

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EC-23, SUB 50

BLUE RIDGE ELECTRIC)	
MEMBERSHIP CORPORATION)	
Petitioner,)	
)	
v.)	CONTENTIONS OF CHARTER
)	COMMUNICATIONS
)	PROPERTIES, LLC
CHARTER COMMUNICATIONS)	
PROPERTIES, LLC,)	
Respondent.)	
)	

Pursuant to the Commission’s October 9, 2017 Order Requiring Pretrial Filing in this proceeding, Charter Communications Properties, LLC (“Charter”), submits its Contentions.

INTRODUCTION

This is the fifth case to come before the Commission under the jurisdiction provided in the General Assembly’s 2015 amendments to GS 62-350. The issues raised here and in the prior four cases are not new or unprecedented, either nationally or in North Carolina. Questions about how to determine pole attachment rates have been the subject of scores of decisions by the Federal Communications Commission (“FCC”) – over the past 39 years and many more decisions by states, some involving investor-owned utilities (“IOUs”) and some involving cooperative and/or municipal utilities.¹ Not

¹ See, e.g., *Adoption of a Standard Methodology for Establishing Rates for Cable Television Pole Attachments*, 49 P.U.R. 4th 128, No. 251 (Ky. PSC 1982); *Re: Columbus and Southern Electric Company*, 50 PUR 4th 37 (Pub. Util. Comm. Oh. 1982); *Petition of CPS Energy for Enforcement Against AT&T Texas And Time Warner Cable Regarding Pole Attachments* Docket No. 36633 at 34 (TX PUC 2012); among many others identified in Charter’s testimony.

only are North Carolina IOU pole rates, terms and conditions regulated by the FCC, but the North Carolina Business Court applied the FCC pole rate methodology to North Carolina cooperative and municipal utilities in two cases decided in 2014.² In moving pole attachment jurisdiction over cooperative and municipal utilities from the Business Court to this Commission, the General Assembly removed the earlier statutory reference to the FCC as a specific guidepost for North Carolina, but nevertheless explicitly made reference to “any methodologies previously applied” – a clear reference to rates set by the FCC and by the Business Court, among other methodologies presented by a party.

Similarly, the contractual terms and conditions that are the subject of these proceedings not only in many cases have been addressed by the FCC, but there is a strong weight of authority provided by clear industry standard language.

CONTENTIONS

A. Rate Issues

1. BREMC is a monopoly owner of facilities essential to the operation of Charter’s business.³

Because electric and telephone utilities have long operated under joint use agreements by which they share each other’s poles, there is generally only one set of poles available to third parties like Charter for attachment. Placing a second

² See *Rutherford Electric Membership Corp. v. Time Warner Entertainment-Advance/Newhouse P’ship*, No. 13-cvs-231, 2014 WL 2159382 (N.C. Super. Ct. May 22, 2014), aff’d 771 S.E.2d 768 (N.C. Ct. App. 2015); *Time Warner Entertainment-Advance-Newhouse P’ship v. Town of Landis*, No. 10-CVS-1172, 2014 WL 2921723 (N.C. Sup. Ct. June 24, 2014).

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

set of poles is usually not an alternative for environmental, legal, regulatory and economic reasons.

While Charter builds underground in special circumstances, primarily in new subdivisions where there is no aerial infrastructure, it is much more expensive to build underground than aerially, and converting Charter's existing aerial plant to underground would be prohibitively expensive.

2. Charter uses “surplus space” or “excess space” on BREMC’s poles and is responsible for making space as necessary to accommodate its attachments.

BREMC's agreement with Charter, like pole agreements generally, require that if space does not exist on a pole sufficient to allow Charter to attach and meet all clearance requirements, then Charter must pay to make the pole ready for attachment. This “make-ready” may involve installing a new and taller or stronger pole at Charter's expense. Even after Charter has paid for a new pole, it is owned by BREMC, and Charter pays annual rent to use it. Industry-standard pole attachment agreements in North Carolina, including Charter's agreement with BREMC, also provide that if the pole owner requires use of more pole space, it may displace Charter's attachment, requiring Charter to make additional space, including paying for a new pole for the pole owner.

3. By virtue of provisions in both its existing and proposed pole agreements, Charter covers those verifiable and direct “but for” costs that BREMC incurs specifically related to Charter’s pole attachments, including application fees, make-ready costs, costs of surveys and inspections, and costs of audits.

