

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

Purple Communications, Inc. (“Purple”) submits these Reply Comments in connection with Section III of the Commission’s October 21, 2015 Further Notice of Proposed Rulemaking (“FNPRM”) pertaining to proposed service changes to Video Relay Service (“VRS”).¹ As detailed below and in Purple’s January 4 Comments, Purple: (1) supports a speed-of-answer requirement of 80/45 measured monthly, provided that any increase is accompanied by a rate freeze and a proceeding to restructure the VRS rate methodology; (2) supports offering “skills-based routing” on a voluntary, trial basis; (3) supports including the use of Certified Deaf Interpreters as part of the skills-based routing trial; (4) does not support the use of at-home

¹ 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*”).

interpreting due to fraud, call privacy, call quality, and other concerns; and (5) supports allowing VRS providers to assign ten-digit iTRS numbers to hearing individuals.²

Purple appreciates the Commission’s efforts to advance functional equivalence and its consideration of the recommendations made in the Joint Provider Proposal.³ Purple shares the views of the Consumer Groups and The Registry of Interpreters for the Deaf, Inc. (“RID”), though, that the Commission should not move forward with service mandates without thoroughly evaluating the impact on provider costs and quality of service.⁴ Unless the Commission ties any mandated service changes to a proceeding addressing the VRS rate methodology and makes appropriate corresponding rate changes, it will impair VRS service quality. Also, failure to tie new service mandates to corresponding rate increases will risk its decision being overturned on appeal as was the case for the Commission’s 85/30 speed-of-answer requirement.⁵

² See Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Jan. 4, 2016) (“Purple Service Improvements Comments”).

³ 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*.

⁴ See Comments of Consumer Groups, CG Docket Nos. 10-51 & 03-123, at 6 (Dec. 24, 2015) (“Consumer Groups’ Comments”) (“[I]f it costs the providers more to meet or significantly exceed the speed-of-answer or quality standards, the providers should receive greater compensation.”); Comments of The Registry of Interpreters for the Deaf, Inc., CG Docket Nos. 10-51 & 03-123, at 4 (Dec. 9, 2015) (“[RID] strongly believe[s] that the reimbursement rate should be guided by what Consumer Groups recommend and what video interpreters are able to reasonably support. . . . [RID is] concerned that the Commission’s efforts to cut rates while increasing service standards like speed of answer . . . undermines the Commission’s ability to meet its mandate of providing functionally equivalent TRS”).

⁵ *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)).

I. Purple Would Support an 80/45 Speed-of-Answer Requirement If Accompanied by Consideration of Appropriate Rates

Purple continues to support an 80/45 monthly speed-of-answer requirement as set forth in the Joint Provider Proposal, provided that any such requirement is accompanied by a rate freeze and a proceeding to restructure the VRS rate methodology.⁶ The Commission is incorrect in concluding that the 80/45 requirement “could be achieved without any provider incurring additional costs” because this fails to account for any potential operational and/or service impact that will result from the currently scheduled rate cuts. As the providers emphasized in the Joint Provider Proposal and consistent with the D.C. Circuit’s holding in *Sorenson*, it is “impossible to meet more stringent speed-of-answer requirements if rates are not commensurate with the [speed-of-answer] requirement.”⁷ Therefore, an 80/45 requirement should be accompanied by a rate freeze while the VRS rate methodology is restructured to account for additional mandates as well as other market changes.⁸

Purple also agrees that it is appropriate to measure speed-of-answer on a monthly basis, which, as stated in the Joint Provider Proposal, “mitigates fluctuations that could result from periods of extended power or Internet outages, weather problems, and erratic demand patterns.”⁹

Finally, Purple reiterates that the Commission should adopt a sliding scale penalty mechanism that ties penalties to the severity of the service shortfall. As the Consumer Groups and other providers have noted, the Commission’s current all-or-nothing penalty framework is

⁶ Joint Provider Proposal at 2.

