

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Complaint of Charter Communications, Inc.)
Against National Grid USA Service Company, Inc.) **Case 15-M-0388**
for Failure to Provide Lawful Access to Utility)
Poles)

VERIFIED COMPLAINT OF CHARTER COMMUNICATIONS, INC.

Charter Communications, Inc. (“Charter”), on behalf of itself and its affiliates, respectfully brings this Complaint, pursuant to Section 66(5) of the New York Public Service Law, against National Grid USA Service Company, Inc. (“National Grid”) due to National Grid’s constructive denial of access to its utility pole facilities. National Grid’s refusal to provide access to poles on nondiscriminatory terms violates Public Service Law §§ 66 and 119-a, and the Commission’s regulations and orders implemented thereunder, including its Order in Case 03-M-0432, *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Order Adopting Policy Statement on Pole Attachments (Aug. 6, 2004) (“Pole Attachment Order”). National Grid’s unlawful actions have frustrated Charter’s ability to meet the initial milestone in the Commission-imposed buildout condition to expand the availability of broadband in New York, despite Charter’s efforts toward meeting that milestone. Charter’s ability to promptly deploy additional infrastructure to expand broadband availability in the State has been a subject of significant recent interest and attention from both the Commission and the Department of Public Service (“Department”). In the absence of action by the Commission to remedy National Grid’s unreasonable conduct and failure to comply with its obligations under New York pole attachment rules and this Commission’s orders, Charter will be unable to meet future milestones in the buildout condition, and more unserved and underserved New Yorkers will be denied timely access to broadband.

PARTIES

1. Charter Communications, Inc. is a Delaware corporation, headquartered in Stamford, Connecticut. Charter is the ultimate parent of several affiliates holding cable franchises in communities throughout the State of New York, and through which Charter provides video, broadband Internet, voice, and business services to New York customers.

2. National Grid USA Service Company, Inc. (“National Grid”) is a public utility holding company with regulated subsidiaries engaged in the generation of electricity and the transmission, distribution, and sale of both natural gas and electricity. National Grid’s wholly-owned New York subsidiaries include Niagara Mohawk Power Corporation (“Niagara Mohawk”), National Grid Generation, LLC (“Genco”), The Brooklyn Union Gas Company (“Brooklyn Union”), and KeySpan Gas East Corporation (“KeySpan Gas East”). As an “electric corporation” under the New York Public Service Law,¹ National Grid is obligated to provide cable and telephone companies, such as Charter, with access to its utility poles on just and reasonable terms.

JURISDICTION

1. The Commission has the power of “general supervision” over electric corporations in New York, which includes the power to, upon complaint, address “unjust [or] unreasonable” practices of any electric corporation company and to determine and prescribe “the just and reasonable, acts and regulations” of electric corporations.²

¹ N.Y. Pub. Serv. Law § 2(13).

² *Id.* § 66(1), (5).

STATUTORY AND REGULATORY BACKGROUND

1. Section 119-a of the New York Public Service Law provides that “[t]he commission shall prescribe just and reasonable rates, terms and conditions for attachments to utility poles and the use of utility ducts, trenches and conduits.”³

2. In 2004, in order to resolve issues concerning pole attachments and to “streamline the process by which attachments to utility poles are made in order to promote the deployment of competitive telecommunications networks[,]” the Commission issued an order adopting a Policy Statement on Pole Attachments.⁴ Although the Pole Attachment Order permits individual pole owners and attachers to enter into agreements and operating procedures to govern pole attachments, such “agreement[s] and operating procedures must be consistent with the Policy Statement on Pole Attachments” adopted in the Pole Attachment Order.⁵

3. Under the Commission’s Pole Attachment Order and Policy Statement on Pole Attachments, pole owners such as National Grid are required to process Charter’s applications for pole attachment permits within five business days of receipt.⁶ After receiving a complete application, pole owners have 45 days from the date of the application’s receipt to complete a preconstruction survey.⁷

4. Within 14 days of completing the survey, the pole owner must send a make-ready work estimate to the applicant—in this case, Charter.⁸ The applicant has 14 days from receipt of

³ *Id.* § 119-a.

⁴ Pole Attachment Order, at 1.

⁵ *Id.* at 9.

⁶ Pole Attachment Order, Appendix A, Policy Statement on Pole Attachments, at 2 (“Policy Statement”).

⁷ Pole Attachment Order, at 3; Policy Statement, at 3.

