

March 2, 2016

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:

Bob Rae, President of Purple Communications, Inc. (Purple), Michael Strecker, Vice President of Regulatory Affairs of Purple, and Monica Desai of Squire Patton Boggs (US) LLP, counsel to Purple, held meetings with staff of the Federal Communications Commission (FCC) on Monday, February 29, and Tuesday, March 1, to discuss various issues involving Telecommunications Relay Services. On February 29, they met with: Edward Smith (Legal Advisor, Office of Chairman Tom Wheeler) and Diane Cornell (Special Counsel to Chairman Wheeler); Nicholas Degani (Legal Advisor, Office of Commissioner Ajit Pai); and the following staff of the Office of Managing Director: Andrew Mulitz (Compliance and Oversight Group Chief), Mark Stephens (Chief Financial Officer), and David Schmidt (TRS Fund Program Administrator). On March 1, they met with: Travis Litman (Legal Advisor, Office of Commissioner Rosenworcel) and Jennifer Thompson (Special Advisor and Confidential Assistant, Office of Commissioner Rosenworcel); and the following staff of the Consumer and Governmental Affairs Bureau: Robert Aldrich (Front Office Legal Advisor); Gregory Hlibok (Chief, Disability Rights Division); and Eliot Greenwald (Deputy Chief, Disability Rights Division).

The meetings focused on two topics: (1) issues related to the Accessible Communications for Everyone (ACE) platform, and (2) the Commission's proposal to temporarily freeze rates for providers with 500,000 or fewer monthly minutes ("Tier I Providers"), and the Tier I Providers' request that the Commission retroactively waive the declining VRS compensation rates so as to freeze the rates applicable to the Tier I Providers

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at the level in effect on June 30, 2015.<sup>1</sup> Purple advocated that *all* small, competitive providers (*i.e.*, those relaying less than 2.75 million minutes per month) must be granted a rate freeze, followed by rate reform. The severe financial impacts of the current VRS rate glide path on small providers, and the fact that it jeopardizes their continuation of service, was demonstrated by the announcement last night of the exit by CAAG/Star VRS from the VRS market.<sup>2</sup>

### **(1) ACE Platform**

Purple expressed to the Commission the need to develop standards and interoperability requirements, and emphasized that Purple is in full support of ACE as it moves towards those same goals. Purple noted that it is critical for the Commission to release the standards and technical requirements behind the ACE application as expeditiously as possible, as providers need that technical information in order to build and implement.

Additionally, Purple expressed concern that the Commission must be careful to consider security measures, because ACE, as an open-source application, may be particularly vulnerable to unintentional or malicious attack. Code could be introduced to collect confidential user data, generate fraudulent calls, or compromise call integrity, which would be inconsistent with the Commission's efforts to reduce inefficiencies and reduce the risk of waste, fraud, and abuse.<sup>3</sup>

Purple also noted that providers' ability to fully support the ACE platform is jeopardized by the currently scheduled dramatic rate cuts, which underscores the need for a rate freeze and rate waiver for small providers, as discussed further below.

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<sup>1</sup> 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 15-143 (Nov. 3, 2015) (*VRS Rate Freeze FNPRM*); Emergency Petition for a Temporary *Nunc Pro Tunc* Waiver of Convo Communications, LLC, Hancock Jahn Lee & Puckett, LLC dba Communications Axxcess Ability Group/Star VRS, and ASL/Global VRS Service Holdings, LLC, CG Docket Nos. 10-51 & 03-123, Petition (Nov. 25, 2015).

<sup>2</sup> Hancock, Jahn, Lee & Puckett, LLC Letter, CG Docket Nos. 10-51 & 03-123 (Mar. 2, 2016) (serving notice that CAAG/Star VRS will no longer provide VRS due to the impact of the rate cuts set forth in the FCC's 2013 reform order, noting "[a]s was the case with IP-Relay, CAAG/Star VRS does not expect to be the last to make this difficult decision. A decision that does not just harm fledgling VRS companies, but ultimately violates the Commission's mandate to provide consumers with competitive choice especially should the VRS industry be left with a single provider in the end as in the case of IP Relay.") ("CAAG/Star VRS Notice of Termination of VRS").

<sup>3</sup> See *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, ¶ 1 (2013).

## (2) Rate Freeze and Rate Reform

Purple expressed that the Commission must provide a rate freeze for *all* small, competitive providers (those relaying less than 2.75 million minutes per month) and expeditiously open a proceeding to reform the VRS rate methodology due to the severe financial impacts the current VRS rate glide path inflicts on small providers, and the fact that it jeopardizes their continuation of service.<sup>4</sup>

Purple reiterated that it is incorrect to characterize the VRS market as being comprised of 3 small and 3 large providers.<sup>5</sup> Rather, based on market share, cost structure, and other considerations, an appropriate description would be that the VRS market is comprised of 3 tiny providers, 2 small providers, and 1 near-monopoly provider.<sup>6</sup> Purple emphasized that the currently scheduled dramatic rate cuts will only serve to eliminate small providers and further concentrate the market – because the Commission has not yet implemented critical, planned structural and competitive reforms. Purple also noted that its proposal to freeze rates for all providers producing less than 2.75 million minutes per month will have a minimal impact on the TRS Fund (given the combined, small market share of all of the small providers) while allowing the small competitive providers to remain viable until the Commission’s planned structural and competitive reforms are implemented, take effect<sup>7</sup>, and the results of which are felt within the market.

Purple also discussed how the declining rates jeopardize the success of the ACE platform. Failing to freeze or waive the rates could result in small, competitive providers either lacking the financial resources to truly support the ACE initiative or, worse, could

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<sup>4</sup> See Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Dec. 9, 2015); Reply Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (Dec. 24, 2015); Purple Communications, Inc. Notice of Ex Parte, CG Docket Nos. 10-51 & 03-123 (Dec. 21, 2015) (“Purple Dec. 21 Ex Parte”); Comments of Purple Communications, Inc. on Emergency Petition for a Temporary *Nunc Pro Tunc* Waiver; CG Docket Nos. 10-51 & 03-123 (Dec. 9, 2015); see also CAAG/Star VRS Notice of Termination of VRS.

<sup>5</sup> See *VRS Rate Freeze FNPRM* ¶ 18.

<sup>6</sup> See Attachment to Purple Dec. 21 Ex Parte.

<sup>7</sup> See *id.* The Commission has stated that the goals of the rate freeze are to afford “a reasonable measure of temporary relief from rate reductions that are . . . potentially jeopardizing [providers’] continuation of service[,]” and also provide the “window of opportunity” anticipated by the Commission in 2013 for important competition-friendly reform efforts to be implemented and for small providers to “grow and increase efficiency under fair competitive conditions. *VRS Rate Freeze FNPRM* ¶¶ 3, 18-19. Purple emphasized that its proposal is consistent with these goals.

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eliminate those providers from the market before the ACE platform (which was meant to enable competitive providers) can be deployed.<sup>8</sup>

Purple noted that the necessity of a rate freeze highlights the need for the Commission to expeditiously open a proceeding to reform the VRS rate methodology. As the Commission has acknowledged, the current VRS rate methodology is inherently flawed. Purple looks forward to working with the Commission to structure a rate methodology that is appropriate for the VRS industry and that furthers the Commission's stated goal of reducing the overall costs of delivering VRS service.

Respectfully submitted,



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<sup>8</sup> Attachment Purple Dec. 21 Ex Parte at 1.