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December 21, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Ex Parte Notice
CG Docket 03-123

Dear Madam Secretary:

Kelby Brick, Hands On Video Relay Services, Inc. ("Hands On") Director of Legal and Regulatory Affairs and the undersigned met on December 19, 2007, with Scott Deutchman, legal advisor to Commissioner Michael J. Copps. The topic of the discussion was the recent declaratory ruling contained in the Report and Order and Declaratory Ruling, FCC 07-186 (November 19, 2007) ("Order") and the pending Commission proceedings relating to numbering and 911 service for video relay service ("VRS") users. That meeting was followed up by an email to Mr. Deutchman from the undersigned which highlighted portions of the Report and Order and Declaratory Ruling which concerns Hands On.

During that meeting the following points were made.

First that Hands On supports much of the Order, which addresses certain abusive marketing practices, such as (i) provider threats to remove video equipment if consumers are not making a sufficient number of calls through the provider supplying the equipment; (ii) tracking of consumer usage of a provider's service and using the results of that tracking to determine whether to upgrade a customer's video device; and (iii) contacts made by provider representatives urging VRS consumers to make more calls using a provider's service.

Second, Hands On explained that in certain respects the Order goes beyond legitimate FCC concerns, is not a clarification of any previous order or existing rule, but instead amounts to a new rule adopted without the notice and comment requirements of the APA, serves to impede legitimate outreach efforts by providers, violates providers' rights of free speech and

the rights of consumers to access to vital information necessary to make informed communications choices.

Specifically, the portion of the Order which prohibits providers from contacting *for any reason* consumers who have registered with a provider, including informing them of service offerings or current FCC proceedings that may affect the availability and quality of relay service, plunges a dagger into the very heart of First Amendment free speech values. The First Amendment was designed to ensure both the right of speakers to speak and of listeners to hear. By placing a gag on provider contact of consumers for any reason, the declaratory ruling sweeps broadly past any legitimate governmental interest the FCC might otherwise have had in mind in adopting the Order. *See, e.g., U.S. West v. Federal Communications Commission*, 182 F.3d 1224 (10th Cir. 1999).

This is especially true where as here the ruling seeks to prohibit discussion of pending issues at the FCC. Political speech is deserving of the very highest of First Amendment protections. *See, e.g., New York Times v. Sullivan*, 376 U.S. 254 (1964); *Stromberg v. California*, 283 U.S. 359, 369 (1931). Free speech concerning government and political actions is the core value the framers of the Constitution sought to protect by the First Amendment. If the intent of the restriction is to prevent consumers from being barraged by unsolicited messages from providers – a concern not even stated in the declaratory ruling – the Commission could have crafted a much lesser restrictive alternative to allow consumers to opt out of receiving any such unsolicited messages. *U.S. West v. Federal Communications Commission*, 182 F.3d 1224. It is hornbook First Amendment law that in treading on constitutional guarantees, the government must employ the least restrictive means to accomplish a legitimate articulated state interest. Here, the Order has employed the broadest possible means to accomplish interests left wholly unstated. *Id.*

This is aptly illustrated by reference to the Commission's customer proprietary network information ("CPNI") rules. The CPNI rules, unlike the Order at issue here, were promulgated specifically pursuant to Congressional statute, Section 222 of the Act. CPNI is defined as information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.

A carrier may not use CPNI information concerning use of services of a competitor to market its services. However, a carrier may use CPNI to provide or market service offerings among the categories of service (i.e., local, interexchange, and CMRS) to which the customer already subscribes from that carrier, including installation of inside wiring, maintenance, and

repair services. A carrier may not use CPNI information to market other services, except as discussed below.

Moreover, carriers and certain other parties are permitted to use CPNI for marketing or other purposes depending upon whether they have obtained opt-in or opt-out consent from the customer. 47 C.F.R.§ 64.2007. After obtaining consent, carriers may use CPNI to market to a customer communications-related services, including categories of service to which the customer does not currently subscribe. To the extent a carrier desires to use CPNI to market any service other than a communications-related service, or for any purpose other than those expressly provided for in the FCC's rules or section 222 of the Act, the carrier must first obtain the customer's opt-in consent.