⁸ Pole Attachment Order, at 3; Policy Statement, at 4.

the estimate to accept and pay for the make-ready work, and the pole owner must then perform the make-ready work within 45 days of receiving payment.⁹

5. If a pole owner is unable to meet these deadlines, the Pole Attachment Order expressly authorizes the applicant to “hire an outside contractor to do the survey or perform make-ready work, if the contractor is approved by the Owner [in this case, National Grid].”¹⁰

6. In addition, the Pole Attachment Order expressly authorizes applicants to use various alternative attachment methods to facilitate the timely completion of their buildout. For example, recognizing that speed is of the essence to an attacher and that temporary attachments can “compensate for delays in make-ready and other impediments to accessing poles[,]”¹¹ the Pole Attachment Order requires that “[t]emporary attachments to poles should be used if they meet all safety requirements and if a utility is unable to meet the make-ready work timeline.”¹² The Order likewise contemplates that “[e]xtension arms may be an appropriate method of attachment for both permanent installations, when make-ready costs are exorbitant and/or on a temporary basis when make-ready work cannot be performed in a timely manner.”¹³

7. Beyond the specific obligations identified in the Commission’s Pole Attachment Order, electric corporations have a general obligation under Public Service Law Section 66 not to utilize “acts or regulations” that are “unjust, unreasonable, unjustly discriminatory or unduly

⁹ Pole Attachment Order, at 3; Policy Statement, at 4.

¹⁰ Pole Attachment Order, at 3; Policy Statement, at 3.

¹¹ Policy Statement, at 5.

¹² Pole Attachment Order, at 5.

¹³ Policy Statement, at 6.

preferential.”¹⁴ This prohibition extends to and includes electric corporations’ acts and regulations governing access to their poles.

FACTUAL BACKGROUND

I. Charter’s Commission-Ordered Buildout.

8. Charter’s pole attachment dispute with National Grid arises in the broader context of a large buildout project that Charter is undertaking in the State of New York in connection with conditions imposed by the Commission in approving Time Warner Cable Inc.’s (TWC’s) transfer of control to Charter of several cable and telecommunications provider affiliates offering services within the state. Specifically, the Commission’s order requires Charter to extend its network to pass an additional 145,000 unserved or underserved premises within four years of closing its transaction with TWC (*i.e.*, by May 18, 2020), with 25% completed in the first year and an additional 25% completed in each successive year (“Buildout Condition”).¹⁵

¹⁴ N.Y. Pub. Serv. Law § 66(5).

¹⁵ Charter’s Verified Complaint should not be construed in any way as a waiver or a concession by Charter with respect to the Commission’s jurisdiction to regulate Charter, impose conditions on the Merger, or otherwise compel Charter to act (or refrain from acting) with respect to any activities Charter conducts in New York that are beyond the scope of the Commission’s limited jurisdiction, including but not limited to Charter’s activities in New York related to broadband service or infrastructure which are outside of the jurisdiction of the Commission.

Charter’s Verified Complaint should also not be construed in any way as a waiver or a concession by Charter that any provision or condition of the Merger Order, including but not limited to Condition I of Appendix A of the Order, is lawful or valid under the New York Constitution, the Federal Constitution, or any applicable New York or federal statutes, caselaw and regulations.

Charter reserves all of its rights, including its right to challenge any provision or condition of the Merger Order, including but not limited to Condition I of Appendix A of the Order, in a state or federal court of competent jurisdiction on the basis that the provision or condition is invalid because the Commission lacked statutory authority or jurisdiction to impose the condition, that enforcement of the provision or condition and any associated penalty violates the Due Process or Commerce Clauses of the New York Constitution or the Federal Constitution, or that the provision or condition is preempted by or otherwise contravenes state or federal law.

9. In addition to the Buildout Condition imposed by the Commission, Charter is also subject to national broadband buildout commitments in connection with the Federal Communications Commission's ("FCC") approval of the national transaction involving Charter and TWC, of which the transfers of control of TWC's New York affiliates approved by the Commission was a component. Although Charter's national buildout commitments to the FCC are not specific to New York, Charter's completion of its network buildout commitments in New York is an important component of its plans for satisfying its national commitments to the FCC.

10. Charter has worked towards meeting its buildout obligations in New York. It filed with the Commission on July 5, 2016 (and revised on July 26, 2016) a Network Expansion Implementation Plan and 45-Day Report detailing the Company's plans to expand service in compliance with this condition (collectively, the "Network Expansion Plan" or "Plan"). Charter has since submitted a summary of the activities, expenditures, and schedules related to its Network Expansion Plan on August 16, 2016 as part of its 90 Day Report and Implementation Plan, along with subsequent updates on November 18, 2016, February 17, 2017 and May 18, 2017.

