

LAW OFFICE OF CHARLOTTE MITCHELL

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PO BOX 26212  
RALEIGH, NORTH CAROLINA 27611  
919-260-9901  
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November 7, 2017

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

**Re: Reply to Charter's Opposition to Motion for Leave To Supplement Rebuttal  
Testimony at Hearing, NCUC Docket No. EC-23, Sub 50**

Dear Ms. Jarvis:

Enclosed herewith, for filing on behalf of Blue Ridge Electric Membership Corporation in the above-referenced docket, please find the Reply to Charter's Opposition to Motion for Leave To Supplement Rebuttal Testimony at Hearing. 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

OFFICIAL COPY

Nov 07 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.

BLUE RIDGE ELECTRIC  
MEMBERSHIP CORPORATION'S  
REPLY TO CHARTER'S  
OPPOSITION TO MOTION FOR  
LEAVE TO SUPPLEMENT  
REBUTTAL TESTIMONY AT  
HEARING

Petitioner, Blue Ridge Electric Membership Corporation ("Blue Ridge"), hereby submits this reply to the Opposition to BREMC's Motion for Leave To Supplement Rebuttal Testimony at Hearing filed by Charter Communications Properties LLC's ("Charter") on November 3, 2017 (the "Opposition").

Charter, faced with its undisputed failure to file Responsive Testimony by the 5:00 p.m. October 30 deadline established under the Commission's Rules and Procedural Orders,<sup>1</sup> resorts to over-heated rhetoric, name calling, and outright misdirection to discourage any attempt to hold it to its procedural obligations. Yet, despite Charter's professed indignation, Blue Ridge's Motion is not part of any "attempt to smear and harass

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<sup>1</sup> See Order Establishing Procedural Schedule, entered June 7, 2017, and Order Granting Joint Motion to Modify Procedural Schedule, entered October 6, 2017.

Charter.” (Opposition, at p. 3). Instead, Blue Ridge requested leave to supplement its testimony at hearing—in lieu of moving to strike Charter’s testimony outright—merely to ensure it had sufficient opportunity to respond to Charter’s filings, given that Blue Ridge had already agreed to limit its time to review Charter’s filing and submit any rebuttal to the week immediately preceding the hearing in this matter and that Charter’s failure to meet its deadlines shortened this period even further.

Charter’s Opposition includes a number of misstatements, which warrant correction:

*First*, Charter states that it “served” its responsive testimony during the evening of October 30, and then misleadingly posits that “filings made with the clerk’s office after 4:30 p.m. often-times are not processed by the clerk’s office and publicly posted until the next day.” But Charter did not file, much less serve, its testimony by the 5:00 p.m. deadline required under Rule R1-28(h).<sup>2</sup> Indeed, in response to Blue Ridge’s request about the status of Charter’s filings, Charter’s counsel sent an e-mail at 5:11 p.m., stating that “Charter’s testimony hasn’t been filed yet. I’ll send them around as soon as I’m able this evening.” (See E-mail from Marcus Trathen to Debbie Harden, dated 5:11 p.m., October 30, 2017, attached hereto as Exhibit A).

In fact, the date stamp on the official copy of the filing, made available on the Commission’s website, is October 31, 2017. (Exhibit B, attached hereto, shows the first

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<sup>2</sup> Rule R1-28(h) provides as follows:

Both paper and electronic filings must be received by the Commission by 5:00 p.m. Eastern time to be considered to be filed on that business day. A filing may be made electronically at any time, but filings submitted after 5:00 p.m. Eastern time are considered to be filed on the next business day.

page of each of the public versions of the responsive testimony filed by Charter.) Had the filing been timely, but not processed by the clerk's office until the following day, the date stamp on filing would have been October 30, 2017. *See* Rules R1-28(a) (noting that filings are deemed filed on the day received by the Commission) and R1-28(h) (providing that electronic filings submitted after 5:00 p.m. are not deemed admitted until the next day).

