

June 10, 2025

Senator Shelley Funke Frommeyer, Co-Chair
Representative Shawn McPherson, Co-Chair
Capital Projects and Bond Oversight Committee
Legislative Research Commission
Capitol Annex Building – Room 136
702 Capitol Avenue
Frankfort, Kentucky 40601

Subject: Sundry Research, Scientific and Medical Equipment

Dear Senator Funke Frommeyer, Representative McPherson and Honorable Members of the Capital Projects and Bond Oversight Committee:

Pursuant to KRS §45.760(5), the University of Kentucky hereby reports the purchase of the following item of research equipment in excess of \$200,000. Money specifically budgeted and appropriated by the General Assembly for another purpose or program was not used to acquire this item.

- An Insight X3 Dual Laser has been purchased from Spectra-Physics. The Insight laser delivers high power for brighter signals. Together with an existing hyperscope, the equipment provides a greater range of imaging of deep brain structures affected by Alzheimer's Disease and related dementias through gapfree pulse energy than the hyperscope alone. The total cost of the research equipment was \$216,250 and was purchased with federal funds from a National Institutes of Health grant. The item will be located at the William R. Willard Medical Education Building in Lexington, Kentucky.

Please advise if you have any questions or if you would like additional information.
Sincerely,



Angela Martin
Vice President for Financial Planning and Chief Budget Officer

cc: Elizabeth Baker
Kristin Cheser



University of Kentucky
Facilities Management
® Office of the Vice President

June 10, 2025

Senator Shelley Funke Frommeyer, Co-Chair
Representative Shawn McPherson, Co-Chair
Capital Projects and Bond Oversight Committee
Legislative Research Commission
Capitol Annex Building – Room 34
702 Capitol Avenue
Frankfort, Kentucky 40601

Dear Senator Funke Frommeyer and Representative McPherson and Members of the Capital Projects and Bond Oversight Committee:

Pursuant to KRS §45.760(6), the University of Kentucky (UK) is reporting the transfer of funds from Restricted Funds to Federal Funds and Private Funds for the following budgeted projects:

- The Upgrade/Renovate/Expand Research Labs (Center for Clinical and Translational Science Enterprise Data Center Expansion) capital project will renovate, expand and upgrade the University's secure research data center space within the Enterprise Data Center at the Center for Clinical and Translational Science (CCTS) located in the Lee T. Todd, Jr. Building. This \$9,500,000 project will be funded with \$7,548,058 in federal funds from the National Institutes of Health and \$1,951,942 in restricted funds. The University's Board of Trustees approved the initiation of this project at its April 25, 2025, meeting.
- The Improve Academic/Administrative Space 1 (Expand Carol Martin Gatton Business and Economics Building – Design Phase) capital project will design the expansion of the Gatton Business and Economics Building to better serve its growing student population. This \$9,000,000 project will be funded with private funds. The University's Board of Trustees approved the initiation of this project at its April 25, 2025, meeting.

Should you or members of the Committee have questions, the University will be pleased to respond at your next scheduled meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Barry Swanson', with a long horizontal flourish extending to the right.

Barry Swanson
Interim Vice President and Chief Facilities Officer

FCR 7

Office of the President
April 25, 2025

Members, Board of Trustees:

UPGRADE/RENOVATE/EXPAND RESEARCH LABS
(CENTER FOR CLINICAL AND TRANSITIONAL SCIENCE ENTERPRISE DATA
CENTER EXPANSION) CAPITAL PROJECT

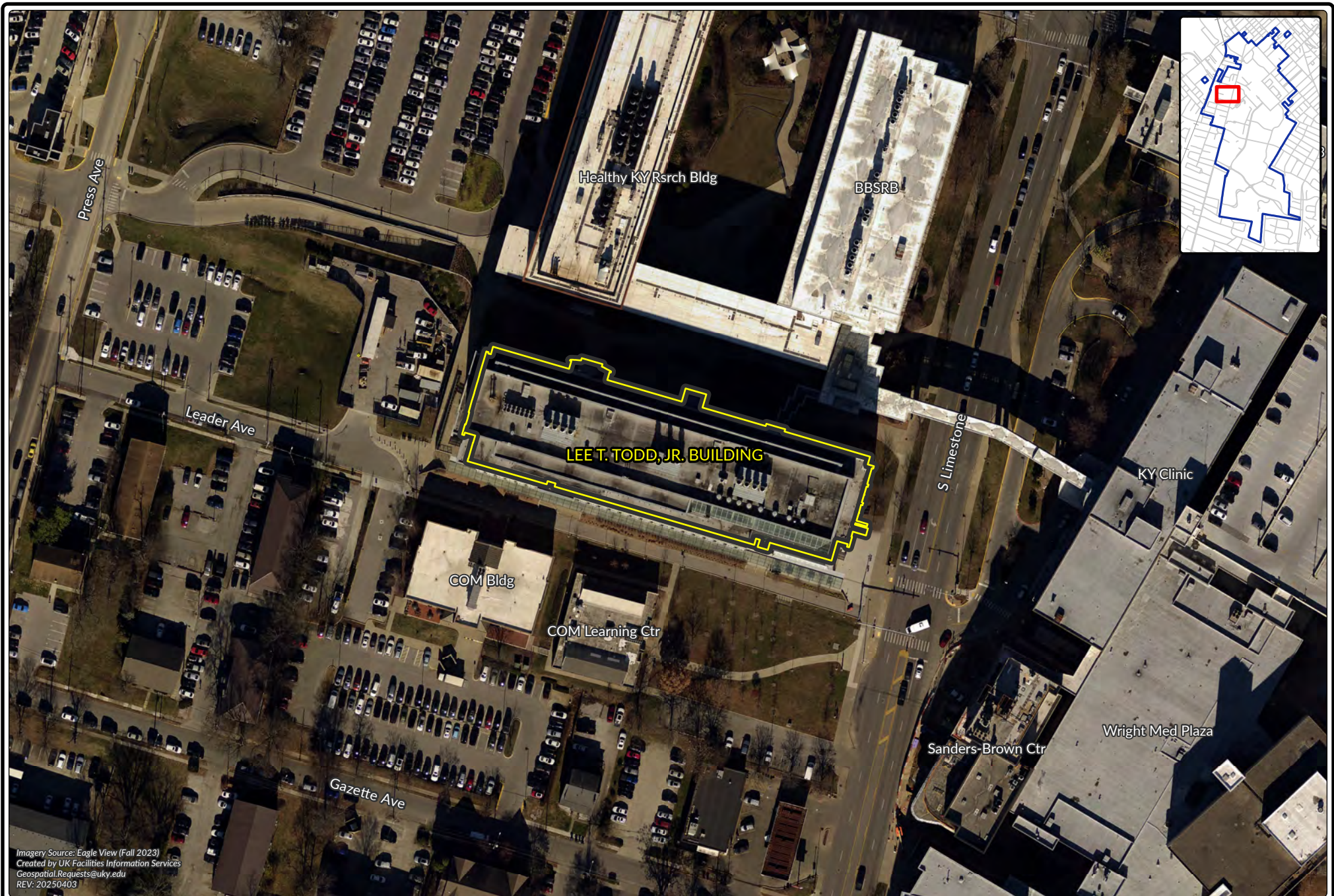
Recommendation: that the Board of Trustees approve the initiation of the Upgrade/Renovate/Expand Research Labs (Center for Clinical and Transitional Science Enterprise Data Center Expansion) capital project.

Background: Pursuant to Administrative Regulation 8:2, any capital project with an estimated cost of \$1,000,000 or more must be approved by the Board prior to initiation.

This project will renovate, expand and upgrade the University's secure research data center space within the Enterprise Data Center at the Center for Clinical and Translational Science (CCTS) located in the Lee T. Todd, Jr. Building. CCTS manages over \$34.1 million in annual grants to support biomedical and population health research projects and requires HIPAA-compliant data management and storage. The Enterprise Data Center, UK's only HIPAA-secure research data center, faces increased demands for secure research data infrastructure from CCTS as well as other University research centers. This project will renovate and expand the Enterprise Data Center space and will provide requisite cooling, electrical distribution and ADA-compliant entry. The increase in secure biomedical research data center space will allow the University to support rapid advances in research computing and data capabilities that are revolutionizing research.

This \$9,500,000 project, authorized by the 2024 Kentucky General Assembly, is well within the total legislative authorization of \$75,000,000 and will be funded with federal and agency funds.

Action taken: ☒ Approved ☐ Disapproved ☐ Other _____



FCR 9

Office of the President
April 25, 2025

Members, Board of Trustees:

IMPROVE ACADEMIC/ADMINISTRATIVE SPACE 1
(EXPAND CAROL MARTIN GATTON BUSINESS AND ECONOMICS
BUILDING - DESIGN PHASE) CAPITAL PROJECT

Recommendation: that the Board of Trustees approve the initiation of the Improve Academic/Administrative Space 1 (Expand Carol Martin Gatton Business and Economics Building - Design Phase) capital project.

Background: Pursuant to Administrative Regulation 8:2, any capital project with an estimated scope of \$1,000,000 or more must be approved by the Board prior to initiation.

The Carol Martin Gatton Business and Economics Building originally opened in 1963 as the University's Commerce Building. The building has undergone two renovations and expansions. The first in 1992 which included the addition of a wing for classrooms and the second in 2015 which included a significant expansion. The College continues to experience growth in enrollment and currently educates more than 5,000 undergraduate, masters and doctoral students in accounting, economics, finance, management, marketing and supply chain management.

This project will initiate the design phase to further expand the building to enable the College to better serve its students and meet future enrollment growth needs. The space will be designed to facilitate today's educational needs with flexibility to accommodate future needs and may include classrooms, student spaces, offices and other support spaces.

This \$9,000,000 design phase of the project, authorized by the 2024 Kentucky General Assembly, is well within the total legislative authorization of \$20,000,000 and will be funded with private and agency funds.

Action taken: ☒ Approved ☐ Disapproved ☐ Other _____





June 5, 2025

Capital Projects and Bond Oversight Committee
702 Capital Avenue, Room 34, Capitol Annex
Frankfort, KY 40601

RE: \$4,035,000 Magoffin County School District General Obligation
Bonds, Series of 2025

Please find enclosed a Bond Payee Disclosure Form and Plan of Financing related to the above-referenced series of Bonds. The Bonds will be used to finance Bus Garage Renovations and a High School Multipurpose Building.

We would like to go ahead and submit the plan to Bond Oversight so that we will be ready to proceed with the bond sale shortly. The Bonds will be funded with 100% Local Funds.

Please process this bond disclosure form for review by the Bond Oversight Committee at the next meeting. Should you have any questions or require any additional information, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'L Theinert', with a long horizontal flourish extending to the right.

Lincoln Theinert

Enclosures

147 East Third Street
Lexington, KY
40508

859/977-6600

fax: 859/381-1357

www.rsamuni.com

BOND PAYEE DISCLOSURE FORM

Par Amount:	\$4,035,000					
District	Magoffin County School District					
Issue Name:	General Obligation Bonds, Series 2025					
Purpose:	Bus Garage Renovations and High School Multipurpose Building					
Projected Sale Date:	Q3 2025					
First Call Date:	8 Years at par					
Method of Sale:	Competitive Bids					
Place/time of sale:	Parity /SFCC, Frankfort, Ky. / TBD					
Bond Rating:	Moody's: "Aa3"					
Bond Counsel:	Steptoe and Johnson, Louisville, KY					
Fiscal Agent:	RSA Advisors LLC, Lexington, Kentucky					
Date received by SFCC:	<table border="1" style="display: inline-table; width: 100px; text-align: center;"> <tr><td> </td><td>/</td><td> </td><td>/</td><td> </td></tr> </table> <i>To be filled in by SFCC</i>		/		/	
	/		/			
Date scheduled for Committee review:	<table border="1" style="display: inline-table; width: 100px; text-align: center;"> <tr><td> </td><td>/</td><td> </td><td>/</td><td> </td></tr> </table> <i>To be filled in by SFCC</i>		/		/	
	/		/			

Estimated par amount of Bonds:

% Share of total Bonds:

Estimated average annual debt service:

Estimated debt service reserve:

SFCC Portion	Local Portion	Total
\$0	\$4,035,000	\$4,035,000
0.00%	100.00%	100.00%
\$0	\$337,622	\$337,622
\$0	\$0	\$0

Estimated Cost of Issuance:

Fiscal Agent, Bond Counsel, etc

Special Tax Counsel

Number verifications

Bond Rating & Bank Fee

Underwriter's Discount

Credit Enhancement

Total Cost of Issuance:

\$0	\$29,140	\$29,140
\$0	\$0	\$0
\$0	\$0	\$0
\$0	\$18,350	\$18,350
\$0	\$80,700	\$80,700
\$0	\$0	\$0
\$0	\$128,190	\$128,190

Anticipated Interest Rates:

5 Years: 3.650% 10 Years: 4.200% 15 Years: 4.680%

20 Years: 4.950%

Notes: No Tax Increase required

MAGOFFIN COUNTY SCHOOL DISTRICT

Statement of Indebtedness

1. The assessed valuation of all the taxable property in the School District as estimated by the last certified assessment is:	407,161,106
2. Date of last certified audit:	6/30/2024
3. The total of all bonds, notes, and other obligations of the district currently issued and outstanding, including the present issue of <u>\$4,035,000</u> :	24,570,000
4. Statutory debt limit for General Obligation bonds as set forth in KRS 66.041:	8,143,222
5. District bonding potential as set forth in 702 KAR 3:020:	12,500,000
6. The total of bonds, notes, and other obligations of the district currently issue subject to the 2% statutory limit including the present issue of \$4,035,000`	4,035,000
7. Does this issue include a special appropriation grant from the Commonwealth of Kentucky? If so, please state the amount and purpose of the grant.	No



June 6, 2025

Ms. Katherine Halloran
700 Capital Ave
Frankfort, Kentucky 40601

Re: Reporting of Bond Issuance Costs to the Capital Projects and Bond Oversight
Committee ("Bond Oversight Committee")

Dear Ms. Halloran:

Enclosed please find a Bond Payee Disclosure form for the following bond issue:

\$12,700,000 (est.)
Owen County School District
General Obligation Bonds,
Series of 2025

Please be advised that the enclosed costs are estimated. Actual costs will not be known until the bonds are sold. Please be advised that no tax increases are necessary to support this financing.

We hereby request that the above bond issue be considered by the Bond Oversight Committee at its next meeting.

If you need any additional information, please call me at 502.588.8695.

Sincerely,

Maria Long
Baird Public Finance

BOND PAYEE DISCLOSURE FORM

Par Amount:	\$12,700,000
Issue Name:	Owen County School District General Obligation Bonds, Series of 2025
Purpose:	Various upgrades to Owen County Schools (including Upper Elementary) to include life safety and ADA upgrades, renovations at the Central Office and athletic improvements.
Projected Sale Date of Bonds:	Summer 2025
First Call Date:	TBD
Method of Sale:	Competitive
Place/Time of Sale:	TBD
Bond Rating:	Expected "Aa3 Enh" – Moody's
Bond Counsel:	Steptoe & Johnson
Fiscal Agent:	Baird
Architect/Engineer	Robert Ehmet Hayes & Assoc.

Date Received by SFCC:

/ /
/ /

To be filled in by SFCC

Date Scheduled for Committee Review:

/ /
/ /

To be filled in by SFCC

	SFCC Portion	Local Portion	Total
Estimated par amount of Bonds ⁽¹⁾ :	-	\$12,700,000	\$12,700,000
% Share of total Bonds:	-	100.0%	100.0%
Estimated average annual debt service:	-	\$1,104,485	\$1,104,485
Estimated debt service reserve:	-	-	-
Estimated Costs of Issuance ⁽¹⁾:			
Fiscal Agent, Bond Counsel, Advertisements, Printing, etc.	-	\$63,800	\$63,800
Special Tax Counsel	-	-	-
Number Verifications	-	-	-
Bond Rating	-	29,000	29,000
Underwriter's Discount	-	254,000	254,000
Paying Agent/Escrow Agent Bank	-	4,000	4,000
Total Cost of Issuance:	-	\$37,090	\$37,090

Anticipated Interest Rates:

5 Years: 3.65%	15 Years: 4.55%	
10 Years: 4.10%	20 Years: 5.00%	

(1) Actual costs will not be known until the bonds are sold.

Board of Education of Owen County
School District, As of January 1, 2025

Statement of Indebtedness

1. The assessed valuation of all the taxable property in the School District as estimated by the last certified assessment is:	\$971,117,319
2. Date of last certified audit:	June 30, 2024
3. The total of all bonds, notes, and other obligations of the district currently issued and outstanding.	\$25,710,000
4. Statutory debt limit for General Obligation bonds as set forth in KRS 66.041:	\$19,422,347
5. District bonding potential as set forth in 702 KAR 3:020:	\$17,500,000
6. The total of bonds, notes, and other obligations of the district currently issue subject to the 2% statutory limit.	\$0
7. Does this issue include a special appropriation grant from the Commonwealth of Kentucky? If so, please state the amount and purpose of the grant.	No

School District Name:
Project:

Probable Cost Breakdown
Date:

Owen County School District
ADA and life safety upgrades throughout the Owen County School District, renovations at the Central Office and various athletic improvements.
(Administration/Athletics/Instructional)
6/9/2025

	Total Project 100%	Administration Percentage	Athletic Percentage	Instructional Percentage
Construction	\$ 10,823,627.00	\$ 4,329,450.80	\$ 3,247,088.10	\$ 3,247,088.10
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -
Total Construction Cost	\$ 10,823,627.00	\$ 4,329,450.80	\$ 3,247,088.10	\$ 3,247,088.10
Soft Costs (Architect/CM Fees)	\$ 1,523,938.00	\$ 609,575.20	\$ 457,181.40	\$ 457,181.40
Total Project Cost	\$ 12,347,565.00	\$ 4,939,026.00	\$ 3,704,269.50	\$ 3,704,269.50
Plus: Cost of Issuance Including Bond Discount & Bond Rounding	\$ 352,435.00	\$ 140,974.00	\$ 105,730.50	\$ 105,730.50
Amount Bonded for Construction Project	\$ 12,700,000.00	\$ 5,080,000.00	\$ 3,810,000.00	\$ 3,810,000.00



Andy Beshear
GOVERNOR

**FINANCE AND ADMINISTRATION CABINET
DEPARTMENT FOR FACILITIES AND SUPPORT SERVICES
DIVISION OF REAL PROPERTIES**

Bush Building, 3rd Floor
403 Wapping Street
Frankfort, Kentucky 40601
Phone: (502) 564-2205

Holly M. Johnson
SECRETARY

Charles O. Bush, Jr.
INTERIM COMMISSIONER

Natalie W. Brawner
DIRECTOR

MEMORANDUM

TO: Katherine Halloran, Committee Staff Administrator
Capital Projects and Bond Oversight Committee

FROM: Natalie W. Brawner, Director *NWB*
Division of Real Properties

DATE: June 10, 2025

SUBJECT: Lease Modifications – square footage changes

Per KRS 56.823(11)(a), the following leases were subject to modifications for square footage changes:

PR-5834, Jefferson County, Department for Public Advocacy				
Square Foot Change		Annual Rent Change		Effective:
From	30,924	From	\$463,860.00	Original n/a
To	34,424	To	\$516,360.00	Current n/a
Difference	3,500	Difference	\$52,500.00	Expires: 6/30/2032
Rental: \$15.00 per sq ft				
Per House Bill 277, the lease originally included 30,924 square feet of office space at \$15.00 per square foot annually with all utilities and janitorial costs included. It also includes 125 parking spaces at \$90.00 per space, per month at an annual parking cost of \$135,000.00 or \$33,750.00 per quarter/\$11,250.00 per month. It was anticipated an additional 3,500 square feet of office space would be added effective July 1, 2024, but the 3,500 square feet was not available for occupancy until January 1, 2025 which resulted in an increase of \$26,250 for FY25.				

PR-4385, Mason County, Education Labor Cabinet				
Square Foot Change		Annual Rent Change		Effective:
From	5,617	From	\$53,361.50	Original n/a
To	5,509	To	\$52,335.52	Current n/a
Difference	108	Difference	\$1,026.50	Expires: 6/30/2025
Rental: \$9.50 per sq ft				
Parties mutually agreed to a modification to the lease to decrease the leased space by 108 square feet				

If you have any questions or require additional information concerning this matter, please advise.

NWB

Attachment

Cc: Capital Construction Log, Office of the State Budget Director, PR-5411 File

REPORT TO CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

LEASE MODIFICATION

Lease No.: PR-4385		County: Mason	
Using Agency: Education & Labor Cabinet, Department of Workforce Investment			
Lessor (identify all parties having 5% or more ownership): Attached extra sheet if necessary		City of Maysville	
Property Location: 201 GOVERNMENT STREET, MAYSVILLE, Kentucky			
Check One: <input type="checkbox"/> New Lease <input type="checkbox"/> Renewal <input checked="" type="checkbox"/> Modification			
Type Space: Office		Cost Per Square Foot: \$9.50	
Annual Rental Cost: \$52,335.52		Average Cost Per Square Foot of Leased-In Space in County: <u>\$12.46</u>	
Utilities Included: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Cancellation Clause:	<input checked="" type="checkbox"/> Yes If yes, explain terms: 30 Days		<input type="checkbox"/> No If no, explain why not:
Effective Date: April 1, 2025		Expiration Date: June 30, 2025	
Justification for Lease: Please see attached			
Has the Finance & Administration Cabinet complied with statutory requirements: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, explain:			
Explain why the Finance & Administration Cabinet chose this lessor (see attached approval memo and lease agreement): Please see attached			

COMMONWEALTH OF KENTUCKY LEASE MODIFICATION AGREEMENT

LESSOR	City of Maysville	PR NUMBER, COUNTY	PR-4385, Mason County
ADDRESS	216 Bridge Street Maysville KY 41056-1208	VENDOR NUMBER	KY0033629
		AGENCY/DEPARTMENT	Education and Labor Cabinet
		DIVISION	Department of Workforce Investment
		DATE	March 28, 2025
		BUILDING CODE	91020001

1. Lease Agreement number **PR-4385, Mason County**, dated **August 8, 2001**, is hereby modified as set forth in Paragraph Two.

2. This Lease is modified as follows:

Effective April 1, 2025

1. To decrease the leased space by 108 square feet; from 5,617 square feet to 5,509 square feet; at the same terms and conditions as reflected in the existing lease, resulting in an annual decrease of \$1,026.50 from \$53,361.50 to \$52,335.52 (rounded).

3. All other terms and conditions of the lease remain unchanged.

4. The Lessor is required to sign this document and return all copies for further processing.

5. The Lessor certifies by his signature hereinafter affixed that he ("he" is construed to mean "they" if more than one person is involved; and, if a firm, partnership, corporation, business trust or other organization is involved, then "he" is construed to mean any person with an interest therein) is legally entitled to enter into contracts with the Commonwealth of Kentucky and that by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330 - 45A.340 or 45A.990) of the Executive Branch Code of Ethics, KRS Chapter 11A, or any other applicable statute or principle by the performance of this Lease, or will he realize any unlawful benefit or gain directly or indirectly from it. The Lessor further certifies that he has not knowingly violated any provision of the campaign finance law of the Commonwealth, and that by entering into this Lease Modification Agreement he will not be in violation of the campaign finance laws of the Commonwealth.

Jamie Link
Jamie Link (Apr 23, 2025 14:08 EDT)

STATE LEASING AGENCY REPRESENTATIVE

Date

Debra L. Catterall 7/14/25
 LESSOR Date

Bias Redding 4/24/2025
 ANALYST, LEASING BRANCH, DIVISION OF REAL PROPERTIES Date

Patrick M. Dineen 5/08/2025
 ATTORNEY, FINANCE & ADMINISTRATION CABINET Date

Callan T. Goff 5/28/2025
 MANAGER, LEASING BRANCH, DIVISION OF REAL PROPERTIES Date

Natalie W. Brauner
 DIRECTOR, DIVISION OF REAL PROPERTIES

Heidi M. Johnson 05.08.2025
 SECRETARY, FINANCE & ADMINISTRATION CABINET Date

APPROVED THIS _____ DAY OF _____, 20____

All correspondence and inquiries regarding this Lease Modification Agreement are to be directed to the Division of Real Properties, Suite 300, 403 Wapping Street, Frankfort, Kentucky 40601-2607, phone 502/564-2205. BGR

REPORT TO CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

LEASE MODIFICATION

Lease No.: PR-5834		County: Jefferson	
Using Agency: Department of Public Advocacy			
Lessor (identify all parties having 5% or more ownership): Attached extra sheet if necessary		Park EZE, LLC	
Property Location: 719 West Jefferson Street, Louisville, Kentucky 40202			
Check One: <input type="checkbox"/> New Lease <input type="checkbox"/> Renewal <input checked="" type="checkbox"/> Modification			
Type Space: Office		Cost Per Square Foot: \$15.00	
Annual Rental Cost: \$651,360.00		Average Cost Per Square Foot of Leased-In Space in County: \$12.79	
Utilities Included: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Cancellation Clause:	<input checked="" type="checkbox"/> Yes If yes, explain terms: 30 Days	<input type="checkbox"/> No If no, explain why not:	
Effective Date: July 1, 2024		Expiration Date: June 30, 2032	
Justification for Lease: Please see attached			
Has the Finance & Administration Cabinet complied with statutory requirements: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, explain:			
Explain why the Finance & Administration Cabinet chose this lessor (see attached approval memo and lease agreement): Please see attached			

COMMONWEALTH OF KENTUCKY LEASE MODIFICATION AGREEMENT

LESSOR	Park EZE, LLC	PR NUMBER, COUNTY	PR-5834, Jefferson County
ADDRESS	111 West Washington Street Suite #400 Louisville, Kentucky 40202	VENDOR NUMBER	KY 0077943
		AGENCY/DEPARTMENT	Department of Public Advocacy
		DIVISION	
		DATE	February 18, 2025
		BUILDING CODE	91893001

1. Lease Agreement number PR-5834, Jefferson County dated July 1, 2024, as per House Bill 277, originally included 30,924 square feet of office space at an initial rate of \$15.00 per square foot annually with all utilities and janitorial costs included with an initial annual rent cost of \$463,860.00 or \$115,965 per quarter/\$9,663.75 per month. It also includes 125 parking spaces at \$90.00 per space, per month at an annual parking cost of \$135,000.00 or \$33,750.00 per quarter/\$11,250.00 per month. It was anticipated an additional 3,500 square feet of office space would be added effective July 1, 2024, but the 3,500 square feet was not available for occupancy until January 1, 2025.

2. Effective January 1, 2025, this Lease is modified as follows:

The effective date for the additional 3,500 square feet of office space is changed from July 1, 2024 to January 1, 2025, which increases the total office square footage from 30,924 square feet to 34,424 square feet.

3. All other terms and conditions of the lease remain unchanged.
4. The Lessor is required to sign this document and return all copies for further processing.
5. The Lessor certifies by his signature hereinafter affixed that he ("he" is construed to mean "they" if more than one person is involved; and, if a firm, partnership, corporation, business trust or other organization is involved, then "he" is construed to mean any person with an interest therein) is legally entitled to enter into contracts with the Commonwealth of Kentucky and that by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330 - 45A.340 or 45A.990) of the Executive Branch Code of Ethics, KRS Chapter 11A, or any other applicable statute or principle by the performance of this Lease, or will he realize any unlawful benefit or gain directly or indirectly from it. The Lessor further certifies that he has not knowingly violated any provision of the campaign finance law of the Commonwealth, and that by entering into this Lease Modification Agreement he will not be in violation of the campaign finance laws of the Commonwealth.

