UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications and Information
Washington, D.C 20230

May 8, 1996

The Honorable Reed Hundt
Chairman
Federal Communication Commission
Room 814
1919 M Street, N.W.
Washington D.C. 20554

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Re: RM 8775

Dear Chairman Hundt:

This letter addresses the petition for rulemaking filed before the Commission by America's Carriers Telecommunication Association (ACTA) in March 1996. ACTA asks the Commission to: (1) order Internet software providers to "immediately stop their unauthorized provisioning of telecommunications software"; 2) confirm the Commission's authority over interstate and international telecommunications services offered over the Internet; and 3) institute rules to govern the use of the Internet for providing telecommunications services.

On behalf of the Administration, NTIA strongly urges the Commission to deny the ACTA Petition. The Petition not only mischaracterizes the existing law, but also reflects a fundamental misunderstanding of the way in which the Internet operates and of the services now making use of the Internet.

ACTA requests that the Commission stop firms such as the Respondents from selling software that enables "a computer with Internet access to be used as a long distance telephone, carrying voice transmissions, at virtually no charge for the call."[1/] ACTA asserts that such firms are common carrier providers of telecommunications services that should not be allowed to operate without first obtaining a certificate from the Commission.[2/]

That argument is wrong. The Respondents provide their customers with goods, not services. Although the software that those firms sell does enable individuals to originate voice communications, all of the actions needed to initiate such communications are performed by the software users, rather than the vendors. At no time do the Respondents engage in the "transmission" of

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1/ ACTA Petition at i.

2/ Id. at 6-7.

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information, which, according to the Telecommunications Act of 1996, is the sine qua non of both a telecommunications service and a telecommunications carrier.[3/] In that critical sense, the Respondents are no more providing telecommunications services than are the vendors of the telephone handsets, fax machines, and other customer premises equipment that make communications possible.

ACTA also asks the Commission for a declaratory ruling "confirming its authority over interstate and international telecommunications services using the Internet."[4/] In fact, as the Federal Networking Council pointed out in comments filed on May 4, there are no telecommunications services currently being offered via the Internet. The services that now involve the Internet are more likely to be "enhanced," or information services over which the Commission has disclaimed jurisdiction under the Communications Act. The Commission decision in the 1980's not to regulate enhanced services was a wise one that has conferred substantial benefits on American consumers. The Telecommunications Act of 1996 in no way requires a change in that decision.

The Internet now connects more than 10 million computers, tens of millions of users, and is growing at a rate of 10-15 percent a month. This growth has created opportunities for entrepreneurs to develop new services and applications such as videoconferencing, multicasting, electronic payments, networked virtual reality, and intelligent agents. Perhaps more importantly, it creates a growing number of opportunities for consumers to identify new communication and information needs and to meet those needs. The Commission should not risk stifling the growth and use of this vibrant technology in order to prevent some

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3/ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 3(a) (amending Section 153 of the Communications Act of 1934 to add new definitions of "telecommunications," "telecommunications service," and "telecommunications carrier.")

4/ ACTA Petition at 6. While ACTA claims the Commission has jurisdiction to regulate the Internet pursuant to Section 1 of the Communications Act, citing United States v. Southwestern Cable Co., 392 U.S. 157 (1968), ACTA also acknowledges that such jurisdiction is limited to actions ancillary to the effective performance of its specific responsibilities under other parts of the Act. Id. at 5,7-8. ACTA suggests that unregulated growth of the Internet presents "unfair competition" to Title II regulated interexchange carriers that "could, if left unchecked, eventually create serious economic hardship on all existing participants in the long distance marketplace" and could be "detrimental to the health of the nation's telecommunications industry and the maintenance of the nation's telecommunications infrastructure." Id. at 4, 5. Voice telephony via the Internet, however, is still a limited and cumbersome capability: both parties to the call need computers and must have compatible software. Moreover, there is no assurance that a call placed will be completed or not interrupted. While the technology involved may improve rapidly, presently there is no credible evidence to justify Commission regulation of the Internet.

undemonstrated harm to long distance service providers. If Internet-based services eventually develop to an extent that raises concerns about harm to consumers or the public interest, the Commission would have ample time to more fully address the issue. Now is not that time.

NTIA, therefore, urges the Commission to reject the ACTA petition without delay.

Larry Irving

Assistant Secretary for
Communications and Information

cc: The Honorable James H. Quello
The Honorable Rachelle B. Chong
The Honorable Susan Ness