II. Delays in Pole Attachment Process.

11. Charter's ability to complete its Network Expansion Plan depends upon its ability to access poles owned by third parties—which, in turn, depends upon those third parties' meeting their contractual and regulatory obligations to grant such access in a timely manner. As Charter's implementation of its Network Expansion Plan has progressed, however, the principal barrier Charter has encountered—again and again—is the failure of pole owners to process and respond to Charter's applications in a timely manner.

12. Charter has prepared and submitted to various pole owners applications for approximately 180,164 poles within the State of New York since May 2016 (when Charter's

transaction with TWC closed and the Buildout Condition became effective) in order to obtain access to poles needed under its Network Expansion Plan, and has paid approximately \$4.1 million in fees to pole owners in connection with those applications. However, New York pole owners have come nowhere close to meeting their obligations under this Commission's rulings to process those applications in a timely manner, and have granted approval for only approximately 6,472 of those poles, *i.e.*, fewer than 4% of those that Charter has submitted. The Commission's 2004 Pole Attachment Order requires pole owners to process applications and complete initial surveys within 45 days. Yet pole owners are consistently and systematically disregarding this requirement—statewide, over 76% of Charter's applications have been pending without approval for more than 45 days; 62% of Charter's applications have been pending without approval for more than 90 days, and over 61% of Charter's applications (covering 110,213 poles) have been pending for more than 100 days.

13. Charter has sought in good faith to work with pole owners to mitigate these issues. As Charter explained in its February 14, 2017 letter to the Commission,¹⁶ Charter has been actively engaging with its three largest pole partners, National Grid, Verizon New York, Inc. ("Verizon") and New York State Electric and Gas Corporation ("NYSEG")—who collectively represent approximately 85% of its pole attachment applications—in an attempt to find mutually acceptable resolutions that will allow Charter to move forward with its Network Expansion Plan. Charter has engaged in joint calls with National Grid (as well as with Verizon) on a weekly basis to discuss the pole attachment process, including answering specific questions

¹⁶ CASE 15-M-0388 - *Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, ProForma Reorganization, and Certain Financing Arrangements*, Letter from Adam Falk, Senior Vice President, State Government Affairs, Charter Communications, Inc. to Karen Geduldig, Director, Office of Telecommunications, Department of Public Service (Feb. 14, 2017) (Filing No. 140).

or concerns regarding specific Charter pole attachment applications, providing ideas and opportunities to expedite and improve work-flow, identifying potential resolutions to barriers encountered, as well as assisting with general housekeeping and other agenda items.

14. Charter has also sought the assistance of the Department in facilitating resolution of these recurring delays. In a February 14, 2017 letter, Charter outlined a number of pole attachment issues that have been delaying Charter's ability to complete its Network Expansion Plan, as well as its mitigation strategy to expedite approvals.¹⁷ As part of this letter, Charter also identified specific areas in which the Department's active engagement would be necessary to facilitate resolution of the pole impediments and mitigate further delays.

15. Charter has also regularly met with Staff over the past year to discuss these issues—including in several meetings held throughout early 2017 and in a joint meeting on March 22, 2017, which included Charter, pole owners (including National Grid), and Department Staff. The Department shares Charter's interest in swiftly obtaining pole attachment rights to facilitate the joint goal of expanding broadband availability in unserved and underserved areas of the State, and has committed to effectuate approvals and prompt the pole owners to take necessary actions to accomplish that goal.¹⁸ Charter welcomes those efforts; however, since the March 22, 2017 meeting, the same delays by pole owners have persisted, and they have approved only 24 additional pole permits.

16. In light of the challenges it has faced in obtaining access to utility poles, Charter on May 17, 2017 submitted to the Commission a request for an extension of the four-year line extension build-out provision, as well as an extension of the requirement that one quarter of the

¹⁷ *Id.*

¹⁸ CASE 15-M-0388, Letter from Karen Geduldig, Director, Office of Telecommunications, Department of Public Service, to Adam Falk, Senior Vice President, State Government Affairs, Charter Communications, Inc. (Feb. 8, 2017) (Filing No. 139).

commitment be completed one year after the close of the transaction.¹⁹ On June 19, 2017 Charter and the Department reached a settlement agreement for consideration by the Commission. Under the terms of that agreement, Charter stands to forfeit as much as \$13 million if it is unable to meet certain targets set forth in the agreement. Absent approval by the Commission of the proposed extension agreement, Charter could be threatened with other penalties. Immediate action by the Commission is required if Charter is to meet its commitments to the Commission and bring broadband services to unserved and underserved New Yorkers.