Michael B. Rogers 2/21/25
STATE LEASING AGENCY REPRESENTATIVE Date

Michael Lynn 2/21/2025
ANALYST, LEASING BRANCH, DIVISION OF REAL PROPERTIES Date

Patrick McDaniel 2/21/25
LESSOR Date
Mr. Member 159 K-522
LLC
2/25/2025
ATTORNEY, FINANCE & ADMINISTRATION CABINET Date

Natalie W. Banner FOR 2/24/25
MANAGER, LEASING BRANCH, DIVISION OF REAL PROPERTIES Date

Natalie W. Banner
DIRECTOR, DIVISION OF REAL PROPERTIES

Dee Dee D. Brown 02.25.2025
SECRETARY, FINANCE & ADMINISTRATION CABINET Date

APPROVED THIS _____ DAY OF _____, 20____

All correspondence and inquiries regarding this Lease Modification Agreement are to be directed to the Division of Real Properties, Bush Building, 3rd Floor, 403 Wapping Street, Frankfort, Kentucky 40601-2607, phone 502/564-2205.



Division of Administration and Finance
Lucas Administrative Center 812
Nunn Drive
Highland Heights, Kentucky 41099
859.572.5125
adminfinance.nku.edu

June 11, 2025

Senator Shelley Funke-Frommeyer, Co-Chair
Representative Shawn McPherson, Co-Chair
Capital Projects and Bond Oversight Committee
Legislative Research Commission
Annex Room 34
701 Capitol Avenue
Frankfort, KY 40601

Dear Senator Funke-Frommeyer, Representative McPherson, and members of the Capital Projects and Bond Oversight Committee:

Pursuant to the provisions of House Bill 1 enacted by the 2024 Session of the Kentucky General Assembly, Northern Kentucky University hereby reports a scope increase for the following asset preservation project using 2024-2026 AP funds: ESCO – Steely Library, Regents Hall and Lucas Administrative Center. This project is being managed as a design build project and was previously reported in October 2024 with a scope of \$13,400,000. The new total scope is \$21,000,000. Additional AP funds will address additional condition issues in Regents Hall, to replace deteriorated plumbing infrastructure; to Steely, to replace the 1974 dual-duct HVAC system with a VAV system and to replace sprinkler heads throughout the building; and the addition of the Lucas Administrative Center plumbing infrastructure project, previously reported to the committee in October 2024, to the overall project.

Please advise if additional information is needed about this project.

The university is grateful for the generous appropriation of funds for Asset Preservation. Please contact me if you have questions, calvertc3@nku.edu or 859-572-5208.

Sincerely,

A handwritten signature in black ink, appearing to read "Calvert", written over a horizontal line.

Chris Calvert
Vice President, Administration and Finance/Chief Financial Officer

cc: Adam Blevins, Council on Postsecondary Education
Carla Wright, Office of State Budget Director



EASTERN KENTUCKY UNIVERSITY

Financial Affairs
Office of Budget and Financial
Planning
<https://budgeting.eku.edu>

1410 Commonwealth Hall
521 Lancaster Avenue
Richmond, Kentucky 40475-3102
(859) 622-6932

June 9, 2025

The Honorable Shelley Funke Frommeyer, Co-Chair
The Honorable Shawn McPherson, Co-Chair
Capital Projects and Bond Oversight Committee
Legislative Research Commission,
Capitol Annex Building
700 Capitol Avenue
Frankfort, Kentucky 40601

Dear Senator Funke Frommeyer, Representative McPherson and members of the Capital Projects and Bond Oversight Committee,

In accordance with provisions of KRS 45.750(1)(f)(1), KRS 164A.600, the 2024 *Acts of the Kentucky General Assembly* Chapter 175, Part II, Section 4 and Sub-section I, Sub-part 3 as well as the related portions of the 2022 *Acts* Chapter 199; Eastern Kentucky University (EKU), is reporting the following project budget revisions for Asset Preservation Pool match capital projects:

Project revisions

Project revisions necessary to continue campus-wide deferred maintenance and renovation efforts.

Begley Building Deferred Maintenance

This Begley Building deferred maintenance line is being adjusted to \$900,000 to continue ongoing deferred maintenance activities. This adjustment is reducing the current unobligated balance to \$268,000 and is necessary for a series of additional facility review processes.

This project was originally approved by the ECU Board of Regents, the Council on Postsecondary Education and the State Budget Director's Office.

Please contact me at 859.622.6932, should you have any questions. Thank you for your consideration of this report.

Ryan D. Green
Senior Executive Director

c: Dr. Bryan Makinen, Eastern Kentucky University
Amy L. Scarborough, Eastern Kentucky University
Dana D. Fohl, Eastern Kentucky University
Brooke King, Eastern Kentucky University
Carla Wright, Office of State Budget Director
Aam Blevins, Council on Postsecondary Education



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Majority Whip
Lindsey Burke
Minority Whip

June 2, 2025

Mr. Doug Hendrix
Executive Director
Kentucky Communications Network Authority
500 Mero Street, 1st Floor
Frankfort, Kentucky 40601

Dear Mr. Hendrix:

Thank you for providing the KentuckyWired Critical Infrastructure Upgrades and Purchases information as required by House Bill 6, Part I, A., 31., (3) to the committee for our May 2025 meeting. After transmittal to the committee, questions arose regarding KCNA and Accelecom. Please provide written responses to the below by close of business on June 17, 2025. The responses will be uploaded with the committee's other June transmittals to its website.

State in detail the facts supporting KCNA's claim that Accelecom has breached its agreement(s) with KCNA.

With respect to KCNA's ongoing dispute with Accelecom,

- State the amount of funds that KCNA contends is owed by KCNA to Accelecom and state the amount of payments made by KCNA to Accelecom to date.*
- State the amount of funds that Accelecom has requested that KCNA pay to Accelecom.*
- State the amount of the difference between the amount of funds that KCNA contends that KCNA owes to Accelecom and the amount of funds that Accelecom has requested that KCNA pay to Accelecom.*
- State in detail the facts supporting KCNA's claim that KCNA does not owe to Accelecom the amount of funds that Accelecom has requested that KCNA pay to Accelecom.*

With respect to payments that KCNA contends that it has made to Accelecom,

- State the amount of each payment, the method of payment (e.g. check, wired funds, etc.), the date of payment, the method of delivery of payment (e.g., U.S. mail, courier,*

June 2, 2025

Page Two of Two

commercial delivery service, etc.), the address to which the funds were delivered if mailed or delivered, and the financial institution to which the funds were wired if the funds were electronically transferred.

- *Identify the person or persons by name and title at KCNA who was/were responsible for transmission or delivery of the funds to Accelecom.*
- *Provide proof of delivery or transmission of the funds to Accelecom.*
- *Identify each payment by amount, date, and type that KCNA made by check or other negotiable instrument that has not been cashed or deposited by Accelecom. State whether KCNA has stopped payment on the check or other negotiable instrument, and if not, state why KCNA has not stopped payment.*

With respect to the equipment shelters referred to as huts that are a subject of the transactions between KCNA and Accelecom,

- *What entity is the owner of the huts.*
- *State in detail all facts that support that claim of ownership.*
- *Provide proof of ownership of the huts in the form of bill of sale or other documented proof.*

With respect to each governmental, quasi-governmental, commercial, and industrial customer of KCNA or Accelecom that has contacted KCNA regarding concerns about service, resources, equipment, or other concerns arising in whole or in part out of Accelecom's failure, inability, or unavailability to serve those customers,

- *Identify each customer by name, address, and contact person.*
- *State the concerns expressed.*
- *State KCNA's response.*

State in detail all actions taken and to be taken by KCNA to assure that all customers are being fully served and will be fully served and supported and not adversely impacted by KCNA's ongoing dispute with Accelecom.

If you have any questions, then please contact Katherine L. Halloran, Committee Staff Administrator, at (502) 564-8100.

Sincerely,



Senator Shelley Funke Frommeyer, Co-Chair
Capital Projects and Bond Oversight Committee



Representative Shawn McPherson, Co-Chair
Capital Projects and Bond Oversight Committee

cc: Members, Capital Projects and Bond Oversight Committee



Commonwealth of Kentucky
Governor's Office

Andy Beshear
Governor

Kentucky Communications Network Authority
500 Mero Street, FL 1
Frankfort, KY 40601
(502) 782-9549

Stewart Douglas Hendrix
Executive Director

June 17, 2025

Via e-mail

Sen. Shelley Funke Fromeyer, Co-Chair
Rep. Shawn McPherson, Co-Chair
Capital Projects and Bond Oversight Committee
Capital Annex
Room 136
702 Capital Avenue
Frankfort, KY 40601

Re: Committee questions regarding OpenFiber Kentucky Co. LLC d/b/a Accelecom

Sen. Fromeyer and Rep. McPherson,

The Kentucky Communications Network Authority responds to your June 2, 2025 questions regarding Accelecom as follows:

KCNA Terminated the Wholesaler Agreement

The facts supporting KCNA's termination of OpenFiber Kentucky, LLC (d/b/a Accelecom) for breach of contract are set forth in the attached Notice of Termination. Preceding the termination, KCNA issued three notices of default over a period of eight months specifying a series of breaches, including providing services other than wholesaler services, miscalculating revenue share, unauthorized access and alterations to the system, and failures to sell dark fiber, avoid costs, and participate in an audit of their records. Also included in the attached are the Finance and Administration Cabinet Secretary's Determinations regarding Accelecom's improper last mile service and the correct amount due from KCNA to purchase the Replacement Huts.

Purchase of 20 Replacement Huts (Telecommunications Shelters)

KCNA paid Accelecom \$8,532,690.35 for the Replacement Huts. KCNA sent a check in this amount to Accelecom on July 19, 2024. Accelecom made a claim to KCNA that the payment should have been \$10,177,609.63, a difference of \$1,644,919.28. The State Treasurer issued check no. 25444779 in the amount of \$8,532,690.35. The check was delivered to Accelecom's headquarters at 1700 Eastpoint Parkway #230, Louisville, KY 40223 via Express 1-Day mail by the U.S. Postal Service on July 19, 2024. The check was signed for by Tony Roberts, the designated mail courier for 1700 Eastpoint Parkway, which is Accelecom's principal

place of business. (See attached signature page.) Mr. Roberts picks up the mail at the Anchorage Post Office for all the tenants at 1700 Eastpoint Parkway. Mr. Roberts delivers the mail to Amber Cole, the mail clerk for 1700 Eastpoint Parkway. Ms. Cole then sorts the mail and delivers it to the tenants, including Accelecom.

The basis for the payment amount was in the October 29, 2020 Wholesaler Agreement Change. OpenFiber agreed to design, procure, and construct 20 Replacement Huts for a total estimated cost of \$7,756,991.23. The Agreement allowed a 10% margin without KCNA's approval. For any cost above 10%, the Agreement expressly required OpenFiber to provide notice and obtain KCNA's written consent before exceeding the capped amount. KCNA did not consent to the higher amount because Accelecom could not produce written approval from KCNA approving the cost.

On September 13, 2024 the Finance and Administration Cabinet Secretary determined that the correct purchase price for the Replacement Huts was \$8,532,690.35, representing the base price plus 10% per the Wholesaler Agreement Change. FAC Determination 24-04 (attached). This Determination is, by statute, final and conclusive unless appealed. OpenFiber did not appeal. As a result, the Determination carries the full force and effect of law and is binding on all parties.

Ownership of the Replacement Huts

Ownership of the Replacement Huts is governed by Section 3 of the Wholesaler Agreement Change, which states that ownership transfers to KCNA upon payment. Since KCNA has made full payment as determined by the Finance and Administration Cabinet's Determination 24-04, the Commonwealth is the legal owner of the huts.

Accelecom's Customers

KCNA has requested Accelecom to provide a list of its customers numerous times; Accelecom has refused. The Franklin Circuit Court ordered Accelecom to provide a list of its customers to KCNA and ordered KCNA to send notices of disconnection to each affected customer. (The Franklin Circuit Court's February 13, 2025 and February 27, 2025 Orders and a copy of the list submitted by Accelecom are attached.) Accelecom provided the customer's name only; it did not provide an address, telephone number, contact person or email. Several of Accelecom's customers contacted KCNA regarding the termination of the Wholesaler Agreement with Accelecom. Generally, the customers were concerned that their internet service would be disconnected. They stated that in some areas there are few options for internet service through existing providers. It is KCNA's understanding that all Accelecom's customers had internet service before changing to Accelecom.

The Franklin Circuit Court ordered KCNA to send a letter to each customer as an initial notice. The Court set the 30-day period referenced in the letter. KCNA understands that it might take longer to change to a new internet provider and wanted to give each customer sufficient time to switch to another provider. Once any disconnection is directed by KCNA, KCNA's contractor, Kentucky Wired Operations Co. (KWOC), will disconnect the fibers Accelecom is using. KCNA is working on a process and procedure for this disconnection. For example, KWOC will start with Accelecom's unauthorized splices which are the subject of a temporary restraining order granted by the Franklin Circuit Court. *When that schedule is set, each customer will receive a final 30-day notice prior to disconnection of the fibers.*

Currently, all Accelecom customers continue to be served by Accelecom using the network even though Accelecom is no longer the wholesaler. This service will continue until: (1) the customer obtains an alternate provider or (2) KWOC disconnects the fibers Accelecom is using. For Accelecom customers that are public or government agencies, such as health departments, county/city governments, libraries, etc., KCNA offered to provide service to them. For Accelecom's internet service provider customers, KCNA is prepared to discuss connecting them as well. Regarding K-12 school districts, KCNA has pledged that K-12 internet service will not be disrupted until K-12's contractor, ENA, finds a suitable replacement for Accelecom. KCNA has had several discussions with ENA regarding this issue. Additionally, although KCNA owns the huts, it is allowing Accelecom to use the huts to provide service.

Sincerely,

Stewart Douglas Hendrix

Stewart Douglas Hendrix
Executive Director



Commonwealth of Kentucky
Governor's Office

Andy Beshear
Governor

Kentucky Communications Network Authority
500 Mero Street, Suite 1 – 1NC
Frankfort, KY 40601
(502) 782-9549

Stewart Douglas Hendrix
Executive Director

January 22, 2025

SENT VIA EMAIL AND U.S. MAIL

OpenFiber Kentucky Company, LLC
Attn: Nick Hann and Brad Kilbey
101 Helm Street, Suite 150
Lexington, KY 40505
Nick.Hann@macquarie.com
Brad.Kilbey@accelecom.net

RE: Notice of Termination Pursuant to Wholesaler Agreement Section 12.3

To Whom It May Concern –

For the reasons set forth below, this correspondence constitutes a Notice of Termination (the “Notice”) pursuant to the terms of the Wholesaler Agreement dated October 13, 2017 (the “Agreement”). Further, pursuant to Section 2.1 of the Agreement, the date of this correspondence, January 22, 2025, constitutes the Termination Date; moreover, the termination of this Agreement is effective today. *See id.* at § 2.1. Capitalized terms which are not defined herein shall have the same meaning set forth in the Agreement, as applicable.

I. THE FIRST, SECOND, AND THIRD NOTICES OF DEFAULT.

As you know, on March 21, 2024, the Authority issued a Notice of Default to the Wholesaler outlining a “series of breaches” by the Wholesaler, each constituting a material breach pursuant to Section 12 of the Agreement (the “First Notice of Default”). (Enclosed as **Exhibit A.**); Agreement at § 12.1(b). The First Notice of Default also provided notice that the Wholesaler’s miscalculation of the revenue share created an “amount due and owing to the Authority” pursuant to Section 12.1(a) of the Agreement. Agreement at § 12.1(a). Pursuant to Sections 12.1 and 12.3, the Wholesaler’s deadline by which to cure the breaches identified in the First Notice of Default expired on April 12, 2024—a deadline that passed without the Wholesaler curing any such breach. *See* Agreement, at §§ 12.1 & 12.3.

On May 13, 2024, the Authority issued a second Notice of Default to the Wholesaler again citing a “series of breaches” by the Wholesaler each giving rise to a material breach under Section 12 of the Agreement (the “Second Notice of Default”). (Enclosed as **Exhibit B.**); Agreement at § 12.1(b). Pursuant to Sections 12.1 and 12.3 of the Agreement, the Wholesaler’s deadline by which to cure the breaches identified in the Second Notice

of Default expired on June 4, 2024. *See* Agreement, at §§ 12.1 & 12.3. That deadline similarly passed without the Wholesaler curing its breaches.

More recently, the Authority issued a third Notice of Default under the Agreement (the “Third Notice of Default”) (collectively with the First Notice of Default and the Second Notice of the Default, the “Notices of Default”), enclosed as **Exhibit C**. Like the First Notice of Default and Second Notice of Default, the Third Notice of Default identified a “series of breaches” by the Wholesaler, which each constituted a material breach under Section 12 of the Agreement. *See* Ex. C; Agreement at § 12.1(b). Pursuant to Section 12.1(b) and in accord with the First Notice of Default and Second Notice of Default, the Third Notice of Default included a list of ten (10) requests that, if the Wholesaler abided by, would assist in remedying the breaches identified therein. *See* Ex. C; Agreement at §§ 12.1(b) & 12.3. **The Wholesaler’s deadline by which to remedy the breaches identified in the Third Notice of Default has expired.** As with the First Notice of Default and the Second Notice of Default, the cure period passed without the Wholesaler curing its breaches.

II. THE WHOLESALER FAILED TO REMEDY THE BREACHES IDENTIFIED IN THE NOTICES OF DEFAULT WITHIN THE PROSCRIBED PERIOD.

To put a finer point on this issue, the Notices of Default collectively provided the Wholesaler with eighteen (18) requests that, if completed, would assist the Wholesaler in curing the “breaches” and/or “series of breaches” identified in each of the Notices of Default. *See* Ex. A at p. 2; Ex. B at p. 1, & Ex. C at p. 7; *see also* Agreement, at § 12.1(b). **To date, however, the Wholesaler has not substantively remedied a single one of those eighteen (18) requests.**

Further, each of these eighteen (18) requests corresponded with the Wholesaler’s pre-existing obligations under the Agreement, as these requests were intended to bring the Wholesaler into compliance with the Agreement:

1. The First Notice of Default requested in part that the Wholesaler provide the Authority with a “detailed accounting associated with operating and capital expenditures” related to the provision of Wholesaler Services,” and that such itemization “differentiate between the operating expenses incurred to generate revenue through Core Dark Fiber IRUs, Ancillary Dark Fiber IRUs, and Lit Fiber Services.” Ex. A at p. 2. This request falls squarely within Section 3.4 of the Agreement, which requires that the Wholesaler pay the Authority for portions of revenue generated through the Wholesaler’s provision of “Wholesaler Services,” and further directs that “the Wholesaler will provide along with its quarterly payment, *detailed information including revenue sources, calculations*, and any overdue billings related to such payment.” Agreement at §§ 3.4(a) & (b) (emphasis added).
2. Relatedly, the only request in the Second Notice of Default was that the Wholesaler execute the engagement letter tendered by Blue & Co. LLC (“Blue”) so that Blue could begin its audit of the Wholesaler’s records and property. Ex. B at p. 1. That request coincides with the Authority’s right within the Agreement to “upon reasonable notice . . . conduct or cause to be conducted, an audit of all records and property of the Wholesaler . . . to ensure that the Wholesaler is in compliance with this Wholesaler Agreement.” Agreement, at § 9.3.

3. The Third Notice of Default also makes requests that fall within the confines of the Agreement, including but not limited to requesting that the Wholesaler engage in the Dark Fiber market, pursuant to Section 3.4 of the Agreement. *Id.* at § 3.4 (directing the Wholesaler to share revenue earned from Dark Fiber with the Authority).

These are only a few examples of the eighteen (18) requests made by the Authority to the Wholesaler that have gone unanswered. *See* Ex. A at p. 2; Ex. B at p. 1, & Ex. C at p. 7.

The Authority acknowledges that on December 19, 2024, the Wholesaler sent a letter in reply to the Authority's Third Notice of Default (the "Wholesaler's Reply to the Third Notice of Default" or the "Response"); critically, however, the Response comes too late,¹ and even if it was timely issued, it fails to remedy any of the breaches identified in the Third Notice of Default among other fallacies. *See* Wholesaler's Reply to Third Notice of Default at 2–5. The Agreement is clear: where the "Wholesaler has failed to *remedy* such breach or series of breaches within 15 Business Days of notice," a Wholesaler Event of Default has occurred. Agreement at § 12.1(b) (emphasis added). That provision does not provide 15 Business Days to respond, but rather 15 Business Days to remedy. *Id.*

III. TERMINATION OF THE AGREEMENT.

Pursuant to Section 2.1(b) of the Agreement, the Authority and/or Operations Co. may terminate the Agreement for cause pursuant to Section 12.3 "in connection with a Wholesaler Event of Default." Agreement at §§ 12.1(b) & 12.3. Under the Agreement, three circumstances give rise to a "Wholesaler Event of Default:" (a) the Wholesaler's failure to pay "any amount due and owing" within 15 Business Days after receiving notice of nonpayment; (b) a "breach" or "series of breaches" by the Wholesaler as to any "material term" where the Wholesaler then fails to remedy the "breach" or "series of breaches" within 15 Business Days; and (c) the occurrence of a "Wholesaler Insolvency Event," as that term is defined in Section 1.1. *Id.* at § 12.1.

A. THE WHOLESALER'S DEADLINE TO CURE EACH OF THE NOTICES OF DEFAULT HAS PASSED.

The First Notice of Default provided the Wholesaler with notice that pursuant to Section 12.1(a) and 12.1(b) of the Agreement, the Wholesaler had engaged in a "breach" or "series of breaches" as to material terms of the Agreement and that the Wholesaler had an "amount due and owing to the Authority," both of which are defined as Wholesaler Event[s] of Default. Agreement, at §§12.1(a), 12.1(b), and 12.3. Moreover, the Second Notice of Default and the Third Notice of Default each identified a "breach" or "series of breaches" as to material terms of the Agreement, thus giving rise to further Wholesaler Event[s] of Default. *Id.* at §§ 12.1(b) & 12.3.

On March 21, 2024, May 13, 2024, and November 22, 2024, respectively, the Authority provided notice to the Wholesaler that a "Wholesaler Event of Default" had occurred, thus satisfying the Authority's obligations pursuant to Section 12.1(b). *Id.* at 12.1(b). As set forth above, the 15 Business Day period for the Wholesaler to

¹ Pursuant to Section 18.6 of the Agreement, a notice is considered "received" by any Party to the Agreement when it is "delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt[.]" Agreement, § 18.6. The Third Notice of Default was issued during business hours, "before 3:00 p m local time" on November 22, 2024. The Wholesaler's 15 Business Day period to remedy the issues detailed in the Third Notice of Default therefore ended on December 17, 2024. Yet, the Wholesaler's Reply to the Third Notice of Default was issued on December 19, 2024.

cure each of the Notices of Default passed without the Wholesaler curing its “breaches” and/or “series of breaches[.]” *Id.* at §§12.1(a) & 12.1(b). Each of the Notices of Default were also tendered in accordance with the Notice requirements set forth in Section 18.6 of the Agreement. *Id.* at § 18.6.

Despite the First Notice of Default being tendered to the Wholesaler over nine (9) months ago, the Wholesaler is no closer today to remedying its breaches of the Agreement. In fact, as evidenced by the Second Notice of Default and Third Notice of Default, during those nine intervening months, the Wholesaler engaged in further “breaches” and “series of breaches” of the Agreement. **Pursuant to Section 12.3, the Authority therefore hereby provides notice of its termination of the Agreement. *Id.* at § 12.3.**

B. PROCESS FOR TERMINATION.

Nothing hereunder obviates any requirement the Wholesaler has to provide certain notice requirements pursuant to state and/or federal regulations before terminating Users from its services. The Authority expects the Wholesaler to ensure that it complies with any such regulations. The Authority is prepared to cooperate to the extent reasonably necessary and required.

The Wholesaler is directed to provide written notice to all Users that the Wholesaler is being disconnected from the NG-KIH System and provide copies of such written notice to the Authority, within **5 Business Days** of the date of this correspondence, or January 29, 2025. To ensure that the Wholesaler complies accordingly, the Authority further directs that within **5 Business Days**, January 29, 2025, the Wholesaler completes the worksheet appended as **Appendix 1** for each User connected to the NG-KIH System. The Wholesaler is further directed to provide the Authority with copies of all written notices provided to Users regarding the termination of the Wholesaler’s services. Moreover, to the extent necessary, the Wholesaler is further directed to ensure it complies with all statutory and regulatory notice requirements under Commonwealth and federal law, including but not limited to completing all necessary applications with the Public Service Commission, as applicable, and providing copies of any such application to the Authority.

The Authority anticipates the opportunity for all Users to continue to be fully serviced through the NG-KIH System by and through the Authority and Operations Co., thereby eliminating any User concern with respect to the continuity of services being currently provided.

1. THE WHOLESALER WILL BE DISCONNECTED FROM THE NG-KIH SYSTEM IN 20 BUSINESS DAYS ACCORDING TO A SCHEDULE TO BE INCLUDED IN SUBSEQUENT CORRESPONDENCE

Any access and/or Wholesaler Assets shall be disconnected from the NG-KIH System beginning on or after 20 Business Days of the date of this correspondence, February 19, 2025 (the “Interim Period”.) During the Interim Period, the Authority will communicate with Operations Co. regarding any disconnection procedure and then in subsequent correspondence, the Authority will in turn communicate to the Wholesaler the schedule in which the termination of services will take place. The subsequent correspondence will include such information as, but not be limited to, the order in which Users will be disconnected from any equipment operated by the Wholesaler and reconnected to the NG-KIH System.

To the extent that the Wholesaler needs more than 20 Business Days to prepare for any disconnection, the Wholesaler is directed to notify the Authority within 5 Business Days of the date of this correspondence, January 29, 2025, and propose terms for usage of the KentuckyWired network. In the event the Wholesaler provides such notice, the Authority will contemplate entering a limited-period, short-term agreement with the Wholesaler to continue services during the termination transition and to ensure all Users receive proper notice before disconnection; however, the Authority is under no obligation to grant such request. Moreover, any agreement entered by and between the Wholesaler and Authority will be for a set, limited period.

2. THE INTERIM PERIOD.

During the Interim Period, the Authority demands that the Wholesaler **immediately cease and desist** from connecting any third-parties to the NG-KIH System who are not connected to the NG-KIH System as of the date of this correspondence, January 22, 2025, including but not limited to, any third-parties for whom the Wholesaler has submitted a Preliminary Change Instruction but for whom a PPP Change Certificate has not been issued and any third-party for whom the Wholesaler never initiated a Preliminary Change Instruction. Second, the Wholesaler is directed to **immediately cease and desist** from engaging in any additions or modifications to the NG-KIH System of any kind. As you know, the term NG-KIH System is broadly defined in the Agreement; thus, this directive to cease and desist should be broadly interpreted to include, but is not limited to, preventing the Wholesaler from connecting new equipment of any kind to the NG-KIH System. Agreement at § 1.1. Third, the Wholesaler is further directed to **immediately cease and desist** from engaging in any indirect additions or modifications of the NG-KIH System, including but not limited to, modifying, or connecting any Wholesaler Asset to the NG-KIH System.

Moreover, on information and belief, the Wholesaler has received correspondence from third parties who may be interested in using the NG-KIH System, including but not limited to, correspondence from third-parties inquiring about Dark Fiber, Ancillary Dark Fiber, and Lit Fiber Services. Within five Business Days, the Wholesaler is directed to furnish copies to the Authority of any such correspondence received in the last year, together with any response provided by the Wholesaler.

