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October 16, 2017

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

**Re: PUBLIC Direct Testimony and Exhibits of Lee Layton, NCUC Docket No. EC-23,
Sub 50**

Dear Ms. Jarvis:

Enclosed herewith, for filing on behalf of Blue Ridge Electric Membership Corporation, please find the PUBLIC Direct Testimony and Exhibits of Lee Layton. 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

Oct 16 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.

**DIRECT TESTIMONY
OF
LEE LAYTON, P.E.**

Table of Contents

I.	INTRODUCTION	1
II.	THE NATURE OF ELECTRIC COOPERATIVES	2
III.	FEDERAL LAW EXEMPTS ELECTRIC COOPERATIVES FROM POLE ATTACHMENT REGULATION	7
IV.	BLUE RIDGE’S NEGOTIATIONS WITH CHARTER FOR A NEW POLE ATTACHMENT AGREEMENT	8
V.	CHARTER’S ATTACHMENTS ON BLUE RIDGE’S SYSTEM.....	13
VI.	BLUE RIDGE’S 2015-16 POLE ATTACHMENT INVENTORY	19
VII.	BLUE RIDGE’S CONCERNS REGARDING CHARTER’S ATTACHMENTS	22
VIII.	BLUE RIDGE’S PROPOSED TERMS AND CONDITIONS	32

Exhibits

<u>Exhibit No.</u>	<u>Description</u>
LL-1	Charter Communications Properties, LLC's Responses to Blue Ridge Electric Membership Corporation's First Set of Data Requests
LL-2	Map Showing Charter's Attachments in Blue Ridge Service Territory
CONFIDENTIAL LL-3	Pole Attachment License Agreement between Blue Ridge Electric Membership Corporation and Charter Communications Holding Company, LLC, dated September 1, 2008
LL-4	Pole Attachment License Agreement between Blue Ridge Electric Membership Corporation and Charter Communications Holding Company, LLC, dated January 1, 2003
LL-5	E-mail from Brad Shields to Michael Mullins, dated May 22, 2014
LL-6	E-mail between Brad Shields to Michael Mullins dated July 8, 2014
LL-7	E-mail from Ronnie McWhorter to Brad Shields, dated May 26, 2015
LL-8	E-mail from Brad Shields to Ronnie McWhorter, dated December 7, 2015
LL-9	E-mail from Ronnie McWhorter to Brad Shields, dated September 29, 2016
LL-10	Letter from Brad Shields to Ronnie McWhorter dated November 22, 2016
LL-11	Results of 2015-16 Pole Attachment Inventory
LL-12	Map Showing Charter Violations Identified During 2015-16 Pole Attachment Inventory
LL-13	Attachment Specifications for Blue Ridge Electric Membership Corporation
LL-14	E-mail from Brad Shields to Michael Mullins, dated September 09, 2015
LL-15	Memorandum to Charter Communications, dated August 25, 2017
LL-16	Pictures of Charter Violations Identified During 2015-16 Inventory

**DIRECT TESTIMONY
OF
LEE LAYTON, P.E.**

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5 **I. INTRODUCTION**

6 **Q. State your name.**

7 A. My name is Lee Layton.

8 **Q. What is your position with Blue Ridge Electric Membership Corporation?**

9 A. I am Senior Vice President and Executive Consultant for Blue Ridge Electric
10 Membership Corporation. From July 2005 until I took my current position in
11 October 2016, I served as Senior Vice President and Chief Operating Officer for
12 Blue Ridge.

13 **Q. Please describe your professional background.**

14 A. I have over forty years' experience with electric utilities, including engineering,
15 operations, purchasing, customer service, management, and strategic planning.
16 Prior to becoming Blue Ridge's Chief Operating Officer in 2005, I was the Vice
17 President of Operations for Carroll Electric Membership Corporation, based in
18 Carrollton, Georgia, where I worked in various capacities since 1982. I have a
19 Bachelor of Science degree in electric engineering from Auburn University. I am
20 a registered professional engineer in the States of North Carolina and Georgia.

21 **Q. In general, what are your duties at Blue Ridge?**

22 A. As Chief Operating Officer, I was responsible for overseeing the engineering,
23 reliability, and safe construction and maintenance of Blue Ridge's electrical
24 transmission and distribution system, which includes staking and field engineers

1 who conduct work on Blue Ridge's system and interact with third-party attachers,
2 such as Charter. In my current role as SVP and Executive Consultant, I am
3 responsible for, among other things, projects continuing from my time as COO,
4 including securing a new pole attachment agreement between Blue Ridge and
5 Charter.

6 **II. THE NATURE OF ELECTRIC COOPERATIVES**

7 **Q. Can you explain the purposes of electric cooperatives, like Blue Ridge?**

8 A. Most electric cooperatives, like Blue Ridge, were formed in the 1930s to extend
9 electric service to homes and farms in rural areas where electricity was
10 unavailable, mostly because privately-owned, investor-owned utilities (IOUs) did
11 not find it profitable to build lines to extend services to homes in these, less-
12 densely populated areas. Electric cooperatives operate on a not-for-profit basis
13 and are owned by their members, who are the customers of their electricity. Blue
14 Ridge was formed in 1936, shortly after the passage of the Rural Electrification
15 Act, to provide electric service to homes and farms in Caldwell County that did
16 not yet have electricity. It now provides electricity to members in Allegheny,
17 Ashe, Caldwell, and Watauga Counties, as well as small portions of Avery,
18 Alexander, and Wilkes Counties.

19 **Q: What is your understanding of electric cooperatives' status under North**
20 **Carolina law?**

21 A: Electric cooperatives like Blue Ridge occupy a special status under North
22 Carolina law. As outlined in N.C.G.S. § 117-8:

1 When any number of persons residing in the community not
2 served, or inadequately served, with electrical energy desire to
3 secure electrical energy for their community and desire to form
4 corporations to be known as electric membership corporations for
5 said purpose, they shall file application with the North Carolina
6 Rural Electrification Authority for permission to form such
7 corporation.
8

9 Those persons are authorized to form a corporation “*not organized for pecuniary*
10 *profit*” for “the purpose of promoting and encouraging the fullest possible use of
11 electric energy in the rural section of the State by making electric energy available
12 to inhabitants of the State at the *lowest cost* consistent with sound economy and
13 prudent management.” N.C.G.S. § 117-10 (emphasis added).

14 **Q. What is your understanding of the status of members of electric**
15 **cooperatives?**

16 A. As I said, Blue Ridge, like all electric cooperatives, is operated on a not-for-profit
17 basis. Electric cooperatives are also run solely and entirely for the benefit of their
18 members who are, by definition, the persons who receive their electric services.
19 N.C.G.S. § 117-16 defines the “corporate purpose” of each electric cooperative as
20 rendering “service to its *members only*, and *no person shall become or remain a*
21 *member unless such person shall use energy supplied by such corporation.*” In
22 other words, unlike IOUs, which are generally much larger, the “owners” of
23 electric cooperatives are the North Carolinians served by the electric cooperative,
24 rather than investors in public companies (who may be individuals and companies
25 from anywhere). Electric cooperatives, moreover, are not permitted to “make or
26 grant any unreasonable preference or advantage to any member or subject any
27 member to any unreasonable prejudice or disadvantage.” N.C.G.S. § 117-16.1.

1 The ultimate result of the statutory scheme is to create a cooperative, *i.e.* member-
2 owned, electric utility which is required (1) to treat all its members-owners fairly,
3 (2) to operate on a not-for-profit basis, and (3) to provide electric energy reliably
4 and safely “at the lowest rate consistent with sound economy and prudent
5 management.” N.C.G.S. § 117-10.

