

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

In the Matter of the Application of

CAROLINA
TELEPHONE AND
TELEGRAPH COMPANY

File No. W-P-C-6999

For Authority under Section 214
of the Communications Act of 1934, as
amended, to construct, operate, own,
and maintain facilities and equipment
to provide video dialtone service
within geographically defined areas
in North Carolina

ORDER AND AUTHORIZATION

Adopted: December 23, 1994; Released: December 28, 1994

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. The Carolina Telephone and Telegraph Company (Carolina), a wholly-owned subsidiary of Sprint Corporation (Sprint), has filed an application pursuant to Section 214 of the Communications Act of 1934, as amended,¹ for authority to conduct a technical and market trial of video dialtone services in portions of Wake Forest, North Carolina.² It proposes to test hybrid fiber/coaxial facilities for the provision of video dialtone service for a period of two years, ultimately passing approximately 1,000 homes and businesses. The National Cable Television Association (NCTA) and the North Carolina Cable Television Association (NCCTA) have filed pleadings against Carolina's ap-

plication.³ For the reasons set forth below, we grant Carolina's application, subject to certain conditions and requirements, which are designed to protect the interests of video programmers, video dialtone subscribers, and telephone ratepayers.

II. BACKGROUND

2. In the *Second Report and Order*,⁴ the Commission adopted a regulatory framework whereby local telephone companies could participate in the video marketplace, without violating the statutory telephone company-cable television cross-ownership restrictions.⁵ The Commission defined "video dialtone" as local telephone company provision of a basic common carrier platform to multiple video programmers on a nondiscriminatory basis.⁶ The Commission also determined that carriers must file a Section 214 application before constructing video dialtone facilities.⁷

The Application

3. Carolina seeks authority to conduct a two-year video dialtone trial in Wake Forest, North Carolina to gain experience in, and test the technical feasibility of, delivering video signals over an advanced broadband network. Carolina contends that the trial will enable video programmers to obtain market and operational information. Carolina also seeks to gather data about the provision of non-video programming services and non-programming services to the extent it offers them.⁸ It seeks a two-year trial period because approximately 500 of the homes that it seeks to serve have not yet been constructed.

4. Carolina proposes to construct a broadband, hybrid fiber-coaxial cable network consisting primarily of fiber optic transport facilities, optical-electrical nodes, and coaxial cable to connect the nodes to subscribers' premises. It states that its network will offer up to 110 analog video channels over 750 megahertz of bandwidth, and that modulation and/or digital compression technology will give it the flexibility to transform each analog video channel into as many as six digital video channels as necessary to meet customer demand.⁹

¹ 47 U.S.C. § 214.

² Application of Carolina Tel. & Tel. Co., File No. W-P-C-6999, filed September 9, 1994 (Application).

³ NCCTA and NCTA filed petitions to deny the application on October 21, 1994. Carolina submitted a reply to the petitions on October 31, 1994. NCCTA and NCTA filed replies on November 9, 1994. Carolina submitted an *ex parte* letter on December 14, 1994.

⁴ Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, 7 FCC Rcd 5781 (1992) (*Second Report and Order*), *aff'd & modified on recon.*, FCC 94-269 (Nov. 7, 1994) (*VDT Recon Order*), *appeals pending sub nom. Mankato Citizens Tel. Co., et al. v. FCC*, No. 92-1404, *et al.* (D.C. Cir. Sept. 9, 1992).

⁵ One circuit court, the U.S. Court of Appeals for the Fourth Circuit, has found that the statutory telephone company-cable television cross-ownership restriction, codified at 47 U.S.C. § 533(b), violates the First Amendment. *Chesapeake & Potomac Tel. Co. v. United States*, No. 93-2340 (4th Cir. Nov. 21, 1994), *affirming* 830 F. Supp. 909 (E.D. Va. 1993). Federal district courts in four other circuits have also found the statutory cross-ownership restriction unconstitutional. *See NYNEX Corp. v. United States*, No. 93-323-P-C (Me. Dec. 8, 1994); *Ameritech*

Corp. v. United States, No. 93 C 6642 (N.D. Ill. Oct. 27, 1994); *BellSouth Corp. v. United States*, No. CV 93-B-2661-S (N.D. Ala. Sept. 23, 1994); *U S WEST, Inc. v. United States*, No. C93-1523R (W.D. Wash. June 15, 1994).

