

LAW OFFICE OF CHARLOTTE MITCHELL

PO BOX 26212
RALEIGH, NORTH CAROLINA 27611
919-260-9901
www.lawofficeecm.com

March 1, 2017

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

Re: Verified Response by Blue Ridge Electric Membership Corporation to Counterclaims of Charter Communications Properties LLC, NCUC Docket No. EC-23, Sub 50

Dear Ms. Jarvis:

Enclosed herewith, please find the Verified Response by Blue Ridge Electric Membership Corporation to Counterclaims of Charter Communications Properties LLC for filing on behalf of Blue Ridge Electric Membership Corporation in the above-referenced docket. 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

Mar 01 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

against

Charter Communications
Properties LLC,
Respondent.

VERIFIED RESPONSE BY
BLUE RIDGE ELECTRIC
MEMBERSHIP CORPORATION
TO COUNTERCLAIMS OF
CHARTER COMMUNICATIONS
PROPERTIES, LLC

NOW COMES Blue Ridge Electric Membership Corporation (“BREMC”), by and through undersigned counsel and pursuant to Section 62-350 of the North Carolina General Statutes, and submits this verified response (the “Response”) to the counterclaims made by Charter Communications Properties LLC (“Charter”) in its Answer to Complaint and Counterclaims filed in the above-captioned docket on January 31, 2017 (the “Charter Counterclaims”).

RESPONSE TO COUNTERCLAIMS

GENERAL DENIAL

BREMC denies each and every allegation of fact, conclusion of law, or other matter contained in the Charter Counterclaims not specifically admitted herein.

I. IDENTIFICATION OF THE PARTIES

1. BREMC is without knowledge or sufficient information upon which to form a belief as to the truth of the allegations asserted in Section I, paragraph 1 of the Charter Counterclaims and, therefore, denies those allegations. Notwithstanding the foregoing, BREMC admits that Charter attaches its facilities to poles owned by BREMC but specifically denies that Charter must attach its facilities to poles owned by BREMC in order to provide service.

2. BREMC is without knowledge or sufficient information upon which to form a belief as to the truth of the allegations asserted in Section I, paragraph 2 of the Charter Counterclaims and, therefore, denies those allegations.

3. Admitted.

II. JURISDICTION

4. BREMC admits that Section 62-350 of the North Carolina General Statutes provides that “the [North Carolina Utilities] Commission shall have exclusive jurisdiction over proceedings arising under this section and shall adjudicate disputes arising under this section on a case-by-case basis.”

5. BREMC admits that Section 62-350 of the North Carolina General Statutes speaks for itself.

6. BREMC admits, upon information and belief, as of the date of filing of the Charter Counterclaims, Charter has paid all disputed fees for the use of BREMC’s poles. The remaining allegations are legal arguments to which no response is required, and to the extent a response is required, the allegations are denied.

III. BACKGROUND

A. Regulation of Pole Attachment Access and Rates

7. BREMC is without sufficient knowledge or sufficient information upon which to form a belief as to the allegations contained in Section III, paragraph 7 of the Charter Counterclaims, and, therefore, the allegations are denied.

8. The allegations contained in Section III, paragraph 8 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, the allegations contained in paragraph 8 are denied.

9. The allegations contained in Section III, paragraph 9 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, the allegations contained in paragraph 9 are denied.

10. BREMC admits the allegation contained in the first sentence of Section III, paragraph 10 of the Charter Counterclaims. The remaining allegations contained in Section III, paragraph 10 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, the remaining allegations contained in paragraph 10 are denied.

11. The allegations contained in Section III, paragraph 11 of the Charter Counterclaims are denied.

12. The allegations contained in Section III, paragraph 12 of the Charter Counterclaims are denied.

13. The allegations contained in Section III, paragraph 13 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is

required. To the extent a response is required, BREMC admits that Section 62-350 of the North Carolina General Statutes speaks for itself.

14. The allegations contained in Section III, paragraph 14 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, BREMC admits that Section 62-350 of the North Carolina General Statutes speaks for itself. To the extent a further response is required, the allegations contained in paragraph 14 are denied.

15. The allegations contained in Section III, paragraph 15 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, the allegations are denied.

16. The allegations contained in Section III, paragraph 16 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, BREMC denies the allegations contained in paragraph 16 and further states that Section 62-350 of the North Carolina General Statutes speaks for itself.

B. North Carolina Business Court Decisions Under Section 62-350

17. The allegations contained in Section III, paragraph 17 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, BREMC denies the allegations contained in paragraph 17.