6 **Q. What are the implications of this structure with respect to the manner in**
7 **which Blue Ridge transacts business?**

8 A. Every dollar Blue Ridge saves or earns ultimately inures to the direct benefit of its
9 members in the form of lower costs for electric energy.

10 **Q. As a cooperative, does Blue Ridge get to pick and choose whom it will serve?**

11 A: No. We serve everyone who needs electric power in our service area as assigned
12 by the State.

13 **Q. How does this differ from Charter and other private cable companies?**

14 A. Charter is a for-profit entity that generally gets to choose where it will provide
15 service. Thus, Charter does not have an obligation to serve all customers within
16 Blue Ridge’s territory, but instead can choose to serve only the more-densely
17 populated areas within Blue Ridge’s service area in order to maximize its profit.

18 **Q. And does this affect how Blue Ridge approaches a pole attachment**
19 **agreement with Charter?**

20 A. Yes. As an electric cooperative, our over-arching mission is to provide electric
21 power to our members without regard to profit and at the lowest cost consistent
22 with sound economy and prudent management. By statute, Blue Ridge has to
23 allow Charter to attach to its poles. Given this, a just and reasonable pole

1 attachment rate must enable Blue Ridge to recover the full costs of Charter's
2 attachments and ensure Blue Ridge is not forced to use revenue or capital credits
3 derived from its members to subsidize the business of a for-profit
4 communications company. This is especially true since Charter chooses not serve
5 large portions of our members, specifically those in the more remote areas of Blue
6 Ridge's territory. Further, because our primary focus is delivering safe and
7 reliable electricity to our members, it is important that we ensure Charter's
8 attachments do not interfere with the safety, reliability, or availability of our
9 electric plant.

10 **Q. Please tell me about Blue Ridge's service territory and the demographics of**
11 **its members.**

12 A. Blue Ridge's service territory is predominantly rural and mountainous. As I said
13 above, Blue Ridge serves customers in Allegheny, Ashe, Caldwell, and Watauga
14 Counties, as well as small portions of Avery, Alexander, and Wilkes Counties.
15 Blue Ridge's service territory generally includes rural and unincorporated
16 portions of these counties, but not major cities or towns. For instance, Blue
17 Ridge's territory does not include Hickory and most of Lenoir in Caldwell
18 County, which are instead served by Duke Energy. Likewise, Blue Ridge's
19 service territory does not include most of Boone, in Watauga County, which is
20 served by New River Light and Power. Thus Blue Ridge's customers are
21 normally spread far apart and Blue Ridge must make a significant capital
22 investment to build lines to service members' homes. The average density in
23 Blue Ridge's service territory is only nine customers per mile, and Blue Ridge

1 maintains more than 8,000 miles of distribution line to serve the approximately
2 57,000 members with 77,000 meters in its seven county service territory.

3 In addition, the average household income in the counties Blue Ridge serves is
4 significantly lower than the State and national averages. According to 2015
5 Census data, the median household income was \$35,673 in Caldwell County,
6 \$37,656 in Watauga County, \$36,267 in Ashe County, and \$36,968 in Allegheny
7 County. In comparison, the median household income in North Carolina is
8 \$47,830, and nationally it is \$57,516. Caldwell County is 81st among North
9 Carolina's 100 counties in terms of median household income. As a result, Blue
10 Ridge's members depend on the cooperative to provide reliable service at low
11 rates.

12 **Q. How does Charter's service area compare with Blue Ridge's territory?**

13 A. Charter generally chooses to only serve the more densely populated areas within
14 Blue Ridge's territory. According to its discovery responses, Charter serves areas
15 with an average of 53 homes per mile in the Blue Ridge territory, while the
16 average number of members across the entirety of Blue Ridge's territory is only
17 nine homes per mile. (See Charter's Responses to Blue Ridge's Data Request
18 No. 37, attached hereto as Exhibit LL-1.) I have attached a map to my testimony
19 showing the portions of Blue Ridge's territory that Charter serves, as well as the
20 density of electric members as Exhibit LL-2. It illustrates how Charter has chosen
21 only to serve the more densely populated areas in and around Blue Ridge's
22 system.

1 **Q. Do you believe the differences in Charter and Blue Ridge's service areas has**
2 **implications in setting a pole attachment rate?**

3 A. Yes. First, while Blue Ridge believes that any pole attachment rate should ensure
4 that Charter adequately compensates Blue Ridge for the use of its poles, we think
5 the fact that Charter only serves the more densely populated portions of Blue
6 Ridge's territory, and that it can pick and choose where it provides service, makes
7 Charter's proposed rate particularly inappropriate. I understand that Charter has
8 asked the Commission to adopt the so-called "Cable Rate," which the Federal
9 Communications Commission ("FCC") has imposed on IOUs, and is designed to
10 subsidize (or "promote") the expansion of cable services and broadband internet.
11 Imposing the FCC Cable rate here would effectively require all of Blue Ridge's
12 members to subsidize Charter's business, by providing Charter access to Blue
13 Ridge's poles well below cost, using revenue derived from their electricity bills.
14 Yet, many, if not most, of Blue Ridge's members live in areas that Charter
15 chooses not to serve and, thus, will never receive any benefit from providing this
16 subsidy.

17 **III. FEDERAL LAW EXEMPTS ELECTRIC COOPERATIVES FROM POLE**
18 **ATTACHMENT REGULATION**

19 **Q. To your understanding, does the cooperative structure have implications**
20 **under federal law with respect to pole attachments?**

21 A. Yes. As I understand it, in regulating pole attachments under federal law,
22 Congress explicitly recognized the unique status of electric cooperatives such as
23 Blue Ridge and specifically exempted them from the federal statutory scheme

1 authorizing FCC regulation. *See* 47 U.S.C. § 224(a)(1) (the “term ‘utility’ ... does
2 not include ... any person who is cooperatively organized”). In addition, the cable
3 TV industry is no longer in a fledging state and should need no subsidies from
4 any entity, especially non-profit electric cooperatives.

5 **IV. BLUE RIDGE’S NEGOTIATIONS WITH CHARTER FOR A NEW POLE**
6 **ATTACHMENT AGREEMENT**

7 **Q. What is the date of Blue Ridge’s most recent pole attachment agreement with**
8 **and Charter?**

9 A. Blue Ridge’s most recent pole attachment agreement with Charter is dated
10 September 1, 2008. (*See Exhibit LL-3*, Pole Attachment License Agreement
11 between Blue Ridge Electric Membership Corporation and Charter
12 Communications Holding Company, LLC, dated September 1, 2008.)

13 **Q. Did Blue Ridge and Charter have a pole attachment agreement prior to the**
14 **2008 agreement?**

15 A. Yes. Prior to the 2008 agreement, Blue Ridge and Charter had entered into a pole
16 attachment agreement dated January 1, 2003. (*See Exhibit LL-4*, Pole Attachment
17 License Agreement between Blue Ridge Electric Membership Corporation and
18 Charter Communications Holding Company, LLC, dated January 1, 2003.)