Based on provisions in BREMC's agreement with Charter, Charter is responsible for paying directly the actual direct costs incurred by BREMC in making pole space available to Charter.

4. Under the FCC’s pole rate methodology, which is the basis for the pole rates charged by pole owners across much of this country, the attaching party pays the verifiable and direct “but for” costs related to its use of utility poles, and also pays a “fully allocated” rate on top to pay, in addition, its fair share of all pole-related costs.

5. The FCC fully allocated rate relies on the pole owner’s annual costs of pole ownership, including depreciation and a reasonable return, as well as administrative and general, taxes and maintenance expenses.

6. The FCC fully allocated rate allocates to the attaching party that portion of the annual costs of owning and maintaining the entire pole (including both the “usable” and the “unusable” space) represented by the proportion of the usable space on the pole occupied by the attacher.

Pole owners sometimes try to fudge the operation of the FCC formula to make it sound like the attacher only pays for the cost of the foot of pole space it occupies.

But that is not correct. The formula charges the attacher for the costs of the entire pole, based on the percentage of the usable space it occupies.

As explained by Congress when the federal Pole Attachment Act was enacted, the principle is the same as would be used in allocating the rental cost to a family that rents one floor of a 10-story apartment house: that family would be charged one-tenth of the costs of the building's common space.

- 7. For purposes of rate calculations, BREMC's typical distribution pole is approximately 37.5 feet long, on average. Of that, about six feet is buried, and about 18 feet is necessary to achieve minimum grade clearance (both making up space on the pole that is "unusable" for attachment of wires and cables), leaving 13.5 feet above minimum grade as space that is "usable" for the attachment of wires and cables.**

Pole owners seeking to rebut FCC presumptions with actual data must rebut all of the presumptions. Pole owners cannot selectively rebut only those presumptions that have the effect of increasing the annual pole attachment rate, while using FCC presumptions for those inputs that would have the effect of decreasing the rate if they were rebutted. BREMC has not properly rebutted the presumptions, and has improperly attempted to rebut non-rebuttable presumptions.

BREMC's efforts to rebut various inputs to the untested and never-applied TVA approach illustrate the unpredictability and volatility of that approach. BREMC's manipulations of the formula increase the already excessive TVA rate by an additional 44 percent.

- 8. Charter almost always uses only one foot of the "usable space" on a pole for its attachment.**

Charter's cables are lashed to a steel strand between poles. The attachment of Charter's strand (with the lashed cables) is universally understood to occupy one foot of the usable pole space. When Charter needs to upgrade its facilities, it does so by "overlashing" an additional cable to its strand. Doing so does not cause the attachment to occupy any additional space on the pole.

- 9. BREMC typically uses about eight to 8.5 feet of the usable pole space on their poles.**
- 10. Telephone companies with joint use agreements with BREMC reserve the right to use two feet of space.**
- 11. The 40 vertical inches of so-called "safety space" between the highest communications facility on a pole and the lowest electrical supply conductor is**

allowed to be used – and is used – by BREMC for revenue generating attachments such as streetlights and fiber-optic wires.

The FCC has long understood that the “safety space” is used by pole owners for activities that generate revenue, and thus the FCC treats the space as “usable space” on the pole. Indeed the FCC has reviewed this matter numerous times and reached the same conclusion each time.

The majority of states that regulate pole attachment rates have reached the same conclusion as the FCC and treat the safety space as “usable space” on the pole.

Because Charter uses surplus space on the pole, industry-standard pole attachment agreements in North Carolina allow the pole owner to require Charter to make additional space, including paying for a new pole for the pole owner, if the pole owner needs space within the safety space for its core utility service.

12. The FCC’s “fully allocated rate” is economically justified, fully compensatory and subsidy-free.

Allocating costs based on the use of usable capacity is well-recognized and economically justified. The United Supreme Court has determined that the FCC fully allocated rate is fully compensatory to the utility.⁴

13. This Commission should find the FCC rate just and reasonable and apply it to BREMC in this proceeding.

14. Applying the FCC rate would allocate to Charter 1/13.5 of BREMC’s annual pole-related costs.

15. Based on BREMC’s specific costs for the prior year, the maximum just and reasonable pole rates according to the FCC rate methodology for BREMC are as follows:

**MAXIMUM JUST & REASONABLE RATE UNDER RECOMMENDED
CABLE RATE**

Rate Year	2017	2016	2015
Cost Data Year Ending	2016	2015	2014
Rate	\$5.18	\$5.20	\$5.22

⁴ See *FCC v. Florida Power Corp.*, 480 U.S. 245, 247 (1987).

