

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041302-TX

In the Matter of:

PETITION FOR DESIGNATION AS
ELIGIBLE TELECOMMUNICATIONS
CARRIER (ETC) BY KNOLOGY OF
FLORIDA, INC.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 6

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON
COMMISSIONER LISA POLAK EDGAR

DATE: Tuesday, March 1, 2005

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

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1 PARTICIPATING:

2 GEORGE N. MEROS, JR. ESQUIRE, and FELIX L. BOCCUCCI,
3 representing Knology of Florida, Inc.

4 RICHARD CHAPKIS, ESQUIRE, representing Verizon.

5 TOM McCABE, representing TDS Telecom.

6 BETH KEATING, ESQUIRE, KIRA SCOTT, ESQUIRE, JAMES
7 MADURO, JR., and JOHN MANN, representing the Commission Staff.

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P R O C E E D I N G S

CHAIRMAN BAEZ: Commissioners, we are on Item 6.

MR. MADURO: Good morning, Commissioners, James Maduro, Jr., on behalf of Commission staff. Item 6 addresses staff recommendation to approve Knology of Florida, Inc., petition for designation as an eligible telecommunication carrier or ETC. Knology is a certificated competitive local exchange carrier in Florida. Staff believes that Knology has demonstrated an ability to provide the requisite nine services required by the federal universal support mechanism using their own facilities and has agreed to advertise those services throughout the designated service areas.

Staff recommends that Knology be granted ETC status in Panama City, Panama City Beach, Lynn Haven, Clearwater, and Tarpon Springs area. Furthermore, staff recommends that at the time of annual ETC recertification for high cost, Knology be required to demonstrate how they have used the universal service funds within Florida.

Mr. Felix Boccucci, Vice-president and Chief Financial Officer of Knology, and Attorney George Meros of GrayRobinson law firm are here to speak on behalf of Knology. Mr. Mann will now give you some additional information updates.

MR. MANN: Commissioners, John Mann with staff. Staff would like to make an informational update to our recommendation -- (sound system noise) -- in Morse Code. On

1 Page 5, the first sentence of Paragraph 3, staff states that
2 the FCC has not, as of the filing date of the recommendation,
3 acted on the Joint Board's recommendations regarding ETC
4 status. The Joint Board made a decision in June of last year.
5 Late yesterday afternoon the FCC issued a news release stating
6 that it has adopted the additional requirements recommended by
7 the Joint Board. The FCC order addressing the additional
8 requirements has not been issued. We have discussed these
9 requirements with the petitioners and they said they accept
10 these terms, and we just wanted you to be updated on that
11 last-minute item.

12 COMMISSIONER DEASON: Isn't part of that term some
13 type of a five-year reporting as to how the funds are to be
14 utilized, and there are some other requirements?

15 MR. MANN: Yes, sir. They have until October of
16 2006. All the ETCs are going to be required to have these
17 build-out plans, so it is not just going to be them.

18 COMMISSIONER DEASON: So it would be the ETCs
19 designated by the FCC, but the FCC is encouraging the states to
20 apply the same requirements to state designated.

21 MR. MANN: That is correct.

22 COMMISSIONER DEASON: And this company has agreed to
23 abide by all of that?

24 MR. MANN: Yes, per conversations we had on the phone
25 yesterday.

1 CHAIRMAN BAEZ: We will hear from Mr. Meros first and
2 his client.

3 MR. MEROS: Chairman, Commissioners, George Meros,
4 GrayRobinson, on behalf of Knology. Knology strongly supports
5 the staff recommendation. Mr. Felix Boccucci, Vice-president
6 of Business Development of Knology is here, would be happy to
7 answer any questions. And I guess I would ask right now if he
8 would, in fact, talk about this issue and whether Knology
9 commits to those requirements.

10 CHAIRMAN BAEZ: Welcome, Mr. Boccucci.

11 MR. BOCCUCCI: Thank you, Commissioner. Knology
12 currently, we operate two independent telephone companies in
13 Georgia and Alabama. So as part of our family of companies, we
14 are very aware of the requirements of ETC, since both of those
15 companies are ETC companies that we comply with and serve
16 schools and libraries. So from our petition in Florida, we are
17 aware of those requirements and plan to meet all the
18 requirements of an ETC carrier in the State of Florida.

19 CHAIRMAN BAEZ: Commissioners, any questions? Mr.
20 Chapkis and then Mr. McCabe.

21 MR. CHAPKIS: Good afternoon, Commissioners. Verizon
22 takes no position regarding whether Knology's petition complies
23 with federal law. However, we are concerned that staff's
24 recommendation misconstrues state law, and I'm speaking with
25 respect to Florida Statute 346.025, Subsection 5. That

1 subsection states in three different places that an applicant
2 has to apply to be an ETC and -- it uses the term and as
3 opposed to the term or -- a COLR.

