Presentation to Chris Moore Office of Commissioner Tate

Petition for Declaratory Ruling Concerning Video Interpreter Non-Competition Agreements

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GoAmerica, Inc.

- FCC certified VRS and IP Relay provider.
- State relay provider for California, Tennessee and DC.
- Acquired Verizon TRS division and merged with Hands On Video Relay Services, Inc. January 2008.
- Contract supplier of VRS to AT&T and Sprint.
- Operates [redacted] VRS call centers, several more in construction.
- Now supplying more than [redacted] minutes of VRS a month.

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The Competitive Market for VRS

- The FCC has promoted a competitive market structure for VRS.
- Competition has benefited consumers through the introduction of videophones, service to Apple MacIntosh users, adoption of state of the art video protocol such as SIP, and software applications that are much improved over the no longer supported Microsoft Net Meeting program.

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VRS Market Is Not Freely Competitive

- One provider's 80 percent market share was obtained by distributing free equipment specifically designed to block consumer access to competing providers.
- This provider also contractually prevented consumers from using competing VRS providers.
- The FCC stood by for almost three years before prohibiting blocking of consumer access to VRS competitors.

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Anticompetitive Conduct Is Continuing To Occur

- The 80 percent dominant provider places its video interpreters under non-compete agreements which prevent their working in any capacity to a competing VRS provider agent or subcontractor.
- This provider denies competing providers access to the proxy telephone numbers its assigns videophone users.
- There are reports of other anti-competitive activities which GoAmerica is investigating.

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The Petition for Declaratory Ruling

- Brought by five VRS providers: GoAmerica, Hands On, SNAP!VRS, CSDVRS, and Communications Access Center.
- Requests the FCC to declare the practice of placing VRS interpreters under non-compete agreements void against public policy.
- 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?

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FCC Action Is Needed To Ensure A Competitive VRS Market

- Petition filed May 18, 2007, placed on Public Notice August 3, 2007.
- Comments filed September 3 and replies on September 19, 2007
- Prompt Commission action is needed to prevent harm to the VRS marketplace and consumers.

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Public Comments Overwhelmingly Favor Grant of the Petition

- Joint comments of five deaf consumer advocacy organizations supported the petition.
- More than 100 individual consumers commented in support of the petition.
- Comments in support included some Sorenson video interpreters.
- Only Sorenson and one other comment supported Sorenson's practice of requiring video interpreter non-competes.

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The Commission Should Invalidate Interpreter Non-competes

- Interpreter non-compete clauses are unreasonable and promote a near monopoly enjoyed by the dominant VRS relay provider, the only provider which employs them.
- Interpreters have limited access to trade secrets or confidential information.
- Interpreters are under a legal duty of confidentiality with respect to relay user information.

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The Non-compete Clause at Issue is Unreasonable

- Effect of non-compete clause is to artificially restrict supply of video interpreters 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.

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The FCC Has Jurisdiction to Invalidate Non-compete Clauses

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

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FCC Has Not Hesitated to Invalidate Agreements Interfering with Its Policies

- FCC has held it unreasonable to condition discount on 800 service on use of carrier's software defined network.
- FCC prohibits exclusive access arrangements for telecommunications services in multiple dwelling units ("MDUs").
- FCC has prohibited exclusive service contracts for video services in MDUs.
- FCC exercises jurisdiction over voice mail and interactive menu services and to manufacturers of the equipment for that service.

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Prompt Commission Action is Needed to Protect Consumers and Competition

- Current 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 dominant VRS market position.
- GoAmerica and Hands On ask the FCC to promptly grant the petition and invalidate video interpreter non-compete clauses as contrary to public policy.

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