⁶ A "basic platform" is a common carriage transmission service coupled with the means by which customers (end users) can gain access to any or all video programming carried on that platform.

⁷ *Id.* at 5820, para. 72. Generally, Section 214 requires Commission authorization before a carrier extends a new line of interstate communication.

⁸ Carolina declares that its affiliates or other third parties may offer non-video programming services as permitted by the *Second Report and Order*. Carolina notes that non-video programming services may include news or stock market information services. Non-programming services may include billing and collection, order processing, video customer premises equipment (CPE), and inside wire installation and maintenance. Application at 2 n.4.

⁹ *Id.* at 5-6.

5. Carolina states that in addition to video dialtone service, the network will be capable of providing other video services, including movies on demand and interactive applications like games, home shopping, and health care services. Carolina further declares that it will not exercise any control or management in the selection, pricing, or packaging of the video programming. All channels will be made available to video programmers on a first-come, first-served basis. Carolina asserts that it is actively recruiting video programmers, and it anticipates that a mix of 80 analog channels and 180 digital channels will be sufficient to meet video programmer demand. Carolina states that it does not plan to charge video programmers for access to and service provided by the basic platform during the trial.¹⁰ It estimates that 35% to 70% of the 1,000 homes passed will subscribe to video programmer programming, depending on whether the incumbent cable operator becomes a video programmer on Carolina's video dialtone platform.¹¹

6. Carolina states that the proposed facilities will be used to provide video dialtone services and are not being built to supplement existing telephony. Carolina notes, however, that with enhancements, the facilities would be capable of offering telephony. Carolina also states that some common plant, consisting of fibers in common sheath, will be constructed for the video dialtone network, and portions of existing common plant, currently used for local exchange and exchange access telecommunications services, may be used for video dialtone.¹²

7. Carolina states that it will separately account for the incremental investments and expenses directly assigned to video dialtone service and the allocated costs, including overhead, of the common plant it employs. It proposes to allocate common costs to video dialtone by multiplying the installed costs of the common plant by the proportion of that plant to be used for video dialtone service. *e.g.*, the fraction of fibers in a fiber sheath that are used for video dialtone. It also declares that it will allocate half of the cost of pedestals and drops to video dialtone. It states that all investment specific, plant non-specific, and overhead expenses supporting the directly assigned and common costs attributed to video dialtone service will, in turn, be allocated under Part 36 separations rules, with the video dialtone share allocated to the interstate jurisdiction.¹³ Carolina estimates that the incremental cost of its proposed trial is \$5 million.¹⁴

III. DISCUSSION

8. Applications to construct video dialtone facilities and offer video dialtone services must satisfy both the Commission's video dialtone requirements and Section 214 of the Communications Act.

A. Video Dialtone Issues

9. Local telephone companies wishing to offer video dialtone service must make available a basic common carrier platform to multiple video programmers on a nondiscriminatory basis, and a means by which customers can access any and all of the video programming offered. The platform must provide "sufficient capacity to serve multiple video programmers." The basic platform must be available on a nondiscriminatory, unbundled basis, so that unaffiliated service providers may access the basic platform on the same terms and conditions as an affiliated entity and offer non-regulated or enhanced services in competition with any telephone company-provided non-regulated services. In addition, telephone companies are prohibited from selecting video programming or determining how programming is presented for sale to consumers, including making decisions concerning bundling or "tiering," or the price, terms, and conditions of video programming offered to consumers.¹⁵

