

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-08-IH-0220
)	
)	NAL/Acct. No. 200832080097
Knology, Inc.)	
)	FRN No. 0005066493

ORDER

Adopted: September 26, 2008

Released: October 7, 2008

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Knology, Inc. The Consent Decree terminates an investigation by the Bureau against Knology, Inc. for possible violations of section 214 of the Communications Act of 1934, as amended (the “Act”),¹ relating to extension of lines and transfer of control, and section 63.03 of the Commission’s rules,² relating to streamlined applications for transfer of control and assignment of section 214 authorizations, by consummating an acquisition on January 4, 2008, prior to the end of the streamlined pleading cycle on January 12, 2008.

2. The Bureau and Knology, Inc. have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Knology, Inc. possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,³ and sections 0.111 and 0.311 of the Commission’s rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 U.S.C. § 214.

² 47 C.F.R. § 63.03.

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Chip Yorkgitis, Kelley Drye & Warren LLP, Counsel for Knology, Inc., 3050 K Street, N.W., Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission” or “FCC”) and Knology, Inc. (“Knology” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Knology violated section 214 of the Communications Act of 1934, as amended (the “Act”),¹ relating to extension of lines and transfer of control, and section 63.03 of the Commission’s rules,² relating to streamlined applications for transfer of control or assignment of section 214 authorizations.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Applicants” means Knology, Inc., its wholly-owned subsidiary, Knology of Alabama, Inc., and Graceba Total Communications, Inc.
 - (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Compliance Plan” means the program described in this Consent Decree at paragraph 9.
 - (g) “Effective Date” means the date on which the Commission releases the Adopting Order.
 - (h) “Graceba” means Graceba Total Communications, Inc.

¹ 47 U.S.C. § 214.

² 47 C.F.R. § 63.03.

- (i) “Investigation” means the investigation commenced by the Bureau’s February 27, 2008, Letter of Inquiry³ to Counsel for Knology, Inc., regarding allegations that Knology, Inc. and its wholly-owned subsidiary, Knology of Alabama, Inc., and Graceba Total Communications, Inc. (“Graceba”) may have violated section 214 of the Act, 47 U.S.C. § 214, and section 63.03(a) of the Commission’s rules, 47 C.F.R. § 63.03(a), by consummating a transfer of control of a section 214 blanket authorization prior to the end of the streamlined pleading cycle established pursuant to the Applicants’ filings.
- (j) “Knology” means Knology, Inc., its wholly-owned subsidiary Knology of Alabama, Inc., and its predecessors-in-interest and successors-in-interest.
- (k) “Parties” means Knology, Inc. and the Bureau.
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (m) “Special Temporary Authority” (“STA”) means the special provisions relating to temporary or emergency services under a section 214 authorization pursuant to section 63.25 of the Commission’s rules, 47 C.F.R. § 63.25.
- (n) “Telecommunications service” or “Telecommunications” means interstate telecommunications as defined in sections 3(43) and 3(46) of the Act, 47 U.S.C. §§ 153(43), 153(46).

II. BACKGROUND

2. Pursuant to Section 214 of the Act, telecommunications carriers must obtain a certificate of public convenience and necessity from the Commission before constructing, acquiring, operating, or engaging in transmission over lines of communications, or before discontinuing, reducing or impairing service to a community.⁴ The Commission granted all carriers blanket authority under section 214 to provide domestic interstate services and to construct, acquire, or operate any domestic transmission line.⁵ In accordance with section 63.03 of the Commission’s rules, however, any domestic carrier seeking to transfer control of lines or authorization to operate pursuant to section 214 of the Act must obtain prior approval from the Commission.⁶ Pursuant to section 63.03(a) of the Commission’s rules, an applicant, unless otherwise notified, may transfer control on the 31st day after the date of a Public Notice listing an application for transfer of control of a domestic section 214 authorization as accepted for filing as a streamlined application.⁷ A carrier may apply for Special Temporary Authority (“STA”) relating to

³ See Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Randall W. Sifers, Kelley, Drye & Warren LLP, Counsel for Knology, Inc., dated February 27, 2008 (“February 27, 2008 LOI”).

⁴ See 47 U.S.C. § 214(a).

⁵ See *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996; Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Report and Order and Second Memorandum Opinion and Order, 14 FCC Rcd 11364 (1999); 47 C.F.R. § 63.01.

⁶ See *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5521, ¶ 5 (2002); 47 C.F.R. § 63.03.

