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 ROLKA LOUBE ASSOCIATES
PAYMENT FORMULA AND FUND SIZE ESTIMATE

The Commission seeks comment on the payment formula and fund size estimate for Interstate Telecommunications Relay Services (TRS) for July 2016 through June 2017, as submitted by the TRS Fund Administrator.[1] Purple Communications, Inc. (Purple) focuses its comments on: (1) the practical and policy considerations supporting the use of the Multi-state Average Rate Structure (MARS) for interstate and intrastate Internet Protocol Captioned Telephone Service (IP CTS); (2) why using a weighted average cost methodology for computing provider costs is problematic in IP CTS and Video Relay Service (VRS); and (3) cost considerations associated with implementing the TRS User Registration Database (TRS URD).

---

[1] Federal Communications Commission, *Rolka Loube Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services for the 2016-2017 Fund Year*, CG Docket Nos. 03-123 & 10-51, Public Notice, DA 16-518, at 3 (May 9, 2016) ("TRS Fund Administrator Proposal PN"); *see also* Rolka Loube Associates LLC ("Rolka Loube"), *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123 & 10-51 (Apr. 29, 2016) ("TRS Fund Administrator Proposal").

I. Utilization of MARS for IP CTS

For efficiency and fairness reasons, the Commission adopted MARS, a market-based rate methodology, for IP CTS.[2] The Commission found that using competitively bid state rates to compute reimbursement rates for the interstate leg of TRS, Captioned Telephone Service (CTS), and Speech-to-Speech (STS), as well as for both the intra- and interstate legs of IP CTS, would "simplify the rate setting process and result in more predictable, fair, and reasonable rates."[3]

The Commission understood that a formula based on competitive bidding not only "better approximates providers' reasonable costs," but also "promotes the efficient recovery of all costs."[4] Moreover, the Commission recognized that the MARS plan decreases the burden on the TRS Administrator and on Commission staff, because it "eliminates the costs, burdens, and uncertainties associated with evaluating, correcting, and re-evaluating provider data."[5] And, in choosing to move forward with this approach, the Commission emphasized that "[o]ur mandate … is not to achieve any particular rate level, but to ensure that the rates correlate to actual reasonable costs and that the *process* of determining the rates is fair, efficient, and predictable."[6] More recently, the Commission expressed its desire to also implement a market-based formula in setting VRS rates.[7]

---

[2] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, FCC 07-186, ¶ 16 (Nov. 19, 2007) ("*2007 TRS Cost Recovery Order*").

[3] *Id.* ¶ 16.

[4] *Id.* ¶ 18.

[5] *Id.*

[6] *Id.* ¶ 21 (emphasis retained).

[7] *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, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-82, ¶ 10 (2013) ("*2013 VRS Reform Order*") (explaining that the

The FCC has been utilizing the MARS methodology for CTS since the *2007 TRS Cost Recovery Order* was issued.[8] And, the Commission chose to compensate IP CTS at the CTS MARS rate because it found that the cost recovery rate for CTS "will more accurately reflect the reasonable actual costs of providing IP CTS."[9] Similarly, the Commission chose to apply the TRS MARS rate to STS services.[10]

Over the entire ten-year period from when the Commission first began applying MARS for determining IP CTS rates to the proposed rate today, there has been only a 17% increase in the rate – less than a 2% year-over-year inflationary adjustment.[11]

Given this backdrop, the Commission should use extreme caution when considering an alternative mechanism for establishing the IP CTS reimbursement rate, as suggested by Rolka.[12] As the Commission has concluded, "the cost recovery rate for CTS [(MARS)] will more accurately reflect the reasonable actual costs of providing IP CTS."[13]

Rolka Loube has presented two cost-based rate alternatives within their recent Payment Formula and Fund Size Estimate filing.[14] It is well documented that the cost-based rate

---

Commission was implementing reforms designed to move "compensation rates for VRS providers toward a unitary, market-based compensation rate").

