

FILED

DEC 15 2017

Clerk's Office  
N.C. Utilities Commission

1 PLACE: Dobbs Building  
2 Raleigh, North Carolina  
3 PLACE: Dobbs Building, Raleigh, North Carolina  
4 DATE: November 8, 2017  
5 DOCKET NO.: EC-23, Sub 50  
6 TIME IN SESSION: 9:30 A.M. TO 12:31 P.M.  
7 BEFORE: Chairman Edward S. Finley, Jr., Presiding  
8 Commissioner Bryan E. Beatty  
9 Commissioner ToNola D. Brown-Bland  
10 Commissioner Jerry C. Dockham  
11 Commissioner James G. Patterson  
12 Commissioner Daniel G. Clodfelter  
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IN THE MATTER OF:

Blue Ridge Electric Membership Corporation,

Petitioner

v.

Charter Communications Properties, LLC

Respondent

Volume 1

1 A P P E A R A N C E S:

2

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

2 CHAIRMAN FINLEY: Good morning. Let's go on  
3 the record.

4 My name is Edward Finley, and with me this  
5 morning are Commissioners Bryan E. Beatty, ToNola D.  
6 Brown-Bland, Jerry C. Dockham, James G. Patterson, and  
7 Daniel G. Clodfelter.

8 The Commission now calls for hearing at this  
9 time Docket No. EC-23, Sub 50, In the Matter of Blue  
10 Ridge Electric Membership Corporation's Petition for  
11 Relief against Charter Communications Properties, LLC.

12 On November 30, 2016, Blue Ridge filed a  
13 Petition for Relief, seeking to resolve certain issues in  
14 dispute between Blue Ridge and Charter.

15 On February 1, 2017, Charter filed its Answer  
16 to Complaint and Counterclaims, copies of which were  
17 served on Blue Ridge on January 31, 2017.

18 On March 1, 2017, Blue Ridge filed its Answer  
19 to Charter's Counterclaims.

20 On June 7, 2017, the Commission adopted an  
21 Order Establishing Procedural Schedule. In this  
22 procedural Order the Commission scheduled this matter for  
23 hearing on November 8, 2017.

24 On August 8, 2017, Blue Ridge and Charter filed

1 a Joint Motion for Order Approving Stipulated  
2 Nondisclosure and Protective Agreement.

3 On August 10, 2017, the Commission issued an  
4 Order Approving Stipulated Nondisclosure and Protective  
5 Agreement.

6 On September 12, 2017, Blue Ridge filed a  
7 Motion for Leave to Amend its Verified Petition. There  
8 have been a number of discovery procedural disputes  
9 between the parties, including a Request for a Temporary  
10 Stay addressed by the Commission at appropriate times.

11 On September 27, 2017, the Commission issued an Order  
12 Granting Motion for Leave to Amend the Verified Petition  
13 and Denying the Motion for Temporary Stay.

14 On October 3, 2017, the parties filed a Joint  
15 Motion for Modification of the Procedural Schedule. On  
16 October 6, 2017, the Commission granted this Joint  
17 Motion.

18 On October 9, 2017, the Commission issued an  
19 Order Requiring Charter to Answer Blue Ridge's Verified  
20 Amended Petition. Also, on October 9, 2017, the  
21 Commission issued an Order Requiring Prefiled Filings,  
22 requiring the parties file on or before November 2, 2017  
23 a document containing certain specific information  
24 related to the matters in this docket.

1                   On October 16, 2017, Blue Ridge filed the  
2     testimony of Wilfred Arnett, Gregory L. Booth, and Lee  
3     Layton.

4                   On October 6, 2017, Charter filed its Answer to  
5     Blue Ridge's Amended Petition.

6                   On October 30, 2017, Charter submitted the  
7     responsive testimony of Michael Mullins, Nestor Martin,  
8     and Patricia D. Kravtin. This testimony was resubmitted  
9     with docket numbers on the exhibits and Bates stamped as  
10    filed on October 31, 2017.

11                  On November 1, 2017, Blue Ridge filed its  
12    Objection to Untimely Filing and Motion for Leave to  
13    Supplement Rebuttal Testimony at Hearings, stating that  
14    Charter's responsive testimony was untimely filed,  
15    although Blue Ridge stated its intent to file its  
16    rebuttal in accordance with the October 6, 2017 Order  
17    requesting an Order Granting Blue Ridge's Leave to  
18    Supplement Rebuttal Testimony at the evidentiary hearing  
19    scheduled for today.

20                  Pursuant to the Commission's October 9, 2017  
21    Order Requiring Prefiled Filings on November 2, 2017, the  
22    parties submitted witness lists, exhibit lists, and  
23    statements of contentions, a joint statement of issues,  
24    and joint stipulations.





1 Also with me today are Pressly Millen, Debbie Harden, and  
2 Matthew Tilley of the law firm of Womble Bond Dickinson.  
3 With us today from Blue Ridge are John Coffey who is the  
4 current Chief Operating Officer, as well as Lee Layton  
5 who is the former Chief Operating Officer and Senior Vice  
6 President.

7 MR. TRATHEN: Good morning, Mr. Chairman and  
8 Commissioners. I'm Marcus Trathen with the law firm of  
9 Brooks, Pierce here in Raleigh, representing Charter  
10 Communications Properties, LLC. Here with me today are  
11 Gardner Gillespie, Aaron George, and Hannah -- I forgot  
12 your last name --

13 MR. GEORGE: Wigger.

14 MR. TRATHEN: -- Wigger with the law firm of  
15 Sheppard Mullin in D.C. Mr. Gillespie and Mr. George  
16 have been admitted pro hac vice. Also with us  
17 representing Charter Communications today is Trish  
18 McCausland.

19 CHAIRMAN FINLEY: All right. Welcome  
20 everybody. Any preliminary matters we need to address?  
21 The court reporter indicated there were requests for  
22 opening statements. Is that right or not?

23 MR. GILLESPIE: Yes, Mr. Chairman. We would  
24 propose that we have short opening statements.

1           CHAIRMAN FINLEY: All right. We we'll do that  
2   in just a minute. Let me address the issue to supplement  
3   the rebuttal testimony. You know, once upon a time, the  
4   Commission followed the practice that the rebuttal  
5   testimony was not even submitted until the responsive  
6   testimony to which the rebuttal was sought was cross  
7   examined. So it's always been the Commission's practice  
8   to allow the party with the burden of proof to ask  
9   additional questions when their rebuttal witnesses take  
10  the stand because you don't really know exactly what you  
11  are going to have to rebut until the parties have  
12  testified live and in person.

13           So we will allow limited additional questions  
14  to rebuttal testimony because that's always been the  
15  Commission's practice, but to the extent anybody has some  
16  objections to the specific questions, and if they go too  
17  far, then of course you're free to object and we'll  
18  address those objections.

19           All right. Let's hear the opening statements.

20           MS. MITCHELL: Good morning, Commissioners.  
21  Charlotte Mitchell on behalf of Blue Ridge EMC.

22           So who is Blue Ridge EMC? Blue Ridge is an  
23  electric distribution cooperative that was formed in 1936  
24  to provide electric service to homes and farms in

1 Caldwell County, just across the road from Duke service  
2 territory. At that time in our country's history,  
3 investor-owned utilities were building lines to cities  
4 and towns throughout the country, but not in rural areas.  
5 And why is that? That's because of the increased cost  
6 associated with providing service out into rural areas  
7 and mountainous areas like Blue Ridge's service area.  
8 Over time, Blue Ridge's service territory has grown to  
9 include not only the rural parts of Caldwell County, but  
10 also portions of Alleghany, Ashe, Avery, Alexander,  
11 Watauga, and Wilkes Counties.

12 Blue Ridge, like all electric cooperatives in  
13 North Carolina, is statutorily mandated to operate on a  
14 not-for-profit basis. This means they are run solely and  
15 entirely for the benefit of their members who are, by  
16 definition, those persons who receive electric service  
17 from the Cooperative. Blue Ridge doesn't raise capital  
18 from shareholders. In fact, it's Blue Ridge's members  
19 that have paid for its entire electric system.

20 North Carolina law also makes clear that  
21 cooperatives must make electricity available to its  
22 members at the lowest cost, consistent with sound economy  
23 and prudent management, so this means that Blue Ridge's  
24 members are entitled to safe and reliable and affordable

1 electric service under North Carolina law.

2           So why is Blue Ridge here before you today? So  
3 as the pleadings have shown and as the evidence today  
4 will show, in May of 2014, Blue Ridge contacted Charter  
5 to initiate the negotiation of a new Pole Attachment  
6 Agreement. For more than 2-1/2 years, Blue Ridge tried  
7 to reach agreement with Charter. Again, as the evidence  
8 will show today, Blue Ridge attempted to compromise on  
9 certain critical terms and even on the rate in effort to  
10 find a practical, workable solution that both parties  
11 could live with. When the last draft of the agreement  
12 was received by Blue Ridge from Charter, in other words,  
13 when Charter provided its last draft to Blue Ridge,  
14 Charter rebuffed the offers of compromise and indicated  
15 no response on Blue Ridge's rate proposal. At that time,  
16 Blue Ridge decided it had no other option than to come to  
17 this Commission and seek your assistance in getting into  
18 a contract with the Company.

19           Now, Charter and Blue Ridge have a long history  
20 of working well together. In fact, Charter estimates  
21 that its predecessors have been attaching to Blue Ridge's  
22 poles for almost 40 years. At this point in time,  
23 Charter has more attachments to Blue Ridge's poles than  
24 any other pole attacher or joint user in Blue Ridge's

1 service area. Now, Blue Ridge and Charter have worked  
2 together for all these years and the collaborative in a  
3 less than formal manner, addressing issues as they arose  
4 or were spotted in the field and managing -- with Blue  
5 Ridge managing the administrative burden of this  
6 relationship in the way that made the most sense for Blue  
7 Ridge, given its limited resources.

8 In 2015 and 2016, in the course -- in the  
9 normal course of business, Blue Ridge conducted an  
10 inventory of attachments to its poles. That inventory in  
11 2015 and 2016 revealed 1,373 unauthorized attachments to  
12 Blue Ridge's poles that had been made by Charter. These  
13 were attachments that Charter had made to Blue Ridge's  
14 poles without prior notice to or permission from Blue  
15 Ridge to do so.

16 In addition, that 2015/2016 inventory revealed  
17 numerous violations, safety violations, associated with  
18 Charter's attachments to Blue Ridge's poles. You'll hear  
19 the specific numbers today, but more than 3,000 readily  
20 apparent and obvious violations were identified with  
21 respect to Charter's attachments during that 2015/2016  
22 process.

23 Now, Blue Ridge had understood that even if --  
24 even if the two companies dealt with each other

1 informally, Charter would still seek permission prior to  
2 making attachments to Blue Ridge's main line distribution  
3 poles and would make all of those attachments in  
4 accordance with applicable safety standards and  
5 requirements of Blue Ridge.

6           So as a result of the findings of the 2015/2016  
7 inventory, Blue Ridge retained PowerServices, an  
8 engineering firm, in 2017 to conduct an in-depth survey  
9 on five of its circuits to which Charter has attachments,  
10 and the results of that survey, as the evidence will  
11 show, revealed that the violations were more prevalent  
12 than even the 2015/2016 inventory indicated.

13           So these -- the condition of Charter's  
14 attachments on Blue Ridge's system, in addition to the  
15 number, the sheer number of unauthorized attachments,  
16 confirmed for Blue Ridge that going forward, the parties  
17 must transact in a more formal manner.

18           So you're going to hear from opposing counsel  
19 today that Blue Ridge is singling Charter out from other  
20 attachers or joint users on its system and seeks to  
21 impose overly burdensome terms and conditions on Charter,  
22 and this is simply not the case. As you'll hear, Blue  
23 Ridge in 2016 entered into a Pole Attachment Agreement  
24 with a company by the name of Morris Broadband upon

1 essentially the same terms and conditions that it entered  
2 into -- that it entered into with Charter in 2008 and  
3 with an annual pole attachment rate of \$23 a year.

4           So what is Blue Ridge requesting from this  
5 Commission? What does Blue Ridge need from you all?  
6 Charter, as you know, has a statutorily mandated right to  
7 access Blue Ridge's system. Blue Ridge has honored that  
8 right over the years and admittedly has been less than  
9 formal in its past practices with Charter. However,  
10 going forward, Blue Ridge intends to institute a formal  
11 process with Charter and with all other attachers to its  
12 poles. So Blue Ridge is requesting two things from the  
13 Commission: one, terms and conditions, contract terms  
14 and conditions that protect the safety and reliability of  
15 its system; and, two, the ability to recover all the cost  
16 associated with Charter's accessing its poles.

17           So first, Blue Ridge must have a contract that  
18 ensures the safety and reliability of its system and  
19 protects the investment that Blue Ridge's members have  
20 made in that system. You may hear Charter deny  
21 responsibility for and challenge the notion that it could  
22 have caused problems on Blue Ridge's system. Ultimately,  
23 though, Blue Ridge must have a contract in place that  
24 requires Charter to take responsibility for its



1 attachments and to act when Blue Ridge needs it to act.

2 Second, Charter, and not Blue Ridge's members,  
3 must pay for the cost associated with Charter's use of  
4 its poles. The evidence will show that the TVA  
5 methodology you will hear about today results in the fair  
6 and appropriate allocation of the costs associated with  
7 providing those poles. And additionally, evidence will  
8 show that Blue Ridge incurs costs beyond simply providing  
9 those poles, so there are costs beyond the pole plant  
10 that Blue Ridge incurs, and Blue Ridge asks that the  
11 Commission ensure that the contract terms and conditions  
12 clearly and unambiguously allow Blue Ridge to recover  
13 those costs.

14 At the end of the day, it's critical that Blue  
15 Ridge receive a fair rate for its poles and fair contract  
16 terms that allow it to recover all of its costs  
17 associated with dealing with Charter. If it doesn't have  
18 these two things, its members will end up covering those  
19 costs through electric rates which may have to be  
20 increased, even though many of them live in areas of Blue  
21 Ridge's service territory that Charter does not and  
22 likely will not ever serve. Thank you.

23 MR. GILLESPIE: Morning, Mr. Chairman and  
24 members of the Commission. I'm Gardner Gillespie, here

1 on behalf of Charter Communications Properties, LLC.

2 Most of you will remember the proceeding in  
3 June involving Time Warner Cable and four cooperatives.  
4 Time Warner Cable, at that hearing, warned the Commission  
5 about the dangers of adopting untested rate methods.  
6 Now, like the four cooperatives in June, Blue Ridge here  
7 advocates a rate method adopted by the TVA for its  
8 wholesale electric customers. That method relies on  
9 certain presumptions and allocates 28.44 percent of the  
10 pole cost to communications attachers. But while the TVA  
11 method achieved rates in the four cases that in some  
12 cases were more than double what those cooperatives had  
13 voluntarily charged their customers, based on  
14 presumptions in the TVA method, don't justify the rate  
15 that Blue Ridge has been charging.

16 So the Blue Ridge rate expert manipulates the  
17 inputs and rebuts TVA's presumptions and allocates more  
18 than 41 percent of the pole cost to Charter. That's  
19 almost 45 percent higher than TVA's rate method based on  
20 the presumptions that was the central subject of the June  
21 hearing.

22 The TVA method that is espoused by Blue Ridge,  
23 as well as the four cooperatives in June, hasn't even  
24 been fleshed out by the TVA. It's untested in court.

1 It's based on a statute that TVA itself interprets as  
2 concern only with keeping down electric rates which is  
3 something that for the cooperatives is beyond the  
4 jurisdiction of this Commission. And in developing its  
5 rate method, TVA relied on a process that excluded all  
6 interested parties except the pole owners and their  
7 association.

8           The fundamental problems with the TVA method  
9 involve its allocation of the cost of the common space,  
10 that's the support space on a pole, and the so-called  
11 safety space between communications and power facilities.  
12 Now, with respect to the common space, TVA allocates the  
13 cost based solely on a per capita equal benefits theory  
14 without any recognition that the benefits are anything  
15 but equal. Now, this Commission has held that per capita  
16 cost allocation is not reasonable where the usage is not  
17 equal, and the benefits here are not equal by any  
18 stretch.

19           Understand that Blue Ridge doesn't construct  
20 pole plant for the purposes of serving cable, including  
21 Charter, and Charter only occupies surplus space and only  
22 temporarily. This is space that is not currently needed  
23 by the Cooperative, and when it is needed by the  
24 Cooperative, Charter is required to give it back. It's

1 much like interruptible electric service where a utility  
2 doesn't construct any plant to serve a customer, service  
3 levels are not promised, and rates reflect this lower  
4 level of service.

5 Now, with respect to the safety space, TVA  
6 allocates the cost of the safety space entirely to cable  
7 and any other communication users on the pole. Now, it  
8 is the -- the communication users cannot use that safety  
9 space. It's only -- it's only the Cooperative that can  
10 use that space to generate revenue. Equally important,  
11 not only is Charter prohibited from using the safety  
12 space itself, but if the Cooperative needs that space to  
13 provide other services or for other facilities, it has  
14 the right to reclaim the space and to require Charter to  
15 move out of that space. In other words, Charter doesn't  
16 prevent the Cooperative from using any of that space for  
17 its electric generating revenues and activities.

18 Well, Charter, like the June cases involving  
19 Time Warner Cable, supports the FCC rate method. There's  
20 a reason why the FCC method is used in 45 states,  
21 including many where the state utility commissions have  
22 approved it explicitly, and that is the rate that  
23 controls the pole attachment rates, terms, and conditions  
24 for the investor-owned utilities and the ILECs in North

1 Carolina. It's grounded in common-place utility rate  
2 making principles. It allocates the common costs  
3 according to the same percentage as the direct costs are  
4 allocated. This is the way that costs are allocated  
5 elsewhere in the economy.

6 It's the way that the common cost of an office  
7 building would be allocated to tenants. The renter of  
8 only one floor in a 10-floor building would not be  
9 expected to pay one third or one half of the cost of the  
10 elevator, the lobby, the ground, and the garage. It's  
11 the way that an airport would allocate the cost of its  
12 runways by the number of gates used, not by the number of  
13 airlines using the airport. It's the way a business with  
14 three distinct product lines, which each draw on a common  
15 input from a single factory, would allocate the factory  
16 costs, and that would be according to the use of the  
17 factory, not one third allocated to each product line.

18 So we don't have the -- okay. I was going to  
19 show you some diagrams, but apparently that's not going  
20 to happen.

21 The FCC method and the TVA method both allocate  
22 the cost of the revenue generating portion of the pole,  
23 the usable space, according to the percentage of that  
24 space that is occupied by the cable attachment and is

1 foreclosed for the owner of the pole to make other  
2 revenue on it. Now, that's the way that both methods  
3 allocate that type of space.

4 Well, the FCC method allocates all cost of the  
5 pole that way, and this is the traditional way of  
6 allocating cost and regulation. It's the same way that  
7 the FCC allocates cost in Part 64 of its Rules. It's the  
8 same way that the Commission, this Commission, allocated  
9 cost of security to CLECs in the co-location decision in  
10 2000.

11 As I said, TVA allocates the cost of the  
12 revenue generating portion of the pole in the same way  
13 the FCC does, basically, but it allocates the cost of the  
14 common space, that's the non-revenue generating space,  
15 purely based on the number of attaching entities on a per  
16 capita basis.

17 Because Blue Ridge determines that there are an  
18 average of only 1.3 attaching parties to the pole --  
19 that's 1.3 entities other than Blue Ridge -- their rate  
20 expert allocates more than 42 percent of the common cost  
21 to Charter. And ultimately, Blue Ridge allocates more  
22 than 41 percent of the entire pole cost to Charter,  
23 despite the fact that Charter only uses 1 foot of the  
24 usable space for its attachments and despite the fact

1    that its attachment right is potentially temporary,  
2    completely subject to displacement if Blue Ridge needs to  
3    use the space for its own activities. So the idea that  
4    Charter gets equal benefit from the unusable space is  
5    completely apocryphal.

6            Blue Ridge has also raised questions about  
7    terms and conditions that were addressed by Ms. Mitchell.  
8    So once again, as in the June cases, we have a cable  
9    operator that's faced with scores of recently taken  
10   pictures of alleged violations that have not yet been  
11   subject to the causation and remediation analysis that's  
12   called for all parties to engage in under 62-350.

13           And I think we can all gain better insight into  
14   the Cooperative's strategy now that we have another case.  
15   That strategy is reflected here as well as the June  
16   cases. It's to raise the cost of litigating with the  
17   Cooperative so high that no one will ever think of  
18   challenging them again before the Commission. To the  
19   cooperatives, a good defense is a good offense. They've  
20   created scores of violations themselves by installing  
21   transformers too close to Charter's facilities, right on  
22   top of Charter's facilities, and many of these were  
23   installed decades ago, and they have the chutzpah to come  
24   before this Commission and blame Charter for those

1 violations. This is a similar tactic to what the four  
2 cooperatives used in the June case, do a last-minute  
3 inspection just before the hearing, take a bunch of  
4 pictures, then cry that the sky is falling.

5 Here, they and their engineering expert have  
6 one upped the other co-ops from the other case. Here  
7 they claim that these violations, which have been around  
8 for decades, were caused not by themselves -- that were  
9 not -- that were caused by themselves, that they claim  
10 these are imminent safety violations for which Charter is  
11 responsible. Know, as you will learn, that there are  
12 other parties that are attached to Blue Ridge's poles  
13 that have more violations, that have a higher percentage  
14 of violations, and yet Blue Ridge has done nothing about  
15 these other entities.

16 So we don't believe there is any appropriate  
17 place for action here, including in the contract  
18 language, related to alleged safety violations until it  
19 can be determined based on the process called for by  
20 Section 62-350 who caused these violations. Who caused  
21 the violations alleged to have been caused by Charter?  
22 What other parties have created violations, and how  
23 should all these matters be resolved in a way that  
24 doesn't discriminate against Charter? Thank you very



1 much.

2 CHAIRMAN FINLEY: Okay. Blue Ridge, call your  
3 first witness.

4 MS. HARDEN: Yes, Chairman Finley. Debbie  
5 Harden. I'd like to call Mr. Lee Layton with Blue Ridge.

6 CHAIRMAN FINLEY: Mr. Layton, you need to pull  
7 that microphone up around in front of you, please, sir.

8 LEE LAYTON: Having been duly sworn,  
9 testified as follows:

10 DIRECT EXAMINATION BY MS. HARDEN:

11 Q Sir, would you please state your name,  
12 employer, and title for this record.

13 A My name is Lee Layton. I work for Blue Ridge  
14 Electric Membership Corporation. My title is Senior Vice  
15 President and Executive Consultant.

16 Q What is your business address, sir?

17 A Business address is 1216 Blowing Rock  
18 Boulevard, Lenoir, North Carolina.

19 Q On whose behalf are you testifying in this  
20 proceeding?

21 A On behalf of Blue Ridge Electric Membership  
22 Corporation.

23 Q Mr. Layton, did you cause to be prefiled in  
24 this docket on October 16, 2017, direct testimony

1 consisting of 40 pages and Exhibits 1 through 16, and on  
2 November 6, 2017, the filing of rebuttal testimony  
3 consisting of 30 pages and Exhibits 17 through 25?

4 A Yes, I did.

5 Q Do you have any corrections to make to that  
6 prefiled testimony at this time?

7 A No, I do not.

8 Q If I were to ask you the same questions today  
9 as set forth in your testimony, would you answer them the  
10 same as set forth therein?

11 A Yes, I would.

12 MS. HARDEN: At this time, Chairman Finley, I  
13 move that Lee Layton's prefiled direct testimony and his  
14 rebuttal testimony be copied into the record as if  
15 delivered orally from the stand, and the exhibits so  
16 marked be prefiled and received into evidence.

17 CHAIRMAN FINLEY: All right. Mr. Layton's  
18 direct prefiled testimony consisting of 40 pages, filed  
19 on October 16, 2017, is copied into the record as though  
20 given orally from the stand, and his 16 direct exhibits  
21 are marked for identification as premarked in the filing.

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1 (Whereupon, the prefiled direct  
2 testimony of Lee Layton was copied  
3 into the record as if given orally  
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**DIRECT TESTIMONY  
OF  
LEE LAYTON, P.E.**

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5 **I. INTRODUCTION**

6 **Q. State your name.**

7 A. My name is Lee Layton.

8 **Q. What is your position with Blue Ridge Electric Membership Corporation?**

9 A. I am Senior Vice President and Executive Consultant for Blue Ridge Electric  
10 Membership Corporation. From July 2005 until I took my current position in  
11 October 2016, I served as Senior Vice President and Chief Operating Officer for  
12 Blue Ridge.

13 **Q. Please describe your professional background.**

14 A. I have over forty years' experience with electric utilities, including engineering,  
15 operations, purchasing, customer service, management, and strategic planning.  
16 Prior to becoming Blue Ridge's Chief Operating Officer in 2005, I was the Vice  
17 President of Operations for Carroll Electric Membership Corporation, based in  
18 Carrollton, Georgia, where I worked in various capacities since 1982. I have a  
19 Bachelor of Science degree in electric engineering from Auburn University. I am  
20 a registered professional engineer in the States of North Carolina and Georgia.