18. The allegations contained in Section III, paragraph 18 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is

required. To the extent a response is required, BREMC denies the allegations contained in paragraph 18.

19. The allegations contained in Section III, paragraph 19 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, BREMC denies the allegations contained in paragraph 19.

20. The allegations contained in Section III, paragraph 20 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, BREMC denies the allegations contained in paragraph 20.

C. Low and Uniform Rates Serve the Public Interest

21. The allegations contained in Section III, paragraph 21 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, BREMC denies the allegations contained in paragraph 21.

22. The allegations contained in Section III, paragraph 22 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, BREMC denies the allegations contained in paragraph 22.

23. The allegations contained in Section III, paragraph 23 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, BREMC denies the allegations contained in paragraph 23.

24. The allegations contained in Section III, paragraph 24 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, BREMC denies the allegations contained in paragraph 24.

IV. THE PARTIES' DISPUTE

25. BREMC is without sufficient knowledge or sufficient information upon which to form a belief as to the allegations contained in the first sentence of Section IV, paragraph 25 of the Charter Counterclaims, and, therefore, the allegations are denied. Notwithstanding the foregoing, BREMC admits the allegations contained in the second sentence of Section IV, paragraph 25 of the Charter Counterclaims.

26. BREMC admits that BREMC and Charter first entered into a written contract to facilitate Charter's use of BREMC's poles in 2003, that a true and correct copy of the 2003 contract is attached to the Charter Counterclaims as Exhibit 1, and that such contract, in context, speaks for itself. All remaining allegations set forth in Section IV, paragraph 26 are denied.

27. BREMC admits that the contract entered into by and between BREMC and Charter in 2003, in context, speaks for itself. The remaining allegations contained in Section IV, paragraph 27 of the Charter Counterclaims constitute a legal conclusion to which no response is required. To the extent a response is required, BREMC denies the allegations contained in paragraph 27.

28. BREMC admits that on April 20, 2015 it sent Charter a draft of a proposed new agreement. BREMC admits that the parties agreed to suspend negotiations while the

North Carolina General Assembly considered amendments to N.C.G.S. § 62-350 and to continue to operate under their existing contract.

29. BREMC admits that in 2015 and in 2016 Charter paid to BREMC \$2.22 per attachment per month. BREMC is without sufficient knowledge or sufficient information upon which to form a belief as to the remaining allegations contained in Section IV, paragraph 29 of the Charter Counterclaims, and, therefore, the remaining allegations of paragraph 29 are denied.

30. BREMC admits that BREMC invoiced Charter for unauthorized attachments, based on BREMC's 2016 inventory, and that it has provided to Charter data to support the invoice. BREMC is without sufficient knowledge or sufficient information upon which to form a belief as to the remaining allegations contained in Section IV, paragraph 30 of the Charter Counterclaims, and, therefore, the remaining allegations of paragraph 30 are denied.

31. BREMC specifically denies Charter's allegation that BREMC has refused to negotiate and that Charter maintained efforts to keep negotiations on track and narrow the issues. BREMC further responds that for more than eight (8) months, Charter failed to respond to a draft agreement proffered by BREMC on December 6, 2015. BREMC further admits that the parties have reached an impasse on several issues related to the new agreement and that the Commission has jurisdiction to hear this dispute. The remaining allegations contained in Section IV, paragraph 31 of the Charter Counterclaims constitute a legal argument or conclusion to which no response is required. To the extent a response is required, BREMC denies such remaining allegations contained in paragraph.

V. JUST AND REASONABLE RATES

32. BREMC admits that it has requested that the Commission find that the methodology adopted by the Tennessee Valley Authority in February 2016 is appropriate for calculating the rate BREMC will charge Charter. BREMC admits that TVA has no authority over BREMC. The remaining allegations contained in Section V, paragraph 32 of the Charter Counterclaims constitute a legal conclusion to which no response is required. To the extent a response is required, BREMC denies the remaining allegations contained in paragraph 32.

33. BREMC is without sufficient knowledge or sufficient information upon which to form a belief as to the allegations contained in Section V, paragraph 33 of the Charter Counterclaims, and, therefore, the remaining allegations of paragraph 33 are denied. Further, the allegations contained in Section V, paragraph 33 of the Charter Counterclaims constitute legal argument or conclusions to which no response is required. To the extent a response is required, BREMC denies such allegations contained in paragraph 33.