10. Noting that no petitioner challenges Carolina's proposal as failing to provide a common carrier platform with sufficient capacity to serve multiple video programmers on a nondiscriminatory basis, we conclude that Carolina meets these requirements.¹⁶ Carolina states that its proposed network will be capable of offering up to 110 analog channels, and that it will make those channels available to video programmers on a first-come, first-served basis. It also states that it will use modulation, digital compression, or both to gain additional capacity if demand from video programmers for analog channels exceeds the initial analog capacity. We will require Carolina to notify the Chief of the Common Carrier Bureau of any anticipated or existing capacity shortfall that arises during the trial and of its plans for addressing such shortfall within thirty days of when Carolina becomes aware of anticipated shortfall and within five days after denying a video programmer access due to a capacity shortfall.¹⁷ Carolina will be required to expand system capacity to the extent that expansion is technically feasible and economically reasonable in the context of its trial. To the extent Carolina concludes that expansion of the platform's capacity during the trial is not technically feasible or economically reasonable, it must, at the time, explain in detail the basis for its determination.¹⁸

11. In its application, Carolina has not proposed to use the platform to provide, either directly or indirectly through an affiliate, video programming directly to subscribers during the trial. Carolina states that it will have no role in the selection, packaging, or pricing of video programming offered over the video dialtone network.¹⁹ Telephone company provision of video programming (if otherwise lawful) raises a number of regulatory issues not addressed in this record, which would need to be decided prior to permitting such activity.²⁰ Allowing Carolina to provide video programming in advance of resolving these issues would not serve the public interest. We therefore

¹⁰ It modifies this position in a subsequent letter, as noted below.

¹¹ *Id.* at 6, 8.

¹² *Id.* at 4,5.

¹³ *Id.* at 4-5, 9.

¹⁴ *Id.* at Attachment C.

¹⁵ *Second Report and Order*, 7 FCC Rcd at 5783, 5789, 5797, 5817, 5831, paras. 2, 14, 29, 69, 94; see *VDT Recon Order* at paras. 18, 30-33, 109.

¹⁶ NCTA does argue, however, that if Carolina intends to meet its capacity requirements using digital compression, it must identify the associated costs in its application. In response, Carolina states that the relevant costs were provided in Attachment C of its application. Carolina Reply at 6.

¹⁷ *VDT Recon Order*, at para. 38.

¹⁸ See *VDT Recon Order*, at para. 38.

¹⁹ Application at 6.

²⁰ 7 FCC Rcd at 5789, para. 14, 5817, para. 69.

conclude that the public inconvenience and necessity requires, at this time, a condition on this authorization that Carolina not, either directly or indirectly through an affiliate, provide video programming directly to subscribers on this video dialtone system without further action by the Commission.

B. Section 214 Issues

1. Bona Fide Trial

Comments

12. Both NCTA and NCCTA argue that Carolina's proposed trial is not truly a trial. NCCTA alleges that it is a permanent offering, merely characterized as a trial to avoid conventional regulatory and public scrutiny. NCTA argues that trials should not be used to gain an unfair competitive advantage.²¹

13. Both petitioners are particularly critical of Carolina's proposal not to charge video programmers for carriage. Both question the value of any marketing data that such a trial could provide. NCTA states that "[f]ree carriage may improperly induce the incumbent [cable operator] to lease Carolina's facilities . . . and anticompetitively induce subscribers to select the Carolina service over the incumbent." NCCTA argues that it is impossible to determine market demand for video dialtone service if that service is provided to programmers at no charge.²²

14. Carolina responds by stating its trial is both a technical trial and a market trial. Carolina intends to test various vendors' products and to develop operations and maintenance support systems. It also claims that it needs to offer carriage to video programmers at no charge because its trial is small, and video programmers will incur significant costs in bringing their signals to the Carolina network and acquiring interfaces to connect to the network. Moreover, it notes that video programmers will face the risk associated with testing several vendors' products in a small trial.²³

15. In response to petitioners' claims that Carolina's failure to charge video programmers will eliminate the market value of the trial, Carolina notes that video programmers will be free to charge their subscribers, which will enable them to gain market data on the levels of penetration they can achieve at different prices. It observes that video programmers would have no incentive to render their data meaningless by underpricing their offerings. Carolina explains that it will ask video programmers to share their data, to the extent they are legally permitted to, and that such data will help Carolina determine a price ceiling for what it can charge if and when it seeks to offer video dialtone commercially. Carolina also notes that it may provide, and will charge a fee for, non-video programming and non-programming services during the trial, which will permit it to gather market data regarding the

provision of these services.²⁴ Finally, Carolina notes that the Commission has previously allowed US West not to charge video programmers during its technical trial in Omaha, Nebraska.²⁵

