

EXHIBIT 1

OFFICIAL COPY

May 05 2016

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1. I am employed by North Carolina Electric Membership Corporation ("NCEMC") as Vice President, Associate General Counsel. I am competent to make this affidavit and it is based upon my personal knowledge.
2. NCEMC is a so-called "Generation and Transmission" Electric Cooperative, formed by and operated by its members, twenty-five of North Carolina's electric distribution cooperatives (referred to by statute as "Electric Membership Corporations," or "EMCs").
3. I also provide counsel to North Carolina Association of Electric Cooperatives ("NCAEC"), the statewide service organization formed by and operated by the twenty-six EMCs headquartered in North Carolina. NCAEC's service to its members generally takes the form and substance common to entities considered trade associations, such as government relations, consolidated training, communications and publication of a trade magazine, and tracking of state and national issues of importance to its member EMCs.
4. Upon information and belief, twenty of the NCAEC member cooperatives presently host communications facilities constructed by or on behalf of Time Warner Cable ("TWC") on a number of the poles that were constructed to support their electric distribution systems. These facilities are commonly referred to as "pole attachments."

5. The purpose of my testimony submitted in this affidavit is to briefly summarize the efforts, still ongoing, of those NCAEC member cooperatives, conducted through NCAEC personnel or outside counsel retained for that purpose, to engage TWC in joint negotiations as to rates, terms and conditions for pole attachments.
6. For roughly a decade, TWC has been unique among other pole attachers in North Carolina in its inability to reach agreement with EMCs as to pole attachment contracts.
7. That decade has been punctuated by litigation involving TWC and two EMCs (as well as a North Carolina municipality's electric system) and separate legislative initiatives at the North Carolina General Assembly to institute, and then modify, a statute addressing pole attachments.
8. In 2015, following the last of the legislative efforts, a committee of NCAEC chief executive officers began meetings and discussions to explore the potential for engaging TWC in joint negotiations. In general, the group determined that a joint approach would be more efficient and cost effective than conducting twenty separate one-on-one negotiations with TWC representatives and its counsel. The work of this committee was conducted in June through September, 2015, and concluded with the decision of the full NCAEC Board of Directors, in September 2015, authorizing NCAEC to negotiate on their behalf, and to retain outside counsel to assist in that purpose.
9. Prior to the September Board meeting, NCAEC internal counsel contacted TWC's lawyer, Gardner Gillespie, by phone to determine TWC's willingness to engage in such joint negotiations. (In the negotiation efforts that eventually commenced,

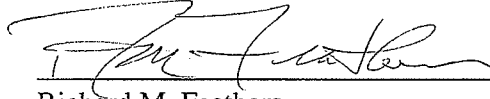
counsel for TWC and NCAEC agreed that its substantive discussions would be confidential and considered inadmissible for purposes of future disputes or litigation. Accordingly, this affidavit will recount the events and timeline of those efforts, but will not delve into the substance of particular discussions or rates, terms and conditions.)

10. Mr. Gillespie confirmed TWC's willingness to proceed with a joint approach, and advised that TWC was party to at least one agreement with a North Carolina EMC that had provisions generally acceptable to TWC that would serve as a good starting point for creation of a template contract document. On September 11, 2015, Mr. Gillespie clarified that the agreement he considered a "good model" for such discussion was with a different EMC than he'd initially thought (see Exhibit A). I replied to his email on October 1, to advise Mr. Gillespie of the NCAEC Board's decision, our engagement of outside counsel, and to propose dates for commencement of negotiation discussions. (see Exhibit B)
11. On November 9, 2015, counsel for NCAEC forwarded to Mr. Gillespie a "redlined" version of the agreement that Mr. Gillespie had suggested as a "good model" for discussions, again proposing the scheduling of a meeting for negotiation purposes. (See Exhibit C).
12. NCAEC next heard from Mr. Gillespie on December 17, when he provided a redline mark-up of the draft agreement by email. Mr. Gillespie further advised that he and his staff had "not attempted to address the rate issue," preferring to discuss rates in person. He proposed that the parties schedule the meeting in January, 2016. (See Exhibit D).

