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September 21, 2017

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

Re: Reply to Charter Communications Properties LLC's Opposition to Blue Ridge Electric Membership Corporation's Motion for Leave to Amend its Verified Petition for Relief, NCUC Docket No. EC-23, Sub 50

Dear Ms. Jarvis:

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

Regards,

/s Charlotte Mitchell

4815-1013-4589, v. 1

OFFICIAL COPY

Sep 21 2017

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EC-23, SUB 50

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

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

v.

**CHARTER COMMUNICATIONS
PROPERTIES LLC,
Respondent.**

**REPLY TO CHARTER
COMMUNICATION PROPERTIES
LLC'S OPPOSITION TO BLUE
RIDGE ELECTRIC MEMBERSHIP
CORPORATION'S MOTION
FOR LEAVE TO AMEND ITS
VERIFIED PETITION FOR RELIEF**

NOW COMES Petitioner, Blue Ridge Electric Membership Corporation, ("BREMC") and submits this Reply to Charter Communications Properties LLC's ("Charter") Opposition to BREMC's Motion for Leave to Amend its Verified Petition (the "Motion").

INTRODUCTION

BREMC, through its Motion, has asked the Commission for leave to amend its petition to include a request that the Commission approve five terms—involving overlashing, indemnity, remedies for unauthorized attachments, reservation of space, and recovery of space—as just and reasonable pursuant to N.C.G.S. § 62-350 ("Section 62-350"). Despite Charter's insistence to the contrary, these terms are "in dispute." Indeed, Charter itself put these issues in dispute, either through its Counterclaims or the sworn testimony of witnesses it has now indicated will testify in this case. Moreover, even

though Charter does not specify any additional discovery that would be necessary to respond to these claims, Charter has had—and continues to have—ample time to propound any additional discovery it believes necessary to respond to these claims. BREMC’s request for leave to amend its petition therefore should be granted.

ARGUMENT

A. The Terms and Conditions Identified in BREMC’s Proposed Amendment are “In Dispute.”

Charter disingenuously argues BREMC should not be allowed to amend its petition because the issues it has identified are not actually “in dispute” or Charter has “not previously discussed or disputed the term[s]” BREMC has proposed. *See* Opp. at pp. 1, 2. Charter, however, ignores that it asked for a ruling on three of these issues—overlapping, indemnity, and remedies for unauthorized attachments—in its own pleadings. It also ignores that it recently revealed in discovery it will offer witnesses who have testified under oath that the remaining terms—reservation of space and recovery of space—are unjust and unreasonable.

Charter’s Counterclaims seek to challenge the following terms that BREMC has proposed: (1) requiring Charter to obtain prior approval before “overlapping” additional cables onto its existing attachments; (2) requiring Charter pay both back rent and a fee for unauthorized attachments it makes to BREMC’s system; and (3) requiring Charter to indemnify BREMC for claims and losses arising from Charter’s attachments. *See* Countercl. ¶¶ 44-47 (overlapping), 48-51 (unauthorized attachments), and 52-54 (indemnity). Indeed, Charter itself alleges that—at least with respect to these issues—the

parties are “at an impasse,” *see id.* ¶ 31, and asks the Commission to approve its own proposed terms regarding each of these issues in its prayers for relief. *Id.* at p. 7.¹

In its Opposition, Charter elides over the fact that its own pleadings put these issues in dispute, suggesting the terms in BREMC’s proposed amendment are merely “*similar* to those identified in Charter’s Counterclaim.” Opp. at p. 1 (emphasis added). The terms BREMC has proposed on these issues, however, are not just “similar”; they are the mirror image of the terms Charter has asked the Commission to approve in its Counterclaims. Charter therefore cannot credibly claim that these issues are “not in dispute.” BREMC seeks to amend its petition to include these issues only to guard against the possibility that Charter withdraws these issues from being in contention in this proceeding.

Charter likewise strains credulity by suggesting there is no dispute regarding BREMC’s proposed terms (1) reserving the seventy-two (72’) inches allocated to the so-called electric “supply space” on each pole for BREMC’s electrical facilities and (2) allowing BREMC to “recover” space on its poles, and requiring Charter to relocate its attachments, in the event BREMC needs to add additional electric facilities on its poles. While Charter did not ask for changes to these provisions when it last provided BREMC a draft agreement (in September 2016), Charter disclosed in response to BREMC’s data requests that it has replaced the employee responsible negotiating an agreement with BREMC, Ronnie McWhorter, with Nestor Martin. *See* Charter’s Responses to Data

¹ BREMC has likewise asserted that each of the terms and conditions it has submitted to the Commission are in dispute. While Charter incorrectly suggests otherwise, BREMC’s *verified* Petition specifically avers that the parties’ “have reached an impasse” and have “failed to resolve” each of the issues it has identified, which includes the issues identified in its Proposed Amendment. *See* Petition ¶¶ 10, 11; Motion to Amend, Ex. A., (amending paragraph 11 of the Petition).

Request Nos. 2, 53, and 54, attached as **Exhibit A**. Mr. Martin served as Time Warner Cable's ("TWC") Senior Manager of Construction prior to its merger with Charter Communications, and apparently now performs the same role for Charter as well. This summer, Mr. Martin testified in proceedings between TWC and four electric cooperatives that terms mirroring those BREMC has proposed in this case are "unreasonable" and asked the Commission to instead approve provisions severely limiting cooperatives' rights to reserve or reclaim space on their poles. *See, e.g., Union Electric Membership Corporation v. Time Warner Cable Southeast, LLC*, Docket No. EC-39, Sub. 44, Testimony of Nestor Martin, Tr. Vol 1, pp. 182-86, attached hereto as **Exhibit B**. BREMC, of course, takes Mr. Martin at his word, and must assume he and Charter will take the same position in this case.

In short, Charter's suggestion that it has not "disputed" the terms identified in BREMC's proposed amendment is either plainly false, or, at best, misleading. Charter has put each of these issues in dispute—either through its pleadings or the sworn testimony of its witnesses. It cannot complain now that BREMC has asked to amend its pleadings in order to specifically request that the Commission rule in BREMC's favor.

B. BREMC's Proposed Amendment Will Not Cause Charter any Undue Prejudice.

Charter—perhaps hoping the Commission will forget that BREMC's proposed amendment merely asks for a ruling on terms and conditions Charter itself has put in dispute—resorts to hyperbole and hysterics. It thus claims BREMC somehow waited to amend the petition in a supposed effort to "punish" Charter for exercising rights under Section 62-350 and insists there is "inadequate time for Charter to answer the claims, much less take discovery on them." *See Opp.* at pp. 2, 3. Neither claim is correct.

First, Charter cannot claim any prejudice with respect to the three issues it has already put in dispute through its Counterclaims—indemnity, overloading, and fees for unauthorized attachments. Charter has known all along that those issues are in dispute, and it has been free to conduct discovery on those issues since the Commission issued its Order Establishing Procedural Schedule on July 7, 2017.

Second, Charter has been given—and *still has*—ample time to seek discovery on BREMC’s proposed terms regarding reservation of space and recovery of space. The Commission’s procedural order allows the parties until October 3, 2017, to *propound* additional discovery. Further, no depositions have yet been taken in this case. Charter is thus free to seek any additional discovery it claims it needs to address these terms. Yet, Charter tellingly does nothing to explain why it cannot conduct any additional discovery in this time. Indeed, Charter does not even identify *any* additional discovery it believes will be required to address BREMC’s amendment.

In truth, the issues raised by BREMC’s proposed terms regarding recovery of space and reservation of space are not “new,” and Charter has already sought discovery necessary to respond. Both of the parties’ proposed rate methodologies—the Federal Communication Commission’s “Cable Rate,” proposed by Charter, and the Tennessee Valley Authority’s rate methodology, proposed by BREMC—seek to derive a pole attachment rate by allocating space on the pole to between the electric utility and communications attachers. *See* Petition at ¶ 12; Countercl. at ¶¶ 39-40. Thus, how space is allocated on the pole has been in dispute from the beginning of these proceedings. BREMC’s proposed term regarding reservation of space merely asks that Charter be prohibited from attaching its cables in the seventy-two (72) inches allocated to the

BREMC for electric “supply space” under either of the parties’ proposed formulas. *See* Mot., Ex. A. at ¶ 11.k. Likewise, BREMC’s initial petition asked the Commission to approve terms requiring Charter to relocate or “transfer” its facilities, at Charter’s expense, in the event BREMC has to relocate or modify its facilities. *See* Petition at ¶ 11. BREMC’s proposed term allowing it to “recover” space on its poles from Charter in the event it has to add additional electrical facilities is just a specific application of this general requirement.

Charter has already sought extensive discovery on these issues and has propounded forty-two data requests to BREMC asking it to produce, among other things, related to rate methodologies, the TVA rate specifically, the parties’ negotiations for a pole attachment agreement, any communications between BREMC and any other party related to pole attachments in any way, audits or inventories of attachments on BREMC’s poles, Charter’s unauthorized attachments to BREMC’s poles, and records regarding Charter’s failure to “transfer” its attachments when requested. *See* Charter’s First Set of Data Requests to BREMC, attached hereto as **Exhibit C**, Data Request Nos. 1-3, 5-6, 12-13, 15-16, 25-28, 35. And, to the extent Charter really does require additional discovery to respond to these claims, it is free to propound additional requests or seek answers from BREMC’s witnesses at deposition pursuant to the Commission’s Procedural Order.

BREMC’s proposed amendment is thus far from an effort to “saddle” Charter with “new” terms that were never before in dispute without giving it an opportunity to respond, as Charter claims. *See* Opp. at p. 2. As Charter notes, in previous cases it and its counsel opposed efforts by cooperatives to seek rulings on any terms and conditions that Charter did not believe was specifically identified in the pleadings. *See id.* at p. 3.

