



Chris Nelson, Chairperson  
Kristie Fiegen, Vice  
Chairperson  
Gary Hanson,  
Commissioner

*South Dakota*  
**PUBLIC UTILITIES  
COMMISSION**  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070  
[www.puc.sd.gov](http://www.puc.sd.gov)

Capitol Office  
(605) 773-3201

Grain Warehouse  
(605) 773-5280

Consumer Hotline  
1-800-332-1782

Email  
[puc@state.sd.us](mailto:puc@state.sd.us)

TC15-029

- 1-1) At the beginning of part 3 of the application, the company says USAC informed them to provide Clarity with 9 months of data to complete the form 481 and file under the Clarity name. Provide communications with USAC to confirm that statement.

Response: On May 1, 2015, Tanea Foglia who works for JSI, our consultants reached out to Brandon Ruffley of USAC for direction on this matter. The enclosed e-mail from Brandon dated May 1, 2015 confirms that Clarity should report our data in their Form 481.

- 1-2) Confirm that the company sent Lifeline and Link-Up information to all new customers, in the 9 months it owned the business, within 30 days of the customer gaining service.

Response: Confirmed

- 1-3) Explain why on the USAC website's funding disbursement page it has Knology receiving 11 months of support versus the 9 months included in the filing in South Dakota.

Response: The information provided to the SD PUC in our initial filing reflects the company who actually "booked" the support. Since Clarity purchased the receivables from WOW!, starting October 1 the disbursements were reported as Clarity for the periods received after the sell date. In regards to what was posted on the USAC website, there was an internal communication issue between USAC's High Cost Division and the division that manages the 498 (SPIN information) which resulted in a delay in the updating of the name from Knology to Clarity and transferring the SAC from Knology to Clarity. The initial 498 was rejected because Clarity originally attempted to combine the ILEC and CLEC into one SPIN which is not possible for NECA Pool Members. The second form was approved in mid-November; however, the High Cost program did not receive the notification. This should have been automatic when the SAC/SPIN relationship was established by the Form 498 team at USAC. However, the assignment didn't occur until November.

- 1-4) Provide Lifeline and Link-Up advertising and outreach information pursuant to ARSD 20:10:32:55 for the 9 months Knology still had control of the territory.

Response: Lifeline and Link-Up advertising and outreach information pursuant to ARSD 20:10:32:55 is enclosed.



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- 1-5) Refer to DR2-3 in docket TC14-032, provide any updates made to the infrastructure for the customers receiving 512k down and 256k up speeds.

**Response:**

Knology Community Telephone, Inc. (“Knology”) was a rate-of-return eligible telecommunications carrier (“ETC”). In its USF/ICC Transformation Order, the Federal Communications Commission (“FCC”) ruled that such carriers must provide broadband service at 4 Mbps/1 Mbps “upon reasonable request.”<sup>1</sup> In its recent Omnibus Order, the FCC issued a declaratory ruling regarding “which requests should be deemed unreasonable under our current rules and policies to provide greater clarity to all affected stakeholders.”<sup>2</sup> In an Order released December 18, 2014 (FCC 14-190), the FCC modified the speed requirement for the “reasonable request” standard and ruled that if a carrier determines that a request for broadband service at actual speeds of at least 10 Mbps downstream and 1 Mbps upstream (10/1) is unreasonable, and offering broadband service at actual speeds of at least 4 Mbps downstream and 1 Mbps upstream (4/1) is reasonable, the Company must offer broadband service at actual speeds of at least 4/1 to the requesting customer. This requirement became effective in January 2015 which was after WOW’s assets were sold to Clarity Telecom, LLC dba Vast Broadband.

In requiring that rate-of-return ETCs to provide broadband upon reasonable request, the FCC recognized that these carriers are able to satisfy this requirement by providing DSL over joint-use facilities in this manner. Specifically, in its May 16, 2013 Order, the FCC clarified that for the purposes of the five year plan reports that rate-of-return carriers must submit in 2014, “the relevant ‘customer’ is the end-user customer of the retail broadband Internet access service regardless of whether that customer purchases that retail service directly from the ETC or from an Internet service provider that purchases the ETC’s wholesale broadband transmission service offering.”<sup>3</sup> The FCC further found that rate-of-return carriers can satisfy their federal high-cost universal service obligations by providing broadband Internet access service “either directly or indirectly to end-user customers.”<sup>4</sup>

Knology provided broadband over “joint-use” buried cable and loop plant that was used to enhance both telecommunications and broadband service (DSL) which were jointly provided over these facilities. The broadband DSL service provided over these joint-use facilities was

<sup>1</sup> See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-61 (rel. Nov. 18, 2011) (USF/ICC Transformation Order) at Para. 206; *pets. for review denied*, Direct Comm. Cedar Valley, et al v. FCC, No. 11-9900, www.ca10.uscourts.gov/opinions/11/11-9900.pdf (10th Cir. May 23, 2014).