16. The FCC rates for BREMC are in the range of rates charged by the IOUs and telephone companies for poles virtually identical to, and interspersed with and around, BREMC's poles in their service territory.

For example, for 2016, Charter paid IOUs in North Carolina the following pole rates:

- \$6.64 (Dominion Power)
- \$5.21 (Duke Energy)
- \$9.75 (Progress Energy) (pursuant to settlement)

And for 2016, Charter paid telephone companies the following pole rates:

- \$2.48 (AT&T)
- \$4.25 (CenturyLink)
- \$2.98 (Frontier)
- \$4.89 (Verizon)
- \$1.59 (Windstream)

17. The approach chosen by the Tennessee Valley Authority for use by its wholesale electric customers is an outlier, is based on factual errors and misunderstandings, and was the product of a closed and secret process that excluded all interested parties except for pole owners and their trade association.

In early 2015 the TVA, in order to avoid pole rate regulation of its wholesale electric customers by state commissions, asked its customers (electric cooperatives and municipally owned utilities) for input regarding its intent to regulate pole attachments. No other interested parties, such as the companies that would have to pay higher pole rates or consumer or public interest groups, were included in any discussions.

Meanwhile, TVA took the position that its sole concern was lower electric rates.

TVA recently announced that it is going into competition with broadband providers like Charter in the provision of broadband connectivity. TVA's cooperative and municipal utility customers and the same trade association that worked with TVA to develop its rate methodology are also working with TVA to compete with broadband providers like Charter. North Carolina electric cooperatives also compete (or are planning to compete) with broadband providers like Charter.⁵

The result of TVA's narrow and uninformed analysis was predictable – a rate methodology with a single focus – to keep poles rates as high as possible. Among

⁵ See, e.g., Exhibit PDK-5 attached to Patricia Kravtin's October 30, 2017 responsive testimony in Docket No. EC-23, Sub 50.

other things, the TVA analysis holds the attachers fully responsible for all of the safety space, apparently unaware or unconcerned that the utilities use that space for revenue-generating streetlights, fiber-optic networks, and other facilities.

TVA has calculated that its rate methodology as applied to its cooperative and municipal utility customers will result in rates between \$7.60 and \$85.50. It calculates that the mean pole attachment rate will be \$31, with rates ranging from \$17 to \$45 within one standard deviation of the mean. TVA also calculates that 20 of its customer utilities will have pole attachment rates in excess of \$45.00.

- 18. BREMC already discriminates against Charter by requiring Charter to pay a higher pole attachment rate than any other communications company attached to BREMC's poles, including by charging a rate almost \$10 more per pole than it charges Charter's direct video, internet, and voice competitor. BREMC's attempt to charge Charter the TVA rate would further discriminate against Charter.**
- 19. This Commission should resolve any doubt regarding which proposed cost allocation method to adopt in favor of lower reasonable and compensatory pole rates so as to reduce the cost of expanding the reach of broadband in North Carolina.**

The expansion of broadband, especially in more rural areas, is important, as a matter of public policy, for the well-being of North Carolina citizens and the competitiveness of the state and the nation.⁶

Infrastructure costs are a significant inhibition on the expansion of broadband.⁷

Checking pole owners' propensity to raise the cost of infrastructure for broadband providers will encourage the extension of broadband to remote areas of the State.

B. Amounts of Overcharges

- 20. Charter is entitled to reimbursement of all pole rate overpayments made to BREMC since 90 days after Charter sought to negotiate rates under Section 62-350.**

Charter's overpayment in a given year equals the difference between the rate Charter paid to BREMC and the maximum just and reasonable pole rate for that year according to the FCC rate methodology, multiplied by the number of poles for which Charter paid.

⁶ See, e.g., Exhibit PDK-6 attached to Patricia Kravtin's October 30, 2017 responsive testimony in Docket No. EC-23, Sub 50.

⁷ *Id.*

- 21. Charter overpaid BREMC and is entitled to refunds of overcharges as detailed in the testimony of Patricia Kravtin.**

Charter is also entitled to a refund of overcharges based on BREMC's improper billing on a per-attachment rather than a per-pole basis. BREMC has invoiced Charter on a per-attachment basis, though Charter's agreement with BREMC stipulated that Charter is required to pay on a per-pole basis for poles with one or more attachments.