4 And staff's recommendation has interpreted the word
5 and in this instance to mean or, that they may apply to be
6 either a universal service provider or a carrier of last
7 resort. And it is Verizon's position that they would have to
8 apply to be both.

9 COMMISSIONER BRADLEY: I would like for staff to
10 respond to that.

11 CHAIRMAN BAEZ: Could staff respond.

12 MS. SCOTT: Commissioners, Kira Scott on behalf of
13 staff. Yes, staff does interpret the particular provision to
14 find that these two terms ETC and KLOR to be not synonymous
15 with one another, and that the CLEC applicant only has to apply
16 for one or the other. They don't have to apply for both.

17 COMMISSIONER BRADLEY: So you disagree with Verizon's
18 statement?

19 MS. SCOTT: Yes, Commissioner Bradley.

20 COMMISSIONER DEASON: But you do agree the statute
21 says and. Very clearly it talks about universal service
22 provider and carrier of last resort. It doesn't say or. Now,
23 how do you justify that?

24 MS. KEATING: I agree with Ms. Scott's
25 interpretation, first off. Let me just say that. And staff

1 will concede that we think this particular provision in the
2 statute is subject, perhaps, to some level of interpretation.
3 But we reached the conclusion that we did on how we were
4 interpreting this was by the way the rest of the statute reads.
5 And it is not entirely clear to staff in reading the entire
6 text of this section that it was real clear when this
7 particular provision was passed that there is a difference
8 between those two terms, the level. It seems to be directed
9 more particularly towards the incumbent carriers who were
10 originally designated with the COLR status, and it was not
11 entirely clear to us that it contemplated that there might
12 really be a difference between those two terms. But we will
13 concede that the use of and does, of course, make it subject to
14 some level of interpretation.

15 COMMISSIONER DAVIDSON: By agency action would we be
16 redefining the defining the statute, so to speak? I mean, are
17 we giving an interpretation to the statute that is inconsistent
18 with the expressed wording of the statute?

19 MS. KEATING: I don't think so. And, again, that is
20 because of the way we read the entire text of the statute. But
21 this would be the first time that I am aware of that the
22 Commission would actually be making any interpretation of that
23 particular provision. But --

24 COMMISSIONER DAVIDSON: If you go down on into the
25 paragraph it further provides the Commission may establish the

1 CLEC as the universal service provider and carrier of last
2 resort, provided that we make a determination that the telecom
3 will provide high quality reliable service. As I sit here I'm
4 sort of torn. I mean, I think companies like Knology and FDN
5 are absolutely the types of facilities-based providers you want
6 in the state, you want to encourage, you want providing
7 service, you want competing with Verizon and BellSouth, the
8 ILECs. That is exactly what we have been saying all along we
9 want to encourage.

10 But this language, I mean, it just is a bit troubling
11 in trying to keep sort of a strict mandate. There were folks
12 here that argued, well, we have jurisdiction to make ETC
13 determinations for wireless, and sort of based on a strict
14 reading of that statute I said we don't have jurisdiction to do
15 that, or a majority of the Commission said that. So my
16 question is, one, if you can address that; but, two, have we in
17 other instances ever designated a CLEC as an ETC without the
18 carrier of last resort obligation. Have we done that in the
19 past?

20 MS. KEATING: First off, I will address your last
21 question first, if that is all right, Commissioner. This is
22 the first applicant, CLEC applicant for ETC status in the
23 state, so this is a case of first impression for this
24 Commission. Second, going back to the interpretation question,
25 one of the biggest reasons that we think that these can be

1 separated out is the legislature has extended the time period
2 in which COLR status is applicable to the incumbent carriers in
3 this state. It has made no change, though, in Subsection 5
4 with regard to the time period after which a CLEC can apply for
5 universal service provider status and COLR status. And the
6 conflict, in our minds, is can you have two COLRs in an area.
7 And if a CLEC can apply for this status after the January 1st
8 date, but the incumbent is allocated that COLR status up
9 through 2009, there is no provision in the statute, and that is
10 one of the reasons that we thought that they must have
11 contemplated that they could be separated out.

12 COMMISSIONER DAVIDSON: A follow-up. Do we know if
13 any other state commissions have ever sort of dealt with a
14 similar provision and how they have resolved it?

15 MS. KEATING: Not that I am aware of. Nothing that
16 is worded quite like our state statute.

17 CHAIRMAN BAEZ: If we can get to Mr. McCabe, let him
18 make his comments so that he can be ready to join the question
19 and answer, if necessary.

20 Go ahead, Mr. McCabe.

21 MR. McCABE: Good morning. Tom McCabe on behalf of
22 TDS Telecom, Quincy Telephone Company. Although this
23 application for ETC status does not impact rural areas, I think
24 what it does today, though, is that the actions you take today
25 begin to set the framework for future applications, and that is

1 the issue that we are here to address.

