or for any liability, loss or damage to Licensee or any other party claiming actual damages. If Owner elects not to transfer Licensee's Attachments then Owner shall notify Licensee of the need to transfer its attachments and Licensee shall do so within sixty (60) days of such notice and shall advise Owner when the transfer is complete in the manner specified in the Rules. In the event of extraordinary circumstances, Owner may elect to grant an extension of the 60 day period to Licensee. If the transfer is not completed by the end of the sixty (60) day period or the extended time period granted by Owner, the Unauthorized Attachment Discovery Fee shall apply and the Unauthorized Attachment Daily Fee shall also apply from the date on which the 60 day period or the extended time period expired and shall continue until Owner receives notification that Licensee has transferred its Attachment. In addition, if Licensee does not transfer its Attachments within the 60 day period or the extended time period and the delay forces Owner to make a special return trip to the job site to remove the old pole, then the cost incurred by the Owner to return to the job site and remove the old pole will be paid by the Licensee.

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9.5 In the event the Licensee notifies Owner that the transfer has been accomplished and the Owner returns to the job site to remove the old pole, and discovers that the transfer has not been made, then the Licensee will pay the False Notification Fee in Exhibit "C".

ARTICLE 10
UNAUTHORIZED ATTACHMENTS

10.1 Any of Licensee's Attachments placed after the Commencement Date without a Permit having been issued or that are not part of work being performed pursuant to Article 5, or as provided in Article 12 shall be considered an Unauthorized Attachment (the "Unauthorized Attachment"). When discovered, Owner will notify Licensee of the Unauthorized Attachment using the form attached hereto as Exhibit "B-10" and Licensee agrees to pay Owner an Unauthorized Attachment Discovery Fee, per pole containing an unauthorized attachment, in the amount stated in Exhibit "C". Licensee shall within thirty (30) days after being notified remove such Unauthorized Attachment or shall make Application for a Permit and the provisions of Article 5 apply.

10.2 If Licensee fails to remove the Unauthorized Attachment or to make Application within the thirty (30) day period, then Licensee shall pay to Owner without prejudice to Owner's other rights under this Agreement, an Unauthorized Attachment Daily Fee as specified in Exhibit "C", such fee to be effective as of the date on which the thirty (30) day period expired and shall continue until an Application is made or the Unauthorized Attachment is removed , of which Owner shall be notified in writing. Furthermore, at any time after the thirty (30) day period Owner may, but is not required to, do either of the following: (1) Remove the Unauthorized attachment without liability and Licensee shall pay Owner's Cost of such removal and the Unauthorized Attachment Daily Fee shall terminate as of the date of the removal or (2) Declare Licensee in Default and the provisions of Article 23 shall apply. Attachments that are removed by Owner may, at Owner's option, be left where removed, stored at the expense of Licensee or disposed of by sale or otherwise with any proceeds being retained by Owner.

10.3 No act or failure to act by Owner with regard to any Unauthorized Attachment shall be deemed as ratification or the licensing of the Unauthorized Attachment. If any Permit should be subsequently issued, said Permit shall not operate retroactively or constitute a waiver by Owner of any of its rights or privileges under this Agreement; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement from its inception in regard to said Unauthorized Attachment.

ARTICLE 11
NON-COMPLIANT ATTACHMENTS

11.1 If any of Licensee's facilities that were placed after the Commencement Date or were Permitted under the provisions of Article 12 are found to be attached to Owner's poles and, in Owner's judgment are in violation of the requirements as specified in this Agreement, or the NESC, or other applicable codes or are not attached substantially as provided on the Make Ready Engineering Plans (a "Non-Compliant Attachment"), Owner will notify Licensee of the Non-Compliant Attachment.

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11.2 After receiving notification, Licensee will, within forty five (45) days, submit to Owner its plans for corrective action including the schedule for completion of all work (the "Correction Plan) for Owner's approval. The forty-five (45) day period may be extended by Owner if Licensee is diligently pursuing development of a plan and implementation of corrective action. If Licensee does not provide the Correction Plan within the forty-five (45) day period, Owner may revoke the Permit and declare the attachments as Unauthorized Attachments and the provisions of Article 10 apply.

11.3 If the Correction Plan is submitted within the forty five (45) day period or other period as agreed by Owner, Owner shall review the Correction Plan and either approve it (the "Approved Correction Plan") in which case Licensee will proceed with the work in accordance with the plan or Owner may reject it. If Owner rejects the Correction Plan, Owner and Licensee will work together in good faith so that Licensee can develop a Correction Plan that is reasonably satisfactory to Owner. If, after ninety (90) days of Owner's rejection of the initial Correction Plan, Owner and Licensee have not agreed on a Correction Plan, then Owner may revoke the Permits for the poles involved and declare the Attachments as Unauthorized Attachments and the provisions of Article 10 apply.

