Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket No. 10-51
	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
	)	
	)	

COMMENTS OF PURPLE COMMUNICATIONS, INC. ON
EMERGENCY PETITION FOR A TEMPORARY *NUNC PRO TUNC* WAIVER

Purple Communications, Inc. (Purple) hereby submits these Comments on the Emergency Petition for a Temporary *Nunc Pro Tunc* Waiver ("Waiver Petition")[1] filed by a group of competitive providers of Video Relay Service (VRS) each processing under 500,000 minutes of VRS per month (collectively, the "Tier I Providers").[2] The Tier I Providers ask the Commission to retroactively freeze the declining VRS compensation rates established in the *VRS Competitive Reform Order*, as applicable to the Tier I Providers, at the level in effect on June 30, 2015.[3] Purple supports a temporary freeze of the rates established in the *VRS Competitive Reform Order*, but submits that such a waiver should apply to all competitive providers that relay less

[1] Emergency Petition for a Temporary *Nunc Pro Tunc* Waiver of Convo Communications, LLC, Hancock Jahn Lee & Puckett, LLC dba Communications Axcess Ability Group/Star VRS, and ASL/Global VRS Service Holdings, LLC, CG Docket Nos. 10-51 & 03-123, Petition, at 1-2 (Nov. 25, 2015) ("Waiver Petition"); *see also Structure and Practices of the Video Relay Service Program* et al., CG Docket Nos. 10-51 & 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618 (2013) ("*VRS Competitive Reform Order*").

[2] The Tier I Providers include Convo Communications, CAAG/Star VRS, and ASL/Global VRS.

[3] *See* Waiver Petition at 1-2; *VRS Competitive Reform Order* ¶¶ 181-216.

than 2.75 million minutes per month, as discussed in its recent ex parte filings,[4] and its Comments to the recent *VRS Rate Freeze FNPRM*,[5] which are being filed concurrently.

The *VRS Competitive Reform Order* established a tiered per-minute VRS compensation rate structure under which rates automatically decline every six months during a four-year period.[6] If the Waiver Petition is granted, VRS rates for the Tier I Providers would be retroactively frozen at the levels in effect on June 30, 2015 until September 30, 2016 or until the Commission acts on the *VRS Rate Freeze FNPRM*, in which the Commission has proposed to freeze rates at the June 30, 2015 levels for the Tier I Providers.[7]

The Tier I Providers state they have been operating at a loss as a result of the compensation rates that took effect July 1, 2015.[8] They support their request based on the argument that they should be afforded the opportunity to "gain minimally efficient scale,"[9] and that they "should have a fair opportunity to participate in [anticipated VRS] reforms."[10] They warn that the scheduled rate reductions will "undermine, if not jeopardize, the ability of the Tier I Providers to continue to participate in the Commission's VRS program."[11]

---

[4] *See* Purple Communications, Inc. Notice of Ex Parte, CG Docket Nos. 10-51 & 03-123 (Nov. 25, 2015); Purple Communications, Inc. Notice of Ex Parte, CG Docket Nos. 10-51 & 03-123 (Dec. 4, 2015).

[5] *See Structure and Practices of the Video Relay Service Program* et al., CG Docket Nos. 10-51 & 03-123, Further Notice of Proposed Rulemaking, FCC 15-143 (Nov. 3, 2015) ("*VRS Rate Freeze FNPRM*"); Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Dec. 9, 2015) ("Purple *VRS Rate Freeze FNPRM* Comments").

[6] *See generally VRS Competitive Reform Order*.

[7] *See VRS Rate Freeze FNPRM* at ¶¶ 14-18.

[8] Waiver Petition at 2.

[9] *Id.* at 2-3.

[10] *Id.* at 3; *see also VRS Rate Freeze FNPRM* ¶ 16.

[11] Waiver Petition at 3.