16. In reply, NCTA states that it only objects to the provision of free carriage to programmers during the market trial, and not during the technical trial. Both NCTA and NCCTA argue that the purpose of a market trial is not to enable customer programmers to determine whether there will be demand by subscribers for their programming services, but rather to enable Carolina to determine whether there is sufficient demand by customer programmers for Carolina's video dialtone transmission service. NCTA questions what programmers would learn from this market trial that they have not already learned from previous trials. NCTA also observes that no programmers have filed in support of this market trial, even though they are the intended beneficiaries. Both also dispute Carolina's reliance on the Commission's grant of the US West trial as a relevant precedent for offering video programmers carriage free of charge. They note that in the US West trial, free service was only to be provided during the 6-month technical trial, not during the subsequent market trial, while Carolina intends not to charge for the entire two-year trial period. NCCTA also argues that the US West test was much smaller (based on homes passed as a percentage of the subscriber base) than the Carolina trial.²⁶

17. In an *ex parte* letter filed on December 14, 1994, Carolina reiterates that it is proposing both a technical trial and a market trial. It states that video programmers will not be charged during the technical trial, but that when the technical phase of the trial is satisfied, Carolina will, upon proper notification to the Commission, assess charges for the remainder of the trial.²⁷

DISCUSSION

18. The Communications Act requires the Commission "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nationwide" communications infrastructure.²⁸ The Commission also has a mandate under the Act to encourage technological innovation in communications and to expedite the introduction of new technology subject to other public interest considerations.²⁹ Significantly, in the Second Report and Order, the Commission found that it is in the public interest to encourage trials of video dialtone technology in order to fulfill its goal of promoting efficient investment in the national telecommunications infrastructure.³⁰

19. We conclude that Carolina's application is a *bona fide* proposal for a technical and marketing trial of video dialtone facilities. The Commission has repeatedly declined to set fixed standards regarding the size or duration of video dialtone proposals, but rather has found that a case-

²¹ NCCTA Pet. at 7-10; NCTA Pet. at 3.

²² NCTA Pet. at 3-4, 15; NCCTA Pet. at 10.

²³ Carolina Reply at 2.

²⁴ *Id.* at 2-3.

²⁵ *Id.* at 3-4 (citing US West Communications, Inc., 9 FCC Rcd 184, 188 para. 24 (1993) (*US West Trial*)).

²⁶ NCCTA Reply at 4, Exh. A at 5 n.16; NCTA Reply at 3.

²⁷ Letter from Warren D. Hannah, Director, Federal Regulatory Relations, Sprint to William F. Caton, Acting Secretary, Federal Communications Commission (Dec. 14, 1994).

²⁸ 47 U.S.C. § 151.

²⁹ 47 U.S.C. § 151, 157, 218.

³⁰ 7 FCC Rcd at 5836, para. 105; see *VDT Recon Order* at para. 3.

by-case review better serves the public interest.³¹ Moreover, the Commission has stated its preference not to interfere with carriers' decisions regarding technologies or services. Rather, it has stated that "through the trial process, carriers can be given a certain amount of flexibility to explore the commercial and technical viability of video dialtone."³² We find that a trial size of 1,000 homes is reasonable.³³ We also conclude that a two-year trial period is reasonable, given that half of the homes Carolina seeks to serve have not yet been constructed. We impose certain conditions on Carolina's authorization that are intended to protect telephone ratepayers and trial participants. To this end, we will require Carolina to inform video programmers, video dialtone subscribers, and all other participants in this trial that it is conducting a trial of video dialtone services, that the trial is limited to two years, and that Carolina, if it wishes to continue to offer video dialtone service on a commercial basis, must seek Commission approval.³⁴