11.4 Rearrangements and changes to Licensee's Attachments required by the Approved Correction Plan shall be made by Licensee at Licensee's expense.

11.5 If Licensee fails to complete all work in connection with the Approved Correction Plan within ninety (90) days of the schedule (or such extension of time granted by Owner to Licensee as provided herein), Owner may revoke the Permit(s) and declare the Attachments as Unauthorized Attachments and the provisions of Article 10 apply. In the event of extraordinary circumstances, Owner may elect to grant an extension of the 90 day period to Licensee.

11.6 In the case of an attachment that is not in compliance with the NESC and is in Owner's reasonable judgment a safety hazard, then the thirty (30) day period contained in Article 10 is changed to seven (7) days.

11.7 The interpretation of the NESC requirements shall be at the reasonable discretion of Owner.

11.8 No act or failure to act by Owner with regard to any Attachment that does not conform with the NESC or other requirements of this Agreement shall be deemed as ratification of the Non-Compliant Attachment.

ARTICLE 12
ATTACHMENTS EXISTING AT COMMENCEMENT DATE

12.1 Owner requires a formal written Permit for any and all Attachments. Attachments that existed prior to the Commencement Date of this Agreement for which a Permit exists will be considered an Authorized Attachment. Licensee will be given an opportunity to produce such Permits and will receive the cooperation of the Owner with respect to documentation in the Owner's possession.

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12.2 For Attachments for which no Permit exists in accordance with the provisions of Article 12.1, Licensee shall make application for Permits within forty five (45) days of written notice identifying such Attachments from Owner to Licensee and the provisions of Article 5 apply.

12.3 Should Licensee fail to make application within the forty five (45) day period required then Owner may declare the Attachments as Unauthorized Attachments and the provisions of Article 10 apply.

12.4 Licensee's application for permitting existing Attachments must include all Attachments specified by Owner.

ARTICLE 13
ATTACHMENTS NOT REMOVED AT END OF TERM

13.1 Licensee shall not make additional attachments to Owner's poles after the Agreement has expired and has not been extended. Any such additional attachments will be considered Unauthorized Attachments.

13.2 If Licensee fails to remove its attachments within of the period set forth in Section 2.2 of this Agreement after the expiration of this Agreement the provisions of Article 10 apply and Owner may remove any or all of Licensee's attachments and Licensee shall pay Owner Owner's Cost of such work. Attachments that are removed by Owner in accordance with the terms of this Agreement may, at Owner's option, be left where removed, stored at the expense of Licensee or disposed of by sale or otherwise with any proceeds being retained by Owner.

ARTICLE 14
RECOVERY OF SPACE BY OWNER

14.1 If Owner at any time reasonably requires the space occupied by Licensee's attachments on Owner's poles for core business purposes, Licensee, within thirty (30) days after receipt of notification from Owner of Owner's need for such space, shall rearrange its attachments to other available space on such poles at Licensee's expense or remove such attachments. If Owner requires the space in order to provide service to one of its customers, the thirty (30) day period is changed to ten (10) days. If the work is not completed within the specified time period, Owner may declare the Attachment as an Unauthorized Attachment and the provisions of Article 10 apply.

ARTICLE 15
ABANDONMENT OF POLES

15.1 Owner may abandon pole(s) upon thirty (30) days notice to Licensee. If, at the expiration of said 30 day period (or such extension of time granted by Owner to Licensee as provided herein), Owner shall have no attachments on such pole, but Licensee shall not have removed all of the attachments therefrom, then Owner may (1) Revoke Licensee's Permit for that pole and declare the attachment to be an Unauthorized Attachment, or (2) Remove Licensee's attachments, with no liability to Owner except for gross negligence or willful misconduct, and

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Licensee shall pay Owner's Cost of any such removal. In the event of extraordinary circumstances, Owner may elect to grant an extension of the 30 day period to Licensee.

15.2 Licensee may, at any time, abandon the use of a licensed pole by removing therefrom any and all attachment it may have thereon. Billing shall cease as of the last day of the month in which the attachment was removed and Owner has been notified in writing in accordance with the Rules.

15.3 Following such removal, no attachment shall again be made to such pole until Licensee shall have made Application and received a new Permit as provided in Article 5 of this Agreement and the Rules.

ARTICLE 16
RIGHTS OF OTHER PARTIES

16.1 Nothing herein shall be construed to limit the right of Owner, by contract or otherwise, to confer upon others, not parties to this Agreement, rights or privileges to use the poles covered by this Agreement, provided any such conveyance of rights or privileges to a third party does not violate or infringe upon the attachment rights granted to Licensee in this Agreement.