2 First, I would like to address just a couple of
3 points in staff's recommendation. In staff's recommendation it
4 states that we find that Knology's ETC petition is in the
5 public interest. It would be our recommendation that you
6 strike that from the staff's recommendation. Under Section 214
7 there is no requirement for the Commission to make a public
8 interest determination with respect to ETC status in nonrural
9 areas. In the Virginia Highlands (phonetic) cellular case,
10 what the FCC found was that simply making a finding that it
11 enhances or promotes competition is not a public interest
12 determination in and of itself. And that is exactly what
13 staff's recommendation does here. So we think from a precedent
14 standpoint, we think it would be best that that piece be
15 removed in case it was to move into the order.

16 The second issue that we object to is the issue of
17 carrier of last resort responsibility. It is our position that
18 all ETC providers should be required to take on that
19 responsibility. Section 214 of the Act requires that ETC
20 providers, for example, like TDS Telecom in the future, if you
21 were to grant another ETC provider in our service area, we
22 would have the opportunity to come before this Commission and
23 file to relinquish our ETC status. And as such it states that
24 the Commission shall grant that responsibility. We have no
25 interest in doing so, but it would only seem logical that if

1 one was to relinquish that responsibility, then this Commission
2 would ensure that there is somebody there to be the carrier of
3 last resort. There is no restriction on this Commission from
4 implementing the carrier of last resort responsibility on a new
5 ETC application.

6 COMMISSIONER DEASON: I'm sorry, Mr. McCabe, can you
7 just repeat what you just said, because honestly I didn't
8 follow that.

9 MR. McCABE: Okay. Section 214 of the Act allows any
10 ETC provider to relinquish that responsibility. And the Act
11 specifically states that the Commission shall grant that. In
12 doing so there are --

13 COMMISSIONER DEASON: Did you say the Commission
14 FPSC, or FCC?

15 MR. McCABE: Well, within the Act, so it would be --
16 no, I think it would be the Florida Public Service Commission.

17 COMMISSIONER DEASON: So according to 214 of the
18 Federal Act, if an existing ETC wishes to relinquish its ETC
19 status and its carrier of last resort obligations that we, as a
20 matter of law, have to grant that?

21 MR. McCABE: That is what it states, yes. It says
22 shall.

23 CHAIRMAN BAEZ: Yes, but I think you might have added
24 something more to that, or maybe I need to understand it a
25 little better. We are referring to a federal act that doesn't

1 have COLR. You know, the federal act doesn't have a term of
2 carrier of last resort, does it?

3 MS. SCOTT: That is correct, Commissioner.

4 CHAIRMAN BAEZ: That is a state term, or state term
5 of art, if you will. How can 214 create a right to, you know,
6 as a matter of right relinquish or give up your COLR status
7 under state law?

8 MR. McCABE: Well, I don't think there is really a --
9 as you mentioned, carrier of last resort is not in the federal
10 act, but universal service provider is. And under that
11 responsibility you have the obligation to serve all of those
12 within that serving area that is designated as your ETC area.
13 It is not I'm going to serve only a portion of those customers.
14 Now, there are some build-out obligations and abilities for new
15 entrants. For example, if it was an entire study area, would
16 someone ask for ETC status, the Commission may be able to say,
17 okay, you don't have to -- you have to show us within five
18 years you are going to be able to serve everyone within that
19 area. So I don't know that there is really a big distinction
20 between universal service provider and carrier of last resort.

21 CHAIRMAN BAEZ: And I would agree with you there, but
22 I would be more interested in Mr. Meros letting me know what he
23 thinks about that. Is it a distinction without a difference
24 or --

25 MR. MEROS: Chairman, I think the key thing is the

1 Commission doesn't have to parse the statute in this case. In
2 answer Number 14 to staff's data request, Knology has agreed,
3 to the extent necessary, to be a carrier of last resort. Now,
4 I recognize the dilemma in the Florida Statute as to this term
5 and, but the fact that they are already carriers of last
6 resort. But this issue, this legal issue is really an academic
7 one.

8 CHAIRMAN BAEZ: Well, it is and it isn't, based on
9 what Mr. Chapkis might be contemplating if a carrier of last
10 resort gets granted -- if a duplicative carrier of last resort
11 gets granted in your territory. I mean, I think the company
12 would be well to consider whether it wants to be a carrier of
13 last resort in an overlapping sense. And in order to address
14 that situation, I'm concerned about clarifying whether that
15 right to relinquish a right to cease being a carrier of last
16 resort exists under state law. Because if it doesn't, then I
17 don't have a problem, then I don't have a problem with the math
18 question that you presented before saying, well, you can't
19 have -- theoretically you can't have two COLRs in the same
20 area. That doesn't bother me so much.