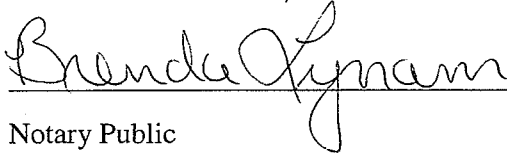
13. On January 21, 2016, counsel for TWC and NCAEC met in the offices of Mr. Gillespie's Washington, D.C. law firm. Among the expected participants in the meeting was Marcus Trathen, a Raleigh attorney. NCAEC's representatives were under the impression that Mr. Trathen would be attending as counsel for TWC, in which capacity we were familiar with him from the legislative proceedings that had just concluded that summer (and, indeed, Mr. Trathen is serving as local counsel to TWC in the proceedings brought by TWC against certain NCAEC members, and in fact signed the complaints and transmittal letters that give rise to those dockets). However, we were advised that Mr. Trathen's attendance (which was ultimately frustrated by a snow storm that hit D.C. the evening before the meeting) was to reflect his role as counsel for the North Carolina Cable Telecommunications Association ("NCCTA"), and that Mr. Gillespie envisioned that the negotiations with the EMCs would not be solely with TWC, but with the NCCTA as well.
14. Following the January 21 meeting, counsel and NCAEC membership worked on development of a counter-proposal to the rates, terms and conditions proposed by TWC at that meeting. Prior to transmitting that counter-proposal, counsel for NCAEC emailed Mr. Gillespie on February 12, 2016 to indicate that NCAEC's members wished to restrict the negotiations to TWC, rather than the NCTTA. (See Exhibit E). The message requested that TWC consider a confidentiality agreement that would reflect and preserve the confidentiality of these discussions, restricting such disclosure to those parties anticipated to eventually be the signatories to pole attachment contracts.

15. TWC did not respond for over a month, despite several email reminders and prompting from NCAEC's counsel (see emails from Tom Magee on March 2, 7 and 14, attached as Exhibit F). Notably, the March 7 email made clear NCAEC's readiness to provide a counter-proposal to the draft agreement, including a proposal as to rates. (Id.)
16. Mr. Gillespie advised NCAEC by letter on March 16, 2016 that TWC "did not understand" the desire of NCAEC members to restrict negotiation discussions to their intended counterparty, TWC, and declined the proposal. He, did, however, indicate TWC's continued interest in further negotiations (see Exhibit G).
17. On March 28, Mr. Trathen, on TWC's behalf, filed the complaints to which this affidavit is directed, namely the proceedings against Carteret-Craven Electric Membership Corporation, Jones-Onslow Electric Membership Corporation, and Surry-Yadkin Electric Membership Corporation. Mr. Gillespie notified NCAEC's counsel of this development by email that day. Despite not having received the NCAEC's counter-proposal as to rates, Mr. Gillespie stated that "[i]t is apparent that NCAEC and its members have determined not to budge on rates..." (See Exhibit H).
18. Without delving into the details of the counter-proposal already formulated by NCAEC, as authorized by its members with TWC pole attachments, Mr. Gillespie's assertion is mistaken.
19. NCAEC's members (including those subject to the complaints filed by TWC) remain open to further negotiations, and if given the opportunity, remain prepared

to furnish TWC with a counter-proposal to that communicated by TWC in the
January 21 meeting.


Richard M. Feathers

Sworn to and subscribed before me
this 5 day of MAY, 2016.


Brenda Lynam

Notary Public

My Commission Expires: 11-18-2018

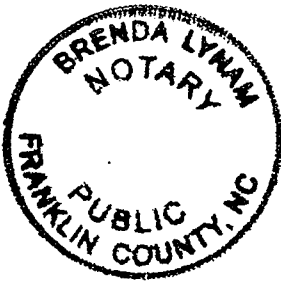


EXHIBIT A

Feathers, Rick

From: Gardner Gillespie <GGillespie@sheppardmullin.com>
Sent: Friday, September 11, 2015 4:11 PM
To: Feathers, Rick
Cc: Schwentker, Bob
Subject: Model Agreement

Rick,

I misstated the name of the coop with a pole agreement that we think is a good model. It is Jones Onslow, not Surry Yadkin. (The double name apparently confused me.) Thanks. Let me know if you want to discuss.