16.2 Prior to making attachments to any pole or poles of Owner hereunder, if the attachments by Licensee will require any rearrangement of the attachments on such pole or poles of any other parties, Licensee shall give notice thereof to such other parties and shall cooperate with them in the rearrangement of their facilities. Licensee does not have the right to rearrange the facilities of other parties except with the other party's express written permission. In the event that such rearrangement becomes necessary, Licensee hereby acknowledges that it shall bear the expense of such rearrangement. Any attachment privileges granted to Licensee hereunder shall be subject to any rights or privileges that shall have been heretofore granted by Owner to any prior attaching parties.

16.3 If other parties require the rearrangement of Licensee's Attachments in order to attach their facilities under the authority of make ready construction plans approved by Owner for their work, Licensee agrees to reasonably cooperate with the other party in scheduling and performing the work and the other party shall bear the expense of such rearrangement, provided that any cost charged to the other party shall be reasonable and shall be no more than Licensee's actual cost of doing the work.

ARTICLE 17
ASSIGNMENT OF RIGHTS

17.1 Licensee shall not permit any other party to use its attachments and may not sublicense any of its rights under this Agreement to any other party.

17.2 Licensee shall not assign or otherwise dispose of this Agreement, or of any of its rights or interests hereunder without the prior written consent of Owner, such consent not to be unreasonably withheld. Provided, however, Licensee may assign or transfer this Agreement and the rights and obligations hereunder to any entity controlling, controlled by, or under common

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control with Licensee without the consent of Owner, but upon thirty (30) days prior written Notice to Owner detailing the assignment including the relationship. No such permitted assignment shall relieve Licensee, the permitted assignee, or any other party liable to Owner from any obligations, duties, responsibilities, or liabilities to Owner under this Agreement and the use is in strict compliance with Paragraph 1.1. This Agreement shall be binding upon the successors and/or assigns of both parties.

17.3 Nothing contained herein is intended to interfere with Licensee's leasing fibers or capacity in its facilities, if such use is in strict compliance with the provisions of Paragraph 1.1. The renting or leasing of fibers or capacity in its facilities specifically does not give Licensee's customer the right to any kind of access to Owner's poles and Licensee's customer is specifically prohibited from climbing or otherwise working on the facilities that are attached to Owner's poles unless Licensee's customer is working as a contractor for Licensee under the terms of a written agreement.

ARTICLE 18
WAIVER OF TERMS OR CONDITIONS

18.1 The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement including the Rules shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE 19
PAYMENT OF TAXES

19.1 Each party shall pay all taxes and assessments lawfully levied on its own property attached to licensed poles. Taxes and the assessments which are levied on its poles shall be paid by Owner thereof, but the portion of any tax (except income taxes), fee, or charge levied on Owner's poles solely because of their use by Licensee shall be paid by Licensee.

ARTICLE 20
INSURANCE

20.1 Licensee shall take out and maintain throughout the period during which this Agreement shall remain in effect the following minimum insurance:

A. Workers' compensation insurance covering all employees of Licensee requiring the same of its contractors with regard to its employees of contractors, subcontractors and employees of subcontractors who shall perform any of the obligations of Licensee hereunder, whether or not such insurance is required by the laws of the state governing the employment of any such employee. If any employee is not subject to the workers' compensation laws of such state, such insurance shall extend to such employee voluntary coverage to the same extent as though such employee were subject to such laws.

B. Public liability and property damage liability insurance covering all operations under this Agreement limits for bodily injury or death not less than $1,000,000 for one person

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and $500,000 for each accident for property damage, not less than $2,000,000 for each accident and $2,000,000 aggregate for accidents during the policy period.

C. Automobile liability insurance on all self-propelled vehicles used in connection with This Agreement, whether owned, non-owned or hired: public liability limits of not less than $1,000,000 for one person and $2,000,000 for each accident; property damage limit of $1,000,000 for each accident.

D. The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to Owner.

E. Licensee shall furnish to Owner at least annually or at the request of owner a certificate evidencing compliance with the foregoing requirements. This certificate will list Owner as an additional insured provided that such coverage shall exclude events arising from Owner's acts or omissions, and will note specific cancellation language as follows: "In the event of cancellation of any of the said policies, the insuring company shall give the party to whom this certificate is issued thirty (30) days prior notice of such cancellation."

ARTICLE 21
SERVICE OF NOTICES

21.1 It is expressly agreed and understood between Owner and Licensee that any Notice required to be given to either Owner or Licensee pursuant to this Agreement shall be in writing and sent by personal delivery to the office of the party receiving notice, by certified mail (return receipt requested), or by recognized national overnight delivery service and shall be deemed received upon actual delivery or refusal of delivery as evidenced by the records of the US Postal Service or delivery service as the case may be.

21.2 Notices shall be sent addressed as follows:

If to Licensee:
Charter Communications
755 George Wilson Road
Boone, NC 28607

With a copy to:
Charter Communications
Legal Department – Operations
12405 Powerscourt Drive
St. Louis, MO 63131

If to Owner:
Blue Ridge EMC
1216 Blowing Rock Blvd., N.E.
Lenoir, NC 28645-3619

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or to such other address as either party may designate by Notice to the other party from time to time in accordance with the terms of this Article.