21 COMMISSIONER DAVIDSON: And, Chairman, just as --

22 CHAIRMAN BAEZ: I mean, it seems to make sense to me,
23 but --

24 COMMISSIONER DAVIDSON: It is making sense, and I
25 wanted to just sort of add one point. I'm looking at Kathleen

1 Abernathy's comments on the Joint Board recommendations, and I
2 wanted to ask Mr. Mann to sort of, in conjunction with your
3 question, and she said the Joint Board did recommend that all
4 ETCs be subject to equivalent carrier of last resort
5 obligations. In particular we make clear that all ETCs are
6 required to serve all customers upon a reasonable request, et
7 cetera, et cetera. Is that one of the recommendations that was
8 adopted by the FCC, if you recall? Okay.

9 CHAIRMAN BAEZ: So I guess in a practical sense, is
10 it fair to say that even an ETC grant creates COLR
11 responsibilities?

12 Go ahead, Ms. Keating.

13 MS. KEATING: I just wanted to clarify that part of
14 this conflict comes up, I think, in the different ways the
15 state had traditionally looked at universal service providers
16 and COLR and the way the federal government has interpreted it.
17 I mean, what we are talking about here is an application to
18 apply for federal universal service funds, but the conflict
19 comes in with the state definition of COLR.

20 CHAIRMAN BAEZ: But I guess by Commissioner
21 Davidson's -- and I know Commissioner Bradbury has a
22 question -- but by Commissioner Davidson's statements haven't
23 we established that essentially you are creating the same
24 COLR-like responsibilities to a federal petition? And I will
25 ask a question later whether what we just need to do is

1 change -- I mean, you have for all intents and purposes Knology
2 acceding to whatever responsibilities as a carrier of last
3 resort. Couldn't we just short-circuit all of this and have
4 them apply for COLR status, or would that be even appropriate?

5 MS. KEATING: I agree that it is essentially the
6 same, but it is a federal requirement as opposed to a state
7 requirement. That's all I'm trying to convey.

8 COMMISSIONER DAVIDSON: Right.

9 CHAIRMAN BAEZ: And the only problem, and that
10 problem or that question only exists because maybe the petition
11 was --

12 MS. KEATING: Well, the petition was filed prior to
13 the adoption of those additional criteria for one thing.

14 CHAIRMAN BAEZ: Okay.

15 MR. MEROS: And if I may, Chairman, on that I
16 certainly would urge the Commission to grant the petition based
17 on the state statute now. It was filed prior to that. Knology
18 has acceded to that as an ultimate obligation.

19 CHAIRMAN BAEZ: Do we have discretion to do that,
20 going above and beyond the petition, I guess?

21 MS. KEATING: Can I ask a clarifying question?

22 CHAIRMAN BAEZ: Ask anyone you want, yes.

23 MS. KEATING: Are you asking if we can impose a state
24 COLR requirement in addition to the already established federal
25 COLR requirement that will apply once the Joint Board's

1 recommended additions become effective through the FCC's order?

2 CHAIRMAN BAEZ: Well, and, again, I may be
3 misunderstanding this, but I guess to the extent that only
4 granting ETC status under federal law would create a conflict
5 under state law, can we go ahead and impose those requirements
6 under state law by our own discretion?

7 MS. KEATING: If they were amending their application
8 to include COLR status under the state law --

9 CHAIRMAN BAEZ: Yes, that would be nice, too.

10 MS. KEATING: -- I would say, yes, you could
11 certainly do that. I am just not real clear whether you can --

12 CHAIRMAN BAEZ: Impose it.

13 MS. KEATING: Whether it makes a lot of difference in
14 the long run, I'm not sure if it does.

15 CHAIRMAN BAEZ: That's why I said to the extent that
16 it removes any existing conflict. I mean, if you are subject
17 to both, then you by design have to adhere to the stricter.
18 You know, to everything that doesn't -- to the outer bounds of
19 both.

20 MS. KEATING: Right.

21 CHAIRMAN BAEZ: And then you don't have a conflict.

22 MR. MELSON: Mr. Chairman, part of what we are
23 struggling with here is we have got terminology in the state
24 law that is similar to some terminology the federal government
25 uses. We have got some terminology that is different. Our

1 state terminology really is not defined. There is no
2 definition in the Florida Statute of carrier of last resort.
3 It is clear that the incumbents are designated and have that
4 status, but there is nothing that really defines what that
5 status means. We don't have a state definition of eligible
6 telecommunications carrier. We do have universal service
7 provider which appears, as a practical matter, to be the same
8 thing.

9 We were trying to wind our way between these two
10 statutes by fulfilling the federal obligation to respond to the
11 eligible telecommunications carrier, and yet to fit that within
12 the scope of state law authority. And the way staff tried to
13 straddle that line was to say, in essence, the FCC is
14 equivalent to the state universal service provider. And by
15 granting ETC status, essentially what we are doing is imposing
16 on them whatever rights or obligations come as a state
17 universal service provider. But trying not to take the next
18 step and apply carrier of last resort, which really is a little
19 bit undefined and it is not clear, or at least certainly prior
20 to this recent FCC action, how it interplayed with federal
21 requirements.

22 CHAIRMAN BAEZ: And now after the adoption by the FCC
23 of the Joint Board requirements is the need to straddle that
24 line still there?