Taking Charter's prior assertions at face value, BREMC has asked to amend its pleadings in the interest of clarity to ensure that Charter receives full notice of the terms BREMC intends to ask the Commission to approve—and with ample time for Charter to serve additional discovery if it believes it is warranted.

Ultimately, BREMC seeks to do only what Charter has now sought to do in numerous cases—vindicate its right under Section 62-350 to have the Commission approve just and reasonable terms to govern Charter's pole attachments. While BREMC understands Charter would prefer only to follow this statute when it initiates the proceedings, Section 62-350 gives either party—the electric cooperative or communications attacher—a right to seek redress before the Commission. BREMC's request to amend its petition to add terms and conditions that Charter has already put in dispute, and to do so before the close of discovery, accordingly poses Charter no prejudice.

CONCLUSION

For the foregoing reasons, as well as those stated in BREMC's initial Motion to Amend, BREMC requests that the Commission grant BREMC leave to file the proposed First Amendment to its Verified Petition, attached to its motion.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

This the 21st day of September, 2017.

/s/ Charlotte A. Mitchell

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ATTORNEYS FOR BLUE RIDGE
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CERTIFICATE OF SERVICE

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

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This 21st day of September, 2017.

/s/ Charlotte A. Mitchell

Charlotte A. Mitchell

EXHIBIT A

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EC-23, SUB 50

BLUE RIDGE ELECTRIC)	
MEMBERSHIP CORPORATION)	
Petitioner,)	CHARTER COMMUNICATIONS
)	PROPERTIES LLC'S
v.)	RESPONSES TO BLUE RIDGE
)	ELECTRIC MEMBERSHIP
CHARTER COMMUNICATIONS)	CORPORATION'S FIRST SET
PROPERTIES LLC,)	OF DATA REQUESTS
)	
Respondent.)	

Pursuant to the Commission's June 7, 2017 Order Establishing Procedural Schedule and the parties' agreement to extend the time for meet and confer, objections, and responses, Charter Communications Properties LLC ("Charter"), by and through its undersigned counsel, responds to Blue Ridge Electric Membership Corporation's ("BREMCO's") first set of data requests ("Requests") served on July 6, 2017, as follows:

PRELIMINARY STATEMENT

Charter incorporates herein by reference, and responds to the Requests ("Responses") to the extent consistent with, the limitations agreed upon in the parties' conferences on July 13, 18, and 19, 2017, as confirmed by email on August 2, 2017. By agreeing to search for and produce certain documents and information, Charter is not admitting that such documents in fact exist or that such information is within its present knowledge. Charter reserves the right to use documents discovered after the date of its Responses, which are now known but whose relevance, significance, or applicability has not yet been ascertained.

Furthermore, Charter's Responses are made without in any way intending to waive or waiving, but, on the contrary, intending to preserve and preserving:

1. The right to assert the attorney-client privilege, the common interest privilege, the work-product doctrine, and/or any other privilege or protective doctrine. Any inadvertent production of privileged or protected documents shall not constitute a waiver, in whole or in part, of any such privilege. Any document subject to a privilege or protection, if inadvertently produced, shall be returned by BREMC immediately. BREMC shall not use in any manner whatsoever any information derived solely from any inadvertently produced privileged or protected documents.

2. The right to designate documents containing information regarding trade secrets, confidential and/or proprietary business information, and/or information subject to confidentiality agreements with non-parties as confidential or highly confidential, and to produce such documents subject to the parties' Non-Disclosure Agreement and any protective order entered in this matter.

3. The right to question or object to the authenticity, foundation, relevancy, materiality, privilege, and admissibility of the documents produced in response to the Requests in any subsequent proceeding in, or the trial of, this or any other action.

4. The right to object to the use of the documents produced in response to the Requests in any subsequent proceeding in, or the trial of, this or any other action on any grounds.

5. The right to object to the introduction of the Responses into evidence.

6. The right to object on any ground at any time to other discovery involving the subject matter of these Requests or the Responses to these Requests.

7. The right to produce documents on a rolling basis given the breadth of the Requests, and to supplement its Responses and to produce additional documents, consistent with the Commission's rules and the Scheduling Order entered in this matter, should it discover further responsive documents after the date of its Response to BREMC's Requests.

RESPONSES TO REQUESTS

Incorporating the foregoing Preliminary Statement and Objections into each of the following responses, Charter responds to BREMC's requests as follows:

Request No. 1:

Identify and produce an organization chart depicting the corporate structure of Charter, its parents, subsidiaries and affiliates, both prior to and subsequent to the merger with Time Warner Cable.

RESPONSE:

Both pre- and post-merger, Charter Communications Properties LLC and its affiliates have served municipalities and counties in BREMC's service area. Prior to a post-merger internal reorganization in September 2016, Charter Communications Properties LLC and its affiliates operated in areas that include BREMC's service area as part of Charter's South Region. As of September 2016, Charter Communications Properties LLC and its affiliates operate in areas that include BREMC's service area as part of Charter's Carolina Region, specifically the Western North Carolina Market Area. Charter Communications Properties LLC has authority to execute a pole attachment agreement with BREMC that would apply to all of Charter's attachments to BREMC poles.

Request No. 2:

For each year from 2008 to present, identify the department or division within Charter, its parent, subsidiaries or affiliates, as well as the individual, that have been responsible since 2008 and will be responsible going forward for the design, construction, inspection and maintenance of attachments to BREMC's poles.

RESPONSE:

Personnel in Charter's Carolina Region and, specifically, its Western North Carolina Market Area, have responsibility for attachments to BREMC's poles. Before September 2016, Ronnie McWhorter served as Construction Manager for the areas that include BREMC's service area. As of September 2016, Nestor Martin, Senior Director of Construction, now serves in the role of overseeing construction operations in the area that includes BREMC's service area. Micheal Mullins is a Construction Supervisor for Charter in the areas that include BREMC's service area, and has been responsible for design and construction of attachments to BREMC's mainline poles since at least November 2011 to the present. Jeff Hutchinson is the Maintenance Manager for areas that include Charter's attachments to BREMC's poles, and has served in this role since at least November 2011.

Request No. 3:

Identify and produce copies of all currently-effective pole attachment agreements to which Charter has entered into since 2008, including any amendments thereto, with respect to its service footprint in North Carolina, South Carolina, Georgia, Alabama, Tennessee, and Virginia.

RESPONSE:

Charter will produce documents responsive to this request, consistent with the parties' agreed-upon limitations.

Request No. 4:

Identify all judicial or regulatory proceedings in North Carolina, South Carolina, Georgia, Alabama, Tennessee, and Virginia involving Charter's aerial facilities and/or pole attachment rates, terms and conditions from 2008 to the present—at a minimum, identify the jurisdiction, case name, case number, and all parties involved—and produce all copies of all pleadings and testimony filed by or against Charter in such proceedings.

RESPONSE:

After a diligent search, Charter has not identified any judicial or regulatory proceedings involving Charter's pole attachment rates, terms and conditions from November 2011 to the present in North Carolina, South Carolina, Tennessee, and Virginia.

Request No 5:

Identify the annual pole attachment rental rate that Charter or its parent, subsidiaries or affiliated entities has paid and currently pays to attach to the poles of every pole owner with which Charter has a pole attachment agreement with respect to its service footprint in North Carolina, South Carolina, Georgia, Alabama, Tennessee, and Virginia and the formula used to calculate the annual rental rate, for each year since 2008.

RESPONSE:

Charter will produce information responsive to this request, consistent with the parties'

agreed-upon limitations.

Request No. 6:

Identify and produce copies of any economic or other analysis undertaken by Charter or its parent, subsidiaries or affiliated entities for planned and/or installed new facilities which compares the economics of aerial versus buried (a) initial costs and (b) total service life costs, for deployment of new facilities in North Carolina and nationwide, from 2008 to the present. If such information and documentation are not available for North Carolina as a whole, then provide it for every area in North Carolina for which it is available.

RESPONSE:

In the areas that include BREMC's service area, Charter's budgeted average cost per mile for aerial construction of new facilities, including labor and materials, is \$26,432.37. Where Charter must build underground, its average cost per mile is substantially higher, budgeted at approximately \$45,109.40, including materials and labor, but this does not include the costs of wreck outs or the expense of obtaining the necessary regulatory approvals, permits, and easements associated with such work. Charter will produce documents responsive to this request, consistent with the parties' agreed-upon limitations.

Request No. 7:

Identify the number and location of poles used for the distribution of communications services that are owned by Charter in North Carolina and nationwide. If such information and documentation are not available for North Carolina as a whole, then provide it for every area in North Carolina for which it is available.

RESPONSE:

Owing to economic, environmental, aesthetic, local zoning and rights-of-way restrictions,

Charter cannot practicably build its own aerial network or system of poles. Charter thus does not install its own poles, except in unique and idiosyncratic circumstances and as determined by local construction personnel. Charter is not currently aware of any poles it has installed or owns that are used by other service providers in the Western North Carolina market area, but Charter is continuing to search its records and will supplement this response as appropriate.

Request No. 8:

Produce all documents showing Charter's or its parent's, subsidiaries' or affiliated entities' engineering and construction practices for aerial plant construction (both cable and wire) that are applicable in North Carolina.

RESPONSE:

Charter will produce documents responsive to this request, consistent with the parties' agreed-upon limitations.

Request No. 9:

Produce a copy of all of Charter's or its parent's, subsidiaries' or affiliated entities' engineering design standards, including sag tables and wind loading and ice loading analysis, for aerial cable construction that are applicable in North Carolina.

RESPONSE:

Charter directs BREMC to the design specifications identified in its pole attachment agreements produced in response to Request No. 3. Charter is continuing to search its records and will supplement this response as appropriate.