20. In its *US West Trial* decision, the Commission permitted US West to provide video dialtone service to programmers at no charge during its technical trial, explaining that "the uncertainties of a trial posed by untested network components does not necessarily lend itself to charging for trial services."³⁵ Under that same rationale, we will permit Carolina to provide free carriage to video programmers during the technical stage of this trial. As Carolina has now stated that it will assess charges to programmers once the technical phase of the trial is completed, there is no need for us to consider whether Carolina could justify free carriage during the market phase of its trial. Rather, Carolina has agreed to notify the Commission when the technical phase of its trial is satisfied, and will then charge programmers for the remainder of the trial. Based on the trial authorizations we have already granted, we presume that twelve months is a reasonable period within which to compete a video dialtone technical trial. For this reason, we direct Carolina to report to the Chief, Common Carrier Bureau, nine months from the date it starts its technical trial, that it will be prepared to file a tariff to permit its marketing trial to begin one year from the date that its technical trial begins or to explain why its technical trial must continue beyond one year. The rates, terms, and conditions for the provision of video dialtone service during the second year of the trial will be governed by tariff.

2. Economic Justification

Comments

21. NCTA and NCCTA both argue that Carolina has provided insufficient information about its proposed video dialtone service to demonstrate that it is economically feasible and a prudent investment. NCCTA states that it cannot determine the reasonableness of the investment and operating costs for Carolina's proposed video dialtone sys-

tem because Carolina's data are 1) excessively aggregated, 2) fail to account for annual costs,³⁶ and 3) fail to deal adequately with common costs. It also criticizes Carolina for failing to provide revenue information, and asserts that Carolina's video dialtone trial will face a revenue deficiency of about \$1.5 million per year. NCCTA fears that video dialtone service providers will use their monopoly revenues from telephony to cross-subsidize their video dialtone services. NCTA states that Carolina has not explained how it intends to pay for the cost of its trial, particularly given that it proposes to offer free carriage to programmers. NCTA urges that Carolina not be permitted to impose the cost of its trial on ratepayers for other services. NCTA also charges that Carolina fails to include the cost of digital equipment in its cost estimates.³⁷

22. NCCTA charges that Carolina has not provided the information necessary to determine the reasonableness of its proposed allocation of common costs to video dialtone service. While NCCTA acknowledges that Carolina proposes to use Part 36 as a guide in making its allocations of the cost of common fiber plant, pedestals, and drops, it charges that Carolina has not identified the key components of its proposed common cost allocation scheme, the installed costs of common plant, the proportion of the plant to be employed for video dialtone service, the manner in which overhead expenses will be attributed to the video dialtone service, or the share of the costs to be allocated to video dialtone service. Both NCCTA and NCTA criticize Carolina's allocation of fiber based on percentage of fiber strands used for video dialtone and the allocation of half the cost of pedestals and drops, asserting that neither allocation is specifically authorized in Part 36 of the Commission rules. NCTA argues that "there is no principled way to allocate joint and common costs." NCTA urges the Commission to adopt video-dialtone specific cost allocation and anti-discrimination procedures in a rulemaking proceeding, rather than addressing these issues in the Section 214 authorization and tariff review processes.³⁸

23. In response, Carolina states that it will follow the new accounting safeguards adopted in the *VDT Recon Order*, and that Carolina will "pay for this trial to the extent revenues derived from the trial do not cover costs."³⁹ Carolina also states that its \$5 million cost is considerably less than the \$35 million cost of the US West trial, which the Commission felt US West could absorb without jeopardizing the interests of telephone customers. Carolina states that it will file any revisions to its Cost Allocation Manual that may be required for non-regulated components of the video dialtone service. In allocating common costs, it states that it followed the guidance of 47 C.F.R. Section 36.153 to assign the cost of cable on the basis of conduct cross sections, *i.e.*, strands. Furthermore, it states that it allocated all of that portion of costs to the interstate jurisdiction because the Commission provided for exclusive interstate jurisdiction over video services at the time of its applica-

³¹ See, *e.g.*, The Southern New England Telephone Co., FCC 97-297, released Nov. 22, 1994, (*SNET Trial*) at para. 12; *US West Trial* at 188 para. 22.