21 **Q. In general, what are your duties at Blue Ridge?**

22 A. As Chief Operating Officer, I was responsible for overseeing the engineering,  
23 reliability, and safe construction and maintenance of Blue Ridge's electrical  
24 transmission and distribution system, which includes staking and field engineers

1 who conduct work on Blue Ridge's system and interact with third-party attachers,  
2 such as Charter. In my current role as SVP and Executive Consultant, I am  
3 responsible for, among other things, projects continuing from my time as COO,  
4 including securing a new pole attachment agreement between Blue Ridge and  
5 Charter.

6 **II. THE NATURE OF ELECTRIC COOPERATIVES**

7 **Q. Can you explain the purposes of electric cooperatives, like Blue Ridge?**

8 A. Most electric cooperatives, like Blue Ridge, were formed in the 1930s to extend  
9 electric service to homes and farms in rural areas where electricity was  
10 unavailable, mostly because privately-owned, investor-owned utilities (IOUs) did  
11 not find it profitable to build lines to extend services to homes in these, less-  
12 densely populated areas. Electric cooperatives operate on a not-for-profit basis  
13 and are owned by their members, who are the customers of their electricity. Blue  
14 Ridge was formed in 1936, shortly after the passage of the Rural Electrification  
15 Act, to provide electric service to homes and farms in Caldwell County that did  
16 not yet have electricity. It now provides electricity to members in Allegheny,  
17 Ashe, Caldwell, and Watauga Counties, as well as small portions of Avery,  
18 Alexander, and Wilkes Counties.

19 **Q: What is your understanding of electric cooperatives' status under North**  
20 **Carolina law?**

21 A: Electric cooperatives like Blue Ridge occupy a special status under North  
22 Carolina law. As outlined in N.C.G.S. § 117-8:

1 When any number of persons residing in the community not  
2 served, or inadequately served, with electrical energy desire to  
3 secure electrical energy for their community and desire to form  
4 corporations to be known as electric membership corporations for  
5 said purpose, they shall file application with the North Carolina  
6 Rural Electrification Authority for permission to form such  
7 corporation.  
8

9 Those persons are authorized to form a corporation "*not organized for pecuniary*  
10 *profit*" for "the purpose of promoting and encouraging the fullest possible use of  
11 electric energy in the rural section of the State by making electric energy available  
12 to inhabitants of the State at the *lowest cost* consistent with sound economy and  
13 prudent management." N.C.G.S. § 117-10 (emphasis added).

14 **Q. What is your understanding of the status of members of electric**  
15 **cooperatives?**

16 A. As I said, Blue Ridge, like all electric cooperatives, is operated on a not-for-profit  
17 basis. Electric cooperatives are also run solely and entirely for the benefit of their  
18 members who are, by definition, the persons who receive their electric services.  
19 N.C.G.S. § 117-16 defines the "corporate purpose" of each electric cooperative as  
20 rendering "service to its *members only*, and *no person shall become or remain a*  
21 *member unless such person shall use energy supplied by such corporation.*" In  
22 other words, unlike IOUs, which are generally much larger, the "owners" of  
23 electric cooperatives are the North Carolinians served by the electric cooperative,  
24 rather than investors in public companies (who may be individuals and companies  
25 from anywhere). Electric cooperatives, moreover, are not permitted to "make or  
26 grant any unreasonable preference or advantage to any member or subject any  
27 member to any unreasonable prejudice or disadvantage." N.C.G.S. § 117-16.1.

1       The ultimate result of the statutory scheme is to create a cooperative, *i.e.* member-  
2       owned, electric utility which is required (1) to treat all its members-owners fairly,  
3       (2) to operate on a not-for-profit basis, and (3) to provide electric energy reliably  
4       and safely "at the lowest rate consistent with sound economy and prudent  
5       management." N.C.G.S. § 117-10.

6   **Q.   What are the implications of this structure with respect to the manner in**  
7       **which Blue Ridge transacts business?**

8   A.   Every dollar Blue Ridge saves or earns ultimately inures to the direct benefit of its  
9       members in the form of lower costs for electric energy.

10   **Q.   As a cooperative, does Blue Ridge get to pick and choose whom it will serve?**

11   A:   No. We serve everyone who needs electric power in our service area as assigned  
12       by the State.

13   **Q.   How does this differ from Charter and other private cable companies?**

14   A.   Charter is a for-profit entity that generally gets to choose where it will provide  
15       service. Thus, Charter does not have an obligation to serve all customers within  
16       Blue Ridge's territory, but instead can choose to serve only the more-densely  
17       populated areas within Blue Ridge's service area in order to maximize its profit.

18   **Q.   And does this affect how Blue Ridge approaches a pole attachment**  
19       **agreement with Charter?**

20   A.   Yes. As an electric cooperative, our over-arching mission is to provide electric  
21       power to our members without regard to profit and at the lowest cost consistent  
22       with sound economy and prudent management. By statute, Blue Ridge has to  
23       allow Charter to attach to its poles. Given this, a just and reasonable pole

1 attachment rate must enable Blue Ridge to recover the full costs of Charter's  
2 attachments and ensure Blue Ridge is not forced to use revenue or capital credits  
3 derived from its members to subsidize the business of a for-profit  
4 communications company. This is especially true since Charter chooses not serve  
5 large portions of our members, specifically those in the more remote areas of Blue  
6 Ridge's territory. Further, because our primary focus is delivering safe and  
7 reliable electricity to our members, it is important that we ensure Charter's  
8 attachments do not interfere with the safety, reliability, or availability of our  
9 electric plant.

10 **Q. Please tell me about Blue Ridge's service territory and the demographics of**  
11 **its members.**

12 A. Blue Ridge's service territory is predominantly rural and mountainous. As I said  
13 above, Blue Ridge serves customers in Allegheny, Ashe, Caldwell, and Watauga  
14 Counties, as well as small portions of Avery, Alexander, and Wilkes Counties.  
15 Blue Ridge's service territory generally includes rural and unincorporated  
16 portions of these counties, but not major cities or towns. For instance, Blue  
17 Ridge's territory does not include Hickory and most of Lenoir in Caldwell  
18 County, which are instead served by Duke Energy. Likewise, Blue Ridge's  
19 service territory does not include most of Boone, in Watauga County, which is  
20 served by New River Light and Power. Thus Blue Ridge's customers are  
21 normally spread far apart and Blue Ridge must make a significant capital  
22 investment to build lines to service members' homes. The average density in  
23 Blue Ridge's service territory is only nine customers per mile, and Blue Ridge



1 maintains more than 8,000 miles of distribution line to serve the approximately  
2 57,000 members with 77,000 meters in its seven county service territory.

3 In addition, the average household income in the counties Blue Ridge serves is  
4 significantly lower than the State and national averages. According to 2015  
5 Census data, the median household income was \$35,673 in Caldwell County,  
6 \$37,656 in Watauga County, \$36,267 in Ashe County, and \$36,968 in Allegheny  
7 County. In comparison, the median household income in North Carolina is  
8 \$47,830, and nationally it is \$57,516. Caldwell County is 81st among North  
9 Carolina's 100 counties in terms of median household income. As a result, Blue  
10 Ridge's members depend on the cooperative to provide reliable service at low  
11 rates.

12 **Q. How does Charter's service area compare with Blue Ridge's territory?**

13 A. Charter generally chooses to only serve the more densely populated areas within  
14 Blue Ridge's territory. According to its discovery responses, Charter serves areas  
15 with an average of 53 homes per mile in the Blue Ridge territory, while the  
16 average number of members across the entirety of Blue Ridge's territory is only  
17 nine homes per mile. (See Charter's Responses to Blue Ridge's Data Request  
18 No. 37, attached hereto as Exhibit LL-1.) I have attached a map to my testimony  
19 showing the portions of Blue Ridge's territory that Charter serves, as well as the  
20 density of electric members as Exhibit LL-2. It illustrates how Charter has chosen  
21 only to serve the more densely populated areas in and around Blue Ridge's  
22 system.

1   **Q.    Do you believe the differences in Charter and Blue Ridge's service areas has**  
2       **implications in setting a pole attachment rate?**

3   **A.**    Yes. First, while Blue Ridge believes that any pole attachment rate should ensure  
4       that Charter adequately compensates Blue Ridge for the use of its poles, we think  
5       the fact that Charter only serves the more densely populated portions of Blue  
6       Ridge's territory, and that it can pick and choose where it provides service, makes  
7       Charter's proposed rate particularly inappropriate. I understand that Charter has  
8       asked the Commission to adopt the so-called "Cable Rate," which the Federal  
9       Communications Commission ("FCC") has imposed on IOUs, and is designed to  
10      subsidize (or "promote") the expansion of cable services and broadband internet.  
11      Imposing the FCC Cable rate here would effectively require all of Blue Ridge's  
12      members to subsidize Charter's business, by providing Charter access to Blue  
13      Ridge's poles well below cost, using revenue derived from their electricity bills.  
14      Yet, many, if not most, of Blue Ridge's members live in areas that Charter  
15      chooses not to serve and, thus, will never receive any benefit from providing this  
16      subsidy.

17   **III.   FEDERAL LAW EXEMPTS ELECTRIC COOPERATIVES FROM POLE**  
18       **ATTACHMENT REGULATION**

19   **Q.    To your understanding, does the cooperative structure have implications**  
20       **under federal law with respect to pole attachments?**

21   **A.**    Yes. As I understand it, in regulating pole attachments under federal law,  
22       Congress explicitly recognized the unique status of electric cooperatives such as  
23       Blue Ridge and specifically exempted them from the federal statutory scheme

1 authorizing FCC regulation. *See* 47 U.S.C. § 224(a)(1) (the “term ‘utility’ ... does  
2 not include ... any person who is cooperatively organized”). In addition, the cable  
3 TV industry is no longer in a fledging state and should need no subsidies from  
4 any entity, especially non-profit electric cooperatives.

5 **IV. BLUE RIDGE’S NEGOTIATIONS WITH CHARTER FOR A NEW POLE**  
6 **ATTACHMENT AGREEMENT**

7 **Q. What is the date of Blue Ridge’s most recent pole attachment agreement with**  
8 **and Charter?**

9 A. Blue Ridge’s most recent pole attachment agreement with Charter is dated  
10 September 1, 2008. (*See Exhibit LL-3*, Pole Attachment License Agreement  
11 between Blue Ridge Electric Membership Corporation and Charter  
12 Communications Holding Company, LLC, dated September 1, 2008.)

13 **Q. Did Blue Ridge and Charter have a pole attachment agreement prior to the**  
14 **2008 agreement?**

15 A. Yes. Prior to the 2008 agreement, Blue Ridge and Charter had entered into a pole  
16 attachment agreement dated January 1, 2003. (*See Exhibit LL-4*, Pole Attachment  
17 License Agreement between Blue Ridge Electric Membership Corporation and  
18 Charter Communications Holding Company, LLC, dated January 1, 2003.)

19 **Q. Were the terms and conditions of Blue Ridge’s 2008 agreement with Charter**  
20 **the same as the 2003 agreement?**

21 A. Yes. The terms and conditions of the two agreements are substantially the same,  
22 except for the rates. Blue Ridge and Charter reached the 2003 agreement as a  
23 result of negotiations in 2002. Both agreements provided for a three-year term

1 with two additional, one-year renewals. As a result, Blue Ridge and Charter  
2 viewed the 2008 agreement as an update to the 2003 agreement, and the primary  
3 issue in negotiating the 2008 agreement was setting the rate. The rates under both  
4 agreements—the 2003 agreement and the 2008 agreement—were established as a  
5 result of negotiations between Blue Ridge and Charter. Charter did not ask Blue  
6 Ridge for any significant revisions to the terms and conditions when the parties  
7 negotiated the 2008 agreement, and we generally understood that Charter, as well  
8 as Blue Ridge, viewed the terms of the 2003 and the 2008 agreements as  
9 acceptable.

10 **Q. Have Blue Ridge and Charter engaged in negotiations for a new contract?**

11 **A.** Yes. Blue Ridge initiated those negotiations. On May 22, 2014, Blue Ridge's  
12 representative, Brad Shields, sent an e-mail to Michael Mullins informing him  
13 that the 2008 agreement had expired and letting him know that he would be  
14 providing an updated agreement for Charter to review. (See Exhibit LL-5, E-mail  
15 from Brad Shields to Michael Mullins, dated May 22, 2014.) Mr. Shields  
16 followed up with another e-mail on July 8, 2014, providing a draft agreement.  
17 (See Exhibit LL-6, E-mails from Brad Shields to Michael Mullins, dated July 8,  
18 2014.)

19 The draft agreement Blue Ridge provided included the same material terms as the  
20 2003 and 2008 agreements. The only substantial difference was that the proposed  
21 draft provided for automatic renewals. Blue Ridge also proposed keeping  
22 Charter's annual pole attachment rate—which was then \$26.04 per year—the

1 same but with annual adjustments for inflation in accordance with the Consumer  
2 Price Index (CPI) thereafter.

3 **Q. How would you describe Charter's approach to the negotiations for a new**  
4 **pole attachment agreement?**

5 A. Charter's response was marked by delay. Charter did not respond to Blue Ridge's  
6 for almost a full year. After Blue Ridge reached out several times asking for a  
7 response, Charter finally responded to the draft agreement on May 26, 2015. (*See*  
8 Exhibit LL-7, E-mail from Ronnie McWhorter to Brad Shields, dated May 26,  
9 2015.) Even then, the draft Charter proposed requested changes to a number of  
10 terms and conditions the parties had previously agreed upon in their prior  
11 contracts—such as provisions requiring Charter to provide certification from an  
12 engineer that its attachments comply with the NESC as well as provisions  
13 governing unauthorized and non-compliant attachments. Charter's draft also  
14 included numerous notes that various provisions were TBD, or "to be  
15 determined."

16 **Q. Did Blue Ridge attempt to negotiate a new agreement with Charter after it**  
17 **finally responded in May 2015?**

18 A. Yes we did. Blue Ridge's representative, Brad Shields, tried for several months  
19 to negotiate a new pole attachment agreement with Charter, and Blue Ridge  
20 provided alternative draft agreements trying to seek a compromise. Mr. Shields,  
21 along with several other representatives from Blue Ridge, also met with Charter's  
22 representatives, Michael Mullins and Ronnie McWhorter, in person on November  
23 11, 2015, to see if we could reach an agreement. It became clear in the meeting

1 that Charter would not agree to a reasonable pole attachment rate, even though we  
2 offered to compromise on the rate in order to get Charter under an agreement and  
3 avoid the cost and expense of proceedings before the Commission.

4 In addition, Charter's representatives told Blue Ridge that Charter would not  
5 agree to certain terms and conditions to which Charter had previously agreed,  
6 including providing professional engineer certifications that its attachments  
7 comply with the NESC and other applicable specifications, because Charter and  
8 its contractors do not employ professional engineers. Charter also said that it  
9 could not require its contractors to report attachments they make to secondary or  
10 "drop" poles to Blue Ridge, as the parties' previous agreements required, since it  
11 had no process or system in place to even monitor, much less report, such  
12 attachments. It therefore suggested that Charter pay for attachments to secondary  
13 pole in arrears when they are counted in pole attachment inventories, which are  
14 generally conducted every 5-6 years.

15 Even though the meeting in November 2015 was discouraging, Blue Ridge  
16 provided another draft agreement to Charter on December 7, 2015, in an attempt  
17 to reach an agreement with Charter. (See Exhibit LL-8, E-mail from Brad Shields  
18 to Ronnie McWhorter, dated December 7, 2015.)

19 **Q. How long did it take Charter to respond to Blue Ridge's December 2015**  
20 **proposal?**

21 A. Charter did not respond to Blue Ridge's December 2015 for more than nine  
22 months, and finally responded on September 29, 2015, only after Blue Ridge  
23 followed up several times asking it to do so. (See Exhibit LL-9, E-mail from

1 Ronnie McWhorter to Brad Shields, dated September 29, 2016.) By this time  
2 Charter had announced its merger with Time Warner Cable, and we now  
3 understand that Nestor Martin, Time Warner's Senior Director of Construction for  
4 the Carolinas Region, took over responsibility for negotiating a pole attachment  
5 agreement with Blue Ridge sometime in September 2016.

6 When Charter did respond, it continued to dispute many of the terms it had  
7 previously accepted as part of the 2003 and 2008 agreements. In addition,  
8 Charter indicated that it would not agree to the proposed rate and marked rate  
9 provision "TBD."

10 **Q. How did Blue Ridge interpret Charter's response to the December 2015**  
11 **proposal?**

12 **A.** Obviously, the rate is a key term of any pole attachment agreement. At this point,  
13 with Blue Ridge pushing the negotiations, we had been in discussions for almost  
14 two years, so, given that Charter again failed to provide a counter offer on the  
15 rate, it was clear we were not close to reaching an agreement. From our  
16 perspective, Charter's negotiating tactics, and its refusal to agree to provisions it  
17 had accepted in the past, represented a drastic change from the parties' previous  
18 relationship, which had generally been cooperative. That change coincided with  
19 the announcement of Charter's merger with Time Warner Cable, and is consistent  
20 with Time Warner Cable's reputation for treating electric cooperatives in a much  
21 more adversarial manner when it comes to pole attachments than had been our  
22 experience with Charter. We were aware that Time Warner Cable had sued  
23 Rutherford Electric Membership Corporation over pole attachment rates. We

1 were also aware that Time Warner Cable had abruptly ended negotiations with  
2 other North Carolina cooperatives and had filed petitions against five cooperatives  
3 to set pole attachment rates, but did not want to have the Commission consider  
4 other terms and conditions as part of those proceedings. We therefore determined  
5 that the parties were at an impasse and that we had no choice but to file a petition  
6 with the Utilities Commission to adjudicate these disputes in order to enter into a  
7 new agreement with Charter.

8 **V. CHARTER'S ATTACHMENTS ON BLUE RIDGE'S SYSTEM**

9 **Q. For how long has Blue Ridge dealt with Charter as an attacher on Blue**  
10 **Ridge's poles?**

11 A. I do not know exactly how long, but Charter claims it or its predecessors have  
12 made attachments on Blue Ridge's poles for approximately forty years.

13 **Q. Prior to Blue Ridge's attempt to negotiate a new pole attachment agreement,**  
14 **did Blue Ridge have a cooperative relationship with Charter?**

15 A. Yes. Historically, Blue Ridge's staff has had a cooperative relationship with  
16 Charter and has attempted to respond to Charter's requests to make attachments or  
17 to conduct work to "make ready" poles for Charter's attachments in a quick an  
18 informal manner in order to assist Charter in its business.

19 **Q. Has working with Charter in such an informal manner caused problems for**  
20 **Blue Ridge?**

21 A. Yes, it has. For instance, the parties' 2003 and 2008 pole attachment agreements  
22 require Charter to submit a written application, in a form specified under the  
23 agreement, and receive a permit for each attachment to Blue Ridge's poles. I



1 understand that, over time, Blue Ridge and Charter's field personnel developed a  
2 less-formal practice where Charter's construction coordinators would contact  
3 Blue Ridge's staking technicians in its district offices by telephone or e-mail and  
4 ask them to assess make-ready work when Charter had clearance issues or needed  
5 space on the poles to attach. Blue Ridge's staking technicians generally  
6 responded to these informal requests by following up, reviewing the poles, and  
7 providing quotes for Charter's requested make-ready work, out of a desire to  
8 assist Charter's personnel in their work.

9 It has become clear, however, that such an informal process is not sufficient and  
10 that the application and permit process specified in the 2003 and 2008 agreements  
11 needs to be followed to protect Blue Ridge's system.

12 **Q. Why do you believe a written application and permit process is necessary?**

13 **A.** The written permit and approval process is important for several reasons. First, it  
14 provides Blue Ridge notice that Charter is making attachments on its system.  
15 Second, while the parties' agreements make clear that Charter is responsible for  
16 ensuring its attachments comply with the NESC, the parties' pole attachment  
17 agreement, and other applicable design standards, the agreements require Charter  
18 to provide construction plans with its applications, which gives Blue Ridge's  
19 personnel an opportunity to review Charter's proposed attachments for  
20 compliance with these standards. Finally, the written application and permit  
21 process gives Blue Ridge and Charter a way to track Charter's attachments for the  
22 purposes of billing. Charter is required to pay fees for its attachments, and Blue

1 Ridge needs to know how many attachments Charter has its system to make sure  
2 Charter pays for all of its attachments.

3 The informal approval system Blue Ridge and Charter's personnel have used in  
4 the past has not accomplished these goals. Blue Ridge understood that, even if  
5 Charter did not submit formal applications, Charter would still (i) seek prior  
6 permission for each attachment it made to Blue Ridge's mainline distribution  
7 poles (ii) report all of the attachments it makes to "secondary poles" to Blue  
8 Ridge, as the 2003 and 2008 agreements required; and (iii) make all attachments  
9 in accordance with the NESC, Blue Ridge's specifications, applicable codes, and  
10 the requirements of the parties' agreement. However, it is clear that Charter has  
11 not done this. As discussed below, Blue Ridge conducted a pole attachment  
12 inventory in 2015 and 2016, which revealed that Charter had 27,674 attachments,  
13 which is a net of 1,373 more attachments than what was reflected in Blue Ridge's  
14 billing records for Charter. (See Exhibit LL-10, Letter from Brad Shields to  
15 Ronnie McWhorter dated November 22, 2016.) This number surprised Blue  
16 Ridge's field personnel, who recalled receiving some attachment requests from  
17 Charter, mostly when Charter needed Blue Ridge to perform "make ready" work  
18 in order to accommodate Charter's attachments, but did not receive nearly enough  
19 requests to account for a net of 1,373 new attachments since the parties' last  
20 conducted a pole attachment inventory in 2010. Neither party has documentation  
21 to show these attachments were authorized. Indeed, Charter acknowledges that it  
22 *never* reported attachments to secondary poles, and that it has no system or  
23 process to report attachments to secondary poles, even though the 2008 agreement

1 required it to do so within seven days of making the attachment. Moreover, since  
2 the 1,373 figure number represents the *net* increase in Charter's attachments  
3 during this time, and does not reflect attachments Charter has removed, it is likely  
4 that Charter has made numerous attachments to Blue Ridge's poles for which it  
5 has never paid.

6 **Q. Has not using the formal application and permit process in the parties' pole**  
7 **attachment agreement created any other problems?**

8 A. Yes. Like the 2003 agreement, the 2008 agreement specifically provides that

9 [BEGIN CONFIDENTIAL] [REDACTED]

10 [REDACTED]

11 [REDACTED] [END CONFIDENTIAL] (See

12 CONFIDENTIAL Exhibit LL-3, Pole Attachment License Agreement between  
13 Blue Ridge Electric Membership Corporation and Charter Communications  
14 Holding Company, LLC, dated September 1, 2008, Rules and Practices of Owner  
15 for Attachments, at § D.1.) In particular, the agreement provides that [BEGIN

16 CONFIDENTIAL] [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] [END

22 CONFIDENTIAL] This is intended to give Blue Ridge room to add additional

1 electrical facilities, such as transformers, without having to first ask Charter to  
2 relocate its facilities or pay for additional make ready work.

3 Even though Blue Ridge's personnel responded to Charter's informal telephone  
4 and e-mail requests for make-ready work, rather than require it to submit formal  
5 applications, they did not release Charter from its obligation to make its  
6 attachments in compliance with the NESC and parties' agreement. Yet, when  
7 Blue Ridge conducted a pole attachment inventory in 2015-16, it found 3,767  
8 safety violations among Charter's attachments, including numerous cases where  
9 Charter—or more specifically, its contractors—attached too close to Blue Ridge's  
10 facilities. (The results of the 2015-16 inventory are attached as Exhibit LL-11).  
11 Exhibit LL-12 is a map which shows the violations found among Charter's  
12 attachments during the audit. As this map shows, Charter has caused violations on  
13 virtually every portion of Blue Ridge's system where it has attached.

14 Further, Blue Ridge's expert witness in this case, Gregory Booth, P.E., has  
15 reviewed more than 2,000 poles on five electric distribution circuits where  
16 Charter has made attachments to Blue Ridge's system, and his findings suggest  
17 these violations are even more prevalent than the inventory suggests.

18 **Q. Do these clearance violations pose problems for Blue Ridge?**

19 **A.** Charter's clearance violations create safety concerns, since the NESC requires at  
20 least forty (40) inches clearance between Charter's attachments and Blue Ridge's  
21 facilities to protect Charter's workers from potential electrocution. It also poses a  
22 risk to the public, since, without proper clearance, Charter's cables could come

1 into contact with energized electrical facilities and carry current to someone who  
2 comes into contact with Charter's service drops or even equipment in their home.  
3 In addition to safety concerns, clearance issues also create an operational problem  
4 because they prevent Blue Ridge from adding electrical facilities and making full  
5 use of its poles, which are a capital asset for which Blue Ridge has already paid.  
6 For instance, if Blue Ridge needs to add a transformer to provide electrical service  
7 to one of its member's homes, it now must ask Charter to relocate its facilities or  
8 pay for additional make ready work that should have been performed when  
9 Charter first made its attachment, because Charter has failed to honor the seventy-  
10 two (72) inch reservation of space required by the agreement. Worse still, now  
11 that it is under common management with Time Warner, Charter has taken the  
12 position, at least as part of this proceeding, that it should not have to pay to  
13 relocate its attachments or to install a taller pole if it attached first.  
14 The delay and expense of remedying these safety violations, as well as having to  
15 deal with thousands of non-compliant attachments, is yet another example of why  
16 Blue Ridge believes the parties need to follow the application and permit process  
17 in the parties' pole attachment agreement.