C. Contract Terms and Conditions⁸

- 22. Compliance issues are not ripe in this proceeding. The parties have not completed the statutory procedures under G.S. § 62-350(d) for addressing them. Until issues related to causation and remediation are resolved following the statutory procedures, these issues cannot serve as a basis for penalizing Charter with burdensome contract provisions.**

- 23. BREMC has imposed more stringent and burdensome terms and conditions of attachment on Charter than on any other communications company with attachments to its poles, with the exception of one minor attacher.**

BREMC allows Charter's direct competitors to attach on more favorable and less burdensome terms and conditions.

- 24. Charter should be required to follow industry-standard procedures for submitting applications for new attachments, including procedures related to paying for make-ready work necessary to accommodate Charter's attachment.**

It is reasonable for BREMC to identify when it approves an application for attachment where on the pole Charter should make its attachments to comply with the National Electrical Safety Code. It is industry standard for the agreement to allow BREMC to conduct a post-attachment inspection.

- 25. Charter should be required to comply with industry-standard requirements and specifications applicable at the time its attachment is constructed, except to the extent a modified specification requires retroactive application.**

- 26. There is no need for Charter to supply a costly and unnecessary certification by a professional engineer.**

It is not a standard industry requirement. Only a very few of Charter's pole agreements in North Carolina require it.

⁸ Attached to Charter's Contentions is a complete list of the proposed terms and conditions Charter contends are just and reasonable in this case.

Many existing agreements allow for certification by an “authorized representative” of Charter.

With one exception, BREMC does not require any other communications company attaching to its poles to provide certification by a professional engineer. And it has never enforced the requirement against the other company required to follow this practice.

BREMC may conduct a post-construction inspection, at Charter’s cost, including review by a professional engineer on BREMC’s staff.

27. There is no need for more than advance notice of overlashing.

The industry standard for overlashing is simple notice, either before or after the overlash.

It is reasonable to require 15 days’ advance notice of all new overlashings, except for projects involving the overlashing of 5 or fewer poles, in which case 48 hours advance notice is sufficient.

BREMC has no notice or approval requirements regarding overlashing by other communications companies attaching to its poles, with the exception of one minor attacher.

The FCC has determined that simple notice of overlashing is sufficient.

BREMC can require Charter to provide information regarding its attachment so that, to the extent deemed necessary, BREMC can do a loading analysis at Charter’s expense.

28. Quarterly notice after making an attachment of a cable service drop is sufficient.

The industry standard for drops is after the fact notice.

BREMC’s current agreements with Charter and other attachers provides for after-the-fact notice.

The joint user telephone companies often do not provide any notice of drop pole attachments.

29. There is no basis or need for a penalty for discovering noncompliant attachments or an unauthorized attachment fee greater than allowed by the FCC.

Charter has the same incentives as BREMC to construct and maintain a safe and reliable network, including to make compliant attachments to BREMC’s poles.

Noncompliant conditions arise for any number of reasons. When Charter is notified of a noncompliant condition it has created, it remedies the problem and pays the costs of doing so. Charter agrees that if it fails to remedy an NESC violation within a reasonable time, BREMC may revoke its permit to attach to that pole.

The evidence establishes that causation is not always provable, and that BREMC has created noncompliant conditions that it now blames on Charter. A penalty for noncompliant attachments is unnecessary and discriminatory, and could be abused.

BREMC's other attachers, including Charter's direct competitors, have similar rates of noncompliant attachments as Charter, and are not required to pay penalties for noncompliant attachments.

As a matter of course, Charter obtains consent before making attachments to BREMC's mainline distribution poles.

The FCC and industry standard requires an Unauthorized Attachment fee equal to five (5) times the current Annual Attachment Fee.

- 30. The industry standard and the parties' most recent agreement supports Charter's proposed language addressing its obligation to transfer its facilities to new poles within a reasonable time.**
- 31. There is no need for a requirement that Charter must attach 72 inches below BREMC's facilities.**

The National Electrical Safety Code requires 40 inches of separation.

Consistent with industry standard, if BREMC requires additional space for its core utility service, Charter must (i) rearrange its attachments at its own expense, (ii) vacate the space by removing its attachments, or (iii) pay BREMC to install a larger pole if no space is available.

A requirement for 72 inches of separation on all poles would require Charter to replace poles that may never be used for additional electric services.

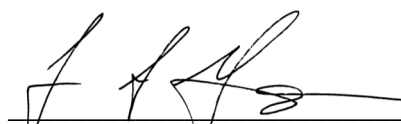
With the exception of one minor attacher, BREMC allows all other communications companies (including Charter's direct competitors) to attach 40 inches below BREMC's effectively grounded neutral.

