

**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 SECTION III – VRS IMPROVEMENTS  
FURTHER NOTICE OF PROPOSED RULEMAKING**

As part of the Commission’s ongoing effort to “ensur[e] that TRS is made available to the extent possible, and in the most efficient manner, and that TRS provides the ability for individuals with hearing or speech disabilities to engage in communication by telephone in a manner that is functionally equivalent to the ability of individuals who do not have such disabilities[.]” the Commission has asked for comments and measures on the following five items: (1) imposing a faster speed-of-answer standard; (2) adopting a limited trial of “skills-based routing;” (3) authorizing providers to use qualified deaf sign language interpreters; (4) authorizing the use of at-home interpreters; and (5) permitting the assignment of ten-digit numbers for phones used by hearing individuals.<sup>1</sup> As detailed in these comments, Purple supports some of these items while raising concerns with others.

---

<sup>1</sup> See *Structure and Practices of the Video Service Program et al.*, CG Docket No. 10-51 *et al.*, Further Notice of Proposed Rulemaking, FCC 15-143, at ¶ 29 (Nov. 3, 2015) (“*VRS Rate Freeze FNPRM*”).

The Commission’s efforts to address VRS rates and certain Service Improvements as two separate items within the same FNPRM raises significant concerns. The D.C. Circuit vacated the Commission’s attempt to impose a speed-of-answer requirement of 85 percent of calls to be answered in 30 seconds or less measured daily on the grounds that “the Commission is, by its own interpretation of the ADA, required to reimburse providers for all costs necessarily incurred to meet the mandatory minimum standards established by the agency, of which speed-of-answer is one. By adopting the new speed-of-answer metric without evidence of the cost to comply with it, the Commission acted arbitrarily and capriciously.”<sup>2</sup> Accordingly, the Commission must directly tie any mandated service level improvements to an FNPRM addressing the VRS rate methodology, including specifically taking into account the impact of service improvements on provider costs, or risk being overturned once again on appeal.

Functional equivalency is not a stagnant target that once met will never change. Advancements in technology, competition driven service offerings, and use cases for individuals “without such disabilities” are constantly evolving. Purple appreciates the Commission’s effort to incorporate such advances by considering the recommendations made by consumer groups and providers.<sup>3</sup> While Purple may not support all five items listed within the *VRS Rate Freeze FNPRM*, Purple applauds the effort of the Commission to advance the functional equivalency standard. Purple is optimistic that the Commission will acknowledge that functional equivalence sometimes comes at a necessary cost.

---

<sup>2</sup> *Sorenson Communications, Inc. v. FCC*, 765 F.3d 37, 50 (D.C. Circ. 2014) (citing *Telecommunications Relay Services & Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report & Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, 12543-44, ¶ 181 (2004)).

<sup>3</sup> See ASL Services Holdings, LLC, Convo Communications, LLC, CSDVRS, LLC, Hancock Jahn Lee & Puckett, Purple Communications, Inc., Sorenson Communications, Inc., *Joint Proposal of All Six VRS Providers for Improving Functional Equivalence and Stabilizing Rates*, CG Docket Nos. 10-51 & 03-123 (Mar. 30, 2015) (“Joint Provider Proposal”), available [here](#).

## I. Speed-of-Answer

### a. Consistent with the Joint Provider Proposal and DAC Recommendation, Purple Tentatively Supports a Strengthened Speed-of-Answer Standard for VRS.

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.<sup>4</sup> The Commission’s proposal to “amend the speed-of-answer rule to require that 80 percent of all VRS calls to be answered within 45 seconds, measured monthly” is a reasonable step towards improving the quality of service offered to VRS consumers.<sup>5</sup>

A speed-of-answer requirement for 80 percent of all VRS calls to be answered within 45 seconds, measured monthly (“80/45 Monthly”) had the support of Consumer Groups and all six VRS providers as part of the Joint Provider Proposal. While Purple still supports the proposed 80/45 Monthly requirement, we would like to point out that the support of all six VRS providers was based on an assumption that the Commission would freeze the current VRS rate glide path in concert with an increase in speed-of-answer requirements.<sup>6</sup> As the Commission noted, “[a]ccording to Rolka Loube . . . over a 12-month period from May 2014 through April 2015 . . . if a requirement to answer 80 percent of calls within 45 seconds, measured monthly, as proposed by the providers and the DAC, were in effect during that period, all the providers would have been in full compliance with that requirement.”<sup>7</sup> The Commission, however, is misguided when it goes on to say, “[t]herefore, we tentatively conclude that compliance with the proposed

---

<sup>4</sup> Comments of Purple Communications, Inc., CG Docket Nos. 03-123 & 10-51, at 1-3 (Nov. 14, 2012).