18 **Q. Did Blue Ridge's personnel ever try to do anything to facilitate coordination**  
19 **with Charter and communicate its expectations regarding clearance**  
20 **requirements?**

21 **A.** Yes. First of all, Blue Ridge's design specifications were set forth in the 2003  
22 and 2008 agreements, and the NESC requires Charter to provide certain minimum

1 clearances between its attachments and any electrical facilities, whether or not it  
2 is required by the agreement.

3 Still, Blue Ridge's personnel tried to make sure Charter's personnel were aware  
4 of the design specifications. In 2006, Blue Ridge's personnel provided training  
5 for all of its attachers, including Charter, regarding the requirements for  
6 attachments to Blue Ridge's system. A copy of the training manual Blue Ridge's  
7 personnel provided in this meeting is attached as Exhibit LL-13. Charter's  
8 construction coordinators attended this meeting. However, it is apparent now that  
9 Charter's personnel either did not follow these guidelines or failed to  
10 communicate them to Charter's contractors, who perform all of the construction  
11 work on Charter's attachments.

12 **Q. Do you believe that formal adherence to a permitting process will alleviate**  
13 **these concerns?**

14 A. No system is perfect, nor can Blue Ridge be expected to police all of Charter's  
15 work to ensure it complies with the NESC and the parties design specifications—  
16 that is Charter's responsibility. Still, requiring Charter to provide advance notice  
17 and construction plans for its proposed attachments through the permit and  
18 application process will help prevent these issues and will also help prevent  
19 disputes over responsibility for unauthorized and non-compliant attachments.

20 **VI. BLUE RIDGE'S 2015-16 POLE ATTACHMENT INVENTORY**

21 **Q. You mentioned a system-wide pole attachment inventory earlier, when did**  
22 **Blue Ridge conduct that pole attachment inventory?**

1 A. Blue Ridge engaged an outside contractor, UtilitiesChoice, to conduct a system-  
2 wide pole attachment inventory in 2015, which was concluded in 2016.

3 **Q. Did Blue Ridge give Charter an opportunity to participate in this inventory?**

4 A. Yes we did. In the course of negotiating a new pole attachment agreement, Brad  
5 Shields informed Michael Mullins in September 2015 that Blue Ridge was  
6 conducting an inventory, that it was approaching areas that included Charter's  
7 attachments, and asked if Charter wanted to send someone to participate. (See  
8 Exhibit LL-14, E-mail from Brad Shields to Michael Mullins, dated September  
9 09, 2015.) Charter responded that it did not have personnel or time to participate.

10 **Q. What did the inventory show?**

11 A. As stated above, the inventory found that Charter had 27,674 attachments on Blue  
12 Ridge's system, which represents a net of 1,373 additional, unauthorized  
13 attachments over the 26,301 shown by the existing count. (See Exhibit LL-10). In  
14 addition, the inventory revealed approximately 3,767 violations among Charter's  
15 attachments. (See Exhibit LL-11).

16 **Q. What did Blue Ridge do regarding the unauthorized attachments found as**  
17 **part of the inventory?**

18 A. Blue Ridge submitted an invoice for the unauthorized attachments to Charter,  
19 back-billing it five years' of attachment fees for those attachments, which is the  
20 length of time since the parties' last pole inventory. (See Exhibit LL-10.)  
21 Although section 10.1 of the 2008 agreement authorized Blue Ridge to charge an  
22 Unauthorized Attachment Discovery fee of \$150 per attachment, and section 10.2  
23 authorized Blue Ridge to charge an Unauthorized Attachment Daily Fee of \$5.00

1 per attachment, per day, if Charter failed to submit a permit for unauthorized  
2 attachments once they are discovered or show that they have been permitted, Blue  
3 Ridge charged Charter only the back-rent, in keeping with historical practice of  
4 the parties.

5 **Q. Did Charter pay the back-billed fees for the 1,373 unauthorized attachments**  
6 **discovered as part of the inventory?**

7 A. Yes. Charter paid the amount for the back-billed attachment fees for these  
8 unauthorized attachments, without protest.

9 **Q. Has Charter ever disputed the results of the inventory?**

10 A. No it has not.

11 **Q. What did the inventory find regarding violations among Charter's**  
12 **attachments?**

13 A. As part of the inventory, UtilitiesChoice noted instances where attachers failed to  
14 provide proper ground clearance, failed to provide proper separation from Blue  
15 Ridge's electrical facilities as required by the NESC, or made improper mid-span  
16 attachments. The inventory found at least 3,767 violations among Charter's  
17 attachments

18 **Q. What did Blue Ridge do about the violations identified in the inventory?**

19 A. Blue Ridge submitted notices of the 3,767 violations identified during the  
20 inventory to Charter through the National Joint Use Notification System (NJUNS)  
21 in August of this year. NJUNS is a national system used by pole owners and  
22 attachers to notify one another of transfer requests and safety violations, and the  
23 2008 agreement provides that [BEGIN CONFIDENTIAL] [REDACTED]



1 [REDACTED] [END  
2 CONFIDENTIAL] Blue Ridge also provided a memorandum to Charter when it  
3 submitted tickets in the NJUNS system for these violations, offering to work with  
4 Charter in approving a plan to remedy the violations, including granting  
5 reasonable extensions of the deadlines under the parties' pole attachment  
6 agreement. (See Exhibit LL-16, Memorandum to Charter Communications, dated  
7 August 25, 2017.)

8 **Q. Did Blue Ridge ask Charter to correct these violations in an effort to punish**  
9 **Charter or gain leverage in this proceeding?**

10 A. No. While I understand Charter has made that accusation, it is simply false. Blue  
11 Ridge notified Charter of the violations because they need to be fixed. We have  
12 not asserted any claim against Charter arising from those violations, and we have  
13 not made them part of this litigation. Indeed, as I just said, we have offered to  
14 work with Charter to review its proposed plan to respond to these violations and  
15 remedy them. Charter's accusation is just another example of how its approach  
16 to pole attachments has changed since its merger with Time Warner Cable. We  
17 do not view these violations as part of a "game" or as a "bargaining chip," and I  
18 am disappointed that Charter would view them this way. These violations need to  
19 be fixed, and we intend to work with Charter cooperatively to see that they are.

20 **VII. BLUE RIDGE'S CONCERNS REGARDING CHARTER'S**  
21 **ATTACHMENTS**

22 **Q. We discussed permitting earlier, but can you explain more about how Blue**  
23 **Ridge intends to approach its relationship with Charter going forward?**

50

1 A. The permit and application process is a good example of how we intend to  
2 approach Blue Ridge's relationship with Charter going forward. While Blue  
3 Ridge has dealt with Charter on an informal basis in the past, it is clear for all the  
4 reasons explained above that we need to adhere to the terms and conditions the  
5 parties agreed to follow in their pole attachment agreements. This will help avoid  
6 potential disputes in the future. It will also help ensure Charter's attachments do  
7 not create a drain on Blue Ridge's resources or impede Blue Ridge in the delivery  
8 of safe and reliable power to its members.

9 Therefore, going forward, we intend to follow the procedures in the parties' pole  
10 attachment agreement, and insist that Charter do the same. At the same time, we  
11 are not asking Charter to do anything other than abide by the same terms and  
12 conditions we agreed to follow in the 2003 and 2008 pole attachment agreements.  
13 The terms and conditions we have proposed and are seeking to have the  
14 Commission approve are materially the same as in those agreements.

15 **Q. Do the terms and conditions Blue Ridge has asked the Commission to**  
16 **approve arise out of any particular concerns Blue Ridge has about Charter's**  
17 **attachments to its poles?**

18 A. Yes the terms and conditions are designed to address concerns we have about  
19 Charter's attachments to Blue Ridge's poles. Our concerns generally fall into two  
20 categories: (i) the workmanship of Charter and its contractors in making  
21 attachments, which often lead to safety issues, and (ii) the administrative burdens  
22 associated with Charter's attachments.

23 **A. WORKMANSHIP AND SAFETY ISSUES**

1   **Q.    You referred to Charter's workmanship in making pole attachments. Can**  
2       **you please explain what you mean?**

3   A.    Yes. In Blue Ridge's experience Charter uses contractors, who then hire  
4       subcontractors, to perform virtually all work on attachments to Blue Ridge's  
5       system. Charter and its contractors have often failed to make its attachments in a  
6       workmanlike manner or follow the requirements of NESC, other regulations, and  
7       Blue Ridge's design specifications when making attachments to Blue Ridge's  
8       poles. This creates safety hazards that endanger Blue Ridge's personnel,  
9       Charter's personnel, and the public. But even where there is no imminent safety  
10      concern, Charter's poor workmanship often causes problems for Blue Ridge.

11   **Q.    Would you explain how Charter's poor workmanship causes problems for**  
12       **Blue Ridge?**

13   A.    Charter's failures to follow applicable design specifications and the NESC create  
14       a number of problems for Blue Ridge, which are set out more fully in Mr. Booth's  
15       testimony. These include (i) damage to Blue Ridge's poles because Charter has  
16       failed to install proper guys and anchors to support its attachments; (ii) installation  
17       of excess or poorly placed additional equipment that create impediments for Blue  
18       Ridge personnel climbing poles or prevent vehicles, such as bucket trucks, from  
19       being able to access Blue Ridge's facilities; (iii) "clearance" violations, in which  
20       Charter's attachments are too close to Blue Ridge's electrical facilities, which  
21       creates a danger of electrocution for Charter personnel and prevents Blue Ridge  
22       from fully using its allocated electrical supply space.

1   **Q.    You also mentioned that Charter's poor workmanship causes safety hazards.**

2           **Would you explain what you mean?**

3   **A.**    There are several ways Charter's failures to follow the NESC and applicable  
4           design specifications cause safety hazards on Blue Ridge's system. First, when  
5           Charter's attaches its cables too close to Blue Ridge's facilities and does not leave  
6           adequate space for the Communication Workers' Safety Zone, as required by the  
7           NESC, it creates a danger of electrocution for Charter personnel and contractors.  
8           Second, when Charter fails to properly guy and anchor poles, it increases the risk  
9           that poles will fall, leaving downed lines. Third, when Charter leaves insufficient  
10          ground clearance for its lines, it creates a risk that trucks or other vehicles will hit  
11          the lines, which has happened in Blue Ridge's territory as well as elsewhere in  
12          North Carolina. Fourth, when Charter fails to properly bond its attachments it  
13          creates a danger of electrocution for personnel working with those facilities as  
14          well as members of the public. Fifth, Charter often leaves loose or excess  
15          unsecured cable in and around service drops, which presents a danger for  
16          members of the public who can become entangled or ensnared in the unsecured  
17          cable. These types of situations cause Blue Ridge serious concern. And of course,  
18          all of these issues create added obstacles and hazards for Blue Ridge's personnel,  
19          too.

20   **Q.    Why are these safety issues a concern for Blue Ridge?**

21   **A.**    Aside from anything else, we believe we have a responsibility to protect the  
22          public, not to mention our own personnel, and to try to ensure that any  
23          connections made to our system are done in a safe and workmanlike manner. As

1 a practical matter, when Charter's attachments create safety issues—either for line  
2 crews or members of the public—it exposes Blue Ridge to additional legal risk.  
3 Even if Charter is responsible for the safety violation, Blue Ridge may still be  
4 sued if personnel or members of the public are injured.

5 **Q. What evidence does Blue Ridge have of Charter's poor workmanship?**

6 A. In addition to my experience and the experience of Blue Ridge's personnel, as  
7 well as the 3,767 safety violations found as a result of the attachment inventory  
8 conducted in 2015-16, Blue Ridge's expert, Mr. Booth, has reviewed a significant  
9 portion of Blue Ridge's system to determine the prevalence of safety violations  
10 among Charter's attachments, and has attached photographs illustrating his  
11 findings to his testimony.

12 **Q. Why do you believe there are so many workmanship and safety issues with**  
13 **Charter's attachments?**

14 A. The problems with Charter's workmanship may be due, at least in part, to its  
15 heavy use of contractors and subcontractors. Charter performs virtually all of its  
16 work through contractors over whom Charter has limited control with respect to  
17 their training, capabilities, and quality.

18 Charter does not employ any professional engineers to review its attachments.  
19 Instead, Charter depends on its contractors to know and abide by the requirements  
20 of the NESC and Blue Ridge's design specifications. Charter also does not have  
21 a program to regularly inspect its attachments for safety violations, which means  
22 that it only corrects problems if its contractors catch them in the course of other  
23 work.

1 Q. Could you give some examples of the types of safety violations Blue Ridge has  
2 found among Charter's attachments?

3 A. Yes. I have attached several pictures showing violations that Blue Ridge and its  
4 personnel found during the system wide audit the conducted in 2015-16. These  
5 pictures were taken with special camera equipment that provides measurements  
6 concerning where the attachments are made.

7 Exhibit LL-16A shows extremely dangerous situations where *Charter has*  
8 *attached its cables in such a way that they are in contact with Blue Ridge's*  
9 *electric lines.* In the first picture, *Charter has slung its cable over Blue Ridge's*  
10 *secondary conductor.* In the second picture, Charter has run its cable through Blue  
11 Ridge's electric lines. These situations pose an immediate danger to the public.  
12 Charter's cable could become energized and electrocute a Charter customer in  
13 their home or someone who comes in contact with Charter's cables or service  
14 drop.

15 Exhibit LL-16B shows places where Charter has failed to provide proper ground  
16 clearance for its cables. In at least two cases, Charter has provided as little as 11  
17 feet of clearance over driveways, which could easily clip a trucks or other  
18 vehicles. In the last picture, Charter's cables are so low to the ground that Pete  
19 Berry, who performed the inventory on behalf of UtilitiesChoice, can grab them  
20 without reaching his arm above his head. There is simply no reason why Charter  
21 should have hung its cables so low that they come to eye level. In each of these  
22 cases, Charter should have either attached its facilities to higher on the pole or  
23 paid for make-ready work to install taller poles.

1 Exhibit LL-16C includes pictures showing instances where Charter has attached  
2 its cables far too close to Blue Ridge's electrical facilities and has failed to leave  
3 40-inches of separation required by the NESC to protect communications workers  
4 from electrocution. In several of these pictures, Charter has placed its attachment  
5 less than a foot from Blue Ridge's electrical facilities. In one case, shown in the  
6 first picture, Charter attached its cables directly under Blue Ridge's transformer.

7 Exhibit LL-16D includes several photos where Charter has failed to provide  
8 proper guys and anchors for poles, and thus failed to provide proper support for  
9 its attachments. The last two pictures show poles that have bowed and bent  
10 because Charter has failed to provide proper guying.

11 Exhibit LL-16E shows a situation where Charter has attached to a transmission  
12 (rather than distribution) pole, and placed power supplies on both sides of the  
13 pole, which is an NESC violation and blocks Blue Ridge's personnel from  
14 climbing the transmission pole.

15 **B. ADMINISTRATIVE BURDENS**

16 **Q. You said Blue Ridge is concerned about the administrative burden of**  
17 **Charter's attachments. Would you please explain what you mean by that?**

18 A. Yes. Having Charter attached to Blue Ridge's poles, even in the best of  
19 circumstances, creates administrative burdens, which are only compounded when  
20 Charter fails to follow the terms and conditions of the parties' pole attachment  
21 agreement and applicable design specifications. These include:

22 (i) the burden and cost of administering Charter's attachment agreement,  
23 including processing, reviewing, and tracking Charter's permits and applications

1 for new attachments, as well as conducting engineering to design higher poles and  
2 relocate Blue Ridge's electrical facilities when Charter requires "make ready"  
3 work to accommodate its attachments;

4 (ii) "field" issues with Charter's attachments, such as (a) the cost of  
5 inspecting Charter's attachments; (b) conducting field inspections to verify  
6 Charter's permit requests and verifying Charter's compliance with design  
7 requirements after completion, (c) coordinating and resolving requests to transfer  
8 Charter's facilities, (d) delay and repeated mobilization costs when Charter fails  
9 to transfer its facilities, or fails to do so timely, as required by the parties'  
10 agreement, (e) identifying and remedying safety violations;

11 (iii) the burden and cost of having to conduct pole attachment inventories  
12 and safety inspections to determine and verify the number and types of  
13 attachments Charter has made to Blue Ridge's system; and

14 (v) legal exposure to Blue Ridge that may result from Charter's operations  
15 on Blue Ridge's facilities, or from injuries to the public as a result of Charter's  
16 attachments to Blue Ridge's poles.

17 **Q. Do the categories of burdens and costs you just identified correspond with**  
18 **those Mr. Booth identified in his testimony?**

19 **A.** Yes. Mr. Booth's testimony is based, in part, on his review of the many issues  
20 Blue Ridge has had with Charter over the years.

21 **Q. Do you believe Mr. Booth accurately identifies the administrative burdens**  
22 **and costs of Charter's attachments in his testimony?**



1 A. Yes. While it is impossible to anticipate every scenario and identify all of the  
2 additional costs Blue Ridge incurs because of Charter's attachments, I believe Mr.  
3 Booth has accurately identified the primary additional burdens and costs that Blue  
4 Ridge incurs as a result of Charter's attachments.

5 **Q. You mentioned administrative burden and delays when Charter fails to**  
6 **timely respond to requests to relocate its attachments. Why would Blue**  
7 **Ridge ask Charter to relocate its attachments?**

8 A. There are several reasons we may have to ask Charter to relocate its attachments.  
9 For example, if we are replacing existing poles or moving a pole line, we ask  
10 Charter to move its facilities to the new poles so we can remove the old ones. In  
11 addition, if we need to attach additional electrical facilities to a pole, such as  
12 adding a transformer so we can connect electricity to a member's home, we may  
13 have to ask Charter to move its attachments down the pole if there is not enough  
14 room to maintain proper separation under the NESC. This especially may be the  
15 case if Charter failed to observe the seventy-two inch reservation of space  
16 requirement in the pole attachment agreement and Blue Ridge's specifications for  
17 attaching entities, and thus did not leave room for Blue Ridge to add facilities  
18 such as a transformer.

19 **Q. What does the 2008 pole attachment agreement require with respect to**  
20 **transfers?**

21 A. The 2008 agreement requires Charter [BEGIN CONFIDENTIAL] [REDACTED]  
22 [REDACTED]

1 [REDACTED]  
2 [REDACTED] [END CONFIDENTIAL]

3 **Q. What problems does it cause Blue Ridge if Charter does not respond to these**  
4 **requests, or does not do so in time?**

5 A. The primary problem is delay and re-mobilization costs. For instance, if we are  
6 replacing a pole or moving a pole line, we cannot remove the old pole or poles  
7 until Charter moves its facilities. Thus, if Charter fails to respond to the transfer  
8 request, the old pole remains in place, we cannot complete the work, and we may  
9 have to re-mobilize crews to complete the work when Charter finally transfers its  
10 attachments. Our customer service representatives and district personnel respond  
11 to numerous complaints from members regarding old poles that still remain next  
12 to new poles because Charter has failed to transfer its attachment. In addition, if  
13 we are trying to add a new transformer to hook up a new member, Charter's  
14 failure to respond may delay our ability to connect electricity to the members'  
15 home.

16 **Q. How often has Charter failed to respond to transfer requests?**

17 A. Charter's failure to timely respond to transfer requests is a persistent problem.  
18 Based on data pulled from the NJUNS system this summer in response to  
19 Charter's data requests, Charter had failed to respond to 139 currently outstanding  
20 transfer requests, for which it was the next to go, which represents 29.8% of all of  
21 the requests issued to Charter. A quarter (24.5%) of the 139 transfer requests  
22 Charter has failed to complete have been outstanding for more than three years.  
23 Fifty-nine percent have been outstanding between 3-6 months, even though the

1 2008 pole attachment agreement requires Charter to complete transfers in sixty  
2 (60) days.

3 **VIII. BLUE RIDGE'S PROPOSED TERMS AND CONDITIONS**

4 **Q. What does Blue Ridge believe should be done to address these concerns**  
5 **regarding Charter's attachments?**

6 **A.** Blue Ridge believes that any pole attachment agreement with Charter needs to  
7 include terms and conditions to address these concerns. The terms and conditions  
8 included in Mr. Arnett and Mr. Booth's testimony address at least the primary  
9 concerns Blue Ridge has regarding Charter's attachments to Blue Ridge's poles,  
10 and we believe the Commission should adopt those proposed terms and  
11 conditions.

12 **Q. Does Blue Ridge believe that the parties' prior pole attachment agreements**  
13 **from 2003 and 2008 address these concerns?**

14 **A.** Yes, we do. Blue Ridge originally proposed to Charter that the parties enter into  
15 an updated version of the 2008 agreement, and we believe that the terms Mr.  
16 Arnett and Mr. Booth have proposed are materially the same as those in the 2008  
17 agreement, which Charter has already accepted twice before.

18 **Q. Would you summarize the terms and conditions from the 2008 agreement**  
19 **that are in dispute and that Blue Ridge is asking the Commission to approve?**

20 **A.** Yes. Charter has indicated, either through negotiations or positions it has taken in  
21 this or other proceedings, that it will not agree to terms and conditions concerning  
22 the following issues, which we believe should be included in any pole attachment  
23 agreement between the parties going forward:

60

1 (a) Permits and Applications. Though the 2008 agreement required  
2 Charter [BEGIN CONFIDENTIAL] [REDACTED]  
3 [REDACTED] [END  
4 CONFIDENTIAL] Charter has insisted in negotiations for a new pole attachment  
5 agreement that it should only be required to submit applications for projects that  
6 involve ten or more attachments, and that it should only have to pay one permit  
7 fee no matter how many attachments are included in the application. Charter's  
8 proposal would allow it to make any number of attachments to Blue Ridge's  
9 poles, without giving Blue Ridge any notice or any opportunity to ensure Charter  
10 is making its attachments in compliance with the NESC and the parties'  
11 agreement. It also ignores the administrative and technical work required to  
12 review and respond to Charter's attachment applications, and would thus fail to  
13 adequately compensate Blue Ridge for the work required to process Charter's  
14 applications. Charter should be required to apply for a permit for each attachment  
15 and should pay an application fee for each such attachment, as a "go-along, get-  
16 along" process has proven inadequate to protect our system.

17 (b) Disputed Invoices. While we agree that Charter should have the right to  
18 dispute invoices under the parties' pole attachment agreement, Charter has  
19 insisted on provisions that would permit it to withhold payment on any disputed  
20 invoices until the dispute is resolved. Blue Ridge believes that this will create an  
21 incentive for Charter to dispute amounts owed to Blue Ridge and work less than  
22 efficiently to resolve disputes. Charter has already refused to pay Blue Ridge for  
23 two substantial make-ready projects this year, even though there is no dispute

1 over the amounts owed. If Charter could avoid its obligations merely by  
2 “disputing” an invoice, we expect that it will certainly abuse the process even  
3 further in an attempt to avoid legitimate charges that are not subject to any  
4 dispute. Charter should be required to pay invoices pending the resolution of any  
5 dispute, just as it was required to do under the 2008 agreement.

6 (c) Engineering Certification. Section 1.7 of the 2008 agreement required  
7 Charter [BEGIN CONFIDENTIAL] [REDACTED]

8 [REDACTED]

9 [REDACTED] [END CONFIDENTIAL] Charter, however, has refused in  
10 the parties current negotiations to agree to such a provision, and has instead  
11 proposed that it should be allowed to provide certification from an “authorized  
12 representative” and should not have to provide any certification with respect to  
13 attachments to secondary or “drop” poles that serve a single house. This is  
14 inappropriate. As explained in Mr. Booth’s testimony, State statutes require a  
15 person be licensed as a professional engineering license in order to certify  
16 compliance with the NESC and applicable design specifications. Charter cannot  
17 satisfy this requirement merely by providing certification from an “authorized  
18 representative,” who could be any employee of the company—especially given  
19 that Charter’s current employees are clearly are not complying with the NESC or  
20 Blue Ridge’s design specifications.

21 (d) Maintenance and Transfers. Under section 9.6 of the 2008 agreement,  
22 Charter agreed that [BEGIN CONFIDENTIAL] [REDACTED]

23 [REDACTED]

1 [REDACTED] [END  
2 CONFIDENTIAL] Charter, however, has refused to agree to this provision in the  
3 parties' current negotiations, and it has instead insisted it should not have to pay  
4 any additional fees or costs if it fails or refuses to transfer its attachments in the  
5 time required. This is insufficient to protect Blue Ridge's interests, as it would  
6 allow Charter to ignore transfer requests with impunity, as it is currently doing.

7 (e) Non-Compliant Attachments. Article 11 of the 2008 agreement required  
8 Charter [BEGIN CONFIDENTIAL] [REDACTED]

9 [REDACTED]  
10 [REDACTED] [END

11 CONFIDENTIAL] Yet, in the current negotiations, Charter has insisted that it  
12 should not have any deadline for responding to such notices. It also has insisted  
13 that it should not have to pay to correct non-compliant attachments unless Blue  
14 Ridge can prove Charter caused the violation, and that Blue Ridge should not  
15 have the right to revoke Charter's permit if it fails to correct the violation.  
16 Charter's proposal invites future disputes and would allow it to persist in its  
17 failure to correct safety violations and non-compliant attachments without any  
18 consequence. Blue Ridge must have a mechanism to require Charter to correct  
19 safety violations and other deficiencies in its attachments.

