

**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)	
BUSINESSES OF THE COMMONWEALTH)	

DIRECT TESTIMONY OF

JASON KELLER

**ON BEHALF OF
THE KENTUCKY BROADBAND AND CABLE ASSOCIATION**

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TESTIMONY INDEX

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I. INTRODUCTION

1 **Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

2 A. My name is Jason Keller. My position is Chairman of the Board of the Kentucky
3 Broadband and Cable Association (“KBCA”) and Vice President, Government Affairs
4 and Regulatory Strategy at Charter Communications (“Charter”). KBCA’s business
5 address is 1617 Foxhaven Drive, Richmond, Kentucky 40475.

II. BACKGROUND

6 **Q. WHAT IS KBCA?**

7 A. KBCA is the trade association that represents Kentucky’s investor-owned cable
8 companies. KBCA’s member companies operate in nearly all 120 counties across the
9 state, offering high-speed broadband service, cable television, landline telephone, and
10 a variety of other services, to nearly two million Kentucky homes and businesses.
11 KBCA members have invested in networks to extend broadband and other connectivity
12 services to nearly two million homes and small businesses in Kentucky. Of these, more
13 than a million Kentuckians receive some type of broadband service from a KBCA
14 member company.

15 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
16 **BUSINESS EXPERIENCE.**

1 A. I have worked in the cable industry for nearly 14 years, including with Insight
2 Communications, Time Warner Cable, and Charter. Prior to my work in the broadband
3 and telecommunications industry, I served in the Office of the Governor in Frankfort.
4 A lifelong Kentuckian, I am a graduate of Georgetown College.

5 **Q. WHAT ARE YOUR RESPONSIBILITIES AS CHAIRMAN OF THE BOARD**
6 **OF THE KBCA?**

7 A. I assist in setting goals and strategy for the organization, as well as lead regular board
8 meetings of the member companies.

9 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

10 A. I have not provided pre-filed written testimony to the Commission, but I participated
11 in public comment sessions related to the Commission's work on utility pole
12 attachment regulations. I also appeared at a virtual hearing in this proceeding on
13 November 15, 2021.

III. PURPOSE OF TESTIMONY

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

15 A. The purpose of my testimony is to address Kenergy Corp.'s ("Kenergy") maps
16 depicting where it plans to construct and lease its fiber network, and whether those
17 areas are unserved or underserved as defined by KRS 278.5464(2)(b)-(c).

18 **Q. WHAT DO YOU CONCLUDE?**

19 A. The fiber network that Kenergy is proposing to construct, and to lease to a broadband
20 affiliate, will not be exclusively located in unserved and underserved areas, or
21 exclusively capable of being used to offer service in such areas. Based on the maps

1 provided by Kenergy, both Kenergy's fiber system and its proposed lease of that fiber
2 system will include homes and businesses in certain areas where broadband service is
3 already available from Charter, primarily in Daviess and Henderson Counties, with
4 some additional overlap in Hopkins, McLean, Ohio, Union, and Webster Counties.¹

IV. KENERGY'S PLANNED FIBER CONSTRUCTION

5 **Q. HAS KENERGY PROVIDED INFORMATION REGARDING THE SCOPE OF**
6 **ITS PLANNED FIBER SYSTEM CONSTRUCTION?**

7 A. Yes. In its responses to KBCA's Second Request for Information, Kenergy explained
8 that "Kenergy's smart grid will be overbuilt onto its existing distribution infrastructure"
9 and further explained that maps depicting those distribution facilities were provided in
10 response to KBCA's initial Data Requests 5 and 6. *See* Kenergy Response to KBCA
11 Data Request No. 11.a.

