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December 9, 2015

Accepted / Filed

DEC - 9 2015

Federal Communications Commission
Office of the Secretary

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 two copies of a Redacted version of Comments filed by Purple on December 9, 2015 in the above-captioned dockets.[1]

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

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

[2] 47 C.F.R. § 0.459(e).

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

Respectfully submitted,

/s/

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Accepted / Filed

DEC - 9 2015

Federal Communications Commission
Office of the Secretary

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.
VIDEO RELAY SERVICE RATE FREEZE
FURTHER NOTICE OF PROPOSED RULEMAKING

The Commission has proposed to temporarily freeze rates for Video Relay Service ("VRS") providers with 500,000 or fewer monthly minutes.[1] As detailed in these Comments, the Commission must provide a rate freeze for *all* small, competitive providers, because they all will be equally impacted by the currently scheduled dramatic rate reductions. Otherwise, the Commission risks jeopardizing the important competition-friendly VRS reform efforts the Commission has been working towards since 2011.[2]

[1] *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*").

[2] *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 11-184 (Dec. 15, 2011) ("*2011 VRS Structural Reform FNPRM*"); *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*").

The Commission has consistently agreed that leaving only a single provider in the VRS market would be detrimental to consumer choice and the public interest.[3] Moreover, the Commission anticipated important structural and competitive reforms to the VRS program to coincide with the scheduled dramatic rate decreases. The Commission concluded that reform of the VRS program was necessary to correct structural problems that artificially suppressed competition and resulted in inefficiencies and artificial constraints on growth. The Commission further concluded that reforms would lead to a level playing field, allowing for fair competition resulting in growth of competitive providers, which in turn would result in scale efficiencies, a lower cost structure for competitive providers, and the ability to operate at a lower reimbursement rate.

Purple agrees with the Commission's conclusions and has consistently supported these important reform efforts. Unfortunately, the majority of the Commission's anticipated structural reforms have either not yet been implemented or taken effect in the market. Accordingly, moving forward with the scheduled rate declines in the absence of competitive reform – and related absence of the growth, scale efficiencies, and lower cost structure that will result from these reforms – will jeopardize the very program objectives that the Commission has sought to effectuate through the reform process. A rate freeze right now for each one of the five small, competitive providers is necessary to ensure that the VRS program is not left with only one monopoly provider. As detailed in these Comments, Purple supports a rate freeze and proposes

[3] *See 2011 VRS Structural Reform FNPRM* ¶ 11; *see also VRS Rate Freeze FNPRM* ¶¶ 14-16 (The Commission stated that it "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)).

that the freeze for any further scheduled decline apply to any provider processing under two million seven hundred and fifty thousand (2,750,000) minutes per month.

Purple is concurrently submitting Comments to the Emergency Petition for a Temporary *Nunc Pro Tunc* Waiver filed by the "Tier I Providers" asking 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.[4]

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[4] *See* 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); Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Dec. 9, 2015).

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I. The Commission Anticipated Structural Reforms to Coincide with Rate Declines; Without Structural Reforms In Place and Effective, Scheduled Rate Declines Will Harm the Important Program Goals the Commission Has Sought to Effectuate

The functional equivalence mandate of the Americans with Disabilities Act ("ADA") calls for a VRS program characterized by competition, innovation, and quality service, with each factor critically important in promoting consumer choice.[5] The Commission has long recognized that structural reform of the VRS market is needed in order for the VRS program to promote the goals of Congress.[6] Indeed, in the *2011 VRS Structural Reform FNPRM*, the Commission specifically identified "a number of structural issues with the current program that have not only detracted from its historical success in providing communications services to individuals who are deaf, hard of hearing, deaf-blind, or have a speech disability, but may also threaten its future success."[7] Those particular structural issues identified by the Commission included: insufficient development of VRS access technology standards resulting in the inappropriate lock-in of VRS users; an unpredictable and potentially inefficient VRS compensation mechanism; a suboptimal VRS industry structure inconsistent with statutory goals; and a compensation mechanism vulnerable to waste, fraud and abuse.[8]

In 2013, the Commission took steps toward these important reform efforts in the *VRS Competitive Reform Order*, which included a focus on correcting lingering competition issues.[9] The Commission rightly recognized the importance of standards to support interoperability and portability, as well as the need to address and curtail practices such as slamming and lack of

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[5] Comments of Purple Communications, Inc. at 1-3, CG Docket Nos. 03-123 & 10-51 (filed Nov. 14, 2012) ("Purple VRS PN Comments").

