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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition for Declaratory Ruling,)
Special Relief, and Institution)
of a Rule Making Proceeding by)
America's Carriers Telecommunications)
Association)
)

RM No. 8775

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**JOINT REPLY COMMENTS OF
VOCALTEC LTD. AND
QUARTERDECK CORPORATION**

VocalTec Ltd. ("VocalTec") and Quarterdeck Corporation ("Quarterdeck:") (collectively, the "Respondents"), by its attorneys, submit these reply comments in the above-captioned proceeding.

REPLY COMMENTS

- I. The Overwhelming Majority of Commenters Oppose ACTA's Request for the Commission to Assert Jurisdiction over IVSDs and Regulate IVSDs as Telecommunications Carriers

Boiled down to its essence, the ACTA Petition seeks the following relief from the Federal Communications Commission ("Commission"): that the Commission assert jurisdiction over certain Internet Voice Software Developers

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("IVSDs") and regulate IVSDs as Telecommunications Carriers, as defined by the Communications Act of 1934, as amended.¹ Among the hundreds of comments submitted in response to the ACTA Petition -- which ranged from computer hobbyists, Regional Bell Operating Companies, interexchange carriers ("IXCs"), computer software developers, the National Telecommunications and Information Administration ("NTIA") and information service providers -- only one commenter other than ACTA itself supported the fundamental relief sought by the ACTA Petition.² Accordingly, the Commission should avoid taking any decision substantially at variance with the record in this proceeding because it would likely be deemed arbitrary and capricious by a reviewing court.

As a threshold matter, the Respondents observe that the scope of the ACTA Petition's fundamental request is very narrow. Nevertheless, many of

¹ 47 U.S.C. § 153(a)(2)(49). The Respondents support the Reply Comments of the Joint Parties filed in this proceeding to the extent that they share the view of the Respondents that the ACTA Petition should be denied.

² See LDDS WorldCom ("LDDS"). If any industry could be expected to support the ACTA Petition, it would be the Telecommunications Carriers. Nevertheless, a large number of Telecommunications Carriers *unanimously opposed* the fundamental relief sought by the ACTA Petition. See, e.g., Comments of the United States Telephone Association, Comments of Pacific Bell and Nevada Bell, Comments of Sprint Corporation, Comments of AT&T. In addition, although the Telecommunications Resellers Association ("TRA") contended that "voice telephony" providers should be regulated as IXCs, it explicitly conceded that "TRA believes that the Commission can reach only Internet access providers in exercising its jurisdiction and cannot direct the actions of software providers." Comments of TRA, p. 6, n. 8.

the commenting parties, including ACTA's comments filed in response to its own petition, seek to significantly broaden the scope of the proceeding.³ For the Commission to fully address all of these issues, however, would be tantamount to launching a "Computer IV" inquiry. Yet there is *no* need for the Commission to commence such a Computer IV inquiry to resolve the narrow issue raised by the ACTA Petition.⁴

II. ACTA's Claim that IVSDs Hold Themselves Out as Common Carriers Is Inaccurate and Should be Rejected

To support its argument that IVSDs should be regulated as common carriers, ACTA inaccurately contends that IVSDs "hold themselves out to the public as offering long distance telecommunications services as part of [sic]

³ See, e.g., Comments of Sprint Corporation, Comments of Pacific Bell and Nevada Bell, Comments of Southwestern Bell Telephone Company, Comments of USTA (contending that the Commission should address the issue of access charge reform in this proceeding); Comments of CompuServe (discussing the deregulated status of enhanced services); Comments of American Telegram Corporation (requesting that the Commission assert jurisdiction over online service providers without even mentioning IVSDs), and Comments of ACTA (improperly arguing in this proceeding that IVSDs should contribute to the Universal Service Fund. ACTA failed to make this contention in its own comments that it filed in the pending Universal Service rulemaking proceeding).

⁴ Indeed, the narrow RM 8775 is not the proper forum nor is this year, when the Commission is consumed with implementing the Telecommunications Act of 1996, the proper time for such a Computer IV-like inquiry.

bundle of services which may include software, online services, etc."⁵ First, this contention is legally irrelevant because IVSDs have been deemed by law, i.e., the Communications Act, not to be common carriers.⁶ Second, IVSDs are not common carriers in fact because they do not hold themselves out as "carrier[s] for hire, in interstate or foreign communications by wire or radio."⁷ Rather, at the most, IVSDs hold themselves out in manner similar to manufacturers and distributors of customer premises equipment ("CPE").⁸ Indeed, there is no substantive difference between the marketing practices of IVSDs and those of computer microphone manufacturers, the equipment of which is also used to

⁵ ACTA Comments at 15.