Ultimately, Charter did not begin serving its pre-filed until 7:53 p.m., when it served Mr. Mullins' testimony, and it did not complete service completed until 11:36 p.m. on October 30, when it finally served Netstor Martin's testimony. Thus, despite its suggestions, Charter did not file or serve its responsive testimony by the deadline imposed under the Commission's Rules.

*Second*, Charter, in an effort to direct blame elsewhere, inaccurately suggests that Blue Ridge did not serve its pre-filed direct testimony until October 17, 2017, the day after its deadline. (Opposition, p. 2). The truth, however, is that Blue Ridge filed and served its pre-filed testimony on October 16, 2017. When Blue Ridge learned the next day that a handful of the exhibits were not included in the secure file site provided to Charter to effectuate service, it served those materials again, and, at Charter's request, provided the exhibits separately as well. (*See* E-mail from Matthew Tilley to Gardner Gillespie, Exhibit C). Charter's suggestion that Blue Ridge failed to serve its pre-filed testimony until the day after it was filed is false, and stands in stark contrast to Charter's knowing failure to even file its testimony in the time required under the Rules.

*Third*, Charter incorrectly argues that Blue Ridge did not "give up" valuable time when it agreed to push back the procedural schedule to accommodate Charter's request to take depositions after the October 3, 2017 close of discovery. While Charter is correct that

Blue Ridge had seven days to prepare and submit rebuttal testimony under the original Procedural Order, Charter omits that Blue Ridge's rebuttal testimony would have been due on November 1, 2017, allowing an additional week following the submission of that testimony to prepare for hearing. Blue Ridge, however, gave up this time in order to accommodate Charter, which had not conducted any depositions of fact witnesses during the originally-planned discovery period.

Ultimately, Blue Ridge has requested only a modest accommodation in light of Charter's failure to comply with the deadlines to which the parties agreed and which the Commission has established under its Rules and Procedural Orders. Charter's violent reaction in opposition is revealing and indicative of a belief that rules apply only to others. At the same time, Blue Ridge acknowledges that it has been able to submit rebuttal testimony in the time allowed, and requests only that it be allowed to supplement its filings with live testimony if the need arises.

Respectfully submitted this the 7th day of November, 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

Debbie W. Harden (NC Bar # 10576)  
Matthew F. Tilley (NC Bar # 40125)  
Womble Bond Dickinson (US) LLP  
One Wells Fargo Center, Suite 3500  
301 South College Street  
Charlotte, North Carolina 28202-6037  
(704) 331-4943  
Debbie.Harden@wbd-us.com  
Matthew.Tilley@wbd-us.com

Pressly M. Millen (NC Bar # 16178)  
Womble Bond Dickinson (US), LLP  
555 Fayetteville Street, Suite 1100  
Raleigh, North Carolina 27601  
(919) 755-2135  
Press.Millen@wbd-us.com

ATTORNEYS FOR BLUE RIDGE  
ELECTRIC MEMBERSHIP  
CORPORATION

**CERTIFICATE OF SERVICE**

The undersigned certifies that he has served a copy of the foregoing **BLUE RIDGE ELECTRIC MEMBERSHIP CORPORATION'S REPLY TO CHARTER'S OPPOSITION TO MOTION FOR LEAVE TO SUPPLEMENT REBUTTAL TESTIMONY AT HEARING** 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 the 7th day of November, 2017.

/s Charlotte A. Mitchell

**EXHIBIT A**



**Tilley, Matthew**

---

**From:** Marcus W. Trathen <MTRATHEN@brookspierce.com>  
**Sent:** Monday, October 30, 2017 5:11 PM  
**To:** Harden, Debbie; Tilley, Matthew; Millen, Press; Charlotte Mitchell  
**Subject:** RE: Charter motion for PHV admission

**EXTERNAL EMAIL: Open Attachments and Links With Caution.**

Debbie (and all) – Charter's testimony hasn't been filed yet. I'll send them around as soon as I'm able this evening.