Gardner

Gardner F. Gillespie
Partner
202.747.1905 | direct
202.747.3815 | direct fax
703.626.4639 | cell
GGillespie@sheppardmullin.com | [Bio](#)

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EXHIBIT B

Feathers, Rick

To: Gardner Gillespie (GGillespie@sheppardmullin.com)
Cc: Tom Magee - Keller and Heckman LLP (magee@khlaw.com)
Subject: Model Agreement
Attachments: 2.Time Warner Pole Att 2007.pdf

Gardner:

Since Bob Schwentker and I last spoke with you, our Board provided authorization for cooperative staff to conduct joint negotiations with TWC along the lines we discussed in that phone conversation. We have retained Tom Magee at Keller and Heckman for assistance in that process. I've attached to this message a Pole Attachment Agreement between TWC and Jones-Onslow EMC, and believe it to be the agreement referenced in your email. If you would please confirm that this is the agreement you intended to reference, we'd like to schedule a meeting where you, Tom and I could review the document to ensure there is mutual understanding as to its terms, and to explore what topics merit attention. This would provide an opportunity to address a game plan for moving forward.

It would seem most efficient to hold such discussions in DC. We are available October 5 (afternoon), 6 (afternoon), 29 (afternoon) and 30 (morning). If none of these work, please let us know what works after the first week of November, and we'll coordinate at our end.

Rick

EXHIBIT C

Feathers, Rick

From: Magee, Thomas <Magee@khlaw.com>
Sent: Monday, November 09, 2015 4:21 PM
To: Gardner Gillespie
Cc: Feathers, Rick
Subject: RE: Model Agreement
Attachments: 2007 Jones Onslow-TWC (NCAEC Changes 11-9-2015 Clean).doc; 2007 Jones Onslow-TWC (NCAEC Changes 11-9-2015 Redline).doc; GEMC_CTAG final revised 4-29-08.pdf

Gardner:

Please find attached "clean" and "redline" versions of the Jones-Onsboro agreement, reflecting NCAEC's proposed changes. We can use this agreement as a starting point, but it appears to have been negotiated by parties having unequal sophistication in pole attachment matters, and TWC seems to have taken advantage of the co-op's inability to remove an established attacher like TWC from its poles.

We don't know why you suggest these negotiations are not a priority or why you attached an Ohio agreement between munis and the Ohio cable association. Electric cooperatives are different from municipalities in important respects and this is North Carolina, not Ohio. More relevant for this negotiation is the attached agreement between the 42 Georgia electric cooperatives and the Georgia Cable Association, which appears to have been negotiated more even-handedly. It requires advance permitting of overlashing, safety inspections, correction of most safety violations within 18 months, a penalty of \$100 if violations are not timely corrected, a \$100 unauthorized attachment penalty, late transfer fees, recovery of space by the cooperative or joint user, posting of a security instrument, and an \$18 attachment rate in 2010, to be increased each year thereafter by the Handy-Whitman Index.

To facilitate negotiations, NCAEC is taking a "middle of the road" approach by suggesting far fewer changes with considerably less impact than it could. We hope TWC will decide to take a similar approach.

I understand Rick repeated his offer to you below to meet and that you agreed to meet after reviewing our changes and proposing some TWC changes. We look forward to TWC's response and to scheduling a meeting.

Thanks, Tom

Thomas B. Magee, Partner
tel: 202.434.4128 | fax: 202.434.4646 | magee@khlaw.com
1001 G Street, N.W., Suite 500 West | Washington, D.C. 20001



Please visit our website at www.khlaw.com for additional information.