III. National Grid's Failure to Comply with the Pole Attachment Order and the Commission's Rules.

17. As one of Charter's largest pole partners in New York, National Grid's cooperation is vital to Charter's ability to meet its Commission-ordered buildout targets. National Grid's persistent failure to meet its legal and regulatory obligations to grant timely access to poles has caused significant harm to Charter and impeded Charter's ability to meet these initial targets.

18. National Grid is responsible, either in whole or in part, for a significant portion of the poles for which Charter has not been granted approval to access for attachments as set forth in Paragraphs 11-16 above. Since the Buildout Condition took effect in May 2016, Charter has submitted 877 pole attachment applications to National Grid, requesting permits to attach to 71,855 poles—more than a third of all of the poles that Charter needs to access in order to meet its buildout requirements. To date, however, National Grid has approved only 95 of those applications and has released only 773 poles to Charter—approximately a mere 1% of poles for which Charter has submitted applications to National Grid.

¹⁹ CASE 15-M-0388, Request of Charter Communications, Inc. for an Extension of Time in Which to Comply with the Merger Order's Buildout Provisions and Reserving the Right to Supplement (May 17, 2017) (Filing No. 143).

19. National Grid has not even conducted any preconstruction surveys for 59% of Charter's applications (representing 31% of the poles), despite accepting Charter's payment of application fees to pay for such work, and still has not provided Charter with make-ready estimates (or information sufficient to obtain such estimates from its contractors) for 77% of Charter's applications (representing 87% of the poles). Moreover, of the more than 71,000 poles covered by Charter's applications, National Grid has provided make-ready estimates to Charter for only 3,831 poles.²⁰ While a number of these may represent poles that National Grid jointly owns with another pole owner (and in some instances other pole owners have likewise been a source of unacceptable delays),²¹ National Grid's co-ownership of a pole does not relieve it of its legal obligation to complete surveys and provide make-ready estimates in a timely fashion. And of the poles for which National Grid *has* completed surveys and provided estimates, more than 38% were not completed until *after* expiration of the 45-day deadline specified in the Commission's Pole Attachment Order.

²⁰ In some of these instances, estimates from National Grid's co-owners remain outstanding and Charter is not yet in a position to evaluate whether a workaround, such as underground deployment, would be more practical and cost-effective than attaching to the pole.

²¹ As discussed in Paragraphs 11-16 *supra*, delays by pole owners impeding Charter's Network Expansion Plan have not been limited to National Grid. Charter recently filed a complaint with the Commission regarding delays and unreasonable practices by Verizon, which co-owns many poles with National Grid, and Charter anticipates that it may need to seek the Commission's assistance in addressing similar difficulties with further pole owners as well. Insofar as Verizon and National Grid have each contributed to one another's respective delays and failed to take appropriate responsibility for managing the pole attachment process for poles they co-own, it may be appropriate for the Commission to coordinate its processes for addressing the delays and unreasonable practice of each company as set forth in Charter's complaints against each.

20. Of the 782 applications that remain pending, National Grid’s processing has been delayed, often significantly, as shown below:

Days Application Pending	Applications	Poles
0-45	88	7,675
46-90	171	15,398
91-120	24	1,498
121-150	152	14,742
151-180	92	7,589
181 or more	255	24,180
Total	782	71,082

21. Although Charter is able to access some information about the status of its pole attachment applications through a tracking database maintained by National Grid’s third-party contractor, Osmose Utilities Services, Inc. (“Osmose”), such information does not provide Charter with any visibility into National Grid’s internal processing of Charter’s applications, nor with projected completion dates for various stages of the pole attachment process, further frustrating Charter’s efforts to mitigate delays in National Grid’s processing of such applications.²² Charter has compiled the following summary demonstrating the delays in National Grid’s performance from internal data—which Charter is regularly updating during the course of its build:

²² Charter recognizes that Staff, in an effort to help address such lack of transparency, is working on a proposal to require Charter and each of its major pole partners to collect and share granular, comprehensive data with one another and with the Department. Timely and complete responses by all parties will be important to the effectiveness of these efforts. Because the challenges and delays Charter faces with pole owners extend well beyond information-sharing issues, however, the Department’s efforts in this area should not delay or preclude its assistance in resolving the other difficulties set forth in this Complaint.

Application Processing and Surveys	
Applications Charter Has Submitted to National Grid	877
Poles Encompassed by Charter Applications to National Grid	71,855
Poles for which National Grid has Performed Preconstruction Survey and Provided Make-Ready Estimate	3,831
Poles for which National Grid has Not Yet Performed Preconstruction Survey and Provided Make-Ready Estimate	68,024

IV. National Grid’s Failure to Take Adequate Steps to Mitigate Its Noncompliance.

22. Charter brings this Verified Complaint only after trying without success to obtain National Grid’s cooperation in mitigating the failures described above.²³ National Grid’s unwillingness to address these deficiencies has, in turn, frustrated Charter’s ability to take necessary measures to do so.