[Marcus W. Trathen](#)



t: 919.839.0300  
f: 336.232.9207

1700 Wells Fargo Capitol Center  
150 Fayetteville Street  
Raleigh, NC 27601  
P.O. Box 1800 (27602)

---

**From:** Harden, Debbie [mailto:DHarden@wcsr.com]  
**Sent:** Monday, October 30, 2017 5:06 PM  
**To:** Marcus W. Trathen <MTRATHEN@brookspierce.com>; Tilley, Matthew <Matthew.Tilley@wcsr.com>; Press Millen <pmillen@wcsr.com>; Charlotte Mitchell <cmitchell@lawofficecm.com>; Harden, Debbie <DHarden@wcsr.com>  
**Subject:** Re: Charter motion for PHV admission

Marcus

I have not received service copies of Charter's opposition filings that were due today. Would you please forward if Charter made such filings.

Regards,  
Debbie Harden

Sent from Email+ secured by MobileIron

**Debbie Harden | Partner**  
Womble Carlyle Sandridge & Rice, LLP  
One Wells Fargo Center  
Suite 3500  
301 South College Street  
Charlotte, NC 28202-6037

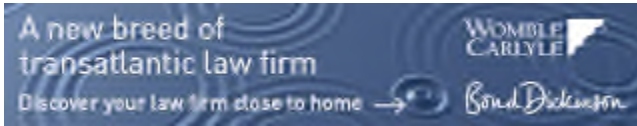
Office: 704-331-4943

Fax: 704-338-7813

[wcsr.com](http://wcsr.com)



We are pleased to announce we will be changing our name to Womble Bond Dickinson (US) LLP on November 1, 2017:



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----- Original Message -----

From: "Marcus W. Trathen" <[MTRATHEN@brookspierce.com](mailto:MTRATHEN@brookspierce.com)>

Date: Mon, Oct 30, 2017, 4:10 PM

To: "Tilley, Matthew" <[Matthew.Tilley@wcsr.com](mailto:Matthew.Tilley@wcsr.com)>, "Millen, Press" <[PMillen@wcsr.com](mailto:PMillen@wcsr.com)>, "Harden, Debbie" <[DHarden@wcsr.com](mailto:DHarden@wcsr.com)>, Charlotte Mitchell <[cmitchell@lawofficecm.com](mailto:cmitchell@lawofficecm.com)>

Subject: Charter motion for PHV admission

Counsel:

Attached is a service copy of Charter's motion for pro hac vice admission, submitted for filing this afternoon via the Commission's electronic systems.

-Best regards.

**Marcus W. Trathen**



t: 919.839.0300

f: 336.232.9207

1700 Wells Fargo Capitol Center  
150 Fayetteville Street  
Raleigh, NC 27601  
P.O. Box 1800 (27602)

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Nov 07 2017

**EXHIBIT B**

**BEFORE THE STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

|   |   |                                 |
|---|---|---------------------------------|
| Blue Ridge Electric Membership Corporation, | ) |                                 |
|   | ) |                                 |
| Complainant,                                | ) |                                 |
|   | ) |                                 |
| v.  | ) | <b>DOCKET NO. EC-23, SUB 50</b> |
|   | ) |                                 |
| Charter Communications Properties, LLC,     | ) |                                 |
|   | ) |                                 |
|   | ) |                                 |
| Respondent.                                 | ) |                                 |

**RESPONSIVE TESTIMONY**

**OF**

**PATRICIA D. KRAVTIN**

**Submitted on Behalf of**

**Charter Communications Properties, LLC**

**October 30, 2017**

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

|                        |   |                                 |
|------------------------|---|---------------------------------|
| BLUE RIDGE ELECTRIC    | ) |                                 |
| MEMBERSHIP CORPORATION | ) |                                 |
| Petitioner,            | ) |                                 |
|                        | ) |                                 |
| v.                     | ) | <b>DOCKET NO. EC-23, SUB 50</b> |
|                        | ) |                                 |
| CHARTER COMMUNICATIONS | ) |                                 |
| PROPERTIES LLC,        | ) |                                 |
|                        | ) |                                 |
| Respondent.            | ) |                                 |

