

State of Florida



## Public Service Commission

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**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** February 17, 2005

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Competitive Markets & Enforcement (Maduro, Mann, Casey, Bulecza-Banks)  
Office of the General Counsel (Keating, Scott) *KS*

**RE:** Docket No. 041302-TX – Petition for designation as eligible telecommunications carrier (ETC) by Knology of Florida, Inc.

**AGENDA:** 03/01/05 – Proposed Agency Action – Interested Persons May Participate

**CRITICAL DATES:** March 12, 2005, 120-Day Statutory Requirement to Act on Petition

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\041302.RCM.DOC

### Case Background

On November 12, 2005, Knology of Florida, Inc. (Knology) petitioned the Florida Public Service Commission (FPSC or Commission) for designation as an Eligible Telecommunications Carrier (ETC) in the State of Florida. Specifically, Knology requested that it be granted ETC status in the non-rural BellSouth Telecommunications, Inc. (BellSouth) exchanges of Panama City, Panama City Beach and Lynn Haven. Additionally, Knology is requesting ETC status in the non-rural Verizon-Florida Inc. (Verizon) exchanges of Clearwater, St. Petersburg and Dunedin in Pinellas County. This is the first Competitive Local Exchange Carrier (CLEC) ETC petition to be brought before the Commission for consideration.

Knology is a FPSC certificated CLEC which has a fully integrated facility providing video, voice, data and advanced communications services to residential and business customers in nine markets in the Southeastern United States. According to Knology, as of December 31, 2003, its network has been made available to approximately 737,000 homes, and had

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approximately 382,000 total connections (voice, video and data connections counted separately). Knology provides services over its own fully upgraded 750 MHz interactive broadband network. The network is designed with sufficient capacity to meet the growing demand for high-speed and high-bandwidth video, voice and data services, as well as the introduction of new communications services.

In 1998, Knology entered the Panama City market by purchasing Beach Cable and investing approximately \$50 million in its Panama City telecommunication services. It has offered bundled services for the last six years providing a full suite of video, voice and data services.

Knology also offers video and data services in Pinellas County, Florida and has begun to enhance its present system in order to provide voice services to that market. Knology recently purchased the video assets of Verizon in Pinellas County and is currently upgrading this system to provide voice, video and data. This acquisition provides Knology with an opportunity to market its services to approximately 275,000 homes and businesses.

Knology had significant telecommunications revenues in Florida in 2003 and is current in its accounts with both the FPSC for regulatory assessment fees and the Universal Service Administrative Corporation (USAC) for universal service fund contributions. Knology has requested the FPSC designate it as an eligible telecommunications carrier in the following wire centers: Panama City (PNCYFLDARS1); Panama City Beach (PNCYFLDARS1); Lynn Haven (PNCYFLDARS1); Clearwater (CLWTFL05RS0); and Tarpon Springs (CLWTFL05RS0).

The Commission is vested with jurisdiction in this matter pursuant to 47 CFR §54.201, and Section 364.025(5), Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should Knology be granted ETC status in the State of Florida?

**Recommendation:** Yes. Staff recommends that Knology be granted ETC status in the following wire centers: Panama City (PNCYFLDARS1); Panama City Beach (PNCYFLDARS1); Lynn Haven (PNCYFLDARS1); Clearwater (CLWTFL05RS0); and Tarpon Springs (CLWTFL05RS0). Knology should be required, at the time of annual ETC recertification, to demonstrate how it has used the universal service funds within Florida. (Maduro, Mann, Casey, Bulecza-Banks)

**Staff Analysis:** Federal Communications Commission (FCC) rules provide that carriers designated as ETCs shall, throughout the designated service area: (1) offer the services that are supported by federal universal support mechanisms either using their own facilities or a combination of their own facilities and the resale of another carrier's services and (2) advertise the availability of such services and the related charges therefore using media of general distribution. (CFR §54.201(d))

Knology has identified the wire centers of Panama City (PNCYFLDARS1); Panama City Beach (PNCYFLDARS1); Lynn Haven (PNCYFLDARS1); Clearwater (CLWTFL05RS0); and Tarpon Springs (CLWTFL05RS0) to offer the services that are supported by federal universal support mechanisms. CFR §54.201(c), states:

Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

The requirements of CFR §54.201(d), state:

A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and shall, throughout the service area for which the designation is received:

(1) Offer the services that are supported by federal universal service support mechanisms, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(2) Advertise the availability of such services and the charges therefore using media of general distribution.