<sup>2</sup> *Connect America Fund, et. al*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking. WC Docket No. 10-90 *et. al*, FCC 14-54, adopted April 23, 2014, released June 10, 2014 (“*Omnibus Order*”) at paras. 59-72.

<sup>3</sup> *In the Matter of Connect America Fund*, WC Docket 10-90, Order, FCC 13-1115 (rel. May 16, 2013) at para. 6 (“*May 16 2013 Order*”).

<sup>4</sup> *Id.* at para. 7 citing 47 C.F.R. § 54.313(a)(2)-(7).



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provided by the ILEC, Knology Community Telephone, Inc., on a wholesale basis to the company's cable affiliate, which also provided limited cable modem service, who then provided the service to the end-user customer.

Knology fully believes that during the nine months in 2014 that it owned the business it met the broadband obligations imposed by the FCC. As stated in its *May 16, 2013 Order*, the FCC cited its *USF/ICC Transformation Order* and stated, "as a condition of receiving support for ongoing operations of mixed-use facilities capable of providing voice and broadband service, the Commission required rate-of-return carriers that receive HCLS, ICLS, or new CAF-ICC support to provide broadband service to their customers upon reasonable request."<sup>5</sup> Specifically, under the obligation which Knology was under during the nine months in 2014 that it owned the business, rate-of-return carriers must provide broadband service upon reasonable request at actual speeds of at least 4 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol. The company was able to meet these obligations as follows:

Knology identified areas within its study area in which it was able, through its cable affiliate, to provide broadband service which met or exceeded the 4-1 speeds and met the requisite latency requirements. For those areas, the Company determined that any request for broadband would be considered a "reasonable" request and that it could be met within a reasonable amount of time. In areas where such facilities did not exist, the Company would make a determination at the time of the request as to whether the request was reasonable based upon the factors set forth in the FCC's *Omnibus Order*.<sup>6</sup> If the company determined that such a request was reasonable, it would extend terrestrial broadband service to that area in a reasonable amount of time. If the Company determined that such a request was not reasonable, it would provide the subscriber with the highest level of broadband service that the existing DSL facilities can provide.

- 1-6) Provide an updated map similar to the one provided in DR2-5 in TC14-032. If no broadband boundaries changed and there are no changes to the map please indicate that in your response and a new map won't be necessary.

Response: No broadband boundaries changed during the first nine month of 2014. There are no changes to the map that was provided in 2014.

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<sup>5</sup> *Id.* at para. 6 citing *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*) at para. 206, *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622 (2012) (*Third Reconsideration Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013) (*ETC Reporting Clarification Order*).

<sup>6</sup> *Omnibus Order* at paras. 65-69.

TC 15-29 1-1

**Arlene Morgan**

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**From:** Brandon Ruffley <bruffley@usac.org>  
**Sent:** Friday, May 01, 2015 11:26 AM  
**To:** Tanea Foglia  
**Cc:** Amanda Bilodeau; Elizabeth Pertsevoi  
**Subject:** RE: 481 and Acquisition

Hello Tanea,

Your question was shared with me. You're correct that in the event of an acquisition during the year, the financial statements for the entire fiscal year still need to be provided.

We're evaluating your other question and will respond at a later time.

Thanks,  
Brandon

**Brandon Ruffley**  
(202) 772-5208 (ph)  
[bruffley@usac.org](mailto:bruffley@usac.org) | [www.usac.org](http://www.usac.org)

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**From:** Tanea Foglia [<mailto:TFoglia@jsitel.com>]  
**Sent:** Friday, May 01, 2015 8:45 AM  
**To:** Elizabeth Pertsevoi; Amanda Bilodeau  
**Subject:** 481 and Acquisition

Hello again ladies,

I have another one for you... I have a client that purchased the assets/operations of an ETC in mid-2014. FAQ 66 appears to confirm our understanding that the new company would provide all of the data for 2014 as well as both the financials from the previous owners and the new company's financials in the filing. However, the client would like me to confirm with you all. Can you please validate that our assertion is true?

**Q66: If a company sells mid-year, the new owners will ultimately only have an audit review done on the financials for the portion of the year they owned the company and not the entire "fiscal year end." When it comes time to certify that the financials were audited, how should this be handled?**

**A66:** . . . Filers are responsible for attesting to the financial statements for the entire fiscal year of the SAC they own.

Thanks so much and have a good weekend!

Tanea Foglia  
Manager – Regulatory Affairs  
John Staurulakis Inc.  
7852 Walker Drive, Suite 200  
Greenbelt, Maryland 20770  
Office: 301-459-7590  
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