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December 24, 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 two copies of a Redacted version of Reply Comments filed by Purple on December 24, 2015 in the above-captioned dockets.[1]

All information contained after the headings *****BEGIN CONFIDENTIAL***** and before the close headings *****END CONFIDENTIAL***** is confidential. 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]

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[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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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
	)	
	)	

REPLY COMMENTS OF PURPLE COMMUNICATIONS, INC.
VIDEO RELAY SERVICE RATE FREEZE
FURTHER NOTICE OF PROPOSED RULEMAKING

Purple Communications, Inc. (Purple), through counsel, respectfully reiterates through these Reply Comments that the Commission must implement the rate freeze proposed in the *VRS Rate Freeze FNPRM* for *all* small, competitive providers, including Purple.[1] Unless a rate freeze is implemented for all small providers – those producing fewer than 2.75 million minutes per month – the Commission risks jeopardizing small providers' continued service and the important competition-friendly VRS reform efforts the Commission has been working towards since 2011.[2] The Commission should also implement Quality of Service ("QoS") standards to ensure that rate

[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*"). *See also* Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 8 (Dec. 9, 2015) ("Purple VRS Rate Freeze Comments").

[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) ("*2013 VRS Competitive Reform Order*").

cuts do not lead to a degradation of service quality that might harm consumers or conflict with the statutory mandate of functional equivalence.

I. Scheduled Rate Cuts Risk Further Concentrating the Market in a Single Provider, Which Threatens Competition and Functional Equivalence

The current VRS market is comprised of three very small providers, two small providers, and one dominant, near-monopoly provider.[3] All five small providers are in jeopardy as a result of the scheduled rate cuts, because their actual allowable costs per minute are significantly higher than rates paid under the current glide path.[4]

The rate cuts scheduled through the *2013 VRS Competitive Reform Order* were intended to set VRS compensation rates "closer to average provider costs as calculated by the Fund administrator."[5] Because the "average" calculated by Rolka Loube is a *weighted* average, and the majority of total VRS minutes are produced by a single near-monopoly provider, none of the five smaller providers as a practical matter have any material "weight" in such a calculation.

The chart on the following page summarizes how using a weighted average of VRS provider costs presents an inaccurate view of providers' reasonable costs.

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[3] *See* Purple VRS Rate Freeze Comments at 8-9.

[4] *See 2013 VRS Competitive Reform Order* ¶¶ 181-216.

[5] *VRS Rate Freeze FNPRM* ¶ 3.

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

[redacted]

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

To compound the issue for the five small providers, the vast majority of anticipated market reforms set forth in the *2011 VRS Structural Reform FNPRM* and the *2013 VRS Competitive Reform Order* – which were intended to create a level playing field for competition – have not been implemented or taken effect. The Commission recognized that, without reform, the Commission could not flash cut to a rate that would eliminate competition. Instead, the Commission instituted a series of declining rates intended to be implemented in parallel with the anticipated reforms, and recognized that it was important to allow "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."[6] Those anticipated reforms include the development of standards, full interoperability, and the curbing of "slamming" and misleading marketing practices.[7] The Commission expected such reforms to allow competitive providers to grow and achieve the scale efficiencies and the lower cost structure needed to operate at a lower reimbursement rate.[8]

These reforms have not been implemented or taken effect. At the same time, the rate cut "glide path" that was intended to be implemented in parallel with these anticipated reforms has steadily been implemented. Now, unless the Commission implements a rate freeze for small, competitive providers, the rate cuts established by the Commission in the *2013 VRS Competitive Reform Order* will ironically result in zero competition.

Accordingly, Purple asks that the Commission implement a rate freeze for *all* small, competitive providers – *i.e.,* those providers producing less than 2.75 million minutes per month – and that the rate freeze apply until the Commission implements anticipated VRS structural reforms and those reforms are realized in the market.

As an alternative, the Commission could adopt a tiered freeze approach under which it would freeze rates for providers producing less than 500,000 minutes per month at the rates effective June 30, 2015, and freeze rates for providers producing between 500,000 and 2.75 million minutes per month at the reduced rates effective December 31, 2015. As Purple stated in its Comments, Purple's primary and alternative proposals would have a minimal impact on the

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[6] 2013 *VRS Competitive Reform Order* ¶ 200.

[7] *See generally 2011 VRS Structural Reform FNPRM*; *2013 VRS Competitive Reform Order.*

[8] *2013 VRS Competitive Reform Order* ¶ 200.

