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

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

To: The Commission

REPLY COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

Hands On Video Relay Services, Inc. ("Hands On"), by its counsel, and pursuant to FCC Rule Section 1.401, et seq., submits its comments in reply to comments submitted on the July 30, 2004, Further Notice of Proposal Rulemaking, FCC 04-137 ("*FNPRM"*). In support, the following is shown:

Review of the various comments submitted by the parties shows there is general agreement with the positions Hands On has taken on the issues. For example, the overwhelming weight of the comments support the position that Internet based relay, whether text based IP Relay, or Video Relay Service is inherently interstate in nature and should thus continue to be compensated from the Interstate Telecommunications Relay Service Fund. *See* SBC Comments at 3-6; Comments of Oregon Public Utility Commission at 3-6 ("Oregon"); MCI Comments at 8-12; Hamilton Comments at 1-3; Sorenson Comments at 5-7; Ohio Public Utility Commission at 3-7 ("Ohio"); AT&T Comments at 2-3; Iowa Utilities Board at 1-4; Wireless RERC Comments; NASRA Comments. Each of these commenters also point out various problems with any scheme to attempt jurisdictional separation of Internet relay services. SBC at 6-7; Hamilton at 4-6; Sorenson at 7-8. Especially telling is the position of the various state utility commissions which express concern regarding the increased expense of attempting to effectuate jurisdictional separation of costs. *See, e.g.,*

Pennsylvania Public Utility Commission Comments at 4-6; Florida Public Service Commission Comments at 2-3.

Hands On finds particularly persuasive the very well reasoned comments of CSD on, among other issues, the utility of VRS, on issues relating to the VRS rate methodology, on the necessity to mandate VRS on a 24 hour basis and to set an appropriate minimum VRS answer speed criterion. *See generally* Comments of Communications Service for the Deaf. Hands On also fully endorses the comments submitted by the TRS Advisory Council, The National Video Relay Service Coalition, and The National Association for State Relay Administration.

A few comments, however, require a more detailed response. These are discussed below.

Verizon's comments are directed to the possibility of wide-spread fraud by persons using IP Relay who are either not deaf or hard of hearing or who are located in a foreign country. Verizon reproduces a Baltimore City Paper article which purports to quote a communications assistant to the effect that a substantial number of IP Relay calls he handled were attempting to effect fraudulent transactions, apparently originating in Nigeria. To deter such calls, Verizon urges the Commission to require registration to use IP Relay.

The problem of fraud is one that the industry is working hard to prevent. Registration, however, does not appear to be the best means of combating fraud. As discussed in Hands On's comments and in the comments of other parties, there is no non-discriminatory way to verify the information which is provided when a user registers. For example, requiring a credit card number would discriminate against deaf and hard of hearing persons who lack credit cards. Moreover, there is considerable commerce in stolen credit card information and no doubt fraudsters would quickly learn to give stolen credit card information in registering for IP Relay calls.

Blocking incoming foreign IP Relay traffic or IP addresses with a pattern of abuse is a better solution to the fraud problem. Moreover, relay providers should be able to refer suspected fraud cases to the authorities, provided that the confidentiality of relay calls is not violated.[1] In addition, the Commission could and should require telephone companies to provide billing inserts both explaining to businesses their rights and responsibilities with respect to relay traffic, and advising them how to stay alert for potential relay fraud. These would be better and more effective approaches to relay fraud than registration.

Hamilton Relay, Inc. urges the Commission to abandon rate of return regulation of IP Relay and instead adopt a competitively based rate determination methodology. Hamilton Comments at 9-10. Hands On believes that there is sufficient merit in the Hamilton proposal to justify further study.

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[1] In other word, relay providers seeing a suspicious pattern should investigate without inquiring of communications assistants, and if fraud is suspected from the investigation, the relay provider should be entitled to alert the proper authorities. Law enforcement could then obtain warrants to tap relay calls based on probably cause in accordance with the law. Under no circumstances, however, should communications assistants be subject to examination on the content of calls.

Hamilton likewise urges a competitively based rate setting methodology for VRS. Again there is merit to Hamilton's comments and the Commission should seriously consider how a competitively based VRS rate may be implemented. However, the record at this stage is insufficient for the Commission to make any decision other than to continue with the cost-based rate methodology it is now using, but with appropriate modifications such as proposed by Hands On and CSD. *See* CSD Comments at 19-29. This is especially the case because service levels differ among providers. Answer speeds, hours of service and customer service levels differ substantially among providers. If a VRS provider were to submit a low bid, based upon a low level of service or quality of service, plainly providers promising a higher level of service would be priced out of the market and VRS users would suffer. In Hands On's view this is the most important issue facing the Commission with respect to VRS.

Illustrative of this problem, Sorenson opposes a minimum answer speed and mandatory 24 hour VRS service. Sorenson Comments at 8-12, 14-15. Sorenson bases its opposition to a minimum answer speed on the suggestion that VRS is fully competitive and that there may not be enough video interpreters to support a minimum answer speed requirement. The Commission should reject Sorenson's position.

