

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

**THE ELECTRONIC APPLICATION OF)
KENERGY CORP. FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY)
FOR THE CONSTRUCTION OF A HIGH-SPEED) Case No. 2021-00365
FIBER NETWORK AND FOR APPROVAL OF THE)
LEASING OF THE NETWORK'S EXCESS CAPACITY)
TO AN AFFILIATE TO BE ENGAGED IN THE)
PROVISION OF BROADBAND SERVICE TO)
UNSERVED AND UNDERSERVED HOUSEHOLDS)
AND BUSINESSES OF THE COMMONWEALTH)**

**KENERGY CORP. RESPONSE TO KBCA'S MOTION FOR
LEAVE TO FILE SUPPLEMENTAL BRIEFING**

KENERGY CORP. ("Kenergy") for its response to the motion by the KBCA requesting leave to file a supplemental brief on House Bill 315, states as follows.

1. House Bill 315 Has No Impact on the Outcome of this Proceeding.

Kenergy filed its Application seeking a CPCN to (i) construct a fiber optic network for its intra-system communication needs and (ii) to lease excess capacity on that fiber optic network to its affiliate, Kenect, for the provision of broadband service in Kenergy's predominantly unserved or underserved territory. Kenergy's Application and all evidence submitted in this proceeding fully satisfy all requirements of KRS 278.020 and KRS 278.5464 (both at the time the Application was filed and as amended by House Bill 315).

There is no need for additional briefing or the presentation of any other evidence in this proceeding. Kenergy has fully demonstrated that it has a need for a new intra-system communications system and that there will be no wasteful duplication because Kenergy will phase in construction of its new intra-system communications network to replace its current microwave

communications system, which has a limited useful life and unsupported equipment. This will result in Kenergy investing in a needed intra-system communications network that is safer and more reliable, which will best serve Kenergy and its members.

Accordingly, the Commission should enter an Order approving Kenergy's application as presented.

2. KBCA Exceeds the Scope of its Intervention and Causes Further Delay.

Once again, KBCA flouts the Commission's Order limiting its scope of intervention, now seeking to delay this proceeding even further so that it may argue "whether the enactment of HB 315 impacts the matter pending before the Commission."¹ KBCA has no right to file such a brief in this proceeding.

[T]he Commission finds that KBCA failed to demonstrate that it has a special interest not otherwise adequately requested. This is because the only special interest proffered by KBCA was to ensure that the law was followed. This is a generalized interest held by all Kentuckians, and does not rise to the level of a special interest that satisfies the legal standard for intervention. . . . [T]he Commission finds that KBCA should be granted intervention, but KBCA is limited to the issue of maps depicting whether the service areas are underserved or unserved.²

Moreover, as the Commission already recognized in this proceeding, "Kenergy is correct that the Commission has denied intervention to persons whose interest was that of a competitor." In this proceeding, intervention was sought on behalf of and granted to KBCA, but KBCA has presented testimony exclusively from an employee of Charter Communications;³ the only maps provided are alleged to be the proprietary information of Charter Communications and were

¹ Motion for Leave to File Supplemental Briefing, at 3.

² Order Granting Intervention, at 4, *available at*: https://psc.ky.gov/pscscf/2021%20Cases/2021-00365//20211209_PSC_ORDER.pdf.

³ Direct Testimony of Jason Keller on Behalf of KBCA, at Keller-1 ("My name is Jason Keller. My position is . . . Vice President, Government Affairs and Regulatory Strategy at Charter Communications."), *available at*: https://psc.ky.gov/pscscf/2021-00365/tosterloh%40sturgillturner.com/01212022072703/KBCA_Keller_Testimony_PUBLIC_Jan_21_%2801606211%29.pdf.

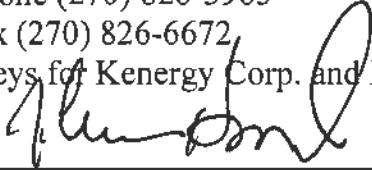
created by Charter Communications solely for use in this proceeding;⁴ and Charter Communications is alleged to be the only KBCA member that serves Kenergy's territory.⁵

The Commission should not allow the promulgation of broadband to Kentucky's citizens to be further delayed by attempts to prevent competition in a market-based, competitive industry. See KRS 278.546; 278.5462.

The Commission should deny KBCA's Motion and this matter should stand submitted for decision on April 22, 2022, as set forth in the Commission's March 31, 2022 Order.

Respectfully submitted,

DORSEY, GRAY, NORMENT & HOPGOOD
318 Second Street
Henderson, KY 42420
Telephone (270) 826-3965
Telefax (270) 826-6672
Attorneys for Kenergy Corp. and Kenect, Inc.

By 
J. Christopher Hopgood
chopgood@dkgnlaw.com

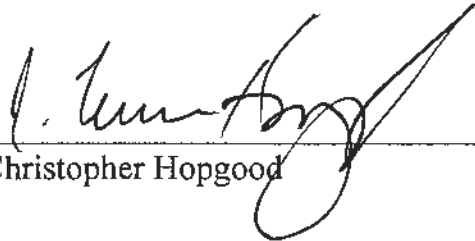
CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served by electronic filing to the Kentucky Public Service Commission, 211 Sower Blvd., Frankfort, KY 40602 with a copy served electronically to the Kentucky Attorney General, Office of Rate Intervention, 700

⁴ KBCA's Responses to Kenergy's Requests for Information at 5, 6 ("The maps produced in this proceeding are proprietary materials of KBCA member entity Charter. . . . The maps produced in this proceeding were prepared by KBCA member entity Charter in January 2022 for purposes of KBCA's testimony in this proceeding . . ."), available at: https://psc.ky.gov/psccef/2021-00365/tosterloh%40sturgillturner.com/03042022051114/2_-KBCA_Responses_to_Kenergy_final.pdf.

⁵ *Id.* at 3 ("As far as KBCA is aware, the only KBCA member entity that provides internet service within any portion of Kenergy's certificated electric territory today is Charter.").

Capital Avenue, Suite 20, Frankfort, KY 40601-8204, and James W. Gardner and M. Todd Osterloh, Sturgill, Turner, Barker & Maloney, PLLC, 333 W. Vine St., Suite 1500, Lexington, KY 40507, on this 21st day of April, 2022.



J. Christopher Hopgood