Request No. 10:

Produce a copy of Charter's or its parent's, subsidiaries' or affiliated entities' outside

plant engineering planning guidelines that are applicable in North Carolina.

RESPONSE:

Charter will produce documents responsive to this request, consistent with the parties' agreed-upon limitations.

Request No. 11:

Produce all safety standards, plans, procedures, and agreements followed or used by Charter or any parent, subsidiary or affiliate of Charter in the completion of any safety inspection of Charter's facilities and attachments that are applicable in North Carolina.

RESPONSE:

Charter will produce documents responsive to this request, consistent with the parties' agreed-upon limitations.

Request No. 12:

Identify each attachment audit or inventory of poles with Charter's or its parent's, subsidiaries' or affiliated entities' attachments in North Carolina that was conducted or is currently being conducted by any pole owner or another person acting on that pole owner's behalf, from 2008 to the present, and produce all documents related to each such audit or inventory, including communications, documents reflecting the methodology used for each audit or inventory, records created during the course of each audit or inventory, and documents reflecting the results of each audit or inventory.

RESPONSE

AT&T/BellSouth, BREMC, Broad River Electric, Duke Energy, Duke Energy Progress, Energy United Electric Membership Corporation, and Rutherford Electric Membership have conducted attachment audits or inventories of their poles with TWC attachments

since November 2011. Surry-Yadkin Electric Membership Corporation is currently conducting an inventory. Charter continues to search for responsive information and documents and will supplement this response, as necessary, at an appropriate time in the future. Answering further, documents related to BREMC's audits are already in the possession of the Cooperative.

Request No. 13:

Identify each pole attachment safety inspection of poles with Charter's or its parent's, subsidiaries' or affiliated entities' attachments in North Carolina that was conducted or is currently being conducted by any pole owner or another person acting on that pole owner's behalf, from 2008 to the present, to ensure compliance with the NESC or other safety standards, and produce all documents related to each such safety inspection, including communications, documents reflecting the methodology used for each inspection, records created during the course of each inspection, and documents reflecting the results of each inspection.

RESPONSE:

Surry-Yadkin Electric Membership Corporation is currently conducting an attachment audit that includes a safety inspection. Charter continues to search for responsive information and documents and will supplement this response, as necessary, at an appropriate time in the future.

Request No. 14:

Identify Charter's attachments to the Cooperative's poles made from 2008 to the present, which were attached after Charter or someone acting at Charter's direction performed engineering to ensure compliance with the NESC, including NESC wind and ice loading

standards.

RESPONSE:

After a diligent search, Charter has been unable to locate any documentation or other means of identifying its attachments which were attached to the Cooperative's poles after Charter, or someone at its direction, performed "engineering." Charter submits permit applications to the Cooperative prior to making attachments to its poles, consistent with the parties' pole attachment agreement. Charter follows the engineering recommendations made by the Cooperative as part of the permit process, if any, and makes its attachments according to the permit issued by the Cooperative. Charter also makes its attachments pursuant to the NESC and Charter's safety standards and procedures.

Request No. 15:

Produce all documents which reflect the Charter inspection program for its attachments to BREMC poles, including the method of initial inspection and time of each initial inspection, how often it inspects its lines and facilities after installation, the items inspected, and the standards to which the inspections are performed and how Charter inspects construction once completed to ensure compliance with the NESC.

RESPONSE:

Charter continuously monitors the condition of its plant and conducts regular line inspections on a day-to-day basis as its employees, and contractors perform work in the field. Charter's contractors are responsible for making and maintaining attachments to BREMC poles. Charter's construction coordinators will meet with the contractors to complete a detailed review of the work done. Construction coordinators will also inspect

a portion of the field work shortly after completion. During the course of construction, a contractor may occasionally find the work cannot be completed as planned due to safety or clearance issues, and a new plan of action is developed. Any deviations in the work from the plan are reviewed and corrected as they arise. Charter will produce documents, if any, responsive to this request, consistent with the parties' agreed-upon limitations.

Request No. 16:

Produce all documents evidencing pole attachment construction standards or design specifications which:

- a. have been developed by or on behalf of Charter or any parent, subsidiary or affiliate of Charter; and
- b. are currently required of Charter or any parent, subsidiary or affiliate of Charter by any pole owner in North Carolina.

RESPONSE:

Charter directs BREMC to the standards provided in Charter's pole attachment agreements with pole owners across North Carolina, produced in response to Request No. 3.

Request No. 17:

Identify every licensed professional engineer employed by or who works on behalf of Charter, or any parent, subsidiary or affiliate of Charter, with respect to North Carolina, along with a detailed description of his/her responsibilities. Additionally, identify by name and title each professional engineer who designs the Charter new construction, including overlashing, and who is responsible for the inspection of all completed construction and overlashing.

RESPONSE:

Charter does not employ any professional engineers who have responsibility for attachments in BREMC's service area. Charter contracts with or pays for the services of licensed professional engineers when necessary.

Request No. 18:

Identify the training, and provide related documentation, received by Charter employees and the employees of parent, subsidiary or affiliate of Charter, in the requirements and specifications of the NESC, the National Electrical Code, the North Carolina Department of Transportation, the Occupational Safety and Health Act, the Rural Utilities Service, the Society of Cable Television Engineer's Recommended Practices for Coaxial Cable Construction and Testing and for Optical Fiber Cable Construction, and the design and operational standards developed by the Cooperative.

RESPONSE:

Charter will produce documents responsive to this request, consistent with the parties' agreed-upon limitations.

Request No. 19:

Identify all vendors or contractors or subcontractors hired by Charter to install, maintain, inventory or service in any manner Charter's attachments to the Cooperative's poles from 2008 to the present and produce copies of all agreements or contracts between Charter and such vendors and contractors.

RESPONSE:

Charter uses Bigam Cable Construction to perform work on the Cooperatives poles. Charter will produce documents responsive to this request, consistent with the parties'

agreed-upon limitations.

Request No. 20:

For the vendors and contractors or subcontractors hired by Charter to install, maintain, inventory or service in any manner Charter's attachments to the Cooperative's poles:

- a. Identify the training such vendors and contractors receive in the requirements and specifications of the NESC, the National Electrical Code, the North Carolina Department of Transportation, the Occupational Safety and Health Act, the Rural Utilities Service, the Society of Cable Television Engineer's Recommended Practices for Coaxial Cable Construction and Testing and for Optical Fiber Cable Construction, and the design and operational standards developed by the Cooperative;
- b. Provide documentation from each such training course; and
- c. Provide verification that each such vendor or contractor has received such training.

RESPONSE:

Charter does not regularly conduct training for its vendors. Charter's vendors are contractually obligated to comply with all standards, rules, and laws required under the pole agreement, local, state, and federal laws and regulations. After a diligent search, Charter has been unable to locate any documents responsive to this request.

Request No. 21:

Identify and produce documents sufficient to show the linear feet of Charter facilities installed in the Cooperative's service area, in North Carolina and nationwide that have been overlashed. Identify the linear feet of Charter facilities that have one, two, three, four, five, and more cables overlashed in the same bundle. If such information and

documentation is not available for North Carolina as a whole, then provide it for every area in North Carolina for which it is available.

RESPONSE:

After a diligent search, Charter has been unable to locate any documents responsive to this request. Charter is willing to make its system maps available for inspection by BREMC's counsel or authorized representatives at a mutually agreed upon time and place, to be coordinated with counsel for Charter.

Request No. 22:

Identify, and produce documents sufficient to demonstrate, each instance from 2008 to the present that Charter and/or another person acting on Charter's behalf has performed a loading analysis of BREMC's pole(s) on which Charter has installed attachments, including the pole(s) analyzed, the reason for the analysis (i.e. whether for overloading or other attachments made by Charter or by another person), type of analysis performed and the program or software used to perform each analysis, the inputs used for each analysis, the equipment used for each analysis, the cost of performing each analysis, the results of each analysis, and communications related to the analysis.

RESPONSE:

Charter has not located any documents responsive to this request as of the date of these Responses. Charter will continue to search for non-privileged, non-attorney work product documents and will supplement this response as necessary.

Request No. 23:

Identify and produce every analysis performed by Charter, or any parent, subsidiary or affiliate of Charter, or on their behalf, analyzing the impact of overloading on the wind

and ice load of utility poles.

RESPONSE:

Charter has not located any documents responsive to this request as of the date of these Responses. Charter will continue to search for non-privileged, non-attorney work product documents and will supplement this response as necessary.

Request No. 24:

Identify every instance in which Charter has postponed overlash, or decided not to overlash, existing Charter facilities on BREMC's poles because of preexisting NESC safety violations.

RESPONSE:

Charter does not maintain records tracking information responsive to this Request. Consistent with its standard construction process, Charter pre-inspects all poles and spans involved in its aerial plant construction, submits applications to BREMC for review, and may opt for underground construction if preexisting conditions on the pole make it unsafe or unsuitable for Charter's planned construction. Charter will continue to search for additional information responsive to this Request and will supplement this response as necessary.

Request No. 25:

Identify each instance since 2008 that Charter obtained a statement or opinion from a professional engineer regarding Charter's attachments to BREMC's poles, and produce such statement or opinion.

RESPONSE:

Charter has not identified any instances where it has obtained a statement or opinion from

a professional engineer regarding Charter's attachments to BREMC's poles, except in those instances where BREMC may have provided statements or opinions upon review of Charter's attachment application. Charter will continue to search for additional information responsive to this Request and will supplement this response as necessary.

Request No. 26:

Identify Charter's procedures for handling "downed-line" calls and specify how such procedures differ from routine customer service calls. Include all procedural documentation and special "downed line" call training materials.

