

**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 the Supplement to Exhibit 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. This request is the same as presented to the Commission by motion filed on March 4, 2022.

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 supplement to 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 Union County. 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.

For the foregoing reasons, KBCA respectfully requests confidential treatment of the entirety of the supplement to Exhibit 3 of KBCA’s responses to the Commission Staff’s Initial Request for Information, as described above.

RESPECTFULLY SUBMITTED,

STURGILL, TURNER, BARKER & MOLONEY, PLLC



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