[8] *2007 TRS Cost Recovery Order* ¶ 38.

[9] *Id.*

[10] *Id.* ¶ 34.

[11] Rolka Loube Associates LLC, *Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate*, CG Docket Nos. 03-123 & 10-51, at 19 (Apr. 29, 2016) ("TRS Fund Administrator Proposed Compensation Rates") (proposing $1.9058); *compare 2007 TRS Cost Recovery Order* ¶ 1 (adopting the MARS plan rate of $1.629 for the 2007/2008 Fund Year).

[12] TRS Fund Administrator Proposed Compensation Rates at 20.

[13] *2007 TRS Cost Recovery Order* ¶ 38.

[14] *See* TRS Fund Administrator Proposal at 20-21, Exhibits 1-4.1 & 1-4.2.

structures the FCC has utilized have failed.[15] Additionally, the FCC's cost based rate methodologies have driven providers out and limited consumer choice while reducing quality and functionality.[16]

Rates must provide returns to operators that are commensurate with the risk of regulatory and demand uncertainty. The Commission made a sound choice in moving towards market based rates. In doing so, the Commission implicitly recognized that rate structures must encourage investment into the industry and support innovation and quality. Given the Commission's track record in this area, rather than choosing to try to handle one service differently and separately, the Commission should address rate methodologies for all TRS services in a separate, more comprehensive proceeding.

---

[15] Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 7 (Dec. 9, 2015) ("Purple VRS Rate Freeze Comments") (explaining that the "dramatically declining rate schedule presently stands to effectively eliminate any possibility of any competition to the monopolist in the future"); Purple Communications, Inc. Letter, CG Docket No. 03-123 (Oct. 15, 2014) ("Purple Notice of IP Relay Service Termination") (providing notice that Purple would cease providing IP Relay service after concluding that Purple "cannot operate an IP Relay service under the current state of the Commission's approach to the industry").

[16] *See Structure and Practices of the Video Relay Service Program* et al., CG Docket No. 10-51 *et al.*, Report and Order, FCC 16-25, ¶¶ 1, 11 (Mar. 3, 2016) (providing "limited compensation rate relief" for the "smallest VRS providers," and indicating a concern that without "rate relief" smaller providers might be eliminated from the market or unable to effectively compete); 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 VRS Reform Order*); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CG Docket No. 03-123, DA 14-1889, ¶ 6 (Dec. 29, 2014) (noting that "four of five IP Relay providers have terminated their provision of service over the past two years" and "increas[ing] the IP Relay compensation rate" for the "sole remaining provider" of IP Relay); Purple Notice of IP Relay Service Termination; Sorenson Communications, Inc. Letter, CG Docket No. 03-123, at 1 (July 8, 2013) (serving notice that Sorenson would no longer provide IP Relay services because "the IP Relay rates set by the Commission in its order of July 1, 2013 … are simply too low to sustain a high quality service, and they are further scheduled to be reduced by 6% in each of the following years"); AT&T Services Inc. Withdrawal, CG Docket No. 10-51 (May 28, 2013) (withdrawing from the Commission's consideration AT&T Corp.'s application for certification as a provider of IP Relay).

II. A Rate Based on Weighted Average Cost Is Unsound in an Unequally Distributed Market

The Commission has asked for comments on whether Rolka Loube has "correctly calculated the weighted average projected costs for IP CTS [and VRS] for 2016 and 2017."[17] Additionally, the Commission has asked for comments on the "possible relevance of such cost data to the determination of the future of ratemaking methodology for VRS."[18] Without all of the provider cost data behind those figures, it is impossible to comment on the accuracy of what Rolka Loube has presented.