20 (f) Insurance. As in the 2008 agreement, Blue Ridge has asked that Charter agree  
21 [BEGIN CONFIDENTIAL] [REDACTED]

22 [REDACTED]  
23 [REDACTED] [END CONFIDENTIAL]

1 Charter, however, has refused and has instead insisted that it should only have to  
2 carry the amount of insurance required by its own internal policies. This is  
3 insufficient to protect Blue Ridge.

4 (g) Default Provisions. Again contrary to the provisions of the 2008 agreement,  
5 Charter has insisted that an event of default under the agreement should be limited  
6 to its failure to pay an undisputed invoice, and that Blue Ridge's rights upon  
7 default should be limited to (i) revoking Charter's permit for the attachment at  
8 issue; (ii) terminating the agreement; or (iii) performing any work Charter failed  
9 to perform. These provisions provide an incentive for Charter not to perform its  
10 obligations and shift the risk of default entirely onto Blue Ridge. Blue Ridge  
11 should be entitled to charge Charter for the cost of performing work Charter fails  
12 to perform under the contract and should be allowed to withhold further the  
13 performance of make-ready work until Charter cures any failure to perform under  
14 the agreement.

15 (h) Right to Withhold Consent. [BEGIN CONFIDENTIAL] [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED] [END CONFIDENTIAL]

19 (i) Confidentiality. Just as the 2008 agreement provided, the parties' agreement  
20 should provide that they keep the terms, conditions, and amounts paid under the  
21 agreement confidential.

22 (j) Indemnity. Charter has insisted that any indemnification requirement  
23 must be "reciprocal." However, Charter—not Blue Ridge—should bear all risks

1 associated with Charter's attachments. This includes an obligation that Charter  
2 defend and indemnify Blue Ridge for all existing attachments Charter has made to  
3 Blue Ridge's system that violate the NESC, the terms of the parties' agreements,  
4 or any other applicable design and safety standards. This is especially important  
5 given the widespread safety violations Blue Ridge has discovered among  
6 Charter's existing attachments, including attachments made outside of the space  
7 allocated to Charter.

8 (k) Reservation of Space. To enable Blue Ridge to accommodate future  
9 electrical facilities and make full use of the space allocated to it, any pole  
10 attachment agreement must include a provision specifying that all attachments  
11 made after the date of the agreement shall have at least 72 inches vertical  
12 clearance under Blue Ridge's grounded neutral. Though Charter agreed to similar  
13 provisions in the 2003 and 2008 agreements, and did not object when Blue Ridge  
14 proposed such a provision in the course of the parties' negotiations, its lead  
15 negotiator, Nestor Martin, has now asserted that cooperatives should not be  
16 allowed to reserve space on its poles. Blue Ridge, however, owns its poles and  
17 should be permitted to reserve space for its facilities, just as it has done in the  
18 past.

19 (l) Recovery of Space. Once again, though it agreed to provisions allowing  
20 Blue Ridge to recover space on its poles in the 2003 and 2008 agreements, and  
21 did not object to such a provision in the course of negotiations, Charter has now  
22 indicated that it will not agree to a provision that entitles Blue Ridge to require  
23 Charter to remove or rearrange its facilities, at Charter's expense, in the event



1 Blue Ridge seeks to add additional electrical facilities and there is insufficient  
2 space on the pole due to Charter's attachments.

3 (m) Overlashing. "Overlashing" is a method Charter uses to add aerial  
4 facilities by running a new cable (or cables) over an existing cable and then  
5 lashing the cables together, in effect using the existing cable as a way to support  
6 and string the new cable. Because it adds additional cables to Charter's existing  
7 attachments, overlashing can affect wind and ice loads on poles and add structural  
8 load to Blue Ridge's poles. In addition, overlashing necessarily involves work by  
9 Charter (or its contractors) on Blue Ridge's system. Just as the 2008 agreement  
10 required, [BEGIN CONFIDENTIAL] [REDACTED]

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED] [END  
14 CONFIDENTIAL]

15 (n) Unauthorized Attachment Fee. Though it was required under the 2003  
16 and 2008 agreements, Charter has now refused to agree to any provision that  
17 would require it to pay an unauthorized attachment fee in addition to back rent for  
18 unauthorized attachments. Instead, Charter proposes that it should only pay the  
19 rent *it should have paid in the first place* if Blue Ridge discovers it has made  
20 unauthorized attachments creates a perverse set of incentives. Charter's proposal  
21 would allow it to continue making unauthorized attachments to Blue Ridge's  
22 system—as it has done for years—without any consequence. Charter has  
23 conceded in this proceeding that it regularly makes unauthorized attachments,

1 because it does not give notice of its attachments to secondary poles, and that it  
2 has no process to do so. Under Charter's proposal, it would actually be to  
3 Charter's advantage to make unauthorized attachments, and then pay the rent  
4 should have otherwise paid only if its attachments are discovered. Charter's  
5 proposal is improper, denies Blue Ridge the time value of money from attachment  
6 fees, and ignores the time and expense Blue Ridge must incur to monitor the more  
7 than 100,000 poles on its system to catch Charter's attachments.

8 **Q. Do you believe the terms and conditions you listed above are just and**  
9 **reasonable?**

10 A. Yes. Charter has agreed to these terms and conditions at least twice—in both the  
11 2003 agreement and the 2008 agreement—following arms-length negotiations. Charter  
12 has no basis to claim that these terms and conditions are somehow now unjust or  
13 unreasonable.

14 **IX. CONCLUSION**

15 **Q. In conclusion, what is Blue Ridge asking the Commission to do in this**  
16 **proceedings?**

17 A. We are asking the Commission to approve Blue Ridge's use of the TVA rate  
18 methodology for Charter's attachments to Blue Ridge's electric distribution poles, as Mr.  
19 Arnett has proposed, and to approve the terms and conditions Blue Ridge has proposed  
20 for a pole attachment agreement with Charter, as set forth above and Mr. Arnett and Mr.  
21 Booth's testimony.

22 **Q. Does this conclude your testimony?**

1 A. Yes.

1 (Whereupon, Exhibits LL 1-16  
2 identified as premarked.)

3 CHAIRMAN FINLEY: I do note, according to my  
4 records here, that there is some confidential information  
5 in some of those exhibits.

6 MS. HARDEN: Yes, there is.

7 CHAIRMAN FINLEY: And so we've -- I think I've  
8 identified one person in the hearing room that probably  
9 has not signed a Confidentiality Agreement, and so when  
10 counsel come to the place where they need to ask  
11 questions on confidential information, I'd wish you'd let  
12 me know so we can preserve the confidentiality of those  
13 records.

14 MS. HARDEN: Yes, Chairman Finley. We had  
15 planned only to raise confidentiality for the person  
16 doing it if there were a person in the room that were not  
17 subject or that we were not willing to waive with respect  
18 to.

19 CHAIRMAN FINLEY: All right. Just be mindful  
20 of it, if you don't mind. And we will copy into the  
21 record as though given orally from the stand Mr. Layton's  
22 rebuttal testimony consisting of 30 pages, and his  
23 Exhibits 17 through 25 are marked for identification as  
24 premarked in the filing.

1 (Whereupon, the prefiled rebuttal  
2 testimony of Lee Layton was copied  
3 into the record as if given orally  
4 from the stand.)

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**DIRECT TESTIMONY  
OF  
LEE LAYTON, P.E.**

**Q. State your name.**

**A.** My name is Lee Layton.

**Q. Have you previously submitted testimony in this proceeding?**

**A.** Yes. I submitted pre-filed direct testimony in this matter on October 16, 2017, on behalf of Blue Ridge Electric Membership Corporation ("Blue Ridge.")

**Q. What is the purpose of your rebuttal testimony?**

**A.** I would like to respond to assertions made in the testimony submitted by Charter Communications Properties, LLC ("Charter") in this matter. In particular, I want to respond to the testimony Michael Mullins, Patricia Kravtin, and Nestor Martin submitted in this matter on October 30, 2017.

**I. CHARTER'S POLE ATTACHMENT AGREEMENTS WITH BLUE RIDGE**

**Q.** In his testimony, Mr. Mullins argues the Commission should not look to Charter's 2003 and 2008 pole attachment agreements with Blue Ridge to determine just and reasonable terms and conditions, because Charter had "no leverage" in negotiating those agreements and "was essentially stuck with whatever terms Blue Ridge decided to impose." Is that correct?

**A.** Absolutely not. Charter had a full opportunity to negotiate those agreements. Indeed, other joint users and attachers, such as SkyLine Membership Corporation, negotiated rates and terms under their agreements with Blue Ridge. However,

1 Blue Ridge does not have any record that Charter ever asked to change the  
2 language of those agreements. Instead, Charter focused its negotiations solely on  
3 the rate and accepted the terms and conditions of those agreements without ever  
4 asking for any substantial changes.

5 **Q. Did Charter ever object to the requirements of the 2003 or the 2008**  
6 **agreements or ask Blue Ridge to change them?**

7 A. No. Charter never raised any issue with the terms of the 2003 or 2008 agreements  
8 until May 2015, when, after a year, it finally responded to Blue Ridge's proposal  
9 to enter a new pole attachment agreement with substantially the same terms as the  
10 two prior agreements. Until then, we understood that Charter found the terms of  
11 those agreements acceptable—especially given that Charter had already accepted  
12 those terms twice before without requesting any substantive changes.

13 **Q. Mr. Mullins says the 2003 and 2008 agreements "single out" Charter for**  
14 **different treatment. Is that true?**

15 A. No. Blue Ridge's agreements with Charter are generally consistent with the  
16 agreements Blue Ridge has with other *third-party attachers*.

17 In his testimony, Mr. Mullins spends most of his time comparing Charter's  
18 pole attachment agreement to the agreements Blue Ridge has with joint users,  
19 particularly telephone companies, such as AT&T, Century Link, Skyline  
20 Membership Corp. (a telephone cooperative), and Wilkes Telephone Membership  
21 Corporation (another telephone cooperative). However, joint use agreements  
22 involve arrangements between two pole owners to use one another's poles. They  
23 therefore are fundamentally different from agreements with third-party attachers.

1 Mr. Mullins also misunderstands Blue Ridge's agreements and dealings  
2 with its joint users and other third-party attachers. For instance, he claims that  
3 Blue Ridge does not reserve at least 72 inches of space for Blue Ridge's electrical  
4 facilities with all its joint users and attachers. In doing so, he fails to understand  
5 that, by the very nature of their agreements, Blue Ridge and its joint users have  
6 already planned the allocation and spacing of their respective attachments on the  
7 pole. He also fails to mention that Blue Ridge's staking engineers have provided  
8 specifications to all of its other third-party attachers that incorporate this 72 inch  
9 reservation of space.

10 Finally, Mr. Mullins forgets that these contracts were the result of  
11 individual negotiations between the parties, based on specific circumstances  
12 related to each joint user and attacher, and that many are decades old. For  
13 instance, Blue Ridge's joint use agreements with AT&T and Wilkes Telephone,  
14 and its pole attachment agreement with ACTV (which has only 1,868  
15 attachments), were all signed in 1996. While Blue Ridge's joint use and pole  
16 attachments contracts have varied over time, Blue Ridge's agreement with  
17 Charter represents the "form agreement" Blue Ridge has used and intends to use  
18 with third-party attachers going forward.

19 Indeed, although Mr. Mullins attached a number of other contracts to his  
20 testimony, he did not attach Blue Ridge's agreement with Morris Broadband,  
21 which is the most recent agreement Blue Ridge has with a third party attacher. *It*  
22 *is also the only pole attachment agreement—with either a joint user or third-*  
23 *party attacher—that Blue Ridge has entered since the enactment of N.C.G.S.*



1       § 62-350 in 2009. That agreement was signed on November 29, 2016, and *uses*  
2       *the same form as Blue Ridge's agreements with Charter.* (A copy of Blue  
3       Ridge's 2016 pole Attachment License Agreement with Morris Broadband is  
4       attached as Exhibit LL-17.) Among Blue Ridge's third-party attachers, Morris  
5       Broadband has the second highest number of attachments to Blue Ridge's system,  
6       next to Charter. (Morris Broadband has 5,289 attachments; Charter has 27,676).  
7       Blue Ridge's recent agreement with Morris Broadband therefore provides a much  
8       better comparison than the agreements Mr. Mullins cites—*indeed it is the only*  
9       *agreement Blue Ridge has entered since the enactment of N.C.G.S. § 62-350.*

10    **Q.     Why are agreements with joint users different than agreements with third-**  
11       **party attachers?**

12    A.     Joint use agreements involve a fundamentally different transaction than  
13       agreements with third-party attachers. Under a joint use agreement, both parties  
14       own poles and agree to allow one another to attach their facilities to one another's  
15       poles. They typically also agree to "net out" the poles to which one another are  
16       attached, and then only pay pole attachment fees for the difference. Because both  
17       parties own and install poles, joint use agreements typically include an agreement  
18       that both parties will install poles of a standard height and class, which is  
19       engineered in advance to accommodate their standard attachments without any  
20       further "make ready" work. Charter, however, does not contribute any poles for  
21       Blue Ridge's use. (Indeed, Charter revealed in deposition that it owns only *one*  
22       *pole* in Blue Ridge's territory.)

1 Joint use agreements also typically involve telephone companies. Cable  
2 companies, such as Charter, generally do not own poles, and therefore enter into  
3 pole attachment agreements. As a result, there are often other differences  
4 between joint use agreements and pole attachment agreements, since telephone  
5 companies typically attach at the lowest point on the pole, below any cable  
6 attachers.

7 **Q. Does the fact Blue Ridge has more attachments than its joint users, or even**  
8 **many more attachments than its joint users, change the basic structure of its**  
9 **joint use agreements?**

10 A. No. Joint use agreements are fundamentally different from pole attachment  
11 agreements no matter how many attachments each party makes. Whatever the  
12 numbers, a joint use agreement still involves an agreement between two pole  
13 owners to use one another's poles. A pole attachment agreement, however,  
14 involves only a lease of poles to a third party. The parties are not "trading" any  
15 poles or resources, and so the terms and conditions, including the parties'  
16 responsibility for "make-ready" work, are necessarily different. For instance, we  
17 conduct engineering work with joint users to determine the standard height and  
18 class of pole that will be necessary to accommodate both of our typical  
19 attachments, and then agree to install poles that meet those specifications.  
20 However, our agreements with third-party attachers, like Charter, do not include  
21 these provisions, since Charter does not own any poles and is not contributing any  
22 resources to Blue Ridge, but instead only leases space on the poles to which it  
23 chooses to attach.

1 Q. Do joint users differ in any other respect that affects the terms of their  
2 agreements with Blue Ridge?

3 A. Yes. Since joint users own and maintain poles, they typically employ professional  
4 engineers to design and review their attachments and they employ personnel to  
5 conduct safety inspections and maintain their poles. Charter does not employ any  
6 professional engineers and does not do anything to contribute to the maintenance  
7 on poles where it is attached, other than its payment of the annual rental rate.

8 Q. In his testimony, Mr. Mullins often discusses SkyLine and SkyBest as if they  
9 were the same attacher. Is it right to treat them as the same attacher?

10 A. SkyLine and SkyBest should not be treated as one attacher. Skyline is a  
11 telephone cooperative that serves rural members in Ashe, Allegheny, and  
12 Watagua counties. SkyBest is a separate, subsidiary company that provides cable  
13 and internet services. Blue Ridge has separate agreements with each company:  
14 We have a joint use agreement with SkyLine and a pole attachment agreement  
15 with SkyBest.

16 Q. Comparing terms and conditions, does Blue Ridge require other attachers to  
17 reserve 72 inches below the lowest neutral conductor for Blue Ridge's future  
18 build out?

19 A. Yes. This is an example of how Mr. Mullins misreads our contracts with other  
20 joint users and third-party attachers. We require all joint users and attachers to  
21 provide at least 72 inches of clearance between their attachments and the lowest  
22 effectively grounded neutral on our facilities. All of Blue Ridge's agreements  
23 require attachers to comply with Blue Ridge's specifications. We have provided

1 Joint Use Attachment Specifications to all attachers on our system—both joint  
2 users and third-party attachers—that include this 72 inch requirement. (See  
3 Exhibit LL-13).

4 Indeed, as I explained in my direct testimony, Blue Ridge's staking  
5 engineers even held a training for all of the attachers on Blue Ridge's system in  
6 2006, in which they provided copies of these specifications and went over them  
7 with the attachers' personnel. At least two of Charter's construction coordinators  
8 attended that training. They agreed then that the 72 inch requirement was a good  
9 idea, since it makes it less likely Blue Ridge will have to ask Charter to lower its  
10 attachments if Blue Ridge adds a transformer or other electric facilities in the  
11 future.

12 **Q. Do Blue Ridge's agreements require other third-party attachers to pay fees**  
13 **for unauthorized attachments, in addition to back rent?**

14 A. Yes. While some of our agreements differ and are dated, Blue Ridge's contract  
15 with // BEGIN CONFIDENTIAL // [REDACTED]

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED] // END CONFIDENTIAL //

1 Q. Why is Blue Ridge not renegotiating all of its pole attachments agreements  
2 with third-party attachers at once?

3 A. We simply do not have the resources to renegotiate every agreement with every  
4 third-party attacher at one time. There are several reasons we are focusing on  
5 renegotiating Charter's pole attachment agreement now.

6 First, Charter, by far, has the most attachments of any third-party attacher  
7 on our system. According to the 2015-16 Inventory, Charter has 27,676  
8 attachments on Blue Ridge's system. The other third-party attachers have  
9 significantly fewer attachments. Morris Broadband has 5,289 attachments. ACTV  
10 has 1,868 attachments. SkyBest, only has 1,394 attachments. Charter also has  
11 many more attachments than most of our joint users. AT&T has 15,976  
12 attachments; CenturyLink has 3,453 attachments; and Wilkes telephone only has  
13 959 attachments. While SkyLine, a joint user, has almost as many attachments as  
14 Charter (27,091), it is moving its system underground and is in the process of  
15 removing attachments from Blue Ridge's system.

16 We already entered an agreement with Morris Broadband, the next largest  
17 third-party attacher, based on our desired form. This makes Charter our largest  
18 priority based on number of attachments to our system.

19 Second, many of our agreements with other attachers either have  
20 automatic renewal clauses or provisions that automatically increase the pole  
21 attachment rate on an annual basis in accordance with the consumer price index or  
22 other metrics to account for inflation. Blue Ridge's 2008 agreement, however,  
23 does not have a continuous automatic renewal provision. While Blue Ridge and

1 Charter have continued to operate under that agreement, it is important to Blue  
2 Ridge that we have a written, executed agreement with our largest attacher.

3 Finally, Charter's recent merger with Time Warner Cable has caused us  
4 concern. We are aware of Time Warner's disputes with other cooperatives in  
5 North Carolina, and we know that the Time Warner personnel responsible for  
6 negotiating and administering pole attachment agreements with electric  
7 companies, are now responsible for administering Blue Ridge's agreements with  
8 Charter as well. We think this is part of the reason Charter refused to accept the  
9 terms and conditions it agreed to in the 2003 and 2008 Agreements, many of  
10 which are standard industry terms, and it has refused to date to even offer a  
11 proposed rate in negotiations.

12 **Q. Does Blue Ridge intend to renegotiate its pole attachment agreements in the**  
13 **future?**

14 A. Yes. While we are not currently renegotiating our agreements with third-party  
15 attachers, we intend use the form agreement we have used with Charter and  
16 Morris Broadband with all our third-party attachers going forward, assuming that  
17 form is approved by the Commission. We intend to implement this form as our  
18 agreements with the attachers are renegotiated.

19 **Q. You said that Blue Ridge's 2016 agreement with Morris Broadband is its**  
20 **most recent pole attachment agreement with a third-party attacher and the**  
21 **only one entered after the enactment of N.C.G.S. § 62-350. What rate did**  
22 **Morris Broadband agree to pay in that agreement?**

1 A. Morris Broadband has agreed to pay a monthly pole attachment fee of //BEGIN  
2 CONFIDENTIAL// [REDACTED]  
3 [REDACTED] //END CONFIDENTIAL // Morris  
4 Broadband agreed to pay this rate without the need for proceedings before the  
5 Commission, which, as you might expect, involves significant attorneys' fees and  
6 expenses. We therefore determined this rate was appropriate given that we could  
7 avoid the costs of litigation.

8 **Q. Mr. Mullins compares to the pole attachment rates Blue Ridge charges other**  
9 **joint users and third-party attachers to those Charter pays. Does he state**  
10 **those rates correctly?**

11 A. No. Many of the agreements stated initial rates that increased over time and have  
12 been increased in order to reflect inflation, so the agreements themselves do not  
13 reflect the current rate. According to Blue Ridge's billing records, the rates Blue  
14 Ridge charged joint users and third-party attachers for attachments to distribution  
15 poles on its system, as of 2016, are as follows: // BEGIN CONFIDENTIAL//

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

1 // END CONFIDENTIAL //

2 **Q. Does Blue Ridge intend to apply the TVA rate formula in determining pole**  
3 **attachment rates for third-party attachers going forward?**

4 A. Yes. We do. Assuming it is approved, we intend to use the TVA formula to  
5 calculate pole attachment rates with all of our third-party attachers going forward,  
6 and to bring those rates in-line with the TVA formula as our agreements are  
7 renegotiated.

8 **II. BLUE RIDGE'S FINANCIAL STRUCTURE**

9 **Q. Have you reviewed the testimony of Charter's expert, Ms. Kravtyn in which**  
10 **she states that "BREMC has access to a substantial amount of retained**  
11 **earnings in the form of patronage capital"?**

12 A. Yes.

13 **Q. Do you agree with that statement?**

14 A. No. Blue Ridge's retained earnings are actually the "Members' Equity" in the  
15 cooperative. This is the accumulation of the profits or margins that have been  
16 allocated annually to specific member's accounts, and used as working capital to  
17 operate and invest in the infrastructure of the cooperative. The members' Equity  
18 is not, as Ms. Kravtyn suggests, a cash balance that Blue Ridge can simply tap at  
19 will. Any amount paid by Blue Ridge to Charter for claimed overcharges will  
20 reduce the margins of the cooperative and cause a higher cost of electricity to the  
21 members.

22 **III. USE OF SPACE ON BLUE RIDGE'S POLES**



1 Q. Both Mr. Mullins and Ms. Kravtin claim that Charter only attaches to  
2 "excess" space on Blue Ridge's poles. Is that true?

3 A. Absolutely not. Blue Ridge does not have "excess" space on its poles. We design  
4 our poles to accommodate our electrical facilities and meet our members' needs;  
5 we do not install "excess" space on our poles for other attachers' use.

6 Ms. Kravtin and Mr. Mullins suggest that if Blue Ridge is not "actively  
7 using" space on its poles at the time Charter makes an attachment, then the space  
8 Charter uses is "excess" or "surplus." That is wrong. Just because we have not  
9 installed a transformer or additional lines on our pole does not mean that we will  
10 not do so, or do not intend to do so, in the future. Our poles are significant capital  
11 assets, designed to last decades. We should not have to install all facilities on the  
12 pole at one time. Instead, we should be allowed to install additional equipment,  
13 such as transformers, as they are needed over the entire life of the pole.

14 Further, Ms. Kravtin claims in her testimony that electric companies often  
15 install taller poles, knowing that a cable company or communications attacher will  
16 seek to attach their facilities at a later date. Other electric companies may do so,  
17 but we generally do not (unless it is part of a joint use agreement). Indeed, Blue  
18 Ridge's average pole height is 36.8 feet, which is shorter than the 37.5 feet  
19 assumed under the FCC and TVA rate formulas. Moreover, even if a pole has  
20 enough room to accommodate Charter's attachments without additional make-  
21 ready, that does mean the space Charter occupies is "excess" space. It is space  
22 Blue Ridge has to provide to accommodate Charter's attachment or could use if  
23 Charter were not on the pole.

1    **Q.    Does Blue Ridge install streetlights in the Communications Worker Safety**  
2       **Zone?**

3    A.    Blue Ridge does not install streetlights in the Communications Worker Safety  
4       Zone as a matter of practice. While there may be some isolated cases where a  
5       streetlight has been installed in the Communications Worker Safety Zone our  
6       practice is not to install streetlights in that space, but instead to install streetlights  
7       in the electric supply space. Based on my experience, the overwhelming majority  
8       of poles on our system do not have streetlights at all, and the streetlights that are  
9       installed on our poles almost always are installed in the electric supply space.

10   **Q.    Does Blue Ridge install fiber-optic cable in the communications worker**  
11       **safety zone or the communications space?**

12   A.    No. Within its service territory, Blue Ridge installs fiber-optic cable in the  
13       electric supply space, and virtually all of Blue Ridge's fiber cables are installed on  
14       the system is attached in this space. The 2015-16 inventory only identified two  
15       instances in which Blue Ridge attached its fiber-optic cables below the electric  
16       space.

17       Indeed, the fiber cables Blue Ridge has installed on its distribution poles  
18       are all-dielectric self-supporting ("ADSS") cables. These cables are designed to  
19       be installed in the electric supply space. They have no conductive materials and  
20       use Kevlar® instead of steel strands for support. ADSS cables are therefore much  
21       more expensive than typical fiber cables installed in the communications space.  
22       Blue Ridge would not have paid for these cables if it intended to install them  
23       anywhere other than in the electric supply space.

