

**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> |) | |

**THE KENTUCKY BROADBAND & CABLE ASSOCIATION
RESPONSES TO KENERGY CORP'S AND KENECT, INC'S DATA REQUESTS**

Kentucky Broadband & Cable Association (“KBCA”) responds to Kenergy Corp’s requests for information as follows:

1. Please identify each member of KBCA.

RESPONSE: A current list of KBCA member entities is available at

<https://www.kybroadband.org/members>.

WITNESS: Jason Keller

2. Please identify when each member of KBCA began providing internet service in the Commonwealth of Kentucky.

RESPONSE: KBCA objects to this data request as irrelevant and not reasonably tailored to

lead to the discovery of relevant evidence.

WITNESS: Jason Keller

3. Please identify each member of KBCA that provides internet service in Kenergy's certified electric territory.

RESPONSE: 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.

WITNESS: Jason Keller

4. Please explain, in detail, why KBCA's members have failed to serve those individuals in Kenergy's certified electric territory classified as "unserved" or "underserved" by the FCC and KRS 278.5464.

RESPONSE: KBCA objects to this data request as irrelevant and not reasonably tailored to lead to the discovery of relevant evidence. KBCA further objects to the form of the question as misleading. The term "failed to serve" implies, incorrectly, that KBCA member entities are under an obligation offer broadband services within Kenergy's certified electric territory. No such legal requirement exists. Subject to and without waiving that objection, KBCA states the following:

Cable providers are prohibited by federal law from offering cable service in areas where they do not have a cable franchise authorized by the local franchising authority. As cable and broadband services are both provisioned over common network facilities, this means that—as a practical matter—cable providers can generally only obtain the legal and regulatory authorizations to deploy their networks and offer broadband services in places where they are authorized by a local franchising authority to offer cable service. Absent a cable franchise agreement for a particular

area, it is much more challenging for a cable operator to offer broadband service, both due to the difficulty of obtaining access to public rights-of-way, and due to the impossibility of offering cable video services as a revenue source to offset the costs of network construction.

Where cable providers have a franchise agreement with a local franchising authority, in some cases cable providers will agree to extend their networks in areas defined by the franchise or areas meeting defined density requirements. However, in many low-density and rural areas, it is not economical for cable operators (or any other wireline provider) to extend network facilities without additional support due to the much higher network deployment costs per customer. These challenges can be augmented by the fact that, in many unserved areas, the local pole infrastructure is unable accommodate new broadband attachments, either because the local pole owners have not maintained the poles in a condition to accommodate new attachers, or because they reserve available space on the poles for their own future uses, requiring cable providers who seek to expand into those areas to pay for costly pole replacements that substantially drive up the cost of bringing service to customers. To overcome these challenges, KBCA members have actively sought out participation in broadband support programs to help offset the high up-front costs of deploying networks in unserved areas, as well as advocated for reforms to the rules regarding pole attachments and pole replacements to facilitate rural network buildout.

WITNESS: Jason Keller

5. Please identify what entity claims proprietary ownership of the maps KBCA intends to produce in this proceeding.

RESPONSE: The maps produced in this proceeding are proprietary materials of KBCA member entity Charter.

WITNESS: Jason Keller

6. Please identify when the proprietary maps were created.

RESPONSE: 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, shortly before KBCA's testimony was filed.

WITNESS: Jason Keller

7. Please identify what entity created the proprietary maps.

RESPONSE: KCBA member entity Charter prepared the maps.

WITNESS: Jason Keller

8. Please identify the sources of information used to create the proprietary maps.

RESPONSE: Exhibit 1 was prepared using Charter's June 2021 Form 477 data submitted to the FCC. Exhibit 2 was created from Charter's engineering records regarding the physical locations of its cable plant.

WITNESS: Jason Keller

9. Please describe whether any non-confidential or publicly available information was used to create the proprietary maps.

RESPONSE: A combination of confidential and non-confidential material was used to create the maps presented as Exhibits 1 and 2 to Jason Keller's testimony. In particular:

a. Exhibit 1 is a depiction, in map form, of the census blocks in which

Charter offers service as reported to the FCC in its June 2021 Form 477 data submission. Charter previously reported its serviceable census blocks to the FCC in prior Form 477 submissions, including the December 2020 submission, which is publicly available on the FCC website. Exhibit 1 contains confidential data only to the extent that differences between Charter's December 2020 and June 2021 FCC submissions have not yet been made public by the FCC.

b. Exhibit 2 is a depiction, in map form, of Charter's service area at a level of granularity more precise than what is publicly available today. The engineering maps showing the precise locations of Charter's broadband-capable facilities, which were used to create Exhibit 2, are not publicly available.

c. Both Exhibits 1 and Exhibit 2 include depictions, in map form, of the census blocks in which Charter is scheduled to receive RDOF support. This information is publicly available on the FCC website.

WITNESS: Jason Keller

10. Have a copy of the proprietary maps been made available to all members of KBCA?

RESPONSE: KBCA objects to this data request as irrelevant and not reasonably tailored to lead to the discovery of relevant evidence.

Subject to and without waiving that objection, KBCA has not yet distributed copies of the confidential maps to all KBCA members, but expects to do so subject to a requirement that its members maintain the information therein as confidential.

