



Office of the Secretary

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

September 22, 2008

Thomas Goode
General Counsel
Alliance for Telecommunications
Industry Solutions
1200 G St. NW, Suite 500
Washington, DC 20005

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

Dear Mr. Goode:

Thank you for your comments on behalf of the Alliance for Telecommunications Industry Solutions ("ATIS") 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 organizations like ATIS that are directly involved in standards development. Based on longstanding experience in dealing with the competing interests, such commenters are in a position to discuss the issues presented by anticompetitive conduct in the standard-setting process. In your comment letter you state that ATIS recognizes and appreciates the Commission's exercise of its power under Section 5 of the FTC Act, in appropriate circumstances, to address standards-related conduct that may result in unfair and anticompetitive effects. According to ATIS, such conduct could deter innovators from contributing proprietary technology to standards development efforts, and could frustrate the efficient and cost-effective implementation of standards.

You express concern, however, that the Commission's action may be given an overly broad reading, and request that the Commission clarify the scope and reach of its action. In particular, ATIS expresses concern about the possible effect of the Commission's action on standards development and asks that the Commission make clear that its action in this matter should not be interpreted to create a *per se* rule that a patent owner that provides a licensing assurance can never change the terms no matter what the circumstances.

The Commission is pleased to clarify that the Decision and Order in *N-Data* should not be interpreted as creating a *per se* rule for liability for any particular conduct. Rather, as the Complaint, Commission Statement, and the Analysis to Aid Public Comment in the *N-Data* matter make clear, the Commission has reason to believe that Respondent patent-holder violated

Section 5 of the FTC Act, based on the factual circumstances set forth in detail in those documents.

The Commission understands that standards-development organizations craft rules as they see fit concerning intellectual property rights. The Commission gives due deference to 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 purpose of such rules will be one of several factors the Commission assesses 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, the timing and content of any assurances provided by the holder of intellectual property 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 on competition in relevant markets affected by the relevant standards could be important considerations. 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 ATIS, 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