



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

September 22, 2008

Robert A. Skitol
Drinker, Biddle & Reath LLP
1500 K Street, NW
Washington, DC 20005

Re: *In the Matter of Negotiated Data Solutions LLC*
File No. 051-0094

Dear Mr. Skitol:

Thank you for your comments on behalf of VITA and VITA Standards Organization (“VSO”) regarding the proposed consent order accepted for public comment in the above-captioned matter. The Commission has reviewed your comments and has placed them on the public record of the proceeding.

The Commission is pleased to have received comments from VITA, VSO and other organizations directly involved in the process of standards development. Such organizations are in a position to usefully discuss the issues raised by anticompetitive conduct in the standards setting context, based on longstanding experience in dealing with the competing interest groups affected by industry standard-setting activities. In this comment, VITA and VSO support the Commission’s use of its statutory authority in this matter, and express strong approval of the Commission’s action. You explain that VSO has recently taken steps to strengthen and clarify its patent policy, but you caution that standard setting organizations cannot entirely self-protect against anticompetitive patent hold-up. In your comment letter, you maintain that there is a predominant public interest that justifies, as a matter of FTC law, the proposition that licensing assurances given in the course of standards setting should be binding upon subsequent patent holders and should protect, for the long term, standards organization participants and others who make or use products compliant with the affected standard.

The Commission understands that standards-development organizations craft rules concerning intellectual property rights that recognize the dynamic character of the standards process, the necessary balancing of the interests of stakeholders in the process, and the varied business strategies of those involved. The content and intention of such rules will be one of several factors to be assessed in determining whether, under any given set of facts, challenged conduct by a holder of intellectual property rights may constitute a violation of the FTC Act. In addition, any such assessment would be likely to include (among other things) the timing and content of any assurances provided the holder of IP rights; the nature, timing and offered

justification for any changes in those assurances; and the effects of the conduct on the standard-setting process and competition in relevant markets affected by the standards. As with many other competition-related enforcement matters, the question of liability under the FTC Act will turn on a careful assessment of the surrounding facts.

Thank you for your interest in this matter. After considering all of the comments in this matter, including the comments of VITA and VSO , the Commission has determined that the public interest would be served best by issuing the Decision and Order in final form without modification..

By direction of the Commission, Chairman Kovacic dissenting.

Donald S. Clark
Secretary