1 Q. Why does Blue Ridge attach fiber optic cables to its poles?

2 A. Blue Ridge uses fiber-optic cables to control and monitor its distribution and  
3 transmission facilities. The wide-spread and mountainous terrain in Blue Ridge's  
4 service territory limits the effectiveness of radios and other methods of controlling  
5 our distribution and transmission plants, such as SCADA. Starting in 2001, Blue  
6 Ridge made the investment to install fiber-optic cable to control and monitor its  
7 system. While this has been an expensive undertaking, it has greatly increased  
8 the reliability of our system and our ability to respond to outages.

9 Q. Mr. Mullins argues pictures attached to his testimony show Blue Ridge's use  
10 of the Communications Worker Safety Zone. How do you respond?

11 A. The pictures Mr. Mullins attaches to his testimony do not show that Blue Ridge  
12 uses the Communications Worker Safety Zone, or that it installs facilities in that  
13 space on anything other than an isolated basis.

14 In fact, I have reviewed the pictures attached to Mr. Mullins' testimony  
15 and most actually undercut his arguments. Indeed several pictures show  
16 equipment that does not even belong to Blue Ridge:

17 "Photo 1" (Pole 05-11-225) – Mr. Mullins claims this picture shows "how  
18 Blue Ridge is able to make full use of the safety space." (Mullins Direct Test., p.  
19 26). What it actually shows is a safety violation that Charter has caused. Mr.  
20 Mullins also fails to disclose that this pole is part of a temporary construction  
21 project to accommodate the N.C. Department of Transportation's work to widen  
22 Highway 321 outside Blowing Rock. Blue Ridge and its attachers have had to  
23 temporarily re-arrange their facilities to accommodate NCDOT's road work. This

1 is why there is bundled cable and an extra antenna installed on this pole in the  
2 manner shown in the picture.

3 More importantly, this picture shows that Charter has attached too close to  
4 Blue Ridge's facilities, causing a safety violation. The transformer on this pole  
5 serves a security light that has been in service in 1960—long before Charter  
6 started providing cable service. Charter, however, has not observed the safety  
7 space required by the NESC, but has instead attached its facilities a mere 12  
8 inches from Blue Ridge's electrical facilities.

9 Photo "2" (Pole 05-02-267) – Mr. Mullins claims this picture shows "Blue  
10 Ridge's fiber attached in the safety space." (Mullins Direct Test., p. 27). The  
11 actual story is different. Blue Ridge has installed its fiber in what should be the  
12 electric supply space on the pole, which is allocated to Blue Ridge, and for which  
13 Blue Ridge pays, under both the FCC Cable and TVA formulas. Charter,  
14 however, has made its attachment so high on the pole that it has encroached into  
15 Blue Ridge's allocated space. Blue Ridge's staking manual provides that cable  
16 attachments should be one foot from telephone attachments. The telephone  
17 attachment in this picture is in the right place, but Charter, for some unknown  
18 reason, has installed its attachment much higher—at least two feet above the  
19 telephone line—pushing the Communications Worker Safety Zone into Blue  
20 Ridge's allocated space.

21 "Photo 3" (Pole 05-06-165) – This picture shows a pole with a large,  
22 cylindrical antenna, which Mr. Mullins claims belongs to Blue Ridge and shows  
23 that it is using the safety space. (Mullins Direct Test., p. 28). *The antenna,*

1        *however, does not belong to Blue Ridge.* It belongs to a cellular company that  
2        provides service to the town of Blowing Rock. Mr. Mullins also fails to mention  
3        that this pole is part of the temporary construction to accommodate work to widen  
4        Highway 321, so the picture does not even represent a permanent installation.  
5        Even still, it is worth noting that the picture shows Charter has failed to install  
6        proper down guys and anchors for its attachments.

7        “Photos 4 and 5” – Mr. Mullins admits that the pole in these pictures  
8        belongs to AT&T, and not Blue Ridge. (Mullins Direct Test., p 39-40). He  
9        nevertheless claims that equipment attached to the pole’s support space belongs to  
10       Blue Ridge, and that it presents a climbing hazard. *The equipment in the picture,*  
11       *however, does not belong to Blue Ridge.* Instead, it belongs to a cellular company  
12       that provides service to the town of Blowing Rock. In other words, the picture  
13       does not show Blue Ridge’s pole or Blue Ridge’s equipment.

14    **Q.    Mr. Mullins claims that the Communications Worker Safety Zone is**  
15       **intended to protect both communications workers (like Charter’s employees**  
16       **and contractors) and electric utility workers (like Blue Ridge’s linemen). Do**  
17       **you agree?**

18    **A.**    No. The Communication Worker Safety Zone is designed solely as a buffer to  
19       keep communications workers clear of electrified lines in the electric supply  
20       space. But Blue Ridge’s workers are, of course, trained to work around electrified  
21       lines within the electric supply space, above the Communications Worker Safety  
22       Zone. If anything, the presence of communications attachments poses an  
23       impediment to Blue Ridge’s linemen, who have to climb around Charter’s

1 attachments and through the Communications Worker Safety Zone to access the  
 2 electric supply space and Blue Ridge's facilities. The Communications Worker  
 3 Safety Zone exists to keep communications workers clear of electrified lines—not  
 4 to protect electric company linemen who routinely work with those electrified  
 5 lines anyway.

6 **Q. Should Blue Ridge have to share the costs of the Communications Worker**  
 7 **Safety Zone in setting a pole attachment rate?**

8 A. No. Blue Ridge does not derive any benefit from the Communications Worker  
 9 Safety Zone, and it if it uses it at all, does so on only the most isolated basis. The  
 10 Communications Worker Safety Zone exists solely to protect communications  
 11 workers. It represents space that is rendered virtually unusable to Blue Ridge, and  
 12 Blue Ridge would not have to provide that space if communications attachers like  
 13 Charter were not attached to its poles. Blue Ridge instead could install shorter  
 14 poles. Communications attachers like Charter should pay for the costs of  
 15 Communications Worker Safety Zone—and they certainly should not be able to  
 16 force Blue Ridge to pay for it.

17 **IV. 2015-16 ATTACHMENT INVENTORY**

18 **Q. Why did Blue Ridge conduct the 2015-16 pole attachment inventory?**

19 A. Blue Ridge typically conducts an attachment inventory about every five years.  
 20 Blue Ridge's last attachment inventory concluded in 2010, so it was time to  
 21 conduct another to ensure we had an accurate count of the attachments to our  
 22 system.

1 Q. Mr. Mullins said that he learned for the first time in this proceeding that  
2 Charter was being billed attachment fees per attachment, rather than per  
3 pole. Did Charter know it was being billed per attachment?

4 A. Yes. Blue Ridge has billed Charter annual attachment rents on a per-attachment  
5 basis for many years. While the language of the 2003 and 2008 Agreements set a  
6 per pole rate, I understand that Blue Ridge had been billing Charter since before  
7 the 2003 Agreement and that the parties continued with that arrangement even  
8 after the 2003 and 2008 Agreements were signed. Charter has thus accepted, and  
9 paid, bills on a per-attachment basis for more than a decade. Charter has known  
10 that it was being billed on a per-attachment basis all along.

11 Q. Did Blue Ridge provide information showing Charter that has been being  
12 billed on a per-attachment versus a per-pole basis?

13 A. Yes. We have provided Charter with information showing both the number of  
14 attachments and the number of poles to which it is attached with each inventory.  
15 Thus, Charter should have received that information in 2010, when we conducted  
16 the previous inventory. Further, the invoice we sent Charter in November 2016,  
17 assessing back-rent for Charter's unauthorized attachments, listed the number of  
18 attachments, (see Exhibit LL-10), Blue Ridge provided Charter the full results on  
19 the inventory on February 03, 2017. (See E-mail from Brad Shields to Brian  
20 Godefroid, dated February 03, 2017, attached as Exhibit LL-18). Thus, Charter  
21 has had both the number of attachments and the number of poles identified in the  
22 2015-16 inventory since February, and has known that it was being billed on a  
23 per-attachment basis, since that time.

1 Q. Mr. Mullins says Blue Ridge and Charter used the terms “pole” and  
2 “attachment” interchangeably. Is that true?

3 A. No its not. A “pole” and an “attachment” are entirely different things. I have  
4 never heard anyone use those words interchangeably, and I do not know how that  
5 would even work.

6 Q. You testified before that the 2015-16 inventory showed Charter had a net  
7 increase of 1,373 unauthorized attachments? How did this compare to Blue  
8 Ridge’s other attachers?

9 A. Charter by far had the most unauthorized attachments. The inventory showed that  
10 Charter had a net increase of 1,373, unauthorized attachments since the previous  
11 inventory, which was conducted in 2010. (The fact that this was a *net* increase  
12 suggests Charter made even more unauthorized attachments during this time.) No  
13 other attacher had nearly that many unauthorized attachments. The next highest  
14 was ACTV, which had 254.

15 Q. Did Blue Ridge bill all of its joint users and attachers back-rent for  
16 unauthorized attachments shown in the 2015-16 inventory?

17 A. Blue Ridge billed all of its joint users and attachers that had unauthorized  
18 attachments. If the inventory showed a decrease in the number of attachments,  
19 then Blue Ridge provided the joint user or attacher a credit. For instance, the  
20 inventory showed that SkyLine was attached to 1,441 fewer poles than reflected  
21 in Blue Ridge’s records, for which it received a credit.

22

23 V. CHARTER’S SAFETY VIOLATIONS



1 **Q. Mr. Mullins says that Charter “relies on pole owners” to conduct safety**  
2 **inspections and inform Charter when they come across safety violations. Do**  
3 **you think that is fair?**

4 A. No. We do not have the resources, nor is it our business, to conduct safety  
5 inspections for other parties. Charter’s pole attachment fees are meant to  
6 compensate Blue Ridge for the use of its poles. Charter does not pay Blue Ridge  
7 to provide services, such as safety inspections and engineering, nor would Blue  
8 Ridge agree to provide those services to Charter. Our mission is to provide low-  
9 cost, reliable electricity to our members, not provide contract engineering to other  
10 companies. It is extremely unfair for Charter to try to push the cost and burden  
11 of conducting safety inspections onto Blue Ridge, its employees, and its members.

12 **Q. Did the 2015-16 inventory include a full safety inspection?**

13 A. No. The purpose of the inventory was to identify and count all of the third-party  
14 attachments to Blue Ridge’s poles for purposes of record-keeping and billing.  
15 While Blue Ridge engaged UtilitiesChoice to conduct an attachment inventory,  
16 the inventory did not include a full safety inspection, which would have been  
17 many times more expensive. We did, however, ask UtilitiesChoice to log readily-  
18 apparent safety violations that it saw during the course of the inventory.

19 **Q. How many safety violations did the inventory identify among Charter’s**  
20 **attachments?**

21 A. The inventory revealed that Charter had 3,767 violations among its attachments.  
22 As Mr. Mullins admits in his testimony, this represents a 14% “violation rate,”

1 meaning 14% of Charter's attachments had violations that were so obvious they  
2 were picked up in the inventory.

3 **Q. When did Blue Ridge provide notice to Charter of these violations?**

4 A. We believe we provided notice of the violations to Charter's personnel in  
5 November 2016, when we received the audit results, but we have been unable to  
6 locate a record of the e-mail sending that information. We also submitted tickets  
7 for the violations in August 2017 through the National Joint Use Notification  
8 System (NJUNS), which is a national system for providing notice of non-  
9 compliant attachments that Charter and Blue Ridge have agreed to use. Given the  
10 sheer number of violations, Blue Ridge did not have sufficient personnel to  
11 prepare and enter each of the tickets, so we had to hire a third-party vendor to  
12 help prepare them and submit them, which took some time.

13 **Q. Has Blue Ridge provided notice of violations to other attachers?**

14 A. We are in process of doing so. As I said, however, Blue Ridge does not have  
15 dedicated staff to prepare these tickets since we are not in the business of  
16 providing safety inspections for third-party attachers. We are in the process of  
17 notifying each of the attachers and working with them to remedy the violations  
18 found in the inventory.

19 **Q. Did Charter have the most violations?**

20 A. Charter actually had the second highest number of violations found in the  
21 inventory. SkyLine, a telephone company that is a joint user, actually had more  
22 violations (4,403). In his testimony Mr. Mullins tries to inflate the number of  
23 violations SkyLine had even further by combining it with SkyBest, despite the

1 fact that they are different companies, providing different services, with different  
2 attachment or joint use contracts.

3 **Q. How many violations did the inventory find among Blue Ridge's**  
4 **attachments, and have they been corrected?**

5 A. The inventory found 142 violations among Blue Ridge's attachments. We are in  
6 the process of remedying them now and have remedied over 50 percent.

7 **Q. Mr. Mullins argues that Blue Ridge submitted NJUNS tickets for Charter's**  
8 **violations in order to make them a "focus of litigation." Is that true?**

9 A. Absolutely not. We notified Charter of these violations because they need to be  
10 fixed. We have also told Charter that we are willing to grant reasonable  
11 extensions under the parties' agreement for it develop and present a plan to  
12 remedy these violations. (See Exhibit LL-15).

13 In fact, I believe it has been Charter that has tried to use the violations as  
14 litigation tactic. Charter did not respond to Blue Ridge directly for more than a  
15 month after the tickets were submitted. Instead, its lawyers filed a motion in this  
16 case, seeking to stay this hearing on the grounds that Charter was overwhelmed  
17 by the need to respond to Blue Ridge's "ticket dump." (See Respondent's  
18 Motion for a Temporary Stay, dated Sept. 18, 2017). Charter also suggested that  
19 many of the tickets were incorrect or incomplete (*id.*), but when Mr. Mullins was  
20 deposed on October 4, 2017, he revealed that the only thing Charter had done to  
21 assess these tickets was to look at a sample of less than 30 . (See Exhibit LL-19,  
22 Deposition of Michael Mullins, pp. 121-24).

1 Q. Has Charter ever contacted Blue Ridge regarding the NJUNS tickets?

2 A. Yes, shortly after his deposition on October 4, 2017, Mr. Mullins called Blue  
3 Ridge to discuss the ticket. During a phone call with Blue Ridge's personnel on  
4 October 13, 2017, Mr. Mullins said he did could not discern the type of violation  
5 at issue or what Charter needed to do to fix it from the NJUNS tickets. The  
6 NJUNS tickets, however, have a set of standard codes that list "RAISE,"  
7 "LOWER," or "RESAG", which tell the recipient what needs to be done and also  
8 reveals nature of the violation. Blue Ridge responded to Mr. Mullins directing  
9 him to this information and also pointing him to a spreadsheet Blue Ridge has  
10 provided, which identifies whether the violation involves ground clearance,  
11 spacing of attachments, or mid-span clearances. (See Exhibit LL-20, E-mail from  
12 John Coffey to Michael Mullins, dated October 23, 2017).

13 Q. Has Charter ever asked for more information about any of the individual  
14 tickets?

15 A. No. It has not.

16 Q. Has Charter followed the process under the parties' pole attachment  
17 agreement for remedying these violations?

18 A. No it has not. Blue Ridge submitted the NJUNS tickets on August 25, 2017.  
19 Sections 11.2 and 11.3 of the parties' 2008 Pole Attachment Agreement require  
20 Charter to develop and submit a plan for correcting non-compliant attachments  
21 within 45 days for Blue Ridge to review and approve. (See Exhibit LL-3, p. 10).  
22 While the agreement provides that Blue Ridge can extend this deadline if Charter  
23 is "diligently pursuing development and implementation of a plan," and Blue

1 Ridge has offered to grant such an extension, (see Exhibits LL-15, and LL-20).  
2 Charter has never asked for one. Charter has not even told Blue Ridge when such  
3 a plan might be forthcoming.

4 **Q. Has Charter done anything else that leads you to believe it is treating**  
5 **violations merely as a litigation tactic?**

6 A. Yes. As I explained in my direct testimony, Blue Ridge engaged Greg Booth of  
7 PowerServices, Inc. to conduct a safety inspection on five circuits on Blue  
8 Ridge's distribution system. We did so as part of Blue Ridge's investigation into  
9 this case, so we could determine, among other things, just how prevalent  
10 Charter's compliance issues truly were. Mr. Booth reported the results of his  
11 inspection in his direct testimony filed on October 16, 2017.

12 The next day, our lawyers wrote Charter's counsel to inform them that 24  
13 violations presented "imminent" safety concerns that might pose a danger to the  
14 public. (See Exhibit LL-22, Letter from Matthew F. Tilley to Aaron George,  
15 dated October 17, 2017). Charter's counsel, however, seemed more concerned  
16 with arguing about whether the violations were truly imminent, demanding to  
17 know why Mr. Booth did not inform Charter of the violations earlier, and why the  
18 notice was being sent to counsel, rather than the parties. (See Exhibit LL-23,  
19 Letter from Aaron George, dated October 18, 2017).

20 Our lawyers have responded to that letter, providing GPS coordinates for  
21 each pole, as Charter has requested. (See Exhibit LL-24, Letter from Matthew F.  
22 Tilley to Aaron George, dated October 23, 2017). However, it has become clear

1 that, no matter what we do, and no matter how we communicate, Charter would  
2 rather fight over who is responsible for the violations than work to fix them.

3 **Q. Mr. Mullins makes a number of arguments about pictures of violations**  
4 **attached to your testimony. How do you respond?**

5 **A.** I take Mr. Mullins' arguments as yet another sign that Charter would rather argue  
6 and do everything it can to avoid responsibility for its violations than actually fix  
7 the problems with its attachments. Many of the assertions Mr. Mullins makes  
8 about the violations in those pictures attached to my testimony are either flat  
9 wrong or, worse, misleading. For instance:

10 Exhibit LL-16A – The first picture in this exhibit shows a situation where  
11 Charter's cable is loosely hanging over one of Blue Ridge's secondary  
12 conductors. As I said in my direct testimony, this is extremely dangerous,  
13 because Charter's cable could become energized and electrocute a Charter  
14 customer or someone who comes in contacts with its cables on the ground. Mr.  
15 Mullins argues that this cable has been there for decades and is so "slack" that it  
16 must have been blown over the conductor by the wind. (Mullins Direct Test., p.  
17 42). This situation, however, would not have occurred if Charter had installed its  
18 facilities correctly and conducted its own safety inspections.

19 Exhibit LL-16B – The first picture in this exhibit shows a situation where  
20 Charter has failed to provide proper ground clearance over a driveway, which  
21 could be easily clipped by a delivery truck. Mr. Mullins apparently concedes  
22 Charter's attachment is too low, but argues that there is also a telephone  
23 attachment "so both of these issues would have to be remedied." He also argues,

1           incredibly, that it is unclear “how the situation developed, including when the  
2           driveway was constructed.” (Mullins Direct Test., p. 42.) The driveway,  
3           however, is even with the grade and the road. There can be no dispute that  
4           Charter simply hung its cables too low.

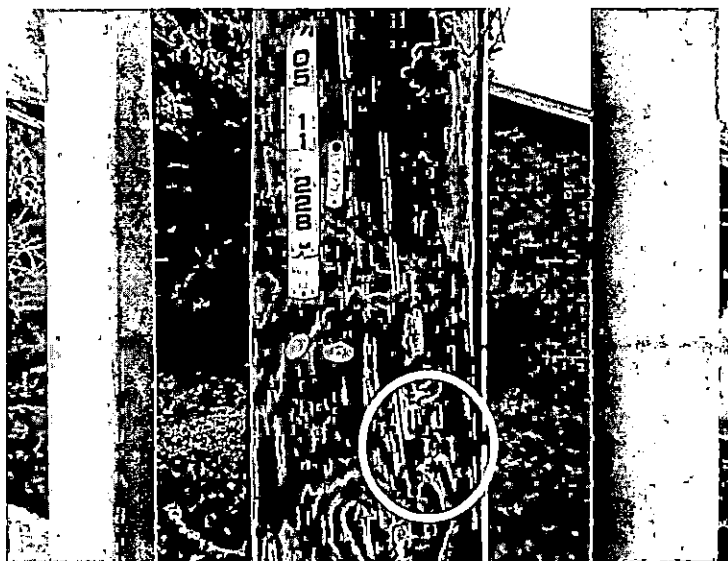
5           Exhibit LL-16D – The first photo shows a situation where Charter failed  
6           to install a guy to support its attachment, which has bowed the pole. Mr. Mullins  
7           argues that this picture does not show that Charter actually has a guy and attaches  
8           a photo that shows only two anchors in the ground without any other point of  
9           reference. (See Mullins Direct Test., p. 43). However, the guy that he shows was  
10          actually newly installed, and was not in place during the 2015-16 inventory.  
11          Indeed, this pole is located along Highway 321, and its configuration has been  
12          changed several times recently to accommodate N.C. DOT’s work to widen that  
13          highway.

14          Exhibit LL-16-E – This picture shows a situation where Charter has  
15          attached risers on one side of a transmission pole and an amplifier box on the  
16          other, which is an NESC violation and blocks Blue Ridge’s personnel from  
17          climbing the pole. Mr. Mullins argues that there is no issue here. The picture he  
18          attaches in his testimony, however, *shows only the side of the pole where the*  
19          *risers are installed.* (Mullins Direct Test., p. 44). Indeed, there are two through  
20          bolts clearly visible on the pole, which are holding up the amplifier on the other  
21          side. (*Id.*)

1 Q. Mr. Mullins also argues throughout his testimony that Charter's system has  
2 been in place for "decades." Does that prove Charter is not at fault for  
3 clearance violations?

4 A. No. Even though Mr. Mullins suggests that Charter's system has been in place  
5 for "decades," I seriously doubt that Charter has left most of its system untouched  
6 for 30 or 40 years. During that time, Charter has likely upgraded its cables,  
7 overlashed its facilities, added new attachments, or transferred its attachments to  
8 new poles. Mr. Mullins merely uses the vague argument that Charter has been in  
9 place for decades as way to avoid responsibility for Charter's clearance violations.  
10 In fact, in many cases, his assertion is just wrong.

11 For instance, in Photo 14 in his testimony, Mr. Mullins argues that Blue  
12 Ridge must be at fault for the violation because Charter's plant has been in place  
13 for "more than 30 years." (Mullins Direct Test., p. 54). The pole itself, however,  
14 has a 1998 date stamp, as shown in the picture below:





Moreover, Blue Ridge's records show that this pole was part of a project to replace and relocate an existing line in the town of Blowing Rock, and that Blue Ridge attached its facilities to the new pole and then asked Charter to transfer its facilities from the old pole to this new one. Mr. Mullins' argument that Charter must have been here first—and therefore isn't responsible for the safety violations or Charter's attachment being placed too high on the pole—is simply wrong. Charter could not have been on this pole for "more than 30 years," given that it was not installed until at least 1998.

**Q. Mr. Mullins suggests that Charter informs Blue Ridge the height at which Charter makes its attachments when it seeks permission for those attachments. Is that true?**

**A.** No. Even when Charter submits formal applications for attachment permits, as the 2008 Agreement requires, the drawings attached to those applications merely show an aerial view of the proposed attachments on a map. They do not show the height on the pole that Charter plans to make its attachments, nor do they show the clearance between Charter's attachments and the other attachments on the pole.

Starting this year (2017), Charter has submitted some applications for permits, an example of which is attached as Exhibit LL-21. However, as this example application shows, the applications do not show the height on the pole where Charter intends to make its attachments. In fact, the 2008 Agreement makes clear that it is Charter's responsibility to attach at the proper height and to ensure its attachments leave proper clearances from other attachers' facilities.

1 (See Exhibit LL-3, at Exhibit B, Section D.3 (“It shall be the responsibility of  
2 [Charter] to attach at the proper height, to achieve proper clearance, and to  
3 construct their facilities in accordance with the agreement.”)).

4 And, of course, Charter has historically been providing us even less  
5 information than what is included in these drawings, because it historically has  
6 not submitted applications as required by the parties’ pole attachment agreement.

7 **Q. Do you believe Charter’s arguments regarding these violations should have**  
8 **any implications for the terms and conditions that need to be included in a**  
9 **new pole attachment agreement?**

10 A. Yes. Blue Ridge needs clear terms that require Charter to (1) remedy safety  
11 violations when they occur, (2) relocate its facilities when Blue Ridge requires it;  
12 (3) reserve space (72 inches) for Blue Ridge to install future facilities; and  
13 (4) allow Blue Ridge to “recover” space on its poles when Charter’s attachments  
14 do not allow it enough room to add facilities, such as a transformer.

15 While Charter professes it will accept these terms, its actions prove  
16 otherwise. For instance, Charter has said that it will only remedy safety  
17 violations when Blue Ridge can show that it is at fault. This is an invitation for  
18 disputes, since Charter can always make the generalized argument that its  
19 attachments have been in place for “decades,” even though it has no permit to  
20 show when it attached. In addition, while Charter claims in its pleadings that it  
21 will agree to a “recovery of space” provision, (see Answer to First Amend  
22 Petition. ¶ 11.L), Mr. Martin, who is administers Charter’s pole attachment  
23 agreements in the Carolinas, insisted in his deposition that Charter should not

1 have to pay to relocate its facilities if it made its attachment first. (See Exhibit LL-  
2 25).

3 A good contract should avoid situations that will lead to these types of  
4 disputes. It should also protect Blue Ridge—and its members—from having to  
5 incur inordinate cost and expense resulting from Charter's attachments.

6 **Q. Does this conclude your rebuttal testimony?**

7 **A. Yes.**

1 (Whereupon, Rebuttal LL Exhibits  
2 17-25 were identified as premarked.)