ARTICLE 22
SUPPLEMENTAL AGREEMENTS

22.1 Neither Owner nor Licensee is under any obligation, express or implied, to amend, supplement or otherwise change or modify any of the provisions of this Agreement. However, if Owner and Licensee agree to amend, supplement or otherwise change or modify any of the provisions of this Agreement, then any such amendment, supplement, change or modification, to be enforceable, must be evidenced by written documentation duly executed by both parties. Without any such duly executed, written documentation of any amendment, supplement, change or modification, then any oral discussions relating thereto shall not be binding upon Owner or Licensee.

22.2 Nothing in the foregoing shall preclude the parties to this Agreement from preparing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

ARTICLE 23
DEFAULT

23.1 The following shall be an event of Default:

(1) If Licensee defaults in the payment of any fees or other sums due and payable to Owner under this Agreement and such default continues for a period of ten (10) days after Notice of such default has been given by Owner to Licensee or,

(2) With regard to Licensee in a matter that does not involve safety, and with regard to Owner in any matter, if either party shall violate or default in the performance of any covenants, agreements, stipulations or other conditions contained herein (other than the payment of fees and other sums) for a period of thirty (30) days after Notice of such violation or default has been given by the non-defaulting party to such defaulting party, or, in the case of a default not curable within thirty (30) days, if such defaulting party shall fail to commence to cure the same within thirty (30) days and proceed diligently until corrected, or,

(3) In a matter that does involve safety, (i) Licensee shall violate or default in the performance of any covenants, agreements, stipulations or other conditions contained herein and fails to commence to cure the same immediately upon Notice and thereafter proceed to pursue diligently until corrected or (ii) if the correction takes longer than thirty (30) days.

23.2 In the event of Default, Owner may at any time thereafter for so long as the default condition exists upon Notice of Default do any one or all of the following (1) Declare this Agreement to be terminated in its entirety; (2) Terminate the Permits covering the pole or poles in respect to which such default or noncompliance shall have occurred; (3) Refuse to issue any more Permits; (4) Stop all Make Ready Construction Work and retain any monies that have been paid.

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23.3 If Licensee defaults in the performance of any work which it is obligated to do under this Agreement, Owner may elect to do such work, and Licensee shall reimburse Owner of Owner's Cost. If Owner elects to do such work, except for gross negligence or willful misconduct, Owner shall not be liable for any loss or damage to Licensee's facilities, which may result therefrom or for any liability, loss or damage to Licensee or any other party claiming actual damages.

23.4 The remedies set forth in this Article are cumulative and in addition to any and all other remedies Owner may have at law or in equity.

23.5 The existence of a Default shall not relieve Licensee of the requirements provided in Article 10 or Article 11 unless the Agreement is terminated in its entirety.

ARTICLE 24
INDEMNIFICATION AND HOLD HARMLESS

24.1 Licensee agrees to indemnify Owner against and to defend and hold Owner harmless from any and all claims, demands, damages, penalties, costs, liabilities and losses to the full extent arising from or based upon any alleged act, omission or negligence of Licensee or Licensee's agents or employees arising from or based upon any breach of Licensee's covenants under this Agreement.

24.2 Owner agrees to hold Licensee harmless and to not seek damages, costs or expenses of any kind from Licensee arising from or based upon any alleged act, omission or negligence of Owner or Owner's agents or employees, provided that nothing herein shall obligate Owner to indemnify Licensee in any way for any claims of any kind.

ARTICLE 25
CONSEQUENTIAL LOSS OR DAMAGE

25.1 Notwithstanding any provision contained herein to the contrary, neither party shall be liable to the other in any way for indirect or consequential losses or damages, or damages for pure economic loss, however caused or contributed to, in connection with this Agreement or with any equipment or service governed hereby.

ARTICLE 26
FORCE MAJEURE

26.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement resulting from the following events to the extent they are beyond such party's reasonable control: acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a party's obligations under this Agreement, the due date for the performance of the original obligation(s)shall be extended by a term equal to the time lost by reason of the delay.

In the event of such delay, the delaying party shall perform its obligations at a performance level no less than that which it uses for its own operations.

ARTICLE 27
OWNER'S COST

27.1 "Owner's Cost" and "Cost" when used in this Agreement shall include all material and labor costs, the cost of outside contractors and consultants, equipment, engineering, permits, right-of-way, land clearing, insurance and overhead. Owner intends that the costs of outside contractors and consultants shall be at market.

ARTICLE 28
NO WARRANTY OF RECORD INFORMATION

28.1 From time to time, Licensee may purchase or otherwise obtain from Owner records and other information relating to Owner's outside plant facilities. Licensee acknowledges that such records and information provided by Owner may not reflect field conditions and that physical inspection is necessary to verify presence and condition of outside plant facilities and Right-of-Way. In providing such records and information, Owner does so as a convenience to Licensee and Owner assumes no liability or responsibility to Licensee or any Third Party for errors and omissions contained therein.

