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March 18, 1996

Via Federal Express

Secretary
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, Florida 32399-0850

*Re: America's Carriers Telecommunication Association
Petition for Declaratory Ruling, Institution of
Rulemaking and Injunctive Relief*

960355-T.I

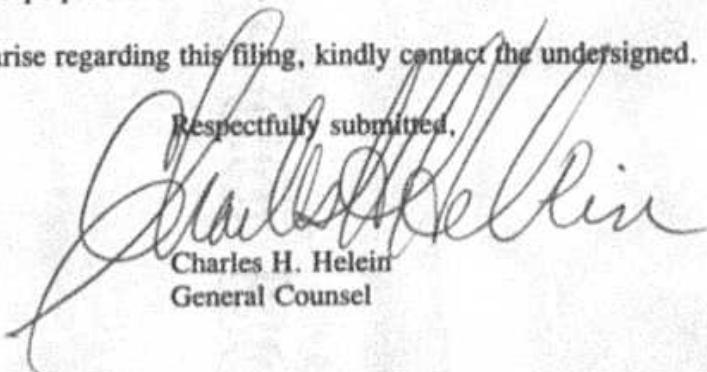
Ladies and Gentlemen:

Enclosed for filing, on behalf of America's Carriers Telecommunication Association ("ACTA"), is an original and ten (10) copies of ACTA's Petition for Declaratory Ruling, Institution of Rulemaking and Injunctive Relief.

An additional copy of this filing has been enclosed to be date-stamped and returned in the enclosed postage prepaid envelope provided.

Should any questions arise regarding this filing, kindly contact the undersigned.

Respectfully submitted,



Charles H. Helein
General Counsel

CHH/sh
Enclosures

DOCUMENT NUMBER-DATE

03258 MAR 19 96

FPSC-RECORDS/REPORTING

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION
Tallahassee, Florida 32399-0850

In the Matter of)

THE PROVISION OF INTRASTATE)
TELECOMMUNICATIONS SERVICE VIA THE)
"INTERNET" BY NON-TARIFFED, UNCERTIFIED)
ENTITIES)

AMERICA'S CARRIERS TELECOMMUNICATION)
ASSOCIATION ("ACTA"),)
Petitioner)

PETITION FOR DECLARATORY RULING,)
INSTITUTION OF RULEMAKING, and)
INJUNCTIVE RELIEF AGAINST:)

VocalTec, Inc.; Internet Telephone)
Company; Third Planet Publishing Inc.;)
Camelot Corporation; Quarterdeck)
Corporation; and Other Providers of Non-tariffed,)
and Uncertified Interexchange Telecommunications)
Services,)
Respondents.)

PETITION FOR DECLARATORY RULING,
INSTITUTION OF RULEMAKING, AND INJUNCTIVE RELIEF

America's Carriers Telecommunication Association ("ACTA"), by its attorneys, submits this Petition for Declaratory Ruling, for Institution of Rulemaking Proceedings, and for Injunctive Relief. In support of this petition, the following is shown.

DOCUMENT NUMBER-DATE

03258 MAR 19 88

FPSC-RECORDS/REPORTING

STANDING

ACTA is a national trade association of competitive interexchange, non-dominant telecommunications companies. Its members provide interexchange telecommunications services on an intrastate, interstate and international basis to the public at large.

Some of its members also act as underlying (or wholesale) carriers providing network facilities, equipment and service to other member carriers which permits telecommunications services to be resold to the public. Other ACTA members supply facilities and equipment to member and nonmember wholesale and resale carriers.

ACTA's carrier members must be certificated and tarified before the Florida Public Service Commission (the "Commission"), most other state regulatory commissions, and the Federal Communications Commission (the "FCC") in order to render their telecommunications service to the public. In addition, ACTA carrier members are subject to the requirements of Florida and other state and federal laws and regulations which prohibit engaging in unreasonable practices and/or unduly discriminatory conduct.

ACTA carrier members are required to pay, directly or indirectly, various fees and charges in order to render their services to the public. Filing fees and annual fees are levied by Florida, most states and the FCC.

In addition, Florida, like most states and the FCC, requires interexchange carriers to assess and collect from the using public specific charges to support various regulatory policies and programs used to sustain and advance state and national goals for telecommunications.

