FCC Petition for Declaratory Ruling Concerning Video Interpreter Non-Competition Agreements

Presented to Scott Bergmann, Office of Commissioner Adelstein
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- FCC certified VRS and IP relay provider
- State relay provider for California and Tennessee
- Acquired Verizon TRS division and merged with Hands On Video Relay Services, Inc. January 2008
- Contract VRS supplier for [deleted]
- Operates [deleted] VRS call centers with several more in construction; employs more than [deleted] persons across the nation
- Supplies more than [deleted] minutes of VRS monthly

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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 Mac 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 Continues

- 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

- Necessary 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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Overwhelming Public Support

- Joint comments of five deaf consumer advocacy organizations support 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 commenter supported Sorenson's practice of requiring video interpreter non-competes.

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FCC Should Invalidate 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 (which are protected by non-disclosure agreements that we do not contest).
- Interpreters are under a legal duty of confidentiality with respect to relay user information.

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Non-compete Clause Unreasonable

- Non-compete clause artificially restricts video interpreter supply and raises 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

- 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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A Precedent of Action

- 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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Consumer and Competitive Protection

- Prompt Commission action is critical
  - Current controversy is due partly to FCC's delay in acting against anti-competitive practices such as equipment interoperability and bundling of equipment and VRS service.
  - Failure of FCC to act promptly on the petition allows Sorenson to further exploit its dominant VRS market position.
  - CGB has studied the issue and it is now ripe for decision.
  - GoAmerica requests that the FCC to render a prompt decision on the petition, and invalidate video interpreter non-compete clauses as contrary to public policy and the public interest.

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