



Commonwealth of Kentucky
Governor's Office

Andy Beshear
Governor

Kentucky Communications Network Authority
500 Mero Street, Suite 1 – 1NC
Frankfort, KY 40601
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Stewart Douglas Hendrix
Executive Director

August 30, 2024

Brad Kilbey
Chief Executive Officer
OpenFiber Kentucky Co., LLC
1700 East Point Parkway
Suite 230
Louisville, KY 40223

Re: Next Generation 911 RFP Demand letter

Brad:

The Kentucky Communications Network Authority (“KCNA”) is in receipt of your letter dated August 27, 2024 regarding the Next Generation 911 (“NG-911”) System and, by this correspondence, provides this response.

In your letter, you state that the RFP closing date is September 12, 2024 and demand KCNA respond by August 30, 2024. That closing date, however, is incorrect. On August 21, 2024, the Finance and Administration Cabinet moved the RFP response date to September 26, 2024 by 3:30 p.m. NG-911 RFP, Addendum No. 1, Sec. 1.1. Notwithstanding these corrections to the RFP response timeline, your letter is procedurally improper and substantively incomplete.

This type of preliminary request seeking approval to access the Additional Capacity does not meet the requirements of the Change process set forth in the Wholesaler Agreement and is outside of the four corners of the Wholesaler Agreement. As you well know, prior to accessing PPP Assets, OpenFiber must submit a Change to the KentuckyWired Operations Company, LLC (“KWOC”) through the Wholesaler Agreement, Schedule 1, which then prompts KWOC to submit a Change to KCNA under Project Implementation Agreement, Schedule 6. Your letter asks KCNA to usurp KWOC’s rights and responsibilities under both the Wholesaler Agreement and the Project Implementation Agreement. The Wholesaler Agreement unequivocally states, “The Wholesaler’s sole rights of access to, and use of, [the Additional Capacity of the NG-KIH System] shall be through a Change requested by the Wholesaler made in accordance with Schedule 1.” Wholesaler Agreement, at § 3.3. As always, the Wholesaler must follow the process within the Wholesaler Agreement, and KCNA will not be strong-armed into taking action outside the Change process and related procedures required by the Wholesaler Agreement and other Project Agreements.

Without question, your correspondence does not meet the standards in the Wholesaler Agreement.

Finally, you declare that if KCNA fails to respond to a procedurally improper and substantively incomplete letter within two (2) days - a date chosen by you based upon a misunderstanding of the RFP - then “Accelecom will interpret that lack of response as a tacit declaration of KCNA’s unwillingness to support or cooperate in delivering critical service to the Commonwealth.” This declaration is not well received, is self-serving, and a misstatement of KCNA’s drive to deliver broadband to the Commonwealth’s citizens, notwithstanding OpenFiber’s intransigence and refusal to comply with the Wholesaler Agreement. To the extent the Wholesaler follows the proper procedures set forth in the Wholesaler Agreement and Project Agreements, KCNA commits to a good-faith review of all KWOC-requested Changes it receives pursuant to Schedule 6.

Sincerely,

Stewart Douglas Hendrix

Stewart Douglas Hendrix
Executive Director