12 **Q. WHAT DO THOSE MAPS DEPICT?**

13 A. The maps show Kenergy's full distribution infrastructure. Kenergy's responses to
14 KBCA's initial Data Requests 5 and 6 indicates that these maps also represent the full
15 area where Kenergy plans to install its fiber optic network and lease that network to its
16 broadband affiliate, Kenect, Inc. ("Kenect"), who will sublease to non-affiliate
17 Conexon Connect. *See* Kenergy Response to KBCA Data Request Nos. 5 and 6. Fiber
18 optic networks are generally capable of providing broadband service (through drops
19 and line extensions to individual homes) several hundred feet beyond the facilities

¹ There is also a very small overlapping area in Caldwell County.

1 located in the right of way, so Kenergy's proposed fiber optic network will be capable
2 of providing service to areas near its distribution plant.

3 **Q. DO EXISTING BROADBAND PROVIDERS PROVIDE SERVICE IN AREAS**
4 **COVERED BY KENERGY'S DISTRIBUTION PLANT AND PLANNED**
5 **FIBER NETWORK?**

6 A. Broadband service is not available from KBCA members throughout the entire
7 footprint of Kenergy's proposed fiber network, but there are some areas covered by the
8 proposed fiber network where KBCA members offer such service today, primarily in
9 Daviess and Henderson Counties. KBCA asked Charter engineers to prepare maps
10 showing the overlap between Kenergy's planned fiber network and areas served by
11 Charter. These maps are being provided as Exhibits 1 and 2 to my testimony, which I
12 will explain below. As shown on those maps, Kenergy's planned fiber network
13 deployment partially overlaps Charter's existing broadband service footprint in eight
14 counties: substantial overlapping areas in Daviess and Henderson Counties, as well as
15 additional overlapping areas in Hopkins, McLean, Ohio, Union, and Webster Counties,
16 and a very small area in Caldwell County.

17 **Q. OF THE AREAS WHERE CHARTER PROVIDES SERVICE, DO ANY AREAS**
18 **NOT HAVE A SERVICE OFFERING THAT MEETS OR EXCEEDS**
19 **TWENTY-FIVE (25) MEGABITS PER SECOND DOWNSTREAM AND**
20 **THREE (3) MEGABITS PER SECOND UPSTREAM?**

21 A. No. In all areas where Charter offers service, service offerings are available with
22 speeds well in excess of the 25 megabits per second downstream and 3 megabits per
23 second upstream speed identified in KRS 278.5464(2)(b). Charter today offers

1 broadband speeds of up to 1 gigabit per second download and 35 megabits per second
2 upload in all areas where its existing network overlaps Kenergy's proposed fiber
3 network.

4 **Q. HAS CHARTER REPORTED ITS SERVICE AREAS TO THE FEDERAL**
5 **COMMUNICATIONS COMMISSION ("FCC")?**

6 **A.** Yes. Charter reports its service areas to the FCC through the FCC's Form 477 process,
7 and maps depicting the census blocks in which Charter has reported providing service
8 are publicly available. Charter's most recent service area maps as reported to the FCC
9 are attached hereto as Exhibit 1 (Confidential).²

10 **Q. THE FCC'S BROADBAND MAPS HAVE BEEN CRITICIZED FOR**
11 **OVERSTATING SOME INTERNET SERVICE PROVIDERS' SERVICE**
12 **AREAS. IS IT POSSIBLE TO PROVIDE MORE GRANULAR DATA ABOUT**
13 **EXISTING BROADBAND AVAILABILITY?**

14 **A.** Yes. The FCC maps show coverage at the census block level, and they do not provide
15 a ready way to distinguish between census blocks where service is available to every
16 home and business and census blocks where broadband is available to some homes and
17 businesses but not all of them. In order to assist the Commission with understanding
18 the availability of broadband service within the footprint of Kenergy's proposed fiber
19 network, KBCA asked Charter engineers to prepare maps that more closely
20 approximate the areas in which Charter offers broadband service, based upon the
21 specific locations of Charter's distribution plant and the radius around that distribution