TRS Fund and would sustain competition and consumer choice while the Commission implements structural and competitive reform.[9]

II. The Commission Should Establish Quality of Service Standards

The record reflects that in the absence of offsetting growth and related economies of scale, rate cuts are likely to result in degradation of service and may impact functional equivalency. Consumer Groups emphasized that "[w]ithout [reimbursement rates that cover the entirety of their legitimate costs], providers will be financially incapable of maintaining an adequate quality of service" or engaging in the research and development necessary to meet the constantly advancing functional equivalence mandate.[10] Providers state that further rate cuts will "inevitably" lead to a degradation of service.[11] Consumer Groups and Registry of Interpreters for the Deaf, Inc. both noted the Government Accountability Office's finding that without specific goals related to service quality, such as interpreter accuracy, it is difficult to determine whether functional equivalence is being met.[12] For these and other reasons emphasized in its

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[9] Purple Rate Freeze Comments at 16.

[10] *See* Comments of Consumer Groups, CG Docket Nos. 10-51 & 03-123, at 4-5 (Dec. 9, 2015).

[11] Comments of ZVRS, CG Docket Nos. 10-51 & 03-123, at 8 (Dec. 9, 2015) (if ZVRS is "not afforded rate relief similar to the relief offered to the Tier 1 providers," the "high quality and efficiency of the ZVRS service . . . will inevitably deteriorate[.]"); Comments of Convo Communications, CG Docket Nos. 10-51 & 03-123, at 6 (Dec. 9, 2015) (a "rate cut on January 1, 2016 would force Convo to make operational reductions and those changes would correspondingly affect service quality[.]").

[12] *See* Comments of Consumer Groups, CG Docket Nos. 10-51 & 03-123, at 2 (Dec. 9, 2015); Comments of Registry of Interpreters for the Deaf, Inc., CG Docket Nos. 10-51 & 03-123, at 2 (Dec. 9, 2015); *see also* United States Government Accountability Office, *TRS: FCC Should Strengthen Its Management of Program to Assist Persons with Hearing or Speech Disabilities*, Report to the Honorable Jeff Sessions, at 18 (Apr. 2015), *available at* http://www.gao.gov/products/GAO-15-409.

Comments, Purple reiterates its request that the Commission should implement QoS standards and reporting prior to further reducing the rates applicable to small, competitive providers.[13]

III. Rate Methodology

The Commission has acknowledged that the current rate methodology is not appropriate for the VRS market and is inherently flawed. Moreover, the necessity of a rate freeze further highlights the glaring need for the Commission to move forward expeditiously with a separate rate setting methodology proceeding.[14] 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.[15]

IV. Conclusion

The Commission must implement a rate freeze for *all* small, competitive providers because they will all be equally impacted by the dramatic pending rate cuts. Declining to implement such a rate freeze endangers providers' continued service and the important competition-friendly VRS reform efforts the Commission has been working towards since

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[13] Purple Rate Freeze Comments at 13-14.

[14] *See* Purple VRS Rate Freeze Comments at 8-11. *See also* Comments of ZVRS, CG Docket Nos. 10-51 & 03-123, at 13-14 ("the effect of Rolka Loube's methodology is to attribute the dominant provider's scale to all other providers . . .. Clearly, the methodology used by the TRS Fund Administrator and the Commission has produced a misleading result regarding costs per minute and should be reconsidered.") (Dec. 9, 2015); Comments of ASL/Global VRS, CG Docket Nos. 10-51 & 03-123, at 23 (Dec. 9, 2015) (the "flawed rate methodology that widely averages smaller provider costs [has] contributed [to] a distortion of smaller provider 'reasonable' VRS costs[.]"); Comments of CAAG/Star VRS, CG Docket Nos. 10-51 & 03-123, at 1 (Dec. 9, 2015) ("the rate setting methodology used by the FCC is seriously flawed.").

[15] *See VRS Rate Freeze FNPRM* ¶ 3.

2011.[16] Purple therefore proposes that the Commission freeze rates for all providers producing fewer than 2.75 million minutes per month while at the same time starting a proceeding to review the current rate methodology in order to ensure a long-term solution is implemented. The Commission should also implement QoS standards in order to ensure that any further rate reductions do not unduly burden interpreters and to protect consumers and the statutory mandate of functional equivalence from reductions in service quality.

Respectfully submitted,

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December 24, 2015

[16] *See 2011 VRS Structural Reform FNPRM*; *see also 2013 VRS Competitive Reform Order.*