25 MR. MELSON: To the extent a particular carrier

1 requests both ETC designation and state law COLR status, I
2 don't think we need to straddle that line. We could grant, you
3 know, the ETC designation, state universal service or state
4 COLR and never have to answer the question.

5 The situation would arise, and the place you would
6 have to reconcile those would be if you have got an application
7 where somebody says I think I'm entitled to ETC designation,
8 but I don't believe that that makes me a COLR under state law,
9 and I don't want to be a COLR under state law, then we would
10 have to try to harmonize the two schemes.

11 CHAIRMAN BAEZ: And what are the legal obstacles to
12 tying the two. First of all, the statute doesn't say that you
13 can. Is that the starting point?

14 MR. MELSON: I'm not sure I understand the question.

15 CHAIRMAN BAEZ: Are you saying, in effect, you know
16 what, if you want to apply for ETC status here in Florida, you
17 are going to have to take COLR status, as well?

18 MR. MELSON: That would be another reasonable
19 construction of that section of statute. I mean, staff has
20 read it. Even though it says and, we have read it as though it
21 can be disjunctive and you could apply for one or the other.
22 But that is a case of first impression as to your
23 interpretation of the statute. And if you believe that in
24 order to get ETC designation, in order for the Florida
25 Commission to grant it that they have to have both universal

1 service and COLR provider under state law, that would be
2 probably an equally reasonable interpretation.

3 CHAIRMAN BAEZ: Commissioners, I'm sorry, I have
4 monopolized the questions. Commissioner Davidson.

5 COMMISSIONER DAVIDSON: No, I didn't want to
6 interrupt.

7 CHAIRMAN BAEZ: No, please, go ahead.

8 COMMISSIONER BRADLEY: Could I ask --

9 CHAIRMAN BAEZ: I'm sorry, Commissioner Bradley has
10 tapped my shoulder. I'm sorry.

11 COMMISSIONER BRADLEY: Thank you, Mr. Chairman. And
12 I think that staff may have answered my question, but I'm going
13 to ask this question specifically. Carrier of last resort
14 status, how is that designated or how is that determined?

15 MR. MELSON: Commissioner Bradley, first, there is no
16 definition of carrier of last resort. It is simply a term that
17 is used. Statute designates the incumbents as carriers of last
18 resort in their territories through a deadline, I believe it is
19 2007.

20 MS. KEATING: Nine.

21 MR. MELSON: 2009. It last allows other carriers,
22 CLECs to apply for carrier of last resort status. And we are
23 in a timetable where they can do that now. One could have made
24 an argument at one point, I believe, with the way the statute
25 was structured, it was anticipated there would be only a single

1 carrier of last resort. It appears now, because of the
2 differing timetables, that the statute contemplates you could
3 have more than one carrier of last resort. But, again, that is
4 all based on simply trying to interpret the various provisions
5 of the statute in a harmonious way, and they may not be the
6 easiest ones to reconcile.

7 COMMISSIONER BRADLEY: What is the practical impact
8 upon designating Knology as a universal service provider but
9 them not being the carrier of last resort, what is the
10 practical impact upon consumers?

11 MR. MELSON: It seems to me one practical impact
12 might be if one of the incumbent carriers in an overlapping
13 area said I no longer want to be carrier of last resort, and we
14 were out past 2009 where that obligation is imposed on them,
15 Knology, the one with the overlapping territory, might have a
16 state law obligation to step in and serve all of those
17 customers and there might be no reason under state law to say
18 that Verizon cannot withdraw from that territory.

19 Again, in a way we are speculating a little, because
20 ultimately the state statute is going to mean what you
21 interpret it to mean, and we have just got a situation where
22 the state law is not that clear.

23 COMMISSIONER BRADLEY: You used the term might rather
24 than would have.

25 MR. MELSON: Again, because ultimately if we got to

1 2009, and if you designated Knology as a carrier of last resort
2 today, you got to 2009, Verizon sought to withdraw as carrier
3 of last resort from a portion of the territory. You would be
4 faced at that point with a question under Section 214A of what
5 does the federal law say about that. You would be faced with a
6 question under Florida Statutes, what does the Florida Statutes
7 say about that. And some future Commission would have to
8 decide how to handle that situation.

9 And, I guess I feel uncomfortable sitting here,
10 first, predicting that Verizon would ever seek to withdraw;
11 but, second, predicting how a future Commission, you know, five
12 years down the road would ultimately interpret that statute.
13 And that's why I said may rather than would.

14 COMMISSIONER BRADLEY: And let me make sure I
15 understand, and I will be finished. You stated that Verizon
16 could withdraw, or Verizon would have to come before the
17 Commission to seek agreement to withdraw, or they just could
18 withdraw?