19 **Q. Were the terms and conditions of Blue Ridge’s 2008 agreement with Charter**
20 **the same as the 2003 agreement?**

21 A. Yes. The terms and conditions of the two agreements are substantially the same,
22 except for the rates. Blue Ridge and Charter reached the 2003 agreement as a
23 result of negotiations in 2002. Both agreements provided for a three-year term

1 with two additional, one-year renewals. As a result, Blue Ridge and Charter
2 viewed the 2008 agreement as an update to the 2003 agreement, and the primary
3 issue in negotiating the 2008 agreement was setting the rate. The rates under both
4 agreements—the 2003 agreement and the 2008 agreement—were established as a
5 result of negotiations between Blue Ridge and Charter. Charter did not ask Blue
6 Ridge for any significant revisions to the terms and conditions when the parties
7 negotiated the 2008 agreement, and we generally understood that Charter, as well
8 as Blue Ridge, viewed the terms of the 2003 and the 2008 agreements as
9 acceptable.

10 **Q. Have Blue Ridge and Charter engaged in negotiations for a new contract?**

11 **A.** Yes. Blue Ridge initiated those negotiations. On May 22, 2014, Blue Ridge's
12 representative, Brad Shields, sent an e-mail to Michael Mullins informing him
13 that the 2008 agreement had expired and letting him know that he would be
14 providing an updated agreement for Charter to review. (See Exhibit LL-5, E-mail
15 from Brad Shields to Michael Mullins, dated May 22, 2014.) Mr. Shields
16 followed up with another e-mail on July 8, 2014, providing a draft agreement.
17 (See Exhibit LL-6, E-mails from Brad Shields to Michael Mullins, dated July 8,
18 2014.)

19 The draft agreement Blue Ridge provided included the same material terms as the
20 2003 and 2008 agreements. The only substantial difference was that the proposed
21 draft provided for automatic renewals. Blue Ridge also proposed keeping
22 Charter's annual pole attachment rate—which was then \$26.04 per year—the

1 same but with annual adjustments for inflation in accordance with the Consumer
2 Price Index (CPI) thereafter.

3 **Q. How would you describe Charter's approach to the negotiations for a new**
4 **pole attachment agreement?**

5 A. Charter's response was marked by delay. Charter did not respond to Blue Ridge's
6 for almost a full year. After Blue Ridge reached out several times asking for a
7 response, Charter finally responded to the draft agreement on May 26, 2015. (*See*
8 Exhibit LL-7, E-mail from Ronnie McWhorter to Brad Shields, dated May 26,
9 2015.) Even then, the draft Charter proposed requested changes to a number of
10 terms and conditions the parties had previously agreed upon in their prior
11 contracts—such as provisions requiring Charter to provide certification from an
12 engineer that its attachments comply with the NESC as well as provisions
13 governing unauthorized and non-compliant attachments. Charter's draft also
14 included numerous notes that various provisions were TBD, or “to be
15 determined.”

16 **Q. Did Blue Ridge attempt to negotiate a new agreement with Charter after it**
17 **finally responded in May 2015?**

18 A. Yes we did. Blue Ridge's representative, Brad Shields, tried for several months
19 to negotiate a new pole attachment agreement with Charter, and Blue Ridge
20 provided alternative draft agreements trying to seek a compromise. Mr. Shields,
21 along with several other representatives from Blue Ridge, also met with Charter's
22 representatives, Michael Mullins and Ronnie McWhorter, in person on November
23 11, 2015, to see if we could reach an agreement. It became clear in the meeting

1 that Charter would not agree to a reasonable pole attachment rate, even though we
2 offered to compromise on the rate in order to get Charter under an agreement and
3 avoid the cost and expense of proceedings before the Commission.

4 In addition, Charter's representatives told Blue Ridge that Charter would not
5 agree to certain terms and conditions to which Charter had previously agreed,
6 including providing professional engineer certifications that its attachments
7 comply with the NESC and other applicable specifications, because Charter and
8 its contractors do not employ professional engineers. Charter also said that it
9 could not require its contractors to report attachments they make to secondary or
10 "drop" poles to Blue Ridge, as the parties' previous agreements required, since it
11 had no process or system in place to even monitor, much less report, such
12 attachments. It therefore suggested that Charter pay for attachments to secondary
13 pole in arrears when they are counted in pole attachment inventories, which are
14 generally conducted every 5-6 years.

15 Even though the meeting in November 2015 was discouraging, Blue Ridge
16 provided another draft agreement to Charter on December 7, 2015, in an attempt
17 to reach an agreement with Charter. (See Exhibit LL-8, E-mail from Brad Shields
18 to Ronnie McWhorter, dated December 7, 2015.)

19 **Q. How long did it take Charter to respond to Blue Ridge's December 2015**
20 **proposal?**

21 A. Charter did not respond to Blue Ridge's December 2015 for more than nine
22 months, and finally responded on September 29, 2015, only after Blue Ridge
23 followed up several times asking it to do so. (See Exhibit LL-9, E-mail from

1 Ronnie McWhorter to Brad Shields, dated September 29, 2016.) By this time
2 Charter had announced its merger with Time Warner Cable, and we now
3 understand that Nestor Martin, Time Warner's Senior Director of Construction for
4 the Carolinas Region, took over responsibility for negotiating a pole attachment
5 agreement with Blue Ridge sometime in September 2016.

6 When Charter did respond, it continued to dispute many of the terms it had
7 previously accepted as part of the 2003 and 2008 agreements. In addition,
8 Charter indicated that it would not agree to the proposed rate and marked rate
9 provision "TBD."

10 **Q. How did Blue Ridge interpret Charter's response to the December 2015**
11 **proposal?**

12 A. Obviously, the rate is a key term of any pole attachment agreement. At this point,
13 with Blue Ridge pushing the negotiations, we had been in discussions for almost
14 two years, so, given that Charter again failed to provide a counter offer on the
15 rate, it was clear we were not close to reaching an agreement. From our
16 perspective, Charter's negotiating tactics, and its refusal to agree to provisions it
17 had accepted in the past, represented a drastic change from the parties' previous
18 relationship, which had generally been cooperative. That change coincided with
19 the announcement of Charter's merger with Time Warner Cable, and is consistent
20 with Time Warner Cable's reputation for treating electric cooperatives in a much
21 more adversarial manner when it comes to pole attachments than had been our
22 experience with Charter. We were aware that Time Warner Cable had sued
23 Rutherford Electric Membership Corporation over pole attachment rates. We

1 were also aware that Time Warner Cable had abruptly ended negotiations with
2 other North Carolina cooperatives and had filed petitions against five cooperatives
3 to set pole attachment rates, but did not want to have the Commission consider
4 other terms and conditions as part of those proceedings. We therefore determined
5 that the parties were at an impasse and that we had no choice but to file a petition
6 with the Utilities Commission to adjudicate these disputes in order to enter into a
7 new agreement with Charter.

8 **V. CHARTER'S ATTACHMENTS ON BLUE RIDGE'S SYSTEM**

9 **Q. For how long has Blue Ridge dealt with Charter as an attacher on Blue**
10 **Ridge's poles?**

11 A. I do not know exactly how long, but Charter claims it or its predecessors have
12 made attachments on Blue Ridge's poles for approximately forty years.

13 **Q. Prior to Blue Ridge's attempt to negotiate a new pole attachment agreement,**
14 **did Blue Ridge have a cooperative relationship with Charter?**

15 A. Yes. Historically, Blue Ridge's staff has had a cooperative relationship with
16 Charter and has attempted to respond to Charter's requests to make attachments or
17 to conduct work to "make ready" poles for Charter's attachments in a quick an
18 informal manner in order to assist Charter in its business.

