

**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.)	OPPOSITION TO BLUE RIDGE
)	ELECTRIC MEMBERSHIP
CHARTER COMMUNICATIONS)	CORPORATION'S MOTION
PROPERTIES LLC,)	FOR LEAVE TO AMEND
)	PETITION
Respondent.)	

Charter Communications Properties LLC (“Charter”) respectfully submits this Opposition to Blue Ridge Electric Membership Corporation’s (“BREMC’s”) Motion for Leave to Amend its Verified Petition for Relief, filed on September 12, 2017.

BREMC’s motion for leave to amend its petition is inadequate and untimely, and should be denied. BREMC’s motion seeks to add five terms and conditions that were not identified in its initial petition. While some of these terms and conditions are similar to those identified in Charter’s Counterclaim, several are entirely new—including terms related to reservation of space and recovery of space. BREMC, however, does not actually allege that these issues are in “dispute”—as required by the Section 62-350—because they were not in dispute when BREMC filed its petition. G.S. § 62-350(b) (“The parties shall identify with specificity in their respective filings the issues in dispute.”). Rather, BREMC asserts these are terms “over which the parties have not yet reached agreement,” which could conceivably include every term in a pole attachment agreement, whether the parties have a genuine dispute or not. The Cooperative further asserts these terms “will require a

ruling from the Commission” based on “discovery” and “positions Charter has taken in this and similar proceedings.” Mot. ¶ 3.¹

This case already involves many of same rates, terms, and conditions as the “similar proceedings” the Commission is set to resolve under Section 62-350. *See* Docket Nos. EC-43, Sub 88; EC-49, Sub 55; EC-55, Sub 70; EC-39, Sub 44.² BREMC’s motion is designed to bring this case into even closer alignment with those cases. And it draws from the same playbook as the EMCs involved in those cases.

Like the other EMCs, BREMC argues that, in the absence of a final agreement, it should be able to add to this docket any term that could be included in a new agreement—even if the Cooperative and Charter have not previously discussed or disputed the term. Charter now understands that BREMC makes this argument so that it, like the other EMCs, may seek the Commission’s blessing for terms newly minted for purposes of litigation: terms which exceed industry standards, exceed terms it voluntarily proposed and accepted prior to and even after regulation under Section 62-350, and even exceed terms it had previously proposed for the parties’ new pole agreement (and which Charter did not dispute). In doing so, Charter believes the Cooperative ultimately hopes to punish it for refusing to concede the rates and terms that were actually the subject of a good faith dispute by saddling it with additional terms far more onerous than either party had proposed or discussed prior to litigation. The strategy is clear: BREMC (like the other EMCs) seeks to discourage communications providers from relying on their statutory rights at all. If a communications provider knows that its resistance to even one rate or term in a new

¹ BREMC presumably is referring to positions taken by Time Warner Cable Southeast LLC in similar proceedings, as this is the only pole attachment case before the Commission involving Charter.

² Charter is contemporaneously filing a motion for temporary stay of this proceeding based on its substantial overlap with the cases the Commission is set to resolve.

agreement will be met with a pole owner's attempt to seek Commission approval of an entirely new suite of oppressive terms and conditions—even on matters the parties previously did not dispute—then it will be strongly discouraged from exercising its rights to submit a dispute to the Commission. Having seen the other EMCs put this strategy to practice, Charter is compelled to object to BREMC's apparent attempt to abuse the statute's dispute mechanism in the same manner.

Also like the other EMCs, BREMC seeks to add new issues to this case long after the pleadings have closed and with inadequate time for Charter to answer the claims, let alone take discovery on them. BREMC does not explain why it waited 10 months to seek permission to amend its petition. Nor does it explain why it failed to seek permission prior to the start of discovery. Taking BREMC at its word, if it decided to amend based on developments in the similar cases, then it should have sought to amend its petition in late June or early July—when those similar cases had been fully heard and their record developed, and before discovery in this case opened.

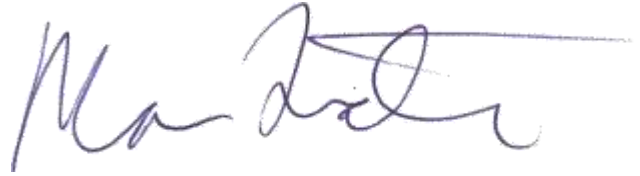
For reasons known only to it, BREMC waited until now to seek leave to amend its petition, with only two weeks left to serve discovery, with prefiled testimony due in a month, and the hearing fast approaching during the week of November 6, 2017. The Cooperative's empty assurance that its request to amend will not cause any undue delay or prejudice ignores reality. These new provisions were not previously identified in BREMC's claims and therefore Charter has not had an opportunity to respond to them, nor have they been the subject of discovery. BREMC nowhere explains how Charter can be expected to respond to the amended petition (for which the Commission customarily allows 30 days), prepare and take discovery on the new claims, address discovery disputes on the

new claims, and develop a complete record for the Commission's resolution in such a short time.³ Charter thus opposes BREMC's motion as untimely and prejudicial.

If the Commission were to grant BREMC's motion and allow it to amend its petition, which Charter opposes, it would provide further support for Charter's Motion for a Temporary Stay of this case, filed on September 18, 2017, which the Commission should grant no matter how it resolves BREMC's motion. A stay is already warranted because this case and the cases the Commission is set to resolve raise identical rate issues and overlapping issues related to terms and conditions, including similar facts and the same expert witnesses. And precedent created by the Commission in those cases will likely save the parties to this case and the Commission substantial resources by narrowing or eliminating the disputes ultimately presented to the Commission in a hearing. Granting BREMC's motion to amend would further support a stay by bringing this case into even closer alignment with the other cases. At a minimum, it would necessitate suspension of the current procedural schedule to give Charter its customary 30 days to respond to the amended petition and to account for the further discovery and other proceedings BREMC's new claims would require.

³ When Charter previously raised these concerns to BREMC, the Cooperative offered to extend discovery by a week, and to extend each parties' respective filing deadlines by a week, without altering the timeframe identified for the hearing. A one-week extension is plainly inadequate because it nowhere accounts for Charter's response to the amended claims. It also would prejudice Charter by pushing the Cooperative's reply testimony into the week of the hearing, denying Charter sufficient time to address the Cooperative's positions on reply as it prepares for the hearing.

Respectfully submitted, this 18th day of September, 2017.



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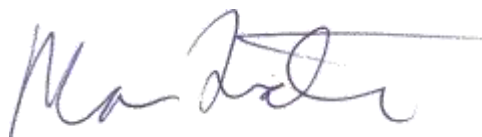
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CERTIFICATE OF SERVICE

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

This the 18th day of September, 2017.



*Attorney for Charter Communications
Properties LLC*