ARTICLE 29
MISCELLANEOUS PROVISIONS

29.1 If Owner requests, Licensee shall become a member of the National Joint Use Notification System (the "NJUNS") and maintain the capability of receiving messages from NJUNS and shall utilize such capability. Should Licensee indicate that a transfer has been made ("clear the ticket") which in fact was not made and the Owner proceeds to act on that notification then a False Notification Fee will be charged as stated in Exhibit "C".

29.2 Time is of the essence of this Agreement.

29.3 Neither party shall, by mere lapse of time, be deemed to have waived any breach by the other party of any terms or provisions of this Agreement. The waiver by either party of any such breach shall not be construed as a waiver of subsequent breaches or as a continuing waiver of such breach.

29.4 Should any court of law or administrative or governmental entity with jurisdiction declare any provisions of this Agreement to be void or unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

29.5 Nothing contained in this document, or in any amendment or supplement thereto, or inferable herefrom shall be deemed or constructed to (i) make Licensee the agent, servant, employee, joint venturer, associate, or partner of Owner, or (ii) create any partnership, joint venture or other affiliation or association between Owner and Licensee. The parties hereto are

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and shall remain independent contractors. Nothing herein shall be deemed to establish a partnership, joint venture, or agency relationship between the parties. Neither party shall have the right to obligate or bind the other party in any manner to any third party. It is understood that this document enables only a license in favor of Licensee strictly in accordance with its written provisions.

29.6 Each party represents that it has the full power and authority to enter into this Agreement and to convey the rights herein conveyed.

29.7 This agreement is deemed executed in and shall be construed under the laws of the State of North Carolina.

29.8 Unless otherwise provided, in any instance hereunder where Owner's approval or consent is required or the exercise of Owner's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Owner, and Owner shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such approval or consent or exercise such judgment in any particular manner regardless of the reasonableness of either the request or Owner's judgment.

29.9 The terms "notify", "notification" and "advise" as used in this Agreement reflect communications between Owner and Licensee in administering its terms. The methodology for such communication shall be in writing which may include NJUNS, email, facsimile or other method as specified in the Rules. These terms are not to be confused with the term "Notice" in Article 21, Service of Notices.

29.10 Where Owner's reasonable approval or consent is required, it shall be reasonable for Owner to withhold consent if Licensee is in default of this Agreement and has not cured same within the timeframe provided in the Agreement (or is diligently pursuing if allowed for the element in default) or if Licensee is over thirty (30) days past due on the payment of monies owed to Owner by Licensee under the terms of this Agreement.

29.11 Within this Agreement, words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein", "hereof", "hereunder" and other similar compounds of the word "here" shall, unless the context dictates otherwise, refer to this entire Agreement and not to any particular paragraph or provision. The term "person" and words importing persons as used in this Agreement shall include firms, associations, partnerships (including limited partnerships), limited liability companies, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

29.12 Unless the context clearly indicates otherwise, as used in this Agreement, the term "Licensee" means the party or parties named on the first page hereof or any of them. The obligations of Licensee hereunder shall be joint and several. If Licensee, or any signatory who signs on behalf of any Licensee, is a corporation, partnership, limited liability company, trust, or other legal entity, Licensee and any such signatory, and the person or persons signing for Licensee, represent and warrant to Owner that this instrument is executed by Licensee's duly authorized representatives.

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ARTICLE 30
CONFIDENTIALITY

30.1 In the absence of a separate Confidentiality Agreement between the parties, if either party provides confidential information to the other in writing and identified as such, the receiving party shall protect the confidential information from disclosure to third parties with the same degree of care accorded his own confidential and proprietary information. Neither party shall be required to hold confidential any information which (a) becomes publicly available other than through the recipient, (b) is required under applicable law, (c) is independently developed by the recipient, or (d) becomes available to the recipient without restriction from a third party.

30.2 This Agreement in form and structure as well as content including its terms and conditions is deemed confidential.

30.3 These obligations set forth in Article 30 shall survive the expiration or termination of this Agreement for a period of two (2) years. The parties agree to use their best efforts to avoid disclosing to each other confidential information that is not reasonably required for the administration of this Agreement.

OWNER

By: _____

Print Name: Doug Johnson

Print Title: Chief Exec. officer

Date: 9/22/03

Attest: _____

LICENSEE

By: _____

Print Name: Hunt Sevier Brown

Print Title: VP and Counsel – Legal Operations

Date: 9/9/03

Attest: Bradley W Crandall

EXHIBIT A

SERVICE AREA

(Insert map of geographical area covered by the agreement)

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EXHIBIT B

RULES AND PRACTICES OF OWNER FOR ATTACHMENTS

This Exhibit provides implementation details in connection with the process for Licensee's applying for and ultimately receiving a Permit to attach to Owner's pole(s). These procedures are subject to modification by owner from time to time.