23. The principal cause of National Grid’s delays has been National Grid’s failure to commit, deploy, or retain sufficient staff (or third-party contractors) to meet its pole attachment obligations. In particular, National Grid has failed to retain sufficient staff or contractors to complete make-ready designs in a timely fashion following the completion of the preconstruction survey. Without such designs, Charter cannot obtain make-ready estimates from National Grid’s approved make-ready contractors and have those contractors proceed with the necessary make-ready work, if the projected cost is acceptable given the scope of the project. National Grid’s inability to generate make-ready designs in a timely fashion therefore delays the entire pole attachment process.

24. National Grid has exacerbated the delays at its design stage by following the inefficient practice, unique among Charter’s New York electric utility pole owner partners, of refusing to provide preliminary make-ready estimates based on the preconstruction survey.

²³ Charter reserves all rights to seek additional remedies against National Grid beyond those available in a pole attachment complaint before the Commission, including without limitation its rights to seek any appropriate legal and equitable relief in a court of law.

Instead, National Grid has insisted upon completing a time-consuming final make-ready design and issuing a scope of work first—meaning that Charter cannot obtain (from National Grid’s contractors) estimates for the cost of completing projected make-ready work until *after* projects have gone through National Grid’s make-ready design process, which it has understaffed.

25. National Grid’s insistence on putting every project through a complete design phase first—in lieu of providing preliminary estimates following the preconstruction survey—has created numerous inefficiencies that have driven its unreasonable delays.

- a. First, because National Grid has failed to appropriately staff or otherwise devote resources to completing make-ready designs, this stage in National Grid’s process has operated as a significant bottleneck to obtaining make-ready estimates, as discussed above. Under the Commission’s Pole Attachment Order, make-ready estimates are due to the attaching entity within 14 days of completion of the preconstruction survey.²⁴ Yet National Grid has been consistently incapable of meeting this deadline.
- b. Second, National Grid’s process has made it impossible for attaching entities such as Charter to identify, at an earlier stage in the pole attachment process, whether the costs of a particular route renders that route impractical, necessitating rerouting of cables or utilization of underground deployment in lieu of attaching to specific high-cost National Grid poles. National Grid’s process results in attaching entities’ not becoming aware of potential cost concerns until after National Grid has *already* undertaken significant, time-consuming, and unnecessary design work. In effect, National Grid’s process has been forcing

²⁴ Pole Attachment Order, at 3.

attaching entities to await completion of the full make-ready design process for poles to which the attaching entity has not yet agreed to attach.

- c. Third, because National Grid's process has failed to provide an adequate opportunity for attaching entities to identify cost concerns and make according modifications to proposals in advance of make-ready design, it has created further, avoidable delays when—after cost concerns eventually come to light following National Grid's completion of its premature make-ready designs—those make-ready estimates must be revised.

26. The more reasonable and efficient process, followed by Charter's other New York electric utility pole partners, is for the pole owner to prepare and submit to the attaching entity a make-ready estimate based on the pole owner's field survey and preliminary design sketches *before* undertaking the process of finalizing any make-ready designs. This approach has the salutary effect of flagging any high-cost poles and thereby allowing the attaching entity to decide whether the proposed route is practical and cost-effective before the pole owner finalizes its make-ready designs, reducing the amount of time spent upfront on preparing make-ready designs, and obviating the need to revise make-ready designs after they have been finalized.

27. Since submitting its first round of applications in the Fall of 2016, Charter has repeatedly raised these delays in National Grid's design process and pressed National Grid to expand its design capacity and/or to revise its pole attachment process to allow attaching entities to obtain make-ready estimates before National Grid completes make-ready design. However, Charter's efforts to work cooperatively with National Grid to resolve these issues have failed meaningfully to reduce delays in National Grid's process or to impact the backlog of applications pending approval.

28. National Grid has claimed to be addressing these difficulties, including via the supposed addition of design staff by its contractor Osmose. However, notwithstanding National Grid's claimed steps to address its delays, Charter has yet to see a material improvement in National Grid's speed in processing and approving its applications. To the contrary, National Grid appears to be moving as slow ever. By way of example, in Charter's Central New York region (where National Grid's presence in Charter's footprint is most significant), National Grid has only approved 31 applications during the first half of this year (representing 336 poles), as opposed to 49 applications (representing 287 poles) during the first half of 2016. Notwithstanding the significant increase in pole attachment applications and National Grid's claims to have increased its capacity, therefore, its pace in approving Charter's applications has not materially changed.

