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April 24, 2008

Federal Trade Commission
Office of the Secretary
Room 134-H
601 Pennsylvania Ave NW
Washington, DC 20580

Re: Negotiated Data Solutions
File No. 051-0094

To the Federal Trade Commission:

On behalf of the Voluntary Trade Council, I submit the following public comments regarding the Federal Trade Commission's proposed consent order with Negotiated Data Solutions, LLC.

Neither the Constitution of the United States nor section 5 of the Federal Trade Commission Act permit the FTC to intervene in a dispute between a private standards-development organization (SDO) and a lawful patent-holder. Congress and the Article III courts provide appropriate fora for the resolution of such disagreements, either through amendments to the patent laws or litigation before a neutral trier of fact. An executive branch agency such as the FTC may not seek to impose its own desired outcomes upon the market.

The FTC should have learned its lesson from this week's decision by the D.C. Circuit Court of Appeals in *Rambus Incorporated v. Federal Trade Commission* (Nos. 07-106 & 07-1184). The *Rambus* court appropriately prevented this Commission from interperting section 2 of the Sherman Act to govern alleged deception by a patent-holder before an SDO. While the court left open the possibility of addressing such disputes under section 5 of the FTC Act, as the consent order against N-Data proposes, such intervention must be supported by substantial evidence. As former chairman Deborah Majoras explained in her dissenting statement, that evidence is not in the record.

In any case, section 5 should not be extended to these types of disputes. Far from providing necessary legal guidance that will protect the standards-development process, FTC intervention merely guarantees that rent-seeking antitrust lawyers will lobby the FTC, under the pretext of consumer protection, to impose price controls on patent-holders for the benefit of large manufacturers that dominate SDOs. Expanded section 5 enforcement means that all firms--manufacturers and patent-holders--will divert capital from away from serving customers and towards retaining expensive lawyers with FTC connections. In this proceeding, for example, we've seen appearances from Douglas Melamed and M. Sean Royall, two of the key figures in the Rambus litigation. No doubt they will sell their "expertise" to the next set of companies that appear before the FTC in conection with an SDO dispute.

This is not to say that "patent hold-up" is not a real problem that should be addressed. But from a constitutional standpoint, it *must* be addressed by Congress and the Article III courts. "FTC law" is simply not a valid substitute, especially when the Commission has become monopolized by a small faction of career antitrust lawyers looking out for their bretheren. Accordingly, the FTC should withdraw its proposed consent order against N-Data and dismiss the underlying complaint.

Sincerely,

/s/

S.M. Oliva
President
The Voluntary Trade Council, Inc.