For purposes of administering this agreement, notification and/or advice shall be sent by email followed by U.S. Mail. Following is contact information for the parties:

If to Owner

Name:	
Title:	Joint Use Coordinator
Address:	1216 Blowing Rock Blvd, N.E.
City, State, ZIP	Lenoir, NC 28645-3619
Phone	828-758-2383
Fax	828-754-9671
Email:	bshields@blueridgeemc.com

and for Licensee shall be directed to:

Name:	Gary Powell
Title:	Plant Manager
Address:	755 George Wilson Road
City, State, ZIP	Boone, NC 28607
Phone	828-262-3936
Fax	828-263-0297
Email:	_____

The above addresses are for administrative matters only and do not modify the addresses for Notice pursuant to Article 21.

A. Process for Permitting Attachments (Make Ready)

1. Application for Permit shall be made on the "Application" attached as Exhibit "B"-1. Licensee shall also indicate the poles to which it desires to attach by including a drawing made on system maps of Owner, Licensee may either use its own maps of Owner's system or Licensee may, but is not required to, purchase such maps from Owner at a reasonable cost.

2. Licensee's Construction Plans shall contain full specifications of the facilities to be installed including:

   a) Size and type of messenger including weight/ft and design tension.

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b) Size and type Attachments including weight/ft and diameter.
c) Specification drawings depicting type of bolt attachments and bolt patterns.
d) Specification drawings of the installation rating and type of guy and anchor assemblies proposed to be used by Licensee.

3. Owner shall respond to Licensee within the timeframe provided Article 5 by sending Response to Application, attached hereto as Exhibit "B-2".

4. The Make Ready Construction Cost Estimate and Invoice for Make Ready Construction Work will be sent to Licensee using the form attached hereto as Exhibit "B-3".

5. When the Make Ready Construction Work is complete, Owner shall send Licensee Notification of Completion of Make Ready Construction Work and Request for Certification on the form attached hereto as Exhibit "B-4".

6. Licensee's Certification shall be the form attached hereto as Exhibit "B-5".

7. The "PERMIT FOR ATTACHMENT" shall be the form attached hereto as Exhibit "B-6".

B. Secondary Poles

In connection with Article 6 of the Agreement, Licensee shall use Application for Secondary Pole Attachment Permit attached hereto as Exhibit "B-8" for the notification

C. Procedures for Notification of Pole Transfers

NJUNS protocol to be utilized if available.

D. Supplemental Rules Regarding Licensee's Attachments

1. All Licensee' Attachments to poles shall be installed in a manner to ensure compliance with the requirements of the National Electric Safety Code (NESC) in effect at the time of the installation as clarified or exceeded by Owner's specifications below:

a) Attachments (meeting Rule 230E1 of the NESC) shall meet a minimum vertical clearance of 15.5 ft. under the conductor temperature and loading conditions specified in Rule 232A over all accessible areas, including all power line rights-of-way and easements to be traveled by Owner's maintenance equipment. This requirement is not limited only to roads, streets, and highway rights-of-way, but also includes all ground accessible by Owner's equipment.

b) Attachments (meeting Rule 230E1 of the NESC) shall meet a minimum vertical clearance of 13.5 ft. under the conductor temperature and loading conditions specified in Rule 232A over areas not accessible. These areas are defined by Owner as having steep hillsides, swamps, or other permanent

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impediments that would prohibit the passage of a vehicle, including Owner's equipment.

c) All Attachments installed before the effective date of this contract shall have at least thirty (30) inches vertical clearance under the effectively grounded parts of transformers, transformer platforms, capacitor banks and sectionalizing equipment and at least forty (40) inches clearance under the current carrying parts of such equipment which is energized at 14,400 volts or less between phase and ground. Clearances not specified in this rule shall be determined by reference to the National Electrical Safety Code. If Licensee has made any Attachments which would otherwise have been in compliance with the requirement above, and after which Owner has made any enhancements or improvements to Owner's system that have placed such Attachments in non-compliance with this requirement, any steps necessary to bring such Attachments back into compliance shall be the responsibility of Owner at its sole expense.

d) All new Attachments shall have at least forty (40) inches vertical clearance to the top of all conduit or underground riser guard coverings regardless of the type of cable being covered.

2. It shall be the responsibility of Licensee to attach at proper height, to achieve proper clearance, and to construct their facilities in accordance with the Agreement. If Licensee finds that it cannot make an attachment on a pole and be in compliance with the Agreement then it shall be immediately brought to the attention of Owner in writing and by telephone so the pole can be re-surveyed and appropriate measures taken to make it ready for attachment.

3. All Attachments, cabinets and enclosures, that are separated by a distance of six (6) feet or less, must be grounded by bonding to the existing pole ground with #6 solid, bare, soft drawn copper wire.