[6] *See generally 2011 VRS Structural Reform FNPRM*; *VRS Competitive Reform Order*.

[7] *2011 VRS Structural Reform FNPRM* ¶ 11.

[8] *Id.*

[9] *See VRS Competitive Reform Order*.

access to video mail that result in anti-competitive advantages.[10] Purple has sought to be a partner with the Commission in supporting efforts to move forward with proposed changes.[11] This focus on competition in the *VRS Competitive Reform Order* was borne out of the reality that the VRS marketplace has, for most of its mature existence, been dominated by a near-monopoly that has been supported through the same structural and competitive issues (such as the lack of interoperability that the Commission is seeking to change).

The *VRS Competitive Reform Order* also imposed a dramatically declining rate schedule that the Commission planned to coincide with the transition to structural reforms.[12] The Commission predicted that the planned structural reforms – "once implemented" – would "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."[13]

Importantly, in discussing the retention of the tier structure during the transition to structural reform, the Commission specifically concluded that until economies of scale are realized through the competitive reform process, reimbursement rates must take into account the inherent cost structure differences for the small competitive providers, or risk losing competition: "it is worth tolerating some degree of additional inefficiency in the short term, in order to

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[10] *VRS Competitive Reform Order* ¶¶ 6, 9, 275.

[11] *See* Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 5 (Mar. 8, 2012); Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Nov. 14, 2012); Notice of Ex Parte of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Aug. 23, 2013); Notice of Ex Parte of Purple Communications, Inc., CG Docket Nos. 10-51, 03-123, & 13-24 (Dec. 9, 2013); Notice of Ex Parte of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Dec. 24, 2013); Notice of Ex Parte of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Feb. 13, 2015); Notice of Ex Parte of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Nov. 3, 2015).

[12] *See VRS Competitive Reform Order* ¶¶ 181-216.

[13] *VRS Competitive Reform Order* ¶ 199.

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."[14] The Commission specified that it did not want to "unnecessarily constrict[] the service choices available to VRS consumers during the period prior to implementation of structural reforms."[15] The Commission rightly recognized that "small providers may be able to operate more efficiently and compete more effectively under the structural reform conditions than under current conditions, in which technical barriers to interoperability and portability, as well as other limitations, continue to inhibit the full development of competition."[16] The Commission deemed it important to "have an opportunity to find out whether such providers are able to grow sufficiently to reach a more efficient scale under more hospitable conditions."[17] Implicit in all these statements is the Commission's acknowledgment of the correlations between fair competition, growth, and operating costs at scale.

During the anticipated transition to structural reform, the Commission imposed dramatically declining rates.[18] Now, four years after the release of the *2011 Structural Reform FNPRM* and two years and five months after the release of the *VRS Competitive Reform Order*, many of the anticipated structural and competitive reforms have yet to be implemented or take effect. At the same time, the dramatically declining rate schedule presently stands to effectively eliminate any possibility of any competition to the monopolist in the future. As a result, freezing the rates for all small, competitive providers will ensure that those providers are still in operation

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[14] *VRS Competitive Reform Order* ¶ 200.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *See VRS Competitive Reform Order* ¶¶ 181-216.

once planned reforms take effect, and that those providers will have the opportunity to compete on a level playing field, as anticipated by the Commission.

II. The Market Remains Unevenly Distributed

It is incorrect to characterize the VRS market as being comprised of 3 small providers and 3 large or larger providers.[19] The current distribution of the market is actually quite different. Purple suggests that a more accurate view is that the market is truly comprised of three very small providers, two small providers, and one near-monopoly provider. ***BEGIN CONFIDENTIAL*** [redacted]

[redacted]

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

The Commission is correct that "the timing of structural reforms is of particular

[19] *See, e.g., VRS Rate Freeze FNPRM* ¶¶ 18, 21, 25.