RESPONSE:

"Downed-line" calls are directed to Charter's Regional Operations Center, a 24/7 operations center, that will immediately dispatch the system technician on call for the area to the problem spot. The system technician will work to get the downed line "temped" or safely out of the way and get any service outage running within 90 minutes. If multiple lines are down in a small area at once due to a storm or some other similar event, it may take longer to respond to each and every problem spot. A contractor will also be called immediately to fix the line permanently—unless a new pole needs to be placed, in which case the permanent fix must wait for the utility to place the pole. A routine customer service call is not directed to the Regional Operations Center and will not trigger the 24/7 response. Routine service calls are directed to fulfillment technicians who help customers connect to Charter services.

Request No. 27:

Provide the specific location and number of personnel on call 24/7 in the BREMC service territory and the specific protocols and training documentation demonstrating how

Charter dispatches staff to respond to an emergency call, including a “downed-line” call.

RESPONSE:

Charter will produce information responsive to this request, consistent with the parties’ agreed-upon limitations.

Request No. 28:

Identify each occurrence in which Charter’s or its parent’s, subsidiaries’ or affiliated entities’ aerial facilities in North Carolina have come into contact with vehicular traffic, bicycles or pedestrians from 2008 to the present, and for each such occurrence, please provide the following:

- a. The date of each occurrence;
- b. The location of the occurrence;
- c. Any damage to Charter’s facilities as a result of the contact;
- d. Any remedial work performed by Charter after the occurrence;
- e. Any damage to the vehicles or injuries to the vehicle’s driver and passengers, bicyclists or pedestrians as a result of the contact; and
- f. Any other damage or injuries as a result of the contact.

RESPONSE:

Charter is in the process of identifying and occurrences that rise to the level of “claims” or “causes of action” in North Carolina, subject to the parties’ agreed-upon limitations, and will supplement this response at an appropriate time.

[Requests 29-35 withdrawn]

Request No. 36:

Specify the housing density threshold below which Charter does not or will not provide service in BREMC service area, in North Carolina and nationwide along with documentation sufficient to show Charter's policy regarding its service density.

RESPONSE:

Charter does not have a specific housing density threshold below which it will not provide service in the areas that include BREMC's service area.

Request No. 37:

Identify, and produce documents sufficient to show, the average number of homes passed per mile by Charter's video, voice, Internet, broadband, or other communications service in North Carolina and nationwide for each year since 2008. If such information and documentation is not available for North Carolina as a whole, then provide for every area in North Carolina for which it is available.

RESPONSE:

Charter has no knowledge at present regarding the average number of homes passed per mile by Charter's communications services in BREMC's service area. In 2016, Charter passed an average of approximately 53 homes per mile with its distribution plant in areas that include BREMC's service area. Charter will produce documents responsive to this request, consistent with the parties' agreed-upon limitations.

Request No. 38:

Provide customer counts within the zip codes served by Charter in BREMC's service territory and elsewhere in North Carolina.

RESPONSE:

Charter will provide customer counts within BREMC's service territory upon receipt of the zip codes BREMC serves.

Request No. 39:

Provide Form 10K and all other financial reports and filings publicly filed with the U.S. Securities and Exchange Commission.

RESPONSE:

Charter's Form 10-K and other financial reports and filings made to the SEC can be found at: <http://ir.charter.com/phoenix.zhtml?c=112298&p=irol-sec>.

Request No. 40:

Provide annual shareholder reports from 2008 forward.

RESPONSE:

Charter's annual reports to shareholders can be found at: <http://ir.charter.com/phoenix.zhtml?c=112298&p=irol-reportsannual>.

Request No. 41:

For each Charter franchise area that includes some portion of the service territory of the Cooperative, produce documents sufficient to explain to which portions of such franchise Charter offers video, voice, Internet, broadband, or other communications service, and to which portions Charter does not.

RESPONSE:

Charter's system maps contain information from which BREMC will be able to derive details regarding the information sought. Charter is willing to make those maps available for inspection by BREMC's counsel and/or authorized representatives at a mutually

agreed-upon time and place, to be coordinated with counsel for Charter, subject to the Protective Order to be entered in this matter.

Request No. 42:

Produce all documents that identify any consideration, analysis, plans, and/or decision by Charter to extend the reach of its video, voice, Internet, broadband, or other communications service to areas unserved by Charter, including all communications and any documents prepared on behalf of or submitted to Charter by another person.

RESPONSE:

Charter will produce documents responsive to this request, consistent with the parties' agreed-upon limitations.

Request No. 43:

Identify every BREMC pole to which Charter has received a permit or other authorization from BREMC to attach and produce a copy of all such permits or other authorizations received from BREMC.

RESPONSE:

Charter will make its permits and other records received from BREMC available for inspection by BREMC's counsel or authorized representatives at a mutually agreed-upon time and place, to be coordinated with counsel for Charter.

Request No. 44:

Identify the number of BREMC Secondary Poles to which Charter has installed new attachments since 2008.

RESPONSE:

Charter will make its records available for inspection by BREMC's counsel or authorized representative at a mutually agreed-upon time and place, to be coordinated with counsel for Charter.

Request No. 45:

Identify every BREMC pole besides Secondary Poles to which Charter has installed new attachments since 2008.

RESPONSE:

Charter will make its records available for inspection by BREMC's counsel or authorized representative at a mutually agreed-upon time and place, to be coordinated with counsel for Charter.

Request No. 46:

Identify what Charter understands to be the "electrical supply space" on BREMC's poles.

RESPONSE:

Charter does not use the phrase "electrical supply space," but understands it to refer to the top-most part of the pole used by BREMC for its electrical facilities.

Request No. 47:

Provide a copy of any and all specifications provided to construction personnel and contractors and inspectors, including the specific clearance Charter requires between the BREMC "supply space" and Charter's "communications space" with specifics on what Charter assumes is the BREMC "supply space."

RESPONSE:

Charter will produce documents responsive to this request, consistent with the parties' agreed-upon limitations. Charter personnel comply with the minimum clearance requirements specified by the NESC. Charter attaches its facilities 72" below neutral on BREMC's poles.

Request No. 48:

Identify what Charter believes is the length of the uppermost portion of the pole allocated to BREMC in feet and inches.

RESPONSE:

Charter directs BREMC to the parties Pole Attachment License Agreement, which does not specifically allocate space to BREMC in feet and inches. Charter believes the space allocated to BREMC is the space actually used by the Cooperative's facilities attached to each pole, consistent with the specifications of the NESC.

Request No. 49:

Identify what Charter believes is the minimum "communication worker safety zone space" in inches from each voltage line on the BREMC system upon which Charter attaches its facilities.

RESPONSE:

The NESC identifies the minimum "communication worker safety zone space" from each voltage line and other facilities installed on poles.

Request No. 50:

Provide all documentation which Charter provides to its construction employees and construction contractors which specifies the location in which the Charter facilities must be installed on a BREMC pole.

RESPONSE:

Charter will produce documents responsive to this request, consistent with the parties' agreed-upon limitations.

Request No. 51:

Identify every BREMC pole besides Secondary Poles for which Charter has requested a permit or other authorization from BREMC to attach since 2008, and produce a copy of such requests.

RESPONSE:

Charter will make its permits and other records from BREMC available for inspection by BREMC's counsel or authorized representatives at a mutually agreed-upon time and place, to be coordinated with counsel for Charter.

Request No. 52:

Identify each expert witness Charter intends to use in this case and his/her claimed subject matter expertise, and for each of the experts identified, specify the nature of the testimony the expert will be providing, and produce all documents related to the expert's testimony in this proceeding, including the expert's resume or curriculum vitae (listing, among other information, all prior testimony provided by the expert), contracts between the expert and Charter, documents provided to the expert by Charter or another person acting on its behalf,

and documents on which the expert intends to rely upon, and/or actually relies upon, in developing the expert's testimony.

RESPONSE:

At this time, Charter may call Patricia Kravtin, of Patricia D. Kravtin Economic Consulting, 57 Phillips Avenue, Swampscott, Massachusetts, as an expert regarding rate calculations, methodologies, and related issues. Charter will supplement this Response, as necessary, at an appropriate time.

Request No. 53:

Identify all persons providing information contained in the answers to each of these data requests.

RESPONSE:

The following persons, excluding counsel for Charter, were involved in responding to these Requests:

Nestor Martin
Sr. Director of Construction, Carolina Region
Charter Communications
7910 Crescent Executive Drive, 5th Floor
Charlotte, NC 28217

Ronnie McWhorter
Director of Field Engineering
Charter Communications
1511 S. Batesville Road
Greer, SC 29650

Micheal Mullins
Construction Supervisor,
Charter Communications
220 McLean Drive
Lenoir, NC 28645

Request No. 54:

Identify the name, title and contact information for all former and current Charter personnel who are responsible for pole attachments, calculating pole attachment rates and/or the administration of pole attachment agreements in North Carolina.

RESPONSE:

Prior to September 2016, Ronnie McWhorter was responsible for pole attachments, and administration of pole attachment agreements in areas that include BREMC's service area. As of September 2016, Nestor Martin has taken over that responsibility.

Request No. 55:

Identify the name, title and contact information for all former and current Charter personnel who are responsible for the design, construction installation and maintenance of any attachment by Charter to BREMC poles.

RESPONSE:

Charter directs BREMC to its response to Request Nos. 2 & 53.

Request No. 56:

Identify the name, title and contact information for all former and current Charter personnel involved in any negotiations related to a pole attachment license agreement between Charter and BREMC, on behalf of Charter, from 2011 and forward.

RESPONSE:

The following persons, excluding counsel for Charter, were involved in negotiations between Charter and BREMC:

Ronnie McWhorter
Director of Field Engineering
Charter Communications
1511 S. Batesville Road

Greer, SC 29650

Micheal Mullins
Construction Supervisor,
Charter Communications
220 McLean Drive
Lenoir, NC 28645

Request No. 57:

Describe all communications and produce all documents from 2011 and forward, including but not limited to drafts, related to the negotiation of a pole attachment licensee agreement between Charter and BREMC.

