SQUIRE
PATTON BOGGS

Squire Patton Boggs (US) LLP
2550 M Street, NW
Washington, DC 20037

O +1 202 457 6000
F +1 202 457 6315
squirepattonboggs.com

Benjamin D. Tarbell
T +1 202 457 6159
Ben.Tarbell@squirepb.com

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DEC - 4 2015

Federal Communications Commission
Office of the Secretary

December 4, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **REDACTED – FOR PUBLIC INSPECTION**
Purple Communications, Inc.
CG Docket Nos. 10-51 & 03-123

Dear Ms. Dortch:

On behalf of Purple Communications, Inc. (Purple), pursuant to Sections 0.457, 0.459, and 1.419 of the Federal Communications Commission's (FCC or Commission) rules, please find enclosed one original and one copy of a Redacted version of a Notice of Ex Parte filed by Purple on December 4, 2015 in the above-captioned dockets.[1] Purple has also submitted one original and one copy of the Confidential version of the Notice of Ex Parte consistent with those rules.

All information contained after the headings *****BEGIN CONFIDENTIAL***** and before the close headings *****END CONFIDENTIAL***** is confidential. As described below, all material contained inside those headings is proprietary commercial and business information that is not customarily disclosed to the public or within the industry and is subject to Exemption 4 under the Freedom of Information Act.

As this information is submitted voluntarily and absent any requirement by statute, regulation, or the Commission, Purple requests that, in the event that the Commission

[1] *See* 47 C.F.R. §§ 0.457, 0.459, 1.419.

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denies Purple's request for confidentiality, the Commission return the materials without consideration of the contents therein.[2]

Should you have any questions concerning the foregoing information, please contact the undersigned.

Respectfully submitted,

/s/

Benjamin D. Tarbell
Squire Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037
202-457-6159
Counsel to Purple Communications, Inc.

[2] 47 C.F.R. § 0.459(e).

SQUIRE
PATTON BOGGS

Squire Patton Boggs (US) LLP
2550 M Street, NW
Washington, DC 20037

O +1 202 457 6000
F +1 202 457 6315
squirepattonboggs.com

Monica S. Desai
T +1 202 457 7535
Monica.desai@squirepb.com

December 4, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Notice of Ex Parte – Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 10-51 & 03-123**

Dear Ms. Dortch:

On December 2, 2015, John Goodman, Chief Legal Officer, Purple Communications, Inc. (Purple), Michael Strecker, Vice President of Regulatory Affairs, Purple, and Monica Desai, Squire Patton Boggs (US) LLP, met with Edward Smith, Legal Advisor, Office of the Chairman, Federal Communications Commission (FCC or Commission), and the following staff of the FCC Consumer and Governmental Affairs Bureau (CGB): Karen Peltz Strauss, Deputy Bureau Chief; Robert Aldrich, Legal Advisor; Gregory Hlibok, Chief, Disability Rights Office; and Eliot Greenwald, Deputy Chief, Disability Rights Office.[1]

In the meeting, Purple discussed the *Further Notice of Proposed Rulemaking* (*FNPRM*) issued November 3, 2015 in the above-captioned dockets, in which the Commission has proposed to temporarily freeze rates for video relay service (VRS) for providers with 500,000 or fewer monthly minutes, while other providers' rates would continue to be dramatically reduced pursuant to the Commission's findings in the *VRS Reform Order*.[2]

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[1] John Goodman participated by telephone, all other participants met in person.

[2] *See Structure and Practices of the Video Relay Service Program* et al., CG Docket No. 10-51 *et al.*, Further Notice of Proposed Rulemaking, FCC 15-143 (Nov. 3, 2015) (*FNPRM*); *Structure and Practices of the Video Relay Service Program* et al., CG Docket No. 10-51 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618 (2013) *(VRS Reform Order)*.

Purple requested that the Commission raise the minute threshold for the rate freeze to a level appropriate to encompass all small providers, which is necessary to achieve the Commission's goal of affording a "reasonable measure of temporary relief from rate reductions that . . . are potentially jeopardizing [providers'] continuation of service."[3] Purple proposed that the Commission freeze rates for providers producing less than 2.75 million minutes per month, which, as detailed in the Attachment to this Ex Parte, will have a minimal impact on the TRS Fund.

Purple noted that the VRS market does not, as the Commission characterizes it in the *FNPRM*, consist of three large and three small providers.[4] Rather, the market includes three very small providers, two small providers (including Purple), and one near-monopoly provider. The Commission should evaluate the impact of the rate cuts and extend the freeze to *all* small providers. Continuing the currently scheduled rate decrease for any small provider would only serve to further concentrate the market.

Purple emphasized that until the Commission moves forward with the competitive reforms as anticipated through the Commission's 2011 FNPRM,[5] and the market responds to the impacts of those reforms, the current scheduled rate cuts for the 5 small providers should be suspended. Purple shared the attached document, which it will submit in connection with its comments to the FNPRM.

Respectfully submitted,

Monica S. Desai
Squire Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037
202-457-7535
Counsel to Purple Communications, Inc.

cc: Edward Smith
Karen Peltz Strauss
Robert Aldrich
Gregory Hlibok
Eliot Greenwald

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[3] *FNPRM* ¶ 18.

[4] *FNPRM* ¶ 18.

[5] *Structure and Practices of the Video Relay Service Program* et al., CG Docket Nos. 10-51 & 03-123 *et al.*, Further Notice of Proposed Rulemaking, FCC 11-184 (Dec. 15, 2011).