⁷ 47 C.F.R. § 63.03(a).

temporary or emergency services under a section 214 authorization pursuant to section 63.25 of the Commission's rules.⁸

3. Knology, Inc., through its operating subsidiaries, is a provider of telecommunications service, interactive communications, and entertainment services in the southeastern and north central United States. On December 7, 2007, Applicants Graceba, a provider of Telecommunications service in Alabama, and Knology filed an application, pursuant to section 63.03 of the Commission's rules, requesting approval to transfer control of a domestic section 214 authorization from Graceba to Knology. Pursuant to a Public Notice issued by the Wireline Competition Bureau ("WCB") on December 12, 2007,⁹ the transfer was to become effective automatically on the 31st day after the date of the Public Notice, *i.e.*, January 12, 2008. Without notice to WCB, however, the Applicants consummated the transaction on January 4, 2008. After the end of the streamlined cycle, WCB approved the transfer on January 14, 2008, effective January 12, 2008, subject to subsequent enforcement action.¹⁰

4. On February 27, 2008, the Bureau issued a Letter of Inquiry ("LOI") to Knology.¹¹ The February 27, 2008 LOI directed Knology, among other things, to submit a sworn written response to a series of questions relating to the acquisition agreement and the transfer of control of Graceba to Knology. The LOI concerned allegations that the Applicants' transaction may have violated section 214 of the Communications Act and section 63.03(a) of the Commission's rules by consummating the transaction on January 4, 2008, prior to the end of the streamlined pleading cycle established pursuant to the Applicants' filings, on January 12, 2008. Knology responded to the LOI on March 28, 2008.¹²

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction.** Knology agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date: Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation

⁸ 47 C.F.R. § 63.25.

⁹ Public Notice, "Domestic Section 214 Application Filed for the Transfer of Control of Graceba Total Communications, Inc. to Knology of Alabama, Inc., Streamlined Pleading Cycle Established," 22 FCC Rcd 21494 (Wir. Comp. Bur. 2007).

¹⁰ Public Notice, "Notice of Domestic Section 214 Authorization Granted," 23 FCC Rcd 261 (Wir. Comp. Bur. 2008). On January 7, 2008, WCB requested that the Applicants file an application for Special Temporary Authority, and on January 9, 2008, WCB granted it by date-stamping the letter request. *See* Letter from Randall W. Sifers, Kelley, Drye & Warren LLP, Counsel for Knology, Inc., to Marlene H. Dortch, Secretary, FCC, dated January 9, 2008.

¹¹ February 27, 2008 LOI.

¹² *See* Letter from Edward A. Yorkgitis, Jr., Kelley, Drye & Warren LLP, Counsel for Knology, Inc., to Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated March 28, 2008.

of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation. In consideration for the termination of said investigation, Knology agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Knology concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Knology with respect to Knology's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, Knology agrees to create within thirty (30) calendar days from the Effective Date a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:

- (a) Knology will conduct an education program for company lawyers, managers, and other parties responsible for and involved in the purchase, sale, or acquisition of telecommunications assets and telecommunications carriers, regarding the rules and requirements applicable to assignments and transfers of control under section 214 of the Act and the Commission's rules.
- (b) Knology commits to file applications relating to transactions involving transfers of control or assignments to the FCC sufficiently in advance of the targeted transaction closing or consummation date if it determines such approvals are needed.
- (c) In transactions involving transfers of control or assignments, Knology will, as a practice, seek federal regulatory counsel involvement early in the process to ascertain what approvals, if any, are required.
- (d) Knology will implement a policy of contacting federal regulatory counsel in advance in the event that Knology and other parties to the transaction consider moving the closing date before the original target closing date to ascertain whether any special temporary authority or other regulatory relief may be required to lawfully complete the transaction at an earlier time.
- (e) Knology will seek and obtain from the Commission special temporary authority or other regulatory relief if it desires to close prior to receiving federal regulatory approval.

10. **Compliance Reports.** Knology will file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Knology, stating that the officer has personal knowledge that Knology has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All

compliance reports shall be submitted to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Ms. DeNigro at Hillary.DeNigro@fcc.gov.

11. **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four (24) months after the effective date.

12. **Section 208 Complaints: Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against Knology or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Knology of the Act, the rules, or the Adopting Order.

13. **Voluntary Contribution.** Knology agrees that it will make a voluntary contribution to the United States Treasury in the amount of twelve thousand dollars (\$12,000) within ten (10) business days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money Order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. Knology will also send an electronic notification on the date payment is made to Gerald Chakerian at Gerald.Chakerian@fcc.gov.

14. **Waivers.** Knology waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Commission issues the Adopting Order without change, addition, modification, or deletion to the Consent Decree as executed by Knology. Knology shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Knology nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Knology shall waive any statutory right to a trial *de novo*. Knology hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

15. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

16. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Knology does not expressly consent) that provision will be superseded by such Commission rule or Order.

17. **Successors and Assigns.** Knology agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

18. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission’s Rules and Orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Knology does not admit or deny any fact, noncompliance, violation, or liability for violating the Act in connection with the matters that are the subject of this Consent Decree.

19. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

20. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

21. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

22. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kris Anne Monteith
Chief
Enforcement Bureau

Date

Chad Wachter
Vice President, General Counsel
Knology, Inc.

Date