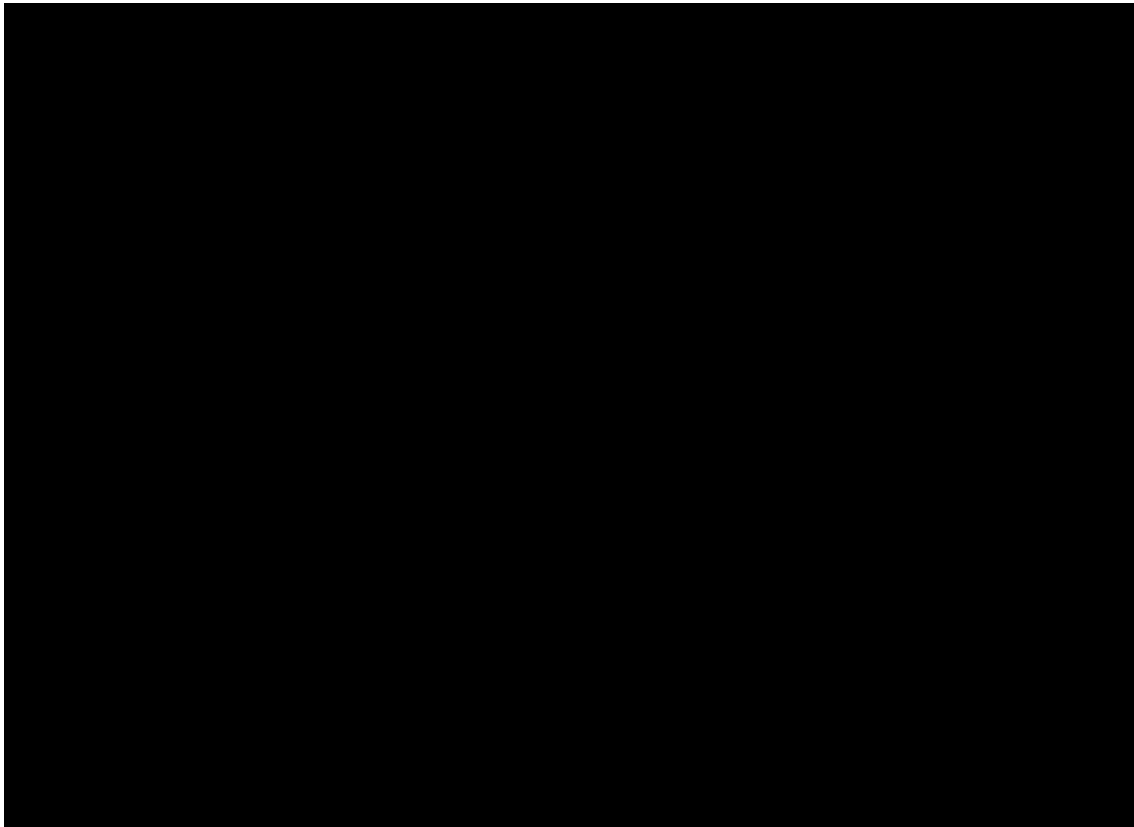
² Exhibit 1 reflects information recently supplied to the FCC and not yet published, so it is more current than the information that is publicly available today.

1 plant where broadband service can be provided through drop connections. Although
2 the FCC is expected to collect and publish data at this level of detail from broadband
3 providers in the future through the Broadband DATA Act, this is a more granular level
4 of data than the FCC collects and publishes from broadband providers today, and is
5 competitively sensitive information that KBCA members do not generally make
6 public. However, KBCA understand that this information has value to aid the
7 Commission's decisionmaking in this proceeding. These more detailed maps are being
8 provided as Exhibit 2 (Confidential) to my testimony.