3 BY MS. HARDEN:

4 Q Mr. Layton, did you prepare a summary of  
5 your direct and rebuttal testimony for this Commission  
6 this morning?

7 A Yes, I have.

8 Q Would you please present your summary of your  
9 testimony?

10 A Thank you. Be glad to. Mr. Chairman and  
11 Commissioners, I do have a PowerPoint. I'd like to show  
12 it here if that's okay with you. And can you see this  
13 okay? Everybody see this okay?

14 Just Charlotte shared a lot of this with you,  
15 but to give you a little more information, as you know,  
16 Blue Ridge Electric Membership Corporation is a member-  
17 owned not-for-profit electric cooperative. We do not  
18 have investors. We just have the members who receive  
19 electric service from us.

20 We have an assigned service territory from the  
21 State of North Carolina and, as such, we have an  
22 obligation to serve everybody in our area. And we're up  
23 in the upper northwest corner of North Carolina. That's  
24 a very mountainous, rough terrain area, sparsely

1 populated, and somewhat of a lower income area. Our  
2 member household income is about 23 percent below the  
3 state average, so it's a little difficult area.

4 Blue Ridge is -- Blue Ridge isn't required to  
5 allow Charter to attach to our poles. Of course, Charter  
6 is a profit-motivated company and they choose to serve  
7 the densely populated areas. They do have the choice of  
8 who they serve.

9 I want to show you this map. This shows our  
10 service territory. Our predominant counties are  
11 Caldwell, Watauga, Ashe, and Alleghany, starting at the  
12 bottom and just working your way up. We do serve a  
13 little bit of Avery and Alexander and Wilkes County, but  
14 the predominant ones are those four. The green shows  
15 our --

16 MR. GEORGE: Objection, Commission. This is  
17 oral testimony. This is not a summary.

18 CHAIRMAN FINLEY: Overruled. Go ahead.

19 A This is our electric service territory. On  
20 there I have superimposed where Charter also serves, and  
21 that's shown in blue. So the green is electric and then  
22 blue is there on top of our lines there. If you look  
23 down in Caldwell, the lower county, Duke serves a large  
24 part of Caldwell so there's a big hole in that, but

1 Charter serves predominantly in that hole, also. But you  
2 see where they serve there. They do not serve up in the  
3 northern part of the county which is sparsely populated.

4 In Boone -- or in Watauga there's a hole right  
5 in the middle of Watauga that's where New River Light &  
6 Power serves, and Charter serves that and then everything  
7 around that, but not out in the outlying areas of  
8 Watauga. They serve just a little bit in Ashe, and then  
9 over in Alleghany they serve just a little bit of Roaring  
10 Gap area there. So that's -- that's where they serve.

11 And we have had a long relationship with  
12 Charter. They've been on our system probably 40 years or  
13 more. The last agreement was executed in 2008.  
14 Historically, we've had a very cooperative relationship  
15 with Charter. Our guys in the field work well together.  
16 And over time, the arrangement has moved to a very  
17 informal process. We haven't necessarily followed the  
18 contracts like we should. That's created problems for  
19 both of us. And it's not just Charter's fault or ours.  
20 We've both just done that. It's been an attempt by our  
21 guys to just get along, get things done in the field, but  
22 it has moved into somewhat of an informal relationship.

23 And this is a little history -- I'll run  
24 through this briefly -- of where we got -- how we got to

1 this point. In May of 2014, we approached Charter and  
2 said we need to initiate negotiations for a new  
3 agreement. In July of '14, we sent them a new agreement  
4 which was essentially the 2008 agreement with a couple of  
5 changes, a couple of minor changes. One is -- well, one  
6 was that we wanted to make it an automatic renewal  
7 agreement so that we didn't have to just renegotiate this  
8 thing every five years, and then we proposed to use the  
9 same rate methodology we had, just take the existing rate  
10 and increase it by CPI each year, which is what we had  
11 historically done.

12 So we gave that to them July of '14. It was  
13 May of '15 before we heard back. It was 10 months later  
14 after we'd given them the contract before we heard back.  
15 And then from May of 2015 until late 2015, we had some  
16 negotiations back and forth, conversations with them,  
17 talked about different options in the proposal. And late  
18 in '15, October through December, we offered a compromise  
19 proposal. It had some different terms than what we'd  
20 initially proposed, some of the things Charter was asking  
21 for.

22 We proposed a compromised rate. Charter had  
23 never given us any kind of rate concepts. They had just  
24 -- every time they'd send us a rate proposal back, they

1 just put in the rate to be determined, so they'd never  
2 give us a proposed rate back. But we did offer to  
3 compromise and lower our rate from what we were charging  
4 at that time. We were probably charging a \$26 range. We  
5 said we would compromise and move it to 18. I'd done  
6 some rate calculations. And I'm not a rate consultant,  
7 but I'd done some rate calculations, and I felt that rate  
8 should be in the 18 to \$22 range. Subsequently, I think  
9 I've had some errors in those calculations, but still I  
10 felt at that time that was a reasonable number. And I  
11 would much rather have lowered that to 18 versus having  
12 to go through a process like we're going through now with  
13 Utility Commission and incurring legal costs, so that was  
14 the reason we did that.

15 So that was December or so of '15. Again, we  
16 didn't hear back from Charter until September of '16.  
17 They had a lot of different changes to the agreement.  
18 Even things we'd previously agreed to they pulled back  
19 on. Still, they had not offered any rate concept for us.  
20 And so we felt like after two-and-a-half years of this,  
21 we just needed to come to the Commission with a petition  
22 to help us resolve this. So that's -- that's why we're  
23 here.

24 Now, the inventory, every five years we do an



1 inventory of all of our attachers on our system, joint  
2 users and pole attachers. We did one in 2015 and '16.  
3 It took a year, but it spilt over '15 to '16. In that  
4 inventory we found 1,373 unauthorized attachments by  
5 Charter, and what that means is those are attachments  
6 that either we or Charter could not produce a permit to  
7 say we had authorized them to be on those poles. When  
8 you do these type of inventories, you always find a few.  
9 This number just seemed to be a little high. It was a  
10 little surprising that there were that many.

11 And, also, the person, the auditor we had doing  
12 this inventory, we told him to -- while he was out there  
13 to look for any obvious NESC, National Electric Safety  
14 Code, violations. We didn't ask him to do a safety  
15 audit. We said if you see things that are clearly  
16 violations, put it down. Not just on Charter, now, but  
17 on all the inventory, anything he saw out there. So he  
18 did find 3,767 violations by Charter, and these were  
19 just, let's say, just the obvious ones that he saw. And  
20 every attacher had violations. It wasn't just Charter.  
21 Everybody had violations, including Blue Ridge. They  
22 even reported some where we had some violations. We may  
23 have -- I think SkyLine may have had a few more  
24 violations than Charter. Charter and SkyLine were the

1 two highest with violations.

2 I was a little concerned about the number of  
3 violations that this auditor reported. And with this  
4 petition before the Commission, I thought we needed to  
5 verify that, so I engaged PowerServices to do a survey  
6 because I wanted to see if this was right. I didn't know  
7 if he had overestimated or he had underestimated, just  
8 wanted to do a detailed survey. Didn't have time to do  
9 the whole system, so we just did a random survey of five  
10 circuits. I had them go out and look at five circuits.  
11 They did a very detailed safety audit in this case, so  
12 they measured clearances at every pole they went to, and  
13 they found that 43 percent of the poles that they  
14 surveyed where Charter was on there had an NESC  
15 violation, so it was really worse than we thought.

16 The type of violations that we found, things  
17 like inadequate ground clearance, obviously, their wire  
18 has got to be high enough above the road so it doesn't  
19 get hit by a truck, and the code specifies those numbers.  
20 Violation of mid-span clearances, and what I mean by that  
21 is between the two poles, as the wires go between the two  
22 poles, and if they sag down, there's got to still be at  
23 least 30 inches of separation between their conductor and  
24 our conductor. Violation of the 40-inch space, that's

1 also called a communications safety zone. Where we  
2 actually attach on the pole, they're supposed to be 40  
3 inches below our nearest energized -- well, neutral  
4 conductor. They can be a little closer. If it's a  
5 transformer piece of equipment, they can be 30 inches,  
6 but 30 to 40 inches from our equipment is the National  
7 Electric Safety Code standard. Violation of climbing  
8 space, and what that means is NESC says you've always got  
9 to leave room on your pole for the lineman to climb up to  
10 work on the pole.

11 Now, we have conduits on the pole going up to  
12 bring wires down the pole. We call those risers. We  
13 have them on the pole. Blue Rid--- Charter puts them on  
14 the pole. Everybody who's on the pole generally has some  
15 type of risers on that pole. And we've put boxes on the  
16 pole, also, to control some of our equipment. Charter  
17 does, and we do, also. But all that needs to be put on  
18 the pole so that there's always a space on the pole where  
19 the lineman can safely climb the pole.

20 And we found instances of inadequate  
21 maintenance. Now, I've been in the utility business over  
22 40 years, and I'll tell you if anybody's operating a  
23 utility, they're going to have violations -- you're going  
24 to have problems in the field. You know, people hit

1 poles. We have cars hit poles. DOT mowing cuts guide  
2 wires. Wind blows limbs into lines. So we always have  
3 problems.

4 We are required by the National Electric Safety  
5 Code to inspect our system. Blue Ridge has a very good  
6 inspection program. It's a multi-layered program with  
7 different things we do different years and different  
8 times, but our goal is to continuously be inspecting our  
9 system. Charter has told us they don't have a formal  
10 inspection program, even though they do look at their  
11 stuff. I'll show you a few examples.

12 CHAIRMAN FINLEY: I couldn't hear you. What  
13 did you say?

14 MR. LAYTON: I'm sorry?

15 CHAIRMAN FINLEY: Not a formal inspection  
16 program, but they do what? I didn't quite hear what you  
17 said.

18 THE WITNESS: Charter said they do not have a  
19 formal inspection program, but they do look when they're  
20 out in the field.

21 I'll show you a few pictures of some of these  
22 just so you can put in perspective of what I'm talking  
23 about. If you look at this pole, the wire that's up at  
24 the top on the upper right going down to the left, that's

1 Charter's cable. It's laying on a Blue Ridge conductor  
2 on the pole. You can see where those two are actually  
3 touching. There's supposed to be spacing between those  
4 two. They're actually touching. Not only is it  
5 touching, but it appears the Charter cable is pushing  
6 down on the Blue Ridge cable. This is a safety hazard  
7 that could cause their cable to be energized. In some  
8 cases, depending on the voltage, it could cause a fire  
9 hazard in a home. It could cause a house fire, depending  
10 on the voltage of our cable, if they were in contact.

11 This is an example of inadequate ground  
12 clearance. In this case, this is over a driveway.  
13 Charter had 11 feet. But I'll also point out right below  
14 them is an AT&T cable that's even lower at 10 feet, so  
15 both Charter and AT&T have got a violation here. It  
16 would be very easy for a panel truck pulling into that  
17 driveway to snag those wires, which could break one or  
18 both poles, could cause our electric lines to fall on the  
19 truck or on somebody and, of course, impact the  
20 reliability of the system.

21 Violation of the 40-inch safety space, this  
22 pole is a little technical, but it does show that their  
23 cable is a little too close to our transformer, so it's  
24 technically violating that safety space.

1           And here is an example of inadequate  
2 maintenance. This pole has got -- you can see two guides  
3 on the pole. That's -- the support wire is coming down.  
4 They've got the little yellow guards at the bottom. Ours  
5 is in full tension. That's the one that's straight down.  
6 There's another one that's sagging. And then there's a  
7 third one, you really can't see that it's broken and  
8 hanging down. The slack one and the broke one are  
9 Charter and SkyLine guides. I'm not sure which is which.  
10 I looked at this pole the other day and I saw it, but I  
11 couldn't really determine which was which. But either  
12 way, neither one of those guides is supporting the load  
13 on the pole. I just wanted you to have an idea of what  
14 some of these looked like. You're going to be hearing  
15 more talk about them today.

16           I have one more, the violation of the climbing  
17 space, and this one is, it's such a distance it's hard to  
18 see, but on the left side of this pole there are two  
19 risers, two conduits going up. Those are Blue Ridge's  
20 risers. But on the other side of the pole Charter has  
21 put a box, and I think they have a conduit on that side  
22 going up the pole, so that blocks our climbing space on  
23 that pole. This is a transmission pole. It's a  
24 tremendous reliability issue for Blue Ridge. This

1 circuit supplies all of western Watauga County, so if we  
2 have an issue on this transmission pole, we've got to be  
3 able to get to any of them along this line.

4           You know, having Charter on our system does  
5 cause some administrative costs. We have administrative  
6 duties and cost of managing the contract and permits and  
7 so forth. It creates field issues where Charter may be  
8 too close and we can't get our transformer mounted on the  
9 pole in an appropriate place. We have to do the  
10 inventories, the expense of managing that. There's legal  
11 expenses, especially like what we're going through now  
12 with being in front of the Utility Commission. And we  
13 have some liability concerns because if they do break  
14 something -- if they do cause something to break on our  
15 pole because somebody snags their wire, then we could be  
16 in a liability issue there, also. So those are concerns  
17 that we have.

18           The terms and conditions that are in dispute  
19 are listed here. You will hear a lot more about this  
20 today, so I'm not going to run through all of these. I  
21 will mention one, though. One, two, three, fourth one  
22 down says Maintenance and Transfers. You know, we put  
23 poles out. They are out there a long time, so  
24 periodically -- well, frequently -- every week we're

1 probably relocating a pole somewhere. You know, we have  
2 poles that they deteriorate, they no longer meet our  
3 strength standards, and we have to put in a new pole. So  
4 we'll put a new pole in right beside it and move our  
5 facilities over. Then we notify whoever's on the pole to  
6 also move over and attach to that pole. We do that  
7 through what's called a National Joint Use Notification  
8 System. It's abbreviated NJUNS. So we let them know  
9 about that. But it could be because we've got a  
10 deteriorated pole, or it could be DOT is widening a road  
11 and we have to move the pole back and then we ask them to  
12 transfer over.

13           What we find is our attachers are slow to move  
14 over to the new pole, and so we end up with two poles on  
15 a person's property, and members get upset about this.  
16 We'll have our new pole there and right beside it's a  
17 pole that's been cut off at the top. And you've probably  
18 seen this driving down the road. It will be cut off at  
19 the top because we cut it off so that they can move their  
20 cable over and attach to the new pole. So we report  
21 these, and with Charter we've been reporting for several  
22 years this way, and currently we've got about 139 that  
23 have not transferred. And of those 139, I believe 35  
24 have been out there for more than three years. We've had



1 an extra pole in somebody's yard for three years, waiting  
2 for them to transfer. And these could have been  
3 deteriorated poles when we asked them to transfer, so  
4 there could be a liability issue there, a rotten pole  
5 that they're on and haven't moved over. And these are on  
6 poles that are next to go. Now, somebody -- sometimes it  
7 could be somebody above them that's preventing them from  
8 moving, but what I'm talking about are where they are  
9 next to go. But I won't go into these others. You'll  
10 hear from others today more about this.

11 Just -- if I can just sum up, we need a good  
12 agreement with Charter, something that's clear and  
13 concise about how we need to work together. And we just  
14 want to make sure that our members of Blue Ridge are  
15 protected in the process. Thank you.

16 MS. HARDEN: Chairman Finley, Lee Layton is  
17 available for questions.

18 CHAIRMAN FINLEY: Charter.

19 CROSS EXAMINATION BY MR. GEORGE:

20 Q Good morning, Mr. Layton.

21 A Good morning.

22 Q Charter is a member of Blue Ridge, right?

23 A Yes.

24 Q Charter purchases electricity from Blue Ridge?

1 A Yes.

2 Q You retired from Blue Ridge in 2016, correct?

3 A Yes. I was with Blue Ridge as Senior Vice  
4 President and Chief Operating Officer from 2005 through  
5 late 2016. I announced my retirement last year. They  
6 brought the new Chief Operating Officer who is here  
7 today, John Coffey, in late last year, and I moved into a  
8 role as Executive Consultant to manage a few projects  
9 until I retired in May, but then they asked me to stay on  
10 a little longer to finish out some projects, so I'm still  
11 working on a temporary basis for Blue Ridge.

12 Q And you mentioned special projects you work on  
13 for Blue Ridge, and Charter's negotiation of a new Pole  
14 Attachment Agreement is one of those projects, right?

15 A That's correct.

16 Q And this case is one of those projects?

17 A That's correct.

18 Q Now, how are you compensated for those  
19 services?

20 A It's on an hourly basis. It's a part-time  
21 basis. It's an hour---

22 Q What is your hourly rate?

23 A I believe it's \$165 an hour.

24 Q And none of your special projects include

1 negotiating any agreement with any other attachers,  
2 right?

3 A That's correct.

4 CHAIRMAN FINLEY: Mr. George, how about pulling  
5 that mic up a little bit so we can here what you're  
6 asking.

7 Q Now, a standard --

8 MR. GEORGE: Is that better?

9 CHAIRMAN FINLEY: Yes. Thanks.

10 Q -- a standard pole for Blue Ridge is a 40-foot  
11 Class 4 pole, correct?

12 A That's correct.

13 Q And that's been the standard for as long as  
14 you've been at Blue Ridge?

15 A Yes.

16 Q At your deposition, you could not envision a  
17 circumstance, you said, where Blue Ridge would install a  
18 smaller primary pole; is that right?

19 A Yes. We have Joint Use Agreements with  
20 companies such as Charter -- I mean, not Charter -- AT&T  
21 and SkyLine, and their agreements specify 40 Class 4 as a  
22 joint use pole, so --

23 Q We'll get to that, Mr. Layton.

24 A May I finish? So traditionally, a 40 Class 4

1 would be our standard pole. Now, there may be some  
2 instances where we would have to do something different,  
3 but we -- our goal is to always put at least that in  
4 because that's required by Joint Use Agreements.

5 Q And it's also suitable for your service  
6 territory, correct?

7 A Yes.

8 Q And it's suitable for your service territory  
9 because it gives you the strength you need for the  
10 conductors that you put on the poles?

11 A Yes. We have -- a 40 Class 4 would generally  
12 work. Now, we -- the spacing may have to vary based on  
13 terrain to make that work, but in most cases, if we keep  
14 it to a 40-foot pole, we can vary the spacing to make  
15 that work for our conductors.

16 Q Right. And that pole height is generally  
17 suitable for your territory?

18 A Yes.

19 Q And that standard 40-foot pole, as you  
20 testified, presumes that there would be telephone  
21 attachments on the pole as well?

22 A Yes. Because we have Joint Use Agreements with  
23 four entities, we do specify -- we do assume that they  
24 will have one attachment on that pole, so we design our

1 system to have that one attachment per the data they have  
2 given us.

3 Q And they're designed to bear -- your poles,  
4 your standard poles, are designed to bear both your  
5 attachments and the telephone attachments that you  
6 referenced?

7 A That one attachment, yes.

8 Q But not all of your poles have that additional  
9 attachment on them, right?

10 A That's correct. They're joint use poles. They  
11 -- at any time the joint users could attach, but they may  
12 not have one on there at that time --- at any particular  
13 time.

14 Q Right. So Blue Ridge owns about 108,000  
15 distribution poles, right?

16 A That's correct. 108,000.

17 Q And about 50--- almost 56,000 of those have  
18 attachments by someone other than Blue Ridge?

19 A Yes. Joint users and pole attachers.

20 Q In fact, Blue Ridge calculates a systemwide  
21 average of around 2.35 attachers?

22 A That's correct.

23 Q One of those 2.35 attachers is Blue Ridge?

24 A Yes.

1           Q     But you do not know what is the average number  
2     of attaching entities on Blue Ridge's poles that have a  
3     Charter attachment on them, right?

4           A     No, I do not.

5           Q     And you don't know what the average height of  
6     those 56,000 poles we talked about, you don't know what  
7     the average height of those poles is, do you?

8           A     Nor do I know the average height of our --  
9     well, I know an average height of our system is not 40  
10    Class 4. That's our standard pole at this time. The  
11    Joint Use Agreements in the past specified a 35-foot pole  
12    as the standard pole, so we have other poles other than a  
13    40 foot on our system. I think our average pole is about  
14    36, 37, around 37 feet if you average all of our primary  
15    poles.

16          Q     Right. That's the average of the 108,000,  
17    right?

18          A     Right.

19          Q     But for the subset of 56,000 poles that have a  
20    third-party attachment on it, you don't know what the  
21    average height of those poles is, right?

22          A     I have not calculated that, no.

23          Q     Could you calculate those averages?

24          A     I believe we have the data to do that.

1 Q But you have not done that.

2 A No.

3 Q And, now, your standard pole that we have been  
4 discussing is buried 6 feet deep, correct?

5 A Yes.

6 Q And then there's 18 feet from the ground level  
7 to the lowest point where a horizontal cable or conductor  
8 can be attached?

9 A That's generally correct.

10 Q Now on a three-phase pole, Blue Ridge would  
11 have a conductor at the top of the pole, right?

12 A Not necessarily. Some structures would have a  
13 phase on top of the pole and then two on the crossarm.  
14 In some cases they could all be on the crossarm, or they  
15 could be vertically. They could all be vertically, but  
16 not at the top of the pole.

17 Q Right. And so where there's a crossarm, you  
18 generally put that at about 18 inches below the top of  
19 the pole?

20 A That sounds correct.

21 Q And that crossarm would have two or maybe three  
22 conductors on it?

23 A If it was -- the top phase would generally  
24 maybe be 18 inches below the -- where the crossarm is,

1 but we could -- if we had the conductors all on the  
2 crossarm, the crossarm could be higher up on the pole.

3 Q And then so from the crossarm, you have about 2  
4 to 6 feet until you get to the neutral; is that right?

5 A That's correct.

6 Q Are your neutrals grounded?

7 A Yes.

8 Q And so from the top of the pole to the neutral  
9 you could have anywhere between 3-1/2 feet to 7-1/2 feet;  
10 is that right?

11 A Yes.

12 Q Now, if there is a transformer on the pole,  
13 it's going to be mounted near that neutral, right?

14 A Yes. We generally mount it right -- the lip of  
15 the transformer right near the neutral or slightly below  
16 that.

17 Q You said the lip of the transformer. You mean  
18 the top of the transformer?

19 A The top of the can. There's a bushing above  
20 that, but the top of the can would be close to the  
21 neutral or maybe slightly below.

22 Q And then the rest of the transformer hangs  
23 below the neutral?

24 A That's correct.



1 Q And are Blue Ridge's transformers grounded?

2 A Yes.

3 Q And then there's a space where the  
4 communications attachers can attach if they can maintain  
5 the necessary clearances, right?

6 A Yes.

7 Q And I think you mentioned in your opening that  
8 the NESC requires that communications attachers be 40  
9 inches below the neutral?

10 A Forty (40) inches below the neutral and another  
11 30 inches below the bottom of the can of the transformer.

12 Q And this is called the safety space?

13 A That's correct.

14 Q And there are exceptions to that 40-inch or 30-  
15 inch requirement, right?

16 A As far as where Charter can attach?

17 Q As far as what other facilities can be placed  
18 in that space?

19 A Well, Charter can't get any closer than 30  
20 inches to a transformer or 40 inches to the neutral.

21 Q Right, but Blue Ridge could put a streetlight  
22 in that space?

23 A Yes. It's -- we could still -- we could put a  
24 streetlight, and then there are clearance differences

1     there for Charter.

2           Q     And yet you said in your deposition testimony  
3     that Blue Ridge actually puts its streetlights kind of  
4     right below the transformer, right?

5           A     Yes.   Still in the electric space, but  
6     generally right below the transformer.  It would be rare  
7     to find a security light in the communication worker  
8     safety zone space unless Charter was not -- if -- unless  
9     Charter was in our electric space, and a lot of times  
10    Charter is in our electric space, but there are times we  
11    probably have put some in there even if you were in the  
12    right part.

13          Q     Now, we just discussed the -- that Charter's  
14    attachment can be 40 inches below the neutral, according  
15    to the NESC, correct?

16          A     According to the NESC.  Our -- our contract  
17    specifies that you should be 72 inches below the neutral.

18          Q     I'm talking about the NESC.

19          A     Yeah.

20          Q     That's correct, right?

21          A     That is correct.

22          Q     And the transformer would hang below the  
23    neutral, right?

24          A     Yes.

1 Q And then the streetlight would be below the  
2 transformer?

3 A It could be around the transformer. It could  
4 be below it or right at the bottom of it.

5 Q And that would not violate the NESC, correct?

6 A No, it would not.

7 Q And it's the same if it was a floodlight or  
8 some other type of light attached in that part of the  
9 pole?

10 A That's correct.

11 Q Blue Ridge owns the streetlights that it  
12 attaches to its poles?

13 A Yes.

14 Q And makes revenue from them?

15 A Yes.

16 Q And drip loops can also be placed in that  
17 space, right?

18 A Yes.

19 Q And conduit risers for certain lower voltage  
20 activities?

21 A Yes.

22 Q Now, you mentioned it a few seconds ago, and in  
23 your rebuttal testimony you used the term electrical  
24 supply space. When we talked about the safety space

1 three weeks ago in your deposition, you never used that  
2 term, did you?

3 A I'm sorry. Say that again?

4 Q When we talked about the safety space three  
5 weeks ago in your deposition, you never used the term  
6 electrical supply space, did you?

