

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EC-23, SUB 50

BLUE RIDGE ELECTRIC)	
MEMBERSHIP CORPORATION)	
Petitioner,)	
)	CHARTER COMMUNICATIONS
v.)	PROPERTIES LLC'S RESPONSE
)	TO BLUE RIDGE ELECTRIC
CHARTER COMMUNICATIONS)	MEMBERSHIP CORPORATION
PROPERTIES LLC,)	MOTION FOR PROCEDURAL
)	SCHEDULE
Respondent.)	

Charter Communications Properties LLC (“Charter”) submits this Response to the Motion by Blue Ridge Electric Membership Corporation (“BREMC”) for Procedural Schedule.

Charter agrees with BREMC that the procedural schedule in this matter should be consistent with the December 22, 2016 Order Establishing Procedural Schedules and Scheduling Hearings entered by the Commission in four pending proceedings involving the reasonableness of pole attachment rates, terms, and conditions under N.C.G.S. § 62-350 (“2016 Schedule”). *See* Docket Nos. EC-43, Sub 88; EC-49, Sub 55; EC-55, Sub 70; EC-39, Sub 44. But Charter believes there is no pressing need to kick-start proceedings immediately, as BREMC proposes, in light of imminent hearings scheduled in the ongoing dockets, which are being handled by Charter’s same counsel here. Nor does Charter believe that an abbreviated two-month discovery period would allow sufficient time for the parties to complete necessary factual discovery, particularly given that this docket involves different parties than the other four proceedings and discreet issues that are not raised in those proceedings. Accordingly, Charter proposes a schedule that tracks the timeframes

set in the 2016 Schedule for the four ongoing pole attachment proceedings, with a hearing to be set at a time convenient for the Commission, potentially as early as November 2017.

BREMC has not identified any reason why this docket must move forward now, at the precise time that the burden and associated time demands of the previously filed proceedings is greatest, after sitting dormant for nearly three months. The last activity in this docket was on March 1, 2017, when BREMC filed its answer to Charter's Counterclaims. More than two months passed before BREMC reached out to Charter to discuss a procedural schedule in this matter. At the time that BREMC started the conversation when Charter's counsel—who BREMC's counsel is aware represents Time Warner Cable Southeast LLC ("TWC") in the four ongoing proceedings—was fully engaged in closing out discovery, completing depositions, preparing initial prefiled testimony in those proceedings, finalizing proposed exhibits, and generally preparing for hearing. The four ongoing proceedings are currently set for hearings on June 20, 21, 22, and 23, with multiple filing deadlines, pretrial requirements, and other obligations scheduled between now and then.

Given the substantial demands on counsel's time imposed by the four ongoing proceedings over the next few weeks, and the burden of adding a new proceeding during this critical time, Charter proposes that the opening of discovery promptly commence after the completion of the currently-scheduled hearings—i.e., July 5, 2017. This short pause before the start of discovery will give Charter's counsel an opportunity to adequately prepare, propound, and begin responding to discovery as soon as this docket becomes active. The pause, moreover, will assure that the Commission need not intervene in discovery disputes as the Commission prepares to hear and resolve the four other

proceedings. And a few extra weeks will cause no undue burden to BREMC, who has waited nearly three months to request a procedural schedule in this docket. While Charter shares a desire for the prompt resolution of the matters raised in BREMC's complaint, any decision regarding the attachment rate will apply "retroactively to the date immediately following the expiration of the 90-day negotiating period or initiation of the proceeding, whichever is earlier," N.C.G.S. 62-350(c), thus ameliorating any adverse financial impact to either party resulting from the period of time prior to a decision.

In addition, based on its experience in propounding and responding to data requests in the four ongoing proceedings, Charter does not believe that an abbreviated two-month discovery period allows sufficient time for the parties to complete necessary factual discovery, develop their respective cases, and present the Commission with a fully developed record on which to rule. This docket involves two parties—BREMC and Charter—who are not parties to the other four proceedings. Thus, even if the parties followed the discovery guidance established by the Commission in the other dockets, which Charter is amenable to doing, they still must undertake the time and expense of identifying knowledgeable witnesses, collecting information, and searching for and producing documents. The issues are also different. It remains unclear what position BREMC will take with respect to a just and reasonable pole attachment rate, and whether it will be similar to or different from the positions pursued by the cooperatives involved in the other dockets. And this case involves a number of terms and conditions that are not at issue in the other dockets. These issues will presumably require new discovery requests and, potentially, objections requiring the Commission's involvement to resolve. Finally, Charter notes that the three-month discovery calendar ultimately adopted by the

Commission in the 2016 Schedule was initially proposed by TWC to bring those dockets to a speedy, efficient, and prompt conclusion, while still allowing sufficient time for complete factual discovery.¹ Based on its experiences to date, Charter believes that the same amount of time will be necessary to resolve this docket promptly and on a complete record.²

Therefore, Charter requests the Commission adopt a schedule consistent with the 2016 Schedule, set forth as follows:

- a. Discovery: Discovery shall begin on July 5, 2017. No new discovery requests shall be propounded after October 3, 2017.
- b. Hearing: Charter proposes that the matter be scheduled for purposes of hearing during the week of November 6, 2017, subject to the Commission's availability
- c. Pre-filing of Testimony: Charter proposes that testimony shall be pre-filed as follows:
 - i. Direct testimony by BREMC no later than October 11, 2017;
 - ii. Responsive testimony by Charter no later than October 25, 2017;
 - iii. Rebuttal testimony by BREMC no later than November 1, 2017.

¹ Charter further notes that, despite good faith efforts by all parties to the four ongoing proceedings to complete discovery in the time afforded by the 2016 Schedule, issues related to counsel and witness availability have necessitated minor adjustments to that procedural schedule.

² A three-month discovery window also could encourage the parties to narrow or settle their disputes based upon any rulings entered in the four ongoing proceedings. Alternatively, the Commission could promote judicial economy and conserve the parties' resources by entering a stay in this docket until it resolves the four ongoing proceedings.

WHEREFORE, for the foregoing reasons, Charter respectfully requests that the Commission issue an Order adopting the procedural schedule set forth herein.

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



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CERTIFICATE OF SERVICE

I certify that a copy of Charter Communications Properties LLC's Response to the Motion by Blue Ridge Electric Membership Corporation for Procedural Schedule has been served by electronic mail on counsel of record in this proceeding.

This the 31st day of May, 2017.



*Attorney for Charter Communications
Properties LLC*