19 MR. MELSON: I believe, at least under Section 214,
20 they would have a federal obligation to seek to withdraw and
21 there is some transition type provisions in that statute. The
22 state law doesn't really speak to withdrawal as a carrier of
23 last resort. So you would be faced with the question of does
24 the statute imply an obligation to come to us, and I think the
25 answer could very well be yes. But, again, that is a bridge

1 that we don't have to cross today.

2 COMMISSIONER BRADLEY: Thank you.

3 CHAIRMAN BAEZ: Commissioner Davidson. I'm sorry,
4 Commissioner Deason.

5 COMMISSIONER DEASON: Well, I guess I have a question
6 more in terms of public policy. And I understand that the
7 Florida Statute, which may have been written a year before the
8 federal statute was, so that may be part of the reason for the
9 ambiguity that we are dealing with, but it is ambiguous when it
10 uses the term COLR in this context.

11 But given that, and the Federal Section 214 that
12 apparently applies as well, given all of that -- just setting
13 that aside for a moment, I guess the question that I have is
14 one of what should we reasonably expect a CLEC to afford to
15 customers if they are going to be given the status of a
16 universal service provider and get the benefits associated with
17 that status. It seems to me there should be an obligation.
18 Even though you may not define them as a carrier of last
19 resort, it seems to me they have an obligation that if they
20 define themselves as a universal service provider within a
21 given area that they have an obligation to take all comers,
22 that they can't discriminate.

23 They can't take a customer that because perhaps they
24 have, you know, high demand for toll services, for example, and
25 discriminate against a customer that doesn't. If they have the

1 physical capability, facilities of their own or else those that
2 they obtain from another carrier to provide the service, they
3 have to take everybody that applies. I think that is good
4 public policy. I would hope staff would agree with that. And
5 if you do, how do we get there?

6 MR. MANN: Well, I think that is staff's
7 understanding, too. And on a going-forward basis annually we
8 would look at them and see how are you building out in the
9 areas that you have been designated as an ETC, how many times
10 has service been requested and you haven't fulfilled that
11 request. And so it is not as if we grant it and they have it
12 forever. So I think staff monitoring on an annual basis
13 understands how they are performing in a certain area.

14 COMMISSIONER DEASON: And that raises another
15 question. You know, CLECs by definition are subject to a
16 lesser level of regulation than incumbents. If they request
17 universal service provider status and the benefits associated
18 with that, are they subjecting themselves to a higher level of
19 regulation? Additional reporting requirements, for example.
20 Perhaps requirements for responding to an application for
21 service within three days, one week, whatever the appropriate,
22 are they subjecting themselves to that, or do we have the
23 authority to do that?

24 MR. MANN: Well, some states have required that CETCs
25 comply with the quality of service rules of that Commission. I

1 don't know that we are going that far in our recommendation,
2 but I do know that if they abide by what the Joint Board has
3 recommended, they are going further than the current
4 competitive carriers would have to comply with. So there seems
5 to be a higher standard that they are accepting.

6 COMMISSIONER DEASON: Does the company agree that if
7 you get -- if your petition is granted, that even though you
8 may not be labeled, even though -- I think you are willing to
9 abide by the requirements of a carrier of last resort, and that
10 is an ambiguous term, because it is not defined in the statute
11 and this Commission has never defined it, I don't believe, but
12 are you willing to take everyone that applies for service if
13 you have the physical capability of providing that service?

14 MR. BOCCUCCI: Commissioner, one of the staff's
15 requests from Knology was whether we would be willing to take
16 responsibility of the carrier of last resort. The networks
17 that Knology builds is almost ubiquitous to the existing LEC
18 networks. So as a result, we are willing to take those
19 requirements as what we believe, as a competitive carrier in
20 the applicable marketplace. To note, Knology's network is
21 facility-based. The only interconnection --

22 COMMISSIONER DEASON: I'm sorry, is what based?

23 MR. BOCCUCCI: Totally facility-based. We have
24 invested over \$115 million in the State of Florida. The only
25 thing we ask for in our interconnection agreements with the

1 LECs, which would be BellSouth here up in the panhandle and
2 Verizon in the Pinellas County arena, is basically to
3 interconnect for exchange of traffic. We do not use UNEs, we
4 do not use UNE-Ps. So we provide our own switching, we build
5 our own loops. So we look like an incumbent LEC except we have
6 the designation that we are a competitive LEC because we are
7 the new entrant into the market.

8 COMMISSIONER DEASON: Are you willing to provide to
9 this Commission records which indicate all that apply to you
10 for service and what period of time you connected them. And if
11 you were unable to provide service, why you were unable to
12 provide service, and what measures you have taken to expand
13 your service to provide service to all applicants within the
14 designated area?

15 MR. BOCCUCCI: Absolutely. That would be our
16 responsibility if we were designated as an ETC carrier.

17 CHAIRMAN BAEZ: Commissioner Davidson.

18 COMMISSIONER DAVIDSON: Not so such questions, just
19 some issues for discussion. I think at some point universal
20 service is just going to have to be sort of addressed more at
21 the federal level. I mean, multiple ETCs in a state, and I
22 think that is the law. I think multiple ETCs is clearly
23 contemplated. But the notion of that really is going to put
24 stress on the universal service fund nationwide. I mean,
25 everyone here knows that, and that will have to be addressed.