Purple emphasizes that the arguments supporting the Waiver Petition apply equally to all small, competitive providers. The problem that the Commission identified in the *VRS Rate Freeze FNPRM* – that current and planned rates cuts are "potentially jeopardizing [providers'] continuation of service"[12] – extends equally to Purple. Purple has submitted extensive information to the Commission detailing the dramatic impact of the rate cuts thus far on Purple's operating margin as well the threat posed by the planned 2016 and 2017 rate cuts on Purple's continued ability to provide service in this market.[13] All small, competitive providers should be afforded the opportunity to participate in the competition-friendly VRS reforms anticipated by the Commission, and the resulting opportunity to gain minimally efficient scale in a level-playing field.

The Commission has repeatedly found that leaving only a single provider in the VRS market would be detrimental to consumer choice and the public interest.[14] The currently scheduled rate declines jeopardize the existence of every small, competitive VRS provider. A waiver or a freeze of the scheduled rate cuts for all small providers is necessary to preserve what competition exists in the VRS market and prevent further consolidation in a single provider.

---

[12] *VRS Rate Freeze FNPRM* ¶ 11.

[13] *See* Purple Communications, Inc. Notice of Ex Parte, CG Docket Nos. 10-51 & 03-123 (Nov. 25, 2015); Purple Communications, Inc. Notice of Ex Parte, CG Docket Nos. 10-51 & 03-123 (Dec. 4, 2015); *see also* Purple *VRS Rate Freeze FNPRM* Comments.

[14] *See Structure and Practices of the Video Relay Service Program* et al., CG Docket No. 10-51 & 03-123, Further Notice of Proposed Rulemaking, FCC 11-184, ¶ 11 (Dec. 15, 2011) (Stating that a single provider "could lead to an unacceptable lack of consumer choice.") ("*2011 VRS Structure and Competition FNPRM*"); *VRS Rate Freeze FNPRM* ¶¶ 14-16 (Stating that the Commission "continue[s] to believe that, as stated in the *VRS Competitive Reform Order*, 'it is worth tolerating some degree of additional inefficiency in the short term, in order to maximize the opportunity for successful participation of multiple efficient providers in the future, in the more-competition friendly environment that we expect to result from our structural reforms." (quoting *VRS Competitive Reform Order* ¶ 200)).

The Commission predicts that the structural and competitive reforms that it has been planning since 2011, once they have been implemented and have taken effect, will "address many of the issues that have made it difficult for small providers to operate efficiently" and that there would be a "substantial alleviation of the 'lock-in' problem that has limited the ability of smaller rivals to compete effectively with the largest provider."[15] Purple continues to support such competition-friendly reforms, which include the development of access standards, full interoperability, and the curbing of "slamming" and misleading marketing practices.[16] However, as the Commission has recognized, these critical goals have yet to be achieved. Accordingly, while the Commission continues to move forward in implementing its planned reforms, it must take the immediate step of freezing the rates for all small, competitive providers, to ensure that they are still operating when those reforms are completed.

To allow continued competition in the VRS market and promote consumer choice, Purple supports the Tier I Providers' request for a *nunc pro tunc* waiver of the rate cuts adopted in the *VRS Competitive Reform Order*, but submits that such a waiver should apply to all small, competitive providers relaying less than 2.75 million minutes per month.

---

[15] *VRS Competitive Reform Order* ¶ 199; *see also 2011 VRS Structural Reform FNPRM*.

[16] *See 2011 VRS Structural Reform FNPRM*; *VRS Competitive Reform Order*; *see also* Comments of Purple Communications, Inc., CG Docket No. 10-51 & 03-123, at 5 (Mar. 8. 2012) (Stating that the "proposals in [*VRS Structural Reform FNPRM*], such as technology standards, broadband subsidies and feature portability, should foster real competition and allow smaller providers to gain additional market share."); *see also* Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Aug. 19, 2013).

Respectfully submitted,

PURPLE COMMUNICATIONS, INC.

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

John Goodman
Chief Legal Officer
Purple Communications, Inc.
595 Menlo Drive
Rocklin, CA 95765

Michael Strecker
Vice President of Regulatory Affairs
Purple Communications, Inc.
595 Menlo Drive
Rocklin, CA 95765

December 9, 2015