Entities, like those which are described hereinafter, which do not comply with or operate subject to the same statutory and regulatory requirements as ACTA's carrier members, distort

the economic and public interest environment in which ACTA carrier members and nonmembers must operate. Continuing to allow such entities to operate without complying with or being subject to the same legal and regulatory requirements as ACTA carrier members threatens the continued viability of ACTA's members and their ability to serve the public and acquit their public interest obligations under Florida law.

ACTA's membership includes several carriers and others resident in Florida. In addition, most carrier members of ACTA are certificated by the Commission and provide service subject to, and in compliance with, Florida law and regulation. As the appointed representative of its members charged with advancing their economic interests and assisting in achieving and maintaining their legal and regulatory compliance in the public interest, ACTA has standing to file and prosecute this petition.¹

STATEMENT OF FACTS AND BACKGROUND

A growing number of companies are selling software for the specific purpose of allowing users of the Internet to make free or next to free local, interexchange (intraLATA, interLATA) telephone calls using the user's computer². One of the Respondents, VocalTec, Inc., advertises the ability of its software, called "Internet Phone," to connect any user of "Internet Phone" with any other user of "Internet Phone" anywhere in the world. The software enables users to

¹ On March 4, 1996, ACTA filed a similar petition with the Federal Communications Commission ("FCC"). That petition addresses the same issues involved with interstate and international service.

² The user must hook up a microphone to his computer and either a headset or speakers.

audibly talk with one another in real-time. Respondents make a one-time charge for the software, but users incur no other charges for making local or long distance telephone calls to any other "Internet Phone" user in the world (except for whatever the user already pays monthly to whomever provides them Internet access).

ASSERTION AND ENFORCEMENT OF JURISDICTION

ACTA submits that it is incumbent upon the Commission to exercise jurisdiction over the use of the Internet for unregulated intrastate telecommunications services. As a first step, ACTA submits that the Commission may deem it appropriate to issue a declaratory ruling officially establishing its interest in and authority over intrastate telecommunications services using the Internet.

Secondly, ACTA submits that the Commission has an obligation to address on a focused basis the ongoing, unregulated and unauthorized provisioning of essentially free telecommunications services, as part of its general charter set out in Fla. Stat. § 364.01. Subsection (2) of the statute gives exclusive jurisdiction in all matters set forth therein to the Commission in regulating telecommunications companies. Subsection (3) contains a finding that competition in the communications services is in the public interest; a stated reason therefor is to encourage investment in the telecommunications infrastructure. Subsection (4)(g) provides that the Commission shall use its exclusive jurisdiction to "[e]nsure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior" The Commission should ask the circuit court to temporarily enjoin the Respondents from arranging for, implementing, and marketing non-tariffed, uncertified telecommunications services

without first complying with applicable provisions of Florida law and regulations, to include Fla. Stat. § 364.04, § 364.08, and § 364.33.

Further, ACTA submits that it is incumbent upon the Commission to examine and adopt rules, policies and regulations governing the uses of the Internet for the provisioning of telecommunications services. The use of the Internet to provide telecommunications services has an impact on the traditional means, methods, systems, providers, and users of telecommunications services. The unfair competition created by the current unregulated bypass of the traditional means by which local and long distance services are sold could, if left unchecked, eventually create serious economic hardship on all existing participants in the traditional telecommunications marketplace and the public which is served by those participants. Ignored, such unregulated operations will rapidly grow and create a far more significant and difficult to control "private" operational enclave of telecommunications providers and users. Such development will clearly be detrimental to the health of Florida's telecommunications industry and the maintenance of Florida's telecommunications infrastructure.

ARGUMENT

The Commission's Authority to Regulate Respondents as Intrastate Telecommunications Carriers. ACTA submits that the Respondents, as purveyors of Internet intrastate local and long distance services, are intrastate telecommunications companies, subject to state regulation.³ Fla. Stat. § 364.02 contains the following definitions:

³ ACTA asserts that Respondents are also interstate telecommunications carriers, subject to regulation by the FCC.

12) "Telecommunications company" includes every corporation, partnership, and person . . . offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. . . .

(13) "Telecommunications facility" includes . . . apparatus, property . . . used and operated to provide two-way telecommunications service to the public for hire within this state.

Florida law requires certificates of necessity to be obtained prior to operating telecommunications facilities. Fla. Stat. § 364.33. Florida law prohibits a telecommunications company from, directly or indirectly, giving any free or reduced service between points within the state. Fla. Stat. § 364.08 (2). Each telecommunications company in Florida is to contribute its fair share to the support of the universal service objectives. Fla. Stat. § 364.025(2). It would appear that Respondents are telecommunications companies currently operating without having complied with the requirements of Florida telecommunications laws and regulations.