It is reasonable for the agreement to state a preference for Charter to attach 72 inches below the Cooperative's effectively grounded neutral.

- 32. The industry standard provides for reciprocal indemnification.**

33. **The industry standard supports Charter's proposed language addressing default remedies.**
34. **There is no basis for Charter to be required to pay disputed invoices pending the resolution of a dispute, and such a requirement is inconsistent with G.S. § 62-350.**
35. **There is no basis to require Charter to maintain the same insurance BREMC is required to maintain under its agreements with the Rural Utility Service, because Charter does not borrow funds from RUS or use RUS funds to construct electrical transmission and distribution systems.**
36. **There is no basis for a new pole attachment agreement to be confidential. Pole attachment agreements contain no proprietary or sensitive information. And confidentiality would allow pole owners to impose discriminatory rates, terms, and conditions.**

Respectfully submitted, this 2nd day of November, 2017.



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

Gardner F. Gillespie
J. Aaron George
Sheppard Mullin Richter & Hampton LLC
2099 Pennsylvania Ave. NW, Suite 100
Washington, DC 20006
(202) 747-1900
ggillespie@sheppardmullin.com
ageorge@sheppardmullin.com

*Attorneys for Respondent Charter
Communications Properties, LLC.*

CERTIFICATE OF SERVICE

I certify that a copy of Charter Communications Properties, LLC's Statement of Contentions has been served by electronic mail on counsel of record in this proceeding.

This 2nd day of November, 2017.



*Attorney for Charter Communications
Properties, LLC*

ATTACHMENT A

CHARTER COMMUNICATIONS PROPERTIES, LLC'S PROPOSED JUST AND REASONABLE TERMS AND CONDITIONS

Annual Attachment Fee: Charter shall pay Cooperative an Annual Attachment Fee in advance, on a per pole basis for each foot of usable space occupied by Charter, not to include risers, in an amount [negotiated by the parties or specified by the Commission, provided such Fee shall not exceed the just and reasonable rate determined consistent with the Order of the Commission in this proceeding] for each of the Cooperative's poles to which Charter is attached.

Direct Charges. Charter shall be responsible for the direct, verifiable costs the Cooperative incurs to accommodate Charter's attachments to its poles for pre and post-construction inspections, makeready engineering and makeready construction, and audits of Charter's attachments. Charter will submit a non-refundable Application Fee of \$10 per pole along with its permit application for new attachments to cover administrative costs of processing the application. Upon receipt of the application and fee, the Cooperative will provide Charter of an estimate of any make ready work necessary to accommodate the proposed attachments. The estimate will include the cost of the make-ready survey in addition to the costs of the make-ready work including any change or addition to a pole, pole replacement, or rearrangement of existing facilities on a pole necessary to accommodate Charter's proposed facilities, together with the Make Ready Fee. The Make Ready Fee shall not include costs to correct existing violations of the safety standards caused by the Cooperative or other attachers. Only upon Charter's approval of the estimated cost, shall the make-ready work begin. Charter will pay the

total estimated cost of the Make Ready Fee. After completion of the work, Charter will be assessed the Cooperative's actual costs. If the actual cost is less than the estimated cost, the excess shall be returned to the Licensee. If the actual cost exceeds the estimated cost, the additional amount shall be billed to Charter.

Certification: Upon written request from the Cooperative, no later than 30 days after Charter installs the last Attachment covered by its approved application, Charter shall send to the Cooperative a certification (the "Certification") by a Registered Professional Engineer in the State of North Carolina or an authorized representative that the Attachments are of sound engineering design and fully comply with the safety and operational requirements of this Agreement, including without limitation the National Electrical Safety Code. If Certification is not received when requested, the Cooperative may declare the Attachment to be unauthorized.

Permit and Approval Process: Charter shall comply with the Cooperative's generally applicable, non-discriminatory Attachment approval application procedures for all new Attachments to the Cooperative's poles, except for secondary poles (a/k/a lift poles or drop poles). Charter shall notify Cooperative of all new secondary pole Attachments on a quarterly basis, and such Attachments shall be subject to the Annual Attachment Fee. Charter may overlash its existing Attachments where such activity will not cause the Attachment to become noncompliant with the safety standards described above. Charter shall provide prior notice to Cooperative of all new overlashings at least 15 days in advance, except for projects involving the overlashings of 5 or fewer poles, when Charter

shall provide at least forty-eight (48) hours prior notice to Cooperative. Licensor may perform a post-overlash inspection of Licensee's overlashing on poles as Licensor deems critical in its reasonable discretion, including reliance on Licensor's professional engineers as Licensor deems necessary, and Licensee shall pay for the actual cost. Licensee shall provide sufficient information regarding its overlash to allow Licensor to determine the impact of Charter's overlash on the pole loading. There shall be no additional annual Attachment Fee for overlashings of Licensee's existing facilities.