In accordance with CFR §54.201(d)(1), the following services or functionalities shall be supported by federal universal support mechanisms as defined by CFR §54.101(a):

- (1) Voice grade access to the public switched network Voice grade access is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call;
- (2) Local Usage Local usage indicates the amount of minutes of use of exchange service, provided free of charge to end users;
- (3) Dual tone multi-frequency signaling or its functional equivalent Dual tone multi-frequency ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, thus shortening call set-up time;
- (4) Single-party service or its functional equivalent Single party service is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission;
- (5) Access to emergency services Access to emergency services includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations;
- (6) Access to operator services Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing and/or completion, of a telephone call;
- (7) Access to interexchange service Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;
- (8) Access to directory assistance Access to directory assistance is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings; and
- (9) Toll limitation for qualifying low-income consumers Toll limitation or Blocking restricts all direct dial toll access.

In addition to providing the above services, ETC's must advertise the availability of such services and the charges therefore using media of general distribution. Knology has stated that it will announce and advertise telecommunications services, either on a stand-alone basis or as part of a bundled package, as an ETC in both of its Florida markets.

The above requirements are all that need to be met by federal law to be designated as an ETC in a non-rural LEC wire center at the present time. However, the Federal-State Joint Board on Universal Service (Joint Board) has recommended to the FCC<sup>1</sup> that state commissions consider the following additional minimum eligibility requirements when evaluating ETC designation requests:

- a) Adequate financial resources – Evaluate whether ETC applicants have the financial resources and ability to provide quality services throughout the designated area.
- b) Commitment and ability to provide the supported services – Have ETC applicants demonstrate their capability and commitment to provide service throughout the designated service area to all customers who make a reasonable request for service.
- c) Ability to remain functional in emergencies – Evaluate the applicant's ability to remain functional in emergencies and during power outages.
- d) Consumer protection – Have states impose consumer protection requirements as part of the ETC designation process.
- e) Local usage – Have states consider how much local usage ETCs should offer as a condition of universal service support.

Although the Joint Board has recommended the above additional minimum eligibility requirements for evaluating ETC applicants, the FCC has not, as of the filing date of this recommendation, acted on the Joint Board's recommendations. At present, the only federal eligibility requirements to becoming an ETC in a non-rural area is the ability to provide the nine supported services listed above and advertise the availability of such services and the charges therefore using media of general distribution. Although the Joint Board's recommended additional minimum eligibility requirements for evaluating ETC applicants have not yet been approved by the FCC, staff sees no concerns when applying the additional eligibility requirements to Knology.

With respect to Florida law, Section 364.025(5), Florida Statutes, states:

After January 1, 2001, a competitive local exchange telecommunications company may petition the commission to become the universal service provider and carrier of last resort in areas requested to be served by that competitive local exchange telecommunications company. Upon petition of a competitive local exchange telecommunications company, the commission shall have 120 days to vote on granting in whole or in part or denying the petition of the competitive

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<sup>1</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 04-127, Released June 8, 2004. (¶ 22-36)

local exchange company. The commission may establish the competitive local exchange telecommunications company as the universal service provider and carrier of last resort, provided that the commission first determines that the competitive local exchange telecommunications company will provide high-quality, reliable service. In the order establishing the competitive local exchange telecommunications company as the universal service provider and carrier of last resort, the commission shall set the period of time in which such company must meet those objectives and obligations.

Staff notes that while the statute refers to an application to be the “universal service provider,” also known as an ETC, as well as the “carrier of last resort (COLR),” these two terms are not synonymous. The COLR designation carries with it the requirement to provide basic local service, including B1 service<sup>2</sup>, at reasonable rates and in a reasonable time period to any customer in its territory requesting service.<sup>3</sup> This obligation does not attach to ETC designation. Knology has petitioned only for ETC status in the referenced wire centers.<sup>4</sup> Staff does not believe that the statute must be interpreted to allow a CLEC applicant only to apply for designation as both an ETC and the COLR for a particular area.<sup>5</sup>