Sorenson's comments are an attempt to maximize its profits at the peril of VRS consumers. Sorenson touts that it is the largest provider of VRS. Sorenson Comments at 1. It has accomplished this feat, however, not by offering the highest quality VRS service in a competitive market, but by the simple expedient of giving away thousands of TV set top boxes, which it calls the VP-100 videophone, that allow a VRS user to make and receive calls using a standard television set, rather than a computer and keyboard. This is not to denigrate that product, which plainly has substantial

utility for the deaf and hard of hearing. However, Sorenson has captured a majority of the VRS market by limiting the use of the VP-100 video phone solely to its system, by blocking the ability of VRS users to access other VRS providers, and even by prohibiting a VRS user to receive an incoming VRS call from any provider other than Sorenson. These practices increase the barriers for the deaf, hard of hearing and hearing users of VRS. While there are certainly anticompetitive issues with these restrictions, what they mean in reality is that Sorenson users do not in the short run have the ability to use another VRS provider if Sorenson's service is inadequate. The user would have to terminate his relationship with Sorenson, turn in his VP-100, obtain a video phone on the open market or from one of Sorenson's competitors, or purchase a computer system for VRS use.

The restrictions Sorenson puts on use of its VP-100s have granted the provider substantial market power over VRS traffic. And Sorenson guards that market power zealously. Indeed, counsel for Sorenson recently wrote counsel for Hands On to threaten legal action as a result of what Sorenson alleged were efforts by Hands On to interfere with its exclusive relationship with its VRS VP-100 users. There can be no doubt that Sorenson's market power enables it to profit even though its average answer speed is substantially above that of its competitors. [2] Although Sorenson does not publicly report its average answer speed, anecdotal evidence suggests that Sorenson customers must

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[2] Sorenson advises this Commission that it should value access over functional equivalence. Sorenson Comments at 10. If that is Sorenson's true position, it should stop blocking its users from accessing competing VRS providers. This is not just a competitive beef; it is a matter of safety of life and property. Indeed many deaf and hard of hearing persons have abandoned their TTYs and replaced them with videophones, in most cases with the VP-100s, under the dangerous illusion that VRS will give them immediate access to the public phone system for emergency calls, One day someone will die trying to place an emergency call while waiting 20 minutes to get a Sorenson interpreter. As Wireless RERC points out, Comments at 6, although the Commission encourages users to contact emergency services via a TTY, people with disabilities increasingly are using other means such as IP Relay and VRS to do so.

wait several minutes to be connected with a video interpreter. In fact, we have heard instances of waits as long as 20 to 30 minutes, and even longer.

In light of these facts, the Commission should take Sorenson's suggestion that competition will ensure adequate provider answer speeds with a grain of salt. Clearly, Sorenson simply would rather force VRS users to wait for an interpreter, rather than forego the profits it makes by employing fewer interpreters than necessary to reduce waiting time.

Sorenson's second line of argument against a minimum answer speed is a suggestion that there are not enough interpreters available to handle all the traffic at an acceptable answer speed. Sorenson states -- without citation -- that there are only 4,900 certified ASL interpreters, nationwide. Assuming this is true, it requires merely from 414 to 434 interpreters nationwide to handle 1,000,000 minutes of traffic in a 30 day month with an occupancy rate of 43 percent.[3] That is a maximum of approximately 8.9 percent of Sorenson's estimate of available interpreters. Although Sorenson makes a good point concerning exhaustion of available interpreters in communities where more than one call centers are located, it appears that Sorenson has chosen as a corporate policy to locate call centers in cities with existing VRS call centers, therefore, contributing to the interpreter shortage it decries. For example, Sorenson has opened call centers in Austin, Texas and Minneapolis, MN where CSD has existing VRS call centers, and in the San Francisco Bay area

[3] This calculation is based on an average call length of five minutes conversation time, with one and one half minutes combined set-up and wrap up time, 80 percent of calls answered within 30 seconds, and a maximum occupancy percentage of 43 percent in any two hour segment. Answer speeds down to 10 seconds do not increase the number of interpreters required due to the maximum 43 percent utilization level. Twenty-four hour service is assumed. Call distribution data on an hourly and daily basis is based on past Hands On operational data, except for late night hours in which Hands On currently does not operate. For those hours, data is interpolated from actual operational data. The actual calculations will be made available upon request to the Commission, subject to a request for confidential treatment.

where Hands On recently opened a call center. Thus, perhaps Sorenson should reexamine its own corporate policies.[4]

Finally Sorenson posits the red herring that it would have to limit access to its system in order to meet a speed of answer requirement. That is nonsense. Sorenson is limiting access right now by forcing its users to wait upwards of 20-30 minutes to make calls, and by preventing those users from completing calls on any other VRS provider's system.

Hands On has not found a lack of interpreters as the chief cause for inadequate answer speeds. The interpreters are available, but funds need to be available to pay them. If the Commission sets an appropriately phased-in answer speed requirement, VRS providers will be able to cost adequately to hire and train the necessary interpreters to meet that answer speed requirement, Sorenson included. The interpreter training programs in the nation will then scale up their training programs to meet this increased demand.

Since Sorenson's objections to 24 hour VRS and making VRS mandatory are largely dependent on its arguments against a reasonable speed of answer requirement, no further discussion of these points is required.

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[4] The purpose of this policy appears to be to raid trained interpreters from other VRS providers.

In sum, Hands On supports the comments urging the Commission to continue funding Internet based relay from the Interstate TRS Fund, to increase the role for the TRS advisory counsel, to mandate 24/7 VRS, and to establish a cost recovery methodology for VRS which is based on functional equivalence, including a reasonable speed of answer requirement.

Respectfully submitted,

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Certificate of Service

I, David Crawford, do hereby certify that copies of the foregoing Petition for Reconsideration were sent on this 15th st day of November 2004, via first-class mail, except where noted, postage pre-paid, to the following:

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