IV. RESERVATION OF RIGHTS AND REMEDIES.

The Authority reserves any and all rights and remedies available under the applicable Agreement, at law or in equity, including, without limitation, the right to pursue claim(s) against Wholesaler for any breach of the Agreement or other injury, whether or not addressed in this Notice. Failure by the Authority to take any immediate action does not constitute a waiver of any of the Authority's rights or remedies arising under the Agreement or otherwise. The Authority has incurred and will continue to incur additional costs and attorneys' fees in connection with Wholesaler's breaches of this Agreement, and specifically reserves its right to pursue reimbursement for such costs and fees. *See, e.g.,* Agreement, § 12.4 (requiring Wholesaler to reimburse the Authority for "any and all reasonable costs incurred by the Authority in exercising its rights . . . under this Section 12[.]"). The Authority further specifically reserves its right to pursue an audit of all records and property of the Wholesaler related to Wholesaler Services—a right that continues for three (3) years following today which is the Termination Date of the Agreement. *Id.* at § 2.1 and 9.3 (setting forth the Authority's right to audit).

Sincerely,

**The Commonwealth of Kentucky, the Kentucky Communications Network
Authority**

DocuSigned by:
Stewart Douglas Hendrix
135393F4D2B8453...

By: _____

Name: Stewart Douglas Hendrix

Title: Executive Director

cc: KentuckyWired Operations Company, LLC, 312 4th Street, Suite 700, Louisville, KY 40202 and
101 Helm Street, Suite 150, Lexington, KY 40505 (per Section 18.6)
Attn: Robert G. Morphonios (Robert.Morphonios@kentuckywired.com)

Certificate Of Completion

Envelope Id: 818FCAD E-91B4-4720-91DF-0F6AC396E64A

Status: Completed

Subject: Complete with Docusign: 2025.01.22 Notice of Termination (4888-0762-4188.v14).docx

Source Envelope:

Document Pages: 6

Signatures: 1

Envelope Originator:

Certificate Pages: 5

Initials: 0

D'Lynne Schade

AutoNav: Enabled

One America Square Suite 2900

Envelopeld Stamping: Enabled

Indianapolis, IN 46282

Time Zone: (UTC-06:00) Central Time (US & Canada)

D'Lynne.Schade@icemiller.com

IP Address: 207.237.252.151

Record Tracking

Status: Original

Holder: D'Lynne Schade

Location: DocuSign

1/22/2025 8:06:26 AM

D'Lynne.Schade@icemiller.com

Signer Events

Stewart Douglas Hendrix

Doug.Hendrix@ky.gov

Executie Director

Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:
Stewart Douglas Hendrix
135393F4D2B8453...

Signature Adoption: Pre-selected Style
Using IP Address: 205.204.186.1

Timestamp

Sent: 1/22/2025 8:08:54 AM

Viewed: 1/22/2025 9:07:49 AM

Signed: 1/22/2025 9:07:59 AM

Electronic Record and Signature Disclosure:

Accepted: 1/22/2025 9:07:49 AM

ID: d17624e7-1d5a-4f76-97a2-82fa7aa93fc3

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Kristina Dahmann

Kristina.Dahmann@icemiller.com

Partner

Ice Miller LLP

Security Level: Email, Account Authentication (None)

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Sent: 1/22/2025 8:08:55 AM

Electronic Record and Signature Disclosure:

Accepted: 5/28/2021 8:22:20 AM

ID: eb69af6b-fedc-4cf3-b98f-53ebe6bb487e

Sarah Charlton

sarah.charlton@icemiller.com

Security Level: Email, Account Authentication (None)

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Witness Events

Signature

Timestamp

Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	1/22/2025 8:08:55 AM
Certified Delivered	Security Checked	1/22/2025 9:07:49 AM
Signing Complete	Security Checked	1/22/2025 9:07:59 AM
Completed	Security Checked	1/22/2025 9:07:59 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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APPENDIX 1

Complete this form and return it to the Authority by January 29, 2025 for each User that is connected to the NG-KIH System.

User	
Address	
Service(s) Provided	
User Contact (Name)	
User Contact (Phone Number)	
User Contact (Email)	
Fibers Utilized	
Date Informed of the Wholesaler's Disconnection¹	
Associated Workflow Number(s)	
NWCA Type ID	
PCI Submission Date	

¹ Pursuant to the Notice of Termination, the Wholesaler is further directed to provide to the Authority copies of all written correspondence provided to each User regarding the Wholesaler's termination of services. Notice of Termination at p. 4.

EXHIBIT A



Commonwealth of Kentucky
Governor's Office

Andy Beshear
Governor

Kentucky Communications Network Authority
500 Mero Street, Suite 1 – 1NC
Frankfort, KY 40601
(502) 782-9549

Stewart Douglas Hendrix
Executive Director

March 21, 2024

SENT VIA EMAIL AND U.S. MAIL

OpenFiber Kentucky Company, LLC
Attn: Nick Hann and Brad Kilbey
101 Helm Street, Suite 150
Lexington, KY 40505
Nick.Hann@macquarie.com
Brad.Kilbey@accelcom.net

***RE: Notice of Wholesaler Event of Default Pursuant to Wholesaler Agreement
Section 12.1***

To Whom It May Concern –

This correspondence constitutes a Notice of Default pursuant to the terms of the Wholesaler Agreement dated October 13, 2017 (the “Agreement”). Capitalized terms which are not defined herein shall have the same meaning set forth in the Agreement, as applicable.

As evidenced by the Determination of the Finance and Administration Cabinet dated February 29, 2024 (the “Determination”), the Wholesaler’s actions constitute the provision of services other than Wholesaler Services and any act by the Wholesaler to act as a Last-Mile provider and service to customers that does not align with the requirement of acting as a wholesaler fall outside of the scope of the Wholesaler Agreement. *See* The Determination, at pp. 7–8.

Pursuant to Section 12.1(b) of the Agreement, the Wholesaler therefore engaged in a “series of breaches” as to a “material term” by using the Additional Capacity to provide services other than Wholesaler Services pursuant to Section 3 of the Agreement. Agreement, at §§ 3 & 12.1(b). This failure constitutes a Wholesaler Event of Default as defined in Section 12.1(b) of the Agreement. *Id.*, at § 12.1(b). The Wholesaler’s “series of breaches” pursuant to Section 3 of the Agreement, as demonstrated by the Determination, result in a Wholesaler Event of Default pursuant to Section 12.1(a) of the Agreement, as the Wholesaler has been engaging in the provision of services other than Wholesaler Services, and in turn, miscalculating the Revenue Share, resulting in a present “amount due and owing to the Authority[.]” *See* Agreement, at §§ 3 & 12.1(a).

As a result of these series of breaches within the meaning of Section 12.1(a) and Section 12.1(b) of the Agreement and to understand the extent of OpenFiber's material breaches and the work needed to correct those breaches, the Authority requests that the Wholesaler provide the Authority with the following:

1. A detailed list of all services performed by the Wholesaler using or otherwise in connection with the NG-KIH System to date, including:
 - The date of the service;
 - The type of the service;
 - The terms of the provision of the service;
 - The operating expense associated with the service;
 - The capital expenditure associated with the service;
 - A description of and the identity of the customer;
 - Whether the service is a Wholesaler Service, last-mile/retail service, or other; and
 - The nature of the service provided (Lit Fiber service, wireless, etc.).
2. A detailed list and accounting of the assets procured by the Wholesaler in connection with the provision of Wholesaler Services that meet the definition of Wholesaler Assets.
3. A recalculation, or estimate based on known market factors, of the Transport Fees, related to the provision of any non-Wholesaler Services, including last-mile/retail services. This Transport Fee calculation must be generally comparable to any Transport Fee associated with Wholesaler Services to a similarly-situated Internet Service Provider for the same service, for an equivalent term, and for a same or similar start and end dates.
4. A detailed accounting of associated operating expenses and capital expenditures, with the capital return, solely required for the provision of Wholesaler Services and with respect to the revenue generated for the provision of Wholesaler Services. The itemization should differentiate between operating expenses incurred to generate revenue through Core Dark Fiber IRUs, Ancillary Dark Fiber IRUs, and Lit Fiber Services.
5. A recalculation of the Revenue Share taking into account (i) the Transport Fees calculated under point three (3) and (ii) the operating expenses and capital expenditures under point four (4), which will result in a Revenue Share calculation that appropriately accounts for only the provision of Wholesaler Services.
6. Remit the proper amounts due to the Authority under the recalculation completed per point five (5).
7. A written commitment by the Wholesaler to act in conformity with the Determination moving forward.

Pursuant to Sections 12.1 and 12.3 of the Agreement, the Authority hereby provides notice that the Wholesaler shall have fifteen (15) Business Days from the date of this letter, or until April 12, 2024, to remedy the above-described breaches of the Agreement. *See* Agreement, at §§ 12.1 & 12.3. Points one (1) through seven (7), and all sub-points contained therein, provide a pathway

to begin the steps needed to respond to the Determination of the Wholesaler performance under the Agreement and should not be construed as an agreement with respect to the steps the Authority views as the totality of what is needed in order to remedy the Wholesaler's breaches.

The Authority reserves any and all rights and remedies available under the applicable Agreement, at law or in equity, including, without limitation, the right to pursue claim(s) against the Wholesaler for any breach of the Agreement or other injury, whether or not addressed in this Notice. Failure by the Authority to take any immediate action does not constitute a waiver of any of the Authority's rights or remedies arising under the Agreement or otherwise. The Authority has incurred and will continue to incur additional costs and attorneys' fees in connection with the Wholesaler's breach of this Agreement, and specifically reserves its right to pursue reimbursement for such costs and fees. *See, e.g.,* Agreement, at § 12.4 (requiring the Wholesaler to reimburse the Authority for "any and all reasonable costs incurred by [the Authority] in exercising its rights . . . under this Section 12[.]").

Sincerely,

**The Commonwealth of Kentucky, the Kentucky
Communications Network Authority**

By: Stewart Douglas Hendrix

Name: Stewart Douglas Hendrix

Title: Executive Director

cc: KentuckyWired Operations Company, LLC, 101 Helm Street, Suite 150, Lexington, KY 4050
Attn: Robert G. Morphonios (Robert.Morphonios@kentuckywired.com)

EXHIBIT B



Commonwealth of Kentucky
Governor's Office

Andy Beshear
Governor

Kentucky Communications Network Authority
500 Mero Street, Suite 1 – 1NC
Frankfort, KY 40601
(502) 782-9549

Stewart Douglas Hendrix
Executive Director

May 13, 2024

SENT VIA EMAIL AND U.S. MAIL

OpenFiber Kentucky Company, LLC
Attn: Nick Hann and Brad Kilbey
101 Helm Street, Suite 150
Lexington, KY 40505
Nick.Hann@macquarie.com
Brad.Kilbey@accelcom.net

***RE: Notice of Wholesaler Event of Default Pursuant to Wholesaler Agreement
Section 12.1***

To Whom It May Concern –

This correspondence constitutes a Notice of Default pursuant to the terms of the Wholesaler Agreement dated October 13, 2017 (the “Agreement”). Capitalized terms which are not defined herein shall have the same meaning set forth in the Agreement, as applicable.

According to Section 9.3 of the Agreement, the Authority has the right, upon reasonable notice but not more often than once per year, to conduct, or cause to be conducted, an audit of all records and property of the Wholesaler related to the Wholesaler Services to ensure that the Wholesaler is in compliance with the Wholesaler Agreement. *See* Agreement, at § 9.3, ¶ 4.

In accordance with Section 9.3 of the Agreement, the Wholesaler was required to allow for the audit to be conducted by Blue & Co., LLC, at the request of the Authority on March 21, 2024 (the “Audit”). The Wholesaler was notified of an engagement letter from Blue & Co., LLC on several occasions, but the Wholesaler has failed to countersign the engagement letter. Without the Wholesaler’s execution of the engagement letter, Blue & Co., LLC is unable to commence audit procedures. The failure to execute the engagement letter constitutes a direct violation of Section 9.3 of the Agreement. *See* Agreement, at § 9.3, ¶ 4.

As a result of this breach within the meaning of Section 12.1(b) of the Agreement, the Authority requests that the Wholesaler execute the engagement letter provided by Blue & Co., LLC on April 22, 2024 to allow the Audit to be conducted, and to fully and completely comply with any request in furtherance of the Audit.

Pursuant to Sections 12.1 and 12.3 of the Agreement, the Authority hereby provides notice that the Wholesaler shall have fifteen (15) Business Days from the date of this letter, or until June 4, 2024, to remedy the above-described breaches of the Agreement. *See* Agreement, at §§ 12.1 & 12.3.

The Authority reserves any and all rights and remedies available under the applicable Agreement, at law or in equity, including, without limitation, the right to pursue claim(s) against the Wholesaler for any breach of the Agreement or other injury, whether or not addressed in this Notice. Failure by the Authority to take any immediate action does not constitute a waiver of any of the Authority's rights or remedies arising under the Agreement or otherwise. The Authority has incurred and will continue to incur additional costs and attorneys' fees in connection with the Wholesaler's breach of this Agreement, and specifically reserves its right to pursue reimbursement for such costs and fees. *See, e.g.,* Agreement, at § 12.4 (requiring the Wholesaler to reimburse the Authority for "any and all reasonable costs incurred by [the Authority] in exercising its rights . . . under this Section 12[.]").

Sincerely,

**The Commonwealth of Kentucky, the Kentucky
Communications Network Authority**

By: Stewart Douglas Hendrix

Name: Stewart Douglas Hendrix

Title: Executive Director

cc: KentuckyWired Operations Company, LLC, 101 Helm Street, Suite 150, Lexington, KY 4050
Attn: Robert G. Morphonios (Robert.Morphonios@kentuckywired.com)

EXHIBIT C



Commonwealth of Kentucky
Governor's Office

Andy Beshear
Governor

Kentucky Communications Network Authority
500 Mero Street, Suite 1 – 1NC
Frankfort, KY 40601
(502) 782-9549

Stewart Douglas Hendrix
Executive Director

November 22, 2024

SENT VIA EMAIL AND FEDEX

OpenFiber Kentucky Company, LLC
Attn: Nick Hann and Brad Kilbey
101 Helm Street, Suite 150
Lexington, KY 40505
Nick.Hann@macquarie.com
Brad.Kilbey@accelcom.net

***RE: Notice of Wholesaler Event of Default Pursuant to Wholesaler Agreement
Section 12.1***

To Whom It May Concern –

This correspondence constitutes a Notice of Default pursuant to the terms of the Wholesaler Agreement dated October 13, 2017 (the “Agreement”). Capitalized terms which are not defined herein shall have the same meaning set forth in the Agreement, as applicable.

I. THE FIRST AND SECOND NOTICES OF DEFAULT.

As you know, the Authority sent the Wholesaler Notices of Default on March 21, 2024 (the “First Notice of Default”) and May 13, 2024 (the “Second Notice of Default”), both of which have gone uncured. Each Notice of Default outlined the Wholesaler’s “series of breaches” of material terms pursuant to Section 12 of the Agreement and provided constructive steps to assist in the Wholesaler’s right to remedy the Wholesaler Event of Default pursuant to Sections 12.1 and 12.3 of the Agreement. Agreement, at §§ 12.1 & 12.3.

Specifically, the First Notice of Default explained that the Wholesaler engaged in a “series of breaches” as to a “material term” by using the Additional Capacity to provide services other than Wholesaler Services pursuant to Section 3 of the Agreement. *See id.*, at §§ 3 & 12.1(b). As demonstrated by the Determination of the Finance and Administration Cabinet (the “FAC”) dated February 29, 2024 (the “Determination”), the Wholesaler has been engaging in the provision of services other than Wholesaler Services, and in turn, has been miscalculating the Revenue Share, resulting in a present “amount due and owing to the Authority[.]” *Id.*, at §§ 3 & 12.1(a). Wholesaler has failed to timely cure the breach set out in the First Notice of Default, constituting grounds to terminate the Wholesaler Agreement.

The Authority sent a second Notice of Default to the Wholesaler on May 13, 2024 (the “Second Notice of Default”), which outlined an additional Event of Default based on the Wholesaler’s failure to cooperate with the Blue & Co., LLC (“Blue”) audit. Despite notice, the Wholesaler has refused cooperate by signing an audit letter that would allow Blue to begin its audit. A copy of the audit letter (the “Audit Letter”) is enclosed as **Exhibit A**. On August 12, 2024, the Authority explained in a letter to the Wholesaler that Blue is bound by professional auditing standards which require the Wholesaler to take responsibility for the accuracy and completeness of the revenue share reports. *See* letter from Adam Adkins to Greg Mayes dated August 12, 2024 attached as **Exhibit B**, together with the enclosure to that letter, attached as **Exhibit C**. On August 25, 2024, the Wholesaler again refused to sign the Audit Letter—only further necessitating this instant Notice of Default. Letter from Greg Mayes to Adam Adkins dated August 22, 2024, enclosed as **Exhibit D**. Since then, the Wholesaler has only taken steps to delay and obfuscate the audit. On November 14, 2024, the Authority responded to yet another failed attempt by the Wholesaler to thwart the Authority’s audit rights. Enclosed as **Exhibit E** is the Wholesaler’s October Letter and **Exhibit F** is the Authority’s response.

Five months have passed since the Second Notice of Default was issued; nevertheless, the Wholesaler does not appear to be any closer to complying with its contractual obligation to participate in the audit. Even with all the efforts made by the Authority to explain, to coordinate with Blue, and to ensure the timely completion of an audit under Section 9.3 of the Wholesaler Agreement, Wholesaler has still failed to cure the breach set out in the Second Notice of Default, let alone timely cure the breach, constituting grounds to terminate the Wholesaler Agreement.

II. OPERATIONS CO.’S NOTICE OF DEFAULT.

Separate and apart from the Authority’s First Notice of Default and Second Notice of Default, on May 23, 2024, Operations Co. identified other breaches of the Wholesaler Agreement by the Wholesaler (the “Operations Co. Notice of Default”), enclosed as **Exhibit G**. Specifically, the Operations Co. Notice of Default provided notice that the Wholesaler had engaged in a series of breaches that, if gone uncured, would constitute a Wholesaler Event of Default. *Id.* In its correspondence, Operations Co. declared that the Wholesaler was in breach of the Agreement, for among other reasons, engaging “in a series of authorized access[es] and alteration[s] to, and interference[s] with, the NG-KIH System and PPP Network Assets.” Ex. G. at 1. To be clear, the Authority concurs with Operations Co.’s positions as set forth in the Operations Co. Notice of Default.

In further correspondence dated July 11, 2024, enclosed as **Exhibit H**, Operations Co. advised through counsel that it would hold in abeyance the Wholesaler’s deadline to cure the breaches outlined in the Operations Co. Notice of Default until five days after either: (1) Judge Shepherd issued a decision on the Wholesaler’s Motion for Partial Summary Judgment;¹ or (2) the parties concluded the then-scheduled court-ordered mediation (the “Abeyance Period”). Because a decision on the Wholesaler’s Motion for Partial Summary Judgment was issued on September 25, 2024 and the court-ordered mediation took place on October 1, 2024, the Abeyance Period expired no later than October 8, 2024.

¹ *See infra* note 1 for further discussion of the Wholesaler’s Motion for Partial Summary Judgment.

The Authority joins and concurs with Operations Co. Notice of Default and incorporates by reference said Operations Co. Notice of Default. Unauthorized access and alteration to, and interference with, the NG-KIH System and PPP Network Assets constitutes a significant breach under the terms of the Agreement. The Authority has not received further correspondence or evidence indicating that the Wholesaler cured the breaches identified in the Operations Co. Notice of Default. Wholesaler has still failed to cure the breach set out in the Operations Co. Notice of Default, let alone timely cure the breach, constituting grounds to terminate the Wholesaler Agreement.

III. THIRD NOTICE OF DEFAULT.

In addition to the First Notice of Default and the Second Notice of Default, the Authority now serves this Third Notice of Default pursuant to the Agreement outlining additional breaches by the Wholesaler. Specifically, the Wholesaler’s “series of breaches” as to “material term[s]” include the Wholesaler’s: (1) failure to sell Dark Fiber, (2) failure to provide access to the Replacement Huts, (3) failure to avoid costs, and (4) failure to correctly calculate the Revenue Share.

1. The Wholesaler’s Refusal to Sell Dark Fiber

The Wholesaler is in breach of the Agreement by failing to commercialize the NG-KIH System by and through its refusal to participate in the sale or leasing of Dark Fiber. Under the Agreement, the Wholesaler is obligated to sell Dark Fiber. *See* Agreement, at §§ 1.1 (defining Wholesaler Services to include Core Dark Fiber IRUs and Ancillary Dark Fiber IRUs) & 3.1 (generally describing Wholesaler Services). The Wholesaler is required to compensate the Authority with “90% of all Gross Ancillary Revenues generated from Core Dark Fiber IRUs” and “80% of all Net Ancillary Revenues generated from Ancillary Dark Fiber IRUs.” *Id.*, at §§ 3.4(a) & 3.4(b). The Wholesaler’s refusal to participate in the Dark Fiber market cannot be disputed. In a December 2022 meeting by and between the Authority, the Wholesaler, and Operations Co., the Wholesaler’s CEO David Flessas bragged that “Accelecom will never sell another piece of dark fiber[.]”

The Wholesaler’s refusal to sell Dark Fiber to interested parties continues, which directly damages the Authority by denying it revenue under Section 3.4 of the Agreement. *Id.*, at §§ 3.4(a) & 3.4(b). Upon information and belief, four internet service providers—East Kentucky Network, LLC (“EKN”), Voipster Communications, Inc. (“Voipster”), BluegrassNet, and ETHit—have attempted to purchase Dark Fiber services from the Wholesaler, but the Wholesaler refused to sell those services. For example, when Voipster attempted to purchase Dark Fiber from the Wholesaler it was informed by the Wholesaler that the Wholesaler has a policy against selling Dark Fiber in the Authority. Email correspondence between the Wholesaler and Voipster dated September 25, 2024, enclosed as **Exhibit I**. Further, on March 8, 2024, EKN sent a letter to the Authority’s Executive Director stating that it also sought to purchase Dark Fiber services from the Wholesaler, only to be denied. Letter from EKN to the Authority dated March 8, 2024, enclosed as **Exhibit J**. Moreover, on September 6, 2024, the Authority sent a letter to the Wholesaler regarding the Wholesaler’s refusal to engage in Dark Fiber negotiations with ETHit, enclosed as **Exhibit K**. The Wholesaler’s response presents a false narrative. Upon information and belief, the Wholesaler onboarded ETHit as a customer, negotiated upfront money and a line of credit

requirement with ETHit, and ETHit acquiesced to every demand made by the Wholesaler to secure Dark Fiber on the NG-KIH System and returned a signed contract to the Wholesaler. As set out herein, Voipster, EKN and ETHit, without recourse, asked the Authority for assistance with respect to the Wholesaler's failures. The Authority, thus, asked the Wholesaler to act in accordance with the Wholesaler Agreement and sell Dark Fiber. Now, the Authority declares the Wholesaler in default under the Agreement because the Wholesaler rebuffed rather than acceded to these repeated, reasonable requests.

The Wholesaler's refusal to engage in the Dark Fiber market is intentional and entirely self-interested. In the December 2022 meeting referenced above, Mr. Flessas plainly stated that "selling Dark Fiber would put [the Wholesaler] out of business." On information and belief, the Wholesaler invoked its policy against selling and/or leasing Dark Fiber because it is under the impression that it would suffer financially if made to sell Dark Fiber, as it would then be selling to would-be competitors. This predicament, however, is one of the Wholesaler's own making. It would only be selling to potential competitors (*i.e.*, internet service providers and telecommunications companies like Voipster, BluegrassNet, and EKN) because the Wholesaler also sells retail services.² If the Wholesaler were acting as a wholesaler and engaged in the sale of wholesaler services, as contemplated by the Agreement, Dark Fiber customers would only be customers, not potential competitors.

The Wholesaler's outright refusal to engage in the sale of Dark Fiber is but the most recent example of the Wholesaler's failure to uphold its end of the bargain and has caused significant damage to the Authority and the Commonwealth of Kentucky. During a May 26, 2014 presentation, Macquarie estimated that Gross Ancillary Revenue generated through the first 10 years of operations in Dark Fiber Services would be more than \$25 million. *See* May 26, 2014 Macquarie Presentation titled "NG-KIH: Wholesaler Discussion Materials," enclosed as **Exhibit M**, at slides 14, 15 & 19. Macquarie also represented that some projections showed Core Dark Fiber and Ancillary Dark Fiber would represent 60% of the revenue. *See id.*, at slides 24 & 25. According to the Wholesaler's most recent Revenue Share Report, to date, the Wholesaler has entered 1 Core Dark Fiber IRU with "a single customer who purchased a dark fiber pair for \$500 [monthly revenue return] on a 60 month term." *See* FY2025 Q2 Report, enclosed as **Exhibit N**, at 3. This falls drastically short of the millions of dollars Macquarie promised the citizens of the Commonwealth of Kentucky.

In light of these refusals to sell Dark Fiber, despite the Wholesaler's obligations under the Agreement, the Authority is left with no choice but to give the Wholesaler notice of its breach in hopes that the Wholesaler will comply with the Agreement's terms. The Authority reserves all rights associated with Wholesaler's ongoing series of breaches with respect to its contractual

² The Wholesaler's position that it may sell retail services (in addition to acting as a wholesaler) has been consistently rejected. As you know, the FAC found in its February 29, 2024 Determination that the Wholesaler Agreement obligates the Wholesaler to engage in wholesale rather than retail services. The Wholesaler thereafter appealed the Determination to the Franklin Circuit Court in the case captioned *OpenFiber Kentucky Company, LLC v. The Commonwealth of Kentucky, the Kentucky Communications Network Authority, et al.*, case no. 24-CI-00333, which has since been consolidated with case no. 23-CI-01049 (the "Litigation"). On June 28, 2024, the Wholesaler filed a Motion for Partial Summary Judgment in the Litigation regarding whether the Determination properly found that the Wholesaler could not engage in the sale of retail services. On September 25, 2024, the Franklin Circuit Court denied the Wholesaler's Motion for Summary Judgment. *See Exhibit L*, the Franklin Circuit Court's September 25, 2024 Order.

obligation to commercialize the NG-KIH System by and through its refusal to participate in the sale or leasing of Dark Fiber, including but not limited to the Authority's right to seek all lost Revenue Share relating to Wholesaler's series of breaches.

2. The Wholesaler's Failure to Provide Access to the Replacement Huts

Under the Agreement, together with the Wholesaler Agreement Change (the "Change Agreement"), the Wholesaler is engaging in a "series of breaches" by failing to provide MuniNet Fiber Agency ("MuniNet") and/or the Authority with access to the Replacement Huts.³ Project Implementation Agreement, at § 4.15 & Schedule 20. The Wholesaler is required to provide MuniNet with around-the-clock access rights to the Replacement Huts under the Project Agreement, Project Implementation Agreement, and the Third-Party Infrastructure Agreement entered between MuniNet and the Commonwealth of Kentucky (the "Infrastructure Agreement"). The Wholesaler's refusal to provide MuniNet with these access rights represents a material breach.