WITNESS: Jason Keller

11. Were the maps available to KBCA members prior to the bidding procedures for funds from the Rural Digital Opportunity Fund (RDOF)?

RESPONSE: KBCA objects to this data request as irrelevant and not reasonably tailored to lead to the discovery of relevant evidence. Subject to and without waiving that objection: No. The maps were created in January 2022 in connection with the preparation of KBCA's testimony. At the time of bidding in the RDOF auction in 2020, KBCA members other than Charter (which had access to its own internal data) had access to the same then-published FCC Form 477 data as the public at large.

WITNESS: Jason Keller

12. Did any member of KBCA place a bid to receive RDOF funds after the proprietary maps were provided to them?

RESPONSE: KBCA objects to this data request as irrelevant and not reasonably tailored to lead to the discovery of relevant evidence. Subject to and without waiving that objection, KBCA incorporates by reference its response to Request No. 11.

WITNESS: Jason Keller

13. Did any member of KBCA place a bid to receive monies from Kentucky's Broadband Deployment Fund after the proprietary maps were provided to them?

RESPONSE: KBCA objects to this data request as irrelevant and not reasonably tailored to lead to the discovery of relevant evidence. Subject to and without waiving that objection, No. The maps were created in January 2022 in connection with the preparation of KBCA's testimony and were not available to KBCA members at the time of applications for the Kentucky broadband grant

program in October 2021. KBCA members other than Charter (which had access to its own internal data) had access to the same then-published FCC Form 477 data as the public at large.

WITNESS: Jason Keller

14. While in possession of the proprietary maps, did any member of KBCA place a bid to receive RDOF funds in an area in which the proprietary maps allegedly show that the census block is not "unserved" or "underserved."

RESPONSE: KBCA objects to this data request as irrelevant and not reasonably tailored to lead to the discovery of relevant evidence. Subject to and without waiving that objection, KBCA incorporates by reference its response to Request No. 11.

WITNESS: Jason Keller

15. While in possession of the proprietary maps, did any member of KBCA place a bid to receive funds from Kentucky's Broadband Deployment Fund in an area in which the proprietary maps allegedly show that the census block is not "unserved" or "underserved."

RESPONSE: KBCA objects to this data request as irrelevant and not reasonably tailored to lead to the discovery of relevant evidence. Subject to and without waiving that objection, KBCA incorporates by reference its response to Request No. 13.

WITNESS: Jason Keller

16. Does KBCA plan to make the proprietary maps publicly available to either the Federal Communications Commission or the Kentucky Infrastructure Authority to ensure that federal or state grant funds are used to deploy internet to those Kentucky citizens the maps allegedly

show do not have access to broadband service?

RESPONSE: Yes, in part. Further answering,

- a. The information depicted in Exhibit A has already been provided to the FCC in connection with Charter's submission for the FCC's June 2021 Form 477 data collection.
- b. The information depicted in Exhibit B (*i.e.*, a depiction of Charter's service areas in shapefile form, showing a higher level of granularity than individual census blocks) has been provided to the FCC by Charter voluntarily. Charter will also provide similar, updated information to the FCC in connection with the Broadband DATA Act data collection.
- c. KBCA is not aware of any generalized broadband mapping data collection performed by the Kentucky Infrastructure Authority analogous to the FCC's Form 477 data collection or Broadband DATA Act mapping process. However, mapping information may be shared with the Authority in particular circumstances, such as during a challenge process. If pertinent in response to a particular public notice or similar inquiry, Charter anticipates that it would confidentially provide information similar to Exhibit 1 or 2.

WITNESS: Jason Keller

17. State whether the "Service Areas" on the maps filed under confidentiality by the KBCA are areas where "broadband" is currently available?

RESPONSE: Yes.

WITNESS: Jason Keller

18. State the number of "broadband" customers KBCA members serve in Daviess

County, Kentucky, outside the City of [sic] limits of Owensboro, Kentucky.

RESPONSE: KBCA objects to this data request as it is irrelevant and not reasonably tailored to lead to the discovery of relevant evidence. At issue in this proceeding is whether these areas are “unserved” or “underserved,” not the number of customers receiving service. KBCA further objects to this data request to the extent that it seeks customer information related to the provision of competitive services.

WITNESS: Jason Keller

19. State the number of "broadband" customers KBCA members serve in Henderson County, Kentucky, outside the City of [sic] limits of Henderson, Kentucky.

RESPONSE: KBCA objects to this data request as it is irrelevant and not reasonably tailored to lead to the discovery of relevant evidence. At issue in this proceeding is whether these areas are “unserved” or “underserved,” not the number of customers receiving service. KBCA further objects to this data request to the extent that it seeks customer information related to the provision of competitive services.

WITNESS: Jason Keller

20. Has any member of KBCA, including but not limited to Charter Communications, ever received a request for broadband service in Kenergy territory that the KBCA member has declined to provide? If the answer is yes, please provide the name of the KBCA member receiving the request, the date and nature of the request for service and provide all communications regarding such requests.

RESPONSE: KBCA objects to this request as overly broad and unduly burdensome.

Subject to and without waiving that objection, KBCA incorporates by reference its response to Request No. 4.

WITNESS: Jason Keller

RESPECTFULLY SUBMITTED,

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