ATTACHMENT

Video Relay Service
Market Distribution and Cost Structure Analysis

The Market is Not Made-up of "3 Small and 3 Large" VRS Providers; there is only one "large" VRS provider:

- *****BEGIN CONFIDENTIAL***** [redacted]

  *****END CONFIDENTIAL***** A more appropriate description of the market would be 3 tiny providers, 2 small providers, and 1 near-monopoly provider.

  *****BEGIN CONFIDENTIAL*****

  [redacted]

  *****END CONFIDENTIAL*****

Volume Drives the Industry Weighted Average Cost:

- *****BEGIN CONFIDENTIAL***** [redacted]

  [redacted]

  *****END CONFIDENTIAL*****

Scheduled Rate Cuts Significantly Impact the Ability of Small Providers to Compete:

- *****BEGIN CONFIDENTIAL***** [redacted]

[redacted]

*****END CONFIDENTIAL*****

  - With little to no operating margin, the ability for the small and tiny providers to compete will only be further handcuffed within the market.
  - *****BEGIN CONFIDENTIAL***** [redacted] *****END CONFIDENTIAL*****
  - With no budget in which to develop, market, innovate or differentiate, the small providers will have limited ability to truly support the ACE application.

Small Providers Need Market Share Gains in Order to Survive Rate Cuts:

- By separating Purple's variable and fixed costs (as submitted to Rolka Loube), operating margin pro-formas can be computed based on certain volume thresholds.
  - Based on the H1 2016 rate schedule, Purple would need to handle approximately *****BEGIN CONFIDENTIAL***** [redacted] *****END CONFIDENTIAL*****

*****BEGIN CONFIDENTIAL*****

[redacted]

*****END CONFIDENTIAL*****

- Based on the H2 2016 rate schedule, Purple would need to be around *****BEGIN CONFIDENTIAL***** [redacted] *****END CONFIDENTIAL***** minutes per month in order to sustain a comparable operating margin as H2 2015.

*****BEGIN CONFIDENTIAL*****

[redacted]

*****END CONFIDENTIAL*****

- Based on the H1 2017 rate schedule, Purple would need to be around ***BEGIN CONFIDENTIAL*** [redacted] ***END CONFIDENTIAL*** minutes per month in order to sustain a comparable operating margin as H2 2015.

*****BEGIN CONFIDENTIAL*****

[redacted]

*****END CONFIDENTIAL*****

- The above chart also paints the significant challenge the "tiny 3" providers will have to ever reach a volume threshold that puts their per-minute cost below the H1 2017 rate structure, further highlighting the need to restructure the VRS rate methodology before future rate cuts take effect.

<u>The Rate Freeze Line Should Be Drawn at Providers under 2.75M (not 500k) Minutes Per Month</u>

- ***The Commission has correctly identified structural issues that threaten the long-term viability of the VRS program, including the suboptimal structure of the VRS industry as a whole, and the inappropriate lock-in of VRS users by the dominant provider of services. In 2011, the Commission opened a proceeding to address and correct these market imbalances, caused in large part by anticompetitive practices. The Commission specifically recognized the desire for consumers to have a choice of providers, and the fact that obstacles to switching providers – many of which remain in place today – severely limit consumer choice, and perpetuate market share concentration. Until those market imbalances are corrected, and anticompetitive practices and features are fully corrected, the Commission should not place an undue burden on the 5 competitive providers via a further rate cut mechanism.***

- ***The dividing line for freezing rates should be set at providers producing less than 2.75 million minutes per month.*** *****BEGIN CONFIDENTIAL***** [redacted] *****END CONFIDENTIAL***** ***Failure to freeze the rates for providers below 2.75M minutes per month will result in those providers either a) having a significant financial disadvantage to compete in the market and to support the ACE initiative or b) being able to financially maintain their business, thus significantly reducing quality, and/or eliminating from the market the small providers ACE was meant to enable.***

<u>Freezing Rates for Providers Below 2.75 Million Minutes Per Month has a Minimal Impact on the Fund:</u>

- This initiative will not unduly burden the TRS Fund. *****BEGIN CONFIDENTIAL***** [redacted]

  [redacted]

  *****END CONFIDENTIAL*****

<u>A Staggered Freeze Approach based on Provider Size Protects Providers and the Fund</u>

- An alternative approach would be to do a staggered rate freeze.
- Purple proposes the following freeze schedule:
    - Providers < 500k minutes per month
        - Rates Frozen effective 6/30/2015 (Freezing H1 2015 Rates)
    - Providers between 500K and 2.75M minutes per month:
        - Rates frozen effective 12/31/2015 (Freezing H2 2015 Rates)

*****BEGIN CONFIDENTIAL*****

[redacted]

- [redacted]

*****END CONFIDENTIAL*****

<u>Consequences of Not Freezing Below 2.75 Million Minutes Are Dire for Small 5:</u>

- ***Purple applauds the Commission's desire to reform the VRS industry as anticipated through the Commission's 2011 FNPRM, including the development of standards, full interoperability, and the curbing of "slamming" and misleading marketing practices. Until those goals have been achieved, and their results are reflected in the marketplace, the current scheduled rate cuts for the 5 small providers should be suspended. Continuing to drive these rate cuts through the VRS supply chain will only guarantee a VRS market dominated by one provider for the foreseeable future.***