The Authority has diligently sought the Wholesaler's cooperation on this issue. Despite two years of correspondence between the Authority and the Wholesaler with respect to the Replacement Huts, the Wholesaler remains uncooperative. It was only after the Wholesaler's repeated refusal to allow the Authority to exercise its right to purchase the Replacement Huts that the Authority issued a Dispute Notice pursuant to Section 18.6 and Schedule 2, Section 2.2 of the Agreement. Agreement, at § 18.6 & Schedule 2 at § 2.2. After the Wholesaler failed to abide by the time limits set forth in Schedule 2 of the Agreement, the Authority advised it was amenable to continuing the Dispute Resolution Procedure so long as the Wholesaler agreed to bear all costs associated with the Referee process and comply with all time limits set forth in Schedule 2 moving forward. *See* May 9, 2024 letter from Kristina Dahmann to Kevin Marino and John Tortorella, enclosed as **Exhibit O**. The Wholesaler did not reply, and on June 6, 2024, the Authority presented a dispute regarding the Replacement Huts to the FAC for consideration. In the interim, the Authority tendered a check for \$8,532,690.35 to the Wholesaler for the purchase of the Replacement Huts and directing the Wholesaler to, through Operations Co., facilitate MuniNet's access. *See* Letter from the Authority to the Wholesaler dated July 17, 2024, enclosed here as **Exhibit P**. Subsequent correspondence from both the Wholesaler and the Authority has failed to resolve this matter. In fact, Wholesaler threatened to remove MuniNet's property from the Replacement Huts. *See* August 10, 2024 Letter from Kevin Marino to Kristina Dahmann at 2, enclosed as **Exhibit Q**. The Authority has reiterated its position through correspondence dated August 9 and September 9, 2024, which are incorporated herein by reference, and enclosed here as **Exhibit R & S**.

On September 13, 2024, the FAC rendered its determination on this issue, attached as **Exhibit T**, finding entirely in the Authority's favor, including that the Authority was entitled to purchase the Replacement Huts. Nevertheless, to date, the Wholesaler has not cashed the check tendered on July 17, 2024.

³ Capitalized terms in this paragraph have the meaning as set forth in the Change Agreement, or, where applicable, the Amended and Restated Project Agreement (the "Project Agreement") and/or the Amended and Restated Project Implementation Agreement (the "Project Implementation Agreement," collectively with the Project Agreement, the "Project Agreements.")

The Authority requests that you provide immediate assurance that the Wholesaler will not interfere with access to the Replacement Huts. The Authority reserves all rights associated with the Wholesaler's ongoing series of breaches with respect to the right of access to the Replacement Huts, including but not limited to the Authority's right to seek all damages the Authority may incur as a result of the Wholesaler's interference with the Commonwealth of Kentucky and/or the Authority's contract(s) with MuniNet.

3. The Wholesaler's Failure to Avoid Costs

The Wholesaler is additionally in breach of the Agreement by failing to avoid costs. Section 2.2 of the Agreement obligates the Wholesaler to "mitigate costs . . . and act in a commercially reasonable manner[.]" but the Wholesaler has breached that provision by incurring tens of millions of dollars in avoidable costs. Agreement, at § 2.2. Based on information known to date:

1. Most costs incurred by the Wholesaler stem from the Wholesaler acting as a retailer and providing retail services rather than acting as a wholesaler and providing Wholesaler Services, and so constitute avoidable costs.

2. According to the FY2025 Q2 Revenue Report, the Wholesaler's Cumulative Capital Expenditures associated with Lit Fiber Services are approximately \$68 million, on top of which, the Wholesaler earns interest through the Capital Return. Ex. N, FY2025 Q2 Revenue Report & Agreement at § 1.1 (defining "Capital Return").

3. According to the FY2025 Q2 Revenue Report, the Wholesaler has incurred a steep \$38 million in Cumulative Net Operating Losses. Ex. N, FY2025 Q2 Revenue Report.

4. The Wholesaler has also spent approximately \$22.5 million on redundant equipment, in addition to significant Capital Return interest that is offset against the Authority's Revenue Share.⁴ To maintain this equipment, the Wholesaler is spending an estimated \$400,000 per month; that maintenance work, however, should be completed by Operations Co.⁵ Agreement, at § 10.4. The Wholesaler's failure to use Operations Co. for maintenance of the NG-KIH System also represents an avoidable cost.

⁴ The Franklin Circuit Court's September 25, 2024 Order also takes great issue with this redundant equipment—referencing it nine (9) times in total. *See* Ex. L. For example, the Franklin Circuit Court found that one "issue at the heart of this dispute concerns [the Wholesaler's] creation of a parallel network system of equipment, which results in lost revenue to the [Authority]." *Id.*, at p. 6. The Court further contemplated that a question existed as to whether the Wholesaler's "equipment was purchased and installed at the cost of the [Authority], or at least whether public funds were used to subsidize [the Wholesaler's] parallel network[.]" *Id.*, at p. 7. At the conclusion of the Order, the Court opined that "if one party seeks to profit to the detriment of the other, by constructing a parallel system that undermines the implementation of the information highway for high-speed internet," in reference to the Authority's allegations against the Wholesaler, "or by wrongfully withholding approval for changes in the System," responding to the Wholesaler's allegations against the Authority, "*then the party that breaches those duties must be held accountable.*" *Id.*, at p. 13 (emphasis added).

⁵ By and through the Master Agreement, Macquarie Infrastructure Developments, LLC ("Macquarie") is responsible (and compensated for) maintenance of the NG-KIH System, obligations it then transferred to KentuckyWired Infrastructure Company, Inc., which were then transferred through a series of agreements to Operations Co.

In addition to providing notice to the Wholesaler that it is engaging in a “breach” or “series of breaches” under Section 12 of the Agreement, the Authority also hereby exercises its right under Section 2.2 of the Agreement to request “a detailed description,” together with supporting documentation, “of the measures and steps taken by the Wholesaler to mitigate and meet its obligations” under Section 2.2. *Id.*, at §§ 12 & 2.2.

4. The Wholesaler’s Failure to Properly Calculate the Revenue Share.

The Wholesaler is also in breach of Schedule 3, Section 1.1(d) of the Agreement for its failure to properly calculate and retain records related to the Revenue Share. *Id.*, at Schedule 3, § 1.1. In its First Notice of Default, the Authority separately provided notice to the Wholesaler that it was in breach of the Agreement and requested, among other information, a recalculation of various fees and expenses included in the Revenue Share. As explained above, that First Notice of Default remains uncured.

Additional Revenue Share calculation issues extend beyond those identified in the First Notice of Default and have otherwise persisted, each constituting a breach pursuant to Section 12.1(a). *Id.*, at § 12.1(a). First, the Authority has learned that the Wholesaler excludes certain services it characterizes as “Enhanced Services” – such as cloud services and VOIP – from its calculation of the Revenue Share, even though the Wholesaler Agreement provides no basis for this exclusion. Second, the Wholesaler has failed to properly calculate Net Ancillary Revenue. Net Ancillary Revenue should be calculated to be Gross Managed Services Revenue minus both Operating Costs incurred during the relevant period and the capital return associated with Managed Services provided in that quarter. Instead, the Wholesaler inappropriately intermingles Operating Costs and Capital Expenditures. Third, the Wholesaler has also engaged in a “breach” by calculating the Net Operating Loss in a “cumulative” manner, allowing the loss to be carried forward, which is contrary to standard accounting principles. *Id.*; *see also* Financial Accounting Standards Board, Accounting Standards Codification 205-10-45-1A (requiring a full set of financial statements for a period to show earnings for that period). Under the Agreement, when expenses outpace revenue for any given reporting quarter, the Revenue Share associated with Lit Fiber Services is zero. Stated differently, by ignoring standard accounting principles and carrying forward its Net Operating Loss, the Wholesaler is artificially increasing expenses for a given quarter while eliminating any would-be Revenue Share for the Authority in the process. This does not constitute a complete recitation of the issues current outstanding with respect to the improper calculation of the Revenue Share. However, given Wholesaler’s failure to sign the Engagement Letter of Blue & Co. (the Commonwealth of Kentucky’s auditor), the Authority reserves the right to supplement this Third Notice.

The Authority thus serves this Third Notice of Default that the Wholesaler is in breach in hopes that the Wholesaler will cease its improper calculation of the Revenue Share, recalculate the Revenue Share, tender full, complete and accurate financial information with the Authority, and remit the Authority’s entitled Revenue Share.

5. Conclusion.

As a result of the above-described series of breaches as defined by Section 12.1(a) and Section 12.1(b) of the Agreement, the Authority notifies the Wholesaler of these breaches and requests that the Wholesaler take the following IMMEDIATE action:

1. Immediately engage with and commence lease discussions with any and all interested parties for the sale of Dark Fiber.⁶
2. Immediately cease any internal policy prohibiting the sale and/or leasing of Dark Fiber.
3. Engage in commercially reasonable efforts to market the sale of Dark Fiber to new customers.
4. Coordinate with KWOC and provide MuniNet and the Authority access to the Replacement Huts and thereafter, refrain from removing or otherwise interfering with MuniNet's equipment and use of the Replacement Huts.
5. Cease the Wholesaler's incurrence of avoidable costs associated with selling retail, rather than Wholesaler, services.
6. Engage with KWOC in a commercially reasonable manner so as to limit the amount of capital expenditures and operating expenses incurred by the Wholesaler.
7. Cease the Wholesaler's incurrence of avoidable costs related to the construction of the Wholesaler's redundant equipment, and in so doing, utilize KWOC for any maintenance with respect to the NG-KIH System.
8. Recalculate the Revenue Share, taking into account: (1) Enhanced Services; (2) a proper calculation of Net Ancillary Revenue in accord with Section 4 *supra*; and (3) that Net Operating Loss should not be calculated in a "cumulative" manner that is carried forward quarter to quarter.
9. Tender complete and accurate financial information to the Authority consistent with the information requested by Blue.
10. Remit the Authority's Revenue Share.

⁶ The Authority understands that the Wholesaler has initiated two Changes that purport to relate to the sale and/or leasing of Dark Fiber. However, as set forth in Authority's response to Operations Co., both Changes lack sufficient detail and fail to provide the information required under Schedule 6, Section 2.4 of the Project Agreement. Project Agreement, at Schedule 6, § 2.4. Providing this information represents another opportunity for the Wholesaler to address its current breach of the Agreement for its failure to sell Dark Fiber. Agreement, at § 12.1(b). For example, with respect to both Changes, the following information would be helpful to understand any proposal: identify the counter party to the IRU; identify which fibers are subject to the connection; identify whether the Change proposes a Core Dark Fiber IRU or Ancillary Dark Fiber IRU; provide the terms of the IRU; provide the IRU rate and the market terms and rates; provide the costs (and any cost savings) associated with the proposed work; and provide an assessment of any value or benefit associated with the proposed work.

Pursuant to Sections 12.1 and 12.3 of the Agreement, the Authority hereby provides notice that the Wholesaler shall have fifteen (15) Business Days, as that term is defined in the Agreement, from the date of this letter, or until December 17, 2024, to remedy the above-described breaches of the Agreement. *See* Agreement, at §§ 12.1 & 12.3. Points one (1) through ten (10) provide a pathway to begin remedying the Wholesaler's breaches.

The Authority reserves any and all rights and remedies available under the applicable Agreement, at law or in equity, including, without limitation, the right to pursue claim(s) against the Wholesaler for any breach of the Agreement or other injury, whether or not addressed in this Notice. Failure by the Authority to take any immediate action does not constitute a waiver of any of the Authority's rights or remedies arising under the Agreement or otherwise. The Authority has incurred and will continue to incur additional costs and attorneys' fees in connection with the Wholesaler's breach of this Agreement, and specifically reserves its right to pursue reimbursement for such costs and fees. *See, e.g.,* Agreement, at § 12.4 (requiring the Wholesaler to reimburse the Authority for "any and all reasonable costs incurred by [the Authority] in exercising its rights . . . under this Section 12[.]").

Sincerely,

**The Commonwealth of Kentucky, the Kentucky
Communications Network Authority**

Signed by:
By Stewart Douglas Hendrix
135393F4D2B8453...

Name: Stewart Douglas Hendrix
Title: Executive Director

cc: KentuckyWired Operations Company, LLC, 312 South 4th Street, Suite 700,
Louisville, KY 40202 and 101 Helm Street, Suite 150, Lexington, KY 40505
(per Agreement Section 18.6)
Attn: Robert G. Morphonios (Robert.Morphonios@kentuckywired.com)



Andy Beshear
GOVERNOR

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No. 24-04

September 13, 2024

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Determination No. 24-04
NG-KIH Contract Dispute
September 13, 2024

RE: The Next Generation Kentucky Information Highway (“NG-KIH”) Project –
Contract Dispute Regarding Wholesaler Agreement Change

Dear Counsel:

The Finance and Administration Cabinet (“Finance”) is in receipt of the Kentucky Communications Network Authority’s (“KCNA”) letter (“KCNA Dispute Notice”) noticing a contract dispute with OpenFiber Kentucky Company, LLC (“OpenFiber”) dated June 6, 2024.¹ Under the Kentucky Model Procurement Code, KRS Chapter 45A (“KMPC”), the Secretary is authorized, subject to limitations otherwise established by law, to resolve claims or controversies involving state contracts. Specifically, KRS 45A.230 authorizes the Secretary to:

...settle, compromise, pay, or otherwise adjust the claim by or against, or controversy with, a contractor relating to a contract entered into by the Finance and Administration Cabinet on behalf of the Commonwealth or any state agency, including a claim or controversy based on breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission...

KCNA submits this contract dispute pursuant to KRS 45A.235, which states in relevant part that if a controversy regarding a state contract cannot be resolved by agreement, the Secretary shall issue a decision in writing and that decision shall be final and conclusive. Upon review of the parties’ submissions, this matter is properly before the Secretary for Determination.

BACKGROUND

The NG-KIH is Kentucky’s project to establish the infrastructure for a high-speed statewide internet communication system. KCNA was created to oversee that project. KRS 154.15-020. The NG-KIH will provide broadband services to various sites throughout the state, which include state agencies and public universities. KCNA brings forth the instant contract dispute based upon a disagreement with OpenFiber concerning components of the NG-KIH, specifically “twenty physical structures referred to as communication shelters, or ‘Huts.’” KCNA Dispute Notice, p. 2. Prior proceedings before the Secretary addressed matters associated with the originally built Huts. (FAC Dispute Nos. 21-03 and 21-20). Due to issues with the original Huts, the parties entered into a Wholesaler Agreement Change, authorized by Section 4 of the Wholesaler Agreement, to remove the original Huts and build Replacement Huts. *Id.* p. 2; see also KCNA Dispute Notice Exhibit 1, Wholesaler Agreement.

The Wholesaler Agreement Change, dated October 29, 2020, was entered into by KCNA, referred to as the “Authority” in the relevant documents, OpenFiber, referred to as the “Wholesaler” in the relevant documents, and KentuckyWired Operations Company, LLC (“KWOC”), referred to as the “Operations Co.” in the relevant documents. These entities are the same parties subject to the underlying Wholesaler Agreement dated October 13, 2017. In short, the NG-KIH contract dispute arises from KCNA’s allegation that OpenFiber has refused to honor KCNA’s purchase of the Replacement Huts, as set forth in the Wholesaler Agreement Change, which set forth the purchase price of the Replacement Huts as \$7,756,991.23. Wholesaler

¹ Received on June 7, 2024.

Determination No. 24-04
NG-KIH Contract Dispute
September 13, 2024

Agreement Change, p. 2. The Agreed Terms of Change included a cap for costs of 10% of the estimate without “the Authority’s prior written approval.” *Id.* KCNA claims it “stands ready to pay the Purchase Price of the Huts” in accordance with the Wholesaler Agreement Change at a price inclusive of the full 10% increase, which totals \$8,532,690.35. KCNA Dispute Notice, p. 3-4.

OpenFiber objects to KCNA’s attempt to purchase the Replacement Huts for the amount specified in the Wholesaler Agreement Change. Specifically, OpenFiber’s June 26, 2024, Response (“OpenFiber Response”) to KCNA’s Dispute Notice claims that KCNA requested improvements and changes that were not contemplated by the Wholesaler Change Agreement and states “OpenFiber incurred at least \$2,184,250.96 in additional costs to make improvements and changes that were not contemplated by the Change Agreement.” OpenFiber Response, p. 1. OpenFiber therefore argues that allowing KCNA to purchase the Replacement Huts at a price that allegedly “does not reflect the cost of those improvements and additions would unjustly enrich KCNA and unfairly deprive OpenFiber of costs it incurred in good faith.” To support OpenFiber’s position, it has provided various email correspondence between the parties discussing the construction and organization of the Replacement Huts. OpenFiber Response, Ex. B. OpenFiber claims such correspondence demonstrates that “KCNA required and approved material changes to the original scope of work under the Change Agreement” and the abovementioned purchase price for the Replacement Huts is therefore not applicable. OpenFiber Response, p. 9.

In support of their respective positions, and pursuant to Finance’s briefing schedule set forth in the June 12, 2024, Notice, the parties submitted the following to the Secretary regarding this contract dispute:

1. KCNA’s initial letter, with attachments, noticing this contract dispute dated June 6, 2024; and
2. OpenFiber’s Response Brief, with attachments, dated June 26, 2024.

Based upon a review of the relevant contract documents, the information provided by the Parties, and the reasons set forth below, the Secretary determines that KCNA’s request to purchase the Replacement Huts for the amount specified in the Wholesaler Agreement Change is supported by the relevant contract language.

ANALYSIS

As noted above, NG-KIH is Kentucky’s project to establish the infrastructure for a high-speed statewide internet communication system. To establish such a network, KCNA, a state agency, was created to oversee the project. The agreement central to this contract dispute is the Wholesaler Agreement Change, dated October 29, 2020, and entered into by KCNA (“Authority”), OpenFiber (“Wholesaler”), and KWOC (“Operations Co.”). The Wholesaler Agreement Change sets forth details regarding actions concerning the original NG-KIH Huts and the design and construction of Replacement Huts. The Wholesaler Agreement Change was entered into based upon Section 4.1, Section 4.2, and Schedule 1, Section 2.5 of the Wholesaler Agreement, which establishes “Wholesaler Assets,” “Ownership of Wholesaler Assets,” and Modification of Processes and Procedures. *See* KCNA Dispute Notice, Ex. 1.

Determination No. 24-04
NG-KIH Contract Dispute
September 13, 2024

The Wholesaler Agreement Change states that the “Wholesaler is willing to request and enter into this Change to purchase, invest in, and procure the design and construction of new structures and related equipment to replace the Huts (the “Replacement Huts”) and allow for their use in connection with the NG-KIH System.” Wholesaler Agreement Change, Recital E. Further, the documents state that “the parties desire for initial ownership of the Replacement Huts to be with Wholesaler until Authority purchases (or is deemed to have purchased) the Replacement Huts as set forth in this Change. *Id.*, Recital F. The details of the removal of the original Huts, and the design and construction of the Replacement Huts, are further set forth in the documents, which state that such acts are termed “Wholesaler Hut Replacement Services.” *Id.*, Agreed Terms of Change, 1. The terms thereafter direct the Wholesaler to:

- (a) Remove and deliver the Huts to, or on behalf of the Authority to a location designated in writing by the Authority; and
- (b) Replace the Huts with Replacement Huts, which are to be situated on existing Hut sites set forth on the attached Schedule A (together “Wholesaler Hut Replacement Services”), in each case in accordance with the April 8, 2020 General Terms and Conditions of Sale and Statement of Work No. 9, Telecommunication Site Upgrades and Improvements, Quote Number 2020-052698 between Wholesaler and Fujitsu Network Communications, Inc., which the parties agree is in compliance with industry standards and the requirements of applicable law and regulations.

Id. The documents obligate the Wholesaler to “contribute such personnel and resources as are reasonably necessary to carry out the Wholesaler Replacement Services as efficiently and expeditiously as possible.” *Id.*

The Wholesaler Agreement Change also details payments for “Hut Improvement/Replacement.” *Id.*, Agreed Terms of Change 2. Specifically, the document states:

Wholesaler estimates the cost to provide the Wholesaler Hut Replacement Services to be approximately \$7,756,991.23, as further set forth in Schedule B. All expenditures will qualify as Capital Expenditures made in connection with Wholesaler Services under Section 1.1 of the Wholesaler Agreement. If the actual cost of the Wholesaler Hut Replacement Services exceeds the estimated amount set forth above, Wholesaler shall bear such excess costs, and the Purchase Prices (defined below) will be increased to reflect the excess costs; provided, however, Wholesaler shall not incur additional costs above the estimate for any tranche set forth in Schedule B in excess of ten percent (10%) of the estimate of such tranche as set forth on Schedule B without the Authority’s prior written approval. In addition, if the actual cost of the Wholesaler Hut Replacement Services is less than the estimate, the Purchase Prices (defined below) will be reduced accordingly. For clarity, the Purchase Prices set forth on Schedule B include all anticipated expenditures of Wholesaler in connection with the Wholesaler Replacement Services, including labor, but do not include the Capital Return that may accrue on such Purchase Prices in accordance with the Wholesaler Agreement. For further clarity, any such Capital Return shall (a) begin accruing on the date the Wholesaler

Determination No. 24-04
NG-KIH Contract Dispute
September 13, 2024

actually makes such expenditure, (b) shall accrue only on the unpaid (including deemed paid) portion of the Purchase Prices, and (c) shall be amortized over five (5) years.

Id.

In addition to the above detailed cost breakdown set forth in the relevant documents, such also defines ownership related to the project. *Id.*, 3. Replacement Hut Ownership. The relevant portion states, in pertinent part, the following:

- (a) In accordance with Section 4.2 of the Wholesaler Agreement, the parties agree that the Replacement Huts (excluding any salvaged equipment from the Huts, which shall be property of the Authority and be transferred to the Authority at a location designated by the Authority at Wholesaler's sole cost and expense) will be Wholesaler Assets and will remain owned by Wholesaler until the Authority purchases or is deemed to purchase the Replacement Huts (in whole or as segregable components) as set forth in this Change, including Schedule B attached hereto. ...
- (b) The Authority shall: (i) purchase the Replacement Huts and identified components thereof for the prices set forth on Schedule B (as adjusted from time to time) ("Purchase Prices") by delivering cash or other immediately available funds to Wholesaler ...
- (c) The Authority may purchase the Replacement Huts and components thereof in any combination of Section 3(b)(i) and (ii) above (at the Authority's sole option), using funds from any source, at any time and without prepayment penalty. ...
- (d) ...
- (e) Receipt of the Purchase Price(s) will not constitute "revenue generated by Wholesaler Services" in accordance with the calculation of Net Ancillary Revenue under the Wholesaler Agreement.

Id.

In support of each party's position, email correspondence has been provided as exhibits to KCNA's Dispute Notice and OpenFiber's subsequent Response. Notably, the correspondence involving KCNA, OpenFiber, and related entities, discusses a variety of matters related to the Replacement Huts, such as network rack placement and cable management. *See* OpenFiber Response, Ex. B. However, upon review of such correspondence, as well as the remainder of the parties' filings, the record does not reflect a reference to the Agreed Terms of Change set forth in the Wholesaler Agreement Change. Specifically, the provided correspondence does not address the requirement set forth in the Agreed Terms of Change, 2. Payment for Hut Improvement/Replacement, that "Wholesaler shall not incur additional costs above the estimate for any tranche as set forth on Schedule B without the Authority's prior written approval." While OpenFiber argues that KCNA's responses related to the design process do amount to approval, and that holding otherwise would amount to unjust enrichment, such an argument is not supported by the record, as it lacks any notice to KCNA that the estimated prices exceed the original estimate plus the related 10% increase. *See* OpenFiber Response, p. 2.

OpenFiber's correspondence does not detail a notice to KCNA that the costs associated

Determination No. 24-04
NG-KIH Contract Dispute
September 13, 2024

with the Replacement Huts project exceeded the original estimate of \$7,756,991.23, nor the 10% cap, set forth in the relevant contract section, which obligated OpenFiber to receive prior written approval from KCNA. Therefore, the Secretary finds, based upon the submissions in the record, that KCNA is entitled to proceed with the purchase as established by the Wholesaler Agreement Change.

DETERMINATION

Pursuant to KRS 45A.230 the Secretary has express authority to, “settle, compromise, pay, or otherwise adjust the claim by or against, or controversy with, a contractor relating to a contract entered into by the Finance and Administration Cabinet on behalf of the Commonwealth,” prior to the institution of an action in civil court. KCNA’s present dispute directly relates to the contractual obligations of OpenFiber, and the Secretary finds that it is appropriate to issue a Determination addressing the purchase set forth in the Wholesaler Agreement Change. As the record does not reflect notice to KCNA, as required by Agreed Terms of Change, 2. Payment for Hut Improvement/Replacement of the Wholesaler Agreement Change, and the required permission to exceed the estimated price and 10% increase related to such Hut Improvement/Replacement, the Secretary finds that KCNA is entitled to proceed with the purchase as outlined in the relevant contract documents.

In accordance with KRS 45A.235, the decision by the Secretary shall be final and conclusive.

DocuSigned by:

Holly M. Johnson

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Holly M. Johnson, Secretary
Finance and Administration Cabinet

Cc: Kathy Robinson, OPS



Andy Beshear
GOVERNOR

**FINANCE AND ADMINISTRATION CABINET
OFFICE OF THE SECRETARY**

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No. 23-13

February 29, 2024

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RE: The Next Generation Kentucky Information Highway ("NG-KIH") Project –
Contract Dispute Regarding the Wholesaler Agreement.

Dear Counsel:

The Finance and Administration Cabinet ("Finance") is in receipt of the Joint Stipulation and Request by all Parties to Determine June 6, 2023, Dispute, submitted on October 19, 2023, by OpenFiber Kentucky Company, LLC ("OpenFiber"), the Commonwealth of Kentucky, the Kentucky Communications Network Authority ("KCNA"), and Kentucky Wired Operations Company, LLC ("KWOC") (collectively, the "Parties"). The Joint Stipulation requested that the Finance and Administration Cabinet Secretary resume consideration of the dispute originally submitted on June 6, 2023, by OpenFiber, which was ultimately denied based solely upon the failure to act according to the Dispute Resolution Procedures set forth in Schedule 2 of the Wholesaler Agreement prior to requesting a Determination. As the Parties have now stipulated to submitting the matter to the Finance Secretary, thereby waiving the relevant Dispute Resolution Procedures set forth in the Wholesaler Agreement, the matter is properly before the Finance Secretary.

Under the Kentucky Model Procurement Code, KRS Chapter 45A ("KMPC"), the Secretary is authorized, subject to limitations otherwise established by law, to resolve claims or controversies involving state contracts. Specifically, KRS 45A.230 authorizes the Secretary to:

...settle, compromise, pay, or otherwise adjust the claim by or against, or controversy with, a contractor relating to a contract entered into by the Finance and Administration Cabinet on behalf of the Commonwealth or any state agency, including a claim or controversy based on breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission...

KRS 45A.235 further states in relevant part that if a controversy regarding a state contract cannot be resolved by agreement, the Secretary shall issue a decision in writing and that decision shall be final and conclusive.

BACKGROUND

The state contract in question involves the Next Generation Kentucky Information Highway (“NG-KIH”), which is Kentucky’s project to establish the infrastructure for a high-speed statewide internet communication system. KCNA was created to oversee that project. The instant NG-KIH System contract dispute arises from a disagreement concerning the Wholesaler Agreement, a contract involving KCNA, OpenFiber, and KWOC. OpenFiber stated in the June 6, 2023, Dispute Notice that the matter was submitted to Finance pursuant to the October 13, 2017, Wholesaler Agreement. OpenFiber, the Wholesaler in the relevant agreement, has alleged that KCNA and KWOC breached the Wholesaler Agreement and have therefore interfered with OpenFiber’s “contracted-for rights to access and use the” NG-KIH System. KCNA’s position is that OpenFiber’s access to the NG-KIH System, and actions in question, must be authorized by KCNA, and are therefore at the discretion of the Commonwealth, pursuant to the provisions of the Wholesaler Agreement. *See* June 14, 2023, KCNA letter.

