

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF VIASAT CARRIER SERVICES, INC.)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER TO) CASE NO.
RECEIVE CONNECT AMERICA FUND PHASE II) 2018-00330
AUCTION SUPPORT FOR VOICE AND)
BROADBAND SERVICES)

O R D E R

On January 9, 2019, Viasat Carrier Services, Inc. (Viasat) filed a motion, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for ten years for redacted portions of its Federal Communications Commission (FCC) Form 683 produced in response to Commission Staff's First Request for Information (Staff's First Request), Item 17.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."¹ In support of its motion, Viasat argued the application of two provisions of KRS 61.878. Under KRS 61.878(1)(m), the Open Records Act exempts "[p]ublic records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing,

¹ KRS 61.872(1).

protecting against, mitigating, or responding to a terrorist act . . ."² The exemption is limited to certain types of records, including:

Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.³

A terrorist act is defined as including a criminal act intended to "[d]isrupt a system" identified in the above.⁴

In addition, KRS 61.878(1)(c)(1) exempts records that are "[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records."

Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁵ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁶

ARGUMENT

The information redacted from Viasat's response to Staff's First Request, Item 17, consists of a North American map of Viasat's satellite network and a Project Funding Description consisting of sales and marketing strategies. Viasat argued that the map shows the location of critical communications systems and should be prohibited from

² KRS 61.878(1)(m)(1).

³ KRS 61.878(1)(m)(1)(f).

⁴ KRS 61.878(1)(m)(2)(b).

⁵ See KRS 61.871.

⁶ 807 KAR 5:001, Section 13(2)(c).

disclosure by KRS 61.878(1)(m). Viasat also argued that the Project Funding Description contains proprietary information that would give competitors an advantage if disclosed within the build-out timeframe of approximately ten years. Viasat also noted that the FCC Form 683 application instructions stated that the project funding description would be treated as confidential and withheld from public inspection pursuant to 47 C.F.R. § 0.451(b)(4).

FINDINGS

Having considered the motion and the material at issue, the Commission finds that Viasat's motion for confidential treatment is granted. The Commission grants confidential treatment indefinitely for the satellite network map pursuant to the plain language of KRS 61.878(1)(m) as locations of critical communications systems. The Commission grants confidential treatment for ten years for the Project Funding Description. This information consists of internal strategic business plans that would harm Viasat competitively if disclosed before the build-out.⁷ Although 47 C.F.R. § 0.451(b)(4) only specifically prohibits the FCC and not others from disclosing information deemed confidential by the FCC, the fact that it deemed this type of information confidential demonstrates that it is generally recognized as confidential and is entitled to protection under KRS 61.878(1)(c)(1). Therefore, the designated material meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(m) and (1)(c)(1).

IT IS THEREFORE ORDERED that:

⁷ See Case No. 2016-00370, *Electronic Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates and for Certificates of Public Convenience and Necessity*, (Ky. PSC Dec. 10, 2018), Order at 3, 5, granting confidential treatment to internal business planning strategies.

1. Viasat's motion for confidential treatment is granted.
2. The map granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.
3. The Project Funding Description granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.
4. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).
5. Viasat shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
6. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Viasat shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Viasat is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.
7. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Viasat to seek a remedy afforded by law.

By the Commission



ATTEST:

Nancy Vusel for
Executive Director

Case No. 2018-00330

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