From: Gardner Gillespie [<mailto:GGillespie@sheppardmullin.com>]
Sent: Thursday, October 08, 2015 2:00 PM
To: Feathers, Rick
Cc: Magee, Thomas
Subject: RE: Model Agreement

EXHIBIT D

Feathers, Rick

From: Gardner Gillespie <GGillespie@sheppardmullin.com>
Sent: Thursday, December 17, 2015 11:29 AM
To: Feathers, Rick; Thomas B. Magee (magee@khlaw.com)
Cc: Ray Rutngamlug; Trish McCausland; 'Marcus W. Trathen (MTRATHEN@brookspierce.com)'
Subject: Pole Agreement Template
Attachments: 2007 Jones Onslow-TWC (NCAEC Changes 11-9-2015 Redline) [TWC 12-2015 Res....doc

Rick and Tom,

Attached is a redline of the draft template pole agreement we received from Tom. We have not attempted to address the rate issue in this document, believing that rates are best addressed in person. We would like to meet with you in January so that we can work on the document, discuss rates and gauge where we are headed. Please let me know of some dates in January that will work for you.

Have a happy holiday.

Gardner

Gardner F. Gillespie
Partner
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703.626.4639 | cell
GGillespie@sheppardmullin.com | [Bio](#)

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EXHIBIT E

Feathers, Rick

From: Magee, Thomas <Magee@khlaw.com>
Sent: Friday, February 12, 2016 1:27 PM
To: Gardner Gillespie (ggillespie@sheppardmullin.com)
Cc: Feathers, Rick
Subject: Confidentiality Agreement
Attachments: NCAEC-TWC Confidentiality Agreement (DRAFT 2-12-2016).doc

Gardner:

At our negotiation conference January 21, TWC proposed that the North Carolina Association of Electric Cooperatives (NCAEC), the North Carolina Cable Telecommunications Association (NCCTA), and TWC enter into an agreement that endorses a model agreement to be used in the future. Having considered this proposal, NCAEC and its members have decided to propose a more direct course that has NCAEC brokering an agreement between TWC and NCAEC members with NCAEC acting as agent for the members. Assuming negotiations go well, we expect the 20 members with TWC attachments will sign the agreement, but we can discuss with TWC how to treat any outlier NCAEC members, if any, that decide not to sign.

NCAEC members want to negotiate an agreement with TWC alone and believe this agreement may improperly influence negotiations with other attaching entities. As a result, they request that NCCTA not be privy to these negotiations. If this is agreeable to TWC, we have attached a Confidentiality Agreement for your review.

We are drafting proposed changes to the Agreement and hope to transmit them to you next week following execution of the Confidentiality Agreement. If you agree it would be helpful, we propose another meeting (K&H offers to host), following our next exchange of revisions.

Thanks, Tom

Thomas B. Magee, Partner
tel: 202.434.4128 | fax: 202.434.4646 | magee@khlaw.com
1001 G Street, N.W., Suite 500 West | Washington, D.C. 20001



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EXHIBIT F

Feathers, Rick

From: Magee, Thomas <Magee@khlaw.com>
Sent: Monday, March 14, 2016 1:28 PM
To: Gardner Gillespie (ggillespie@sheppardmullin.com); Ray Rutngamlug (rrutngamlug@sheppardmullin.com)
Cc: Feathers, Rick
Subject: RE: Confidentiality Agreement

Gardner and Ray:

It's been more than a month since we sent our proposal and we've had no response to our emails below requesting updates. In October, you expressed the hope we would treat these negotiations as a priority and we did despite having to manage a couple dozen co-op members. Are these negotiations no longer a priority for TWC?

Thanks, Tom

From: Magee, Thomas
Sent: Monday, March 07, 2016 9:57 AM
To: Gardner Gillespie (ggillespie@sheppardmullin.com); Ray Rutngamlug (rrutngamlug@sheppardmullin.com)
Cc: Rick Feathers
Subject: RE: Confidentiality Agreement

Gardner and Ray:

We should also have mentioned that we are ready to send you changes to the Agreement along with proposed rates.

We're just waiting to hear back from TWC regarding our February 12 proposal below.