In support of their respective positions and pursuant to the subsequent briefing schedules, set forth in Notices dated June 9, 2023, July 12, 2023, and November 16, 2023, OpenFiber, KCNA, and KWOC submitted the following to the Secretary:

1. OpenFiber’s initial letter noticing this contract dispute dated June 6, 2023;
2. KCNA’s “preliminary correspondence” dated June 14, 2023;
3. KCNA’s and KWOC’s Response Briefs, with enclosures, dated July 21, 2023;
4. KWOC’s Response to the Notice Concerning KCNA;
5. OpenFiber’s Reply, dated August 21, 2023;
6. KCNA’s Sur-Reply, dated September 8, 2023;
7. OpenFiber’s Objection to KCNA’s Sur-Reply, dated September 15, 2023;¹
8. The Parties’ Joint Stipulation and Request by All Parties to Determine June 6, 2023 Dispute sent on October 19, 2023;
9. OpenFiber’s Notices sent on November 20, 2023;
10. KCNA’s Supplemental Submission dated December 20, 2023.

As mentioned above, OpenFiber’s Dispute Notice stems from an alleged breach of the October 13, 2017, Wholesaler Agreement between the parties. OpenFiber Dispute Notice, p. 1. OpenFiber claims KCNA and KWOC have breached the Wholesaler Agreement by interfering with OpenFiber’s “contracted-for rights to access and use the Next Generation Kentucky Information Highway.” *Id.* More specifically, OpenFiber alleges that “KCNA has asserted non-existent requirements under the Wholesaler Agreement in an effort to extort payments, contractual concessions, and customer information from OpenFiber as a precondition to OpenFiber’s lawful access to and use of the NG-KIH System.” *Id.* OpenFiber claims the “NG-KIH System was designed and built for two purposes: to support the communications networking needs of certain public agencies within the Commonwealth and to enable a private contractor, in this case OpenFiber, to commercialize the additional or excess capacity of the network assets (called “Additional Capacity”), both to expand network access throughout the Commonwealth and to

¹ The Secretary declines to rule on the allowance of KCNA’s 9/8/23 Sur-Reply and OpenFiber’s 9/15/23 Objection to the filing.

generate a stream of long-term revenue in which the Commonwealth would share.” *Id.* at 2. OpenFiber’s Dispute Notice claims it “has the exclusive right to sell capacity and services over the Additional Capacity of the NG-KIH System, including through assets constructed by OpenFiber to provide connectivity to customer locations.” *Id.*

NG-KIH System capacity is addressed in the Wholesaler Agreement, which states, in part, that “[T]he parties acknowledge that the NG-KIH System has been sized, in respect of the fiber strand count, at approximately double the capacity necessary to support the requirements of the PPP Services ...” Wholesaler Agreement, Section 3.1(c). Further, the NG-KIH was reported as “an approximately 3,300-mile-long middle mile broadband network ... [that] will consist of approximately 3,300 miles of fiber optic cable serving over 1,000 network sites statewide. The fiber optic cable consists of 288 strands, of which 144 strands will be available for government agencies, and the other 144 strands will be available to local common exchange carriers for last mile service to business and individuals. *See* KCNA’s Response Brief, Exhibit 1: Strategic Plan – KY Broadband Planning: 2019 Update.

OpenFiber claims “KCNA has unlawfully interfered with OpenFiber’s contractual right to access and use the NG-KIH System in breach of the Commonwealth’s obligations under the Wholesaler Agreement.” *See* OpenFiber Dispute Notice. OpenFiber claims the “Wholesaler Agreement distinguishes between the network assets owned by the Commonwealth (which KCNA oversees) and the network assets built and owned by OpenFiber, which are not part of the NG-KIH System (and which KCNA does not oversee).” *Id.* at 3. OpenFiber therefore claims an “unfettered right provided by the Wholesaler Agreement to access and use the Additional Capacity of the NG-KIH System to route user traffic over it.” *Id.* (emphasis original). Ultimately, OpenFiber claims “KCNA has no authority or discretion to approve, evaluate, or otherwise interfere with OpenFiber’s right to route user traffic over the Additional Capacity built into the NG-KIH System.” *Id.* OpenFiber further alleges “[I]n the Wholesaler Agreement, the Commonwealth granted to OpenFiber ‘the exclusive right to use the Additional Capacity for the provision of Wholesaler Services.’” OpenFiber thereafter defines “Additional Capacity” as “the capacity of the PPP Network Assets ‘not otherwise reserved or required for the PPP Services’ – essentially the part of the network not being used by the Commonwealth.” *Id.* at 4 (citing Wholesaler Agreement, Section 1.1).

Due to the NG-KIH being sized “at approximately double the capacity necessary to support the requirements of the PPP Services,” OpenFiber claims such excess was created “so the Wholesaler could sell the Additional Capacity to third-party users to generate revenues for the benefit of itself and the Commonwealth. *Id.* (citing Wholesaler Agreement, Section 3.1(c)). OpenFiber ultimately asserts that the Wholesaler Agreement affirms that KCNA “shall provide the Wholesaler with access to the PPP Network Assets to the extent required for the provision of Wholesaler services.” *Id.* at 5 (citing Wholesaler Agreement, Section 3.1(b)). As such, OpenFiber claims “these rights of access and usage are not discretionary.” *Id.* Ultimately, OpenFiber’s Dispute Notice requests the Secretary to issue an opinion affirming the following:

1. The Wholesaler Agreement contemplates two types of changes related to Wholesaler’s rights to access the NG-KIH System: an NG-KIH System Change

- and an Operations Co. Services Change (described by OpenFiber as a “KWOC Services Change”).
2. Wholesaler requests for interconnection (e.g. splice requests) to the NG-KIH System are not PPP Changes or NG-KIH System Changes if such interconnection, directly or indirectly, is between Wholesaler Assets and PPP Network Assets that provide Additional Capacity (*i.e.*, Ancillary PPP Network Assets), and thus are Operations Co. Service Changes.
 3. KCNA is prohibited from mandating specifically or implicitly, the use of the Change processes under Schedule 6 of the Project Implementation Agreement for changes that are not NG-KIH System Changes.
 4. KWOC is prohibited from mandating, specifically or implicitly, that OpenFiber use the Change process under Schedule 6 of the Project Implementation Agreement for non-NG-KIH System Changes.
 5. KWOC and KCNA are prohibited from mandating that they receive customer or proprietary information, compensation not provided under the Wholesaler Agreement, or imposing other conditions not expressly provided in the Wholesaler Agreement as part of the interconnection process.

Id. at 11. OpenFiber claims the actions of KCNA have negatively affected “OpenFiber’s customers, which include rural healthcare providers, addiction clinics, public education service providers, and high-tech industrial manufacturing[,]” and thereby preventing broadband access for such private customers. *Id.* at 4.

KCNA takes exception to the allegations set forth by OpenFiber. In sum, KCNA argues that the actions in question, particularly the allegation that KCNA is obstructing OpenFiber’s access to businesses receiving high-speed broadband services, highlight the fundamental basis of the instant dispute, that OpenFiber is attempting to act as a last-mile provider, contrary to the terms of the Wholesaler Agreement. *See* KCNA June 14, 2023, Correspondence, at 3 (citing Wholesaler Agreement, section 3.5). KCNA argues that “[T]he ‘exclusive right’ afforded to OpenFiber that it has continually cited in its Dispute letter is governed by the Wholesaler Agreement and, therefore, is restricted to wholesaler services, not to whatever service OpenFiber desires.” *Id.* at 4. Further, KCNA argues “OpenFiber’s access to the Network is not ‘unfettered,’ it too is limited to the provision of wholesaler services, must be authorized by KCNA, and is at the discretion of the Commonwealth. If OpenFiber acts however it wishes, the requirement to provide services to Users under the Wholesaler Agreement would be rendered meaningless.” *Id.*

KCNA further argues the “customers” referenced by OpenFiber “are not internet service providers and telecommunications companies with Last-Mile Networks.” *See* KCNA Response Brief, p. 2. Such “customers” are described by KCNA as “businesses and other consumers that require significant infrastructure to connect them to the NG-KIH Network” and therefore “[T]his OpenFiber ‘Last-Mile’ network cannot qualify as a Wholesaler Asset; it is not for the provision of Wholesaler Services.” *Id.* Ultimately, KCNA claims that “[A]ny request to access the NG-KIH Network, a so-called ‘interconnection’ request, *is* a change to the NG-KIH Network requiring Commonwealth approval.” *Id.* (emphasis original).

KCNA requests the following in response to OpenFiber’s initiation of this dispute:

... the Secretary should affirm the process set out in the agreements, that the Commonwealth is entitled to a detailed description of any value of benefit of any proposal from KWOC, after it agrees to the Change with OpenFiber, and that the Commonwealth has the discretion to make any determination based on what information is available, including whether to grant access to the NG-KIH Network.

Id. at 3.²

DETERMINATION

The ultimate question presented by the Parties for a determination involves the underlying Wholesaler Agreement, Project Implementation Agreement, additional related agreements, and thereby what actions are authorized with respect to the NG-KIH Network. *See* OpenFiber's Dispute Notice, Attachments 1 and 2. As stated in the Amended and Restated Master Agreement, "the NG-KIH will consist of a statewide dark fiber middle-mile network constructed to provide communication services based on an optical fiber backbone which will improve the quality, reliability, and access to network services across the Commonwealth;[.]" *See* KCNA Response Brief, Exhibit 4: Project Implementation Agreement. "The NG-KIH System consists of a middle mile network consisting of fiber segments and sites" as identified in the Project Agreement. *Id.*, Exhibit 3. KCNA further describes the NG-KIH Network, and related networks as a:

"middle-mile network connecting the Internet secured from long-haul network to last-mile networks. A long-haul network is a connection over long distances, between countries, nationwide, and between states, large towns, cities and other political subdivisions ("Long-Haul Network"). A middle mile network ("Middle-Mile Network") is the connection between the last-mile connections and the Long-Haul Network. A Middle-Mile Network *does not* connect directly to retail consumers. Rather, a last-mile network is the final leg of an internet connection between an ISP [Internet Service Provider], and the consumer (residents and businesses) ("Last-Mile Network"). ... The Last Mile Network is the connectivity (from an ISP) that passes to a home or business to allow them to use the Internet through a Middle-Mile Network. The distinction between the Middle-Mile Network and Last-Mile Network is reflected in the 2019 Kentucky Broadband Planning Strategic Plan: "The completed network will be open access, meaning that all last mile providers will be able to lease fiber from the state network to run last mile fiber to homes and businesses. This expanded fiber footprint in Kentucky will encourage last mile providers to build off the network and provide service to underserved areas."

² KCNA requested additional relief by way of "counter determinations" in its Response, which were objected to by OpenFiber. The Secretary declines to rule at this time on such an objection, and further declines to rule at this time on the entirety of the requested "counter determinations." Due to the nature of the dispute, however, a portion of KCNA's "counter determinations" directly relate to the issues presented by OpenFiber and are therefore addressed accordingly in this Determination.

Id., p. 5 (citing Exhibit 1: Strategic Plan) (emphasis original). KCNA ultimately argues that OpenFiber is responsible for monetizing the NG-KIH Middle Mile-Network and has failed to do so.


Pursuant to the Wholesaler Agreement, KCNA granted OpenFiber, as the Wholesaler, the exclusive right to use the Additional Capacity of the NG-KIH for the provision of Wholesaler Services. *See* Wholesaler Agreement, Section 3.1(a). KCNA is further obligated to provide OpenFiber with access to the PPP Network Assets to the extent required for the provision of Wholesaler Services. *Id.*, Section 3.1(b). OpenFiber's limitation to providing Wholesaler Services is supported by the nature of the network in question, which was explicitly established as a Middle-Mile Network in the underlying Master Agreement. *See* KCNA Response Brief, Exhibit 2. Further, with respect to the Wholesaler Agreement, it states that "[T]he Wholesaler agrees that none of this Additional Capacity will be reserved for Wholesaler Services; provided that once the Wholesaler has entered into a User Agreement to provide Wholesaler Services that depend upon the Additional Capacity, such Additional Capacity will be reserved for such Wholesaler Services for the term of such User Agreement." Wholesaler Agreement, Section 3.1(c). As such, the role of OpenFiber in relation to the NG-KIH System is that of a Wholesaler. Further, the Wholesaler Agreement stems from the Master Agreement, which describes the NG-KIH System as a middle-mile network. The Strategic Plan – KY Broadband Planning: 2019 Update, cited by KCNA, notes that the KG-KIH System will not provide internet service to end users such as individuals or businesses. KCNA Response Brief, Exhibit 1. Therefore, the relevant agreements define the Parties' roles in a manner contrary to OpenFiber's claims. The customers referenced by OpenFiber, such as rural healthcare providers and addiction clinics, are not subject recipients of Wholesaler Services, as set forth in the Wholesaler Agreement. Accordingly, OpenFiber's interpretation of the Wholesaler Agreement authorizing it to act as a Last-Mile Network provider, particularly with no input from KCNA, is not supported by the documents provided in the instant dispute and must be rejected by the Secretary.

OpenFiber's argument that the Wholesaler Agreement contemplates two types of Changes related to the Wholesaler's right to access the NG-KIH System, ultimately affording OpenFiber "an unfettered right provided by the Wholesaler Agreement to access and use the Additional Capacity of the NG-KIH System to route user traffic over it[.]" is likewise unsupported by the Wholesaler Agreement. OpenFiber Dispute Notice, p. 3. The Wholesaler Agreement unambiguously states that the Commonwealth "hereby grants to the Wholesaler the exclusive right to use the Additional Capacity for the provision of Wholesaler Services during the Term." Wholesaler Agreement, Section 3.1(a). As the relevant role of OpenFiber as a Wholesaler is set forth in the Wholesaler Agreement, coupled with the supporting documentation describing the NG-KIH System as a Middle-Mile Network, the customers claimed by OpenFiber do not align with the requirement of acting as a Wholesaler. Therefore, OpenFiber does not have such an unlimited right to act as set forth in the Dispute Notice.

With respect to the OpenFiber's remaining arguments regarding the applicability of various changes to the NG-KIH System, such changes are specifically defined in submitted documents, including the Wholesaler Agreement, Schedule I, Changes and Minor Works. A "Change" is defined broadly in the Wholesaler Agreement as "an NG-KIH System Change or an Operations Co Services Change as the context requires[.]" As discussed above, OpenFiber is not granted

unlimited rights with respect to the noted actions affecting the NG-KIH System and neither is OpenFiber provided the opportunity to act outside the relevant Change procedures. Therefore, OpenFiber is again not provided any “unfettered” right to act outside the terms of the Wholesaler Agreement, and related documents. Further, to the extent information related to a Change is required by KCNA, such is also controlled by the Change procedures. *See* Wholesaler Agreement, Schedule 1, Changes and Minor Works, Section 2. KCNA must comply with the parameters set forth in the Wholesaler Agreement when requesting relevant Change information, but it is inherent in the underlying process that such a request for information is provided for in the agreements.

Therefore, the Finance Secretary hereby DENIES OpenFiber’s claims for breach of contract pursuant to the relevant agreements between the Parties. OpenFiber is required to act as a Wholesaler, as set forth in the Wholesaler Agreement, and related documents. To the extent changes to the NG-KIH System are proposed, the Change procedures also set forth in the Wholesaler Agreement, and related documents, control and must be complied with. In accordance with KRS 45A.235, the decision by the Secretary shall be final and conclusive.


Holly M. Johnson, Secretary
Finance and Administration Cabinet

cc: Kathy Robinson, OPS



Andy Beshear
GOVERNOR

**FINANCE AND ADMINISTRATION CABINET
OFFICE OF THE SECRETARY**

Holly M. Johnson
SECRETARY

200 Mero Street, 5th Floor
Frankfort, Kentucky 40622
Phone: (502) 564-4240
Fax: (502) 564-6785

No. 23-13

October 5, 2023

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RE: The Next Generation Kentucky Information Highway ("NG-KIH") Project –
Contract Dispute Regarding the Wholesaler Agreement.

Dear Counsel:

The Finance and Administration Cabinet ("Finance") is in receipt of OpenFiber Kentucky Company, LLC's ("OpenFiber") June 6, 2023 letter noticing a contract dispute with the Kentucky Communications Network Authority ("KCNA") ("Dispute Notice").¹ Noting that Kentucky Wired Operations Company, LLC ("KWOC") also has an interest in the matter, Finance provided KWOC notice of the dispute by letter dated June 9, 2023, which provided KWOC an opportunity to address the matter in writing. As set forth below, the involved parties each submitted written responses, and ancillary filings, to Finance.

Under the Kentucky Model Procurement Code, KRS Chapter 45A ("KMPC"), the Secretary is authorized, subject to limitations otherwise established by law, to resolve claims or controversies involving state contracts. Specifically, KRS 45A.230 authorizes the Secretary to:

...settle, compromise, pay, or otherwise adjust the claim by or against, or controversy with, a contractor relating to a contract entered into by the Finance and Administration Cabinet on behalf of the Commonwealth or any state agency, including a claim or controversy based on breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission...

KRS 45A.235 further states in relevant part that if a controversy regarding a state contract cannot be resolved by agreement, the Secretary shall issue a decision in writing and that decision shall be final and conclusive.

The Next Generation Kentucky Information Highway ("NG-KIH") is Kentucky's project to establish the infrastructure for a high-speed statewide internet communication system. KCNA was created to oversee that project. The instant NG-KIH contract dispute arises from a disagreement concerning the Wholesaler Agreement, a contract involving KCNA, OpenFiber, and KWOC. See Exhibit 1, "Wholesaler Agreement." OpenFiber alleged that KCNA and KWOC breached the Wholesaler Agreement and have therefore interfered with OpenFiber's "contracted-for rights to access and use the" NG-KIH System.

¹ Received on June 7, 2023.

In support of their respective positions and pursuant to the briefing schedule, and amended briefing schedule, set forth in Notices dated June 9, 2023 and July 12, 2023, respectively, OpenFiber, KCNA, and KWOC submitted the following to the Secretary:

1. OpenFiber's initial letter noticing this contract dispute dated June 6, 2023;
2. KCNA's "preliminary correspondence" dated June 14, 2023;
3. KCNA's and KWOC's Response Briefs, with enclosures, dated July 21, 2023;
4. OpenFiber's Reply, dated August 21, 2023;
5. KCNA's Sur-Reply, dated September 8, 2023;
6. OpenFiber's Objection to KCNA's Sur-Reply, dated September 15, 2023; and
7. OpenFiber's Response to KCNA's Improper Sur-Reply, dated September 29, 2023.²
8. KCNA's Emergency Update Concerning Unauthorized Access And Alteration to the NG-KIH System.

KCNA's June 14, 2023 preliminary correspondence notes that the parties did not engage in the Dispute Resolution Procedures set forth in Schedule 2 of the October 13, 2017 Wholesaler Agreement. *See* Exhibit 1. Based upon a review of the relevant contract documents, specifically Schedule 2 of the Wholesaler Agreement, and the information provided by the parties, the record does not reflect that the underlying Dispute Resolution Procedures were followed nor does the record include a mutual agreement to waive the procedures.

The Wholesaler Agreement, Schedule 2, states that, subject to the parties otherwise agreeing, all disputes are to be resolved in accordance with the dispute resolution procedure established in Schedule 2 of the Wholesaler Agreement, which provides detailed instruction on the manner in which the parties are to attempt to resolve such disputes prior to submitting a dispute to the Finance Secretary. Further, the Wholesaler Agreement defines a dispute as "any disagreement, failure to agree or other dispute between two or more of the parties arising out of or in connection with this Wholesaler Agreement, including, without limitation, any disagreement in respect of the interpretation, breach, performance, validity or termination of this Wholesaler Agreement;[.]" Based upon the broad language used to define a "Dispute," it is clear that the arguments set forth in this matter fall within this definition. *Id.* OpenFiber explicitly states the basis for submitting the instant Dispute Notice are "breaches of the Wholesaler Agreement by ... KCNA ... and by KWOC ..." However, as stated by KCNA in the June 14, 2023 preliminary correspondence, the parties, to date, have not complied with the Dispute Resolution Procedures set forth in Schedule 2 of the Wholesaler Agreement, nor have the parties agreed to waive those requirements.

The parties have previously relied upon the Dispute Resolution Procedures set forth in the Project Agreements prior to instituting review by the Finance Secretary. *See* Determinations No. 20-28 and No. 22-09; *see also* Contract Dispute 21-03, which involved the parties seeking direction from Franklin Circuit Court to appoint a Referee with respect to a separate dispute. As the parties have repeatedly entered into the relevant Dispute Resolution Process, the Finance

² The Secretary declines to rule at this time on the allowance of KCNA's 9/8/23 Sur-Reply, OpenFiber's 9/15/23 Objection to the filing, and OpenFiber's 9/29/2023 Response to Sur-Reply.

Secretary agrees with KCNA's position set forth in the June 14, 2023 correspondence regarding the applicable procedures. Here, based upon the filings of the parties, no agreement to bypass the underlying Dispute Resolution Procedure exists and the parties are therefore bound by those provisions of the Wholesaler Agreement. Thereafter, if the parties are unable to reach a resolution of dispute, the parties are free to submit the matter to the Secretary for determination.³

Accordingly, the Finance Secretary hereby directs the parties to proceed pursuant to the provisions in the Wholesaler Agreement pertaining to the Dispute Resolution Process prior to requesting a determination.

In accordance with KRS 45A.235, the decision by the Secretary shall be final and conclusive.


Holly M. Johnson, Secretary
Finance and Administration Cabinet

Cc: Kathy Robinson, OPS

³ Nothing in this decision shall be construed to waive or remove the Secretary's authority to issue a determination in these matters.



January 31, 2025

Dear Postal Customer:

The following is in response to your request for proof of delivery on your item with the tracking number:
EI95 7453 325U S.

Item Details

Status: Delivered, PO Box
Status Date / Time: July 19, 2024, 12:19 pm
Location: LOUISVILLE, KY 40223
Postal Product: Priority Mail Express 1-Day®
Extra Services: PO to Addressee
Up to \$100 insurance included
Actual Recipient Name: T ROBERTS

Note: Actual Recipient Name may vary if the intended recipient is not available at the time of delivery.

Destination Delivery Address

Street Address: 1700 EASTPOINT PKWY
City, State ZIP Code: LOUISVILLE, KY 40223-4140

Recipient Signature

Signature of Recipient:	Signature	<i>[Handwritten Signature]</i>
	Printed Name	TONY ROBERTS
Address of Recipient:	Delivery Address	P.O. Box 23790, 23760, 23507

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,

United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 23-CI-01049**

**COMMONWEALTH OF KENTUCKY, THE
KENTUCKY COMMUNICATIONS
NETWORK AUTHORITY**

PLAINTIFF

v.

ORDER

**OPENFIBER KENTUCKY COMPANY, LLC
AND KENTUCKYWIRED OPERATIONS
COMPANY, LLC, et al.**

and

KENTUCKY WIRED OPERATIONS COMPANY, LLC

DEFENDANTS

This matter is before the Court on KCNA's *Motion to Dismiss* and Openfiber's *Motion for Temporary Injunction*. Having heard arguments from counsel and upon review of the materials, the following is **HEREBY ORDERED**:

1. The Plaintiff's *Motion to Dismiss* is to be **HELD IN ABEYANCE** until the conclusion of the decision of the Secretary of Finance and Administration Cabinet under KRS 45A.225-.290 regarding the validity of KCNA's termination of the Wholesaler Contract. The parties are directed to meet and confer and agree on an expedited schedule for submission of this matter to the Secretary of Finance & Administration within 7 days of the entry of this Order.
2. Following the issuance of a ruling from the Secretary of the Finance and Administration Cabinet, the parties shall have 30 days to file supplemental pleadings under Rule 15.04 in the event the matter is not resolved.

3. To the extent that OpenFiber argues that the KCNA cannot issue or implement a termination of the Wholesaler Contract prior to completion of the Dispute Resolution Process set forth in Schedule 2 of the Wholesaler Contract, the Court **RESERVES** ruling until the Secretary of Finance & Administration has addressed this issue. However, the Court notes that the Dispute Resolution process set forth in Schedule 2 itself provides that it is subordinate to the state contracting requirements of the Model Procurement Code (“KRS 45A.225-45A.290”), so OpenFiber must present these issues to the Secretary of Finance & Administration for decision under KRS 45A.230. Moreover, all state contracts are subject to the provisions of 200 KAR 5:312.
4. In order to adjudicate OpenFiber’s request for injunctive relief, the Court needs additional information. The Defendant OpenFiber is directed to file of record a full disclosure to the Court of the identities and locations of all 217 OpenFiber customers whose internet services OpenFiber alleges may be impacted by KCNA’s termination of the Wholesaler Contract and proposed disconnection of OpenFiber from its system.
5. The Plaintiff KCNA is **ORDERED** to postpone the disconnection of OpenFiber from the system and discontinuation of services from the February 19, 2025 date set forth in its termination letter, until March 1, 2025, pending further Orders of the Court. This postponement is necessary to allow the Court to rule on the *Motion for Temporary Injunction* with a complete record as set forth herein.
6. The Court **RESERVES** on the Defendants’ *Motion for Temporary Injunction* pending submission of additional information required in this Order.

7. The Defendants shall submit affidavits in support of their *Motion* under Rule 65, including any facts showing irreparable injury. These affidavits must be submitted by e-filing by Friday, February 14th, 2025.
8. Plaintiffs have until the close of business on Tuesday, February 18th, 2025, to submit counter-affidavits. KCNA and Ky Wired are directed to address the issue of the public interest regarding the impact of the termination of the Wholesaler Contract on provision of necessary services to the 217 OpenFiber customers at issue, and any actions KCNA will take to ensure continuity of services is available for such customers.
9. Following the submission and review of affidavits, the Court will rule on the Defendants' *Motion for Temporary Injunction*, or in the alternative, the Court may set an evidentiary hearing prior to March 1, 2025 if it determines material facts are in dispute.

SO ORDERED this 13th day of February, 2025.



PHILLIP J. SHEPHERD
electronically signed
2/13/2025 11:12:09 AM ET

PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division 1

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**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CONSOLIDATED CIVIL ACTION NOS. 23-CI-01049
24-CI-00333**

**COMMONWEALTH OF KENTUCKY,
KENTUCKY COMMUNICATIONS
NETWORK AUTHORITY**

PLAINTIFF

V.

**OPENFIBER KENTUCKY COMPANY, LLC, and
KENTUCKY WIRED OPERATIONS COMPANY, LLC**

DEFENDANTS

V.

ORDER DENYING TEMPORARY INJUNCTION

OPENFIBER KENTUCKY COMPANY, LLC

PLAINTIFF

V.

**COMMONWEALTH OF KENTUCKY,
KENTUCKY COMMUNICATIONS
NETWORK AUTHORITY, and
KENTUCKY WIRED OPERATIONS COMPANY, LLC**

DEFENDANTS

This matter is before the Court following the Court's Order of February 13, 2025, holding KCNA's *Motion to Dismiss* (file date January 22, 2025) in abeyance and requesting additional information prior to ruling on OpenFiber's *Motion for Temporary Injunction* (file date January 28, 2025).

Having considered the motions and reviewed the documents submitted by the parties, the Court **HEREBY DENIES** OpenFiber's *Motion for Temporary Injunction*.¹ Under the familiar test of *Maupin v. Stansbury*, 575 S.W.2d 695 (Ky. 1978), the trial court must consider whether the party seeking a temporary injunction has suffered, or is likely to suffer, irreparable injury, whether

¹ KCNA's *Motion to Dismiss* continues to be held in abeyance in accordance with the terms of the Court's prior Order.

the case presents a substantial legal issue on the merits, whether the public interest supports issuance of injunctive relief, and the balance of the equities. Here, the application for injunctive relief fails the critical first test. There is no showing of irreparable injury.