⁷ Joint Provider Proposal at 2; *Sorenson Communications Inc. v. FCC*, 765 F.3d at 50.

⁸ See Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Dec. 9, 2015) (Noting that the “Commission has acknowledged that the rate methodology is not appropriate for the VRS market.”); Reply Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Dec. 24, 2015).

⁹ Joint Provider Proposal at 3.

overly harsh and can lead to inefficiencies in VRS services.¹⁰ Purple continues to support the joint providers’ proposal that the penalty 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, for example, 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.”¹¹

II. Purple Supports a Trial Offering of Skills-Based Routing

Purple continues to support a trial offering of “skills-based routing” as stated in the Joint Provider Proposal.¹² Provider participation should be voluntary, not mandatory, and providers should be able to recoup any exogenous costs incurred. The trial should be for a minimum of 8 but no longer than 12 months, which will allow for ample data collection by the Commission.

Skills-based routing is beneficial to VRS users and is not inconsistent with requirements that TRS calls be answered in the order received and that providers not “unreasonably discriminate” in the handling of calls.¹³ In a skills-based routing system, calls are answered in order within the queue, or skill, that the user called. And – as the Consumer Group state in their comments – allowing VRS users to “opt into” a skills-based system that matches the “VRS CAs’ skills and expertise to the callers’ communications and stylistic needs, as well as specific call

¹⁰ Consumer Groups’ Comments at 5 (The “Consumer Groups acknowledge that unanticipated variations could result in harsh penalties and ultimately disrupt the provision of VRS which may prove counter-productive.”); Comments of ZVRS, CG Docket Nos. 10-51 & 03-123, at 8-9 (Jan. 4, 2016) (urging the Commission to adopt a proportionate penalty scheme); Comments of Sorenson Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 5 (Jan. 4, 2016) (Noting that “a Draconian speed-of-answer penalty can lead interpreters to worry that their employer may not be able to pay them for their work.”).

¹¹ Joint Provider Proposal at 3.

¹² See Joint Provider Proposal at 4-6.

¹³ See *VRS Rate Freeze FNPRM* ¶ 45.

subject areas (*e.g.*, medicine, law, or technology)” fundamentally improves the VRS experience, and cannot properly be viewed as unreasonable discrimination.¹⁴

Purple also advocates that the Commission should waive the sequential call rule for successive calls that do not require the interpreter with the specialized skill, which will “mitigate the risk to specialized interpreter health and wellbeing by not demanding more productivity out of them than a generalist interpreter.”¹⁵ The Commission should also waive the speed-of-answer requirement for skills-based routing during the trial period in recognition of the inherently smaller pool of specialized interpreters that is available to answer calls.¹⁶

Purple will submit answers to the Commission’s questions regarding provider costs and the particular skills to be offered at the close of the trial, which will allow providers and the Commission to evaluate these questions first-hand and submit informed answers.¹⁷ Purple reiterates that any answers provided now would only be speculative and potentially uninformative or inaccurate.

¹⁴ Consumer Groups’ Comments at 7. *See also* Comments of The Registry of Interpreters for the Deaf, Inc., CG Docket Nos. 10-51 & 03-123 (Jan. 4, 2016) (“RID Comments”) (Stating that the “implementation of skills-based routing to connect consumers with video interpreters who best match their needs or who have experience with specialty language or topics helps to ensure the needs of consumers are met.”).

¹⁵ Joint Provider Proposal at 6.

¹⁶ *See* Joint Provider Proposal at 5; *see also* Consumer Groups’ Comments at 8 (“The Consumer Groups urge the Commission to exempt skills-based routed calls from speed-of-answer compliance during the trials.”); Comments of Sorenson Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 8-9 (Jan. 4, 2016) (“Subjecting these specialized calls to the current speed-of-answer requirement may discourage providers from participating in the trial, since they do not yet have enough experience with the system to risk losing significant revenue if they find they are unable to meet the current standards.”).