[20] Purple Communications, Inc. Notice of Ex Parte, CG Docket Nos. 10-51 & 03-123 (Nov. 25, 2015) ("Purple Nov. 25, 2015 Ex Parte").

importance to the smallest VRS providers, who need a window of opportunity to grow and increase efficiency under fair competitive conditions."[21] As explained in detail below, that statement applies equally to all five small providers – not just the three very small providers. As Purple noted to the Commission in 2012: "[w]hile the tiered rate structure has allowed for smaller providers to compete, the vast majority of market share continues to belong to a single provider . . .. Additional proposals in the [*2011 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."[22]

III. The Commission Misinterprets "Average" Provider Costs in the *VRS Rate Freeze FNPRM*

The Commission is not correct in stating that the "average" provider cost is well below the current reimbursement rates for VRS.[23] By Purple's count, the term "average" appears 37 times within the *VRS Rate Freeze FNPRM.* In some cases, it is used as an implied "weighted average," while at other times it seems to imply a straight average. Although the Commission uses these two terms almost interchangeably they are in fact drastically different calculations. It is important to clarify that Rolka Loube uses "industry weighted average cost per minute" to compute what the Commission refers to, in most cases, as the "average provider costs."

When a provider has near-monopolistic position within the market, any application of a "weighted average" will, mathematically, ignore the costs of all other industry providers, as their volumes do not carry enough market "weight" to materially impact a weighted average cost

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[21] *VRS Rate Freeze FNPRM* ¶ 24.

[22] *See* Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 5 (Mar. 8, 2012); *see also* Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Nov. 14, 2012).

[23] *See VRS Rate Freeze FNPRM* ¶¶ 3, 19.

calculation. In the case of the VRS industry, the lopsided market share distribution results in a stated "weighted average" cost of $2.93 per minute which is materially less than a true average provider cost.[24] The following graph illustrates the disparity that exists between average and weighted average given that one provider has near-monopoly status, reflecting that $2.93 per minute does not accurately reflect the "average" cost per minute of the six providers:

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

[redacted]

[redacted]

[24] *See* Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 & 10-51 (Apr. 24, 2015).

[redacted] ***END CONFIDENTIAL***

For the five small, competitive providers, actual allowable costs per minute are all significantly higher than the industry weighted average cost.

IV. Scheduled Rate Cuts Threaten Future Competition

Purple continues to applaud and support the Commission's desire to reform the VRS industry as anticipated through the Commission's *2011 VRS Structural Reform FNPRM*, and as continued through the *2013 VRS Competitive Reform Order*, including the development of standards, full interoperability, and the curbing of "slamming" and misleading marketing practices.[25] Unfortunately, those goals have yet to be achieved. While the Commission continues to move forward in implementing these structural reforms, the timing of those reforms, and, importantly, the timing of when the impact of the reforms will be felt in the market, are uncertain. In the meantime, the next three rounds of dramatic rate cuts are scheduled and the results will be certain – the cuts will unquestionably harm the ability of all small providers to effectively leverage the structural reforms called for by the Commission in 2011 and 2013 to achieve a level playing field and compete fairly for market growth and a resulting lower cost structure.

The Commission has concluded that a single provider "could lead to an unacceptable lack of consumer choice" and that it was therefore important to achieve "a reasonable balance between efficiency and freedom of users to have more than one choice of VRS service provider."[26] As shown in the Attachment, the imposition of the remaining rate reductions from the *VRS Competitive Reform Order* (which presumed effective competition due to structural

[25] *See generally 2011 VRS Structural Reform FNPRM*; *VRS Competitive Reform Order*.

[26] *2011 VRS Structural Reform FNPRM* ¶ 11.

reforms would have resulted by now) will put the five small competitive providers in a position where they will have little to no financial ability to develop, market, or provide outreach to the community. This will severely limit these providers' ability to support the ACE application, or benefit from the reforms planned by the FCC in the *2011 VRS Structural Reform FNPRM.*

This *VRS Rate Freeze FNPRM* also supports the same argument made by Consumer Groups, Purple and other VRS providers that there is an identifiable need for a rate freeze given the need to meet the constantly advancing standard of functional equivalence.[27] The Consumer Groups have advocated that when setting VRS rates, the Commission must take into account "research and development needs to encourage VRS providers to innovate and provide *ever improving* functional equivalency[,] . . . labor costs associated with improved speed-of-answer requirements[,] and 'adjust rates to reflect any increase over the historical costs upon which they were based' to meet its obligation to reimburse providers for all costs incurred to meet the mandatory minimum standards established by the agency."[28] Purple concurs with the Consumer Groups' analysis, and advocates that the Commission freeze rates for all small providers.