The Court of Appeals has recently reiterated the law of temporary injunctions:

The standard for granting a temporary injunction in Kentucky is well-settled. The trial court reviews applications for temporary injunctive relief under CR 65.04 on three levels:

First, the trial court should determine whether plaintiff has complied with CR 65.04 by showing irreparable injury. **This is a mandatory prerequisite to the issuance of any injunction.** Secondly, the trial court should weigh the various equities involved. Although not an exclusive list, the court should consider such things as possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo. Finally, the complaint should be evaluated to see whether a substantial question has been presented. If the party requesting relief has shown a probability of irreparable injury, presented a substantial question as to the merits, and the equities are in favor of issuance, the temporary injunction should be awarded. However, the actual overall merits of the case are not to be addressed in CR 65.04 motions.

Maupin v. Stansbury, 575 S.W.2d 695, 699 (Ky. App. 1978) (emphasis added in *Travelers* opinion, full cite below).

* * *

It is well settled that in the absence of irreparable injury, injunctive relief may not lie.

* * *

An injunction does not lie when money damages are a sufficient remedy. ‘Injunctions, generally, will not be granted, minus some positive provision of the law to the contrary, where there is a choice between ordinary processes of law and the extraordinary remedy by injunction, when the remedy at law is sufficient to furnish the injured party full relief to which he is entitled in the circumstances. *Cyprus Mountain Coal Corp. v. Brewer*, 828 S.W.2d 642, 645 (Ky. 1992).

(Emphasis added.) *Travelers Transitional Living, LLC v. Cabinet for Health and Family Services, et al.*, Franklin Circuit Court, Division I, No. 24-CI-00407, before the Court of Appeals on Motion for Interlocutory Relief, No. 2024-CA-0767-I, entered October 1, 2024, p. 4-6.²

The Court finds that OpenFiber has not met its burden of proving that it has suffered irreparable injury as required under the law as stated by the Court of Appeals in *Travelers* and *Maupin*. “An injury is irreparable if there exists no certain pecuniary standard for the measurement of the damages.” *Cyprus Mountain Coal Corp. v. Brewer*, 828 S.W.2d 642, 645 (Ky. 1992). Here, the gravamen of OpenFiber’s claim that it is entitled to a temporary injunction is that KCNA cannot terminate the Wholesaler Agreement and proceed with disconnection of services without exhausting the Dispute Resolution procedures outlined in the Agreement and that, furthermore, KCNA’s attempt to do so causes irreparable injury to OpenFiber that goes beyond mere financial harm. The Court disagrees.

OpenFiber has provided the Affidavits of Bradley H. Kilbey, OpenFiber’s Chief Executive Officer, and Van Macatee, OpenFiber’s Chief Operations Officer, at the Court’s request, for the purpose of supporting their CR 65.04 motion and showing facts supporting irreparable injury.³ OpenFiber states that if KCNA is allowed to disconnect OpenFiber’s assets, it will suffer irreparable harm in the nature of “being forced to (i) close its business in Kentucky; (ii) lay off its remaining employees in Kentucky; and (iii) lose the reputation and goodwill associated with its business.” OpenFiber Notice, Feb. 14, 2025, p. 2. However, the Court is not convinced that these results are anything other than financial harms or harms to OpenFiber’s business, which, it is well-

² While this is an unreported Court of Appeals opinion (relating to an appeal from a decision of this Court), the Court finds it is particularly relevant given its interpretation of *Maupin v. Stansbury*, CR 65.04, and the specific issue of the impact of mere financial harm on the question of irreparable injury.

³ In compliance with the Court’s Order, KCNA provided the Affidavits of Tom Snyder, Chief Operations Officer at Kentucky Wired Operations Company, LLC, and Stewart D. Hendrix, Executive Director of KCNA. The testimony contained therein is addressed primarily to the continuity of services in the event that KCNA proceeds with disconnecting OpenFiber from the NG-KIH System.

settled, may not be the sole source of irreparable injury for injunctive purposes. *Cameron v. EMW Women's Surgical Center, P.S.C.*, 664 S.W.3d 633, 660 (Ky. 2023) (“Further, the personal harm asserted by the abortion providers, the harm to their business, is not considered an irreparable injury for the purposes issuing a temporary injunction.”); *Norsworthy v. Kentucky Bd. of Med. Licensure*, 330 S.W.3d 58, 62 (Ky. 2009) (“In order to obtain a preliminary injunction, the harm that would result in the absence of the injunction must be irreparable, not merely substantial. Further, mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough.”).

OpenFiber may continue to do business elsewhere in the Commonwealth or anywhere else. If it decides to let its employees go, that is a business decision. However, as OpenFiber notes, its employees are highly skilled and in high demand, and should be readily re-employable. OpenFiber has not cited Kentucky law establishing that the loss of customer goodwill associated with its business or “unique business opportunity” are appropriate considerations for irreparable harm under CR 65.04, and the Court does not find them to be so.

Even if the Court assumed, for the sake of OpenFiber’s argument, that KCNA could not terminate the Agreement for cause without exhausting the Dispute Resolution process provided by Schedule 2 of the Agreement, and the dispute were to proceed before the Secretary of the Finance and Administration Cabinet for decision (and possibly end up before the Court again), KCNA’s termination of the Agreement could still be construed as a *termination for convenience* pursuant to §§ 2.1(a) and (c) of the Agreement.⁴ In other words, KCNA could still terminate the Agreement,

⁴ The Court noted in its previous Order that

... the Dispute Resolution process set forth in Schedule 2 itself provides that it is subordinate to the state contracting requirements of the Model Procurement Code (“KRS 45A.225- 45A.290”), so OpenFiber must present these issues to the Secretary of Finance & Administration for decision under KRS 45A.230. Moreover, all state contracts are subject to the provisions of 200 KAR 5:312.

but the nature of OpenFiber's remedy under the Agreement would change. If KCNA is deemed to have terminated the Agreement for convenience rather than cause, OpenFiber could exercise its "Put Right" under § 14 of the Agreement, requiring the Commonwealth to "purchase all of the Wholesaler Assets for purchase price equal to the Fair Market Value of the Wholesaler Assets." Clearly, this section provides a monetary damages remedy for KCNA's termination of the Agreement. As noted at the outset of this discussion, "[a]n injunction does not lie when money damages are a sufficient remedy." *Travelers Transitional Living*, p. 6.

Because the Court finds that there is no irreparable injury to OpenFiber that would require the extraordinary remedy of injunctive relief, which is a "mandatory prerequisite to the issuance of any injunction," *Maupin* at 699, there is no need to address the other elements of the *Maupin* analysis at this time. OpenFiber makes vague claims regarding allegations of reputational interests and business opportunities. However, even if such claims were well founded (which they are not on the record before the Court), they do not constitute irreparable injury in the context of this case. OpenFiber's counsel stated in response to the Court's question at the hearing on this matter, that it is a business entity wholly owned by the Macquarie Group and UBS, two of the largest investment bankers in the world. There is no reason to believe, based on this record, that OpenFiber lacks the financial wherewithal to continue to operate and to effectively defend its legal rights in this litigation, in the absence of injunctive relief. Likewise, there is no reason to believe that this business dispute over interpretation of a contract gives rise to any kind of injury other than monetary damages.

Nonetheless, despite the fact that KCNA may terminate the Wholesaler Agreement without irreparable injury to OpenFiber that justifies a temporary injunction, the Court has serious concerns

Order, Feb. 13, 2025, ¶ 3.

about the impact of KCNA's decision on OpenFiber customers, and KCNA's ability to accomplish the necessary transition of internet service to such customers following OpenFiber's disconnection from the NG-KIH System. However, those issues are not before the Court, and no customer of OpenFiber has attempted to intervene in this action. In short, the Court's concerns are not fully addressed in the record presented by the parties on this motion.

WHEREFORE:

- OpenFiber's *Motion for a Temporary Injunction* is hereby **DENIED**:
- OpenFiber **shall immediately provide** both KCNA/KWOC with the information and specifications indicated by Tom Snyder and Stewart D. Hendrix in their Affidavits that they have requested from OpenFiber (and not received) so that KCNA/KWOC may assist with the facilitation of the provision or continuity of services to OpenFiber's customers. The principals of these entities shall meet and confer in order to accomplish this task expediently.
- KCNA shall give all disclosed customers of OpenFiber at least thirty (30) days notice prior to disconnection of OpenFiber from the NG-KIH system.
- The matter shall remain on the Court's docket while it is held in abeyance pursuant to the Court's previous Order, and OpenFiber may continue to pursue its claims, if any, under the Dispute Resolution procedures contained in Schedule 2 of the Wholesaler Agreement.
- The Parties shall contact the Court's Judicial Assistant (AmyFeldman@kycourts.net) to schedule this matter for a status conference at the end of 30 days.

SO ORDERED this 26th day of February 2025.



PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division I

DISTRIBUTION:

All Counsel

Customer Name	Address Line 1	City	State	Zip
A Plus Loans & Taxes	965 South, Hwy 25W	Williamsburg	KY	40769
Adanta Group	259 Parkers Mill Rd	Somerset	KY	42501
Adanta Group	90 Medical Lane	Whitley City	KY	42653
Addiction Recovery Care	2221 Central Ave.	Ashland	KY	41101
Addiction Recovery Care	2206 Walnut Street	Catlettsburg	KY	41129
Addiction Recovery Care	2735 Bardstown Road	St Catharine	KY	40061
Addiction Recovery Care	330 Roland Ave.	Owenton	KY	40359
Addiction Recovery Care	185 Farra Dr.	Lancaster	KY	40444
Addiction Recovery Care	758 Stockton Road	Wallingford	KY	41093
Addiction Recovery Care	758 Stockton Road	Wallingford	KY	41093
Addiction Recovery Care	1000 St Christopher Dr.	Ashland	KY	41101
Addiction Recovery Care	1000 St Christopher Dr.	Ashland	KY	41101
Addiction Recovery Care	3439 Buckhorn Drive Ste. 160	Lexington	KY	41501
Addiction Recovery Care	3136 W 2nd St	Owensboro	KY	42301
Addiction Recovery Care	3136 W 2nd St	Owensboro	KY	42301
Addiction Recovery Care	521 E. High Street	Owingsville	KY	40360
Addiction Recovery Care	521 E. High Street	Owingsville	KY	40360
Addiction Recovery Care	360 Pinecrest Drive	Morehead	KY	40351
Addiction Recovery Care	360 Pinecrest Drive	Morehead	KY	40351
Addiction Recovery Care	334 Windy Hill Dr.	Louisa	KY	41230
Addiction Recovery Care	221 Windy Hill	Louisa	KY	41230
Addiction Recovery Care	31 Torchlight Rd.	Louisa	KY	41230
Addiction Recovery Care	31 Torchlight Rd.	Louisa	KY	41230
Addiction Recovery Care	207 W Court St.	Prestonsburg	KY	41653
Addiction Recovery Care	172 Town Hill Rd	Louisa	KY	41230
Addiction Recovery Care	101 N Main St	Stanton	KY	40380
Addiction Recovery Care	501 Jefferson Ave	Paintsville	KY	41240
Addiction Recovery Care	13715 Highway 421 S.	Tyner	KY	40486
Addiction Recovery Care	185 Northup Blvd	Louisa	KY	41230
Addiction Recovery Care	1631 Jerushia Branch Rd.	Booneville	KY	41314
Addiction Recovery Care	31 Deephole Branch Rd.	Louisa	KY	41230
Addiction Recovery Care	31 Deephole Branch Rd.	Louisa	KY	41230
Addiction Recovery Care	107 E. Madison St.	Louisa	KY	41230
Addiction Recovery Care	502 N Lackey Ave.	Louisa	KY	41230
Addiction Recovery Care	502 N Lackey Ave.	Louisa	KY	41230
Addiction Recovery Care	125 S. Main Cross Street Ste. 202	Louisa	KY	41230
Addiction Recovery Care	8015 Millard Highway	Pikeville	KY	41501
Addiction Recovery Care	8015 Millard Highway	Pikeville	KY	41501

Addiction Recovery Care	203 Water St	Louisa	KY	41230
Addiction Recovery Care	2135 Highway 1185	Louisa	KY	41230
Addiction Recovery Care	185 Maggard Street	Benham	KY	40807
Addiction Recovery Care	332 Riverbend Rd.	Louisa	KY	41230
Addiction Recovery Care	332 Riverbend Rd.	Louisa	KY	41230
Addiction Recovery Care	332 Riverbend Rd.	Louisa	KY	41230
Addiction Recovery Care	130 Walmart Plaza Drive	Monticello	KY	42633
Addiction Recovery Care	125 Jordans Way	Somerset	KY	42501
Addiction Recovery Care	125 Jordan's Way	Somerset	KY	42501
Addiction Recovery Care	125 Jordans Way	Somerset	KY	42501
Addiction Recovery Care	260 Evans Dr.	Mt. Sterling	KY	40353
Albaree Health Services	842 E Mountain Parkway	Salversville	KY	41465
All Points Broadband	148 Citizens Blvd	Simpsonville	KY	40067
All Points Broadband	305 VETERANS MEMORIAL HWY	Lebanon	KY	40033
All Points Broadband	90 Jephtha Knob Road	Shelbyville	KY	40065
All Points Broadband	1454 Tyrone Rd	Lawrenceburg	KY	40342
All Points Broadband	303 Gunnell Rd	Georgetown	KY	40324
All Points Broadband	1046 N College St.	Harrodsburg	KY	40330
All Points Broadband	148 Citizens Blvd	Simpsonville	KY	40067
All Points Broadband	148 Citizens Blvd	Simpsonville	KY	40067
All Points Broadband	148 Citizens Blvd	Simpsonville	KY	40067
All Points Broadband	148 Citizens Blvd	Simpsonville	KY	40067
All Points Broadband	141 Industry Rd	Lancaster	KY	40444
Allison Abrasives Inc	2130 S Highway 27	Somerset	KY	42501
Alton Blakley Family of Dealerships	1110 Wilkinson Trace	Bowling Green	KY	42103
American Health Management, Inc	106 Railroad St	Harlan	KY	40831
American Health Management, Inc	965 S Hwy 25 W. Suite 5	Williamsburg	KY	40769
American Health Management, Inc	213 Parkview Dr	Glasgow	KY	42141
American Health Management, Inc	2433 Regency Rd	Lexington	KY	40503
American Health Management, Inc	929 North Main St	London	KY	40741
American Health Management, Inc	121 W Virginia Ave	Pineville	KY	40977
American Health Management, Inc	109 E. Main St.	Leitchfield	KY	42754
American Health Management, Inc	98 Jimmy Dyer Ln	Albany	KY	42602
American Health Management, Inc	27 Imaging Dr	Somerset	KY	42503
American Health Management, Inc	2028 Merrick Dr	Richmond	KY	40475
American Health Management, Inc	5008 Atwood Dr. Suite 1-3	Richmond	KY	40475
American Health Management, Inc	178 Broadway St	Irvine	KY	40336
American Health Management, Inc	439 Jerri Ln	Mt Vernon	KY	40456
American Health Management, Inc	939 W Columbia Ave	Monticello	KY	42633

American Health Management, Inc	57 Oaks Ln. Suite 11	Whitley City	KY	42653
American Health Management, Inc	1032 McCammon Ridge Rd	Mckee	KY	40447
American Health Management, Inc	1907 Elizabethtown Rd	Leitchfield	KY	42754
Anderson County Health Department	1180 Glensboro Rd	Lawrencburg	KY	40342
Arlinghaus Builders LLC	142 BARNWOOD DR	Edgewood	KY	41017
Aviation Museum of Kentucky	4029 Airport Rd.	Lexington	KY	40510
B2 Telecom	1030 Cedar Rd	West Liberty	KY	41472
B2 Telecom	37.407202, -85.886356	Bonnieville	KY	42713
B2 Telecom	37.247031, -85.920353	Horse Cave	KY	42749
B2 Telecom	37.354767, -85.873514	Bonnieville	KY	42713
B2 Telecom	37.354767, -85.873514	Bonnieville	KY	42713
B2 Telecom	36.859917, -85.1603	JAMESTOWN	KY	42629
B2 Telecom	36.859917, -85.1603	JAMESTOWN	KY	42629
B2 Telecom	36.77656, -85.24519	BURKESVILLE	KY	42717
B2 Telecom	36.77656, -85.24519	BURKESVILLE	KY	42717
B2 Telecom	243 Harold Poynter Rd	Knob Lick	KY	42154
B2 Telecom	243 Harold Poynter Rd	Knob Lick	KY	42154
B2 Telecom	37.32431111, -85.9187556	Bonnieville	KY	42713
B2 Telecom	37.32431111, -85.9187556	Bonnieville	KY	42713
B2 Telecom	6131 Bowling Greene Rd	Scottsville	KY	42164
B2 Telecom	6131 Bowling Greene Rd	Scottsville	KY	42164
B2 Telecom	State Hwy 92	Pine Knot	KY	42635
B2 Telecom	State Hwy 92	Pine Knot	KY	42635
B2 Telecom	37.0055555	Edmonton	KY	42129
B2 Telecom	37.0055555, -85.5761111	Edmonton	KY	42129
B2 Telecom	37.247031, -85.920353	Horse Cave	KY	42749
B2 Telecom	37.247031, -85.920353	Horse Cave	KY	42749
B2 Telecom	487 Ogden Vest Rd	Hindman	KY	41722
B2 Telecom	848 S 8th St	Louisville	KY	40203
B2 Telecom	848 S 8th St	Louisville	KY	40203
B2 Telecom	848 S 8th St	Louisville	KY	40203
B2 Telecom	848 S 8th St	Louisville	KY	40203
B2 Telecom	37.407202, -85.886356	Bonnieville	KY	42713
B2 Telecom	37.757731, -83.063814	Salersville	KY	41465
B2 Telecom	37.247031, -85.920353	Horse Cave	KY	42749
B2 Telecom	848 S 8th St	Louisville	KY	40203
B2 Telecom	848 S 8th St	Louisville	KY	40203
B2 Telecom	848 S 8th St	Louisville	KY	40203
B2 Telecom	848 S 8th St	Louisville	KY	40203

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B2 Telecom	37.742806	Campton	KY	41301
B2 Telecom	37.742806	Campton	KY	41301
B2 Telecom	848 S 8th St	Louisville	KY	40203
B2 Telecom	37.74280556, -83.5453889	Campton	KY	41301
B2 Telecom	2274 Flatwoods Rd	Virgie	KY	41572
B2 Telecom	2274 Flatwoods Rd	Virgie	KY	41572
B2 Telecom	8301 US Hwy 460	Wellington	KY	40387
B2 Telecom	1030 Cedar Rd	West Liberty	KY	41472
B2 Telecom	100 Manor Circle	Whitley City	KY	42653
B2 Telecom	100 Manor Circle	Whitley City	KY	42653
B2 Telecom	165 State Hwy 90	Parkers Lake	KY	42634
B2 Telecom	165 State Hwy 90	Parkers Lake	KY	42634
B2 Telecom	487 Ogden Vest Rd	Hindman	KY	41722
Baptist Health Systems	752 Barret Ave	Louisville	KY	40204
Baptist Health Systems	1830 cargo Ct	Louisville	KY	40299
Baptist Health Systems	1419 cumberland falls hwy	corbin	KY	40701
Baptist Health Systems	2831 S hurstbourne pkwy	Louisville	KY	40220
Barbourville Utilities	891 US-25 E	Barbourville	KY	40906
Barbourville Utilities	36.880050109429298	Barbourville	KY	40949
Bell County Government	101 Courthouse sq.	Pineville	KY	40977
Bell County Health Department	310 Cherry St.	Pineville	KY	40977
Bell County Health Department	111 N. 21st St.	Middlesboro	KY	40965
Bell County Health Department	306 W. Park	Pineville	KY	40977
Bell County Health Department	310 S. Cherry Street	Pineville	KY	40977
Bell County Health Department	111 N. 21st St.	Middlesboro	KY	40965
Bell County Health Department	306 W. Park	Pineville	KY	40977
Bellarmine University	752 Barret Avenue	Louisville	KY	40204
Bellarmine University	2001 Newburg Rd	Louisville	KY	40205
Bellarmine University	2001 Newburg Rd	Louisville	KY	40205
Berea College	200 Campus Dr	Berea	KY	40403
BeyondReach	12701 Plantside Dr	Louisville	KY	40299
Big Brothers Big Sisters of Kentuckiana	2820 W Broadway Suite BBBSKY	Louisville	KY	40211
Big Brothers Big Sisters of Kentuckiana	1519 Gardiner Ln Ste B	Louisville	KY	40218
Bluegrass Airport	4000 Terminal Dr Ste 206	Lexington	KY	40510
Bluegrass Airport	4444 Gumbert Rd	Lexington	KY	40510
Bluegrass Community Health Center	131 N Eagle Creek Dr	Lexington	KY	40509
Bluegrass Community Health Center	224 N Martin Luther King Blvd Suite 200	Lexington	KY	40507
Bluegrass Community Health Center	1306 Versailles Rd Suite 120	Lexington	KY	40504
Bluegrass Fiber, LLC	501 High St.	Frankfort	KY	40601

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Bluegrass Fiber, LLC	2820 BALD KNOB RD	KY	Frankfort	40601
Bluegrass Fiber, LLC	2820 BALD KNOB RD	KY	Frankfort	40601
Bluegrass Station Bus Indl	5751 Briar Hill	KY	Lexington	40516
Bluegrass Station Bus Indl	5751 Briar Hill	KY	Lexington	40516
Bluegrass Station Bus Indl	5751 Briar Hill	KY	Lexington	40516
Bluegrass Station Bus Indl	5751 Briar Hill	KY	Lexington	40516
Bluegrass Station Bus Indl	5751 Briar Hill	KY	Lexington	40516
Bluegrass Station Bus Indl	5751 Briar Hill	KY	Lexington	40516
Bluegrass Station Bus Indl	5751 Briar Hill	KY	Lexington	40516
BLUEGRASS.NET	1930 Bishop Ln	KY	Louisville	40205
Bosch Growers	112 Wright Lane	KY	Somerset	42503
Boulevard LLC	375 Hambley Blvd	KY	Pikeville	41501
Bourbon County Health Department	341 East Main Street	KY	Paris	40361
Boyle County Government	321 W Main Street	KY	Danville	40422
Boyle County Health Department	448 S 3rd St	KY	Danville	40422
Bracken County Health Department	429 Frankfort Street	KY	Brooksville	41004
Bracken County Health Department	429 Frankfort Street	KY	Brooksville	41004
Broadlinc Communications	3 Hoop Dr	KY	Walton	41094
Broadlinc Communications	150 Progress Way	KY	Owenton	40359
Callies Lake And Campground in Red River Gorge	5515 Campton Rd.	KY	Stanton	40380
Campaign Deputy	752 Barret Ave	KY	Louisville	40204
Carhartt Inc	678 Industrial Dr	KY	Edmonton	42129
Carhartt Inc	285 Carhartt Ave	KY	Irvine	40336
Carhartt Inc	498 Industrial Dr	KY	Irvine	40336
Carhartt Inc	4550 Hanson Rd	KY	Madisonville	42431
Carhartt Inc	380 Estill Baker Rd	KY	Hanson	42413
Carpet Specialists Incorporated	2101 Stanley Gault Pkwy	KY	Louisville	40223
Carroll County Government	607 Park Ave	KY	Carrollton	41008
Carter County Extension District Board	94 Cs-1006	KY	Grayson	41143
Centre College	762 west main st	KY	Danville	40422
Centre College	236 West Main Street	KY	Danville	40422
Clark County Health Department	400 Professional Avenue	KY	Winchester	40391
Clark County Health Department	273 Shoppers Drive	KY	Winchester	40391
Clark Energy Cooperative	2640 Iron Works Rd	KY	Winchester	40392
Clark Energy Cooperative	170 Halls Ln	KY	Stanton	40383
Clark Energy Cooperative	28 Bible Camp Ln	KY	Frenchburg	40322
Clark Energy Cooperative	170 Halls Ln	KY	Stanton	40383
Clark Energy Cooperative	2640 Iron Works Rd	KY	Winchester	40392

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Clark Energy Cooperative	2640 Iron Works Rd	Winchester	KY	40392
Clear Creek Baptist Bible College	300 Clear Creek Rd	Pineville	KY	40977
Cloud Nexus	9400 Williamsburg Plaza	Louisville	KY	40222
Community Telecom Services	49 Hardwood Drive	Monticello	KY	42633
Comprehend Inc	610 Elizaville Ave	Flemingsburg	KY	41041
Conexon Connect LLC	545 Tina Waggener Rd	Morganfield	KY	42437
Conexon Connect LLC	545 Tina Waggener Rd	Morganfield	KY	42437
Conexon Connect LLC	6000 State Hwy 140	Calhoun	KY	42327
Cornerstone Government Affairs	311 West Main Street	Frankfort	KY	40601
Creative Realities Inc	13100 Magisterial Dr Suite 100	Louisville	KY	40223
Crew Aviation LLC	1176 Standiford Ave	Louisville	KY	40213
Crittenden County Public Library	204 W Carlisle St	Marion	KY	42064
Crittenden County Public Library	204 W Carlisle St	Marion	KY	42064
Cumberland Family Medical Center Inc	127 Foothills Ave	Albany	KY	42602
Cumberland Machinery Movers	6975 Danville Rd	Nicholasville	KY	40356
Cumberland River Behavioral Health	704 Pitzer Street	Barbourville	KY	40906
Cumberland River Behavioral Health	285 Cemetery Road	Williamsburg	KY	40769
Cumberland River Behavioral Health	175 E Peachtree St	Corbin	KY	40701
Cumberland River Behavioral Health	134 Comprehensive Drive	Harlan	KY	40831
Cumberland River Behavioral Health	915 North Laurel Road	Pittsburg	KY	40755
Cumberland River Behavioral Health	225 N Laurel Rd	London	KY	40741
Cumberland River Behavioral Health	324 1/2 North 19th Street	Middlesboro	KY	40965
Cumberland River Behavioral Health	215 East Tennessee Avenue	Pineville	KY	40977
Cumberland River Behavioral Health	565 Muddy Gap Road	Manchester	KY	40962
Cumberland River Behavioral Health	1348 Highway 421 North	Mckee	KY	40447
Cumberland Valley Electric, Inc	6219 Old Hwy 25	Gray	KY	40734
Cumberland Valley National Bank	1520 South Hwy 27 Somerset	Somerset	KY	42501
Cumberland Valley National Bank	100 South Main	London	KY	40741
Cynthiana	111 South Main St	Cynthiana	KY	41031
Cynthiana	111 South Main St	Cynthiana	KY	41031
Dant Clayton Corporation	1500 Bernheim Ln.	Louisville	KY	40210
Davies County Extension District Board	4800A New Hartford Rd.	Owensboro	KY	42303
Dayspring Health	965 US25W, Suite 24-1	Williamsburg	KY	40769
Dayspring Health	402 Cumberland Ave	Williamsburg	KY	40769
DC Elevator Company	709 Miles Point Way	Lexington	KY	40510
DC Elevator Company	1256 Logan St	Louisville	KY	40204
Dismas Charities Inc	909 Georgetown St	Lexington	KY	40511
DRC Industries	252 W Jay Louden Rd	Carrollton	KY	41008
DRC Industries	3356 US 42	Carrollton	KY	41008