29. The only step National Grid has been willing to take to address the inefficiency of its design process—and a step to which it agreed only very recently and upon repeated requests from Charter—has been to agree to provide Charter with preliminary information it can use to obtain initial make-ready estimates from National Grid's contractors before National Grid completes make-ready design. Although this represents a modest step in the right direction, it still falls short of National Grid's obligation under the Pole Attachment Order to provide timely make-ready estimates. This revised process still places upon the attaching entity the burden of obtaining initial make-ready estimates—and then does nothing to bind National Grid to those estimates, meaning that an attaching entity would have no ability to rely on cost projections from National Grid's contractors obtained in this manner. Although this approach may reduce some of the roadblocks that have been impeding National Grid's process for the past several months, it

fails to comply with the instruction in the Commissions' Pole Attachment Order that "make-ready estimates should be binding on the parties."²⁵

30. Furthermore, National Grid has failed to follow the prioritization schedule that Charter has requested as a proposed means of ameliorating National Grid's delays. Instead, National Grid has been processing applications in a piecemeal fashion, often failing to fully process one application before moving on to the next. Because Charter cannot begin construction on a buildout project until Charter has obtained permits to attach to all of the poles encompassed by that project (including from co-owners of the same poles), National Grid's haphazard approach to processing Charter's applications has prevented Charter from adhering to the construction schedules set forth in its Network Expansion Plan and subsequent work plans. In addition, Charter's settlement with the Department and Commission requires it to make available to public inquiry (via an online portal) information identifying planned passings to residences and businesses and their estimated dates of completion—which, in turn, requires Charter to be able to attach to pole owners' poles in a predictable manner that follows a planned schedule.

31. Despite the widespread delays in National Grid's processing of Charter's permit applications, National Grid has also refused to give appropriate consideration to engineering solutions that would ameliorate those delays, such as allowing Charter to utilize extension brackets, or to use temporary attachments until more permanent solutions can be found, to attach to National Grid's poles, including poles jointly-owned with Verizon. In particular, Charter has been engaged in discussions with Verizon regarding the use of alternative attachment methods to expedite Charter's access to such poles, including alternative spacing, by which Charter's

²⁵ *Id.* at 3-4.

facilities would be attached below Verizon's (and which, in turn, would be significantly facilitated by the use of brackets). This issue was discussed at the March 22, 2017 stakeholder meeting with the Commission, at which time National Grid requested a copy of the proposed engineering for the bracket from Verizon. However, to Charter's knowledge, National Grid and Verizon have failed to come to an agreement regarding the use of bracketing on jointly-owned poles. Upon information and belief, although Charter has not been a party to the discussions between National Grid and Verizon, National Grid has not exercised reasonable efforts to reach such an agreement or consider the proposal in a timely fashion.

32. Due to this continued lack of progress by National Grid in addressing its deficiencies, Charter on June 13, 2017, submitted a letter requesting that National Grid take certain immediate actions, required under the Pole Attachment Order, to address its delays ("Demand Letter").²⁶ Charter also requested that National Grid's management take steps to accelerate its make-ready estimate process to enable attaching entities to obtain meaningful estimates before National Grid completes full design work. Finally, Charter again requested National Grid's consent to utilize several standard alternative attachment methods, including temporary attachments and bracketing, to accelerate the make-ready and construction process.²⁷

33. National Grid has admitted, including at the March 22, 2017 meeting with Staff, that it is failing to meet the deadlines set forth in the Pole Attachment Order. However, it has

²⁶ See Letter from Terence Rafferty, Regional Vice President, Northeast Region Field Operations, Charter Communications, to Keith McAfee, Vice President – Electric Operations New York, National Grid (June 13, 2017) (attached as Exhibit 1). The original Exhibit B to Exhibit 1 has been omitted from this filing as containing trade secret information, but can be provided, subject to a request for confidential treatment, if needed to assist the Commission's evaluation of the issues set forth in this Complaint.

²⁷ The use of temporary attachments and brackets are methods expressly contemplated by the Pole Attachment Order for the purpose of reducing make-ready delays and cost, and do not require separate agreement of the parties to implement. See Pole Attachment Order, at 5-6.

sought to deflect its own responsibility for failing to process Charter's applications in a timely manner by seeking, without any basis in fact, to attribute those delays to Charter.