   Bonding must be provided between all above ground metallic power and communications apparatus (pedestals, terminals, apparatus cases, transformer cases, etc.) that are separated by a distance of six (6) feet or less.

4. No bolt used by Licensee to attach its facilities shall extend or project more than one (1) inch beyond its nut.

5. All attachments or facilities of Licensee shall have at least two (2) inches clearance from unbonded hardware.

6. The location of all power supplies and connecting wires and cables on Owner's poles shall be approved in writing by Owner. No attachments shall be made without prior approval of Owner. No power supply service connections shall be made by Owner until Licensee has completed installation of an approved fused service disconnect switch or circuit breaker, and, if required, following an electrical inspection from appropriate government officials. An application for service must be made by Licensee to Owner before service is connected.

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7. All communications protective devices will be designed and installed with operating limits sufficient for the voltage and current which maybe impressed on the communications plant in the event of a contact with the supply conductors.

8. All anchors and guys shall be installed and in effect prior to the installation of any of Licensee's messenger wires or cables. Licensee's guylead must be of sufficient length and strength to accommodate loads applied by the Attachments. No anchor shall be placed within five (5) feet of any existing anchor, provided that an anchor may be placed within the five-feet window if approved by Owner. Guy markers shall be installed on every guy attached to owner's pole.

9. Licensee shall not attach any down guy to Owner's anchors or to other licensees' anchors without prior written permission from such Owner or licensee as the case may be.

10. All down guys, head guys or messenger dead ends installed by Licensee shall be attached to the pole by the use of "through" bolts. Such bolts placed in a "bucking" position shall have at least three (3) inches vertical clearance. Under no circumstances shall Licensee install down guys, head guys or messenger dead ends by means of encircling poles with such attachments.

11. Owner shall perform all make-ready work required for the preparation of Owner's poles for proper attachment by Licensee.

12. All Attachments installed after the effective date of the Agreement shall have at least seventy two (72) inches vertical clearance under the effectively grounded neutral of Owner at supports. Owner may increase the forty (40) inch clearance if, in Owner's judgment, Owner may require additional space on the pole for its future service requirements.

13. Owner requires strand maps to be furnished which show all attachment poles including secondary and service poles for individual service drops.

E. Removing Attachments from Owner's Poles

Prior to Licensee's removing attachments from Owner's Poles, Licensee shall send to Owner "NOTICE OF DISCONTINUANCE OF ATTACHMENTS TO POLES" attached as Exhibit "B-7".

F. Plant Conditions Requiring Attention:

If Licensee becomes aware of an unsafe plant condition or other condition that requires the attention of Owner, then Licensee shall as soon as possible notify owner by completing the Notification of Plant Condition attached hereto as Exhibit "B-9".

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EXHIBIT B-1

PERMIT APPLICATION

TO:

ADDRESS:

DATE:

LICENSEE'S TRACKING NUMBER:

This is to request a Permit to attach to certain of your poles under the terms and conditions of our License Agreement dated _____.

The poles, including proposed construction by Owner if necessary for which permission is requested are listed by pole number on the attached and further identified on the attached map, which also bears the above date and Tracking Number.

This Company understands the need to obtain all authorizations, permits, and approvals from all Municipal, State, and Federal authorities to the extent required by law for Licensee's proposed service and to obtain all easements, licenses, rights-of-way and permits necessary for the proposed use of these poles and will do so prior to providing any service that involves your poles.

Signed:

COMPANY:

NAME:

TITLE:

TELEPHONE:

eMail:

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EXHIBIT B-1 (Continued)

ATTACHMENTS TO BE INSTALLED - TRACKING NUMBER _____

Owner Pole Number	Size & Type of Strand	Size & Type of Cable	Number of Existing Cables Existing Strand

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EXHIBIT B-2

RESPONSE to APPLICATION

TO:

ADDRESS:

DATE:

Re: TRACKING NUMBER: _____ & JOB NUMBER: _____

This is to advise you that the above request for Permitting Attachments to certain poles of this system is approved for the poles shown on the attached subject to the terms of the Agreement.

The Make Ready Engineering Fee is to be $_____. Please remit this amount that Make Ready Engineering Plans can be prepared.

Job Number _____ has been assigned to this Application. Please refer to this job number on all future correspondence and communications relating to this Application.

COMMENTS: (this is a space for additional notes)

Signed:

COMPANY:

NAME:

TITLE

TELEPHONE:

eMail:

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EXHIBIT B-3

MAKE READY COST ESTIMATE AND INVOICE FOR MAKE READY CONSTRUCTION WORK

TO:

ADDRESS:

DATE:

re: JOB NUMBER:

In connection with the above referenced Job request, attached is the Make Ready Construction Cost Estimate for the attachment of Licensee's facilities to Owner's poles per the plans submitted by Licensee and approved by Owner.