1 That is not a reason for saying that multiple ETC status should
2 not be granted.

3 But on the one hand this is a case of first
4 impression with a lot of issues, and it would be nice to almost
5 have sort of a broader docket to go through this and address
6 all of these issues. On the other hand, sort of without
7 prejudging it, I cannot imagine sort of more of a poster child
8 for ETC status than a company like Knology or FDN. I mean, the
9 facilities-based providers that we are trying to encourage. I
10 mean, in Florida those two, and Supra now to a large extent
11 because it is self-deploying some of its switches come to mind.
12 So if we are not going to grant multiple ETC status to a
13 facilities-based CLEC, then to whom would we?

14 So that is sort of where I am now. And I think
15 Commissioner Deason raised a lot of excellent points. I mean,
16 we have got some federal guidelines. Staff has said that the
17 existing guidelines pre-yesterday standards have been met. The
18 company has acknowledged that it will meet the as of yesterday
19 standards, and have given representations to Commissioner
20 Deason. I'm just sort of thinking out loud here, but it seems
21 like everything that sort of we are required to do, we have
22 gone through.

23 CHAIRMAN BAEZ: I don't disagree with you. I think
24 maybe we make too much of the discrepancy between the statutes.
25 And in a practical sense, I believe that to be true. But if

1 what we are going to try and make is a sound decision of first
2 impression, then my sense of it is perhaps we need to be
3 addressing the weaknesses in our decision and not really -- I
4 mean, I want to get to the right result, which I will say here
5 doesn't include denying an ETC, this particular ETC petition,
6 because I believe the logic of your question is sound. I mean,
7 if a company like Knology is not the kind of company, then I
8 don't think one necessarily exists in Florida. If not, who?

9 COMMISSIONER DAVIDSON: It is a hard notion to
10 grapple with, the thought of an ILEC possibly saying, well, we
11 are going to get rid of our carrier of last resort obligations,
12 but I think that is contemplated in a competitive environment.
13 It is just to think of a company doing that is sort of
14 frightening now.

15 CHAIRMAN BAEZ: But I will go back to something I
16 said before. I guess my concern is that our decision be as
17 bulletproof as possible so that when it does get litigated out,
18 and I suspect it may, just for the sake of argument, you know,
19 that we put a good product out there. And that's why I would
20 like to consider exactly if there are practical extensions of
21 this very focused decision, that we may be willing to, capable
22 of, and wanting to consider to make that product better when it
23 gets reconsidered. I don't know if you understand the meaning
24 of --

25 COMMISSIONER DAVIDSON: Well, are you talking about

1 adding maybe some staggered tiers or something so that we
2 are --

3 CHAIRMAN BAEZ: No. I'm really just from -- I'm
4 breaking from the concept of, you know what, if this is a case
5 of first impression, I think in my mind that says, all right,
6 this is going to be something that needs to be a good decision
7 and needs to be a complete decision. And I think we serve
8 ourselves better by having a decision that tees up all the
9 relevant questions to be answered all at once so that we are
10 not -- so that we later don't engage in this piecemeal
11 definition game building. I'm curious as to what everyone's
12 thoughts are on that.

13 COMMISSIONER DAVIDSON: And I would like to know,
14 too, if Verizon opposes this. I mean, you didn't really come
15 out and sort of say that. I'm just curious. I mean, you sort
16 of raised some issues, but --

17 CHAIRMAN BAEZ: They teed up an interesting issue,
18 though. I mean, you know, clearly everybody seems to think
19 there may be some -- I will let Mr. Chapkis and Mr. Meros go.

20 Go ahead, Mr. Chapkis.

21 MR. CHAPKIS: Excuse me, Mr. Chairman. Verizon's
22 problem was limited to staff's interpretation of the statute.
23 And I think now because you have Knology saying that they were
24 applying to be an ETC and a carrier of last resort, that you
25 can dodge for the time being Verizon's problem, or that doesn't

1 have to arise now. That was poor phrasing. That issue doesn't
2 arise before this Commission.

3 CHAIRMAN BAEZ: Right.

4 MR. CHAPKIS: With respect to whether Knology's
5 petition is sufficient, Verizon really takes no position and
6 does not intend to dispute issues other than staff's
7 interpretation of the state law.

8 CHAIRMAN BAEZ: The legal issue. And I know Mr.
9 Chapkis may have framed an issue for you that perhaps you want
10 to redefine. You had something?