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[27] *See VRS Rate Freeze FNPRM* ¶ 17 (The Commission stated that a rate freeze was warranted, in part, because small providers "may offer service features that are either designed for niche VRS market segments or are significantly different from those currently available through other providers; such features may in turn be helpful in advancing the goal of functionally equivalent service for certain subsets of VRS consumers."); Notice of Ex Parte of Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, Association of Late-Deafened Adults, American Association of the Deaf-Blind, Cerebral Palsy and Deaf Organization, Deaf Seniors of America, and California Coalition of Agencies Serving the Deaf and Hard of Hearing, CG Docket Nos. 10-51 & 03-123, at 4-5 (Apr. 7, 2015) (The Consumer Groups "respectfully request[ed] that the Commission carefully consider the Joint Proposal's request for rate stabilization.") ("Consumer Groups' Apr. 7 Ex Parte"); *Structure and Practices of the Video Relay Service Program* et al, CG Docket Nos. 10-51 & 03-123, Joint Proposal of all Six VRS Providers for Improving Functional Equivalence and Stabilizing Rates (Mar. 30, 2015).

[28] *See, e.g.,* Consumer Groups' Apr. 7 Ex Parte at 4-5.

V. The Commission Should Establish Quality of Service Standards

The Commission discounts the concerns regarding degradation of service that have been raised by consumer groups and others that will very likely result from the dramatic rate reductions, when these rate reductions are made in the absence of structural reforms.[29] Purple agrees that rate cuts, in the absence of any offsetting growth and related economies of scale, is bound to result in degradation of service, even if providers can continue to meet the mandatory *minimum* standards.

The Commission has placed a lot of emphasis around Providers becoming more "efficient." For any business running call center operations, where a majority of expense is around variable call center labor ("agents"), "efficiency" is a euphemism for working the agents harder. For example, improving call center efficiencies can be done by having agents take fewer breaks, work longer shifts, or by scheduling fewer agents thereby ensuring they will spend more time processing calls. As the Commission has imposed multiple rate cuts, providers have been forced to increase "efficiencies" in ways that could be considered contrary to public policy.

Those efficiencies, according to several consumer groups and Registry of Interpreters for the Deaf, Inc. (RID), frequently end up unduly burdening interpreters, which can result in a degradation in service.[30] There is not a single Quality of Service ("QoS") report that the Commission currently utilizes to determine if the concerns raised by providers, consumers, or RID around QoS are fact, fiction, or myth. Accordingly, the Commission is ill positioned to determine whether there is any validity around these concerns and as such should not disregard them out-of-hand. For this reason, Purple believes it is time for the Commission to implement

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[29] *VRS Rate Freeze FNPRM* ¶ 28.

[30] *See* Consumer Groups' Apr. 7 Ex Parte; Registry of Interpreters for the Deaf, Inc. Notice of Ex Parte, CG Docket Nos. 10-51 & 03-123 (Apr. 7, 2015).

QoS reporting.[31] This position is further supported by the Government Accountability Office (GAO) report, which confirmed that the Commission needs to establish performance goals and internal controls to oversee its national TRS Program.[32]

Until QoS standards and reporting are in place, the Commission should not further impose rate cuts on the small, competitive providers. QoS must be measured before further rate cuts are imposed, in order to ensure that the VRS program is continuing to meet ADA standards.

VI. The Freeze Line Should Be Drawn at 2.75 Million Minutes per Month

The Commission acknowledges that volume, or necessary scale, is needed in order for the small, competitive providers to continue offering service within the currently prescribed rate methodology.[33] Purple has presented to the Commission on two separate occasions the impact the future rate cuts have on the small competitive providers.[34] By using the industry weighted average methodology, the rates for 2016 and 2017 create an economic environment for the 5 small competitive providers that will either eliminate them, or eliminate their ability to compete in the market. Neither of these outcomes is good for the community, nor do they promote the spirit of the ADA.

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[31] *See* Telecommunications for the Deaf & Heard of Hearing *et al.* Notice of Ex Parte, CG Docket Nos. 10-51 & 03-123 (Sep. 30, 2015).

[32] Government Accountability Office, *Telecommunications Relay Service: FCC Should Strengthen Its Management of Program to Assist Persons with Hearing or Speech Disabilities*, GAO -15-409 (Apr. 2015).