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Edmonson County Schools KY	100 Wildcat Way	Brownsville	KY	42210
ENA Services, LLC	401 East Main Street	Grayson	KY	41143
ENA Services, LLC	502 Ram blvd	Raceland	KY	41169
ENA Services, LLC	709 Red Devil Ln	Russell	KY	41169
ENA Services, LLC	2123 Main St	Ashland	KY	41102
ENA Services, LLC	196 Musketeer Dr	Greenup	KY	41144
ENA Services, LLC	1820 Hickman St	Ashland	KY	41101
ENA Services, LLC	12307 Midland Tr Rd	Ashland	KY	41102
ENA Services, LLC	877 E. 11th Street	Bowling Green	KY	42101
ENA Services, LLC	430 South College Street	Franklin	KY	42135
ENA Services, LLC	2421 Industrial Drive	Bowling Green	KY	42101
ENA Services, LLC	2421 Industrial Dr	Bowling Green	KY	42101
ENA Services, LLC	65 Highschool Dr.	Albany	KY	42602
ENA Services, LLC	100 Wildcat Way	Brownsville	KY	42210
ENA Services, LLC	735 E Main St.	Lebanon	KY	40033
ENA Services, LLC	300 West US 150 By-Pass	Springfield	KY	40069
ENA Services, LLC	178 Academic Way #400	Morgantown	KY	42261
ENA Services, LLC	2400 Bowling Green Rd.	Russellville	KY	42276
ENA Services, LLC	1841 E KY Hwy 70	Liberty	KY	42539
ENA Services, LLC	570 Oliver St	Scottsville	KY	42164
ENA Services, LLC	309 Emberton St	Tompkinsville	KY	42167
ENA Services, LLC	355 S Summer Street	Russellville	KY	42276
ENA Services, LLC	408 Fifth Street	Carrollton	KY	41008
ENA Services, LLC	1029 Hwy 421 N.	Bedford	KY	40006
ENA Services, LLC	11 Kasey Carr Dr	Corbin	KY	40701
ENA Services, LLC	140 school St.	Barbourville	KY	40906
ENA Services, LLC	311 N Main St.	Barbourville	KY	40906
ENA Services, LLC	300 Main St	Williamsburg	KY	40769
ENA Services, LLC	1000 Main St	Williamsburg	KY	40769
ENA Services, LLC	410 N. 5th St.	Bardstown	KY	40004
ENA Services, LLC	302 Brummal Avenue	Greensburg	KY	42743
ENA Services, LLC	209 Corporate Drive	Elizabethtown	KY	42701
ENA Services, LLC	209 Corporate Drive Suite 130	Elizabethtown	KY	42701
ENA Services, LLC	925 S Lincoln Blvd.	Hodgenville	KY	42748
ENA Services, LLC	288 Wildcat Ln	Bardstown	KY	40004
ENA Services, LLC	620 N Mulberry St	Elizabethtown	KY	42701
ENA Services, LLC	305 Bartlett Ave	Erlanger	KY	41018
ENA Services, LLC	32 school Rd.	Walton	KY	41094
ENA Services, LLC	25 E 7th St	Covington	KY	41011

ENA Services, LLC	54 Beechwood Rd	Ft Mitchell	KY	41017
ENA Services, LLC	525 Elm St	Ludlow	KY	41016
ENA Services, LLC	75 Boardwalk Bldg B	Warsaw	KY	41095
ENA Services, LLC	Ockerman Dr	Florence	KY	41042
ENA Services, LLC	Ockerman Dr	Florence	KY	41042
ENA Services, LLC	1155 Main St.	Shelbyville	KY	40065
ENA Services, LLC	328 Shelby St	Frankfort	KY	40601
ENA Services, LLC	652 Chamberlin Ave.	Frankfort	KY	40601
ENA Services, LLC	1160 By-pass North	Lawrenceburg	KY	40342
ENA Services, LLC	1960 HWY 22 East	Owenton	KY	40359
ENA Services, LLC	101 Cold Harbor Dr	Frankfort	KY	40601
ENA Services, LLC	101 Cold Harbor	Frankfort	KY	40601
ENA Services, LLC	101 Cold Harbor	Frankfort	KY	40601
ENA Services, LLC	101 Cold Harbor	Frankfort	KY	40601
ENA Services, LLC	324 Webster Ave.	Cynthiana	KY	41031
ENA Services, LLC	120 Betsy Way	Georgetown	KY	40324
ENA Services, LLC	511 Trojan Tr.	Glasgow	KY	42141
ENA Services, LLC	912 N. Main St.	Burkesville	KY	42717
ENA Services, LLC	1601 Columbia Ave.	Glasgow	KY	42142
ENA Services, LLC	106 Ralph Edwards Rd	Edmonton	KY	42129
ENA Services, LLC	136 S Columbia	Campbellsville	KY	42718
ENA Services, LLC	300 Ingram Ave	Campbellsville	KY	42718
ENA Services, LLC	1102 N Dixie Hwy	Cave City	KY	42127
ENA Services, LLC	302 Gen John Adair Dr	Columbia	KY	42728
ENA Services, LLC	25 Quality Street	Munfordville	KY	42765
ENA Services, LLC	251 Ball Park Rd	Harlan	KY	40831
ENA Services, LLC	420 E Central St	Harlan	KY	40831
ENA Services, LLC	4464 Us Hwy 60	Morganfield	KY	42437
ENA Services, LLC	1715 2nd Street	Henderson	KY	42420
ENA Services, LLC	95 W 9th St	Newport	KY	41071
ENA Services, LLC	305 School Road	Dry Ridge	KY	41035
ENA Services, LLC	300 Helton St.	Williamstown	KY	41097
ENA Services, LLC	201 Center Street	Bellevue	KY	41073
ENA Services, LLC	5006 Madison Pike	Independence	KY	41051
ENA Services, LLC	5006 Madison Pike	Independence	KY	41051
ENA Services, LLC	219 Highland Ave	Fort Thomas	KY	41075
ENA Services, LLC	475 Crossroads Blvd.	Cold Spring	KY	41076
ENA Services, LLC	200 Clay St	Dayton	KY	41074
ENA Services, LLC	2525 Hwy 27N	Falmouth	KY	41040

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ENA Services, LLC	6 William F Blatt Av	Southgate	KY	41071
ENA Services, LLC	202 Main St.	Cadiz	KY	42211
ENA Services, LLC	200 Glass St	Hopkinsville	KY	42240
ENA Services, LLC	205 Airport Rd	Elkton	KY	42220
ENA Services, LLC	340 Schoolhouse Rd	Leitchfield	KY	42754
ENA Services, LLC	1155 Old Ekron Rd	Brandenburg	KY	40108
ENA Services, LLC	1126 Russell Cave Rd	Lexington	KY	40502
ENA Services, LLC	881 Wilmore Rd.	Nicholasville	KY	40356
ENA Services, LLC	Brady Hall 303 S. 2nd Street.	Danville	KY	40422
ENA Services, LLC	1651 Perryville Road	Danville	KY	40422
ENA Services, LLC	440 E Main St	Burgin	KY	40310
ENA Services, LLC	322 W Maple	Lancaster	KY	40444
ENA Services, LLC	330 Pisgah Pike	Versailles	KY	40383
ENA Services, LLC	203 E Lexington Av	Danville	KY	40422
ENA Services, LLC	305 Danville Av	Stanford	KY	40484
ENA Services, LLC	229 School Street	East Bernstadt	KY	40729
ENA Services, LLC	710 N Main St	London	KY	40741
ENA Services, LLC	1867 Frankfort Av	Louisville	KY	40206
ENA Services, LLC	404 Main Cross	Taylorsville	KY	40071
ENA Services, LLC	1900 Button Lane	Buckner	KY	40010
ENA Services, LLC	1900 Button Ln	La Grange	KY	40010
ENA Services, LLC	3332 Newburg Rd	Louisville	KY	40232
ENA Services, LLC	11400 Ridge Rd	Anchorage	KY	40223
ENA Services, LLC	1040 Hwy 44 E	Shepherdsville	KY	40165
ENA Services, LLC	1040 Highway 44 E	Shepherdsville	KY	40165
ENA Services, LLC	254 W Broadway	Eminence	KY	40019
ENA Services, LLC	1124 Eminence Rd.	New Castle	KY	40050
ENA Services, LLC	961 Moberly Rd.	Harrodsburg	KY	40330
ENA Services, LLC	135 Bank Street	Hardinsburg	KY	40143
ENA Services, LLC	499 Viking Drive	Morehead	KY	40351
ENA Services, LLC	848 S 8th St	Louisville	KY	40203
ENA Services, LLC	848 S 8th St	Louisville	KY	40203
ENA Services, LLC	317 Eli St.	Dawson Springs	KY	42408
ENA Services, LLC	28 State Route 1340	Dixon	KY	42409
ENA Services, LLC	510 W Main St.	Powderly	KY	42367
ENA Services, LLC	320 S Seminary St	Madisonville	KY	42431
ENA Services, LLC	1901 Hwy 136 E	Calhoun	KY	42327
ENA Services, LLC	301 James H Phillips Dr	Clinton	KY	42031
ENA Services, LLC	2740 Moscow Av	Hickman	KY	42050

ENA Services, LLC	914 E College St	Mayfield	KY	42066
ENA Services, LLC	4557 State Rt 1377	Bardwell	KY	42023
ENA Services, LLC	700 Stephen Beale Dr	Fulton	KY	42041
ENA Services, LLC	350 W. Miami St.	Brooksville	KY	41004
ENA Services, LLC	79 Lion Lane	Vanceburg	KY	41179
ENA Services, LLC	1762 Sardis Rd	Mt Olivete	KY	41064
ENA Services, LLC	1320 US Hwy 68	Maysville	KY	41056
ENA Services, LLC	207 Bracken St	Augusta	KY	41002
ENA Services, LLC	242 W Water St	Flemingsburg	KY	41041
ENA Services, LLC	405 W. Main St	Owingsville	KY	40360
ENA Services, LLC	1220 Eagles Way	Mayfield	KY	42066
ENA Services, LLC	1800 Sycamore Street	Murray	KY	42071
ENA Services, LLC	2110 College Farm Rd	Murray	KY	42071
ENA Services, LLC	McCreary Avenue & Griffith Avenue	Owensboro	KY	42301
ENA Services, LLC	301 Poplar Street	Cloverport	KY	40111
ENA Services, LLC	1621 Southtown Blvd	Owensboro	KY	42301
ENA Services, LLC	1621 Southtown Blvd	Owensboro	KY	42301
ENA Services, LLC	1400 S Main St	Hartford	KY	42347
ENA Services, LLC	80 State Rt 271 S	Lewisport	KY	42351
ENA Services, LLC	500 South 25th St	Paducah	KY	42003
ENA Services, LLC	201 W Fairview Ave	Eddyville	KY	42038
ENA Services, LLC	416 High school Rd.	Benton	KY	42025
ENA Services, LLC	6601 Old Hwy 60	Paducah	KY	42001
ENA Services, LLC	519 W Gum St.	Marion	KY	42064
ENA Services, LLC	750 US-60	Smithland	KY	42081
ENA Services, LLC	350 Beckner Ln	Princeton	KY	42445
ENA Services, LLC	3561 Paducah Rd	Barlow	KY	42024
ENA Services, LLC	3331 Highway 421 South	Mc Kee	KY	40447
ENA Services, LLC	269 State Hwy 3086	Jenkins	KY	41537
ENA Services, LLC	368 Bulldog Ln.	Louisa	KY	41230
ENA Services, LLC	25 Eagle Lane	Hyden	KY	41749
ENA Services, LLC	752 Hazard Rd. Suite B	Whitesburg	KY	41858
ENA Services, LLC	25 School Drive	Salysersville	KY	41465
ENA Services, LLC	325 2nd St.	Paintsville	KY	41240
ENA Services, LLC	315 Park Ave.	Hazard	KY	41701
ENA Services, LLC	100 Winners Circle Drive	Pikeville	KY	41502
ENA Services, LLC	2307 Bobcat Lane	Jackson	KY	41339
ENA Services, LLC	148 2nd St	Pikeville	KY	41502
ENA Services, LLC	1909 Patton Ave	Jackson	KY	42339

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ENA Services, LLC	253 N Mayo Trail	Paintsville	KY	41240
ENA Services, LLC	1156 Hindman Bypass	Hindman	KY	41822
ENA Services, LLC	5000 Elementary Drive	Inez	KY	41224
ENA Services, LLC	401 Virginia Ave.	Pineville	KY	40977
ENA Services, LLC	9828 US Highway 25 E	Pineville	KY	40977
ENA Services, LLC	220 N 20th St	Middlesboro	KY	40965
ENA Services, LLC	442 KY RT. 550	Eastern	KY	41622
ENA Services, LLC	702 North Second St	Richmond	KY	40475
ENA Services, LLC	702 North Second St	Richmond	KY	40475
ENA Services, LLC	128 Richmond Rd.	Manchester	KY	40962
ENA Services, LLC	349 South KY 7	Sandy Hook	KY	41171
ENA Services, LLC	359 Wynn Flat Rd.	Frenchburg	KY	40322
ENA Services, LLC	212 University Dr	West Liberty	KY	41472
ENA Services, LLC	250 Richmond St.	Mount Vernon	KY	40456
ENA Services, LLC	242 Lee Ave	Beattyville	KY	41311
ENA Services, LLC	3 Pirate Pkwy	Berea	KY	40403
ENA Services, LLC	705 Main St	Hazard	KY	41701
ENA Services, LLC	253 Main St	Irvine	KY	40336
ENA Services, LLC	700 W College Av	Stanton	KY	40380
ENA Services, LLC	14 Old Kentucky 11	Booneville	KY	41314
ENA Services, LLC	85 Main St	Campton	KY	41301
ENA Services, LLC	400 Raider Way	Stearns	KY	42647
ENA Services, LLC	301 College ST	Somerset	KY	42501
ENA Services, LLC	2166 S. Hwy 127	Russell Springs	KY	42642
ENA Services, LLC	925 North Main Street	Somerset	KY	42501
ENA Services, LLC	150 Cardinal Way	Monticello	KY	42633
ENA Services, LLC	6007 N Hwy 27	Science Hill	KY	42553
ENA Services, LLC	3347 Lexington Rd.	Paris	KY	40361
ENA Services, LLC	620 Boone Ave.	Winchester	KY	40391
ENA Services, LLC	3570 Indian Mound Dr.	Mt Sterling	KY	40353
ENA Services, LLC	304 West 7th Street	Paris	KY	40361
ENA Services, LLC	133 School Drive	Carlisle	KY	40311
EnergyNet - Hopkinsville Electric System	204 S Main St	Elkton	KY	42220
EnerSys	761 Eastern Bypass	Richmond	KY	40475
EnerSys	105 Hi Ln Dr.	Richmond	KY	40475
EnerSys	145 Hi Ln Dr.	Richmond	KY	40475
Ephraim McDowell Health, Inc.	1250 Ben Ali Drive	Danville	KY	40422
Ephraim McDowell Health, Inc.	150 War Admiral - EphMcD - DF	Danville	KY	40422
Equine Diagnostic Solutions LLC	1501 Bull Lea Rd. #104	Lexington	KY	40511

Equine Diagnostic Solutions LLC	1501 Bull Lea Rd. #104	Lexington	KY	40511
Estill County Health Department	365 River Dr.	Irvine	KY	40336
Estill Medical Clinic	275 North Court St	Irvine	KY	40336
Eurofins Diatherix	12701 Plantside Dr	Louisville	KY	40299
Eurofins Diatherix	12701 Plantside Dr	Louisville	KY	40299
Expree Credit Union	100 Moore Dr	Frankfort	KY	40601
Fair Way Lending LLC	1450 W Highway 42	La Grange	KY	40031
Family Health Centers Louisville	834 E Broadway	Louisville	KY	40204
FiberNet Communications, LLC	305 Danville Avenue	Stanford	KY	40484
Fishel Company	4508 Bishop Ln	Louisville	KY	40218
Floyd County Health Department	283 Goble St.	Prestonsburg	KY	41653
Floyd County Public Library KY	161 N Arnold Ave	Prestonsburg	KY	41653
Franklin Electric Plant Board	97 Reasonover Dr	Franklin	KY	42134
Frontier Behavioral Health	713 Broadway St	Paintsville	KY	41240
Frontier Behavioral Health	400 University Dr	Prestonsburg	KY	41653
Frontier Medical Associates - Paintsville	713 Broadway Suite 301	Paintsville	KY	41240
Frontier Medical Associates - Prestonsburg	400 University Dr	Prestonsburg	KY	41653
Frontier Nursing University	2050 Lexington Rd.	Versailles	KY	40383
Frost Brown Todd	400 W Market St #3200	Louisville	KY	40202
GAI Consulting	2550 EASTPOINT PKWY	Louisville	KY	40223
GAS Bowstrings, LLC	79 Ladonna Dr	Clay City	KY	40312
Goodwill KY	130 New Circle Rd Ste. 115	Lexington	KY	40505
Goodwill KY	909 E Broadway	Louisville	KY	40204
Goodwill KY	6201 Preston Hwy Suite A	Louisville	KY	40219
Goodwill KY	2820 W Broadway	Louisville	KY	40211
Goodwill KY	6203 Preston Hwy Suite A	Louisville	KY	40219
Goodwill KY	305 W. Broadway	Louisville	KY	40202
Gray Ice Higdon Attorneys at Law	3939 Shelbyville Road	Louisville	KY	40207
Grayson County Health Center	124 E White Oak St	Leitchfield	KY	42754
Green River District Health Department	175 Harrison St	Hawesville	KY	42348
Greenup County Health Department	806 Seaton Ave Building B	Greenup	KY	41144
Greenup County Health Department	806 Seaton Ave Building B	Greenup	KY	41144
Greenup County Health Department	806 Seaton Avenue	Greenup	KY	41144
Greenup County Health Department	806 Seaton Avenue	Greenup	KY	41144
Greenup County Health Department	806 Seaton Avenue	Greenup	KY	41144
Gun Media	112 Esplanade Dr	Lexington	KY	40507
Harlan Community Television, Inc.	124 S. 1st St.	Harlan	KY	40831
Harlan County Government KY	210 East Central Street	Harlan	KY	40831
Harlan County Government KY	210 E Central St	Harlan	KY	40831

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Harlan County Health Department	402 E. Clover St.	Harlan	Ky	40831
Harlan County Public Library KY	107 N 3rd St	Harlan	KY	40831
Harlan Tourism	210 East Central Street	harlan	KY	40831
Harrison Memorial Hospital	1210 KY-36	Cynthiana	KY	41031
Haydon Bridge Company Inc	703 Old Lebanon Rd	Springfield	KY	40069
Health First Community Health Center	107 E Main St	Earlington	KY	42410
Health First Community Health Center	295 Main Street	Calhoun	KY	42327
Health First Community Health Center	220 North Morgan Street	Morganfield	KY	42437
Henderson Municipal Power & Light	417 N Main St	Henderson	KY	42420
High Power Technical Services	1300 New Columbia Rd.	Campbellsville	KY	42718
High Power Technical Services	2230 Ampere Dr	Louisville	KY	40299
Hoskins Medical Center	96 HWY 80	Hyden	KY	41749
Hoskins Medical Center	1120 Reuben St.	London	KY	40741
INDATEL Services, LLC	989 Medical Park Dr	Maysville	KY	41056
INDATEL Services, LLC	47 S MAIN ST	Whitley City	KY	42653
Jackson Energy Cooperative Corporation	177 Barbourville Rd	London	KY	40744
Jackson Energy Cooperative Corporation	115 Jackson Energy Lane	McKee	KY	40774
Jackson Warewashing Systems	6209 N U.S. Hwy 25E	Gray	KY	40734
Jessamine Co. Health Department	210 E. Walnut St. South	Nicholasville	Ky	40356
Keeneland	4201 Versailles Rd	Lexington	KY	40510
Kentucky College of Barbering	2820 W. Broadway Suite 500	Louisville	KY	40211
Kentucky College of Barbering	2820 W. Broadway Suite 500	Louisville	KY	40211
Kentucky Downs LLC	5629 Nashville Road	Franklin	KY	42134
Kentucky Downs LLC	244 Penny Lane	Williamsburg	KY	40769
Kentucky Downs LLC	5629 Nashville Rd	Franklin	KY	42134
Kentucky Downs LLC	2475 Scottsville Rd	Bowling Green	KY	42104
Kentucky Mirror & Plate	930 W Main Street	Louisville	KY	40202
Kentucky River District Health Dept.	115 E. Main St.	Whitesburg	Ky	41858
Kentucky River District Health Dept.	282 KY-28	Booneville	Ky	41314
Kentucky River District Health Dept.	441 Gorman Hollow Rd.	Hazard	Ky	41701
Kentucky River District Health Dept.	880 W. Main St.	Hindman	Ky	41822
Kentucky River District Health Dept.	151 KY-15	Campton	Ky	41301
Kentucky River District Health Dept.	48 Center St.	Beattyville	Ky	41311
Kentucky River District Health Dept.	78 Maple St.	Hyden	Ky	41822
Kentucky River District Health Dept.	115 E. Main St.	Whitesburg	KY	41858
Kentucky River District Health Dept.	441 Gorman Hollow Rd.	Hazard	KY	41701
Kentucky River District Health Dept.	239 Lovern St.	Hazard	Ky	41701
Kentucky River District Health Dept.	413 Stanford St.	Lancaster	Ky	40444
KUDU Systems	801 Westlake Dr.	Columbia	Ky	42728
Lake Cumberland District Health Dept.				

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Lake Cumberland District Health Dept.	45 Roberts St.	Somerset	KY	42502
Lake Cumberland District Health Dept.	39 Jim Hill Service Rd.	Monticello	KY	42633
Lake Cumberland District Health Dept.	119 Medical Ln.	Whitley City	KY	42653
Lake Cumberland District Health Dept.	500 Bourne Ave.	Somerset	KY	42501
Lake Cumberland District Health Dept.	500 Bourne Ave.	Somerset	KY	42501
Lake Cumberland District Health Dept.	385 Valley Oak Dr	Somerset	KY	42503
Lake Cumberland District Health Dept.	131 Foothills Ave	Albany	KY	42602
Lake Cumberland District Health Dept.	650 Whipp Ave	Liberty	KY	42539
Lake Cumberland District Health Dept.	226 Copper Ln.	Burkesville	KY	42717
Lake Cumberland District Health Dept.	220 Industrial Park Rd.	Greensburg	KY	42743
Lake Cumberland District Health Dept.	1880 N Bypass Rd.	Campbellsville	KY	42718
Lake Cumberland District Health Dept.	211 Fruit of the Loom Dr.	Jamestown	KY	42629
Legislative Research Commission	702 Capital Ave	Frankfort	KY	40601
Legislative Research Commission	702 Capital Ave	Frankfort	KY	40601
Legislative Research Commission	702 Capital Ave	Frankfort	KY	40601
Legislative Research Commission	115 Cisco Rd	Lexington	KY	40503
Legislative Research Commission	115 Cisco Rd	Lexington	KY	40503
Legislative Research Commission	115 Cisco Rd	Lexington	KY	40503
Lewis County Extension District Board	284 Second St.	Vanceburg	KY	41179
Lewis County Health Department	185 Commercial Drive	Vanceburg	KY	41179
Lewis County Health Department	185 Commercial Dr	Vanceburg	KY	41179
Lexington Fayette Urban County	115 Cisco Rd	Lexington	KY	40504
Lexington-Fayette County Health Department	650 Newtown Pike	Lexington	KY	40508
LightChange Technologies	13000 Equity Pl	Louisville	KY	40223
Lincoln County Health Department	44 Health Way	Stanford	KY	40484
Lotte Aluminium Materials USA	200 Pritchard Pkwy	Elizabethtown	KY	42701
Lyon County Extension District Board	231 W Main St.	Eddyville	KY	42038
Lyon County Government KY	500 W Dale Ave	Eddyville	KY	42038
Manna Inc	3309 Collins Lane	Louisville	KY	40245
Markland Consulting Group	1525 Parker Hollow Dr	Louisville	KY	40223
Marsh McLennan	400 W Market St #600	Louisville	KY	40202
Martin County Rural Health Clinic	64 Kirk Plaza	Inez	KY	41224
Mastronardi Produce USA, Inc.	1415 Speedwell Rd	Richmond	KY	40475
Mastronardi Produce USA, Inc.	500 Appalachian way	Morehead	KY	40351
Mastronardi Produce USA, Inc.	100 Lake Park Dr	Morehead	KY	40351
Mastronardi Produce USA, Inc.	1000 Farristown Industrial Drive	BEREA	KY	40403
Mercer County Health Department	900 N College St	Harrodsburg	KY	40330
MetroNet Fiber Inc	38.033774, -84.459967	Lexington	KY	40505
MetroNet Fiber Inc	1793 Liberty Rd,	Lexington	KY	40505

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MetroNet Fiber Inc	Lat: 37°46'34.58"N Long: 84°19'12.12"W	Richmond	KY	40475
MetroNet Fiber Inc	1150 Mayde Rd	Berea	KY	40403
MetroNet Fiber Inc	1150 Maybe Rd	Berea	KY	40403
MetroNet Fiber Inc	38.029743, -84.454476	Lexington	KY	40502
Momentum Telecom Inc	655 Hendrickson Dr.	Lebanon	KY	
Monroe Co. Health Dept.	452 E. 4th St.	Tompkinsville	KY	42167
Montgomery County Government KY	1 Court St	Mount Sterling	KY	40353
Montgomery County Government KY	44 W Main St	Mount Sterling	KY	40353
Montgomery County Government KY	751 Chenault Lane	Mount Sterling	KY	40353
Montgomery County Health Department	108 E Locust St	Mount Sterling	KY	40353
Monticello Medical Associates	One South Creek Drive Suite 102	Monticello	KY	42633
Motherson DRSC Modules USA Inc.	223 Progress Dr	Russell Springs	KY	42642
Mountain Comprehensive Care Center	2101 Rocky Drive	Paris	KY	40361
Mountain Comprehensive Care Center	2222 Winchester Ave	Ashland	KY	41101
Mountain Comprehensive Care Center	838 S. Mayo Trail	Paintsville	KY	41240
Mountain Comprehensive Care Center	1225 US HWY 60 W	Morehead	KY	40351
Mountain Comprehensive Care Center	1110 South Mayo Trail	Paintsville	KY	41240
Mountain Comprehensive Care Center	1540 S US Highway 421	Harlan	KY	40831
Mountain Comprehensive Care Center	58 W Highway 80, Suite 1	Hindman	KY	41822
Mountain Comprehensive Care Center	23498 HWY 421	HYDEN	KY	41749
Mountain Comprehensive Care Center	676 North Dr.	Hopkinsville	KY	42240
Mountain Comprehensive Care Center	40 Greenhouse Lane-Auxier Rd	Prestonsburg	KY	41653
Mountain Comprehensive Care Center	1709 KY-519	Morehead	KY	40351
Mountain Comprehensive Care Center	3620 Flemingsburg Rd	Morehead	KY	40351
Mountain Comprehensive Care Center	1100 Kentucky Hwy 801 South	Morehead	KY	40351
Mountain Comprehensive Care Center	2710 E US 60	Morehead	KY	40351
Mountain Comprehensive Care Center	789 BRYANTS CAMP RD	Lancaster	KY	40444
Mountain Comprehensive Care Center	4800 South KY RT 321	Hagerhill	KY	41222
Mountain Comprehensive Care Center	129 Fraley-Miller Plaza Rd	Grayson	KY	41143
Mountain Comprehensive Care Center	160 Douglas Pkwy	Pikeville	KY	41501
Mountain Comprehensive Care Center	797 Slate Ave	Owingsville	KY	40360
Mountain Comprehensive Care Center	123 N Main St	Winchester	KY	40391
Mountain Comprehensive Care Center	224 Market St	Maysville	KY	41056
Mountain Comprehensive Care Center	22 Harbor Lane	Prestonsburg	KY	41653
Mountain Comprehensive Care Center	175 BRIDGE STREET	Morehead	KY	40351
Mountain Comprehensive Care Center	3700 Landsdowne Rd	Ashland	KY	41102
Mountain Comprehensive Care Center	113 Regency Park	Prestonsburg	KY	41653
Mountain Comprehensive Care Center	436 Richmond St.	Lancaster	KY	40444
Mountain Comprehensive Care Center	104 S Front St	Prestonsburg	KY	41653