34. For example, National Grid has attempted to divert focus from its enormous backlog of applications by pointing to Charter's submission, in late 2016, of a small number of applications that National Grid deemed incomplete because they used maps instead of individual strand mapping to show desired plant routes. Prior to Charter's Network Expansion Plan and its concomitant increase in the volume of pole attachment applications, National Grid had accepted applications in such formats in the regular course, including from Charter—and began insisting on more detailed applications only once the volume of Charter's applications began to increase in light of Charter's Buildout Commitment and Network Expansion Plan. However, this small number of initial Charter applications has not been a material driver of National Grid's delays. First, the number of such applications was not very large—in Charter's Central New York region, for instance (where National Grid's presence is most significant for present purposes), fewer than a quarter of Charter's applications in October and November 2016 required supplementation with strand mapping. Any initial delays arising out of Charter's supplementation (upon National Grid's request) of so few applications cannot have been the cause of National Grid's systematic delays across Charter's much larger application pool. Second, Charter quickly completed the strand mapping requested by National Grid and resubmitted these applications to National Grid by December 2016, and has included strand maps in all applications to National Grid since December. Thus, even accounting for any short delay caused by Charter's supplementation of some of its early applications, even those supplemented applications have now have been pending with National Grid for six months or

more, well past the required timeframes for completion of preconstruction surveys and make-ready work.

35. National Grid has further claimed that Charter has made it more difficult and complicated for National Grid to track and process Charter's applications by requesting that certain Charter applications be prioritized. However, the only reason a need for prioritization has arisen in the first place is because National Grid has been failing to process applications in a timely fashion on a first-come first-serve basis—imperiling Charter's progress on satisfying the Buildout Condition and necessitating its access to specific poles on an expedited basis to mitigate those delays. Moreover, prioritization affects the order in which National Grid processes Charter's applications, but should not materially affect the overall rate at which National Grid processes them.

36. Finally, National Grid has sought to blame its own delays on instances in which Charter has decided not to proceed with attaching to certain National Grid poles after receipt of a make-ready estimate. This excuse, however, cannot cover for National Grid's own failings in processing Charter's applications in a timely fashion.

- a. First, any delays arising out of Charter's decisions not to proceed with certain make-ready work upon receiving a make-ready estimate is a problem entirely of National Grid's own making. As set forth in Paragraphs 24-25 above, National Grid has not been following the usual industry practice of making available initial make-ready estimates promptly after the preconstruction survey, which allows attaching entities to identify high-cost poles and develop workarounds before the pole owner undertakes extensive and potentially superfluous design work. To the extent that National Grid insists on undertaking an inefficient and time-consuming

final design process before attaching entities have even been given a make-ready estimate and decided whether to proceed with make-ready on identified poles, it is that unreasonable process that is the cause of any delays that occur when attaching entities, such as Charter, decide to forgo certain high-cost attachments once it becomes aware of them. Modifications of pole attachment proposals to avoid identified high-cost poles are a predictable and normal part of the pole attachment process. National Grid's policies and procedures make such changes unnecessarily disruptive and time-consuming.

- b. Second, National Grid's excuse is ultimately directed at the process set forth in this Commission's Pole Attachment Order itself. Nothing in the Commission 2004 Pole Attachment Order obligates attachers to pay for make-ready work if estimates reveal that work to be impractically costly; rather, attachers are free under the Commission's order to pursue alternative approaches for routing their plant under or around high-cost poles once those poles are identified via the make-ready estimate.²⁸ If National Grid has failed to appropriately plan and staff for that contingency, such delays are the result of its own policies, not Charter's.
- c. Third, there is significant reason to be skeptical of National Grid's assertion that its delays have been caused, in any meaningful way, by Charter's decision to forgo certain pole attachments. Of the 71,855 poles for which Charter has submitted applications to National Grid, it has declined to move forward with make-ready upon receipt of estimates on only 960 of those poles. Moreover, in such instances the result of Charter's foregoing certain pole attachments is

²⁸ See Pole Attachment Order, at 3 (providing attaching entities 14 days to review and decide whether to pay for make-ready work upon receipt of estimate).

generally to *remove* poles from its applications, not add new ones. Removal of poles in these instances should not be expected to materially delay National Grid's planning and make-ready process for the poles that remain.

37. With respect to allowing Charter to utilize alternative attachment methods—which National Grid claims to be taking under advisement—National Grid has suggested that Verizon, with which it co-owns a large number of poles that are the subject of pending Charter applications, has not been diligent in working with National Grid to address engineering issues arising out of such proposals. However, as set forth in Paragraph 31 above, Charter's requests have now been pending for well over three months. While Charter lacks visibility into whatever discussions may have taken place between National Grid and Verizon with respect to such proposals to attach to their jointly-owned poles, upon information and belief, National Grid has not exercised reasonable efforts in moving those discussions forward or in working towards a resolution that would permit Charter to utilize alternative attachments as contemplated by the Commission's Pole Attachment Order.

