Presentation to

Commissioner Robert M. McDowell on

Video Relay Service Cost Recovery

December 8, 2006

Ronald E. Obray, President, Hands On Video Relay Services, Inc.

Kelby Brick, Director Legal and Regulatory Affairs, Hands On Services, Inc.

George L. Lyon, Jr., Lukas Nace Gutierrez & Sachs, Chartered

Hands on Video Relay Services, Inc.

- Certified VRS provider under State of Washington's TRS Program
- Application pending for FCC certification as a VRS and IP Relay provider
- Contract supplier of VRS to AT&T
- Call centers in Vancouver, WA; Rocklin, CA; Oakland, CA; Temecula, CA; Orlando, FL and Guaynabo, Puerto Rico
- Supplying more than DELETED minutes of VRS per month
- Projected to supply more than DELETED minutes of VRS in 2006 and DELETED in 2007

VRS is a vitally important service

- VRS allows deaf and hard of hearing persons to communicate in their natural visual language
- VRS is the closest TRS service in functionality to telephone service for hearing persons
- The utility of VRS is proven by its widespread acceptance by the deaf and hard of hearing community
- VRS is not subject to the type of fraudulent activity experienced with text-based Internet Protocol Relay service

Need for functional equivalency

- Section 225 requires providing the deaf and hard of hearing with functional equivalent telecommunications service
- Relay has yet to achieve true functional equivalence
- Key factor in developing the VRS rate methodology is to determine what is required to make relay truly functionally equivalent

The competitive market for VRS

- VRS is a competitive service with multiple providers
- Competition has benefited consumers through the introduction of videophones, service to Apple MacIntosh users and improved software applications that are much improved over the no longer supported Microsoft Net Meeting

VRS should remain a national service

- VRS, as an Internet based service, is inherently an Interstate Service
- Consumers reap the benefits of competition among the providers
- States are neither likely to include VRS in their TRS programs nor maintain the competitive market structure the Commission has fostered

VRS rate should remain frozen pending resolution of this proceeding

- The bases for freezing the rate for 2006-07 remain today
- Various issues concerning the current rate methodology have yet to be decided
- Various issues concerning cost elements remain for decision
- The effects of implementation of the decision on interoperability have yet to stabilize the marketplace

TRS/VRS is not an accommodation

- Purpose of Section 225 of the Communications Act is universal service
- Unlike Titles I-III of the Americans with Disabilities Act, Section 225 of the Act contains no mention of “reasonable accommodations”
- Even were TRS correctly considered merely an “accommodation” to deaf and hard of hearing persons, it would be no basis for failure to adequately compensate providers for all reasonable costs of providing the service

Why is the VRS rate methodology so important?

- The FCC needs to bring consistency and predictability into the process
- The FCC needs to maintain a competitive market
- The FCC needs to assure functional equivalent service to the deaf and hard of hearing public

Problems with the current VRS rate process

- Process suffers from lack of transparency with a lack of detail available to providers, the TRS Advisory Council or the public
- NECA acts on non-record instructions from the Bureau
- The Bureau seems focused on the size of the TRS Fund rather than quality of service to the public, resulting in arbitrary cost exclusions
- Consumers unhappy with threat to quality service

The rate setting process lacks transparency

- Each year NECA supplies less and less data on rate inputs
- It is impossible for the public to verify data NECA receives and how NECA uses it
- Errors could exist which may not be detected, such as NECA's mistaken calculation of rate of return this year

NECA withholds information from its TRS Advisory Council and the public

- The TRS Advisory Council was denied substantial information on NECA's rate methodology and inputs prior to its April meeting
- The TRS Advisory Council asked for and was promised additional information, but NECA did not provide it
- NECA essentially now disregards input from the TRS Advisory Council on rate issues

NECA apparently acts on non-record instructions from the Bureau

- NECA appears responsive now largely to non-record, non-published contacts with CGB
- NECA substantially revised its 2006-07 rate recommendations after presentation to the TRS Advisory Council apparently on instructions from the Bureau

FCC seems focused on achieving cuts in the TRS fund size without regard to service quality