RESPONSE:

Charter will produce documents responsive to this request.

Request No. 58:

Produce all unredacted deposition transcripts and pre-filed testimony of Time Warner Cable deponents/witnesses from the proceedings on-going in NCUC Docket Nos. EC-43, Sub 88; EC-49, Sub 55; EC-55, Sub 70 and EC-39, Sub 44.

RESPONSE:

Charter will produce documents responsive to this request, consistent with the parties' agreed-upon limitations and the subject to the parties' Non-Disclosure Agreement and any protective order entered in this matter.

Request No. 59:

Produce all documents you intend to present at any trial or evidentiary hearing in this proceeding.

RESPONSE:

Charter has not yet determined which documents it will introduce or present at any trial or evidentiary hearing in this proceeding. Charter will supplement its response to this request at an appropriate time.

This the 10th day of August, 2017.



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*Attorneys for Charter Communications Properties,
LLC*

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing via electronic mail addressed to counsel of record in this proceeding.

This the 10th day of August, 2017.



Carrie A. Ross
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EXHIBIT B

1 PLACE: Dobbs Building, Raleigh, North Carolina

2 DATE: June 20, 2017

3 DOCKET NOS.: EC-43, Sub 88; EC-49, Sub 55;

4 EC-55, Sub 70; EC-39, Sub 44

5 TIME IN SESSION: 9:30 A.M. TO 12:31 P.M.

6 BEFORE: Chairman Edward S. Finley, Jr., Presiding

7 Commissioner Bryan E. Beatty

8 Commissioner Don M. Bailey

9 Commissioner Jerry C. Dockham

10 Commissioner James G. Patterson

11 Commissioner Lyons Gray

12

13 IN THE MATTER OF:

14 Time Warner Cable Southeast, LLC, Complainant

15 v.

16 Jones-Onslow Electric Membership Corporation, Respondent

17

18 Time Warner Cable Southeast, LLC, Complainant

19 v.

20 Surry-Yadkin Electric Membership Corporation, Respondent

21

22

23

24

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N.C. Utilities Commission

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Sep 21 2017

1 Time Warner Cable Southeast, LLC, Complainant

2 v.

3 Carteret-Craven Electric Membership Corporation,

4 Respondent

5

6 Union Electric Membership Corporation, d/b/a

7 Union Power Cooperative, Complainant

8 v.

9 Time Warner Cable Southeast, LLC, Respondent

10

11

12 VOLUME 1

13

14

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1 **Unauthorized Attachments:** The Cooperative may assess a fee for any TWC
2 Attachment that has not been authorized in accordance with this Agreement
3 ("Unauthorized Attachment"). The fee for Unauthorized Attachments shall be
4 equal to five (5) times the current Annual Attachment Fee.

5 A redline comparing this provision with that proposed by Union Power can be
6 found in my attached NM Responsive Exhibit 15.

7 **Q. Is TWC's proposal consistent with the industry standard?**

8 **A.**Yes. None of our agreements allow pole owners to seek penalties reaching back
9 decades. *See* NM Responsive Ex. 18, Table 4. This is consistent with the FCC's
10 conclusion that allowing open-ended penalties that reach back indefinitely would
11 "grossly overcompensate" the pole owner if the unauthorized attachment were
12 installed more recently. *See Cable Television Assoc. of Ga.*, 18 FCC Rcd 22287 ¶
13 22 (rejecting penalty that would require payment of pole attachment fees until the
14 last inventory, and instructing utility to negotiate a reasonable maximum period
15 for the assessment of back-rent). If anything, TWC's position is more generous
16 than the industry standard. It is also straightforward and easy to apply, because it
17 does not require the parties to determine when the attachment was made, only
18 whether it was authorized.

19 **H. RESERVATION OF SPACE**

20 **Q. How does TWC propose to accommodate Union Power's need to recover space**
21 **on its poles?**

22 **A.**TWC appreciates that Union Power will occasionally require additional space for
23 the provision of its core utility service. TWC would agree to reasonable language
24 that allows it to reserve space for their core utility service. In no event should
25 Union Power be allowed to reserve space on its poles for purposes other than for

1 its core electric service. Otherwise, it could favor itself in the provision of
2 competitive communications and video services. See N.C.G.S. 62-350(a).

3 **Q. What language does TWC propose the Commission approve in this**
4 **proceeding?**

5 **A. TWC recommends the Commission approve the following language:**

6 **Reservation of Space:** Should the Cooperative, at any time, reasonably
7 require the space TWC's Attachments occupy on its poles for the provision of
8 its core electric service, TWC shall, upon receipt of thirty (30) days' notice,
9 (a) rearrange its Attachments to other space if available on the pole, at its own
10 expense, (b) vacate the space by removing its Attachments at its own expense,
11 or (c) if no space is available and TWC does not wish to remove its
12 Attachments, TWC may request the Cooperative replace the pole with a larger
13 pole that can accommodate TWC's Attachments, TWC shall bear the expense
14 of such replacement and transfer its Attachments to the new pole.

15 **Q. Is TWC's position consistent with the industry standard?**

16 **A. Yes.** The industry standard, as embodied in virtually all of TWC's other North
17 Carolina agreements, provides that utilities may reserve space for its core utility
18 purposes, pursuant to a bona-fide development plan. *Implementation of the Local*
19 *Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd.
20 15499, 16053, at ¶1169 (1996) ("We will permit the electric utility to reserve
21 space if such reservation is consistent with a bona fide development plan. . . . The
22 electric utility must permit use of its reserved space by cable operators . . . until
23 such time as the utility has an actual need for that space. . . . The utility shall give
24 the displaced cable operator . . . the opportunity to pay for the cost of any
25 modifications needed to expand capacity and to continue to maintain its
26 attachment."). The language proposed above is similar to the provisions that have
27 governed TWC's attachments to Union Power's poles under the parties 2007
28 Agreement, see NM Responsive Exhibit 1, Art 7(a).

1 Q. How does this proposal relate to your proposed language that TWC not be
2 liable for the costs of correcting build-downs?

3 A. The language of these two provisions would allow Union Power to trigger their
4 rights to reclaim pole space where they need the space on a going forward basis.
5 But where Union Power has simply built down on TWC's facilities without
6 giving notice or an opportunity for TWC to avoid having Union Power create a
7 safety violation related to its attachment, Union Power should not be permitted to
8 push the remediation costs on TWC. That would only reward Union Power for
9 having created an unsafe situation that could affect the workers of both
10 companies. Where Union Power has thus already created that unsafe situation,
11 the parties should operate according the language previously agreed to by
12 Carteret-Craven Electric Membership Corporation, when it agreed that TWC was
13 not responsible for correcting for prior build downs by the Cooperative. See NM
14 Responsive Ex. 19, Art. 11.1.

15 Q. Mr. Booth suggests that any encroachment into Union Power's 8.5 feet of
16 "Supply Space" is a problem, would you agree?

17 A. No. TWC's proposal gives Union Power the right to make TWC pay for recovery
18 of space necessary for Union Power's own core utility service. But it is
19 incumbent upon Union Power to tell us that it needs more space, and ask us to
20 rearrange our attachments, vacate the pole, or pay for a taller pole to
21 accommodate the change, rather than dropping a transformer too close to our
22 cable and creating a dangerous condition.

1 Q. Mr. Booth proposed a provision that would require TWC to pay whatever
2 cost necessary to ensure there is at least 8.5 feet of space for Union Power's
3 future facilities or whatever additional space it designates as reserved for
4 future use.

5 A. Having such a requirement is completely unreasonable, inefficient and wasteful of
6 both parties' resources. The requirement Mr. Booth proposed would lead to TWC
7 replacing poles unnecessarily with taller poles, even where there is no expectation
8 that the extra height will be used. For instance, if TWC needed to attach to a line
9 of poles running down a rural highway with very few existing attachments, there
10 may be plenty of space to provide adequate clearance for TWC to meet the NESC
11 clearance requirements and maintain 40 inches of safety space below the electric
12 facilities, but a taller pole would be necessary to ensure Union Power has at least
13 8.5 feet of space at the top of the pole. Requiring TWC to replace those poles
14 would serve no productive purpose. The taller poles would just line the road, half
15 empty, obstructing views.

16 Q. What does TWC propose the Commission approve instead?

17 A. TWC proposes the following language regarding new or relocated attachments:

18 New or Relocated TWC Attachments: Whenever TWC installs new
19 Attachments, transfers existing TWC Attachments to replaced poles, or
20 relocates existing TWC Attachments to a relocated line of poles, TWC shall
21 attach at least forty (40) inches and, preferably seventy-two (72) inches
22 vertical clearance under the effectively grounded neutral of Cooperative.

23 This provision reflects industry standard and the current practice of the parties. I
24 could not have said it better than Mr. Joplin pointed out in his testimony (filed on
25 June 9, 2017, behalf of Carteret-Craven in *Time Warner Cable Southeast LLC v.*
26 *Carteret-Craven Electric Membership Corporation*, Docket No. EC-55, Sub 70),
27 "TWC's space begins at 40" below our facilities and if [Carteret-Craven] requires

1 more space in the future in order to supply its members with electricity, TWC
2 must pay to replace the pole or relocate.” *See* Direct Testimony of Jacob Joplin,
3 at 17:1-3. A redline comparing TWC proposed language to that proposed by the
4 Cooperative can be found in NM Responsive Exhibit 15.

5 **I. TRANSFER & RELOCATION OF FACILITIES**

6 **Q. When do attachers need to transfer facilities?**

7 A. In addition to instances where the pole owner needs to recover space, TWC may
8 need to transfer its facilities when a pole is being replaced or relocated. This
9 could happen for any number of reasons, including because the pole is old, worn,
10 rotten, or broken, or because a taller or stronger pole is needed to accommodate
11 other facilities or meet engineering standards. In some instances, poles will need
12 to be relocated because of proposed widening of a roadway, or because of the
13 needs of adjacent property owners.