³² *SNET Trial* at para. 38.

³³ See, *e.g.*, *US West Trial* at 188 (approving technical trial of 2,500 and market trial of 60,000).

³⁴ This is consistent with our previous orders. See, *e.g.*, *SNET Trial*, at para. 13.

³⁵ *US West Trial*, at 188 n.56.

³⁶ NCCTA argues that Carolina's annual costs could be close to \$700,000 over the two-year period of the trial.

³⁷ NCCTA Pet. at 10-17; NCTA Pet. at 4-5, 6.

³⁸ NCCTA Pet. at 12; NCTA Pet. at 6-8.

³⁹ Carolina Reply at 5.

tion. It promises to modify its allocations if it develops any intrastate offerings. Carolina also explains that Attachment C of its application includes \$180,000 for material costs and \$63,000 for labor costs relating to digital equipment.⁴⁰

24. NCTA responds to these claims by asserting that existing regulations will not adequately protect against cross-subsidies and challenging Carolina's contention that its facilities will not be used in the provision of intrastate service. NCTA argues that Carolina will be providing both intrastate telephony and video dialtone services over its integrated facilities, and therefore must allocate some costs to the intrastate jurisdiction. NCCTA reiterates its view that Carolina's application provides insufficient information to establish the economic justification (for its proposed investment.)⁴¹

DISCUSSION

25. Petitioners ask the Commission to hold the application to a level of scrutiny and examination normally reserved for applications for commercial deployment of video dialtone service. Carolina proposes to conduct a trial involving only 1,000 homes for two years. Because of the experimental, limited nature of Carolina's proposal, we find that it is in the public interest to subject the economic support accompanying this trial application to a less exacting level of scrutiny than would apply to an application for permanent, commercial video dialtone service.⁴² We do this, in part, because any shortfall between revenues recouped and costs expended for a video dialtone trial will ultimately be borne by the carrier's shareholders. Regarding NCTA's request for a rulemaking proceeding to address video-dialtone specific cost allocation and anti-discrimination procedures, we note that we rejected this request in the *VDT Recon Order*.⁴³

26. We note that as of year end 1992, Carolina's total stockholders' equity exceeded \$139 million and its net revenues for 1992 were more than \$72 million.⁴⁴ Carolina represents its total costs for the trial to be approximately \$5 million. Even if we accept NCCTA's estimate that Carolina's application omitted an additional \$700,000 in annual costs over the two-year trial, the total risk Carolina would assume is less than \$6 million. We do not find that the estimated cost of the trial justifies denial of the application. Carolina has expressly agreed to cover its costs out of its own funds, rather than from ratepayers, to the extent that those costs exceed the revenues it collects from the trial. We conclude that Carolina is capable of absorbing the projected cost of the trial without jeopardizing the interests of telephone customers. We thus find the information provided by Carolina to be a sufficient showing of economic justification for this trial.

27. To ensure that video dialtone costs are not borne by ratepayers of other regulated interstate services, we will require Sprint to segregate all costs incurred in providing trial video dialtone service, including development costs and expenses, into subsidiary accounting records for each Part 32 account and to assign these costs to the video dialtone trial. These costs should include both the direct and shared costs of any facilities, including interoffice fiber, used for the provision of video dialtone service. As we have required for every other video dialtone trial authorization, we require that if these costs, including all incremental costs of video dialtone, are not recovered from future video dialtone services, they must be borne by Carolina and its sole shareholder, Sprint, rather than the ratepayers of other regulated services.⁴⁵ We will also require Sprint to create two sets of subsidiary accounting records: one to capture the revenues, investments, and expenses wholly dedicated to the provision of video dialtone, and the other to capture any revenues, investments, and expenses that are shared between video dialtone and the provision of other services. Sprint must file a summary of those records with the Commission on a quarterly basis.⁴⁶ Sprint is further required to keep subsidiary accounting records to identify, by each Part 32 account, the amount of plant that is replaced (that is, no longer used and useful) as a result of the deployment of video dialtone plant. In the event that investments made pursuant to this authorization are not deemed used and useful or deemed not to have been prudently incurred in the provision of interstate services, the Commission reserves the right to disallow the recovery of any or all such expenditures from interstate ratepayers. We take no position here concerning Carolina's proposed method for allocating its common costs; this allocation will be evaluated during the tariff review process.