The issue of a regulatory body's authority to regulate a technology so new that it is not specifically discussed in current law or regulations is not one of first impression in this country. In 1968's *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968), the Supreme Court was presented the issue of whether the FCC had the authority to regulate cable television, then a new technology not specifically addressed in law or regulation. At that time, cable television (referred to as CATV) characteristically neither produced its own programming nor paid producer; or broadcasters for use of the programming which cable redistributed. (Similarly, Respondents here pay no one for the use of telephone transmission lines.) The Court recited the FCC's concern that unregulated competition by cable might destroy or degrade the service offered by local broadcasters and exacerbate the financial difficulties of UHF and educational television broadcasters. The Supreme Court, affirming the FCC's authority to regulate the new

cable technology, stated that "the [Federal Communications] Commission has reasonably concluded that regulatory authority over CATV [was] imperative if it [was] to perform with appropriate effectiveness certain of its other responsibilities." *Id.* at 173. While this decision concerned federal jurisdiction, ACTA submits that its logic and common sense apply equally to the jurisdictional scope of the Florida Commission and defines appropriately the jurisdictional scope of Commission authority to act in the public interest of the citizens of Florida.

The Commission's Authority to Seek Injunctive Relief. ACTA submits that to continue to allow these companies to engage in giving long distance service away, in violation of Fla. Stat. § 364.08 (2), would impair the operations of its members, as they cannot compete with companies who pay no transmission charges. The Commission is authorized, pursuant to Fla. Stat. 364.015⁴, to seek injunctive relief in circuit court.

Other Issues Necessitating the Commission's Regulation of Long Distance via the Internet. The Commission has a duty to oversee and effect its long-standing duties under Florida telecommunications laws and regulations. The Commission should take action in order to preserve fair competition and the health of the Florida's telecommunications industry. Absent a healthy industry, with users paying telecommunications companies a fair price for telecommunications services, the Commission's duty to effectively promote universal service cannot be achieved. Absent action by the Commission, the new technology could be used to

⁴ The Legislature finds that violations of commission orders or rules, in connection with the impairment of a telecommunications company's operations or service, constitute irreparable harm for which there is no adequate remedy at law. The commission is authorized to seek relief in circuit court including temporary and permanent injunction, restraining orders, or any other appropriate order. . . . Fla. Stat. 364.015 (1995).

circumvent restrictions traditionally found in tariffs concerning unlawful uses, such as gambling, obscenity, prostitution, drug traffic, and other illegal acts.

INFORMATION REGARDING RESPONDENTS

ACTA does not possess a listing of all the companies providing free long distance calls via computer software. However, ACTA is aware of at least one such company resident in Florida:

Company:	Internet Telephone Company Boca Raton, FL Telephone (407) 989-8503
Product:	WebPhone

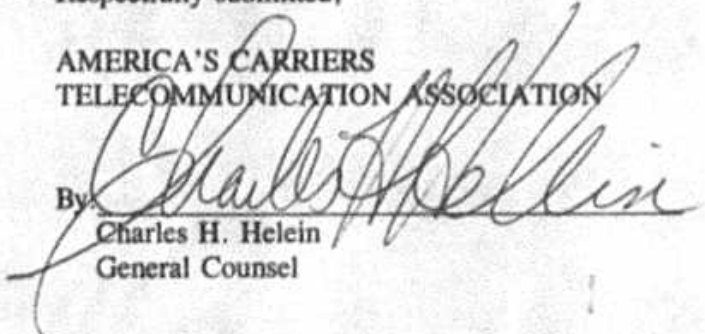
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CONCLUSION

Permitting long distance service to be given away is not in the public interest and is a violation of Florida law. Therefore, ACTA urges the Florida Public Service Commission to exercise its jurisdiction in this matter and: issue a declaratory ruling establishing its authority over intrastate telecommunications services using the Internet; seek a temporary injunction to immediately stop the sale of this software in Florida pending the Respondents' compliance with Florida laws; and institute rulemaking proceedings defining permissible intrastate communications over the Internet.

Respectfully submitted,

AMERICA'S CARRIERS
TELECOMMUNICATION ASSOCIATION

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Dated: March 18, 1995