14 **Q. How do pole attachers and pole owners usually coordinate those transfers?**

15 A. With Union Power, we have recently switched to using an automated system,
16 NJUNS, which helps pole owners with multiple attachers coordinate notice and
17 timing of facility transfers. This coordination is necessary because TWC often
18 cannot make a transfer until the phone company first moves its facilities. It is also
19 helpful because of the sheer volume of requests, transfer requests that were made
20 with a call or email occasionally slipped by without a timely response or follow-
21 up.

22 **Q. What happens if TWC does not transfer its facilities in the prescribed time?**

23 A. We try not to let that happen, but occasionally, notification of the need to transfer
24 does not reach the right people or transfers are contingent on another party, like

1 Windstream, transferring first. TWC accepts responsibility, for the actual costs
2 incurred by Union Power if it must make a special return to the job site to remove
3 an old pole because we failed to meet the time period for completing the transfer.

4 **Q. How does TWC propose the new agreement address transfer of facilities?**

5 A. The new agreement should include reasonable language that requires Union
6 Power to provide us notice in writing (or electronically) to transfer our facilities
7 within thirty days or other time specified. Union Power would be allowed to
8 transfer our facilities at our expense if we failed to do so within the required time.
9 Alternatively, the Cooperative may terminate the permit associated with that
10 attachment upon thirty days' notice, if we fail to complete the transfer. TWC
11 proposes the Commission approve the following language:

12 **Transfers & Relocation:** The Cooperative may replace or relocate poles for a
13 number of reasons, including without limitation when existing poles have
14 deteriorated, when new attachers require additional pole space, and when
15 poles must be relocated at the request of the North Carolina Department of
16 Transportation, another governmental body or a private landowner. In such
17 cases, TWC shall, within 30 days after receipt of written notice, transfer its
18 Attachments to the new poles. If such transfer is not timely performed, the
19 Cooperative may, at its option: (i) revoke the permit for the Attachment and
20 declare it to be an Unauthorized Attachment subject to the Unauthorized
21 Attachment fee; or (ii) transfer TWC's Attachments and TWC shall reimburse
22 the Cooperative for the actual costs of completing such work. If Cooperative
23 elects to do such work, it shall not be liable to TWC for any loss or damage
24 except when caused by the Cooperative's gross negligence or willful
25 misconduct.

26 **Q. Is TWC's proposal consistent with the industry standard?**

27 A. Yes. Except in emergency situations, thirty of TWC's 68 Pole Attachment
28 Agreements in North Carolina require the Licensor to provide notice to Licensee
29 of the need to transfer attachments during or at a prescribed period of time. Ten
30 allow the Licensor to transfer the attachments itself if Licensee has failed to do so

1 in the prescribed time. *See* NM Response Ex. 18, Table 5. It is also consistent
2 with the Cooperative's Joint Use Agreements. *See* NM Response Ex. 6, Table 4

3 **Q. Mr. Booth's provisions include a \$15 fee per day for each day the transfer is**
4 **late, what do you make of that proposal?**

5 A. Truthfully, penalty provisions like that do nothing to incentivize compliance, and
6 are more likely just to lead to a dispute between the parties. With the numerous
7 transfers and relocations that are regularly requested by the Cooperative, there are
8 bound to be a few that slip through the cracks. Indeed, a penalty provision like
9 the one Booth proposes led to a long dispute between the parties that damaged the
10 relationship and caused both parties to direct resources to lawyers rather than
11 solutions. But it does neither party any good just to run up a bill, especially if one
12 party (or both) has no knowledge that the clock is ticking on getting the job done.
13 The better solution is simply to communicate if there is a lingering transfer, as the
14 parties have managed to do for years. Imposing an Unauthorized Attachment Fee
15 for failure to complete a transfer in a timely fashion is more directly linked to the
16 harm caused and provides adequate financial incentive for the parties to act
17 quickly to get the job done right.

18 **Q. Mr. Booth has also suggested reimbursement to the Cooperative for**
19 **completing the transfer should be calculated as the fully-loaded cost plus**
20 **25%. Is that reasonable?**

21 A. No. The addition of a 25% charge may be intended as a deterrent against delayed
22 action. But more often than not, TWC is just as invested in complying with work
23 requests as the pole owner, and any failure to do so is likely a result of
24 inadvertence or for good reason. These issues are better addressed through
25 regular communication in the field. An added 25% penalty has no relationship to

1 the harm or the cost of harm, and would not prevent a problem from arising again
2 in the future. It likely would only invite abuse or disputes.

3 **Q. How does TWC propose to reimburse the Cooperative for the costs it incurs**
4 **in completing transfers or conducting other work for the benefit of TWC?**

5 A. TWC is fully prepared to reimburse the Cooperative for the actual cost of
6 performing work the Cooperative undertook that TWC was required to perform
7 under the terms of their agreements. This is of course in addition to paying Union
8 Power for the costs of processing its attachment applications through the
9 Application Fee, reimbursing Union Power for the costs of accommodating
10 TWC's facilities on its poles through the Make Ready Fee, and covering the costs
11 of any attachment inventories or safety inspections of its facilities which are
12 addressed above. Specifically, TWC proposes the Commission approve the
13 following language:

14 **Imposition Costs:** If the Cooperative must perform work for TWC that TWC
15 was required to perform under this Agreement, but which TWC failed to
16 perform within the provided timeframe, TWC shall be responsible for the
17 actual expense incurred by the Cooperative to perform the work.

18 A comparison of this language against the language proposed by the Cooperative
19 can be seen in NM Responsive Exhibit 15.

20 **J. REMOVAL OF FACILITIES**

21 **Q. What is TWC position on a contract provision requiring the removal of its**
22 **attachments from the Cooperative's poles?**

23 A. If Union Power intends to abandon its poles, it needs to give TWC advance
24 written notice to enable us to remove our attachments from the abandoned poles.
25 Sometimes that timeframe may need to be extended because removing TWC's
26 attachments and relocating them (whether underground or elsewhere) can take

1 time to coordinate and execute, particularly where it may cause a service
2 disruption to TWC's customers. TWC appreciates that Union Power does not
3 want so-called "stub poles" around, and therefore suggests a provision similar to
4 that discussed above in dealing with transfers and relocations:

5 **Pole Abandonment:** Upon thirty (30) days' notice to TWC, the Cooperative
6 may in its sole discretion abandon or remove any attached pole. Within this
7 30-day period, unless granted additional time by Cooperative, TWC shall
8 remove its Attachments and may place its facilities underground if authorized
9 to place its facilities underground, transfer its facilities to the nearest facilities
10 owned by the Cooperative if authorized by the Cooperative, or take other
11 action not inconsistent with this Agreement. If, at the expiration of the 30-day
12 period, the Cooperative shall have no attachments on such pole but TWC shall
13 not have removed all of its Attachments, the Cooperative may (i) revoke the
14 permit for the Attachment and declare it to be an Unauthorized Attachment
15 subject to the Unauthorized Attachment fee; or (ii) remove TWC's
16 Attachments and TWC shall reimburse the Cooperative for the actual costs of
17 completing such work. If Cooperative elects to do such work, it shall not be
18 liable to TWC for any loss or damage except when caused by the
19 Cooperative's gross negligence or willful misconduct.

20 To see how this provision differs from that proposed by the Cooperative, look to
21 the redline attached in NM Responsive Exhibit 15.

22 **Q. What about removing facilities that TWC no longer uses?**

23 **A.** TWC routinely removes non-functioning facilities from its poles. On occasion,
24 however, TWC will maintain facilities that are not currently being used in
25 anticipation that they will be used in the future. This practice is efficient and
26 reduces the need for multiple visits to the pole to take facilities off only to add
27 more facilities later. Most often these are service connections: attachments to
28 drop poles that connect a customer to our services and are not a part of the main
29 distribution line. TWC proposes that, in keeping with the parties' current practice
30 and industry standard, the Cooperative should continue to bill for all attachments
31 to its poles, even if a cable is non-functioning, unless and until the attachment has

1 been removed from the pole. This would give TWC an incentive to remove its
2 non-functioning wire to avoid paying an annual fee for it.

3 **K. INDEMNIFICATION**

4 **Q. How does TWC propose to cover indemnification?**

5 A. TWC believes that a reasonable indemnification provision would require each
6 party to indemnify the other for its own negligence. The following language
7 protects both parties interests:

8 **Indemnity and Limitation of Liability:** Except as otherwise specified
9 herein, each party shall defend, indemnify and hold harmless the other party
10 from any and all claims, liabilities, suits and damages arising from or based
11 upon any breach of the party's obligations under the Agreement.
12 Notwithstanding, neither party shall be liable to the other in any way for
13 indirect or consequential losses or damages, however caused or contributed to,
14 in connection with this Agreement or with any equipment or service governed
15 hereby.

16 **Q. Is a mutual indemnification provision just and reasonable?**

17 A. Yes. Mutual indemnification is standard in the industry. A redline to show how
18 the language I propose differs from that included in Mr. Booth's testimony can be
19 found in NM Responsive Exhibit 15.

20 **L. DEFAULT REMEDIES**

21 **Q. What terms will govern if a party defaults on its obligations under the**
22 **agreement?**

23 A. Reasonable "default remedies" ensure the Cooperative has avenues to remedy
24 circumstances where TWC has defaulted on its obligations under the Agreement.
25 TWC's proposal only slightly modifies Union Power's proposed provision, and
26 would require a Cooperative to provide written notice to TWC describing, in
27 reasonable detail, the alleged default and give TWC a reasonable time to correct
28 the violation (depending on the nature or character of the alleged violation). If

EXHIBIT C

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

Docket No. EC-23, Sub 50

BLUE RIDGE ELECTRIC MEMBERSHIP
CORPORATION

Complainant,

v.

