

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

PETITION FOR DECLARATORY RULING

Hands On Video Relay Services, Inc. (“Hands On”), by its counsel, petitions the Commission for a ruling that its Brown Bag Rewards Program does not violate any section of the Communications Act of 1934, as amended (“Act”), or any rule of this Commission. In support, the following is shown.

Hands On provides video relay service (“VRS”), through contract, to AT&T Corp. (“AT&T”). Hands On is also a certified provider of VRS for the State of Washington Telecommunications Relay Service (“TRS”) program. Hands On has been providing VRS since July of 2002, originally in a developmental mode, since November of 2002 under contract with AT&T, and later with the State of Washington.

Many carriers this Commission regulates offer customer loyalty programs. Some offer programs in conjunction with airline mileage programs. Sprint, for example, is a partner with America West Airlines. A person signing up for Sprint for long distance can accumulate 5,000 miles, plus five miles for every dollar of long distance billing. See http://www.americawest.com/flightfund/partners/ff_phoneservices.htm#Sprint. Other carriers have similar programs. See, e.g., <http://www.united.com/page/article/0,6722,1231,00.html> (Sprint, Nextel, and T-Mobile are partners in the United Airlines frequent flyer program);

<http://www.aa.com/apps/AAAdvantage/ViewMileageProgramsDetail.jhtml?partnerType=Communications> (AT&T, AT&T wireless, T-Mobile are partners in the American Airlines frequent flyer program). Hands On also has a customer loyalty program. It is called Brown Bag Rewards (“Brown Bag”). The Brown Bag program offers Hands On’s customers the opportunity to have their DSL or cable modem bill reimbursed by Hands On. Customers receive five points for every minute of video relay calls placed through Hands On. Customers may redeem points by sending in their DSL or cable bills to Hands On. Hands On then reimburses those customers five cents per point up to the amount of the DSL or cable modem bill. No other cash payments are made. The program is strictly limited to reimbursement for access costs to high speed Internet service to eliminate an existing barrier that is discriminatory to deaf, hard of hearing and speech disabled persons who need higher bandwidth to communicate in their natural visual language, American Sign Language.

The public interest benefit to the program is plain. The major impediment deaf and hard of hearing persons face to full access to video relay service is the cost of a DSL or cable modem line. Deaf, hard of hearing and speech disabled persons desiring to use VRS must pay substantially more to do so than hearing persons seeking to make telephone calls. They must pay for a DSL line or cable modem service. Each of these cost substantially more than a standard residential telephone line. A typical charge for a DSL line runs from \$30 to \$70. That is on top of the telephone line charge. Cable modem service costs about the same, and that is on top of cable TV service. A hearing person does not need a high speed Internet line to communicate in his or her natural language. Thus, deaf, hard of hearing and speech disabled persons are unfairly penalized by the high cost of high speed Internet service merely to enjoy functionally equivalent telephone service.

Hands On has been informed by the FCC staff that some parties have questioned whether the Brown Bag program is consistent with the FCC's rules or the Act. As we show herein, nothing in the rules or in the Act prohibits the program. Offering to defer the cost of high speed Internet service for deaf, hard of hearing and speech disabled persons is plainly not unlawful, unjust, unreasonable, or discriminatory. Rather it ameliorates the discrimination deaf, hard of hearing and speech disabled persons face in communicating in their natural visual language. The Commission should so declare.

The Commission has no rules against the Brown Bag program. Nothing in FCC Rule Section 64.604 addresses the matter, nor in any other rule relating to TRS. Likewise nothing in Section 225 of the Communications Act can be read to prohibit the Brown Bag program. The question then becomes whether the program offends some other provision of the Act, such as Section 201 or Section 202 of the Act. In other words, is the Brown Bag program unjust, unreasonable, unlawful or unduly discriminatory? The answer is plainly that it is not.

No one is forced to use the Brown Bag program. There is no minimum usage associated with it. Points accumulate until they are used. If not used one month, they may be used another month. Points are limited to reimbursing DSL, cable modem or other high speed Internet access costs. There is thus no incentive for excessive use of VRS or to use VRS merely to acquire a reward. The program does not encourage fraudulent VRS calls. Hands On is unaware of any calls having been made on its system that appear solely designed to generate Brown Bag points.

There is no element of unreasonable discrimination in the Brown Bag program. Indeed, the program is open to all persons desiring to use Hands On's VRS service. Thus, there can be no assertion that the program violates Section 202 of the Act.

Similarly, no case having come before this Commission has found a customer affinity program to violate Section 201. To the extent Section 201 applies to the marketing practices of carriers, it has been limited to false and misleading marketing practices. *See NOS Communications, Inc.*, 23 CR 876 (2001); *Business Discount Plan, Inc.*, 14 FCC Rcd 340, 14 CR 784 (1998). The Commission has also applied Section 201 to prohibit bundling of services where there is a significant danger of leveraging, *see Competition in the Interstate Interexchange Marketplace*, 70 RR 2d 968, 7 FCC Rcd 2677 (1992), and significant negative effect on the market, *see Competition in the Interstate Interexchange Marketplace*, 72 RR 2d 578, 8 FCC Rcd 2659 (1993). **However, this is not a case of bundling. In any event there is neither any risk of leveraging nor any risk of significant negative effects on the VRS market.**

The Brown Bag program is also substantially dissimilar to the practice Sorenson Media previously followed (and now claims to have ceased) of supplying equipment to customers conditioned on use of a minimum amount of VRS service. As discussed above, there is no minimum usage requirement under the Brown Bag program. Nor is equipment supplied under the threat of being repossessed if a certain level of use is not maintained. Hence, no issue arises of an unjust or unreasonable practice which would implicate Section 201 of the Act, even assuming Section 201 applies to the provision of TRS or VRS service.

Finally, there has apparently been no consumer complaints concerning the Brown Bag program. That should be a telling point that the program is not unjust, unreasonable or discriminatory. Rather, the issue apparently has been raised by certain of Hands On's competitors, who apparently are losing business because of the program. It is not this Commission's role to protect providers from competition, however.

Hands On therefore requests this declaratory ruling since it has been informed that questions concerning the program have been raised with the staff. Given the existence of these questions, Hands On believes it most appropriate to request a declaratory ruling concerning the program to clarify in an expeditious manner that the program does not violate the Act or any FCC rule.

Respectfully submitted,

HANDS ON VIDEO RELAY SERVICES, INC.

By _____/s/_____
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