<sup>5</sup> *VRS Rate Freeze FNPRM* ¶ 34.

<sup>6</sup> Joint Provider Proposal at 2 (Stating that it is “impossible to meet more stringent speed-of-answer requirements if rates are not commensurate with the [speed-of-answer] requirement.”).

<sup>7</sup> *VRS Rate Freeze FNPRM* ¶ 36.

standard could be achieved without any provider incurring additional costs in excess of those incurred over the past year.”<sup>8</sup>

In reaching its tentative conclusion, the Commission is viewing the speed-of-answer requirement in a vacuum without regard to cost, and is missing the impact that scheduled future rate cuts will certainly have on VRS providers. As the Commission continues down the VRS rate glide path, VRS providers will be forced to make changes that the Commission characterizes as improving “efficiencies.”<sup>9</sup> However, as Purple has emphasized in prior filings, “[t]hose efficiencies, according to several consumer groups and Registry of Interpreters for the Deaf, Inc. (RID) . . . can result in a degradation in service.”<sup>10</sup> We would expect that one such service degradation would be speed-of-answer performance. Therefore, Purple would support an increase in the speed-of-answer recommendation of 80/45 measured monthly, provided that any such service level increase established is in conjunction with a rate freeze, as well as an FNPRM addressing the VRS rate methodology.<sup>11</sup>

b. Speed-of-Answer Should Be Measured Monthly.

As stated in the Joint Provider Proposal, speed-of-answer should be measured on a monthly basis.<sup>12</sup> Utilizing a monthly measurement, instead of a daily measurement, for speed-of-answer “mitigates fluctuations that could result from periods of extended power or Internet

---

<sup>8</sup> *VRS Rate Freeze FNPRM* ¶ 36.

<sup>9</sup> *See VRS Rate Freeze FNPRM* ¶ 16.

<sup>10</sup> Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 13 (Dec. 9, 2015).

<sup>11</sup> *See id.* at 16; Reply Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 6 (Dec. 24, 2015).

<sup>12</sup> Joint Provider Proposal at 2 (Advocating that “[t]he FCC should require 80 percent of calls to be answered within 45 seconds, measured monthly. Note that this is a service-level requirement – not an ‘average’ speed-of-answer.”).

outages, weather problems, and erratic demand patterns (spikes). The daily-measurement proposal did not account for these fluctuations and was, as the National Association of the Deaf has explained, ‘counter-productive.’”<sup>13</sup>

c. Penalties Should Not Be an All or Nothing Approach.

As Purple has previously commented, any discussion about speed-of-answer (or any minimum standard) must necessarily include a treatment of the penalty framework imposed for service level shortfalls.<sup>14</sup> The Commission’s current all-or-nothing penalty framework creates inherent inefficiencies in the delivery of TRS services, and should be replaced with a proportional penalty framework that more directly ties penalties to the magnitude or frequency of any missed service level. With that in mind, Purple still supports the following penalty mechanism as recommended in the Joint Provider Proposal: “[t]he sanction for missing the speed-of-answer in a given month should be the percentage of the provider’s total VRS billings for the month that corresponds to the percentage by which the provider fell short of 80% within 45 seconds in that month. So if a provider answered 78% of calls within 45 seconds in a month, the provider would lose 2% of its VRS billings for that month.”<sup>15</sup>

**II. Skills-Based Routing**

a. Skills-Based Routing Should Be Offered on a Trial Basis

Purple, as already noted within the Joint Provider Proposal, supports the concept of offering “skills-based routing” on a trial basis.<sup>16</sup> Additionally, provider participation in any trial

---

<sup>13</sup> Joint Provider Proposal at 3; National Association of the Deaf, *Position Statement on Functionally Equivalent Telecommunications for Deaf and Hard of Hearing People* (Dec. 21, 2014), available [here](#).

<sup>14</sup> See Joint Provider Proposal at 3.

<sup>15</sup> Joint Provider Proposal at 3.