38. National Grid's consistent failures to meet the timeframes required under the Pole Attachment Order, and refusal to take adequate, reasonable steps to mitigate those failures, have adversely affected Charter and the 145,000 New Yorkers who stand to benefit from the expanded broadband service contemplated by the Network Expansion Plan. In the face of National Grid's intransigence, Charter has been unable to satisfy the milestones in the Buildout Condition. It is also thereby deprived of the opportunity to use its network buildout in New York State as a means of partially satisfying its buildout commitments to the FCC.²⁹

²⁹ CASE 15-M-0388, Charter Communications, Inc. Annual Update (May 18, 2017) (Filing No. 145).

39. The inability of Charter to expand its footprint caused by National Grid's delays also inflicts commercial harm on Charter by depriving it of the opportunity to provide service to new customers. And, as noted above, National Grid's delays are also subjecting Charter to the continued risk of significant regulatory sanctions based on circumstances outside of Charter's control.

COUNT I – VIOLATION OF PUBLIC SERVICE LAW § 119-a

40. Charter realleges and incorporates by reference Paragraphs 1 through 39 as though fully set forth herein.

41. As described above, National Grid has, in numerous instances, failed to supply make-ready estimates, or information from which Charter can obtain make-ready estimates from National Grid's contractors, within 14 days of completion of a preconstruction survey.

42. In addition, National Grid has failed to take reasonable efforts to permit, and has thus constructively denied, Charter's requests to utilize alternative attachment methods, including bracketing and temporary attachments, to accelerate processing times.

43. National Grid's failure to meet the above timeframes required for providing make-ready estimates, and constructive refusal to consent to alternative attachment methods, violates Public Service Law § 119-a, and the Commission's orders implemented thereunder, including its 2004 Pole Attachment Order.

COUNT II – VIOLATION OF PUBLIC SERVICE LAW § 66

44. Charter realleges and incorporates by reference Paragraphs 1 through 43 as though fully set forth herein.

45. As described above, National Grid has, in numerous instances, failed to supply make-ready estimates, or information from which Charter can obtain make-ready estimates from National Grid's contractors, within 14 days of completion of a preconstruction survey.

46. In addition, National Grid has failed to take reasonable efforts to permit, and has thus constructively denied, Charter's requests to utilize alternative attachment methods, including bracketing and temporary attachments, to accelerate processing times.

47. National Grid's failure to meet the above timeframes required for providing make-ready estimates, and constructive refusal to consent to alternative attachment methods, constitute "unjust and unreasonable" acts in violation Public Service Law § 66(5).

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth herein, Charter Communications, Inc. respectfully requests that the Commission initiate an expedited dispute resolution proceeding to resolve the outstanding pole attachment issues between Charter and National Grid.

To the extent the Commission's further intervention fails to produce a resolution, Charter requests that the Commission order National Grid to take immediate steps to do the following, backed up, if necessary, by the Commission's enforcement and penalty provisions contained in Public Service Law sections 25 and 26:

1. Implement measures as needed to enable Charter to meet its Commission-ordered deadlines with respect to its Network Expansion Plan, including, without limitation;
 - a. Ensuring that an adequate number of National Grid's own workers are available to process Charter's pole attachment applications with the timeframes required under the 2004 Pole Attachment Order, particularly with respect to make-ready design; and/or

- b. Hiring outside contractors to perform the necessary survey and make-ready design work to timely process such applications; and/or
 - c. Allowing the use of standard alternative measures, including bracketing and temporary attachments, to further facilitate the timely completion of the request make-ready work; and
 - d. Providing Charter, on a weekly basis, with real-time information regarding the status of all Charter pole attachment applications, including, at minimum³⁰:
 - i. the date preconstruction survey work is completed by National Grid for each application/pole set;
 - ii. the date the make-ready check is received by National Grid and/or its contractors for each application/pole set;
 - iii. the date make-ready work is submitted to National Grid for completion for each application/pole set; and
 - iv. the date make-ready work is completed for each pole/set of poles; and
 - e. Prioritizing applications identified by Charter as necessary to move forward with Charter's projects needed to complete Charter's Buildout Commitments; and
 - f. Performing each of the above in a manner that, in combination, addresses the backlog of Charter's pending pole attachment applications to National Grid and enables Charter to meet its Commission-ordered buildout obligations; and
2. Grant any such further relief as the Commission deems appropriate.

³⁰ Any such remedy can be coordinated with or subsumed within, as appropriate, the data collection and reporting obligations Staff is requiring for pole owners more generally.

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Respectfully Submitted,

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