28. The costs of non-common carrier and enhanced services, as well as video customer premises equipment (CPE) offered during the trial must be accounted for in accordance with Part 32 and Part 64 of the rules.⁴⁷ We require that, to the extent the accounting treatment of non-regulated components of the video dialtone trial is not already covered by Sprint's cost allocation manual (CAM), Sprint must revise its manual to cover them. All revisions must be filed within thirty days after release of this Order, and sixty days before providing non-regulated services related to video dialtone.⁴⁸ At a minimum, in its submission, we require Sprint to list all accounts affected by its provision of non-regulated services associated with its video dialtone trial, and also describe those services. All temporary CAM revisions related to the trial will be subject to public comment and Commission scrutiny. Sprint must file permanent revisions if and when it decides, and is authorized, to offer commercial video dialtone services. We emphasize that our decision here, and the conditions we attach to it, are

⁴⁰ *Id.* at 5-7.

⁴¹ NCTA Pet. at 4-5; NCCTA Reply Ext. at 11.

⁴² See Puerto Rico Telephone Company, DA 94-1384, released Dec. 5, 1994, at para. 39 (*PRTC Trial*); *SNET Trial*, at paras. 37, 39; *US West Trial* at 188 n.57; *Century Federal, Inc. v. FCC*, 846 F.2d 1479, 1481 (D.C. Cir. 1988).

⁴³ See *VDT Recon Order* at paras. 161-69.

⁴⁴ FCC Statistics of Common Carriers 1992/1993 134, 139 (1993).

⁴⁵ *PRTC Trial* at para. 41; *SNET Trial* at para. 29; New York

Tel. Co., 8 FCC Rcd 4325, 4329 at para. 23 (1993) (*NY Tel Trial*); The Chesapeake & Potomac Tel. Co. of Virginia, 8 FCC Rcd 2313, 2316 para. 13 (1993) (*C&P Trial*).

⁴⁶ *VDT Recon Order*, at para. 173. Copies of accounting records should be sent to the Chief, Accounting and Audits Division, Common Carrier Bureau. We note that these requirements are consistent with those imposed in other video dialtone trial authorizations. See, e.g., *PRTC Trial*, at para. 41; *SNET Trial*, at para. 29; *US West Trial*; *NY Tel Trial*; *C&P Trial*.

⁴⁷ 47 C.F.R. § 63.54(d)(2).

⁴⁸ See 47 C.F.R. § 64.903(b).

without prejudice to and in no way constrain any action that the Commission may take in later phases of the video dialtone proceeding or any other applicable rulemaking proceeding.

IV. ORDERING CLAUSES

29. Accordingly, IT IS ORDERED, that, pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and authority delegated to the Chief of the Common Carrier Bureau by Section 0.291(a) of the Commission's rules, 47 C.F.R. §0.291(a), the application of Carolina Telephone & Telegraph Company (File No. W-P-C-6999) IS GRANTED, and the applicant is authorized to construct and operate facilities and equipment to provide a video dialtone trial to approximately 1,000 homes in its Wake Forest, North Carolina service area for a period of two years from the date the system is operational and service is available to at least one end-user subscriber. We instruct Carolina to inform the Secretary of the Commission and the Chief of the Common Carrier Bureau, of the official start date of the technical trial and also of the official start of the marketing trial.

