

Convention Floor Resolution No. 4

**Resolution Concerning the FCC's Third
Further Notice of Proposed Rulemaking
in Docket No. 87-266 and Forthcoming Notice of Inquiry
on New Technologies (Including Video Dialtone)**

WHEREAS, The Federal Communications Commission's (FCC) Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking (FNPRM), Docket No. 87-266, released on November 7, 1994, seeks comments on several outstanding issues related to the implementation of video dialtone; and,

WHEREAS, The Memorandum Opinion and Order also calls for an inquiry proceeding to focus on the implications for the jurisdictional separations process of the introduction of new technologies, including video dialtone, into local exchange carrier networks; and

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) Communications Subcommittee has conducted a survey of state regulators views on video dialtone service, held a workshop on video dialtone cost allocations and reviewed parties' positions; and

WHEREAS, The workshop demonstrated that industry providers are using, or proposing to use, various inconsistent methodologies to jurisdictionally allocate video dialtone costs; and

WHEREAS, Uniform national technical, accounting and cost recovery standards for interconnection must be in place and enforced if there is to be any possibility of multiple providers of broadband services in a competitive marketplace; and

WHEREAS, The cost of deploying a nationwide broadband communications network should be allocated between the federal and state jurisdiction, as well as between regulated and non-regulated services, in an equitable and efficient manner; and

WHEREAS, The determination of whether intrastate investment by local exchange carriers is necessary and prudent properly resides with state Commissions, who must ensure that subscribers of basic services do not unnecessarily underwrite the costs of non-basic facilities; and

WHEREAS, The major portion of the plant of telephone companies is used commonly for both intrastate and interstate services, and a major portion of the telephone company's expense is incurred in the joint rendition of these services; and

WHEREAS, The Federal Pole Attachment Act (section 224 of the Communications Act of 1934) gives a state jurisdiction over the rates, terms and conditions of cable television system attachment to poles, ducts, conduits or right-of-way owned or controlled by a

utility if the state has certified to the FCC that such attachments are regulated in a way which considers the interests of cable television subscribers as well as the interests of utility customers; and

WHEREAS, Certain states have made such certifications and do presently have jurisdiction over cable system pole attachments; and

WHEREAS, The Third FNPRM seeks comment on whether LECs seeking to provide video dialtone service should be required to show in their video dialtone applications that video programmers have available reasonable access to pole or conduit space at reasonable charges and without undue restrictions on the use of pole or conduit space; and

WHEREAS, The states have a continuing interest in ensuring that control over pole attachments and conduit space is not used in an anti-competitive manner; and

WHEREAS, The FCC currently prohibits the acquisition by telephone companies of cable facilities in their service area for provision of video dialtone; and

WHEREAS, The FCC has recognized that some markets may be incapable of supporting two video delivery systems and that in these markets the prohibition may serve little useful purpose and that the prohibition in these markets would therefore effectively preclude the establishment of video dialtone service, thereby denying consumers the benefits of a common carrier video transmission facility capable of serving multiple video programmers; and

WHEREAS, The Third FNPRM seeks comments on whether the prohibition should be amended so that LECs would be permitted to purchase cable facilities in markets that meet certain criteria; and

WHEREAS, The states have a compelling interest in ensuring that consumers are able to benefit from the provision of video services while not being unduly disadvantaged by their location or the potential inability of the market to support two wire-based multi-channel video delivery systems; and

WHEREAS, The Third FNPRM seeks comments on whether the FCC legally can, and should, mandate preferential video dialtone access or rates for certain classes of programmers, or whether to permit LECs voluntarily to provide preferential treatment to certain programmers such as noncommercial educational programmers; and

WHEREAS, Some states have already addressed the issue of promoting telecommunications applications in education in various ways, including through the use of preferential rates; and

WHEREAS, The Subcommittee on Communications has initiated a process to comprehensively address the issues raised in the Third

FNPRM between now and the Winter Meetings in February 1995 and will be prepared to present a policy position for consideration by the Committee on Communications; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 106th Annual Meeting in Reno, Nevada, reiterates its recommendation that the FCC refer the jurisdictional allocation of video dialtone costs to the Federal State Joint Board for consideration and recommendation; and be it further,

RESOLVED, That the FCC, through the Federal State Joint Board process, create jurisdictional separations and cost allocation procedures for VDT to be consistently applied by the industry; and be it further,

RESOLVED, That the NARUC intends to fully address the jurisdictional separations issues regarding video dialtone service and other new technologies in the forthcoming Notice of Inquiry; and be it further,

RESOLVED, That the NARUC General Counsel be directed to request a limited extension of time until March 31, 1995 for the submission of comments in CC Docket No. 87-266 to address all of the issues raised in the Third FNPRM; and be it further,

RESOLVED, That the NARUC General Counsel be directed to provide comments in the FCC proceeding to effectuate this resolution.

Sponsored by the Committee on Communications
Adopted November 16, 1994
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