⁶ See 47 U.S.C. § 223(e)(6). If other sections of the Communications Act were intended to treat Interactive Computer Services (including Access Software Providers) as carriers, then Congress would have had no basis to clarify in Section 223(e)(b) that such entities should not be regulated as common carriers.

⁷ 47 U.S.C. § 153(h).

⁸ The marketing of computer equipment or CPE does not legally compel the equipment manufacturer/developer to be treated as a provider of domestic and international telecommunications services. Similarly, the Comments of LDDS are flawed for failing to recognize that IVSDs are not service providers, but rather merely developers/distributors of equipment which is functional only if the consumer subscribes to third party service providers. See generally Comments of LDDS. As stated by numerous commenters, even if the Commission could assert ancillary jurisdiction over IVSDs, IVSDs are substantially similar to CPE and should not be regulated by the Commission. See, e.g., Joint Comments of VocalTec, Ltd and Quarterdeck Corporation, Comments of Third Planet Publishing, Inc. and FreeTel Communications, and Comments of the Commercial Internet eXchange Association.

communicate over the Internet provided that the same consumer purchases other necessary equipment and services sold by third parties.

CONCLUSION

For the reasons stated above and described in the Respondents comments in this proceeding, the record in this proceeding does not support ACTA's request. Thus, the Respondents recommend that based on the record developed in this proceeding, the Commission concur with the nearly unanimous opinion of the commenters and deny the relief requested by the ACTA Petition.

Respectfully submitted by:

VOCALTEC LTD AND
QUARTERDECK CORPORATION

By: 
Antoinette Cook Bush
Richard A. Hindman
Marc S. Martin

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7000

Its Attorneys

Date: June 10, 1996

Certificate of Service

I, Gaston de Béarn, do hereby certify that copies of the foregoing Joint Opposition were sent via hand delivery on Monday, June 10, 1996 to the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

William E. Kennard, Esq.
General Counsel
Office of General Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 614
Washington, D.C. 20554

Regina Keeney, Esq.
Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

Robert M. Pepper, Chief
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W.
Room 822
Washington, D.C. 20554

Wanda Harris
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

William F. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C., 20554

ITS, Inc.
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037

The Honorable Larry Irving*
Assistant Secretary for
Communications and Information
United States Department of Commerce
National Telecommunications and Information
Administration
Washington, D.C. 20230

Charles H. Helein, Esq.*
Helein & Associates, P.C.
c/o America's Carriers Telecommunication
8180 Greensboro Drive
Suite 700
McLean, VA 22102

Leon M. Kestenbaum*
Sprint Corporation
1850 M Street, N.W., Suite 1110
Washington, D.C. 20036

Robert B. McKenna*
US West, Inc.
Suite 700
1020 19th Street, N.W.
Washington, D.C. 20036

Lucille M. Mates*
Pacific Bell and Nevada Bell
140 New Montgomery Street, Rm. 1529
San Francisco, CA 94105

Helen E. Disenhaus*
Swidler & Berlin, Chartered
c/o Business Software Alliance
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Jack Krumoltz*
Microsoft Corporation
Law and Corporate Affairs Department
5335 Wisconsin Avenue, N.W., Suite 600
Washington, D.C. 20015

Ronald L. Plessner*
Piper & Marbury
c/o Commercial Internet eXchange Association
1200 19th Street, N.W.
Seventh Floor
Washington, D.C. 20036

Jeffrey Blumenfield*
Blumenfield & Cohen
c/o Netscape Communications
1615 M Street, N.W.
Suite 700
Washington, D.C. 20036

Randolph J. May*
Sutherland, Ashbill & Brennan
Compuserve, Inc.
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Mark C. Rosenblum*
AT&T Corp
Room 3245F3
295 North Maple Avenue
Basking Ridge, NJ 07920

Catherine R. Sloan*
WORLDCOM, INC.
d/b/a LDDS WorldCom
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Charles C. Hunter*
HUNTER & MOW, P.C.
c/o Telecommunications Resellers Association
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006

Neal J. Friedman*
PEPPER & CORAZZINI, L.L.P.
c/o Third Planet Publishing, Inc.
200 Montgomery Building
1776 K Street, N.W.
Washington, D.C. 20006

Mary McDermott*
UNITED STATES TELEPHONE ASSOCIATION
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

Roger Meyers*
AMERICAN TELEGRAM CORPORATION
9230 Olympic Boulevard
Beverly Hills, CA 90212


Gaston de Béarn

* Via first-class mail.