[33] *See VRS Rate Freeze FNPRM* ¶¶ 14, 19.

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

Economies of scale play an important role in this industry.[35] In order to maintain quality operations at a cost structure that begins to approach to that of the near-monopoly provider, and as reflected in the Attachment to these comments, Purple submits that 2.75 million minutes per month is the appropriate line for freezing the rates.

VII. Rates Should Be Frozen Until the Commission Implements Proposed Reforms, and the Impact of Those Reforms Are Realized in the Market

The Commission has asked if a 16 month freeze is the correct time frame. The implementation of the anticipated reforms, and allowing those reforms to have a material effect in the market, are critical prerequisites before the Commission moves forward with the planned rate cuts for all small providers. Therefore, Purple proposes that any rate freeze should be applicable to all small competitive providers and should extend until such time as the Commission implements the structural reforms it proposed in 2011, *and the impact of those reforms are achieved in the marketplace*.

Each subsequent rate cut makes more drastic the small competitive providers' need for market share gains, and small providers should be afforded enough time to have a reasonable opportunity for fair competition and related opportunity for growth in order to survive the proposed rate cuts, consistent with the Commission's proposal.

VIII. Alternative Tiered Freeze Approach

For the reasons discussed above, and as reflected in the attachments to these comments, Purple recommends that the Commission freeze rates for all providers producing less than 2.75 million minutes per month. If the Commission decides not to move forward with Purple's recommended approach, however, Purple suggests a tiered freeze approach under which the

[35] *See 2011 VRS Structural Reform FNPRM* (The Commission explored "the option of instituting a more efficient compensation mechanism . . . with a specific plan for transitioning the industry structure to ensure economies of scale.").

Commission would freeze rates for providers producing less than 500,000 minutes per month at the rates effective prior to June 30, 2015 – as the Commission has proposed – and freeze rates for providers producing between 500,000 and 2.75 million minutes per months at the reduced rates effective December 31, 2015.[36]

Additionally, similar to Purple's primary proposal, the tiered approach would have a minimal impact on the TRS Fund. As reflected in the Attachment, the tiered approach would result in only a *****BEGIN CONFIDENTIAL***** [redacted] *****END CONFIDENTIAL***** impact on the total Fund requirement.

IX. Rate Methodology

The Commission noted specifically that it did not want to receive comments around various rate methodologies as part of this *VRS Rate Freeze FNPRM*. The Commission has acknowledged that the rate methodology is not appropriate for the VRS market. Purple agrees, and suggests that reviewing the VRS rate-setting methodology is important enough that the Commission should move quickly to open an entirely separate proceeding to conduct a wholesale review. Purple looks forward to working with the Commission to structure a rate methodology that is suitable for the VRS industry and furthers the Commission's stated goal of reducing the overall costs of delivering VRS service.

X. Conclusion

The Commission must freeze rates for all small competitive providers, because they will all be severely impacted by the currently scheduled dramatic rate reductions. Absent a freeze, the Commission risks jeopardizing the important VRS reform efforts the Commission has been

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[36] *See VRS Rate Freeze FNPRM* ¶ 18 ("Under this proposal . . . the Tier I rate of $5.29 per minute that was in effect prior to June 30, 2015, would be frozen only for those providers whose monthly minutes fall entirely within Tier I.").

working towards since 2011. The majority of the Commission's anticipated structural reforms have not yet been implemented or taken effect in the market. An immediate rate freeze for the five, small competitive providers is necessary to ensure that the VRS program is not left with only one monopoly provider. The Commission has consistently emphasized that having only a single provider in the VRS market would lead to an "unacceptable lack of consumer choice" and be detrimental to the public interest.[37] Purple strongly agrees with that that finding, and accordingly Purple supports the concept of a rate freeze for small, competitive providers but, as discussed above, proposes that the freeze apply to *all* small providers – *i.e.*, those producing less than 2.75 million minutes per month.

[37] *2011 VRS Structural Reform FNPRM* ¶ 11.

Respectfully submitted,

PURPLE COMMUNICATIONS, INC.

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December 9, 2015

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.

<u>Small Providers Need Market Share Gains in Order to Survive Rate Cuts:</u>

- 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*****

- 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.***