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Federal Communications Commission
Office of the Secretary

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December 21, 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 a Notice of Ex Parte filed by Purple on December 21, 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]

[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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December 21, 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 17 and 18, 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 staff of the Federal Communications Commission (FCC or Commission). On December 17, they met with: Travis Litman, Legal Advisor, and Jennifer Thompson, Special Advisor, Office of Commissioner Rosenworcel; Nicholas Degani, Legal Advisor, Office of Commissioner Pai; Edward Smith, Legal Advisor, Office of Chairman Wheeler; and Gregory Hlibok, Chief, Disability Rights Office, Consumer & Governmental Affairs Bureau.[1] On December 18, they met with: Amy Bender, Legal Advisor, Office of Commissioner O'Rielly; and Andrew Mulitz, Compliance and Oversight Group Chief, Office of the Managing Director.

In the meetings, Purple discussed its December 9 Comments to the *VRS Rate Freeze FNPRM*.[2] In the *VRS Rate Freeze FNPRM*, the Commission has proposed to temporarily

[1] John Goodman participated in the meeting with Nicholas Degani on December 17 meeting by telephone, but he did not participate in the other meetings on December 17. All other participants met in person. Mr. Goodman participated in the meetings on December 18 in person.

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

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freeze rates for video relay service (VRS) for providers with 500,000 or fewer monthly minutes, while other providers' rates would continue to dramatically decline pursuant to the schedule set forth in the *2013 VRS Competitive Reform Order*.[3]

Purple reiterated in the meetings that the Commission must provide a rate freeze for *all* small, competitive providers, because they will all be equally impacted by the currently scheduled dramatic rate reductions.[4] A rate freeze for all small providers is necessary to achieve the Commission's goals of affording a "reasonable measure of temporary relief from rate reductions that . . . are potentially jeopardizing [providers'] continuation of service[,]"[5] and also providing the "window of opportunity" anticipated by the Commission in 2013 for important competition-friendly reform efforts to be implemented and for the smallest providers "to grow and increase efficiency under fair competitive conditions."[6] Purple therefore 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, while at the same time will allow the small competitive providers to remain viable while the Commission's planned structural and competitive reforms are implemented and take effect.

Purple noted that it is incorrect to characterize the VRS market as being comprised of 3 small and 3 large providers.[7] Rather, the market includes three very small providers, two small providers (including Purple), and one massive, near-monopoly provider. The Commission should evaluate the impact of the rate cuts and extend the freeze to *all* small, competitive providers. Continuing the currently scheduled dramatic rate decrease in the absence of structural and competitive reforms would only serve to eliminate small providers and further concentrate the market.

Purple fully supports the Commission's desire to reform the VRS industry and strives to remain a partner to the Commission in these efforts. The *VRS Competitive Reform Order* acknowledged the existence of structural and competitive issues that have "limited the ability of smaller rivals to compete effectively with the largest provider" – including the lack of interoperability that the Commission is seeking to change.[8] Purple emphasized that until the Commission moves forward with the competitive reforms as anticipated through the

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[3] *See VRS Rate Freeze 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) (*2013 VRS Competitive Reform Order*).

[4] Purple Rate Freeze Comments at 1, 5-8, 19.

[5] *VRS Rate Freeze FNPRM* ¶ 18; *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) (*2011 VRS Structural Reform FNPRM*).

[6] *VRS Rate Freeze FNPRM* ¶¶ 3, 19.

[7] *See* Purple Rate Freeze Comments at 8-9; *see also VRS Rate Freeze FNPRM* ¶ 18.

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

2011 VRS Structural Reform FNPRM and 2013 *VRS Competitive Reform Order,* and the market responds to the impacts of those reforms, the currently scheduled rate cuts for the 5 small providers should be suspended.[9]

Purple also suggested a tiered rate freeze approach that could be adopted in the alternative. Under this approach, the Commission would freeze rates for providers producing less than 500,000 minutes per month at the rates effective June 30, 2015 – as the Commission has proposed – 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 noted in its Comments, similar to Purple's primary proposal, the tiered approach would have a minimal impact on the TRS Fund, while sustaining competition and consumer choice while the Commission implements structural and competitive reform.[10]

Respectfully submitted,

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cc: Edward Smith
Travis Litman
Jennifer Thompson
Nicholas Degani
Amy Bender
Andrew Mulitz
Gregory Hlibok

[9] Purple Rate Freeze Comments at 11-13.

[10] Purple Rate Freeze Comments at 16.

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***

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  - 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*** ***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]

[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.

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

- ***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.***

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

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

  [redacted]

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

A Staggered Freeze Approach Based on Provider Size Protects Providers and the Fund

- 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*****

Consequences of Not Freezing Below 2.75 Million Minutes Are Dire for Small 5:

- ***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.***