It is plain therefore that the Order goes far beyond the analogous CPNI rules. Furthermore, unlike the CPNI rules, the Order's restrictions on marketing have no Congressional authorization. It is thus essentially a gag order having no justification or authorization from the Commission's enabling statute.

Furthermore, the restriction on contact with consumers is blatantly paternalistic. Apparently, the Order assumes deaf and hard of hearing persons need protection from information provided by relay providers. There is no justification for such a position, which cuts deaf and hard of hearing persons off from information. It serves instead to ghettoize the deaf community by denying deaf and hard of hearing persons vital information about their telecommunications options and accessible services while hearing persons are not subject to any such restrictions and are allowed access to information from their telecommunications providers. Therefore, not only are the restrictions a violation of First Amendment free speech rights, but they also discriminate against deaf and hard of hearing persons.

The gag order further serves to dissuade providers from improving their services and thus better achieving functional equivalency. If providers are unable to inform their users of important feature upgrades such as 911 service, or 10 digit numbering features, they are less likely to make the effort to provide such services.

In addition, Hands On questioned the declaratory ruling's prohibition on incenting consumers to register with a provider. Hands On does not contest the declaratory ruling's prohibition on offering financial incentive to make relay calls. Such incentives might – although it has not been shown that they do – result in some calls being made that would not otherwise be made. However, the act of registering does not result in any calls being made. Rather it can serve many beneficial purposes, including providing a source of location information which providers can use to direct emergency responders in the event of a 911 relay call. Registering should therefore be encouraged not discouraged.

Yet, it is well known that members of the deaf and hard of hearing community have traditionally looked askance at mandatory registration on the basis, inter alia, of privacy concerns. Offering a nominal incentive, such as allowing a consumer to watch a movie in return for registering, or having a free cup of coffee or a free ice cream cone is both an inconsequential event as well as unrelated to the making of unwarranted relay calls. It is thus in no way contrary to the functional equivalence standard in the way which offering a financial incentive to make a call would be. This portion of the declaratory ruling should therefore be retracted as well.

Moreover, Hands On explained that the prohibition set forth in the declaratory ruling on compensating associations or sponsorship partners on the basis of calls made by members of such organizations through the organizations' web sites, intrude on legitimate outreach techniques. Such groups, as state associations of the deaf or deaf school alumni organizations, have the capability to reach many persons who to date have not learned of or understand the benefits of relay service, especially advance relay services such as VRS and IP Relay. These are the hardest persons for providers to reach with their outreach efforts. Partnering with such organizations is a particularly effective use of outreach dollars.

Using state deaf associations and similar organizations for outreach is not functionally different than the practice of some relay providers of using turn key subcontractors for VRS operations and paying them on a per minute of VRS basis. Nor is it functionally different than the arrangement which existed between at least one then uncertified VRS provider, Hawk Relay, and a certified VRS provider, Communications Access Center, which provided a turn key operations for the uncertified provider with the uncertified provider doing nothing but marketing the service for a percentage of the VRS per minute payment rate.

There is no reason why the Commission should discriminate against a state deaf association which desires to offer a branded VRS service through a certified VRS provider, and in fact there is every reason why the FCC should welcome the additional outreach effort that would result therefrom, unless it is the FCC's goal merely to limit the growth of VRS, clearly an illegitimate goal in violation of the letter of the law and the spirit of functional equivalency. Therefore, this portion of the declaratory ruling should also be retracted.

Third, Hands On expressed its concern that certain VRS and IP Relay waivers were expiring on January 1, 2008 and that the Commission has not yet addressed these waived standards, especially the waived standard for automatic routing of 911 calls. Hands On pointed out that no provider is currently capable of automatic 911 call routing and that such automatic routing cannot be accomplished until a uniform numbering system based on the North America Numbering Plan is adopted by the Commission. Therefore Hands On pointed out that the 911 and numbering issues are intimately tied together and should not be addressed separately.