7 A I don't recall. I feel sure we talked about  
8 the 72 inches.

9 Q We may have talked about the contract  
10 requirements, but we didn't talk about that concept of  
11 electric supply space, did we?

12 A I don't -- I thought we did.

13 Q We didn't, did we?

14 A I thought we did.

15 MS. HARDEN: Objection. Asked and answered.

16 Q In fact, as we just discussed, you testified  
17 that the safety space was the 40-inch separation required  
18 by the NESC from the neutral.

19 A That's correct. And then we -- I'm positive we  
20 talked about the 72-inch space that we required in the  
21 contract.

22 Q Is that what you are referring to when you say  
23 the electric supply space?

24 A No. The electric supply space is from the

1 bottom of the pole to the bottom of that 72-inch space --  
2 from the top of the pole to the bottom of the 72-inch  
3 space.

4 Q So when you use that term, you are referring to  
5 what you state is a contract requirement that requires  
6 72-inch -- a 72-inch separation from the neutral to  
7 Charter's attachment, right?

8 A Yes.

9 Q Blue Ridge does not perform a loading analysis  
10 for every new attachment, right?

11 A We do a loading analysis by process. We have  
12 standard designs that we give our guys, so our staking  
13 units have standard designs. We're RUS Borrowers. RUS  
14 has standard specifications for us. And so we know if  
15 we've got a certain size pole and they can put a certain  
16 size wire on it, then it will be a certain load. So they  
17 look at that. They know it from those design standards,  
18 loading it. It's not exactly -- they don't just sit  
19 there and calculate it out each time because we've got it  
20 -- got it to a manual process of they just look and say  
21 I've got this size wire and so I'll need this size pole.

22 Q And that's a design manual that they have,  
23 right?

24 A Yes.

1 Q And it has look-up tables that you were  
2 describing?

3 A Yes.

4 Q And those look-up tables allow the technicians  
5 to determine the size and class of pole they need based  
6 on what facilities are going on the pole, right?

7 A Yeah. Based on what they are putting on the  
8 pole, that's correct.

9 Q And based on the span length?

10 A Yes.

11 Q And as you said, the design manual takes the  
12 math out of it for the technicians, right?

13 A Yes.

14 Q And that design manual also includes  
15 information, hypothetical information, about cable and  
16 phone attachments, right?

17 A I don't know that it does for cable. We have  
18 -- so we're presuming that there's one phone cable on  
19 that pole, so there is some loading based on that, and it  
20 may -- I don't know what it says exactly.

21 Q And you recall in your deposition we looked at  
22 that design manual?

23 A Yes. That's right.

24 (Ms. Wigger hands binder to witness and Ms. Harden.)

1 MS. HARDEN: What binder is that?

2 MS. WIGGER: This is a binder of our first  
3 exhibits.

4 Q Mr. Layton, if you can turn to tab 27, which  
5 you may be at.

6 MR. GEORGE: We've distributed to Mr. Layton  
7 and his counsel a binder of exhibits, and these exhibits  
8 include the deposition exhibits that were admitted during  
9 Mr. Layton's deposition, and tab 27 is the design staking  
10 manual.

11 Q Mr. Layton, is that the design staking manual  
12 you were discussing?

13 A Yes, it is.

14 MS. HARDEN: Excuse me. For the record, we are  
15 looking at Lee Layton Deposition Exhibit Number 18,  
16 correct?

17 MR. GEORGE: That's correct.

18 Q This is an exhibit we looked at during your  
19 deposition, correct?

20 A That is correct.

21 CHAIRMAN FINLEY: What's the name of it again?

22 MR. GEORGE: It's the Blue Ridge Electric  
23 Membership Corporation Distribution Staking Manual.

24 CHAIRMAN FINLEY: Staking Manual. Okay.

1           Q     Mr. Layton, if you'll just turn to page --  
2     there are not page numbers on it, but if you notice at  
3     the bottom right there is a Blue Ridge EMC Bates number.  
4     If you could turn to page BREMC013723.

5           A     Okay.

6           Q     Are you there?

7           A     Yes.

8           Q     And you see that this is one of the tables that  
9     you were discu--- that we were discussing that we  
10    described as a look-up table, right?

11          A     That's correct.

12          Q     And the first part of the tables has a box that  
13    says conductor information. Do you see that?

14          A     You're talking about --

15          Q     At the top of the page.

16          A     Yes.

17          Q     And it describes different conductors, and one  
18    of them is listed as distribution, right?

19          A     Wait a minute. I may not be on -- tell me that  
20    number again.

21          Q     013723.

22          A     Ah. I'm on the wrong one.

23                MS. HARDEN: For the record, it's Staking  
24    Manual Table 5-2-10. That may help you.



1           A     So, then, tell me that number again. Last  
2 three digits.

3           Q     723. And I just, frankly, picked a random page  
4 so you can tell me what page --

5           A     Okay. Yeah. There were too many numbers  
6 there. I got it.

7           Q     Do you see now the conductor information table  
8 that I was discussing?

9           A     Yes.

10          Q     And there's a line there that says  
11 Distribution, right?

12          A     Yes.

13          Q     And that refers to Blue Ridge's distribution  
14 conductors, right?

15          A     That's correct.

16          Q     And then the line below that that says Neutral,  
17 correct?

18          A     Yes.

19          Q     And that refers to Blue Ridge's neutral  
20 conductors.

21          A     Right.

22          Q     And the line below that say CATV/Telephone,  
23 right?

24          A     Yes.

1 Q And you understand CATV means cable?

2 A That's correct.

3 Q And then Telephone is telephone?

4 A Yes.

5 Q And it includes information about a proposed  
6 telephone or cable attachment, right?

7 A That's correct.

8 Q And the table includes -- the next table down  
9 shows -- is titled Pole Framing. Do you see that?

10 A Yes.

11 Q And it shows the distance from the top of the  
12 pole to the attachment?

13 A Yes.

14 Q And so it has the distribution facilities right  
15 at the top of the pole, right?

16 A Yes. That's correct.

17 Q And the neutral at 3-1/2 feet?

18 A Yes.

19 Q And then the cable or telephone attachment at  
20 6.83 feet, right?

21 A Right.

22 Q And so when I asked you before this  
23 distribution staking manual includes information about  
24 cable facilities, your answer was yes, right?

1 A Yes.

2 Q And we talked about this in the deposition, how  
3 Blue Ridge could work with Charter to determine what  
4 wires Charter uses, right?

5 A Yes.

6 Q And the parties could actually build a look-up  
7 table like this one that had both Blue Ridge information  
8 in it and Charter information in it, couldn't they?

9 A We could. I don't see that as our purpose. I  
10 think this was designed, first of all, to make sure we  
11 were meeting our joint use requirements and to give our  
12 guys some guidelines if they did encounter cables out  
13 there, but we don't know what those cables are and we do  
14 not want to be designing Charter's system for us -- for  
15 them.

16 Q Well, you know that there are cables out there,  
17 right?

18 A Yes.

19 Q And you know that there's telephone attachments  
20 out there?

21 A Yep.

22 Q In fact, in your deposition, you said Blue  
23 Ridge would not be willing to work on -- with Charter to  
24 develop a look-up table like this.

1           A     We do not want to be in the process of  
2     designing Charter's system.

3           Q     That's not what I asked. I asked -- you said  
4     Blue Ridge would not be willing to work with Charter to  
5     develop a manual like this.

6           A     Well, that's what I assumed you meant by that,  
7     is you want us to do the design work. I do not want to  
8     do the design work for Charter.

9           Q     That's not -- that's not my question. My  
10    question is you --

11                   MS. HARDEN: Objection.

12           Q     -- would not be willing to work with Charter to  
13    develop a table like this.

14                   CHAIRMAN FINLEY: I don't think he's quite  
15    answered the question yet. Please try to answer his  
16    question, Mr. Layton.

17                   THE WITNESS: I'm not sure what the question  
18    is.

19           Q     My question to you now and at the deposition  
20    was would you be willing -- Blue Ridge be willing to work  
21    with Charter to develop a look-up table like this?

22           A     Okay. When you asked me that at the  
23    deposition, my assumption was, from the way you were  
24    saying that, is that you wanted us to -- you wanted to

1 work out a table so that we would use that in doing our  
2 design work. Now, if you're saying something different  
3 from that, if you're saying would we be willing to work  
4 with you to help you do that, we probably would, but we  
5 do not want to do your design work, and that's what I  
6 understood you to mean when you were in the deposition.

7 Q So is the answer that Blue Ridge is willing to  
8 work with Charter to develop something like -- a look-up  
9 table like this?

10 A We'll help you if you need some help, yes.

11 Q I think you testified earlier you began working  
12 for Blue Ridge in 2005; is that correct?

13 A That's correct.

14 Q And at that time, Blue Ridge and Charter were  
15 operating under an agreement executed in 2003?

16 A That's correct.

17 Q You did not negotiate the 2003 agreement, did  
18 you?

19 A No, I did not.

20 Q But you are aware that Blue Ridge drafted the  
21 2003 agreement?

22 A Yes.

23 Q But you don't know how those negotiations with  
24 Charter happened in 2003, right?

1           A     I do not.

2           Q     And you don't know whether Blue Ridge made any  
3     concessions in its negotiations with Charter for that  
4     2003 agreement, do you?

5           A     My understanding is there were not -- from the  
6     conversations I've had and just what I generally  
7     understood, I've not seen any written records of anything  
8     to say that.

9           Q     So you're not aware of any concessions that  
10    Blue Ridge made for Charter in that agreement?

11          A     I'd have no understanding that there were any  
12    concessions offered or made.

13          Q     And you don't know if Blue Ridge moved at all  
14    on the rate that it demanded Charter pay?

15          A     I do not, nor do I know that Charter asked for  
16    any movement on the rate.

17          Q     But you don't know if Blue Ridge moved at all  
18    on the rate?

19          A     That's what I said, I do not know if they did,  
20    but I do not recall them being asked to move from the  
21    rate.

22          Q     You don't know, rather. You said you don't  
23    recall, but you don't know whether Charter asked to move  
24    on the rate?

1           A     I do not know.

2           Q     And you don't know what agreement predated the  
3     2003 agreement?

4           A     No. I'm only aware of the 2003, 2008  
5     agreement. I assume there were previous agreements, but  
6     I've not seen those.

7           Q     And you don't know what the terms of those  
8     previous agreements were?

9           A     I've not seen those.

10          Q     And you don't know what -- for instance, what  
11     those previous agreements required in terms of the  
12     spacing between Charter's facilities and Blue Ridge's  
13     neutral?

14          A     Well, they would have required the National  
15     Electrical Safety Code as a minimum.

16          Q     Right.

17          A     I don't know if it required more than that or  
18     not.

19          Q     And you understand Charter has had attachments  
20     to Blue Ridge poles for approximately 40 years?

21          A     Yes.

22          Q     But you don't know when Charter made the  
23     majority of its attachments to Blue Ridge poles, do you?

24          A     No, I do not.

1           Q    You don't know how many attachments were made  
2 before 2003, do you?

3           A    I have not looked. I mean, we could tell that,  
4 but I have not looked.

5           Q    And you don't know how many were made before  
6 2008?

7           A    I have not looked.

8           Q    Now, turning to the 2008 agreement, Blue Ridge  
9 drafted that agreement as well, right?

10          A    Yes.

11          Q    And you testified in your written testimony  
12 that the primary issue was the pole attachment rate  
13 between the parties?

14          A    Yes. The 2008 -- the 2008 agreement was  
15 essentially, again, the 2003 agreement, just like we had  
16 offered last May for the new agreement, so there's really  
17 been no substantial changes --

18          Q    Right.

19          A    -- in the agreements.

20          Q    Including no substantial change in the rate,  
21 right?

22          A    That's correct.

23          Q    Even though Charter did want to negotiate the  
24 rate.



1 A In which --

2 Q 2008.

3 A I was not aware they had asked for any  
4 concession on the rate in 2008.

5 Q But your testimony -- your filed testimony here  
6 says that the primary issue in that agreement was the  
7 recurring pole attachment rate, correct?

8 A Well, that's the thing that changed, but I  
9 don't recall any -- asking for any concessions on it. We  
10 offered a rate at that time. I don't believe Charter  
11 objected or raised any issues about that, that I'm aware  
12 of.

13 Q Well, the rate you offered was actually higher  
14 than what you had been charging before?

15 A Yes.

16 Q You're aware of the pole attachment legislation  
17 at the state level under which Blue Ridge brought its  
18 petition in this proceeding, right?

19 A Yes.

20 Q And prior to that legislation, you're not aware  
21 of any right Charter had to take a dispute related to  
22 pole attachments to this Commission?

23 A No.

24 Q You attached the 2008 agreement to your

1 testimony; is that correct?

2 A That's correct.

3 Q Do you have your testimony in front of you?

4 A Yes.

5 Q And the 2008 agreement was attached as Exhibit

6 3.

7 A Okay.

8 Q Is that correct?

9 A Yes. That's correct.

10 Q Section 1.4 of the 2008 agreement specifies  
11 that --

12 MS. HARDEN: Objection. That is a confidential  
13 section, I believe, Mr. George, correct? And we still  
14 have one person who hasn't signed, is that right,  
15 Commissioner Finley?

16 COMMISSIONER FINLEY: Yes, I think. Frances,  
17 you haven't signed a confidentiality agreement, have you?

18 MS. LILES: I haven't.

19 CHAIRMAN FINLEY: All right. We are going to  
20 have some questions on confidentiality agreements, and so  
21 we will clear the hearing room temporarily. Frances, if  
22 you'll stand right outside there, we'll come and get you  
23 when we're finished.

24

1 (Because of the proprietary nature of  
2 the testimony found on pages 140  
3 through 156, it was filed under  
4 seal.)

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1                   CHAIRMAN FINLEY: Re-ask your question, Mr.  
2 George, please.

3                   MR. GEORGE: I'll strike it.

4                   CHAIRMAN FINLEY: All right. Let's -- it's  
5 11:00. We're going to take a 15-minute recess if that's  
6 okay with everybody. Be back at 11:15.

7                   (Recess taken from 11:00 a.m. to 11:14 a.m.)

8                   CHAIRMAN FINLEY: All right. Let's come back  
9 on the record. Are we in confidentiality cross  
10 examination or are we not?

11                  MR. GEORGE: We're going to get into the terms  
12 of the -- sorry. We're going to get into the terms of  
13 the other Joint Use Agreements which I think you've  
14 designated as confidential.

15                  MS. HARDEN: Yes, Chairman Finley. The other  
16 Joint Use and Pole Attachment Agreements all have -- or  
17 almost all -- I won't say all without going back and  
18 checking, but I believe all of them have confidentiality  
19 terms, and we've tried to honor those because obviously  
20 none of those were subject to, you know, public  
21 disclosure in this Commission until these type of  
22 proceedings. So we're honoring those terms and request  
23 they remain confidential in accordance with how they were  
24 negotiated.

1                   CHAIRMAN FINLEY: Well, for the moment,  
2   whatever has been designated confidential we will honor.  
3   And if you want to fight about that later, we'll welcome  
4   to hear you on that.

5                   MS. HARDEN: Thank you, sir.

6                   CHAIRMAN FINLEY: Okay. For the moment, we are  
7   still in confidentiality territory.

8                                   (Because of the proprietary  
9                                   nature of the testimony found  
10                                  on page 159-187, it was filed  
11                                  under seal.)

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1 BY MR. GEORGE:

2 Q So Blue Ridge conducted -- you referenced it  
3 just now -- Blue Ridge conducted an audit during 2015 and  
4 2016, right?

5 A Yes.

6 Q And the focus of that audit was on third-party  
7 attachments?

8 A Joint use and third-party attachers.

9 Q And the auditor counted the number of  
10 attachments for third-party attachers and for joint --  
11 sorry -- the auditor counted the number of attachments  
12 for third-party attachers like Charter, right?

13 A Say it again.

14 Q The auditor counted the number of attachments  
15 for third-party attachers like Charter?

16 A Counted number of poles and number of  
17 attachments --

18 Q For third --

19 A -- for both, joint users and pole attachers.

20 Q Well, let's unpack that a little bit. The  
21 auditor counted the number of attachments and poles for  
22 third-party attachers?

23 A Yes.

24 Q Right?

1 A Yes.

2 Q And then for joint users, the auditor counted  
3 just the number of poles, right?

4 A That's my understanding.

5 Q So the auditor did not count the number of  
6 attachments that joint users made to poles?

7 A No.

8 Q And so the audit found that other attachers had  
9 additional attachments as well, correct?

10 A Third-party attachers or joint users?

11 Q Well, they didn't count the attachments by  
12 joint users.

13 A Oh, you're just talking about number of  
14 attachments, not number of poles.

15 Q The question is the auditor found that other  
16 third parties had more attachments than were permitted,  
17 correct?

18 A Some had less. If we're talking about joint  
19 users, number of poles they're attached to, I'm not sure  
20 I'm clear on the terms you're using here, so that's why  
21 we have confusion with these terms.

22 Q Yeah. It can sometimes be used  
23 interchangeably, right?

24 A Yeah. They are.

1           Q     I'm not using them interchangeably. The  
2 auditor found that other third-party attachers other than  
3 Charter had more attachments than they had permitted for.

4           A     That's correct.

5           Q     That's correct, right?

6           A     Yes.

7           Q     And in this audit you asked the auditor to look  
8 for NESC violations, correct?

9           A     Yes.

10          Q     And you didn't tell them to measure everything,  
11 right?

12          A     No.

13          Q     And you didn't tell them to investigate any  
14 particular issue they found, right?

15          A     We just said if it looked like it was an  
16 obvious violation to report it.

17          Q     And what you found is that every attacher has  
18 violations, right?

19          A     That's correct, including Blue Ridge.

20          Q     Right. So all the joint users had violations?

21          A     That's correct.

22          Q     And all the third-party attachers had  
23 violations?

24          A     Yes.



1 Q And Blue Ridge had issues as well, right?

2 A That's correct.

3 Q Even though the auditor wasn't even looking  
4 necessarily for Blue Ridge violations, correct?

5 A Well, he was looking for obvious violations on  
6 the pole, so he would see those, also.

7 Q All right. So he had noted some clearance  
8 violations that Blue Ridge had?

9 A I don't remember what the violations were, but  
10 there were 140 or so violations.

11 Q And when did you look at those violations?

12 A After the audit report came. It would have  
13 been sometime in 2017.

14 Q And Blue Ridge had separation violations?

15 A I don't remember what the violations were. I  
16 just remember there was a number of them, 140 or so, of  
17 some type of violations.

18 Q Well, when I took your deposition three weeks  
19 ago, you remembered that Blue Ridge had clearance  
20 violations, separation violations, broken guides, and  
21 missing anchors, right?

22 A I don't recall what was said in the deposition.

23 Q Now, in your rebuttal you testified that Blue  
24 Ridge is in the process of fixing those violations,

1 right?

2 A That's correct.

3 Q But it had not been fixing those violations  
4 prior to your deposition, had it?

5 A I don't know where we were in the process. As  
6 I say, I'm no longer a full-time employee so I'm not  
7 there. I do know that it's -- the process is about 50 to  
8 60 percent complete at this time.

9 Q Right. And at the time I said had -- has Blue  
10 Ridge's violations been corrected, and you said you don't  
11 know.

12 A Okay.

13 Q And when I took your deposition three weeks ago  
14 you didn't know how many violations the other  
15 communications companies had, did you?

16 A I've seen it. I just can't recall all these  
17 numbers.

18 Q In your rebuttal testimony, you say SkyLine had  
19 more attachments than Charter, right?

20 A More violations?

21 Q I'm sorry. More violations.

22 A Yes. That's correct.

23 Q And you've learned from Mr. Mullins' testimony  
24 that Morris Broadband had more violations as well?

1 MS. HARDEN: Objection.

2 A Morris Broadband?

3 CHAIRMAN FINLEY: Wait just a minute. Let's  
4 see what she says.

5 MS. HARDEN: He's misconstruing testimony.  
6 Morris Broadband did not have more violations than  
7 Charter.

8 Q You know now that other attachers had similar  
9 violation rates as Charter, right?

10 A Yes.

11 Q And SkyLine actually had a higher violation  
12 rate than Charter?

13 A Yes. Slightly, yes.

14 Q By violation rate we mean the number of  
15 violations based on the number of attachments, right?

16 A No. I was just counting the number of  
17 violations.

18 Q So when you said Charter had -- sorry --  
19 SkyLine had more violations than Charter, you're talking  
20 about the gross number, correct?

21 A That's correct.

22 Q But also as function of the number of  
23 violations per pole, SkyLine had a higher rate of  
24 violations?

1           A     I haven't calculated that. I think you quoted  
2     some numbers like that.

3           Q     Do you see those numbers in Mr. Mullins'  
4     testimony?

5           A     Yes. Yeah, I have.

6           Q     Did you take any steps to verify those numbers?

7           A     No.

8           Q     Do you have any reason to dispute those  
9     numbers?

10          A     No, I do not.

11          Q     And those numbers show that Morris Broadband  
12     had a higher rate of violations than Charter as well?

13          A     I don't recall, and I don't know it's relevant  
14     to anything. I mean, they're violations. You know, if I  
15     had an attacher out there who had 10 total attachments  
16     and he had seven violations, he's got a 70 percent  
17     violation rate, but it's still just seven attachments --  
18     still seven violations.

19          Q     Or you might have an attacher like SkyLine who  
20     has 27,000 -- who's attached to 27,000 poles, right?

21          A     Yes.

22          Q     And had over 4,000 violations.

23          A     Uh-huh. So a very similar percentage rate, as  
24     you said, to Charter.

1 Q But higher than Charter's?

2 A Marginally. It's very close.

3 Q And you didn't know at the time of your  
4 deposition if any of these other communications companies  
5 had been notified of these violations, did you?

6 A That's correct.

7 Q In fact, you had not submitted any NJUNS ticket  
8 to them?

9 A That's correct.

10 Q Now, in your rebuttal testimony, you said you'd  
11 only started submitting those tickets now, right?

12 A We're in the process of doing it. I don't know  
13 where we are in the process, but we have a process set  
14 forth to start doing that.

15 Q Now, have you submitted any tickets to other  
16 parties?

17 A I don't know that any have been submitted at  
18 this time.

19 Q But you did submit about 3,500 tickets to  
20 Charter?

21 A Yes. And we wanted to get that one out first  
22 because we've got this hearing going on. We do intend to  
23 let all the other attachers know what their violations  
24 are, but that's a lot of work. That's a lot of work to

1 put in the system, so it's going to take a while to get  
2 it done, but we will get it all out to them.

3 Q So it was important to get the tickets out to  
4 Charter so that you could then talk about it in this  
5 hearing, right?

6 A We wanted you to be aware of it.

7 Q But you didn't -- when you sent those tickets  
8 to Charter, you didn't take any effort to determine if  
9 Charter was next to go in terms of remedying those  
10 tickets, did you?

11 A In the violations?

12 Q That's right.

13 A No. We just submitted them into the NJUN  
14 system.

15 Q Right. So you sent 3,500 tickets to Charter,  
16 right?

17 A Uh-huh.

18 Q But you didn't take any measures to determine  
19 if Charter was actually the next party to go in terms of  
20 fixing those violations?

21 A Not to my knowledge.

22 Q So what that means is in the ticket, if it says  
23 lower, that's an instruction for Charter to lower its  
24 attachment, right?

1           A     That's correct.

2           Q     And if Charter gets to the pole and the  
3     telephone company is attached below Charter, then Charter  
4     can't do anything at that pole, can it, until the  
5     telephone company moves its attachment down?

6           A     Well, they may not can move their attachment  
7     down. It may be a situation where the pole's got to be  
8     raised to make the attachment.

9           Q     So in that situation, it would require  
10    coordination between Charter and the telephone company  
11    and Blue Ridge --

12          A     Yes.

13          Q     -- to remedy the violation?

14          A     Yes.

15          Q     But your tickets aren't sorted based on who  
16    needs to go first to remedy the violation, right?

17          A     To the best of my knowledge, it's not. I do  
18    not know.

19          Q     And you submitted those tickets to Charter in  
20    August of 2017, correct?

21          A     That sounds right, yes.

22          Q     That's in your testimony, right?

23          A     Yes.

24          Q     And the auditors first finding compliance --

1 first started finding compliance issues in early 2015,  
2 right, when the audit was started?

3 MS. HARDEN: Objection. No foundation for the  
4 early 2015. Mr. George is amplifying.

5 CHAIRMAN FINLEY: Leave out the early and see  
6 if he can answer the question.

7 A The -- we didn't get the results of the audit  
8 until late 2016. It was like November of 2016 is when we  
9 had the completed audit in our hands to look at.

10 Q So was the auditor providing Blue Ridge any  
11 information about the inspection prior to November of  
12 2016?

13 A I don't recall any. He may have, but I don't  
14 recall that.

15 Q In fact, in November of 2016 is when Charter's  
16 -- I'm sorry -- Blue Ridge sent an invoice to Charter,  
17 correct?

18 A Yes. That's right.

19 Q And so from November 2016 until November 2017,  
20 Blue Ridge still has not submitted any tickets to any  
21 other parties other than Charter, correct?

22 A That's correct.

23 Q And it actually waited until this proceeding  
24 was underway to submit the tickets to Charter?



1           A     We thought as soon as the audit was done and we  
2     had the violations, we thought we sent that information  
3     to Charter at that time. There was some email that made  
4     us think we had sent that in December, but we -- we don't  
5     know that we ever sent it in December. Our intent was to  
6     get that to Charter quickly, but after that we decided to  
7     put it all into NJUNS, and that took considerable time.  
8     We started that -- I think I said we had it done in  
9     August, but we started it months before that.

