# *Presentation to Ian Dillner on Petition for Declaratory Ruling on Interpreter Non-compete Agreements & VRS Tiered Rate Proposal*


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Hands On VRS

# *Interpreter petition*

Brought by 5 VRS providers: CAC, CSDVRS, GoAmerica, Hands On and Snap!VRS.

Raises a substantial issue of public interest importance: May a VRS provider invoke a non-compete clause to prevent interpreters from working for a competitor?

Prompt Commission action is needed to prevent harm to the VRS marketplace and consumers.

Hands On VRS

# *The non-compete clause at issue is unreasonable*

Petitioners have standing since each is harmed as a result of this unreasonable and anti-competitive practice.

Effect of non-compete is to artificially restrict supply of VIs and thus to raise cost of VRS.

Anti-competition clause impedes functional equivalency by limiting competition on critical industry resource and threatening answer speeds.

No legitimate business purpose exists for the non-compete other than to deny necessary resources to a competitor since interpreters have no proprietary business information.

# *The FCC has jurisdiction to invalidate the non-compete*

FCC has statutory responsibility under Section 225 to promote functional equivalency, establish a competitive VRS market and to manage the TRS fund.

The FCC has the authority under Section 201 and Section 2(a) to reach unreasonable practices of common carriers or practices ancillary to common carriage. VRS qualifies as both.

# *Hands On requests the FCC to take prompt action*

- Current rate controversy is due partly to FCC's delay in acting against anti-competitive practices in such matters as equipment interoperability and bundling of equipment and VRS service.
- Failure of FCC to act promptly on the  petition will allow Sorenson to further exploit its near monopoly on VRS service.
- Hands On asks the FCC to promptly place the petition on public notice for comment.
- Hands On asks the FCC to promptly grant the petition and invalidate such non-compete clauses as contrary to public policy.

# *The FCC should adopt a tiered rate plan for VRS*

Current rate controversy arises largely because one provider’s market share and cost structure dominates the VRS rate analysis.

That provider was able to amass its dominant market position because it was allowed for some three years to bundle service with non-interoperable equipment.

Cost structure of all other VRS providers lacks the economies of scale of the dominant VRS provider.

FCC needs to move quickly to establish a fair rate that will neither over or under compensate each provider.

# *Weighted average VRS rates are problematic*

- Market structure for VRS is skewed by past anti-competitive conduct.
- Weighted Averages perpetuates domination of the market by one provider.
- FCC recognized public interest detriment of weighted average would cause in 2005.
- FCC should freeze current rate until a fair tiered rate structure can be established, or establish a simplified temporary tiered rate structure.

# *Tiered rate is plainly supported by the record*

Economies of scale are clearly evident in VRS.

Although NECA reports the historical weighted average VRS minute cost for 2006 was about $4.56 per minute, the median cost for 2006 was reported at $6.18, and the median estimated cost for 2007-08 was reported at $7.

Tiered rate structure based on minutes of use per month will result in fair compensation to each provider.

Tiered rate will obviate need for any type of true-up mechanism.

# *Hands On requests FCC adopt a tiered rate plan*

Evidence suggests a top rate of $7 is the appropriate first tier, the average of 2007-08 provider cost estimates.

Hands On lacks sufficient information to suggest now the composition of tiers after the first; however, NECA should have sufficient data -- with public comment -- to construct suggested subsequent tiers.

Hands On’s analysis does indicate that the so-called 2006 historical figure of $4.55 would not cover the reasonable costs of call center operations of even a very efficient large scale provider.