<sup>16</sup> See Joint Provider Proposal at 4-6.

should be voluntary; meaning providers are permitted to take part in the Trial, but are not required to do so. The length of the Trial should be for a minimum of 8 months, but no more than 12 months in length. This time period will allow for an ample amount of data collection and analysis as to which skills are desired, how to best offer the service, customer satisfaction, and the impact that offering “skills-based routing” has on the provider’s interpreter workforce.

b. Skills-Based Routing Does Not Compromise the Fundamental Nature of TRS.

Purple can understand the Commission’s concerns as to whether or not skills-based routing will compromise the nature of TRS, “which is currently subject to requirements that TRS calls must be answered in the order received, that providers must not unreasonably discriminate in the handling of calls, and that CAs must not refuse calls.”<sup>17</sup>

There is a valid concern that establishing skills-based call routing could potentially cause a consumer (Caller A) who places a call via the general, non-skills-based line to have their call answered later than a consumer (Caller B) who called a skills-based line shortly after Caller A. However, it is important to understand that Caller A, during the trial period, is still benefiting from the Commission’s prescribed VRS speed-of-answer requirements, while Caller B is not. A better way to look at this scenario is to realize that both Caller A and Caller B will have their calls answered “as they are received” within the queues, or skills, they called.

The Commission’s concerns regarding the potential to “unreasonably discriminate in the handling of calls” is understandable. However, it is important for the Commission to focus on the fact that skills-based routing, at its core, is meant to improve the calling experience for consumers. Based on this core tenant, Purple does not feel that establishing a skills-based routing trial would be “unreasonable” discrimination in call handling. Instead, the Commission

---

<sup>17</sup> *VRS Rate Freeze FNPRM* ¶ 45.

should be asking if it is reasonable for a consumer who wishes to place a call to their doctor to discuss a medical issue to be forced to use a generalist interpreter who may, or may not, have the necessary skills to adequately interpret the call. That consumer would argue that it is much more reasonable for them to have access, from the start of the call, to an interpreter with the necessary “skills.” To this consumer, that is functional equivalency.

The Providers have stated that “the ‘sequential call rule’ should be waived for successive calls not requiring the interpreter with the specialized skill.<sup>18</sup> In the event that the VRS user desires to place additional calls that a generalist interpreter can handle (*e.g.*, ordering pizza), those sequential calls should be placed at the top of the queue for assignment to the next generalist interpreter.”<sup>19</sup> As to the Commission’s concern that this could result in calls being rejected by interpreters, it is worth clarifying that the calls are not being rejected, but rather, re-routed so as to “mitigate the risk to specialized interpreter health and wellbeing by not demanding more productivity out of them than a generalist interpreter.”<sup>20</sup>

c. The Commission Will Be More Informed by Asking Questions Regarding Costs at the End of the Trial.

The Commission’s questions around the impact that skills-based routing will have on provider costs, the Fund, and interpreter wages should be held until the end of the Trial Period, when more accurate and informed answers can be provided with the benefit of the experience associated with the actual trials. Providing answers now in the absence of such experience will be speculative and thus less informative. As already stated by the Providers, the trial period “will allow providers and the Commission to collect data about the cost and feasibility of

---

<sup>18</sup> Joint Provider Proposal at 6.

<sup>19</sup> Joint Provider Proposal at 6.

<sup>20</sup> Joint Provider Proposal at 6.

offering this service.”<sup>21</sup> Additionally, the Providers went on to clarify in their April 17, 2015 letter what providers, and thus the Commission, hoped to learn during the trial period, including important information surrounding whether there is sufficient demand for skills-based routing, what skills are demanded the most, what skill sets are available in the labor pool, whether the labor pool support current demand, what additional training is needed to implement skills-based routing, how providers can ensure that skill-based VIs are properly screened for competence, what are the logistical lessons learned from the Trial, what is the impact on operational costs, what is the impact on length of calls, how prevalent are fraud attempts, and what is the impact on the Fund.<sup>22</sup> This learning will benefit the Commission tremendously.

d. Skills-Based Calls Should Be Excluded from The Speed-of-Answer Calculation.

As already stated by the Providers, “[t]he number of interpreters with special skills is necessarily smaller than the entire number of interpreters, which means that it may take longer to connect a call requiring a special skill to an interpreter with that skill. Including skills-based routing in the speed-of-answer calculation could discourage VRS providers from offering skills-based routing because that could cause them to miss the speed-of-answer requirement.”<sup>23</sup> For this reason, Purple still supports waiving the speed-of-answer requirement for skills-based routing during the trial period.

e. **The Market Should Define What Skills Are Necessary**

---

<sup>21</sup> Joint Provider Proposal at 5.