34. BREMC is without sufficient knowledge or sufficient information upon which to form a belief as to the allegations contained in Section V, paragraph 34 of the Charter Counterclaims, and, therefore, the allegations of paragraph 34 are denied. Further, the allegations contained in Section V, paragraph 34 of the Charter Counterclaims constitute legal argument or conclusions to which no response is required. To the extent a response is required, BREMC denies such allegations contained in paragraph 34.

35. BREMC is without sufficient knowledge or sufficient information upon which to form a belief as to the allegations contained in Section V, paragraph 35 of the Charter Counterclaims, and, therefore, the allegations of paragraph 35 are denied. Further, the allegations contained in Section V, paragraph 35 of the Charter Counterclaims constitute legal argument or conclusions to which no response is required. To the extent a response is required, BREMC denies such allegations contained in paragraph 35.

36. The allegations contained in Section V, paragraph 36 of the Charter Counterclaims constitute legal arguments or conclusions to which no response is required. To the extent a response is required, BREMC provides that the federal Pole Attachment Act speaks for itself and responds that it is applicable to BREMC.

37. The allegations contained in Section V, paragraph 37 of the Charter Counterclaims constitute legal argument and conclusions to which no response is required. To the extent a response is required, BREMC denies such allegations contained in paragraph 37.

38. The allegations contained in Section V, paragraph 38 of the Charter Counterclaims constitute legal arguments and conclusions to which no response is required. To the extent a response is required, BREMC denies such allegations contained in paragraph 38.

39. The allegations contained in Section V, paragraph 39 of the Charter Counterclaims constitute legal arguments and conclusions to which no response is required. To the extent a response is required, BREMC denies such allegations contained in paragraph 39.

40. The allegations contained in Section V, paragraph 40 of the Charter Counterclaims constitute legal arguments and conclusions to which no response is required. To the extent a response is required, BREMC denies such allegations contained in paragraph 40.

41. The allegations contained in Section V, paragraph 41 of the Charter Counterclaims constitute legal argument or conclusions to which no response is required. To the extent a response is required, BREMC denies such allegations contained in paragraph 41.

42. The allegations contained in Section V, paragraph 42 of the Charter Counterclaims constitute legal argument or conclusions to which no response is required. To the extent a response is required, BREMC denies such allegations contained in paragraph 42.

43. The allegations contained in Section V, paragraph 43 of the Charter Counterclaims constitute legal argument or conclusions to which no response is required. To the extent a response is required, BREMC denies such allegations contained in paragraph 43.

VI. OVERLASHING

44. Section VI, paragraph 44 of the Charter Counterclaims contains no allegation and, instead, summarizes Charter's request for relief, to which BREMC denies Charter is entitled in this proceeding. Further, BREMC responds that BREMC's proposed requirement that Charter submit an application and application fee in order to overlash is just and reasonable in light of the risk posed by overlash.

45. BREMC admits that overlashing is a practice in which cable operators routinely engage and that overlashing can involve the attachment of additional cable facilities to a pole, as well as increased risk to the pole and burden to the electric utility. Notwithstanding the foregoing, BREMC is without sufficient knowledge or sufficient information upon which to form a belief as to the allegations contained in Section VI, paragraph 45 of the Charter Counterclaims, and, therefore, the allegations of paragraph 45 are denied.

46. The allegations contained in Section VI, paragraph 46 of the Charter Counterclaims constitute legal arguments and conclusions to which no response is required. To the extent a response is required, BREMC denies such allegations contained in paragraph 46. Further, BREMC is without sufficient knowledge or sufficient information upon which to form a belief as to the allegations contained in Section VI, paragraph 46 of the Charter Counterclaims, and, therefore, the allegations of paragraph 46 are denied.

47. Section VI, paragraph 47 of the Charter Counterclaims contains no allegation and, instead, summarizes Charter's request for relief, to which BREMC denies Charter is entitled in this proceeding. Further, BREMC responds that the Commission determine it is unreasonable for Charter to overlash its attachment(s) without applying for a permit.

VII. UNAUTHORIZED ATTACHMENT FEE

48. Section VII, paragraph 48 of the Charter Counterclaims contains no allegation and, instead, summarizes Charter's request for relief, to which BREMC denies Charter is entitled in this proceeding. Further, BREMC responds that imposing penalties

for breaches of contract is a reasonable deterrent to breaches of contract, particularly in light of Charter's mandated access to BREMC's poles.

49. BREMC admits and agrees that a just and reasonable penalty is appropriate for unauthorized attachments. BREMC denies all remaining allegations contained in Section VII, paragraph 49.