- Directed NECA in the 2006-07 rate filing period to eliminate provider marketing expense
- Refuses to allows research and development expenses to meet waived mandatory minimum standards such as enhanced 911 service
- Proposals to eliminate so-called indirect costs, and certain management and legal costs

Consumers have expressed serious concern over rate methodology

- *See* Comments of Telecommunications For the Deaf, Inc. et al, Docket 03-123 (May 17, 2006)
- No one who commented on the 2006-07 proposed VRS rate supported its adoption without modification or subsequent revision

Goals of this TRS/VRS rate making methodology proceeding

- Reduce provider uncertainty
- Bring transparency to the rate setting process
- Help achieve functional equivalency
- Maintain consumer choice
- Ensure adequate service to the public
- Encourage innovation and cost control

Discussion of alternative VRS rate setting methodologies

- The joint provider Price Cap proposal meets the goals of this proceeding
- Cost based approaches such as the existing methodology can accomplish these goals, but require careful implementation and excessive regulatory oversight
- A competitive bidding methodology will not meet the goals of this proceeding and will destroy the competitive VRS market

The Price Cap proposal should be adopted

- Price caps will encourage VRS providers to reduce costs
- Price caps will reduce the need for regulatory oversight
- Price caps will simplify the rate making process

Cost based plans require considerable regulatory attention

- NECA and the FCC must flyspeck cost proposals resulting in substantial expenditures of public and private resources
- The traditional weighted average approach is unsound where, as here, one provider has through anticompetitive means achieved a large majority of market share
- A multitude of issues exist with respect to use of a cost based methodology

The FCC should reject a competitive bidding approach for VRS cost recovery

- Use of a competitive bidding methodology for VRS cost recovery would result in the destruction of the competitive VRS market
- One or two VRS providers would emerge with a permanent lock on the market
- The barrier to market entry would be so high as to lock-out any potential competing providers

Major issues relating to reasonableness of costs

- Marketing and outreach are critical to achieving universal service
- Research and development expenses to meet waived standards are necessary for functional equivalence
- Certified deaf interpreters are sometimes necessary for effective and accurate interpreting
- Other costs should not be arbitrarily reduced to curb growth of the TRS Fund

Marketing and outreach are critical to achieving universal service

- Providers are required to engage in outreach
- Only a fraction of ASL literate deaf persons currently use VRS
- Existing outreach efforts have focused on urban areas with substantial broadband penetration, and organized deaf groups
- Rural and isolated communities in particular require outreach efforts as broadband technologies open these areas for VRS

Proposed elimination of marketing costs is highly problematic

- Marketing costs have consistently been accepted as reasonable relay expenses
- Marketing costs are indistinguishable from outreach expenses
- The assumption that marketing expense amounts solely to brand distinction is fallacious
- Elimination of marketing costs and cuts in outreach are inconsistent with estimates that VRS will continue to grow at present rates

Research and development to meet waived standards is necessary for functional equivalence

- The standards define functional equivalence, not the waivers
- Waivers are generally granted where technological issues prevent compliance
- Research and development is necessary to overcome technological barriers and achieve full functional equivalence

Certified Deaf Interpreters are necessary for effective interpreting

- The rules require effective and accurate interpreting
- CDIs are native deaf signers and are steeped in deaf culture
- CDIs are specially trained to interpret in difficult situations
- CDIs are necessary for effective, accurate interpreting in certain difficult circumstances, e.g., foreign born, low language skills, stressful situations such as emergency calls
- Use of CDIs is well established in the interpreting industry

Hand On requests the Commission to take the following action

- Maintain current VRS rate pending a decision in this proceeding
- Base its decision in this proceeding on what best implements functional equivalency
- Adopt the Price Cap methodology for VRS rates
- Reject competitive bidding for setting VRS rates
- To the extent individual cost items are examined:
  - Maintain marketing and outreach costs as rate elements
  - Allow research and development to meet waived standards
  - Do not arbitrarily limit other expenses to reduce the TRS Fund size
  - Include cost of certified deaf interpreters