Hands On urged the Commission to act expeditiously on the pending numbering proposal before it and to afford providers such time to implement any 911 calling protocols which the Commission may adopt for Internet based relay. Hands On stressed that a partial 911 solution is dangerous when a full solution can be expeditiously implemented. Hands On suggested that the Commission issue prior to the end of the year an order requiring providers to formulate within 60 days a consensus proposal for implementing numbering, and suggested that in the absence of timely receipt of such a consensus plan, the Commission would immediately mandate a numbering plan for Internet based relay.

Hands On also notes that on December 19, 2007, the Interstate Telecommunications Relay Services Advisory Council filed the attached letter noting there are only minor differences with respect to two competing numbering proposals pending before the Commission. The Council, representing a broad group of providers, consumers, regulators and carriers, urged the Commission to implement a numbering solution without further delay.

Very truly yours,

George L. Lyon, Jr.
Counsel, Hands On Video Relay Services, Inc.

cc: Commissioner Michael J. Copps
Scott Deutchman, Esquire

December 19, 2007

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: CG Docket No. 03-123

Dear Ms. Dortch:

Attached is a letter submitted on behalf of Interstate Telecommunications Relay Services Advisory Council and our recommendations in connection with numbering and emergency calling for both VRS and Internet Relay.

Sincerely,

Warren Barnett
Chair

The Interstate TRS Advisory Council has had an opportunity to thoroughly review two proposals for implementing an Internet based numbering system associated with the North America numbering plan. One solution was developed by AT&T, Hands On, and i711 while the other solution was developed by Neustar. Both proposals also encompass an emergency calling solution and were discussed at length. It is important to note that both proposals address numbering and emergency calling for both VRS and Internet Relay Services.

The Council recognizes that both - are very similar and utilize existing VoIP numbering and emergency calling models. The customer experience is essentially the same with both approaches. Each can be implemented quickly and within the same time frame. Proponents of both - argue that their approach is cheaper and more efficient.

It is the view of the Council that the two are so similar that the differences should not be used by the FCC or any party to delay implementation. In addition, the Council recognizes that other ideas may be proposed. Nonetheless, because two demonstrated proposals have been made available, the Council urges swift action from the FCC on this important issue that will bring parity and critical E-911 access to users.

The Council recommends that the FCC select a proposal and move with all due speed to implement the chosen system. The chosen system should have (as already outlined by the two proposals):

1) Functionally equivalent dialing parity with the following characteristics:
    a. Standardized numbering plan utilizing NANP numbers for end users
    b. New secure databases containing current IP or URL addresses and telephone numbers of VRS users
    c. Each VRS provider must –maintain databases current with end user IP or URL address and telephone number
    d. VRS providers obtain NANP numbers from a PSTN carrier of choice and offer/assign them to customers
    e. VRS Providers should comply with Customer Proprietary Network Information (CPNI) and Anti-Slamming.
    f. Providers should not discriminate between callers regardless of who provides the NANP number
    g. Interoperability rules -must be enforced vigorously by the FCC
2) End users experience
    a. Customers should not have to change current equipment (customer premise equipment) or software
    b. Customers would need to sign up for true NANP telephone number with provider of choice
    c. Hearing people can direct dial deaf person's personal telephone number (10 digit NANP number) and connect through deaf person's selected relay provider. If hearing person wants to use an alternate relay provider, the 800 number of that relay provider can be dialed. At that time the hearing party gives the 10 digit number of the party he/she desires to call.
    d. Video users can direct dial each other's personal telephone number (10 digit NANP number) regardless of device or who provided the NANP number

    e. Telephone number is portable among different relay providers
3) Standard interface to the existing 911 / E911 service
    a. VRS providers implement similar 911/E911 solutions as VoIP providers and wireless carriers
    b. NANP numbers to be registered in existing dynamic 911 ALI databases
    c. All VRS providers must offer NANP phone numbers
    d. Liability protection similar to Common Carriers who currently handle emergency calls must be provided to VRS providers

The Advisory Council urges the FCC to take immediate action and adopt a proposal that accomplishes the above points. The Advisory Council appreciates the opportunity to work on this issue and hopes that because its conclusions are coming from a cross section of various TRS stakeholders that the FCC will act expeditiously.