CHARTER COMMUNICATIONS
PROPERTIES, LLC,
Respondent.

**FIRST SET OF DATA REQUESTS TO
BLUE RIDGE ELECTRIC
MEMBERSHIP CORPORATION
FROM CHARTER
COMMUNICATIONS PROPERTIES,
LLC**

Respondent Charter Communications Properties, LLC (“Charter”) hereby requests Complainant Blue Ridge Electric Membership Corporation (the “Cooperative” or “BREMC”) to answer the following data requests within twenty-one (21) days of the time service is made upon you in accordance with the North Carolina Utilities Commission’s June 7, 2017 Order Establishing Procedural Schedule.

INSTRUCTIONS

1. In answering these data requests, please furnish all information, documents and/or things that is/are known or available to you or subject to your reasonable inquiry, including information and things in possession, custody or control of any of your representatives, including without limitation your attorneys, accountants, advisors, agents, consultants, investigators or other persons directly or indirectly employed by or connected with you and anyone else otherwise subject to your control.

2. In responding to these data requests, you must make a diligent search of your records and of other papers and materials in your possession or available to you or your representatives.

3. If a request has subparts, answer each part separately and in full, and do not limit your answer to the request as a whole. If a request cannot be answered in full, answer to the extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion.

4. If you claim a privilege as a ground for failing to answer any request, respond to that part of each such request that, in your view, does not call for allegedly privileged information or communications. If you deem any information, documents or things sought by these requests, or portion thereof, to be privileged or otherwise protected from discovery, describe the factual basis for your claim of privilege in sufficient detail to permit adjudication of the validity of that claim, including without limitation, the following:

- a. The identity, title, and job description of the transmitter of the information, document, or communication;
- b. The identity, title, and job description of the person(s) to whom the information, document, or communication was addressed;
- c. The identity, title, and job description of each person who has received or utilized the information, document, or communication;
- d. The date (or your best approximation thereof) of the information, document or communication;

- e. A brief description of the type of information, document, or communication;
- f. A brief description of the subject matter of the information, document or communication; and
- g. A brief reason why the information, document or communications is claimed to be privileged, protected, or subject to non-disclosure.

5. If you object to any data request set forth herein, state the grounds of the objection with sufficient specificity to permit determination of the basis for such objection.

6. If you cannot answer any of the data requests in full after exercising due diligence to secure the full information to do so, so state and answer to the extent possible, specifying your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion, and describing what you did in attempting to secure the unknown information.

7. For all data produced, you are to produce them in their native electronic format (e.g., all Microsoft Excel spreadsheets should be produced in Excel format).

8. Responsive documents and things shall be produced as kept in the ordinary course of business or shall be produced in a manner organized and labeled to correspond with the categories in these requests for production. If any of the documents and things cannot be produced in full, produce to the extent possible, specifying the reason for the inability to produce the remainder. If there are no documents or things responsive to a particular request, state so in writing.

9. In the event that any document or thing called for by this request has been destroyed or discarded, that document is to be identified as follows:

- a. Each addressor and addressee;
- b. Each indicated or blind copy;
- c. The document's date, subject matter, number of pages, and attachments or appendices;
- d. All persons to whom the document was distributed, shown or explained;
- e. Its date of destruction or discard, manner of destruction or discard, and reason for destruction or discard; and
- f. The person who authorized such destruction or discard.

10. Unless stated otherwise in a particular request for production, you should produce all information, documents, or things originated or received by you, in whole or in part, from January 1, 2015 to present.

11. In interpreting these data and discovery requests, definitions and instructions: any masculine, feminine, or neutral term includes all genders; the singular includes the plural and the plural includes the singular; "or," "and," "and/or," and "including" shall be read inclusively rather than exclusively; words in the past tense include the present tense, and words in the present tense include the past tense.

12. These data requests shall be deemed continuing in nature and you are required to provide supplemental answers if you obtain further or different information before the resolution of this matter.

DEFINITIONS

1. The terms “you,” “your,” “the Cooperative” and “Blue Ridge” refer to Blue Ridge Electric Membership Corporation and to its agents, officers, employees, attorneys, accountants, consultants, investigators, representatives, or other persons acting or purporting to act on its behalf.

2. “Charter” refers to Charter Communications Properties, LLC, and its predecessors in interest, and to its agents, officers, employees, attorneys, accountants, consultants, investigators, representatives, or other persons acting or purporting to act on its behalf.

3. The words “document” and “documents” are used in the broadest possible sense and refer, without limitation, to all written, printed, typed, photostatic, photographed, recorded, or otherwise reproduced communications or representations of every kind and description, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, whether prepared by hand or by mechanical, electronic magnetic, photographic, or other means, as well as audio or video recordings of communications, oral statements, conversations, or events. This definition includes, but is not limited to, any and all originals and non-identical copies of any and all of the following: correspondence, e-mails, notes, minutes, records, messages, memoranda, telephone memoranda, diaries, contracts, agreements, invoices, orders, acknowledgements, receipts, bills, statements, appraisals, reports, forecasts, compilations, schedules, studies, summaries, analyses, pamphlets, brochures, advertisements, newspaper clippings, tables, tabulations, financial statements, working papers, tallies, maps, drawings, diagrams, sketches, x-rays, charts, labels, packaging materials, plans,

photographs, pictures, film, microfilm, computer-stored or computer-readable data, computer programs, computer printouts, telegrams, telexes, telefacsimiles, tapes, transcripts, recordings, and all other sources or formats from which data, information, or communications can be obtained. Any preliminary versions, drafts, or revisions of any of the foregoing, any document which has or contains any attachment, enclosure, comment, notation, addition, insertion, or marking of any kind which is not a part of another document, or any document which does not contain a comment, notation, addition, insertion, or marking of any kind which is part of another document, is to be considered a separate document.

4. “Communication” means any oral, written, electronic, or other transfer of information, ideas, opinions or thoughts by any means, from or to any person or thing.

5. “Relate to,” “related to,” and “relating to” mean comprising, mentioning or describing, containing, enumerating, involving or in any way concerning, pertaining or referring to, being connected with, reflecting upon or resulting from, in whole or in part, directly or indirectly, the stated subject matter.

6. “Person” means any natural person or any entity, including, but not limited to, sole proprietorships, partnerships, corporations, associations, joint ventures, firm, business enterprise, governmental or quasi-governmental body or agency, and any other legally recognized entity of any description whatsoever, and includes both the singular and the plural.

7. To “identify” a person, state with respect to each such person:

- a. The full name and, in the case of entities other than natural persons, the nature of the entity (*e.g.*, corporation, partnership, etc.);

- b. The last known residential address, residential phone number, business address, business phone number, and cellular telephone number;
 - c. The company or business affiliation at the date of the matter referred to;
 - d. The title and duties in the company or business with which the person was affiliated; and
 - e. The person's current company or business affiliation.
8. To "identify" or "describe" a document, means to state:
- a. The name, address, telephone number, occupation, job title, and employer of the present or last known custodian of the document; and
 - b. The circumstances of the creation of the document, including the title of the document, identification of each person creating or receiving the document, the date of creation, the signer(s) of the document, the intended recipient of the document, and the type of document, or attach an accurate copy of the document to your answer, appropriately labeled to correspond to the request.
9. To "identify" or "describe" a communication means to state:
- a. The date, type, manner, and location of the communication;
 - b. The identity of all parties to the communication;
 - c. The substance of the communication; and
 - d. A description of any documents relating to the communication.
10. To "identify" or "describe" a fact, event, or action means to state:

- a. Complete and full details concerning such fact, event, or action, including the date, time and place;
- b. The identity of all persons, and a description of all documents and communications, that reflect, refer, relate, evidence, or pertain in any way to such fact, event, or action.

11. To “state the factual basis” for a response, contention, allegation, claim, or statement, means to state each and every fact that you contend supports that response, contention, allegation, claim, or statement, including the basis and source of your knowledge of each fact; the identity of every person having knowledge of each fact; the identity of each document relating to each fact; and the identity of each communication relating to each fact.

12. “Attachment” means any facility, equipment, or item placed directly on a utility pole, including but not limited to wires, cables, or other appurtenant equipment.

13. “Overlash,” “overlashed,” or “overlashing” means to place an additional wire or cable onto an existing attachment.

14. “Permit” means written, electronic, or other authorization of the Cooperative to a person to make, or maintain, attachments to specific poles.

15. “Pole” means a utility pole used for the distribution or transmission of electricity that is capable of supporting third-party communications attachments.

DATA REQUESTS

DATA REQUEST NO. 1: Describe the basis for each pole attachment rate you have charged or sought to charge to any person, including but not limited to Charter, from 2015 to the present, including all steps and calculations performed, the source and

values of all inputs or data used in your calculations, and the decision-making process followed to arrive at each rate.

DATA REQUEST NO. 2: Produce all documents related to any and all pole attachment rates the Cooperative has charged, attempted to charge, or considered charging from 2015 to the present, including documents showing any calculations, computations and/or analyses of such pole attachment rates, and all documents backing up or supporting any rate calculations prepared by or on behalf of the Cooperative or by other persons.

DATA REQUEST NO. 3: Produce all documents related to pole attachment rate calculations or methodologies, including documents prepared by or on behalf of the Cooperative or by other persons.

DATA REQUEST NO. 4: Provide the information identified in the form attached as Exhibit A annually as of yearend 2014 through 2016. If the Cooperative does not follow the RUS accounting system for its electrical system, provide information equivalent to the RUS Account information requested. To the extent that any answer is the product of a calculation, and not simply based on records, please provide the calculation and the source and value of all inputs.