<sup>22</sup> See ASL Services Holdings, LLC, Convo Communications, LLC, CSDVRS, LLC, Hancock Jahn Lee & Puckett, Purple Communications, Inc., Sorenson Communications, Inc., *Joint Response of All Six VRS Providers To Staff Questions Re VRS Providers’ Joint Proposal for Improving Functional Equivalence and Stabilizing Rates*, CG Docket Nos. 10-51 & 03-123 (Apr. 17, 2015) (“Joint Provider Response”), available [here](#).

<sup>23</sup> Joint Provider Proposal at 5.

During the trial period, providers should be allowed to experiment with different skills in order to identify a need within the Market. The Community, through demand, will identify the skill sets that are needed, and thus will dictate the outcome of the Trial. At the close of the Trial, each provider that participated within the trial should be required to present its findings to the Commission. These findings should include, but not be limited to: skills offered during the trial period; volume of calls handled by each skill; average length of call handled by skill; and, if possible, customer satisfaction with the skills-based routing. Additionally, once this data is compiled by the Commission from each provider, the Commission and providers should work with consumer groups in order to determine if the Trial was a success and what next steps should be taken.

### **III. Use of Certified Deaf Interpreters Should Be Part of the Skills-Based Routing Trial**

Currently, there is very limited data in terms of how much demand there is in VRS for Certified Deaf Interpreters (“CDIs”). However, just as there is a limited amount of data, Purple agrees that for certain individuals, (*e.g.*, consumers with limited English or ASL Proficiency, consumers with cognitive disabilities, and some children) the use of a deaf interpreter could be required to ensure that effective communications are taking place. As Purple has been, and will continue to be, an advocate for advancing functional equivalence, Purple believes the use of CDIs within VRS can be very beneficial. For this reason, while the Commission considers amending its rules to permit compensation for the use of CDIs, Purple supports the concept of including the use of CDIs as part of the skills-based routing trial.

Purple understands the concern of the Consumer Groups regarding the treatment of CDIs as a “skills-based” offering.<sup>24</sup> Additionally, Purple agrees with the Consumer Groups that the use of a CDI could take place on any call regardless of what queue, or skill, they dialed. To clarify Purple’s position on the use of CDIs, Purple supports including the use of CDIs as part of the skills-based routing trial because CDIs add unique skills. While providers may or may not choose to establish some special CDI skill/queue that consumers can call in to (as already noted, the use of a CDI can be added to any existing call regardless of skill or queue called), it should be the requirement of the trial participants to report back to the Commission and Consumer Groups the demand, costs, and impact CDIs have on the Fund and the customer experience.

Purple still supports the providers’ proposal to allow CDIs to be able to remotely join a VRS call. Due to the limited availability of CDIs, providers who choose to participate within the Trial should be given the operational latitude to do so as effectively as possible. The Commission should consider the options and ramifications associated with allowing or not allowing CDIs to remotely join a call. On one hand, if not allowed, the Commission is choosing to degrade the effective communication of an individual as opposed to allowing the provider to use readily available technology that would enable the CDI to join the call while not being required to be at the same location of the call. The ability to allow the CDI to remotely join a call makes even more operational sense when one considers that communication assistants (CAs) do have the option to transfer calls.

Consider the following example: Caller A places a VRS call and gets a CA in Call Center A. The CA identifies a need for a CDI to be on the call to ensure that successful communication is taking place. Caller A has been on the phone with the CA and CDI for 45

---

<sup>24</sup> See Comments of Telecommunications for the Deaf & Hard of Hearing, Inc. *et al.*, CG Docket Nos. 10-51 & 03-123, at 10 (Dec. 24, 2015).

minutes when Call Center A closes. At this point, the CA could transfer the call to another CA located at another call center (Call Center B). If the CDI is required to be in the same facility as the CA, Caller A would be subject to having both their CA and CDI being replaced. The new CDI would not have the prior 45 minutes of experience with this consumer and could result in a lesser quality of communication taking place. However, if the CDI could be allowed to remotely join the call, that CDI could stay with Caller A regardless of what call center the call was transferred to. For these reasons, Purple supports the concept of allowing CDIs to remotely join a VRS call.

#### **IV. Purple Does Not Support the Use of At-Home-Interpreting**

Purple can appreciate the Commission's logic for evaluating whether or not at-home-interpreting should be allowed within VRS. On one hand, by allowing at-home-interpreting, the Commission could potentially enable providers to be more cost and operationally efficient. It could also be argued that overnight staffing enables the CA to work from the safety of their own home. However, for all of the reasons noted by the Commission – risk of fraud, concerns around call privacy, assuring call quality, etc. – Purple does not support the use of at-home-interpreting.