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Mountain Comprehensive Care Center	428 E Main St	Inez	KY	41224
Muhlenberg County Health Department	105 Legion Drive	Central City	KY	42330
Nexgen Flight Academy, LLC	4444 Gumbert Rd Suite B	Lexington	KY	40510
North American Stainless	6870 US42	Ghent	KY	41045
Northern Kentucky Cedar, LLC	174 Lions Ln	Vanceburg	KY	41179
Northern Kentucky Cedar, LLC	174 Lions Ln	Vanceburg	KY	41179
Nuvem	One South Creek Drive	Monticello	KY	42633
OC Hub	300 Cs-1014	Hartford	KY	42347
Ohio County Hospital	310 Main St	Hartford	KY	42347
Ohio County Hospital	1313 N Main St	Beaver Dam	KY	42320
Ohio County Hospital	1211 Old Main St	Hartford	KY	42347
Oldham County Health Department	1786 Commerce Parkway	Lagrange	KY	40031
Owensboro Municipal Utilities	2070 Tamarack Road	Owensboro	KY	42301
Paducah Power System	1580 Kentucky Ave	Paducah	KY	42001
Pathways Inc	664 SLATE AVE	Owingsville	KY	40360
Pathways Inc	3701 LANDSDOWNE DR	ASHLAND	KY	41102
Pathways Inc	201 22ND ST	ASHLAND	KY	41101
Pathways Inc	840 Interstate Dr	Grayson	KY	41143
Pathways Inc	1200 BATH AVE	ASHLAND	KY	41101-2685
Pathways Inc	57 Dora Ln	Greenup	KY	41144
Pathways Inc	300 FOXGLOVE DR	MOUNT STERLING	KY	40353
Pathways Inc	767 N Main St	West Liberty	KY	41472
Pathways Inc	70 Main St	Frenchburg	KY	40322
Pathways Inc	60 Professional Park Dr	Louisa	KY	41230
Pathways Inc	209 Davis Rd	Mount Sterling	KY	40353
Pathways Inc	374 N KY 7	SANDY HOOK	KY	41171-9200
Pennyrile District Health Department	208 Outlet Ave,	Eddyville	KY	42038
Pennyrile District Health Department	196 Main St	Cadiz	KY	42211
Pennyrile District Health Department	190 Industrial Dr	Marion	KY	42064
Pike County Extension District Board	148 Trivette Dr	Pikeville	KY	41501
Pike County Health Department	119 W River Dr.	Pikeville	KY	41501
PIKEVILLE MEDICAL CENTER	911 Bypass Road Building A	Pikeville	KY	41501
POD - Power of Design	11490 Bluegrass Parkway	Louisville	KY	40299
Powell County Health Department	210 N Main St	Stanton	KY	40380
Powell County Health Department	376 North Main Street	Stanton	KY	40380
Powell County Health Department	210 N Main St	Stanton	KY	40380
Powell County Health Department	376 North Main Street	Stanton	KY	40380
Precision Mechanical Inc	850 Tech Drive	Winchester	KY	40391
Primary Plus	520 Elizaville Ave	Flemingsburg	KY	41041

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Primary Plus	645 Interstate Dr	Grayson	KY	41143
Primary Plus	927 Kenton Station Dr	Maysville	KY	41056
Primary Plus	432 16th St	Ashland	KY	41101
Primary Plus	1 McDonald Pkwy	Maysville	KY	41056
Primary Plus	142 Depot Dr.	South Shore	KY	41175
Primary Plus	106 Powell Street	Brooksville	KY	41004
Primary Plus	17521 W. KY 9	Tollesboro	KY	41189
Primary Plus	1551 Augusta-Chatham Rd	Augusta	KY	41002
Primary Plus	2300 KY 801	Morehead	KY	40351
Primary Plus	211 KY 59	Vanceburg	KY	41179
Quad State Internet	1212 Helen St	Paducah	KY	42001
Rajant	15 Industry Rd.	Morehead	KY	40351
Rajant	38.200625 -83.553387	Morehead	KY	40351
REACH Inc	501 Park Ave	Louisville	KY	40208
Red Mile Gaming	1200 Red Mile Rd	Lexington	KY	40504
Roberts Communications Network	4201 Versailles Rd #2	Lexington	KY	40510
Roberts Communications Network, LLC	1101 Winbak Way	Lexington	KY	40504
Rockcastle Regional Hospital	145 Newcomb Ave.	Mount Vernon	KY	40456
Russellville Electric Plant Board	165 E 4th St	Russellville	KY	42276
Shelbyville Chrysler Dodge Jeep RAM	2121 Midland Trail	Shelbyville	KY	40065
Shelbyville Chrysler Dodge Jeep RAM	700 Taylorsville Rd	Shelbyville	KY	40065
Silica Broadband	100 W Jefferson St	La Grange	KY	40031
Software Management	2011 Cobalt Dr	Louisville	KY	40299
South Central Rural Telephone Cooperative Corp Inc	2413 Nashville Rd	Bowling Green	KY	42101
Splash Analytics LLC	12300 Plantside Dr	Louisville	KY	40299
St. Claire Healthcare	222 Medical Circle	Morehead	KY	40351
St. Claire Healthcare	222 Medical Circle	Morehead	KY	40351
St. Claire Healthcare	222 Medical Circle	Morehead	KY	40351
St. Claire Healthcare	732 KY-36	Frenchburg	KY	40322
St. Claire Healthcare	390 KY-7	Sandy Hook	KY	41171
St. Claire Healthcare	222 Medical Circle	Morehead	KY	40351
Sterling Health Solutions Inc	635 N Maysville St.	Mount Sterling	KY	40353
Sterling Health Solutions Inc	103 Commonwealth Dr	Mount Sterling	KY	40353
Sterling Health Solutions Inc	455 Bullion Blvd	Winchester	KY	40391
Sterling Health Solutions Inc	44 Water St.	Owingsville	KY	40360
Sterling Health Solutions Inc	1355 Concrete Rd	Carlisle	KY	40311
Sterling Health Solutions Inc	236 W Main St	Mt Sterling	KY	40353
Sterling Health Solutions Inc	68 Elkins Street	Stanton	KY	40380
Stites & Harbison PLLC	421 W. Main St.	Frankfort	KY	40601

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Stites & Harbison PLLC	250 W. Main St.	Lexington	KY	40507
Stites & Harbison PLLC	400 W Market	Louisville	KY	40202
Stites & Harbison PLLC	100 E. Rivercenter Blvd.	Covington	KY	41011
Stuff Recycling LLC	6169 Lexington Rd	Winchester	KY	40391
Swope's Boat Repair	6174 Lexington Rd	Winchester	KY	40391
Tds Telecommunications Corp	37.930913	Lewisport	KY	42351
Techwebhosting Internet Solutions	400 Isaac Shelby Drive	Shelbyville	KY	40065
The Center for Rural Development	82-74 Bobbitt Cemetery Rd	Somerset	KY	42503
The Center for Rural Development	KY003431 -- 2292 US 27	Somerset	KY	42501
The Center for Rural Development	2292 US-27	Somerset	KY	42501
The Creek Church	965 US-25W	Williamsburg	KY	40769
The Creek Church	75 Capital Dr	London	KY	40741
The Healing Place	1503 S 15th Street	Louisville	KY	40210
The Healing Place	105 Heistand Farm Road	Campbellsville	KY	42718
The Healing Place	1020 W Market St	Louisville	KY	40202
The Independent Stave Co.	201 Rodney Hitch Blvd.	Morehead	KY	40351
The Telecom Company	2103 S Park Rd.	Louisville	KY	40219
Todd County Health Department	617 W Main St	Elkton	KY	42220
Todd County Health Department	617 W Main St	Elkton	KY	42220
Todd County Health Department	205 E McReynolds Dr	Elkton	KY	42220
Topy America Inc	980 Chenault Rd	Frankfort	KY	40601
Toyota of Louisville	6514 Dixie Hwy	Louisville	KY	40258
U.S. Bank	3240 Louisville Rd	Bowling Green	KY	42101
U.S. Bank	1906 College Heights Blvd	Bowling Green	KY	42101
U.S. Bank	721 Campbell Ln	Bowling Green	KY	42104
U.S. Bank	500 E Main St	Bowling Green	KY	42101
U.S. Bank	3905 Dixie Hwy	Elsmere	KY	41018
U.S. Bank	2 S Fort Thomas Ave	Fort Thomas	KY	41075
U.S. Bank	2121 N Bend Rd	Hebron	KY	41048
U.S. Bank	3937 Winston Ave	Covington	KY	41015
U.S. Bank	5018 Old Taylor Mill Rd	Covington	KY	41015
U.S. Bank	635 Chestnut Dr	Walton	KY	41094
U.S. Bank	8461 US Highway 42	Florence	KY	41042
U.S. Bank	9437 Viking Center Dr	Louisville	KY	40222
U.S. Bank	12611 Taylorsville Rd	Louisville	KY	40299
U.S. Bank	9905 Dixie Hwy	Louisville	KY	40272
U.S. Bank	4021 Dixie Hwy	Louisville	KY	40216
U.S. Bank	201 E Main St	Scottsville	KY	42164
U.S. Bank	2741 Turkeyfoot Rd.	Crestview Hills	KY	41017

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U.S. Bank	2155 Paul Jones Way	Lexington	KY	40509
U.S. Bank	2020 Nicholasville Rd.	Lexington	KY	40503
U.S. Bank	9500 Preston Hwy	Louisville	KY	40229
U.S. Bank	7685 Mall Rd.	Florence	KY	41042
U.S. Bank	3051 James Sanders Blvd	Paducah	KY	42001
U.S. Bank	3095 Breckenridge Ln	Louisville	KY	40220
U.S. Bank	27989 US Highway 119 South	Williamson	KY	41503
U.S. Bank	95 US Highway 68 E	Benton	KY	42025
U.S. Bank	2350 Bardstown Rd	Louisville	KY	40205
U.S. Bank	122 E Main St	Morehead	KY	40351
U.S. Bank	130 Pavilion Pkwy	Newport	KY	41071
U.S. Bank	5531 Reidland Rd	Paducah	KY	42003
U.S. Bank	3501 Springhurst Commons Dr	Louisville	KY	40241
U.S. Bank	131 W Main St	Lebanon	KY	40033
U.S. Bank	406 S 7th St	Mayfield	KY	42066
U.S. Bank	200 E Main St	Richmond	KY	40475
U.S. Bank	1101 S Main St	Hopkinsville	KY	42240
U.S. Bank	288 Windsor Rd	Flemingsburg	KY	41041
U.S. Bank	1176 US Highway 68	Maysville	KY	41056
U.S. Bank	415 N Lake Dr	Prestonsburg	KY	41653
U.S. Bank	630 Chestnut St	Berea	KY	40403
Union College	310 College St	Barbourville	KY	40906
Union County Extension District Board	1938 US HWY 60 West	Morganfield	KY	42437
United States Equestrian Federation Inc	4001 Wing Commander Way	Lexington	KY	40511
United States Equestrian Federation Inc	4001 Wing Commander Way	Lexington	KY	40511
United States Equestrian Federation Inc	752 Barret Avenue	Louisville	KY	40204
United States Equestrian Federation Inc	4001 Wing Commander Way	Lexington	KY	40511
United States Equestrian Federation Inc	4001 Wing Commander Way	Lexington	KY	40511
University of Kentucky IT Business Services	301 Hilltop Ave	Lexington	KY	40508
University of Kentucky IT Business Services	301 Hilltop Avenue	Lexington	KY	40506
University of Kentucky IT Business Services	920 Barnes Mills Road Suite D	Richmond	KY	40475
University of Kentucky IT Business Services	920 Barnes Mills Road Suite D	Richmond	KY	40475
University of Kentucky IT Business Services	1000 S. Limestone	Lexington	KY	40536
University of Kentucky IT Business Services	1000 S. Limestone	Lexington	KY	40536
University of Kentucky IT Business Services	202 Bevins Lane	Georgetown	KY	40324
University of Kentucky IT Business Services	202 Bevins Lane	Georgetown	KY	40324
University of the Cumberland	410 Meijer Rd	Florence	KY	41042
University of the Cumberland	6191 College Station Drive	Williamsburg	KY	40769
UofL Health	752 Barrett Avenue	Louisville	KY	40204

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UofL Health	2401 Terra Crossing Blvd	Louisville	KY	40245
UofL Health	9700 Stonestreet Rd	Louisville	KY	40272
UofL Health	9700 Stonestreet Rd	Louisville	KY	40272
UofL Health	727 Hospital Dr	Shelbyville	KY	40065
UofL Health	727 Hospital Dr	Shelbyville	KY	40065
UofL Health	3920 Dutchmans Lane	Louisville	KY	40207
UofL Health	3920 Dutchmans Lane	Louisville	KY	40207
UofL Health	1850 Bluegrass Ave	Louisville	KY	40215
UofL Health	1850 Bluegrass Ave	Louisville	KY	40215
UofL Health	2020 NEWBURG ROAD	LOUISVILLE	KY	40205
UofL Health	1903 W Hebron Ln	Shepherdsville	KY	40165
VASCOR LTD	100 Farmers Bank, #300	Georgetown	KY	40324
VASCOR LTD	118 TriPort Circle	Georgetown	KY	40324
VASCOR LTD	321 E Breckinridge Street	Louisville	KY	40203
VASCOR LTD	100 Farmers Bank, #300	Georgetown	KY	40324
VASCOR LTD	100 Farmers Bank, #300	Georgetown	KY	40324
VASCOR LTD	321 E Breckinridge Street	Louisville	KY	40203
VASCOR LTD	321 E Breckinridge Street	Louisville	KY	40203
VASCOR LTD	118 TriPort Circle	Georgetown	KY	40324
VASCOR LTD	118 TriPort Circle	Georgetown	KY	40324
Vector Security INC DBA Vector Security Networks	194 McWhorter Spur Rd. Suite B	Albany	KY	42602
VolPster Communications	321 East Breckinridge St	Louisville	KY	40203
VolPster Communications	11400 Decimal Dr	Louisville	KY	40299
VolPster Communications	11400 Decimal Dr	Louisville	KY	40299
VolPster Communications - Wholesale	11117 Decimal Dr	Jeffersontown	KY	40299
VolPster Communications - Wholesale	11400 Decimal Dr	Louisville	KY	40299
Volunteers of America	2820 W Broadway	Louisville	KY	40211
V-Soft Consulting Inc	2550 Eastpoint Parkway	Louisville	KY	40223
Warner Fertilizer Company Inc	1405 Hwy 2227	Somerset	KY	42502
Wasteology Group	3939 Shelbyville Rd	Louisville	KY	40227
WBNA-TV-21	3701 Fern Valley Rd	Louisville	KY	40219
Webster County Extension District Board	1118 US Hwy 41-A South	South Dixon	KY	42409
Whiskey House	106 Pritchard Parkway	Elizabethtown	KY	42701
White House Clinics	103 Southern Soul Way	Lancaster	KY	40444
White House Clinics	305 Estill Street	Berea	KY	40403
White House Clinics	30 Stacy Lane Rd	Irvine	KY	40336
Whitley County Health Department	368 Penny Lane	Williamsburg	KY	40769
Wimax Express	4585 US-27	Lancaster	KY	40444
XNetworks	82 74 Bobbitt Cemetery Rd	Somerset	KY	42503

Zayo Group Holdings
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**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 23-CI-01049**

**COMMONWEALTH OF KENTUCKY, THE
KENTUCKY COMMUNICATIONS
NETWORK AUTHORITY**

PLAINTIFF

v.

**ORDER GRANTING RESTRAINING ORDER
(CR 65.03)**

**OPENFIBER KENTUCKY COMPANY, LLC
AND KENTUCKYWIRED OPERATIONS
COMPANY, LLC, et al.**

DEFENDANTS

This action came before the Court on the Plaintiff's *Motion for Injunctive Relief by Temporary Restraining Order and Temporary Injunction*, which was heard on Monday, November 20, 2023, in Courtroom H of the Franklin County Circuit Court. This Court, having reviewed the record and being sufficiently advised, **RESERVES RULING** on the Plaintiff's Motion for Temporary Injunction under CR 65.04, but **GRANTS** a limited **RESTRAINING ORDER** under **CR 65.03** for reasons stated more fully below.

Factual Background

The Commonwealth alleges that, "Defendant OpenFiber has engaged in a pattern and practice of accessing and altering the NG-KIH System without obtaining the requisite authorization, written consent, and supervision." *See Pl. 's Verified Compl. For Inj. Relief*, at 8. Further, the Plaintiff claims Defendant has been making changes to sites on the NG-KIH System (the "System") without obtaining a PPP Change Certificate as well as written consent from KWOC. *Id.* Taken together, the Commonwealth asserts that Defendant's access to and alteration of the System constitutes breach of the parties' Wholesaler Agreement and risks service

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disruption and undocumented changes to the System configuration. *See Pl. 's Verified Compl.*, *supra* at 9.

The Plaintiff's *Verified Complaint* alleged three various events that demonstrate OpenFiber's wrongful actions taken with respect to the System, all of which occur between September to October 2023. *Id.* at 9-21. The Commonwealth emphasizes that the Wholesaler Agreement provides the procedures for accessing and altering the System, but that OpenFiber has failed to comply with the procedures by taking unilateral action on preliminary change instructions (PCI). *Id.* at 21. Plaintiff argues that the Defendant's actions (splicing) cannot be undone, reflecting an immediate harm. *Id.* at 23.

In response to the alleged wrongful actions of Defendant in accessing and altering the system from September to October 2023, the parties entered an interim agreement from November 2 to November 15, 2023. *Id.* at 25. Ultimately, the Commonwealth's *Verified Complaint* seeks to enjoin OpenFiber from "accessing the NG-KIH System without written consent from KWOC, altering or otherwise changing the NG-KIH System without the issuance of a PPP Change Certificate, or otherwise performing work without proper supervision." *Id.* at 26-27.

Burden of Proof

Motions for Temporary Restraining Orders are granted if three prongs are satisfied under CR 65.03(1). The three prongs of a TRO require that the:

- (1) applicant's rights are being or will be violated by the adverse party; (2) the applicant will suffer immediate and irreparable injury, loss or damage before the adverse party or his attorney can be heard in opposition; and (3) the applicant's attorney must certify in writing any efforts made to give notice to the adverse party, including an explanation of why notice should not be required.

Because the parties appeared for the Court's hearing and notice was given to the Defendant, the proper analysis will focus on a Motion for Temporary Injunction.

Motions for Temporary Injunctions are decided under CR 65.04, which requires the movant to clearly show an immediate and irreparable injury to its rights that would tend to make a final judgment ineffectual in the absence of injunctive relief. Kentucky courts are guided by the *Maupin* test in analyzing whether three necessary elements are satisfied to grant a temporary injunction. *See Maupin v. Stansbury*, 575 S.W.2d 695, 699 (Ky. Ct. App. 1978). *Maupin* first instructs that the Court find a showing of irreparable injury. *Id.* Next, the *Maupin* test requires a balancing of the equities involved in the case, including the non-exhaustive factors of possible detriment to the public interest, harm to the defendant, and whether injunctive relief would maintain the status quo. *Id.* Last, *Maupin* requires the movant to present a substantial question on the merits, without the Court deciding the actual merits in its ruling on the motion for the Temporary Injunction. *Id.*

Analysis

Maupin: Immediate & Irreparable Harm

In *The Commonwealth's Motion for Injunctive Relief by Temporary Restraining Order and Temporary Injunction*, the Plaintiff asserted its rights in the System were concrete and personal and entitled Plaintiff to protect its current and future use. *See Pl.'s Mot. For Inj. Relief*, at 11. Plaintiff contends its rights in the System were harmed by OpenFiber's access and alteration of the System without authorization or supervision. *Id.* Further, OpenFiber's failure to follow the Wholesaler Agreement procedures may put the Plaintiff's right to use the System in the future at risk. *Id.* The Defendant's failure to obtain authorized access will apparently

permanently change the character and nature of the system in a way that threatens online access for 766 state agencies. *See Pl.'s Mot. For Inj. Relief, supra* at 12, 14.

OpenFiber, in its *Opposition to Plaintiff's Motion for Temporary Restraining Order and Temporary Injunction*, argued no evidence supports Plaintiff's contention that the unauthorized access and alterations interfere with the character and nature of the System. *See Opp'n to Pl.'s Mot. for Temp. Restraining Order and Temp. Inj.*, at 5. Specifically, OpenFiber responds that there is no allegation their access caused any harm and that KWOC had already approved the technical proposals in the apparently unauthorized actions on the System. *Id.* at 7. Ultimately, OpenFiber argued whatever rights the Plaintiff (KCNA) has in the system, such as the right to approve commercially sound transactions related to connections with the System, can be rectified with money, so there is no immediate and irreparable harm sufficient to issue injunctive relief. *Id.* at 8.

The Court finds the Commonwealth has sufficiently alleged immediate and irreparable harm to its rights in the System to satisfy the first *Maupin* prong. The alleged wrongful access and alterations from Defendant have already occurred and may continue to occur in the absence of injunctive relief. Therefore, the Court finds the Plaintiff has alleged immediate and irreparable harm. OpenFiber argues that the only possible injury to the Plaintiff is monetary, and therefore the alleged injury is not irreparable and cannot afford a basis for injunctive relief. In order to preserve the status quo until the Court can more fully evaluate the merits of these arguments, the Court finds that the issuance of a Restraining Order is necessary.

Maupin: Balancing of Equities

The Commonwealth argues that three factors weigh the balance of the equities in its favor: detriment to the public interest, harm to defendant, and preservation of the status quo. *See*

Pl. 's Mot. For Inj. Relief, supra at 17. The Plaintiff alleges that without injunctive relief, “the majority of the Commonwealth’s Sites, which are SLA3 and vulnerable to losing access to the NG-KIH System, would be at risk of being compromised by future unauthorized acts by OpenFiber.” *Id.* Additionally, the Plaintiff asserted its interests in “maintaining the sanctity of the NG-KIH System outweigh OpenFiber’s “individual business interests” in accessing the NG-KIH System to profit from it.” *See Pl. 's Mot. For Inj. Relief, supra* at 17. Last, the Commonwealth argues injunctive relief will preserve the status quo by protecting the System by requiring access and alterations to be authorized. *Id.* at 17.

OpenFiber counters that requiring approval for every routine interaction is logistically unsupportable and imposes substantial harm on the public interest. *See Opp’n to Pl. 's Mot. for Temp. Restraining Order and Temp. Inj., supra* at 8. Specifically, it argues that the people and businesses of Kentucky are being done a great disservice when the Plaintiffs demand *quid pro quo* compliance with its reinterpretation of the Wholesaler Agreement. *Id.* Particularly affected are the customers OpenFiber says are currently under contract to access the System but who will be unable to access their broadband connection. *Id.* at 9. The Court highlights OpenFiber’s contention that essential facilities like outpatient clinics, addiction centers, and mental health clinics are all adversely affected when routine splicing interactions are not reasonably consented to by KCNA. *Id.* Additionally, OpenFiber persuasively argues that KCNA’s blanket refusals to consent to access and alterations to the System will effectively force it to shut down as it awaits the outcome of trial, while also depriving the Commonwealth of a potential revenue stream. *Id.*

The Court finds that the balance of the equities weighs in favor of granting limited relief that requires the Defendant to comply with the compliance procedures for access and alteration of the System laid out in the Schedules of the Wholesaler Agreement, but that the

Commonwealth must also be prohibited from unreasonably withholding consent to PCI's submitted by Defendant OpenFiber that were contemplated by the contract (Wholesaler Agreement) and approved by KWOC.

Maupin: Substantial Question on Merits

The Commonwealth alleges that it has raised a substantial question on the merits on the issue of whether OpenFiber failed to comply with the PCI procedures in the Wholesaler Agreement. *See Pl.'s Mot. For Inj. Relief, supra* at 18. The Wholesaler Agreement contemplated injunctive relief in the event of non-compliance with access and alteration procedures. *Id.* at 19.

OpenFiber argues that the Plaintiff relies on a misinterpretation of the operative Wholesaler Agreement. *See Opp'n to Pl.'s Mot. for Temp. Restraining Order and Temp. Inj., supra* at 10. Under the Defendant's preferred interpretation, OpenFiber would not need permission from Plaintiff to perform routine splices that would not degrade fibers or harm the integrity of the System. *Id.* Consequently, the Defendant's position is that routine splicing interactions are outside the scope of changes to the System that require PPP certificates from KCNA. *Id.*

The Court finds that the Commonwealth has raised a substantial question over the correct interpretation of scope of the contract's requirement for OpenFiber to obtain prior authorization for its actions from the Commonwealth under the Wholesaler Agreement. The Defendant may still be able to show the Commonwealth has unreasonably withheld consent to routine interactions contemplated in the expectations of the contract, or that its actions in routine splicing of wire to gain access to the system for new customers are not subject to review and approval by the Commonwealth. However, at this early stage of the proceedings a substantial question has been raised by the Plaintiff sufficient to issue limited injunctive relief. This

finding by the Court is reinforced by the on-going administrative review of the contract issue by the Secretary of Finance & Administration pursuant to KRS Chapter 45A, and it will preserve the status quo until the Secretary is able to decide the issue of contract interpretation as required by law. Moreover, the Court is mindful that this entire project is funded by public dollars, and the public interest demands that the Plaintiff, OpenFiber and KWOC all work cooperatively to achieve the vital goals and objectives of expanding access to high speed internet throughout the Commonwealth. Accordingly, the Court expects all parties to work cooperatively to achieve that goal while this legal dispute over interpretation of the rights and duties of the parties is adjudicated.

Conclusion

WHEREFORE, the Plaintiffs' Motion for a Restraining Order is **GRANTED**. The Court orders an extension of the parties' Agreed Order entered into on November 17, 2023, and attached as Exhibit A to the Plaintiff's November 21, 2023 filing of its *Notice and Motion to Extend Agreed Order*. The Court further **RESTRAINS** OpenFiber from conducting any splicing (or other interactions which require a physical alteration) of the System, unless it has obtained consent from KWOC and KCNA as contemplated in the procedures in the various Schedules of the Wholesale Agreement. The Court further **ORDERS** that the Plaintiff KCNA shall not unreasonably withhold timely consent to routine splicing interactions contemplated in the contract.

OpenFiber is **RESTRAINED** from making physical alterations to the system prior to obtaining approval for its proposed PCI's from KWOC and KCNA after giving adequate notice. If the Plaintiff KCNA fails to give timely consent to such routine interactions that require

splicing or other reasonably contemplated technical alterations (as documented in PCI's), then OpenFiber may seek expedited relief from this Restraining Order in this Court.

So **ORDERED** this 22nd day of November, 2023.



The image shows a rectangular box containing an electronic signature. On the left is a circular seal of the Franklin Circuit Court. To the right of the seal is a handwritten signature that appears to read 'Phillip J. Shepherd'. Below the signature, the text reads: 'HON. PHILLIP J. SHEPHERD', 'electronically signed', and '11/22/2023 2:17:21 PM ET'.

PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division I

Bond: Not required under CR 81A

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