DATA REQUEST NO. 5: Produce all documents used to complete the form attached as Exhibit A and identified in Data Request No.4, including your annual yearend reports for 2014-2016 (RUS report or otherwise).

DATA REQUEST NO. 6: Identify the method used to determine the Cooperative's depreciation rate for distribution poles, and produce documents sufficient to support the Cooperative's determination of same.

DATA REQUEST NO. 7: Identify the method used to determine the Cooperative's cost of debt, and documents sufficient to support the Cooperative's determination of same.

DATA REQUEST NO. 8: Identify the Cooperative's times interest earned ratio for each year from 2015 to present.

DATA REQUEST NO. 9: State the Cooperative's total revenues and total pole attachment revenues for each year from 2015 to present.

DATA REQUEST NO. 10: State the Cooperative's patronage capital for each year from 2015 to present.

DATA REQUEST NO. 11: Identify all persons that have maintained attachments to the Cooperative's poles from 2015 to the present, including the identity of the person, whether the Cooperative has a pole attachment or joint use agreement with the person, the number of poles on which the person has attachments (by year), the rate charged by the Cooperative for attachments (by year), and the rate paid by each person (by year).

DATA REQUEST NO. 12: State the factual basis for your claim that the "TVA method" as identified in paragraph 12 of the Petition is "consistent with the public interest and necessity" and "the appropriate methodology" to be used in calculating the pole attachment fee to be paid by Charter.

DATA REQUEST NO. 13: Produce all documents and communications related to the TVA method identified in paragraph 12 of the Petition, including all communications related to the Cooperative's decision to pursue the TVA methodology for calculating the pole attachment fee to be paid by Charter.

DATA REQUEST NO. 14: Identify all persons who own poles to which the Cooperative makes attachments, including the identity of the person, whether the Cooperative has a pole attachment or joint use agreement with the person, the number of the person's poles on which the Cooperative has attachments, the amount of pole space the Cooperative's attachments use, and the rates paid by the Cooperative for its attachments to the person's poles.

DATA REQUEST NO. 15: Identify all persons involved in the Cooperative's negotiation of a new pole attachment agreement between the Cooperative and Charter.

DATA REQUEST NO. 16: Produce all documents related to the Cooperative's negotiation of a new pole attachment agreement with Charter, including drafts and mark-ups of proposed agreements and all correspondence related to the negotiation of a new pole attachment agreement.

DATA REQUEST NO. 17: Produce all documents and communications related to pole attachment or joint-use agreements between the Cooperative and any person from 2011 to the present, including all documents and communications related to the negotiation of any pole attachment or joint-use agreement.

DATA REQUEST NO. 18: Identify all former and/or current Cooperative personnel, vendors, contractors, or other persons, with responsibility related to pole attachments, including billing for pole attachments, setting pole attachment rates, administering pole attachment or joint use agreements, permitting pole attachments, inspecting poles, and/or conducting pole loading analyses from 2011 to the present, and describe fully the responsibilities of each such person as related to pole attachments.

DATA REQUEST NO. 19: Identify the number of pole failures, tear downs, and/or broken poles caused by overlashing or excessive loading each year from 2011 to the present.

DATA REQUEST NO. 20: Produce all documents related to pole failures, tear downs, and/or broken poles caused by overlashing or excessive loading from 2011 to the present.

DATA REQUEST NO. 21: Produce all documents that demonstrate the loading on any of the Cooperative's poles contributed by overlashed facilities, and any increased loading or burden on the Cooperative's poles, or additional costs to the Cooperative, as a result of overlashing from 2011 forward.

DATA REQUEST NO. 22: Identify each instance the Cooperative and/or another person acting on its behalf has performed a loading analysis of overlashed facilities on pole(s) owned by the Cooperative from 2011 to the present, including the pole(s) analyzed, the reason for the analysis (i.e. whether for attachments made by Charter or by another person), type of analysis performed and the program or software used to perform each analysis, the inputs used for each analysis, the equipment used for each analysis, the cost of performing each analysis, and the results of each analysis.

DATA REQUEST NO. 23: Produce all documents related to pole loading analyses of overlashed facilities performed by, on behalf of, or submitted to the Cooperative from 2011 to the present, including the documents identifying the reason for the loading analysis (i.e. whether for attachments made by Charter or by another person), the type of analysis performed and the program or software used to perform each analysis, the inputs used for the analysis, the equipment used for the analysis, the cost of

performing the analysis, the results of the analysis, and communications related to the analysis.

DATA REQUEST NO. 24: Identify whether joint users perform loading analyses before adding facilities to the Cooperative's poles and, if so, describe the process for conducting those analyses and produce any documents related to same from 2011 to the present.

DATA REQUEST NO. 25: Identify each audit or inventory of attachments to the Cooperative's poles the Cooperative, and/or another person acting on its behalf, has conducted, considered conducting, or planned to conduct from 2011 to the present.

DATA REQUEST NO. 26: Produce all documents related to the most recent audit or inventory of the attachments to the Cooperative's poles the Cooperative, and/or another person acting on its behalf, has conducted, considered conducting, or planned to conduct, including communications related to such audit or inventory, documents reflecting the methodology used, considered, and/or proposed for such audit or inventory, records created during the course of such audit or inventory, and documents reflecting the results of such audit or inventory.

DATA REQUEST NO. 27: State the factual basis for your demand that Charter pay any amounts related to alleged "unauthorized attachments," as defined in Article 10 of the 2003 Pole Attachment Agreement, to the Cooperative's poles.

DATA REQUEST NO. 28: Identify all poles, by pole number, location, and GPS coordinates, where you claim Charter has made an "unauthorized attachment," as defined in Article 10 of the 2003 Pole Attachment Agreement, provide the date the "unauthorized

attachment” was identified, and produce all documents related to each unauthorized attachment identified.

DATA REQUEST NO. 29: State the factual basis for the penalties and costs for alleged unpermitted attachments the Cooperative has proposed, and produce all documents, including cost studies or analyses, related to the Cooperative’s answer to this request.

DATA REQUEST NO. 30: Identify each safety inspection of the Cooperative’s poles the Cooperative, and/or another person acting on its behalf, has conducted, considered conducting, or planned to conduct from 2011 to the present, including any inspection (partial or complete) of Charter’s attachments to the Cooperative’s poles.

DATA REQUEST NO. 31: Produce all documents related to each safety inspection of the Cooperative’s poles the Cooperative, and/or another person acting on its behalf, has conducted, considered conducting, or planned to conduct from 2011 to the present, including communications related to each such inspection, documents reflecting the methodology and standards used, considered, and/or proposed for each inspection, records created during the course of each inspection, and documents reflecting the results of each inspection including safety code violations on “Secondary Poles,” as defined in Article 6 of the parties’ 2003 Pole Attachment Agreement.

DATA REQUEST NO. 32: Produce all documents related to any consideration, analysis, plans, and/or decision by the Cooperative to provide video, voice, Internet, broadband, telecommunications, or other communications service to customers within the Cooperative’s service area, including all communications and any documents prepared on behalf of or submitted to the Cooperative by another person.

DATA REQUEST NO. 33: Identify each expert witness the Cooperative intends to use in this case and his/her claimed subject matter expertise, and for each of the experts identified, specify the nature of the testimony the expert will be providing, and produce all documents related to the expert's testimony in this proceeding, including the expert's resume or curriculum vitae (listing, among other information, all prior testimony provided by the expert), contracts between the expert and the Cooperative, documents provided to the expert by the Cooperative or another person acting on its behalf, and documents on which the expert intends to rely upon, and/or actually relies upon, in developing the expert's testimony.

DATA REQUEST NO. 34: Produce all documents related to certifications or other analyses provided by professional engineers for attachments made by any person to the Cooperative's poles, including for attachments made by the Cooperative, from 2011 to the present.

DATA REQUEST NO. 35: Identify all poles, by pole number, location, and GPS coordinates, where you claim Charter has failed to transfer attachments in a timely manner, and produce all documents related to each transfer request identified, including all notices provided to Charter.

DATA REQUEST NO. 36: Identify all insurance, including the amount of insurance coverage, the Cooperative alleges it is required to maintain by the Rural Utilities Service, and produce documents sufficient to substantiate such requirements and the terms and conditions related to same.

DATA REQUEST NO. 37: State the factual basis for your claim in paragraph 11(f) of the Petition that “Charter should be obligated to provide the coverage required by RUS.”

DATA REQUEST NO. 38: State the factual basis for your claim in paragraph 11(g) of the Petition that a new pole attachment agreement between the parties must be confidential, including by specifying all “market sensitive information” the Cooperative alleges is in the agreement, all bases for the Cooperative’s claims that such information is market sensitive, and all bases for the Cooperative’s allegation that terms and conditions that are “the result of compromise and the give and take of the parties” require confidentiality protections.

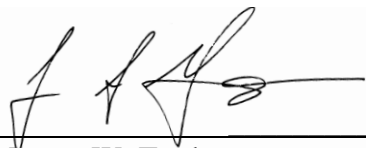
DATA REQUEST NO. 39: Produce all documents reviewed in answering or used to derive answers to all Data Requests propounded by Charter.

DATA REQUEST NO. 40: Produce all documents related to any claim or defense asserted by the Cooperative in its Petition or Answer to Counterclaims.

DATA REQUEST NO. 41: Produce a copy of the Cooperative’s document retention policy for documents related to electric operations.

DATA REQUEST NO. 42: Produce all documents you intend to present at any trial or evidentiary hearing in this proceeding.

Respectfully submitted, this 6th day of July, 2017.



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CERTIFICATE OF SERVICE

The undersigned, of the law firm Sheppard Mullin Richter & Hampton, LLP, hereby certifies that he has served a copy of the foregoing **First Set of Data Requests** via electronic mail addressed to all counsel of record in this proceeding

This the 6th day of July, 2017.



Carrie A. Ross