11 MR. MEROS: No, sir. I think what Mr. Chapkis says
12 is largely correct, and I don't want to be presumptuous and
13 tell the Commission how it decides cases, but theoretically --

14 COMMISSIONER DAVIDSON: Why not? Everyone else does.

15 CHAIRMAN BAEZ: Everybody else does. Don't feel --

16 MR. MEROS: Theoretically, any adjudicatory body,
17 whether PSC, or a judge, circuit court judge, or appellate
18 court in Florida, does its best, in my opinion, when it has
19 concrete facts, concrete issues in dispute, which this body can
20 then look at, assess and decide based on real facts. Courts
21 and adjudicatory bodies, again, in my opinion, get into trouble
22 when they try to divine a solution in the future without a
23 concrete set of facts. That's why incremental policymaking
24 occurs in adjudicatory bodies as opposed to the legislative
25 process. And as ugly as the legislative process can arguably

1 be, at least in that process you have many, many interests
2 coming in and talking about the various facts.

3 The beauty of adjudication is it is incremental so
4 that you don't go beyond what is absolutely in front of you
5 before you create those decisions. And I think in this
6 context, because the state law and the federal law have to be
7 complementary but are not exact, that in a case like this where
8 there really isn't the issue, it would be imprudent to try to
9 make things right. No matter how noble that is, I think you
10 could make things very wrong easily as opposed to making things
11 right.

12 COMMISSIONER DAVIDSON: As I was listening to this it
13 sort of gave me some comfort to your question. Because we
14 will, on a going-forward basis with all of these CLEC ETCs,
15 sort of go through the analysis as required by federal law and
16 state law to make sure that the different factors are sort of
17 being addressed on an ongoing basis. And like any sort of
18 designation or certificate, it is always subject to amendment,
19 modification, revocation, et cetera.

20 CHAIRMAN BAEZ: Fair enough.

21 MR. McCABE: Mr. Chairman, just a couple more quick
22 comments. I agree with Commissioner Deason's comments, and I
23 was going to get to, with respect to issues of service quality.
24 We think that the ETC provider, I mean, this Commission has
25 decided in this point in time that you have implemented service

1 quality standards as a default of the market. And until such
2 time that the marketplace is able to regulate service quality
3 standards, everybody that is an ETC should maintain those same
4 obligations. It would seem imprudent to say that for one
5 provider they should be different given the fact that they are
6 both getting universal service dollars.

7 The other issue in Knology's petition -- and, again,
8 I am not here to object to Knology's petition -- address the
9 issue of Lifeline. I mean, this Commission has to come to a
10 policy in terms of what is an ETC's responsible with respect to
11 Lifeline. They agree that they are going to meet the 350, et
12 cetera, but there is no indication in the petition in terms of
13 what those rates are going to be. Are they going to require
14 somebody to take cable service in order to get Lifeline
15 service? Is it going to be a stand-alone service? Things of
16 that nature. I think that those are public policy debates that
17 the Commission has to engage themselves in, and I'm not saying
18 it needs to hold this petition, but I think that perhaps
19 through a rulemaking proceeding or something of that nature it
20 would be prudent to set forth what the criteria is on a
21 going-forward basis for ETC applications and for petitions and
22 how they should look when they are filed.

23 MR. MANN: Commissioners, to address Mr. McCabe's
24 point, we did look at what their rates would be. They told us
25 that they could get local usage stand-alone for \$17.22. And in

1 their response to our inquiry said average rates are around
2 \$20, and we felt that that was reasonable. They offered to
3 advertise their Lifeline and Link-up programs within 45 days
4 after your decision. So we think that they are doing the right
5 thing as far as Lifeline and Link-up.

6 They have told us that they are not currently serving
7 any of the schools and libraries. We do understand that they
8 will be getting some high-cost funding should they be able to
9 capture customers. It is hard to tell exactly what those
10 numbers would be at this point, it will depend on how many they
11 capture and what percentage of their customers would qualify
12 for Lifeline and Link-up. But staff did consider these issues.

13 CHAIRMAN BAEZ: Commissioners, any other question or
14 a motion?

15 COMMISSIONER DAVIDSON: Move staff.

16 CHAIRMAN BAEZ: There is a motion to accept staff's
17 recommendation. Is there a second?

18 COMMISSIONER DEASON: I'm going to second the motion,
19 but I just want to clarify something. In answer to questions,
20 I think Knology has agreed to provide information to staff
21 reporting and keep records and that sort of thing, and maybe
22 you all have already had these discussions and have had that
23 agreement, but I just want to make sure that it is recognized
24 that they have agreed to cooperate in providing that
25 information. And having said that, I will second the motion.

1 CHAIRMAN BAEZ: There is a motion and a second. All
2 those in favor say aye.

3 (Unanimous affirmative vote.)

4 COMMISSIONER DAVIDSON: Mr. Chairman, I would like to
5 request that Mr. Mann appear more often. He is fun and very
6 well prepared.

7 CHAIRMAN BAEZ: And he has got that ticker going.

8 COMMISSIONER DAVIDSON: Not that everyone else up
9 here is not fun or well prepared. Everyone is always well
10 prepared.

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STATE OF FLORIDA)

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COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 7th day of March, 2005.



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