50. The allegations contained in Section VII, paragraph 50 of the Charter Counterclaims constitute legal argument and conclusions to which no response is required. To the extent a response is required, BREMC denies such allegations contained in paragraph 50.

51. Section VII, paragraph 51 of the Charter Counterclaims contains no allegation and, instead, summarizes Charter's request for relief, to which BREMC denies Charter is entitled in this proceeding. BREMC further responds that BREMC's positions related to unauthorized attachments are reasonable and necessary to deter the practice of Charter's making attachments to BREMC's poles without first notifying BREMC and ensuring that all risks are appropriately considered and mitigated by going through the permit application process.

VIII. INDEMNITY REQUIREMENTS

52. Section VIII, paragraph 52 of the Charter Counterclaims contains no allegation and, instead, summarizes Charter's request for relief, to which BREMC denies Charter is entitled in this proceeding.

53. The allegations contained in Section VIII, paragraph 53 of the Charter Counterclaims constitute legal arguments and conclusions to which no response is

required. To the extent a response is required, BREMC denies such allegations contained in paragraph 53.

54. Section VIII, paragraph 54 of the Charter Counterclaims contains no allegation and, instead, summarizes Charter's request for relief, to which BREMC denies Charter is entitled in this proceeding. BREMC further responds that any indemnification requirements must reflect the fact that the primary purpose of the poles is for the provision of electric service by BREMC to its members and the risks posed to BREMC and its provision of service by any secondary use of the poles, such as for cable attachments.

IX. REQUESTED RELIEF

BREMC denies that Charter is entitled to relief in this proceeding, either as prayed for in its Answer to Complaint and Counterclaims or otherwise, and respectfully requests that the Commission deny any relief requested by Charter.

Respectfully submitted this the 1st day of March, 2017.

/s Charlotte A. Mitchell
NC Bar # 34106
Law Office of Charlotte Mitchell, PLLC
PO Box 26212
Raleigh, North Carolina 27611
(919) 260-9901
cmitchell@lawofficecm.com

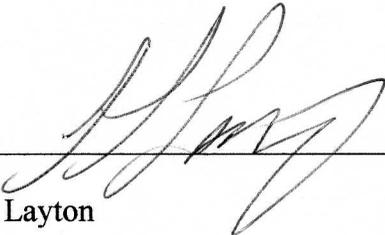
/s Debbie W. Harden
NC Bar # 10576
Womble Carlyle Sandridge & Rice LLP
One Wells Fargo Center
Suite 3500, 301 South College Street
Charlotte, North Carolina 28202
(704)- 331-4943
dharden@wcsr.com

ATTORNEYS FOR BLUE RIDGE ELECTRIC
MEMBERSHIP CORPORATION

VERIFICATION

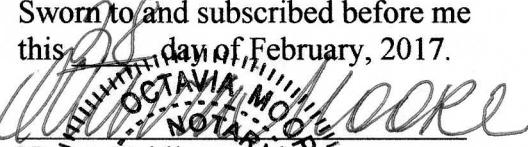
The undersigned, being first duly sworn, deposes and says that he is Lee Layton Senior Vice President of and Executive Consultant to Blue Ridge Electric Membership Corporation. He furthers states that he has read the foregoing response, and that, to his personal knowledge and belief, the matters and statements contained therein are true, except as to those matters or statements made upon information and belief, and as to those, he believes them to be true; and that he verifies the attached response on behalf of Blue Ridge Electric Membership Corporation.

This the 28 day of February, 2017.



Lee Layton

Sworn to and subscribed before me
this 28 day of February, 2017.



Notary Public
OCTAVIA MOORE
NOTARY PUBLIC
GEORGIA
NOV. 17 2018
My Commission Expires 11-17-19
CARROLL COUNTY

CERTIFICATE OF SERVICE

The undersigned certifies that she has served a copy of the foregoing **VERIFIED RESPONSE BY BLUE RIDGE ELECTRIC MEMBERSHIP COPORATION TO COUNTERCLAIMS OF CHARTER COMMUNICATIONS PROPERTIES, LLC** upon the parties of record in this proceeding, or their attorneys, by electronic mail as follows:

Marcus W. Trathen
Brooks Pierce
Wells Fargo Capital Center
150 Fayetteville Street, Suite 1700
Raleigh, N.C. 27601
(919)-839-0300
mtrathen@brookspierce.com

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

This 1st day of March, 2017.

/s Charlotte A. Mitchell