9 **Q. WHAT DO THESE MAPS SHOW REGARDING THE OVERLAP BETWEEN**
10 **THE AREAS WHERE KENERGY PLANS TO INSTALL FIBER AND THE**
11 **AREAS ALREADY SERVED BY CHARTER?**

12 A. The maps at the granular level continue to show that Kenergy's proposed fiber network
13 will include some areas where Charter offers broadband service today. One example
14 is depicted below, with Kenergy distribution lines shown in red and Charter service
15 areas in yellow. The red lines show Kenergy's distribution infrastructure where its
16 proposed fiber network will be located, meaning that the areas in which the network
17 will be capable of providing broadband service will extend beyond those red lines. The
18 maps identify and demonstrate areas where broadband service is already available
19 within the footprint of Kenergy's proposed fiber network. To take one example, in
20 Daviess County, it is clear that there are substantial areas around Owensboro where
21 Kenergy's distribution infrastructure runs through areas where Charter already offers
22 broadband service today:

1 **[Begin Confidential]**



2

3 **[End Confidential]**

4 **Q. HAS KENERGY PRODUCED ANY MAPS OF THE AREAS WITHIN ITS**
5 **SERVICE TERRITORY THAT IT HAS DETERMINED ARE UNDERSERVED**
6 **OR UNDERSERVED AS DEFINED IN KRS 278.5464(2)(b)-(c)?**

7 **A.** Yes, Kenergy provided a link to Conexon Connect’s nationwide map of what areas are
8 unserved or underserved, prepared using the FCC’s census block-level data from the
9 Form 477 process. *See* Kenergy Responses to KBCA’s First Request for Information,
10 Attachment A. Because this map uses the Form 477 data, it may somewhat overstate
11 existing levels of broadband service, but it clearly confirms the analysis by Charter’s

1 engineers at KBCA’s request in the maps attached to my testimony as Exhibits 1 and 2
2 that there are areas within Kenergy’s distribution service footprint where broadband
3 service is already available.

V. KENERGY’S PROPOSED LEASE AND SUBLEASE

4 **Q. HAS KENERGY INDICATED HOW IT IS PROPOSING TO LEASE ITS**
5 **EXCESS FIBER FACILITIES TO KENECT?**

6 A. Yes. Kenergy indicated that it “proposes to lease the excess capacity of the entire smart
7 grid fiber network to Kenect.” *See* Kenergy Response to KBCA Data Request
8 No. 11.c. Therefore, its proposal is to lease to Kenect a fiber network that, as the maps
9 accompanying my testimony demonstrate, is capable of providing broadband service
10 both in areas that are currently unserved and underserved and in areas where broadband
11 service is already available.

12 **Q. DOES KENERGY’S LEASE WITH KENECT PROVIDE ANY**
13 **RESTRICTIONS OR LIMITATIONS ON THE PROVISION OF BROADBAND**
14 **OR THE USE OF KENERGY’S FIBER NETWORK?**

15 A. No. Kenergy’s Application describes Kenect as “engaged exclusively in the provision
16 of broadband service to unserved or underserved households and businesses” and states
17 that the excess fiber capacity will be leased to Kenect “thereby enabling Kenect to
18 extend and enhance the availability of broadband service to unserved and underserved
19 households and businesses in Kenergy’s service territory.” Application at 2, 9.
20 However, there are no provisions included in the lease between Kenergy and Kenect,
21 a copy of which was filed alongside Kenergy’s Application, that limit the leased

1 facilities to being used exclusively in the provision of broadband service to unserved
2 and underserved areas, and as I discussed earlier, the facilities being leased will be
3 capable of providing service both to unserved and underserved areas as well as to areas
4 where broadband service is already available today.

5 **Q. HAS KENERGY INDICATED HOW KENECT WILL SUBLEASE THE**
6 **KENERGY FIBER FACILITIES TO CONEXON CONNECT?**

7 A. No. KBCA requested information regarding the areas of the fiber system that will be
8 subleased and whether the sublease would be limited to areas identified as unserved or
9 underserved, and Kenergy did not provide any information related to the sublease,
10 stating that “Kenergy is not a party to the sublease.” *See* Kenergy Response to KBCA
11 Data Request Nos. 11.c and 11.g.