19 **Q. Has working with Charter in such an informal manner caused problems for**
20 **Blue Ridge?**

21 A. Yes, it has. For instance, the parties' 2003 and 2008 pole attachment agreements
22 require Charter to submit a written application, in a form specified under the
23 agreement, and receive a permit for each attachment to Blue Ridge's poles. I

1 understand that, over time, Blue Ridge and Charter's field personnel developed a
2 less-formal practice where Charter's construction coordinators would contact
3 Blue Ridge's staking technicians in its district offices by telephone or e-mail and
4 ask them to assess make-ready work when Charter had clearance issues or needed
5 space on the poles to attach. Blue Ridge's staking technicians generally
6 responded to these informal requests by following up, reviewing the poles, and
7 providing quotes for Charter's requested make-ready work, out of a desire to
8 assist Charter's personnel in their work.

9 It has become clear, however, that such an informal process is not sufficient and
10 that the application and permit process specified in the 2003 and 2008 agreements
11 needs to be followed to protect Blue Ridge's system.

12 **Q. Why do you believe a written application and permit process is necessary?**

13 A. The written permit and approval process is important for several reasons. First, it
14 provides Blue Ridge notice that Charter is making attachments on its system.
15 Second, while the parties' agreements make clear that Charter is responsible for
16 ensuring its attachments comply with the NESC, the parties' pole attachment
17 agreement, and other applicable design standards, the agreements require Charter
18 to provide construction plans with its applications, which gives Blue Ridge's
19 personnel an opportunity to review Charter's proposed attachments for
20 compliance with these standards. Finally, the written application and permit
21 process gives Blue Ridge and Charter a way to track Charter's attachments for the
22 purposes of billing. Charter is required to pay fees for its attachments, and Blue

1 Ridge needs to know how many attachments Charter has its system to make sure
2 Charter pays for all of its attachments.

3 The informal approval system Blue Ridge and Charter's personnel have used in
4 the past has not accomplished these goals. Blue Ridge understood that, even if
5 Charter did not submit formal applications, Charter would still (i) seek prior
6 permission for each attachment it made to Blue Ridge's mainline distribution
7 poles (ii) report all of the attachments it makes to "secondary poles" to Blue
8 Ridge, as the 2003 and 2008 agreements required; and (iii) make all attachments
9 in accordance with the NESC, Blue Ridge's specifications, applicable codes, and
10 the requirements of the parties' agreement. However, it is clear that Charter has
11 not done this. As discussed below, Blue Ridge conducted a pole attachment
12 inventory in 2015 and 2016, which revealed that Charter had 27,674 attachments,
13 which is a net of 1,373 more attachments than what was reflected in Blue Ridge's
14 billing records for Charter. (See Exhibit LL-10, Letter from Brad Shields to
15 Ronnie McWhorter dated November 22, 2016.) This number surprised Blue
16 Ridge's field personnel, who recalled receiving some attachment requests from
17 Charter, mostly when Charter needed Blue Ridge to perform "make ready" work
18 in order to accommodate Charter's attachments, but did not receive nearly enough
19 requests to account for a net of 1,373 new attachments since the parties' last
20 conducted a pole attachment inventory in 2010. Neither party has documentation
21 to show these attachments were authorized. Indeed, Charter acknowledges that it
22 *never* reported attachments to secondary poles, and that it has no system or
23 process to report attachments to secondary poles, even though the 2008 agreement

1 required it to do so within seven days of making the attachment. Moreover, since
2 the 1,373 figure number represents the *net* increase in Charter's attachments
3 during this time, and does not reflect attachments Charter has removed, it is likely
4 that Charter has made numerous attachments to Blue Ridge's poles for which it
5 has never paid.

6 **Q. Has not using the formal application and permit process in the parties' pole**
7 **attachment agreement created any other problems?**

8 A. Yes. Like the 2003 agreement, the 2008 agreement specifically provides that

9 [BEGIN CONFIDENTIAL] [REDACTED]

10 [REDACTED]

11 [REDACTED] [END CONFIDENTIAL] (*See*

12 CONFIDENTIAL Exhibit LL-3, Pole Attachment License Agreement between

13 Blue Ridge Electric Membership Corporation and Charter Communications

14 Holding Company, LLC, dated September 1, 2008, Rules and Practices of Owner

15 for Attachments, at § D.1.) In particular, the agreement provides that [BEGIN

16 CONFIDENTIAL] [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] [END

22 CONFIDENTIAL] This is intended to give Blue Ridge room to add additional

1 electrical facilities, such as transformers, without having to first ask Charter to
2 relocate its facilities or pay for additional make ready work.

3 Even though Blue Ridge's personnel responded to Charter's informal telephone
4 and e-mail requests for make-ready work, rather than require it to submit formal
5 applications, they did not release Charter from its obligation to make its
6 attachments in compliance with the NESC and parties' agreement. Yet, when
7 Blue Ridge conducted a pole attachment inventory in 2015-16, it found 3,767
8 safety violations among Charter's attachments, including numerous cases where
9 Charter—or more specifically, its contractors—attached too close to Blue Ridge's
10 facilities. (The results of the 2015-16 inventory are attached as Exhibit LL-11).
11 Exhibit LL-12 is a map which shows the violations found among Charter's
12 attachments during the audit. As this map shows, Charter has caused violations on
13 virtually every portion of Blue Ridge's system where it has attached.

14 Further, Blue Ridge's expert witness in this case, Gregory Booth, P.E., has
15 reviewed more than 2,000 poles on five electric distribution circuits where
16 Charter has made attachments to Blue Ridge's system, and his findings suggest
17 these violations are even more prevalent than the inventory suggests.

18 **Q. Do these clearance violations pose problems for Blue Ridge?**

19 A. Charter's clearance violations create safety concerns, since the NESC requires at
20 least forty (40) inches clearance between Charter's attachments and Blue Ridge's
21 facilities to protect Charter's workers from potential electrocution. It also poses a
22 risk to the public, since, without proper clearance, Charter's cables could come

1 into contact with energized electrical facilities and carry current to someone who
2 comes into contact with Charter's service drops or even equipment in their home.

3 In addition to safety concerns, clearance issues also create an operational problem
4 because they prevent Blue Ridge from adding electrical facilities and making full
5 use of its poles, which are a capital asset for which Blue Ridge has already paid.
6 For instance, if Blue Ridge needs to add a transformer to provide electrical service
7 to one of its member's homes, it now must ask Charter to relocate its facilities or
8 pay for additional make ready work that should have been performed when
9 Charter first made its attachment, because Charter has failed to honor the seventy-
10 two (72) inch reservation of space required by the agreement. Worse still, now
11 that it is under common management with Time Warner, Charter has taken the
12 position, at least as part of this proceeding, that it should not have to pay to
13 relocate its attachments or to install a taller pole if it attached first.

14 The delay and expense of remedying these safety violations, as well as having to
15 deal with thousands of non-compliant attachments, is yet another example of why
16 Blue Ridge believes the parties need to follow the application and permit process
17 in the parties' pole attachment agreement.

18 **Q. Did Blue Ridge's personnel ever try to do anything to facilitate coordination**
19 **with Charter and communicate its expectations regarding clearance**
20 **requirements?**

21 **A.** Yes. First of all, Blue Ridge's design specifications were set forth in the 2003
22 and 2008 agreements, and the NESC requires Charter to provide certain minimum

1 clearances between its attachments and any electrical facilities, whether or not it
2 is required by the agreement.