### Conclusion

Section 364.025, Florida Statutes, allows for CLECs to petition this Commission for ETC status. This authority stems from the Commission's statutory duty to exercise oversight over the transition from the monopoly provision of local exchange service to competitive provision in order to protect consumers and provide for the development of a fair and effective telecommunications market.<sup>6</sup> Staff recognizes that there are dual goals of preserving the universal service system, while at the same time fostering competition.<sup>7</sup> Staff believes in this case, that ETC designation is in the public interest as it will promote competition by enhancing choice among service providers and in addition, facilitate network build-out. The provision of telecommunications through a new medium, in this case cable telephony, is just what Congress had hoped for when they passed the Telecommunications Act of 1996.<sup>8</sup> Staff believes that this recommendation furthers the goal that all providers of telecommunications services be treated

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<sup>2</sup> B1 service is a central office line that is not in rotary hunt and is used for a business line or a business fax/modem.

<sup>3</sup> See Order No. PSC-95-1592-FOF-TP at pp. 8-9.

<sup>4</sup> BellSouth is the COLR for the Panama City and Panama City Beach wire centers, while Verizon is the COLR for the Lynn Haven, Clearwater, and Tarpon Springs wire centers.

<sup>5</sup> Staff notes that while the Lifeline obligations set forth in Section 364.10(2), F.S., refer only to the COLR, as set forth in this recommendation, Knology has specifically committed to follow the requirements of the Florida Lifeline program.

<sup>6</sup> Section 364.025(5) addresses CLEC petitions to become a universal service provider and provide its fair share to the funding.

<sup>7</sup> Federal-State Joint Board on Universal Service, Order, CC Docket No. 96-45, 17 FCC Rcd 22642, para. 1 (2002) (Referral Order).

<sup>8</sup> Congress thought that competition and new technologies would reduce, not increase, the overall need for universal service support by lowering costs. See S. Rep. No. 23, 104th Cong., 1st Sess. 26 (“The Committee expects that competition and new technologies will greatly reduce the actual cost of providing universal service over time, thus reducing or eliminating the need for universal service support mechanisms as actual costs drop to a level that is at or below the affordable rate for such service in an area . . .”) (cited in Tenth Circuit Remand Order, FCC 03-249 at para. 77 n.296).

fairly, and ensures the availability of basic local telecommunications services to all consumers in the state at reasonable and affordable prices.

Based on the information presented, staff believes Knology has demonstrated that it has the ability to provide the nine-point list of services that are supported by federal universal support mechanisms using its own facilities or a combination of their own facilities and the resale of another carrier's services. Additionally Knology has indicated that it will advertise the supported services as promulgated.

Knology has acknowledged the requirements of the Florida Lifeline program and has agreed to provide a \$3.50 credit to clients qualified to receive Lifeline assistance to enable the customers to receive \$13.50 in credits consisting of: up to \$6.50 in federal subscriber line charges, \$1.75 in federal support for states that have approved the credit, and \$1.75 which is a 50% match of federal support for having a state lifeline program requiring a \$3.50 credit under the Florida eligibility criteria. Knology indicates that it will advertise the availability of Lifeline and begin offering these services within 30-45 days of receiving ETC status.

Knology commits to use federal universal support only for the provision and maintenance of facilities used for telecommunications services. Knology also commits to isolate telecommunications service costs – to the extent they are separable – and demonstrate that only direct telecommunications costs or appropriately documented shared costs of facilities used for telecommunications services are being supported by federal universal service funds. Staff believes that Knology should be required, at the time of annual ETC recertification, to demonstrate how it has used the universal service funds within Florida.

Although the Joint Board's recommended additional minimum eligibility requirements for evaluating ETC applicants have not yet been approved by the FCC, staff sees no concerns when applying the additional eligibility requirements to Knology. Staff, therefore recommends that Knology be granted ETC status in the following wire centers: Panama City (PNCYFLDARS1); Panama City Beach (PNCYFLDARS1); Lynn Haven (PNCYFLDARS1); Clearwater (CLWTFL05RS0); and Tarpon Springs (CLWTFL05RS0).

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interest are affected files a protest to the Commission's Proposed Agency Action within 21 days of the issuance of the Commission Order, this docket should be closed upon issuance of a consummating order. (Scott, B. Keating)

**Staff Analysis:** If no person whose substantial interest are affected files a protest to the Commission's Proposed Agency Action within 21 days of the issuance of the Commission Order, this docket should be closed upon issuance of a consummating order.