12 **Q. HAS KENERGY INDICATED WHETHER KENECT WILL USE KENERGY’S**
13 **PROPOSED FIBER NETWORK TO OFFER SERVICE TO AREAS WHERE**
14 **BROADBAND SERVICE IS ALREADY AVAILABLE TODAY?**

15 A. Yes. KBCA asked, through its Data Request No. 11.f, whether Kenect will use the
16 capacity on Kenergy’s fiber network to provide broadband service exclusively to
17 unserved and underserved areas. Kenergy’s response states that “in the isolated areas
18 of Kenergy’s territory that do have access to broadband service” from existing
19 providers already, Kenergy “intends to provide broadband service” upon request. *See*
20 Kenergy Response to KBCA Data Request No. 11.f. The Commission can review the
21 maps accompanying my testimony, in particular for Daviess and Henderson Counties,
22 and evaluate whether these areas of overlap are “isolated” as Kenergy contends.

1 **Q. BASED UPON KBCA’S REVIEW OF MAPPING INFORMATION, IS**
2 **KENECT ENGAGED EXCLUSIVELY IN THE PROVISION OF**
3 **BROADBAND SERVICE TO UNSERVED OR UNDERSERVED**
4 **HOUSEHOLDS AND BUSINESSES?**

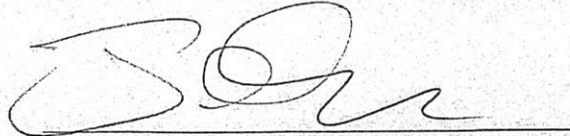
5 A. It is up to the Commission to decide, as a legal matter, what it means for a broadband
6 affiliate of a distribution cooperative to be “engaged exclusively in the provision of
7 broadband service to unserved or underserved households and businesses” within the
8 meaning of KRS 278.5464(3)(a). I can only answer this question as a factual matter
9 based upon my review of the maps and discovery responses provided by Kenergy,
10 combined with the mapping data being provided by KBCA through my testimony.
11 Based on those maps and discovery responses, however, the lease proposed by
12 Kenergy, as presently structured, is not a lease to an affiliate engaged *exclusively* in the
13 provision of broadband service to unserved and underserved households and
14 businesses. Rather, it is presently structured as a lease of fiber optic facilities capable
15 of providing broadband service *both* to unserved and underserved areas *and* to areas
16 that are *not* unserved or underserved, to an affiliate that intends to use those fiber optic
17 facilities to offer service both to unserved and underserved areas as well as to areas that
18 are not unserved or underserved.

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 A. Yes, it does.

VERIFICATION

The undersigned, Jason Keller, being duly sworn, deposes and says he is Chairman of the Board of the Kentucky Broadband and Cable Association ("KBCA"), that he has personal knowledge of the matters set forth in the foregoing testimony and the information contained therein is true and correct to the best of his information, knowledge, and belief after reasonable inquiry.



Jason Keller

COMMONWEALTH OF KENTUCKY)

)

COUNTY OF FAYETTE)

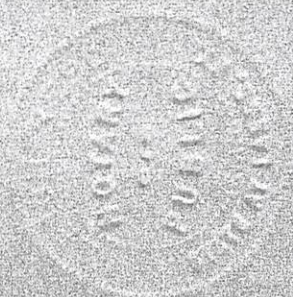
Sworn to, acknowledged and subscribed before me via communications technology by
Jason Keller on this 21 day of January, 2022.



Notary Public, State at Large - Kentucky

I.D. No. 607075

My Commission Expires: August 25, 2022



Case No. 2021-00365

Testimony of Jason Keller

Exhibit 1

Filed Confidentially

Case No. 2021-00365

Testimony of Jason Keller

Exhibit 2

Filed Confidentially