3 Still, Blue Ridge's personnel tried to make sure Charter's personnel were aware
4 of the design specifications. In 2006, Blue Ridge's personnel provided training
5 for all of its attachers, including Charter, regarding the requirements for
6 attachments to Blue Ridge's system. A copy of the training manual Blue Ridge's
7 personnel provided in this meeting is attached as Exhibit LL-13. Charter's
8 construction coordinators attended this meeting. However, it is apparent now that
9 Charter's personnel either did not follow these guidelines or failed to
10 communicate them to Charter's contractors, who perform all of the construction
11 work on Charter's attachments.

12 **Q. Do you believe that formal adherence to a permitting process will alleviate**
13 **these concerns?**

14 A. No system is perfect, nor can Blue Ridge be expected to police all of Charter's
15 work to ensure it complies with the NESC and the parties design specifications—
16 that is Charter's responsibility. Still, requiring Charter to provide advance notice
17 and construction plans for its proposed attachments through the permit and
18 application process will help prevent these issues and will also help prevent
19 disputes over responsibility for unauthorized and non-compliant attachments.

20 **VI. BLUE RIDGE'S 2015-16 POLE ATTACHMENT INVENTORY**

21 **Q. You mentioned a system-wide pole attachment inventory earlier, when did**
22 **Blue Ridge conduct that pole attachment inventory?**

1 A. Blue Ridge engaged an outside contractor, UtilitiesChoice, to conduct a system-
2 wide pole attachment inventory in 2015, which was concluded in 2016.

3 **Q. Did Blue Ridge give Charter an opportunity to participate in this inventory?**

4 A. Yes we did. In the course of negotiating a new pole attachment agreement, Brad
5 Shields informed Michael Mullins in September 2015 that Blue Ridge was
6 conducting an inventory, that it was approaching areas that included Charter's
7 attachments, and asked if Charter wanted to send someone to participate. (See
8 Exhibit LL-14, E-mail from Brad Shields to Michael Mullins, dated September
9 09, 2015.) Charter responded that it did not have personnel or time to participate.

10 **Q. What did the inventory show?**

11 A. As stated above, the inventory found that Charter had 27,674 attachments on Blue
12 Ridge's system, which represents a net of 1,373 additional, unauthorized
13 attachments over the 26,301 shown by the existing count. (See Exhibit LL-10), In
14 addition, the inventory revealed approximately 3,767 violations among Charter's
15 attachments. (See Exhibit LL-11).

16 **Q. What did Blue Ridge do regarding the unauthorized attachments found as
17 part of the inventory?**

18 A. Blue Ridge submitted an invoice for the unauthorized attachments to Charter,
19 back-billing it five years' of attachment fees for those attachments, which is the
20 length of time since the parties' last pole inventory. (See Exhibit LL-10.)
21 Although section 10.1 of the 2008 agreement authorized Blue Ridge to charge an
22 Unauthorized Attachment Discovery fee of \$150 per attachment, and section 10.2
23 authorized Blue Ridge to charge an Unauthorized Attachment Daily Fee of \$5.00

1 per attachment, per day, if Charter failed to submit a permit for unauthorized
2 attachments once they are discovered or show that they have been permitted, Blue
3 Ridge charged Charter only the back-rent, in keeping with historical practice of
4 the parties.

5 **Q. Did Charter pay the back-billed fees for the 1,373 unauthorized attachments**
6 **discovered as part of the inventory?**

7 A. Yes. Charter paid the amount for the back-billed attachment fees for these
8 unauthorized attachments, without protest.

9 **Q. Has Charter ever disputed the results of the inventory?**

10 A. No it has not.

11 **Q. What did the inventory find regarding violations among Charter's**
12 **attachments?**

13 A. As part of the inventory, UtilitiesChoice noted instances where attachers failed to
14 provide proper ground clearance, failed to provide proper separation from Blue
15 Ridge's electrical facilities as required by the NESC, or made improper mid-span
16 attachments. The inventory found at least 3,767 violations among Charter's
17 attachments

18 **Q. What did Blue Ridge do about the violations identified in the inventory?**

19 A. Blue Ridge submitted notices of the 3,767 violations identified during the
20 inventory to Charter through the National Joint Use Notification System (NJUNS)
21 in August of this year. NJUNS is a national system used by pole owners and
22 attachers to notify one another of transfer requests and safety violations, and the
23 2008 agreement provides that [BEGIN CONFIDENTIAL] [REDACTED]

1 [REDACTED] [END
2 CONFIDENTIAL] Blue Ridge also provided a memorandum to Charter when it
3 submitted tickets in the NJUNS system for these violations, offering to work with
4 Charter in approving a plan to remedy the violations, including granting
5 reasonable extensions of the deadlines under the parties' pole attachment
6 agreement. (See Exhibit LL-16, Memorandum to Charter Communications, dated
7 August 25, 2017.)

8 **Q. Did Blue Ridge ask Charter to correct these violations in an effort to punish**
9 **Charter or gain leverage in this proceeding?**

10 A. No. While I understand Charter has made that accusation, it is simply false. Blue
11 Ridge notified Charter of the violations because they need to be fixed. We have
12 not asserted any claim against Charter arising from those violations, and we have
13 not made them part of this litigation. Indeed, as I just said, we have offered to
14 work with Charter to review its proposed plan to respond to these violations and
15 remedy them. Charter's accusation is just another example of how its approach
16 to pole attachments has changed since its merger with Time Warner Cable. We
17 do not view these violations as part of a "game" or as a "bargaining chip," and I
18 am disappointed that Charter would view them this way. These violations need to
19 be fixed, and we intend to work with Charter cooperatively to see that they are.

20 **VII. BLUE RIDGE'S CONCERNS REGARDING CHARTER'S**
21 **ATTACHMENTS**

22 **Q. We discussed permitting earlier, but can you explain more about how Blue**
23 **Ridge intends to approach its relationship with Charter going forward?**

1 A. The permit and application process is a good example of how we intend to
2 approach Blue Ridge's relationship with Charter going forward. While Blue
3 Ridge has dealt with Charter on an informal basis in the past, it is clear for all the
4 reasons explained above that we need to adhere to the terms and conditions the
5 parties agreed to follow in their pole attachment agreements. This will help avoid
6 potential disputes in the future. It will also help ensure Charter's attachments do
7 not create a drain on Blue Ridge's resources or impede Blue Ridge in the delivery
8 of safe and reliable power to its members.

9 Therefore, going forward, we intend to follow the procedures in the parties' pole
10 attachment agreement, and insist that Charter do the same. At the same time, we
11 are not asking Charter to do anything other than abide by the same terms and
12 conditions we agreed to follow in the 2003 and 2008 pole attachment agreements.
13 The terms and conditions we have proposed and are seeking to have the
14 Commission approve are materially the same as in those agreements.

15 **Q. Do the terms and conditions Blue Ridge has asked the Commission to**
16 **approve arise out of any particular concerns Blue Ridge has about Charter's**
17 **attachments to its poles?**

18 A. Yes the terms and conditions are designed to address concerns we have about
19 Charter's attachments to Blue Ridge's poles. Our concerns generally fall into two
20 categories: (i) the workmanship of Charter and its contractors in making
21 attachments, which often lead to safety issues, and (ii) the administrative burdens
22 associated with Charter's attachments.

23 **A. WORKMANSHIP AND SAFETY ISSUES**

1 **Q. You referred to Charter’s workmanship in making pole attachments. Can**
2 **you please explain what you mean?**

3 A. Yes. In Blue Ridge’s experience Charter uses contractors, who then hire
4 subcontractors, to perform virtually all work on attachments to Blue Ridge’s
5 system. Charter and its contractors have often failed to make its attachments in a
6 workmanlike manner or follow the requirements of NESC, other regulations, and
7 Blue Ridge’s design specifications when making attachments to Blue Ridge’s
8 poles. This creates safety hazards that endanger Blue Ridge’s personnel,
9 Charter’s personnel, and the public. But even where there is no imminent safety
10 concern, Charter’s poor workmanship often causes problems for Blue Ridge.