30. IT IS FURTHER ORDERED, that grant of the application for the trial proposed herein IS SUBJECT TO the following CONDITIONS:

a) That Carolina make available a basic common carrier platform offering sufficient capacity to serve multiple video programmers under the same terms and conditions and, as demand increases, undertake all reasonable steps to expand capacity to the extent technically feasible and economically reasonable in the context of this trial.

b) That Carolina notify the Chief, Common Carrier Bureau (with copies to the Chiefs of the Policy and Program Planning Division and the Domestic Facilities Division) within thirty (30) days of becoming aware of a capacity shortfall, or within five (5) days after denying a video programmer access to the video dialtone platform because of capacity limitations, whichever occurs first. If Carolina concludes that expansion of the platform's capacity for the trial is not technically feasible or economically reasonable, it must, at that time, explain in detail the basis for its determination.

c) That the trial be limited to approximately 1,000 residential and business customers, and the technical trial be conducted for a period not to exceed one year.

d) That Carolina inform participants in the trial, including both programmer-customers and video dialtone service subscribers, that Carolina is conducting a trial of video dialtone services, that the trial is limited to two years, and that Carolina may or may not offer video dialtone on a commercial basis after the conclusion of the trial.

e) That Sprint create two sets of subsidiary accounting records for each Part 32 account: one to capture the revenues, investments, and expenses wholly dedicated to the provision of video dialtone, and the other to capture any revenues, investments, and expenses that are shared between video dialtone and the provision of other services. Sprint must file three (3)

copies of the summary of those records for public inspection with the Secretary of the Federal Communications Commission on a quarterly basis. Two (2) copies of those summaries must also be served on the Chief, Accounting and Audits Division, Common Carrier Bureau. The Bureau will determine the content and format of these subsidiary accounting records as well as the quarterly reports. Sprint is further required to keep subsidiary accounting records to identify, by each Part 32 account, the amount of plant that is replaced (that is, no longer used and useful) as a result of the deployment of video dialtone plant. In the event that investments made pursuant to this authorization are not deemed used and useful or deemed not to have been prudently incurred in the provision of interstate services, the Commission reserves the right to disallow the recovery of any or all such expenditures from interstate ratepayers.

f) That Sprint file all revisions to its Cost Allocation Manual (CAM) within thirty (30) days after release of this Order, and sixty (60) days before providing non-regulated products or services related to video dialtone. Carolina must also list all accounts affected by its provision of non-regulated services associated with the video dialtone service, and must describe those services.

g) That Carolina not participate in any decisions concerning the selection, packaging, pricing, bundling, or tiering of video programming to end-users, absent prior Commission approval. This authorization does not permit Carolina, either directly or indirectly through an affiliate, to provide video programming directly to its subscribers.

h) That Carolina submit to the Chief, Common Carrier Bureau, at six month intervals during the trial, and within sixty (60) days of the end of the trial, a written report. The report must, among other things:

1) identify the capacity allocated to each video programmer customer and the identity of the programmer-customer;

2) include a statement from each video programmer or other service provider using Carolina's services stating whether that programmer/service provider believes it has been discriminated against by Carolina in any manner;

3) describe the video dialtone technology used during the trial. Carolina must include information on the components of the video dialtone system, the operation of video-on-demand, the quality of the video, the methods of accessing the platform, and the digital technology incorporated into the network and its impact on capacity;

4) to the extent known, evaluate the market for video dialtone service, providing penetration rates on a monthly basis, and describing consumer interest in on-demand video services and consumer willingness to pay for video dialtone service:

5) detail the costs, both direct and common, that Carolina has assigned or allocated to the trial, broken down into subsidiary accounting records; and,

6) include any published commentary of which Carolina is aware regarding the trial.

i) That Carolina report to the Chief, Common Carrier Bureau, nine months from the date it starts its technical trial, that it will be prepared to file a tariff to permit its marketing trial to begin one year from the date that its technical trial begins or to explain why its technical trial must continue beyond one year.

31. IT IS FURTHER ORDERED, that pursuant to Section 214(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(c), the grant of Carolina's application to provide video dialtone service is subject, from the date of release of this grant, to the conditions contained herein, and is also subject to any Commission rules or orders that result from any existing or future proceeding or proceedings that address video dialtone cost allocations, jurisdictional separations, and pricing issues. Failure of the Carolina Telephone & Telegraph Company to decline this authorization as conditioned within thirty-one (31) days from its release date will be construed as formal acceptance.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M. H. Wallman
Chief, Common Carrier Bureau