

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

In the Matter of:)	
)	
ELECTRONIC APPLICATION OF KENERGY)	
CORP. FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY FOR THE)	
CONSTRUCTION OF A HIGH-SPEED FIBER)	CASE NO.
NETWORK AND FOR APPROVAL OF THE)	2021-00365
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)	
<u>BUSINESSES OF THE COMMONWEALTH</u>)	

KBCA’S PETITION FOR CONFIDENTIAL TREATMENT

Kentucky Broadband and Cable Association (“KBCA”), by counsel and pursuant to 807 KAR 5:001, Section 13, respectfully requests the Public Service Commission to grant confidential protection to the entirety of Exhibits 1 and 3 of KBCA’s responses to the Commission Staff’s Initial Request for Information. Specifically, KBCA seeks confidential treatment for the contents of these exhibits because it contains confidential and proprietary information. In addition, KBCA seeks confidential treatment for the residential addresses listed in Exhibit 2 of KBCA’s responses to the Commission Staff’s Initial Request for Information, which is consistent with Section 4(10) of 807 KAR 5:001.

Administrative Regulation 807 KAR 5:001, Section 13(2) sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “specific grounds pursuant to KRS 61.878

[the Kentucky Open Records Act] for classification of that material as confidential.” 807 KAR 5:001, Section 13(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(c)(1) exempts from disclosure:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records.

This exception “is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997). One “obvious disadvantage” is created when proprietary information is disclosed “without the hurdles systematically associated with acquisition of such information about privately owned organizations.” *See Marina Management Service, Inc. v. Commonwealth of Ky., Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995).

Exhibit 1 consists of an extract from Charter’s September 2021 Form 477 submission to the FCC containing speed and deployment data from January 1, 2021 through June 30, 2021. This submission shows a list of the census blocks in which Charter offers broadband services, including the maximum broadband speeds offered and the technology used. The information in Exhibit 1, which has not yet been published by the Federal Communications Commission (“FCC”), is more current than the publicly available data that represents Charter’s available service offering as of December 31, 2020. Charter does not publicly disclose this data until after it is made public by the FCC, which is expected to be later this year.

Other providers that offer the same services as Charter—video, voice, and internet access—would receive an unfair commercial advantage in the disclosure of that information “without the hurdles systematically associated with acquisition of such information about privately owned organizations.” *See id.* Another voice, video, or broadband provider seeking to gain a similar level of detail about Charter’s service area for marketing or other competitive purposes would need to engage in a costly and time-consuming process to gather such information today. The information in Exhibit 1 should, therefore, be granted confidential treatment through the time at which it is publicly released by the FCC.

Exhibit 3 consists of commercially available data from Ookla, a provider that offers user-initiated speed testing, showing the median and top 10% of speeds measured for Charter services in the counties in which Exhibit 1 indicates that Charter offers broadband. This data is identified as confidential because it is proprietary and competitively sensitive information available only by paid subscription. The Commission has previously held that information obtained from a third-party, paid subscription service is entitled to confidential protection. *See, e.g., Kentucky Power Company*, Case No. 2020-00174 ([Ky. PSC Dec. 23, 2020](#)). Accordingly, the information in Exhibit 3 should be granted confidential treatment in perpetuity.

KRS 61.878 exempts from disclosure “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Exhibit 2 displays screenshots showing the availability of Charter’s broadband services at select addresses within counties where Charter provides service that overlays Kenergy’s service area. The specific address associated with each screenshot is listed on each page. The Kentucky Supreme Court has explained that a residential address will almost always meet the standard for this exemption because the privacy interest in the address is “substantial” and the public interest in disclosure is

“rarely so.” *Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 89 (Ky. 2013). Accordingly, the addresses identified in Exhibit 2 should be granted confidential treatment in perpetuity.

For the foregoing reasons, KBCA respectfully requests confidential treatment of the entirety of Exhibits 1 and 3 and the addresses identified in Exhibit 2 of KBCA’s responses to the Commission Staff’s Initial Request for Information, as described above.

RESPECTFULLY SUBMITTED,

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