11 **Q. Would you explain how Charter’s poor workmanship causes problems for**
12 **Blue Ridge?**

13 A. Charter’s failures to follow applicable design specifications and the NESC create
14 a number of problems for Blue Ridge, which are set out more fully in Mr. Booth’s
15 testimony. These include (i) damage to Blue Ridge’s poles because Charter has
16 failed to install proper guys and anchors to support its attachments; (ii) installation
17 of excess or poorly placed additional equipment that create impediments for Blue
18 Ridge personnel climbing poles or prevent vehicles, such as bucket trucks, from
19 being able to access Blue Ridge’s facilities; (iii) “clearance” violations, in which
20 Charter’s attachments are too close to Blue Ridge’s electrical facilities, which
21 creates a danger of electrocution for Charter personnel and prevents Blue Ridge
22 from fully using its allocated electrical supply space.

1 **Q. You also mentioned that Charter's poor workmanship causes safety hazards.**
2 **Would you explain what you mean?**

3 A. There are several ways Charter's failures to follow the NESC and applicable
4 design specifications cause safety hazards on Blue Ridge's system. First, when
5 Charter's attaches its cables too close to Blue Ridge's facilities and does not leave
6 adequate space for the Communication Workers' Safety Zone, as required by the
7 NESC, it creates a danger of electrocution for Charter personnel and contractors.
8 Second, when Charter fails to properly guy and anchor poles, it increases the risk
9 that poles will fall, leaving downed lines. Third, when Charter leaves insufficient
10 ground clearance for its lines, it creates a risk that trucks or other vehicles will hit
11 the lines, which has happened in Blue Ridge's territory as well as elsewhere in
12 North Carolina. Fourth, when Charter fails to properly bond its attachments it
13 creates a danger of electrocution for personnel working with those facilities as
14 well as members of the public. Fifth, Charter often leaves loose or excess
15 unsecured cable in and around service drops, which presents a danger for
16 members of the public who can become entangled or ensnared in the unsecured
17 cable. These types of situations cause Blue Ridge serious concern. And of course,
18 all of these issues create added obstacles and hazards for Blue Ridge's personnel,
19 too.

20 **Q. Why are these safety issues a concern for Blue Ridge?**

21 A. Aside from anything else, we believe we have a responsibility to protect the
22 public, not to mention our own personnel, and to try to ensure that any
23 connections made to our system are done in a safe and workmanlike manner. As

1 a practical matter, when Charter's attachments create safety issues—either for line
2 crews or members of the public—it exposes Blue Ridge to additional legal risk.
3 Even if Charter is responsible for the safety violation, Blue Ridge may still be
4 sued if personnel or members of the public are injured.

5 **Q. What evidence does Blue Ridge have of Charter's poor workmanship?**

6 A. In addition to my experience and the experience of Blue Ridge's personnel, as
7 well as the 3,767 safety violations found as a result of the attachment inventory
8 conducted in 2015-16, Blue Ridge's expert, Mr. Booth, has reviewed a significant
9 portion of Blue Ridge's system to determine the prevalence of safety violations
10 among Charter's attachments, and has attached photographs illustrating his
11 findings to his testimony.

12 **Q. Why do you believe there are so many workmanship and safety issues with**
13 **Charter's attachments?**

14 A. The problems with Charter's workmanship may be due, at least in part, to its
15 heavy use of contractors and subcontractors. Charter performs virtually all of its
16 work through contractors over whom Charter has limited control with respect to
17 their training, capabilities, and quality.

18 Charter does not employ any professional engineers to review its attachments.
19 Instead, Charter depends on its contractors to know and abide by the requirements
20 of the NESC and Blue Ridge's design specifications. Charter also does not have
21 a program to regularly inspect its attachments for safety violations, which means
22 that it only corrects problems if its contractors catch them in the course of other
23 work.

1 Q. Could you give some examples of the types of safety violations Blue Ridge has
2 found among Charter's attachments?

3 A. Yes. I have attached several pictures showing violations that Blue Ridge and its
4 personnel found during the system wide audit the conducted in 2015-16. These
5 pictures were taken with special camera equipment that provides measurements
6 concerning where the attachments are made.

7 Exhibit LL-16A shows extremely dangerous situations where *Charter has*
8 *attached its cables in such a way that they are in contact with Blue Ridge's*
9 *electric lines.* In the first picture, *Charter has slung its cable over Blue Ridge's*
10 *secondary conductor.* In the second picture, Charter has run its cable through Blue
11 Ridge's electric lines. These situations pose an immediate danger to the public.
12 Charter's cable could become energized and electrocute a Charter customer in
13 their home or someone who comes in contact with Charter's cables or service
14 drop.

15 Exhibit LL-16B shows places where Charter has failed to provide proper ground
16 clearance for its cables. In at least two cases, Charter has provided as little as 11
17 feet of clearance over driveways, which could easily clip a trucks or other
18 vehicles. In the last picture, Charter's cables are so low to the ground that Pete
19 Berry, who performed the inventory on behalf of UtilitiesChoice, can grab them
20 without reaching his arm above his head. There is simply no reason why Charter
21 should have hung its cables so low that they come to eye level. In each of these
22 cases, Charter should have either attached its facilities to higher on the pole or
23 paid for make-ready work to install taller poles.

1 Exhibit LL-16C includes pictures showing instances where Charter has attached
2 its cables far too close to Blue Ridge's electrical facilities and has failed to leave
3 40-inches of separation required by the NESC to protect communications workers
4 from electrocution. In several of these pictures, Charter has placed its attachment
5 less than a foot from Blue Ridge's electrical facilities. In one case, shown in the
6 first picture, Charter attached its cables directly under Blue Ridge's transformer.

7 Exhibit LL-16D includes several photos where Charter has failed to provide
8 proper guys and anchors for poles, and thus failed to provide proper support for
9 its attachments. The last two pictures show poles that have bowed and bent
10 because Charter has failed to provide proper guying.

11 Exhibit LL-16E shows a situation where Charter has attached to a transmission
12 (rather than distribution) pole, and placed power supplies on both sides of the
13 pole, which is an NESC violation and blocks Blue Ridge's personnel from
14 climbing the transmission pole.

15 **B. ADMINISTRATIVE BURDENS**

16 **Q. You said Blue Ridge is concerned about the administrative burden of**
17 **Charter's attachments. Would you please explain what you mean by that?**

18 A. Yes. Having Charter attached to Blue Ridge's poles, even in the best of
19 circumstances, creates administrative burdens, which are only compounded when
20 Charter fails to follow the terms and conditions of the parties' pole attachment
21 agreement and applicable design specifications. These include:

22 (i) the burden and cost of administering Charter's attachment agreement,
23 including processing, reviewing, and tracking Charter's permits and applications

1 for new attachments, as well as conducting engineering to design higher poles and
2 relocate Blue Ridge's electrical facilities when Charter requires "make ready"
3 work to accommodate its attachments;

4 (ii) "field" issues with Charter's attachments, such as (a) the cost of
5 inspecting Charter's attachments; (b) conducting field inspections to verify
6 Charter's permit requests and verifying Charter's compliance with design
7 requirements after completion, (c) coordinating and resolving requests to transfer
8 Charter's facilities, (d) delay and repeated mobilization costs when Charter fails
9 to transfer its facilities, or fails to do so timely, as required by the parties'
10 agreement, (e) identifying and remedying safety violations;

11 (iii) the burden and cost of having to conduct pole attachment inventories
12 and safety inspections to determine and verify the number and types of
13 attachments Charter has made to Blue Ridge's system; and

14 (v) legal exposure to Blue Ridge that may result from Charter's operations
15 on Blue Ridge's facilities, or from injuries to the public as a result of Charter's
16 attachments to Blue Ridge's poles.