**RESPONSIVE TESTIMONY**

**OF**

**NESTOR MARTIN**

**Submitted on Behalf of**

**Charter Communications Properties, LLC**

**October 30, 2017**

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

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

DOCKET NO. EC-23, SUB 50

RESPONSIVE TESTIMONY

OF

MICHEAL MULLINS

Submitted on Behalf of

Charter Communications Properties, LLC

October 30, 2017

**EXHIBIT C**



## Tilley, Matthew

---

**From:** Tilley, Matthew  
**Sent:** Tuesday, October 17, 2017 2:16 PM  
**To:** 'Gardner Gillespie'; Aaron George; 'Marcus W. Trathen (MTRATHEN@brookspierce.com)'; Carrie Ross  
**Cc:** Millen, Press; Charlotte Mitchell (cmitchell@lawofficecm.com); Harden, Debbie  
**Subject:** RE: BREMC Direct Testimony Filings

Gardner,

We'll do so.

Thanks,  
Matthew

**Matthew F. Tilley**  
**Womble Carlyle Sandridge & Rice, LLP**  
Office: 704.350.6361  
Fax: 704.444.9961

---

**From:** Gardner Gillespie [<mailto:GGillespie@sheppardmullin.com>]  
**Sent:** Tuesday, October 17, 2017 2:10 PM  
**To:** Tilley, Matthew; Aaron George; 'Marcus W. Trathen (MTRATHEN@brookspierce.com)'; Carrie Ross  
**Cc:** Millen, Press; Charlotte Mitchell ([cmitchell@lawofficecm.com](mailto:cmitchell@lawofficecm.com)); Harden, Debbie  
**Subject:** RE: BREMC Direct Testimony Filings

**EXTERNAL EMAIL: Open Attachments and Links With Caution.**

Matthew,

We have made copies of the exhibits you sent yesterday. Please send us separately only those exhibits that you failed to send yesterday so that we don't have to make copies of everything again. Thank you.

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**From:** Tilley, Matthew [<mailto:Matthew.Tilley@wcsr.com>]  
**Sent:** Tuesday, October 17, 2017 1:45 PM  
**To:** Aaron George <[ageorge@sheppardmullin.com](mailto:ageorge@sheppardmullin.com)>; 'Marcus W. Trathen (MTRATHEN@brookspierce.com)' <[MTRATHEN@brookspierce.com](mailto:MTRATHEN@brookspierce.com)>; Gardner Gillespie <[GGillespie@sheppardmullin.com](mailto:GGillespie@sheppardmullin.com)>; Carrie Ross <[CRoss@sheppardmullin.com](mailto:CRoss@sheppardmullin.com)>  
**Cc:** Millen, Press <[PMillen@wcsr.com](mailto:PMillen@wcsr.com)>; Charlotte Mitchell ([cmitchell@lawofficecm.com](mailto:cmitchell@lawofficecm.com)) <[cmitchell@lawofficecm.com](mailto:cmitchell@lawofficecm.com)>; Harden, Debbie <[DHarden@wcsr.com](mailto:DHarden@wcsr.com)>; Tilley, Matthew <[Matthew.Tilley@wcsr.com](mailto:Matthew.Tilley@wcsr.com)>  
**Subject:** BREMC Direct Testimony Filings

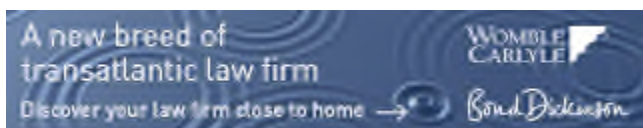
Counsel,

We learned that the secure file link shared with each of you yesterday serving BREMC's direct testimony did not include all of the exhibits to Mr. Layton and Mr. Booth's testimony that were filed with the Commission.

Ann Quinlan of our office has just sent you a link that re-serves BREMC's direct testimony, along with full sets of the exhibits, to ensure you have a complete copy of everything that was filed.

Best regards,  
Matthew

**Matthew F. Tilley**  
Womble Carlyle Sandridge & Rice, LLP  
One Wells Fargo Center  
301 South College Street; Suite 3500  
Charlotte, NC 28202  
Office: 704.350.6361  
Fax: 704.444.9961  
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