If it is the Commission's goal to help providers increase efficiency by reducing costs associated with providing overnight staffing, a possible alternative to at-home-interpreting would be to allow the sub-scale providers to white label to each other for overnight staffing. For example, Provider A, Provider B, and Provider C could negotiate an agreement that would allow the use of a single, certified providers' call center that would handle all overnight traffic of the participating providers. While the CAs in that call center might be employees of Provider C, they would be trained to greet each incoming call based on originating Provider information associated with that call. For example, a customer who places an overnight call via Provider A will be greeted by a CA in the white label center as if they were calling a call center operated by

Provider A. Since all three providers are Certified, and the CAs are employees of one of the providers, this solution does not create a conflict with the Commission's current rules.

**V. Purple Supports the Assignment of Ten Digit iTRS Numbers (TDNs) to Hearing Individuals**

The Commission's proposal to allow VRS providers to assign ten-digit iTRS numbers to hearing individuals so that they are able to place and receive direct (point-to-point) video calls to and from other VRS users has the support of the Consumer Groups and Purple.<sup>25</sup>

If adopted, Purple feels that providers should be given the option to either provide, or not provide, hearing individuals with iTRS registered TDNs. As the providers will be forced to incur the expenses associated with these TDNs and the burden they place on the provider's infrastructure, the Commission should not require every provider to offer hearing TDNs but rather make it an available option.

Purple urges the Commission to limit the functionality of iTRS TDNs assigned to hearing individuals. For example, these TDNs should only function to enable point-to-point calling with iTRS registered TDNs assigned to Deaf Individuals. Providers should not be required to enable e911 on these hearing iTRS TDNs, nor should they enable a hearing individual to place a call to another hearing (non-iTRS) TDN. The sole purpose of providing an iTRS registered TDN to a hearing individual is to enable that individual to place a point-to-point call to a VRS consumer in those situations where the hearing individual has the skills necessary to communicate with the Deaf or Hard-of-Hearing individual over video.

---

<sup>25</sup> See Comments of Consumer Groups, CG Docket Nos. 10-51 & 03-123, at 13 (Dec. 19, 2015) ("The Consumer Groups have long supported [the Commission's proposal to allow VRS providers to assign ten-digit iTRS numbers to hearing individuals so what they are able to place and receive direct (point-to-point) video calls to and from other VRS users] and urge the Commission to implement it.").

Purple supports the Commission's proposal to require providers to submit, and thus register, hearing participants with the TRS-URD under a special "hearing" designation. Furthermore, Purple understands why the Commission would raise concerns around the registration process for hearing individuals wishing to acquire an iTRS registered TDN. One possible solution to ensure that only those individuals who truly wish to utilize this TDN for placing point-to-point calls with Deaf and/or Hard-of-Hearing individuals is to require the hearing individual, during the registration process, to provide the iTRS TDN associated with an individual they plan to utilize the service to call. Purple does not propose this as the definitive process, but merely seeks to point out this one example of a process that would help prevent hearing individuals from acquiring iTRS TDNs only to place point-to-point video calls with other hearing individuals. While hearing consumers have access to other 3<sup>rd</sup> party video conferencing software, Purple feels the Commission should consider ways to mitigate the risk of this scenario taking place. TDNs are not free to providers. Acquiring and assigning TDNs to hearing individuals does come with a cost. Ensuring these TDNs are only provided to individuals with the intended purpose of utilizing them to communicate with VRS users will help control those costs.

## **VI. Conclusion**

Purple is very supportive of initiatives and trials that advance the functional equivalence mandate. Providers must be fairly compensated for Commission requirements. It is concerning that the Commission appears to be taking the position that any provider that chooses to participate in any trial will do so voluntarily, without the ability to recoup exogenous costs from the Fund to support these important initiatives. Purple again reiterates that any item that would mandate a change in service level requirements be handled through a VRS rate setting FNPRM. Additionally, any provider that chooses to participate in a trial, the sole purpose of which is to

evaluate if improvements in functional equivalence can be made, should have the ability to recover any exogenous costs incurred as part of those trials. Failure to allow for a cost recovery mechanism unfairly asks the providers to be the financial donors to what is a federally mandated initiative.

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

January 4, 2016