¹⁷ *See, e.g.*, Consumer Groups’ Comments at 8 (Advocating that the Commission “should leave it to the providers to define the skills subject to special routing during the trial period. This will promote innovation and should lead to comparative data that will support creative policies and services going forward.”).

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

Purple agrees that the use of CDIs could be required to ensure that effective communications are taking place for certain individuals (*e.g.*, consumers with limited English or ASL proficiency, consumers with cognitive disabilities, and some children), and therefore supports including the use of CDIs as a component of the skills-based routing trial.¹⁸ The inclusion of CDIs in the skills-based trial will be useful in developing providers' experience with the use of CDIs and is not conclusive as to how CDIs will be integrated into service offerings. Providers may ultimately choose to establish a CDI skill or queue that consumers can call into, but the use of CDIs can be added to any existing call regardless. To increase the availability of CDIs to users and the efficiency of VRS services, the Commission should allow CDIs to remotely join a VRS call.¹⁹

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

Purple does not support the use of at-home-interpreting, and believes that the concerns identified by the Commission and Consumer Groups – risk of fraud, concerns about call privacy, assuring call quality, etc. – outweigh the potential benefit of cost reduction.²⁰ Purple submits,

¹⁸ See Consumer Groups' Comments at 10 (Explaining that "the use of [CDIs] is an integral component to achieving functional equivalency and the compensation rate should be set in a manner that compensates for their work. CDIs have a shared cultural experience that enables them to more easily match any style of communication that a deaf person presents."); RID Comments at 9 (Stating that "[d]eaf interpreters are largely underutilized in interpreted interactions" and noting that CDIs can be valuable in interpreting situations "with challenging features of language such as minimal language skills or idiosyncratic signing styles").

¹⁹ Purple Service Improvements Comments at 10-11 (Explaining that 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").

²⁰ See *VRS Rate Freeze FNPRM* ¶ 56; Consumer Groups' Comments at 11-12 (Urging that "substantial safeguards" be imposed if the Commission moves forward with at-home interpreting.).

though, that the costs of overnight staffing could be reduced if sub-scale providers were to white label to one another for overnight staffing, thereby allowing the providers to negotiate an agreement for the use of a single providers' call center that would handle all overnight traffic of the participating providers.

V. The Commission Should Allow VRS Providers to Assign Ten Digit iTRS Numbers (TDNs) to Hearing Individuals

Purple supports 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. This proposal is also supported by the Consumer Groups and RID.²¹

Because providers will incur expenses associated with these TDNs, the Commission should not require every provider to offer hearing TDNs, but should make the option available. The Commission should also limit the functionality of iTRS TDNs to match their purpose – to enable point-to-point calling with iTRS registered TDNs assigned to persons who are deaf. Providers should not be required to enable e911 on these hearing iTRS TDNs, nor should the TDNs enable a hearing individual to call another hearing (non-iTRS) TDN. As one additional measure to ensure that these TDNs are used for their intended purpose, the Commission could require the hearing individual to, during the registration process, provide the iTRS TDN of the person(s) that the registrant intends to call. Purple also encourages the Commission to explore other means of guaranteeing that hearing iTRS TDNs are used appropriately. Providers incur costs in acquiring and assigning TDNs, and preventing misuse of TDNs ensures that TRS resources are used properly.

²¹ See Consumer Groups' Comments at 13-14; RID Comments at 11-12.

VI. Conclusion

Purple firmly supports initiatives and trials intended to advance the functional equivalence mandate, but maintains – as other providers, Consumer Groups, RID, and the D.C. Circuit have found – that providers must be fairly compensated for Commission requirements. Purple reiterates that any changes to service standards must be accompanied by a rate freeze and a proceeding to restructure the VRS rate methodology. Not doing so will necessarily impair service quality, and unfairly asks providers to be financial donors to the statutory mandate of functional equivalence.

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

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