

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

In the Matter of)
)
Telecommunications Relay Services And Speech-to-) Docket 98-67
Speech Services for Individuals with Hearing and) Docket 03-123
Speech Disabilities)

To: Chief, Consumer and Governmental Affairs Bureau

AMENDMENT TO WAIVER REQUEST

Hands On Video Relay Service, Inc. (“Hands On”), by its counsel, amends its pending petitions for a waiver of certain of the Commission’s rules governing the provision of Video Relay Service (“VRS”). This amendment to waiver request addresses the issues of 24 hour VRS service and the VRS speed of answer requirement.

Hands On provides VRS, through contract, to two of the major interstate Telecommunications Relay Service (“TRS”) providers, AT&T Corp. (“AT&T”) and MCI. Hands On is also a certified provider of Video Relay Service for the State of Washington Telecommunications Relay Service program. Hands On has been providing VRS since July of 2002, originally in a developmental mode, and since November of 2002 under contract. Thus, Hands On is directly affected by the Commission’s VRS requirements.

On September 22, 2003, Hands On submitted a request for extension of certain waivers of the TRS rules and a request for clarification of certain other TRS requirements as they pertain to VRS. Among the rules for which Hands On requested waiver were the TRS requirements that VRS be provided on a 24 hour basis and that 85 percent of calls be answered within 10 seconds. Hamilton Telephone, another VRS provider, also sought similar waivers of the TRS requirements as they pertain to VRS. On November 25, 2003, Communication Service for the Deaf, Inc. (“CSD”),

another VRS provider, submitted its Ex Parte Amendment to Comments on Petitions for VRS waivers (“Amended Comments”). CSD had previously supported Hands On and Hamilton’s waivers requests. *See* CSD’s October 20, 2003 Comments in this proceeding. In its November 25, 2003 Amended Comments, CSD makes some very important points.

CSD points out that VRS provides greater functional equivalency than traditional TRS because it allows deaf and hard of hearing persons who use American Sign Language to telecommunicate in their natural language. Amended Comments at 2. CSD further explains that the Commission initially declined to make VRS mandatory due to technological uncertainties regarding the service when reimbursement was originally authorized in 2000. Amended Comments at 3. CSD further explains that while the Commission’s decision not to mandate VRS was the correct one in 2000, now in 2003, many of those technological uncertainties are ameliorated or resolved. *See* Amended Comments at 3-4. CSD concludes that it is time for re-examination of the speed of answer and 24-hour, seven days a week waivers. Amended Comments at 4.

Hands On agrees. When the Commission approved reimbursement of VRS, very little VRS was provided, and there was only one provider. Moreover, what VRS was provided was provided via ISDN lines from public locations, not over the Internet. Thus, demand for the service was severely restricted. Since that time, VRS demand has grown exponentially. The latest report from NECA indicates that in October of 2003 there were more than 360,000 VRS minutes reported by six providers. Just recently, Hands On has become a seventh, independent provider as a result of its inclusion in the Washington State TRS program. Each of these providers provide service over Internet platforms in addition to any ISDN service they may provide. Indeed, now virtually all VRS is provided via the Internet..

Demand for VRS service continues to grow at a high rate. The October 2003 NECA report shows that VRS demand is almost double NECA's prediction of earlier this year. Plainly, demand for VRS has increased such that VRS is no longer a nascent service. Public comment in the Commission's TRS dockets (98-67 and 03-123) show heavy reliance on VRS in meeting the telecommunications needs of the deaf and hard of hearing community. Hands On has been providing the service commercially for more than a year. Hands On knows of no reason why it cannot provide the service on a 24 hour basis, seven days a week. Hands On has no infrastructure problem. Moreover, demand exists for 24/7 VRS service. Hands On's call tracking program shows call attempts being made on its system late at night when it is not providing service. Those calls eventually are abandoned when callers either give up in frustration or realize that Hands On is not providing service during those hours. The only issue Hands On has with respect to 24/7 operation is one of cost. The present VRS reimbursement rate of \$7.751 does not allow Hands On to provide 24/7 service.

Similarly, Hands On can technically meet the 85/10 TRS speed of answer requirement. Its only limiting factor again is cost. Hands On cannot provide 85/10 speed of answer at the \$7.751 interim VRS rate the FCC has set.

Although Hands On does not purport to speak for all VRS providers, it is apparent from CSD's Amended Comments and from the foregoing discussion that no technical issues exists which prevents VRS from being provided on a 24/7 basis on meeting the 85/10 speed of answer requirement. Certainly, the record of this proceeding does not indicate that any carrier is incapable of providing VRS without these two waivers. Through Hands On (and its carrier partners) and CSD (and its carrier partner), virtually all state TRS programs are covered. The only issue in providing

full functional equivalence in terms of 24/7 operation and an adequate speed of answer for VRS is cost.

In connection with the costing issue, Hands On is in complete agreement with CSD that a negative byproduct of the interim reduction in the VRS cost recovery rate is that it leaves VRS as a less than functionally equivalent service. Hands On has had to cut its costs so drastically that average wait times exceed one minute, and dropped calls have skyrocketed.¹

¹ Indeed, Hands On recently analyzed its call center staffing using the commercial Westbay Erlang C traffic calculator in an attempt to determine proper staffing level to reduce the ever growing wait times its customers are facing. That traffic calculator revealed that Hands On's call center staffing was so low that the Erlang C program could not make a valid wait time projection. According to the program Hands On's staffing level results in ever increasing wait times and increasing numbers of dropped calls. That appears to be exactly what is happening due to the inadequate VRS compensation rate. Hands On simply lacks sufficient funding to employ a

sufficient number of video interpreters to handle the amount of VRS traffic it is receiving. And this is despite video interpreter utilization levels well in excess of the 50 percent limit recommended by sign language interpreter certification organizations.

Accordingly, Hands On is in agreement with the substance of CSD's Amended Comments. Hands On therefore amends its pending waiver request and requests that the Commission grant only a six-month extension of the mandatory service waiver. As of July 1, 2004, Hands On urges the Commission to require that VRS be provided on a 24 hour seven day a week schedule. Hands On agrees with CSD that a limited one-year waiver of the speed of answer requirement should be granted. However, Hands On believes that the 85/10 standard may not be appropriate for VRS and suggests that after December 31, 2004, the Commission should set an interim standard of 85 percent of calls answered within 20 seconds. This would run through December 31, 2005. Concurrently, the Commission should conduct a rule-making to determine whether VRS requires a different speed of answer from other TRS services. If not, then after December 31, 2005, the speed of answer requirement should revert to the 85/10 rule governing all other TRS services.

The touchstone of regulation of VRS is guided by Section 225 of the Communications Act of 1934, as amended. That touchstone is functional equivalence. Mandatory provision of VRS is necessary to provide the deaf and hard of hearing community with functional equivalence. Likewise functional equivalence requires that VRS providers answer traffic within a reasonable time and begin placement of a call. Excessive wait times for a dial tone would not be tolerated in any other service and have no place in VRS. Hands On therefore amends its pending waiver request and asks the Commission to mandate VRS service beginning July 1, 2004 on a 24-hour, seven day a week basis, and impose a 85/20 speed of answer requirement after December 31, 2004, pending determination of an appropriate speed of answer requirement for VRS.

Respectfully submitted,

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Certificate of Service

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