

**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> | ) |            |

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**KBCA’S PETITION FOR CONFIDENTIAL TREATMENT**

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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 Exhibits 1-2 of Jason Keller’s testimony and the affiliated map appearing in his testimony. Specifically, TWCIS seeks confidential treatment for the contents of Exhibits 1-2 and a portion of Mr. Keller’s testimony because it contains confidential and proprietary information from one of KBCA’s members—Charter Communications (“Charter”).

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).

The information for which confidential treatment is requested are maps that approximate the areas in which Charter offers broadband service, based upon the specific locations of Charter’s distribution plant and the radius around that distribution plant where broadband service can be provided through drop connections. With respect to Exhibit 1, which sets forth this information at the census block level, the Federal Communications Commission (“FCC”) at regular intervals collects and publishes such information, but has not yet published the specific data collection on which Exhibit 1 is based. With respect to Exhibit 2, which sets forth this information at the level of detail reflecting the specific locations of distribution facilities, the FCC is expected to collect and, at some point in the future, publish data at this level of detail from broadband providers through the Broadband DATA Act; however, the information being provided to the Commission in Exhibit 2 and the portion of Mr. Keller’s testimony to which this motion pertains represents a

much more granular level of data than the FCC publishes from broadband providers today. It is also competitively sensitive information that KBCA members do not generally make public; although the census blocks in which providers offer service are reported to and reported by the FCC, the specific locations of internet service provider's distribution plant, and the exact locations of their service area boundaries, are not. In addition, 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.

For the foregoing reasons for an indefinite amount of time, KBCA respectfully requests confidential treatment of the above-referenced information in Exhibit 1 until the FCC publishes it through its National Broadband Map, and of the information in Exhibit 2 in perpetuity or until it otherwise becomes public information through the Broadband DATA Act.

RESPECTFULLY SUBMITTED,

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