10          Q     Right. Months before that during the pendency  
11     of this proceeding, correct?

12          A     Yes.

13          Q     And you actually weren't ever able to verify  
14     that you sent the audit results to Charter or any other  
15     company in December of 2016, right?

16          A     That's correct.

17          Q     Now, later you had Mr. Booth -- I think you  
18     referenced PowerServices -- do an investigation in August  
19     of 2017; is that right?

20          A     That's right.

21          Q     And as you say in your rebuttal testimony, the  
22     purpose of his inspection was for this litigation?

23          A     Yes.

24          Q     And Mr. Booth did not provide the results and

1 Blue Ridge did not provide the results of that  
2 investigation until Mr. Booth served his prefiled  
3 testimony, correct?

4 A I don't recall.

5 Q Blue Ridge didn't provide the results before  
6 Mr. Booth filed his testimony, did it?

7 A As I say, I don't -- I do not recall.

8 Q The day after you filed your direct testimony  
9 in this case and Mr. Booth filed his direct testimony,  
10 your lawyer send a list of imminent threats to Charter,  
11 right?

12 A Yes.

13 Q And you didn't send that list to -- excuse me.  
14 You sent that list to Charter's lawyers, correct?

15 A That's correct.

16 Q And Blue Ridge didn't communicate that  
17 information to Charter directly, right?

18 A No.

19 Q And the Commission is supposed to see the  
20 retainment of Mr. Booth for this inspection and the  
21 issuing of those tickets as anything other than being a  
22 litigation tactic?

23 A I don't know how they will see it. My concern  
24 was, was what we audited correct. It looked like a lot

1 of attachments. I wanted to make sure it was correct,  
2 and that's the reason we engaged PowerServices to look at  
3 this.

4 Q Did PowerServices look at attachments made by  
5 other companies?

6 A Now, we focused on five circuits which were  
7 predominantly -- well, I think they were all Charter, and  
8 that was because we were in this and we wanted to make  
9 sure if we were saying there were this many violations,  
10 that this is indeed correct, so we did look specifically  
11 at Charter versus other entities.

12 Q And Blue Ridge hasn't sent a list of imminent  
13 threats to any other attacher to its poles, has it?

14 A No.

15 Q Now, Blue Ridge was aware, prior to Mr. Booth's  
16 August inspection, that Charter is attached in numerous  
17 locations closer than 8-1/2 feet from the pole top,  
18 right?

19 A I'm sorry. Say that again.

20 Q So Blue Ridge was aware, prior to Mr. Booth  
21 doing his inspection in August of 2017, that Charter is  
22 attached in places on Blue Ridge's poles closer than  
23 8-1/2 feet from the pole top?

24 A I would assume so, yes.

1 Q And you would assume so because the standard  
2 was to attach 72 inches or 40 inches below the neutral,  
3 right?

4 A Right.

5 Q And Charter -- sorry -- Blue Ridge had not  
6 complained to Charter about this practice prior to August  
7 2017, had it?

8 A I do not know.

9 Q Blue Ridge was aware, prior to Mr. Booth's  
10 August 2017 inspection, that Charter's actually attached  
11 in some places closer than 72 inches to the neutral,  
12 right?

13 A Yes.

14 Q In fact, Charter and its predecessors, as we  
15 discussed, had done that for many years before the 2003  
16 agreement?

17 A Yes.

18 Q And you're not aware of any specific attachment  
19 made by Charter since the 2008 agreement that is closer  
20 than 72 inches to the neutral, are you?

21 A Yeah. I believe we've got some that we know  
22 have been made since 2003.

23 Q Well, Mr. Booth did not check whether the  
24 attachment was made prior to or before 2003 or 2008, did

1 he?

2 A I do not know.

3 Q Was he given the information he would need to  
4 verify that by Blue Ridge?

5 A No.

6 Q And your auditor in 2015 and 2016 did not check  
7 whether an attachment was made prior to or before 2003 or  
8 2008, did he?

9 A No.

10 Q And he didn't have the information to determine  
11 that, did he?

12 A No.

13 Q Now, you describe Blue Ridge's inspection  
14 program in your opening statement as very robust; is that  
15 right?

16 A Yes.

17 Q And you just said there's a lot of different  
18 inspections that it conducts, but it does a systemwide  
19 inspection every six years, right?

20 A That's correct. We have several different  
21 inspections. We inspect our poles on a nine-year cycle,  
22 where we inspect them for strength and integrity. All of  
23 our main three-phase lines we inspect every year. And  
24 then the entire system is looked at on a six-year cycle.

1           Q     And those inspections include every pole,  
2     right?

3           A     That's correct.

4           Q     Whether there's a joint user there or not?

5           A     That's correct.

6           Q     And whether there's a third-party attachment  
7     there or not?

8           A     Yes.

9           Q     And I think in your opening statement you said  
10    Blue Ridge does inventories like the one it did in 2015  
11    and 2016 every five years, right?

12          A     It's about every five years.

13          Q     And those inventories are focused on third-  
14    party attachments, right?

15          A     Yes.

16          Q     So if a violation exists and has been there for  
17    more than five or six years, Blue Ridge would have seen  
18    it at a prior inspection, right?

19                   MS. HARDEN:  Objection.

20                   CHAIRMAN FINLEY:  Grounds?

21                   MS. HARDEN:  I object because it is  
22    misconstruing his prior testimony about the scope of  
23    inspections.

24                   CHAIRMAN FINLEY:  Overruled.

1           A     Ask it again.

2           Q     So if a violation exists on a pole involving a  
3     third-party attachment and it's been there for more than  
4     five or six years, Blue Ridge would have known about it  
5     in a prior inspection?

6           A     Based on the prior inventory inspection is what  
7     you're saying?

8           Q     On any of the inspections that Blue Ridge  
9     conducts in its robust program.

10          A     Well, typically when Blue Ridge is doing its  
11     inspections, it's looking at its system, not necessarily  
12     Charter's proximity to the system, unless it's an  
13     imminent threat. And they do see some and they do report  
14     them, but it would have to be very imminent. They're  
15     looking more for broken guides, broken crossarms,  
16     crossarm braces, trees too close, things like that. It's  
17     not really looking at Charter or third-party attachers.

18          Q     So if there are any imminent threats that have  
19     existed for five or six years, those would have been  
20     identified in a prior audit?

21          A     Most likely if it was very obvious and a  
22     concern to the people doing the inspection, they would  
23     have reported it.

24          Q     So the obvious ones would have been reported?

1           A     Very obvious. This is not being done by a  
2 professional safety auditor; it's being done by our  
3 linemen and existing personnel that are looking for  
4 electric system problems.

5           Q     In fact, the NESC requires that violations  
6 identified and not properly cured be reported, right?

7           A     Yes.

8           Q     Do you have any records of the violations found  
9 in the 2015/2016 audit being found in prior audits?

10          A     I do not.

11          Q     And you don't have any records of the imminent  
12 hazards that Mr. Booth identified in August 2017 having  
13 been identified in a prior audit, do you?

14          A     I do not.

15          Q     I'd have you turn to Exhibit LL-16C of your  
16 deposition testimony -- I'm sorry -- of your prefiled  
17 testimony.

18          A     Yes.

19          Q     And are you there?

20          A     Yes.

21          Q     And do you see the picture, the first picture  
22 there --

23          A     Yes.

24          Q     -- as part of LL-16C?



1 A 16C?

2 Q Uh-huh.

3 A Yes.

4 Q And that's the pole that you actually showed in  
5 your opening statement, right?

6 A That's correct.

7 Q And it's a close-up of a set of crossarms with  
8 a streetlight and a transformer?

9 A Yes.

10 Q And there's a Charter attachment that you noted  
11 as below the transformer, but very close to it?

12 A That's correct.

13 Q You don't know when Charter's cable was  
14 attached on this pole, do you?

15 A You've got to give me a minute. I'm trying to  
16 think of where this one is. I can't place it. I can't  
17 remember.

18 Q Well, is it you can't remember or you don't  
19 know?

20 A I think we checked on this, but I just don't  
21 recall.

22 Q Well, I asked you in your deposition about this  
23 same exhibit, and I said, "When was Charter's cable  
24 attached? Do you know?" And you said, "No, I do not."

1 A That's correct.

2 Q Is that right?

3 A That's correct. And since then I've sent  
4 somebody out look at these to verify, and I was told, but  
5 I just do not remember.

6 Q Did you look at any of these poles yourself?

7 A Yes.

8 Q Did you look at them before you filed your  
9 testimony?

10 A No.

11 Q You only looked at pictures before you filed  
12 your direct testimony?

13 A Sorry?

14 Q You only looked at pictures of the poles.

15 A The pictures, yes.

16 Q And you didn't -- you didn't look at all the  
17 pictures that were taken of Blue Ridge poles, did you?

18 A No, I did not.

19 Q And you don't know when the transformer was  
20 hung on this pole, either, do you?

21 A No. As I say, we did look at it, and they told  
22 me. I just do not remember.

23 Q And you didn't say anything about this in your  
24 rebuttal testimony, did you?

1           A     I don't think so.

2           Q     So you may not have liked the answers that you  
3 got?

4           A     I don't recall.

5                   MS. HARDEN:  Objection.

6                   CHAIRMAN FINLEY:  Overruled.

7           Q     And you don't know when the streetlight was  
8 installed on this pole?

9           A     No, I do not.

10          Q     And you don't know when the riser was installed  
11 on this pole?

12          A     No.

13          Q     If you could turn to 16E.

14          A     B, as in boy?

15          Q     Sorry.  I'm sorry.  LL-16E.

16          A     E.  Okay.

17          Q     This is another pole that you talked about in  
18 your opening statement.

19          A     Yes.

20          Q     Did you visit this pole?

21          A     Yes.

22          Q     And you noted that Blue Ridge has several  
23 risers on this pole, correct?

24          A     That's correct.

1 Q And those risers are spaced close together,  
2 right?

3 A Yes.

4 Q And in a configuration that you actually could  
5 not climb this pole because of Blue Ridge's risers,  
6 right?

7 A No. They're on one side of the pole. There  
8 would be adequate room on the other side if it wasn't for  
9 the Charter box.

10 Q There are additional Blue Ridge risers on the  
11 other side of the pole, though, aren't there?

12 A No.

13 Q And you can't tell that from this picture, can  
14 you?

15 A No. It's not clear in this picture.

16 Q So you understand from Mr. Mullins' testimony  
17 that Charter believes there are several poles where Blue  
18 Ridge has hung a transformer within the 40 inches that  
19 Charter left when it attached below the neutral, correct?

20 A Yes.

21 Q And is it Blue Ridge's position today that  
22 Charter should pay to bring those facilities into  
23 compliance?

24 A Yes. The one -- and the ones I looked at on

1     there in his testimony, I believe, and I can't recall all  
2     of them, but it seemed like to me we looked at those and  
3     they were all -- well, I was thinking they were within 30  
4     inches of the pole -- of the transformer. I'm sorry. I  
5     may be confused.

6           Q     So in a situation where Charter contends that  
7     it attached its facilities 40 inches below the neutral  
8     prior to 2003 and Blue Ridge later hung a transformer, is  
9     it your position that Charter should pay to remedy that  
10    violation?

11          A     Charter caused the violation, yes.

12                     (Because of the proprietary nature  
13                     of the testimony found on pages 212  
14                     through 213, it was filed under  
15                     seal.)

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1 REDIRECT EXAMINATION BY MS. HARDEN:

2 Q Mr. Layton, I want to start, if you will, with  
3 your testimony and the photo that I believe Mr. George  
4 ended with which was LL-16E.

5 A Yes.

6 Q And if you'll bear with me -- I think it's very  
7 unfair that you guys don't have these kinds of things --  
8 I have -- I'd like to turn the Elmo on so all of us can  
9 see what we're talking about, okay? The screens are --  
10 well, the screens are off.

11 Well, I tell you, I'll hold this. I don't want  
12 to hold up. I'll come back to it, but I'd like to show  
13 this photo and some subsequent photos of this pole to the  
14 Commission.

15 Mr. Layton, during your examination by Mr.  
16 George, he mentioned the -- Charter had 1,373  
17 unauthorized attachments that were found in the 2015/'16  
18 inspection, correct?

19 MR. GEORGE: Objection, Your Honor. I don't  
20 believe I ever referenced that.

21 MS. HARDEN: You don't -- you did not remember  
22 that there were 13--- you didn't test--- you didn't ask  
23 him any questions about Charter having 1,373 unauthorized  
24 attachments?

1 MR. GEORGE: I never asked that, any questions  
2 about that.

3 MS. HARDEN: Within the scope of the rebuttal,  
4 sir, I believe that --

5 CHAIRMAN FINLEY: Ask your question, but just  
6 don't tie it to his question, okay?

7 MS. HARDEN: Okay.

8 CHAIRMAN FINLEY: Ask your question.

9 MS. HARDEN: All right.

10 Q Do you recall that the audit found 1,373  
11 unauthorized attachments by Charter?

12 A Yes.

13 Q Do you recall that the next largest grouping of  
14 unauthorized attachments by a third-party attacher was  
15 SkyBest?

16 A SkyBest or SkyLine?

17 Q SkyBest.

18 A SkyBest, yes.

19 Q Third-party attacher.

20 A Third-party attachers, yes.

21 MR. GEORGE: Objection. Leading.

22 Q And do you recall --

23 CHAIRMAN FINLEY: Let's not lead the witness if  
24 he's your witness.

1 Q How many, sir, SkyBest unauthorized attachments  
2 did you find, approximately?

3 A I don't remember the exact number. It was  
4 several hundred, 300 or so.

5 Q Three hundred or so. And that was the next  
6 largest grouping by a third-party attacher of  
7 unauthorized attachments you found?

8 A Yes.

9 Q So you're the engineer, not I, so you found  
10 three times as many unauthorized attachments by Charter  
11 than the next closest third-party attacher?

12 A That's correct.

13 Q There's also been -- Mr. George started by  
14 asking you about the electric supply space. What is it?

15 A What we're talking about is the space we need  
16 on the pole to operate the electric system. It starts  
17 with the top of the pole. We've got the crossarm,  
18 crossarm braces. We've got our neutral and then we've  
19 got space for our transformers and equipment. So you add  
20 that all up in the 72 inches and that gets you 8-1/2  
21 feet.

22 Q And that's at the top of the pole?

23 A From the top of the pole, yes.

24 Q And where does that 8-1/2 feet requirement come



1 from, sir?

2 A That's a RUS requirement we have. RUS, Rural  
3 Electric Utility Service, has standard structures that we  
4 have to comply with. They have standard designs we have  
5 to comply with, and it's in that standard.

6 Q Okay. So you didn't make up the 8.5?

7 A No.

8 Q And is Blue Ridge a borrower of the Rural  
9 Utility Service?

10 A Yes, we are.

11 Q And are you required to comply with RUS  
12 electric supply space requirements?

13 A Yes.

14 Q I'd like you to turn to your staking manual.

15 MS. HARDEN: And the Elmo is -- it's still not  
16 working. Is it ready?

17 MR. TILLEY: Yes.

18 Q And the staking manual was Lee Layton Exhibit  
19 13, LL-13 -- sorry -- not the staking manual -- LL-13,  
20 the Joint Use Attachment Specifications. What is this  
21 document?

22 A This is a document that Blue Ridge put together  
23 with the aide of a consulting engineering firm to develop  
24 standards, and it shows our third-party attachers, joint

1 use and pole attachers, our expectations for them being  
2 on our electric system.

3 Q Okay. So even though it says joint use, does  
4 it apply to both joint users as well as third-party  
5 attachers?

6 A That's correct. It does.

7 Q And when was this specification booklet put  
8 together?

9 A 2008, I believe.

10 Q Look at the bottom of the second page. Do you  
11 see the date 12/1/2006?

12 A Six. I'm sorry. Six.

13 Q And Mr. Layton, has this Joint Use Attachment  
14 Specification booklet been shared with any of Blue  
15 Ridge's pole attachers or joint users?

16 A Yes. We've -- we've conducted a meeting where  
17 we asked all of them to come so that we could review this  
18 with them. We did have -- most of the joint users were  
19 there, including Charter.

20 Q Okay. And let's -- we won't belabor this; I  
21 know it's near the noon hour -- but I do want to pull out  
22 just a couple of pages from it. Let's pull out the  
23 fourth page which is diagram 2.0.

24 A Okay.

1 Q Okay? Can you explain to us what the diagram  
2 on 2.0 shows?

3 A Well, the most important thing we were trying  
4 to get across I think at this time to --

5 MR. GEORGE: Sorry. Excuse me. Can you  
6 clarify what page we're looking at?

7 MS. HARDEN: We are looking at Lee Layton  
8 Exhibit 13, and it is the third page of the actual  
9 document, and it's got 2.0 in the bottom right-hand  
10 corner, Mr. George.

11 MR. GEORGE: Thank you.

12 MS. HARDEN: Did you find it?

13 A The point I think we were trying to get across  
14 here to the joint users and the pole attachers is that we  
15 are looking for 72 inches of space from the neutral down  
16 to the first point of attachment.

17 Q And is that on the right-hand side about  
18 halfway --

19 A Yes.

20 Q -- you know, on this diagram?

21 A Yes.

22 Q And can you read those words beside it? Is  
23 that power neutral or secondary conductor?

24 A Yeah. Power neutral or secondary conductor.

1 So from that neutral was the point of reference.

2 Q Okay. And does it say 72 inches is absolutely  
3 required?

4 A No.

5 MR. GEORGE: Objection. Leading.

6 Q What does it say?

7 A Well, it says that we're looking for 72 inches.  
8 We will do 40 inches with special permission.

9 Q And do you sometimes give special permission?

10 A Yes.

11 Q Why did you -- why do you prefer the 72 inches  
12 from the power neutral or secondary conductor be  
13 reserved?

14 A That gives us space to install equipment on our  
15 pole without having to require somebody else to lower  
16 their equipment. The concern we have is if we have a  
17 member requesting new service, they need service  
18 immediately. If they're building a house, they need  
19 service immediately for temporary service, so we have to  
20 go out and install a transformer. And they're looking  
21 for that basically the day -- the week they come in,  
22 they're looking for that temporary service to be  
23 installed that week to get service. And we want to make  
24 sure we've got clear space on the pole to go out and do

1 that without having to file a request to other attachers  
2 to lower down so we can get out there. It's an immediacy  
3 issue of being able to have room on the pole to do our  
4 business to meet our customers' needs.

5 Q Okay. You mentioned a 2006 meeting. Who  
6 attended that meeting?

7 A As I say, I do not know who all was there.  
8 Most of the joint users and pole attachers who are on our  
9 system at that point had representatives there. I do  
10 know Charter had several.

11 Q I'm sorry. You said --

12 A Charter had several employees there, and of  
13 course we had our engineering staff there.

14 Q But these specifications are Blue Ridge's  
15 specifications throughout its entire system?

16 A That is correct.

17 Q Does it to apply only to Charter?

18 A No. It applies to all of our attachers.

19 (Because of the proprietary nature  
20 of the testimony found on page 212,  
21 it was filed under seal.)

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1           A     Joint Use Multiple Communications Separation  
2     Requirements.

3     BY MS. HARDEN:

4           Q     And is this specifically demonstrating how the  
5     72 inches should be aligned on the pole --

6           MR. GEORGE:   Objection.

7           Q     -- vis-a-vis telecommunications equipment?

8           MR. GEORGE:   Objection.   Leading.

9           CHAIRMAN FINLEY:   Overruled.

10          A     Yes.   This is specifying that, first, the  
11     closest attachers -- attacher to us should be 72 inches  
12     below our neutral, and then each subsequent attacher  
13     should be 12 inches below that.

14          Q     Does Blue Ridge's field staking engineers and  
15     professional engineers follow these specifications, sir?

16          A     Yes.

17          Q     And when you're contacted by third-party  
18     attachers and joint users, do you provide and require  
19     these specifications of all of them?

20          A     Yes.

21          Q     Let's go to the picture since we've got the  
22     Elmo working.   How about that?   And this is Lee Layton  
23     Exhibit 16E.   This is the one that Mr. George showed you.  
24     I think it was the last one he showed you.

1           A     Yes.

2           Q     This is the one you explained what was behind  
3     the pole; is that correct?

4           A     Yes.

5           Q     And have you been out since and taken pictures  
6     of this pole?

7           A     Yes. I've looked at this pole recently.

8           Q     Okay. Could we have, please, the additional  
9     pictures that have been taken of this pole?

10           MR. GEORGE: Objection. This is outside the  
11     scope.

12           CHAIRMAN FINLEY: No, it's not.

13           MR. GEORGE: Well, I haven't --

14           CHAIRMAN FINLEY: Overruled.

15           MR. GEORGE: He's --

16           CHAIRMAN FINLEY: Overruled.

17           Q     Could you explain what's on the back side of  
18     this pole, sir?

19           A     The -- well, the back -- what's the back side,  
20     the back side to me is the pole -- the side that's facing  
21     us. There are two conduits there that are Blue Ridge  
22     conduits. And on the other side of the pole, I guess  
23     what you may be calling the back side toward the road,  
24     there is a -- I think a power supply, a Charter power

1 supply, and then there is a conduit I believe that's  
2 Charter's conduit.

3 Q Okay. And you said that this eliminates and  
4 makes it difficult for you to climb this transmission  
5 pole, right?

6 A It's impossible to climb it with what's on  
7 there.

8 Q And could you see that from the general  
9 picture?

10 A I could see it, it was difficult, but yes, it's  
11 -- it's visible.

12 Q Okay. Thank you, sir. And that's what you  
13 mean by climbing hazard, right?

14 A Yes.

15 Q Mr. George asked you questions about the 2008  
16 agreement and the negotiations leading up to that  
17 agreement. Were you at Blue Ridge when the 2008  
18 agreement was signed between Charter and Blue Ridge?

19 A Yes.

20 Q Sir, based on Blue Ridge's information and your  
21 personal knowledge, did Charter propose any term, change  
22 of term, et cetera, to Blue Ridge during the 2008  
23 negotiations?

24 A My understanding is there was -- they had no



1 suggestions to the contract or any reservations about it.  
2 They didn't bring up any issues they wanted to discuss  
3 with us.

4 Q So we're clear, Blue Ridge did not reject any  
5 terms proposed by Charter in 2008; is that right?

6 A No. They did not propose any terms.

7 Q Okay. And in the course of your work as the  
8 Chief Operating Officer at Blue Ridge, have you gone back  
9 and looked at the files for these various agreements?

10 A Yes. And I've talked to staff that was  
11 involved in some of the previous agreements.

12 Q What terms did Charter propose to the 2003 Blue  
13 Ridge/Charter agreement that were rejected by Blue Ridge?

14 A I'm not aware of any.

15 Q You've mentioned SkyLine several times in your  
16 testimony. Who is SkyLine?

17 A SkyLine is a telephone cooperative serving up  
18 in the mountain districts of Ashe, Alleghany, and  
19 Watauga.

20 Q And is it a cooperative?

21 A Yes. It's an elec--- it's a telephone  
22 cooperative.

23 Q Has SkyLine made any changes in its procedures  
24 or practices lately?

1           A     Well, they are moving a lot of their plant to  
2 underground. This recent inventory that we did showed --  
3 I think they had 1,400 less attachments than the prior  
4 inventory.

5           Q     So does that mean that SkyLine has actually  
6 removed its equipment from 1,400 and some Blue Ridge  
7 poles in the last five years?

8           A     That's correct. They've got a conscious effort  
9 apparently to go underground from what we've understood.

10                         (Because of the proprietary nature  
11 of the testimony found on pages 228  
12 through 230, it was filed under  
13 seal.)

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1 BY MS. HARDEN:

2 Q -- that would be Lee Layton --

3 CHAIRMAN FINLEY: Ms. Harden? Ms. Harden --

4 MS. HARDEN: Yes, sir.

5 CHAIRMAN FINLEY: -- do you have several more  
6 questions there?

7 MS. HARDEN: Sir, I probably have -- I'm a bad  
8 estimator, but I probably have at least 15 or 20 more  
9 minutes.

10 CHAIRMAN FINLEY: All right. We're going to --  
11 we're going take a lunch break and come back at 2:00.

12 (The hearing was recessed, to be  
13 reconvened at 2:00 p.m.)

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STATE OF NORTH CAROLINA

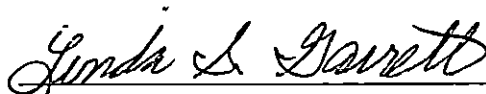
COUNTY OF WAKE

C E R T I F I C A T E

I, Linda S. Garrett, Notary Public/Court Reporter,  
do hereby certify that the foregoing hearing before the  
North Carolina Utilities Commission in Docket No. EC-23,  
Sub 50, was taken and transcribed under my  
supervision; and that the foregoing pages constitute a  
true and accurate transcript of said Hearing.

I do further certify that I am not of counsel for,  
or in the employment of either of the parties to this  
action, nor am I interested in the results of this  
action.

IN WITNESS WHEREOF, I have hereunto subscribed my  
name this 2nd day of December, 2017.



Linda S. Garrett

Notary Public No. 19971700150

**FILED**

**DEC 13 2017**

Clerk's Office  
**N.C. Utilities Commission**