

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF TIME WARNER)	
CABLE INFORMATION SERVICES (KENTUCKY),)	
LLC FOR DESIGNATION AS AN ELIGIBLE)	CASE NO.
TELECOMMUNICATIONS CARRIER TO)	2021-00005
RECEIVE RURAL DIGITAL OPPORTUNITY FUND)	
AUCTION (AUCTION 904) SUPPORT FOR VOICE)	
AND BROADBAND SERVICES)	

ORDER

On January 6, 2021, Time Warner Cable Information Services (Time Warner) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential treatment for an indefinite period for Exhibit E to its application.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."¹ Time Warner sought the application of KRS 61.878(1)(c)(1), which exempts records that are "[g]enerally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records" as well as KRS 61.878(1)(k) which exempts "[a]ll public records or information the disclosure of which is prohibited by federal law or regulation or state law." The specific federal regulation cited by Time Warner prohibited applicants for the Rural Digital Opportunity

¹ KRS 61.872(1).

Fund (RDOF) auction from disclosing bids or bidding strategies until after the down payment deadline, unless such communications are within the scope of certain agreements.² Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.³ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁴

The present petition pertains to Exhibit E of Time Warner's application, which is a brief narrative describing its strategy for investment in broadband services pursuant to the RDOF auction, including how much it expected to spend. In support of its petition, Time Warner argued that disclosure of its specific monetary commitment would result in a commercial advantage to its competitors, as it would give competitors an understanding of its costs, marketing strategy, and activities, thereby providing competitors with an advantage that would hinder its ability to compete. Time Warner also argued that it is prohibited from publicly disclosing this information under 47 C.F.R. § 1.2105(c).

Having considered the petition and the material at issue, the Commission finds that Time Warner's petition is granted. Time Warner has established that it would face unfair competition under KRS 61.878(1)(c)(1) from competitors if those competitors knew how much it was willing to spend on auction bidding in a particular region. The Commission has previously found that utility auction bidding strategies should remain

² 47 C.F.R. § 1.2105(c).

³ See KRS 61.871.

⁴ 807 KAR 5:001, Section 13(2)(c).

confidential.⁵ The designated material therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

IT IS THEREFORE ORDERED that:

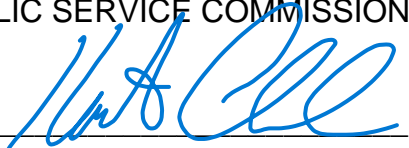
1. Time Warner's petition for confidential treatment is granted.
2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for an indefinite period or until further Order of this Commission.
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).
4. Time Warner shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Time Warner shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Time Warner is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

⁵ See Case No. 2017-00179, *Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) An Order Approving Its Tariffs And Riders; (4) An Order Approving Accounting Practices To Establish Regulatory Assets And Liabilities; And (5) An Order Granting All Other Required Approvals And Relief* (Ky. PSC Jan. 7, 2022), Order at 2, granting confidential treatment for PJM power market bidding amounts and strategies.

6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Time Warner to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner

ENTERED
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SERVICE COMMISSION

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