17 **Q. Do the categories of burdens and costs you just identified correspond with**
18 **those Mr. Booth identified in his testimony?**

19 A. Yes. Mr. Booth's testimony is based, in part, on his review of the many issues
20 Blue Ridge has had with Charter over the years.

21 **Q. Do you believe Mr. Booth accurately identifies the administrative burdens**
22 **and costs of Charter's attachments in his testimony?**

1 A. Yes. While it is impossible to anticipate every scenario and identify all of the
2 additional costs Blue Ridge incurs because of Charter's attachments, I believe Mr.
3 Booth has accurately identified the primary additional burdens and costs that Blue
4 Ridge incurs as a result of Charter's attachments.

5 **Q. You mentioned administrative burden and delays when Charter fails to**
6 **timely respond to requests to relocate its attachments. Why would Blue**
7 **Ridge ask Charter to relocate its attachments?**

8 A. There are several reasons we may have to ask Charter to relocate its attachments.
9 For example, if we are replacing existing poles or moving a pole line, we ask
10 Charter to move its facilities to the new poles so we can remove the old ones. In
11 addition, if we need to attach additional electrical facilities to a pole, such as
12 adding a transformer so we can connect electricity to a member's home, we may
13 have to ask Charter to move its attachments down the pole if there is not enough
14 room to maintain proper separation under the NESC. This especially may be the
15 case if Charter failed to observe the seventy-two inch reservation of space
16 requirement in the pole attachment agreement and Blue Ridge's specifications for
17 attaching entities, and thus did not leave room for Blue Ridge to add facilities
18 such as a transformer.

19 **Q. What does the 2008 pole attachment agreement require with respect to**
20 **transfers?**

21 A. The 2008 agreement requires Charter [BEGIN CONFIDENTIAL] [REDACTED]
22 [REDACTED]

1

2

[END CONFIDENTIAL]

3

Q. What problems does it cause Blue Ridge if Charter does not respond to these requests, or does not do so in time?

4

5

A. The primary problem is delay and re-mobilization costs. For instance, if we are replacing a pole or moving a pole line, we cannot remove the old pole or poles until Charter moves its facilities. Thus, if Charter fails to respond to the transfer request, the old pole remains in place, we cannot complete the work, and we may have to re-mobilize crews to complete the work when Charter finally transfers its attachments. Our customer service representatives and district personnel respond to numerous complaints from members regarding old poles that still remain next to new poles because Charter has failed to transfer its attachment. In addition, if we are trying to add a new transformer to hook up a new member, Charter's failure to respond may delay our ability to connect electricity to the members' home.

15

16

Q. How often has Charter failed to respond to transfer requests?

17

A. Charter's failure to timely respond to transfer requests is a persistent problem. Based on data pulled from the NJUNS system this summer in response to Charter's data requests, Charter had failed to respond to 139 currently outstanding transfer requests, for which it was the next to go, which represents 29.8% of all of the requests issued to Charter. A quarter (24.5%) of the 139 transfer requests Charter has failed to complete have been outstanding for more than three years. Fifty-nine percent have been outstanding between 3-6 months, even though the

23

1 2008 pole attachment agreement requires Charter to complete transfers in sixty
2 (60) days.

3 **VIII. BLUE RIDGE'S PROPOSED TERMS AND CONDITIONS**

4 **Q. What does Blue Ridge believe should be done to address these concerns**
5 **regarding Charter's attachments?**

6 **A.** Blue Ridge believes that any pole attachment agreement with Charter needs to
7 include terms and conditions to address these concerns. The terms and conditions
8 included in Mr. Arnett and Mr. Booth's testimony address at least the primary
9 concerns Blue Ridge has regarding Charter's attachments to Blue Ridge's poles,
10 and we believe the Commission should adopt those proposed terms and
11 conditions.

12 **Q. Does Blue Ridge believe that the parties' prior pole attachment agreements**
13 **from 2003 and 2008 address these concerns?**

14 **A.** Yes, we do. Blue Ridge originally proposed to Charter that the parties enter into
15 an updated version of the 2008 agreement, and we believe that the terms Mr.
16 Arnett and Mr. Booth have proposed are materially the same as those in the 2008
17 agreement, which Charter has already accepted twice before.

18 **Q. Would you summarize the terms and conditions from the 2008 agreement**
19 **that are in dispute and that Blue Ridge is asking the Commission to approve?**

20 **A.** Yes. Charter has indicated, either through negotiations or positions it has taken in
21 this or other proceedings, that it will not agree to terms and conditions concerning
22 the following issues, which we believe should be included in any pole attachment
23 agreement between the parties going forward:

1 (a) Permits and Applications. Though the 2008 agreement required
2 Charter [BEGIN CONFIDENTIAL] [REDACTED]
3 [REDACTED] [END
4 CONFIDENTIAL] Charter has insisted in negotiations for a new pole attachment
5 agreement that it should only be required to submit applications for projects that
6 involve ten or more attachments, and that it should only have to pay one permit
7 fee no matter how many attachments are included in the application. Charter's
8 proposal would allow it to make any number of attachments to Blue Ridge's
9 poles, without giving Blue Ridge any notice or any opportunity to ensure Charter
10 is making its attachments in compliance with the NESC and the parties'
11 agreement. It also ignores the administrative and technical work required to
12 review and respond to Charter's attachment applications, and would thus fail to
13 adequately compensate Blue Ridge for the work required to process Charter's
14 applications. Charter should be required to apply for a permit for each attachment
15 and should pay an application fee for each such attachment, as a "go-along, get-
16 along" process has proven inadequate to protect our system.

17 (b) Disputed Invoices. While we agree that Charter should have the right to
18 dispute invoices under the parties' pole attachment agreement, Charter has
19 insisted on provisions that would permit it to withhold payment on any disputed
20 invoices until the dispute is resolved. Blue Ridge believes that this will create an
21 incentive for Charter to dispute amounts owed to Blue Ridge and work less than
22 efficiently to resolve disputes. Charter has already refused to pay Blue Ridge for
23 two substantial make-ready projects this year, even though there is no dispute

1 over the amounts owed. If Charter could avoid its obligations merely by
2 “disputing” an invoice, we expect that it will certainly abuse the process even
3 further in an attempt to avoid legitimate charges that are not subject to any
4 dispute. Charter should be required to pay invoices pending the resolution of any
5 dispute, just as it was required to do under the 2008 agreement.

6 (c) Engineering Certification. Section 1.7 of the 2008 agreement required
7 Charter [BEGIN CONFIDENTIAL] [REDACTED]

8 [REDACTED]
9 [REDACTED] [END CONFIDENTIAL] Charter, however, has refused in
10 the parties current negotiations to agree to such a provision, and has instead
11 proposed that it should be allowed to provide certification from an “authorized
12 representative” and should not have to provide any certification with respect to
13 attachments to secondary or “drop” poles that serve a single house. This is
14 inappropriate. As explained in Mr. Booth’s testimony, State statutes require a
15 person be licensed as a professional engineering license in order to certify
16 compliance with the NESC and applicable design specifications. Charter cannot
17 satisfy this requirement merely by providing certification from an “authorized
18 representative,” who could be any employee of the company—especially given
19 that Charter’s current employees are clearly are not complying with the NESC or
20 Blue Ridge’s design specifications.