Please remit the payment for Make Ready Construction Work in the amount of $_____ so that we may schedule the work.

It is estimated that the completion of the Make Ready Construction work will require _____ days following receipt of payment of the Make Ready Construction Cost Estimate providing that such is received by _____. If it is received afterward, this schedule is subject to revision.

Signed:

COMPANY:

NAME:

TITLE:

TELEPHONE:

eMail:

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EXHIBIT B-4

NOTIFICATION OF COMPLETION OF MAKE READY CONSTRUCTION WORK AND REQUEST FOR CERTIFICATION

TO:

ADDRESS:

DATE

Re: JOB NUMBER:

In connection with the above referenced Job Number, the Make Ready Construction Work for the approved poles is complete. Monthly rental for the poles will begin _____ (date).

So that a Permit can be issued, please forward the Certification (Exhibit "B-5" of the Rules).

Signed:

COMPANY:

NAME:

TITLE:

TELEPHONE:

eMail:

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EXHIBIT B-5

CERTIFICATION

TO:

ADDRESS:

DATE

Re: JOB NUMBER:

CERTIFICATION FOR ATTACHMENTS (To be made within thirty (30) days of completion of construction)

I hereby certify that the attachments made under the above Job Number are of sound engineering design and fully comply with the National Electrical Safety Code (NESC), latest edition, Article 3 of the Agreement and the Rules and were constructed substantially as provided in the Make Ready Engineering Plans.

Note: If this is a Certification for a portion of the poles under this Request Number, please list the poles to which this Certification applies and the number of Attachments on each pole being Certified. :

Engineer's Signature

Name

Signature

Title

Registration Number &
State

Date

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EXHIBIT B-6

PERMIT FOR ATTACHMENTS

TO:

ADDRESS:

DATE:

JOB NUMBER:

The poles designated below are hereby Permitted for Attachments by _____ in connection with Job Number _____ .

POLE DESIGNATION	NUMBER OF ATTACHMENTS LICENSED ON THIS POLE AS OF THE ABOVE DATE

Signed:

COMPANY:

NAME:

TITLE:

TELEPHONE:

eMail:

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EXHIBIT B-7

NOTICE OF DISCONTINUANCE OF ATTACHMENTS TO POLES

TO:

ADDRESS:

DATE:

This is to notify you that Licensee's Attachments have been removed from the following poles and that billing for those attachments should cease as of the indicated date.

Pole Identification	Date Attachment was Removed	Date Billing Ceases

Signed:

COMPANY:

NAME:

TITLE:

TELEPHONE:

eMail:

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EXHIBIT B-8

APPLICATION FOR SECONDARY POLE ATTACHMENT

TO:

ADDRESS:

DATE:

This is to notify you that Licensee has placed Attachments on the following Secondary Poles and **CERTIFIES** that all requirements of the Agreement have been met: (If no attachments were placed during the month, indicate by entering "None" under the Address of Customer Served.

Address & Meter No. of Customer Served	Map No. of Owner's Pole Being Attached to or Primary Pole Map No. that Line takes off from	Date Attachment Made

Signed:

COMPANY:

NAME:

TITLE:

TELEPHONE:

eMail:

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EXHIBIT B-8 CONTINUED

TO:

ADDRESS:

DATE

Re: JOB NUMBER:

CERTIFICATION FOR ATTACHMENTS (To be made within thirty (30) days of completion of construction)

I hereby certify that the attachments made under the above Job Number are of sound engineering design and fully comply with the National Electrical Safety Code (NESC), latest edition, Article 3 of the Agreement and the Rules and were constructed substantially as provided in the Make Ready Engineering Plans.

Note: If this is a Certification for a portion of the poles under this Request Number, please list the poles to which this Certification applies and the number of Attachments on each pole being Certified. :

Engineer's Signature

Name

Signature

Title

Registration Number &
State

Date

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EXHIBIT B-10
UNAUTHORIZED ATTACHMENTS

TO:

ADDRESS:

DATE:

This is to notify you that the following Attachments to Owner's poles are Unauthorized and require Licensee's immediate attention. An invoice is attached for the Unauthorized Attachment Discovery Fee and an additional charge, the Unauthorized Attachment Daily Fee, will be incurred until the issue in question is resolved.

Attachment Location	**Problem**

Signed:

COMPANY:

NAME:

TITLE:

TELEPHONE:

eMail:

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EXHIBIT C
SCHEDULE OF FEES

Application Fee	$15.00	Per pole.
Make Ready Engineering Fee:	$	To be provided for Each Permit request based on level of effort.

Attachment Fee per Pole

Date	
Year 1	$19.00
Year 2	$20.00
Year 3	$21.00
Year 4	$22.00
Year 5	$23.00

Other Fees

Unauthorized Attachment Discovery Fee	$150.00
Unauthorized Attachment Daily Fee	$5.00
False Notification Fee	$1,500.00