Thanks, Tom

From: Magee, Thomas
Sent: Wednesday, March 02, 2016 2:04 PM
To: Gardner Gillespie (ggillespie@sheppardmullin.com)
Cc: Rick Feathers
Subject: RE: Confidentiality Agreement

Gardner:

Just checking in on our proposal below. Any word yet from TWC? Thanks, Tom

From: Magee, Thomas
Sent: Friday, February 12, 2016 1:27 PM
To: Gardner Gillespie (ggillespie@sheppardmullin.com)
Cc: Rick Feathers
Subject: Confidentiality Agreement

Gardner:

At our negotiation conference January 21, TWC proposed that the North Carolina Association of Electric Cooperatives (NCAEC), the North Carolina Cable Telecommunications Association (NCCTA), and TWC enter into an agreement that

endorses a model agreement to be used in the future. Having considered this proposal, NCAEC and its members have decided to propose a more direct course that has NCAEC brokering an agreement between TWC and NCAEC members with NCAEC acting as agent for the members. Assuming negotiations go well, we expect the 20 members with TWC attachments will sign the agreement, but we can discuss with TWC how to treat any outlier NCAEC members, if any, that decide not to sign.

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We are drafting proposed changes to the Agreement and hope to transmit them to you next week following execution of the Confidentiality Agreement. If you agree it would be helpful, we propose another meeting (K&H offers to host), following our next exchange of revisions.

Thanks, Tom

Thomas B. Magee, Partner
tel: 202.434.4128 | fax: 202.434.4646 | magee@khlaw.com
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EXHIBIT G

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Ray Rutngamlug
Partner
202.747.1934 direct
202.747.3845 fax
rrutngamlug@sheppardmullin.com

March 16, 2016

File Number: OXNT-194084

Via FedEx

Thomas B. Magee
Keller and Heckman LLP
1001 G Street, N.W., Suite 500 West
Washington D.C. 20001

Re: NCAEC-Time Warner Cable Pole Attachment Agreement and Proposed Confidentiality Agreement

Dear Tom:

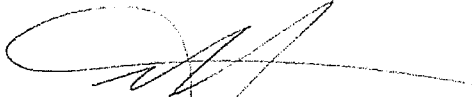
TWC has considered your February 12, 2016 proposal for NCAEC to negotiate a model pole agreement on behalf of its members with TWC alone under the coverage of a confidentiality agreement. We do not understand why NCAEC would insist on restricting the discussions only to TWC, nor do we see any basis to treat our discussions as confidential. The members of the North Carolina Cable Telecommunications Association are as follows: Andrews Cable TV LLC, Charter Communications, Cherokee Cablevision, Comcast, Mediacom, Morris Communications Company, LLC, Red's Cable TV, Inc., Suddenlink Communications, and TWC. And as you undoubtedly know, Charter is seeking to acquire TWC. In TWC's experience, pole agreement negotiations are not a usual subject for confidential treatment. Thus, TWC must decline your proposal.

Nevertheless, TWC remains interested in negotiating a model agreement with NCAEC. Please forward your feedback on the proposed revisions to the NCAEC template agreement we discussed at our January 21 meeting for our review.

SheppardMullin

Tom Magee
March 16, 2016
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read 'Gardner F. Gillespie', with a large, sweeping flourish extending to the right.

Gardner F. Gillespie
Ray Rutngamlug
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

GFG/gs

SMRH:224780141

EXHIBIT H

Feathers, Rick

From: Gardner Gillespie <GGillespie@sheppardmullin.com>
Sent: Monday, March 28, 2016 7:08 PM
To: Thomas B. Magee (magee@khlaw.com); Feathers, Rick
Cc: Ray Rutngamlug
Subject: NCAEC/TWC discussions

Tom and Rick,

While we continue to hope that NCAEC and TWC can make progress regarding the terms and conditions of a template pole attachment agreement, TWC simply cannot wait any longer to put the rate issues regarding some of NCAEC's members before the Utilities Commission. We have attempted to negotiate in good faith with individual coops and NCAEC for years, without any meaningful success. It is apparent that NCAEC and its members have determined not to budge on rates and that ultimately the matter will have to be decided by the Commission. Today, TWC has filed rate complaints against Jones-Onslow, Energy United, Carteret-Craven, South River and Surry-Yadkin.

Even though these rate complaints will have to be decided through the procedures at the Commission, we desire to continue to see if we can negotiate terms and conditions.

Gardner

Gardner F. Gillespie
Partner
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202.747.3815 | direct fax
703.626.4639 | cell
GGillespie@sheppardmullin.com | [Bio](#)

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