21 (d) Maintenance and Transfers. Under section 9.6 of the 2008 agreement,
22 Charter agreed that [BEGIN CONFIDENTIAL] [REDACTED]

23 [REDACTED]

1 [REDACTED] [END
2 CONFIDENTIAL] Charter, however, has refused to agree to this provision in the
3 parties' current negotiations, and it has instead insisted it should not have to pay
4 any additional fees or costs if it fails or refuses to transfer its attachments in the
5 time required. This is insufficient to protect Blue Ridge's interests, as it would
6 allow Charter to ignore transfer requests with impunity, as it is currently doing.

7 (e) Non-Compliant Attachments. Article 11 of the 2008 agreement required
8 Charter [BEGIN CONFIDENTIAL] [REDACTED]

9 [REDACTED]
10 [REDACTED] [END
11 CONFIDENTIAL] Yet, in the current negotiations, Charter has insisted that it
12 should not have any deadline for responding to such notices. It also has insisted
13 that it should not have to pay to correct non-compliant attachments unless Blue
14 Ridge can prove Charter caused the violation, and that Blue Ridge should not
15 have the right to revoke Charter's permit if it fails to correct the violation.
16 Charter's proposal invites future disputes and would allow it to persist in its
17 failure to correct safety violations and non-compliant attachments without any
18 consequence. Blue Ridge must have a mechanism to require Charter to correct
19 safety violations and other deficiencies in its attachments.

20 (f) Insurance. As in the 2008 agreement, Blue Ridge has asked that Charter agree
21 [BEGIN CONFIDENTIAL] [REDACTED]
22 [REDACTED]
23 [REDACTED] [END CONFIDENTIAL]

1 Charter, however, has refused and has instead insisted that it should only have to
2 carry the amount of insurance required by its own internal policies. This is
3 insufficient to protect Blue Ridge.

4 (g) Default Provisions. Again contrary to the provisions of the 2008 agreement,
5 Charter has insisted that an event of default under the agreement should be limited
6 to its failure to pay an undisputed invoice, and that Blue Ridge's rights upon
7 default should be limited to (i) revoking Charter's permit for the attachment at
8 issue; (ii) terminating the agreement; or (iii) performing any work Charter failed
9 to perform. These provisions provide an incentive for Charter not to perform its
10 obligations and shift the risk of default entirely onto Blue Ridge. Blue Ridge
11 should be entitled to charge Charter for the cost of performing work Charter fails
12 to perform under the contract and should be allowed to withhold further the
13 performance of make-ready work until Charter cures any failure to perform under
14 the agreement.

15 (h) Right to Withhold Consent. [BEGIN CONFIDENTIAL] [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] [END CONFIDENTIAL]

19 (i) Confidentiality. Just as the 2008 agreement provided, the parties' agreement
20 should provide that they keep the terms, conditions, and amounts paid under the
21 agreement confidential.

22 (j) Indemnity. Charter has insisted that any indemnification requirement
23 must be "reciprocal." However, Charter—not Blue Ridge—should bear all risks

1 associated with Charter's attachments. This includes an obligation that Charter
2 defend and indemnify Blue Ridge for all existing attachments Charter has made to
3 Blue Ridge's system that violate the NESC, the terms of the parties' agreements,
4 or any other applicable design and safety standards. This is especially important
5 given the widespread safety violations Blue Ridge has discovered among
6 Charter's existing attachments, including attachments made outside of the space
7 allocated to Charter.

8 (k) Reservation of Space. To enable Blue Ridge to accommodate future
9 electrical facilities and make full use of the space allocated to it, any pole
10 attachment agreement must include a provision specifying that all attachments
11 made after the date of the agreement shall have at least 72 inches vertical
12 clearance under Blue Ridge's grounded neutral. Though Charter agreed to similar
13 provisions in the 2003 and 2008 agreements, and did not object when Blue Ridge
14 proposed such a provision in the course of the parties' negotiations, its lead
15 negotiator, Nestor Martin, has now asserted that cooperatives should not be
16 allowed to reserve space on its poles. Blue Ridge, however, owns its poles and
17 should be permitted to reserve space for its facilities, just as it has done in the
18 past.

19 (l) Recovery of Space. Once again, though it agreed to provisions allowing
20 Blue Ridge to recover space on its poles in the 2003 and 2008 agreements, and
21 did not object to such a provision in the course of negotiations, Charter has now
22 indicated that it will not agree to a provision that entitles Blue Ridge to require
23 Charter to remove or rearrange its facilities, at Charter's expense, in the event

1 Blue Ridge seeks to add additional electrical facilities and there is insufficient
2 space on the pole due to Charter's attachments.

3 (m) Overlashing. "Overlashing" is a method Charter uses to add aerial
4 facilities by running a new cable (or cables) over an existing cable and then
5 lashing the cables together, in effect using the existing cable as a way to support
6 and string the new cable. Because it adds additional cables to Charter's existing
7 attachments, overlashing can affect wind and ice loads on poles and add structural
8 load to Blue Ridge's poles. In addition, overlashing necessarily involves work by
9 Charter (or its contractors) on Blue Ridge's system. Just as the 2008 agreement
10 required, [BEGIN CONFIDENTIAL] [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] [END

14 CONFIDENTIAL]

15 (n) Unauthorized Attachment Fee. Though it was required under the 2003
16 and 2008 agreements, Charter has now refused to agree to any provision that
17 would require it to pay an unauthorized attachment fee in addition to back rent for
18 unauthorized attachments. Instead, Charter proposes that it should only pay the
19 rent *it should have paid in the first place* if Blue Ridge discovers it has made
20 unauthorized attachments creates a perverse set of incentives. Charter's proposal
21 would allow it to continue making unauthorized attachments to Blue Ridge's
22 system—as it has done for years—without any consequence. Charter has
23 conceded in this proceeding that it regularly makes unauthorized attachments,

1 because it does not give notice of its attachments to secondary poles, and that it
2 has no process to do so. Under Charter's proposal, it would actually be to
3 Charter's advantage to make unauthorized attachments, and then pay the rent
4 should have otherwise paid only if its attachments are discovered. Charter's
5 proposal is improper, denies Blue Ridge the time value of money from attachment
6 fees, and ignores the time and expense Blue Ridge must incur to monitor the more
7 than 100,000 poles on its system to catch Charter's attachments.

8 **Q. Do you believe the terms and conditions you listed above are just and**
9 **reasonable?**

10 A. Yes. Charter has agreed to these terms and conditions at least twice—in both the
11 2003 agreement and the 2008 agreement—following arms-length negotiations. Charter
12 has no basis to claim that these terms and conditions are somehow now unjust or
13 unreasonable.

14 **IX. CONCLUSION**

15 **Q. In conclusion, what is Blue Ridge asking the Commission to do in this**
16 **proceedings?**

17 A. We are asking the Commission to approve Blue Ridge's use of the TVA rate
18 methodology for Charter's attachments to Blue Ridge's electric distribution poles, as Mr.
19 Arnett has proposed, and to approve the terms and conditions Blue Ridge has proposed
20 for a pole attachment agreement with Charter, as set forth above and Mr. Arnett and Mr.
21 Booth's testimony.

22 **Q. Does this conclude your testimony?**

1 A. Yes.