Unauthorized Attachments: The Cooperative may assess a fee for any Attachment that has not been authorized in accordance with this Agreement ("Unauthorized Attachment"). The fee for Unauthorized Attachments shall be equal to five (5) times the current Annual Attachment Fee and shall be imposed in a non-discriminatory manner as to all attachers.

Notification and Opportunity to Cure Safety Violations: If Charter's Attachments are out of compliance with applicable safety and operational requirements and specifications, whether in a safety inspection or otherwise, then Cooperative will provide written notice to Charter of the non-compliant Attachment containing the pole number, location, and description of the problem. Charter must either contest the notice of non-compliance in writing or correct them consistent with the specifications of G.S. 62-350(d)(1). If Charter should fail to correct the non-compliance within a reasonable timeframe within G.S. 62-350, the Cooperative may revoke the permit for the Attachment. The cost of correcting all violations shall be borne by the party that has created the violation. Charter shall not

be responsible for the cost of correcting a non-compliant Attachment(s) that were placed by or otherwise created by Cooperative or another attacher after Charter's facilities were attached.

Compliance with Safety Standards: Charter's Attachments constructed on the Cooperative's poles after the Commencement Date shall be placed and maintained at all times in accordance with the requirements and specifications of the National Electrical Safety Code, 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 operational standards developed by the Cooperative. And in all cases as such requirements, specifications, and standards may be modified, revised, supplemented or replaced from time to time, all revisions taking effect after Charter's facilities have been installed shall be treated as applying on a prospective basis, except to the extent NESC requires that a modified, revised, supplemented or replaced rule must be applied retroactively.

Reservation of Space: Should the Cooperative, at any time, reasonably require the space Charter's Attachments occupy on its poles for the provision of its core electric service, Charter shall, upon receipt of thirty (30) days' notice, (a) rearrange its Attachments to other space if available on the pole, at its own expense, (b) vacate the space by removing its Attachments at its own expense, or (c) if no space is available and Charter does not wish to remove its Attachments, Charter may request the Cooperative replace the pole

with a larger pole that can accommodate Charter's Attachments. Charter shall bear the expense of such replacement and transfer its Attachments to the new pole.

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

Transfers & Relocation: The Cooperative may replace or relocate poles for a number of reasons, including without limitation when existing poles have deteriorated, when new attachers require additional pole space, and when poles must be relocated at the request of the North Carolina Department of Transportation, another governmental body or a private landowner. In such cases, Charter shall, within 60 days after receipt of written notice, transfer its Attachments to the new poles. If such transfer is not timely performed, the Cooperative may, at its option: (i) revoke the permit for the Attachment and declare it to be an Unauthorized Attachment subject to the Unauthorized Attachment fee; or (ii) transfer Charter's Attachments and Charter shall reimburse the Cooperative for the actual costs of completing such work. If Cooperative elects to do such work, it shall not be liable to Charter for any loss or damage except when caused by the Cooperative's gross negligence or willful misconduct.

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

Defaults: If Charter is in material default under this Agreement and fails to correct such default within the cure period specified below, the Cooperative may, at its option:

- (a) declare this Agreement to be terminated in its entirety;
- (b) terminate the authorization covering the pole(s) with respect to which such default shall have occurred;
- (c) decline to authorize additional Attachments under this Agreement until such defaults are cured;
- (d) suspend all make-ready construction work; and/or
- (e) correct such default without incurring any liability to Charter, except when caused by Cooperative's gross negligence or willful misconduct, and Charter shall reimburse Cooperative for the actual costs of doing the work; and/or
- (f) obtain specific performance of the terms of this Agreement through a court of competent jurisdiction.

For a period of thirty (30) days following receipt of notice from the Cooperative (or, for defaults of a nature not susceptible to remedy within this thirty (30) day period, within a reasonable time period thereafter), Charter shall be entitled to take all steps necessary to cure any defaults. The 30-day notice and cure period does not apply to any default by Charter of its payment obligations under this Agreement.