More fundamentally, the use of weighted average costs for determining rates in any near-monopoly market structure virtually assures vastly inequitable margins among providers and inhibits marketplace competition.[19] Unless market share within an industry is relatively balanced among the providers in that industry, any use of a weighted average methodology will punish all of the small providers while rewarding the dominant provider, further entrenching an already anti-competitive environment. Rolka Loube's data supports the conclusion that compensation based on "weighted average" does not work in any market where there is a largely dominant provider. Such a scenario exists in the current VRS marketplace under current rate structures, wherein the cost for the single dominant provider is dramatically lower than the average costs of the competitive providers.

For IP CTS, the current share distribution does not result in such a skewed result as with VRS, but nevertheless illustrates the same argument, when the "highest projected average

---

[17] TRS Fund Administrator Proposal PN at 2-3.

[18] *Id.* at 3.

[19] *See* Purple VRS Rate Freeze Comments at 9 (explaining that when a provider has a "near-monopolistic position within the market, any application of a 'weighted average' will, mathematically, ignore the costs of all other industry providers, as their volumes do not carry enough market 'weight' to materially impact a weighted average cost calculation").

provider cost for the upcoming program year" is approximately $1.76, which is significantly higher than the rate calculated based on a "weighted average" cost of $1.425.[20]

Any rate methodology should support – and certainly should not undermine – the competition and consumer choice goals of the Commission.[21] The Commission must implement a rate structure that results in fair returns to providers in light of their operational risks, attracts investment into the industry, supports innovation, and results in a high quality service that meets the needs of the consumers served.

If the Commission feels that given developments over time, MARS may no longer "result in more predictable, fair, and reasonable rates," then the FCC should take a hard look at every TRS service in which MARS is used and, based on a thorough evaluation of data and comments, determine a more appropriate methodology.[22] Selectively moving to a cost-based system in one subset of one service is arbitrary and inappropriate – particularly if the Commission believes that MARS is no longer an appropriate framework for setting rates.[23]

III. TRS User Registration Database Cost Reimbursement

The Commission should reimburse providers for their reasonable exogenous costs of supporting the implementation of the TRS URD. The Commission has previously authorized

---

[20] TRS Fund Administrator Proposal at 20, Exhibit 1-3, Exhibit 1-4.

[21] *2013 VRS Reform Order* ¶¶ 199-200 (implementing "structural reforms" that the Commission predicted would effect a "substantial alleviation of the 'lock-in' problem that has limited the ability of smaller rivals to compete effectively with the largest provider" and also "make it more feasible for smaller entities to compete efficiently," and also opting to "retain [the] rate tiers" because "eliminating the rate tiers immediately could force out some of the smallest remaining providers, unnecessarily constricting the service choices available to VRS consumers during the period prior to implementation of structural reforms").

[22] *2007 TRS Cost Recovery Order* ¶ 16.

[23] This applies whether or not the Commission is talking about a reimbursement rate based on a weighted average or based on the costs of the highest cost provider. *See* TRS Fund Administrator Proposal PN at 2.

reimbursement of technical costs associated with implementing similar types of changes in the Commission's rules. Most recently, the Commission reimbursed providers for their costs of adjusting their systems to support ten-digit numbering and to support E911 compliance, because those costs were outside the scope of Rolka Loube's annual cost collection and rate setting.[24] The Commission concluded that "because we now require Internet-based TRS providers to offer ten-digit numbering and E911 services, providers of these services are entitled to recover their reasonable costs of complying with the new requirements."[25] As was the case with ten-digit numbering and E911, providers have incurred a material amount of expense in support of the TRS URD, and accordingly should be similarly reimbursed.

IV. Conclusion

Purple has three principal recommendations in response to Rolka Loube's submission. *First*, the Commission should not abandon its longstanding use of a market-based rate methodology for IP CTS, which it has found "result[s] in more predictable, fair, and reasonable rates" than cost-based methodologies and also eliminates costs and uncertainties for providers and for the Commission.[26] The Commission lacks an adequate factual or policy-based basis for adopting either of Rolka Loube's suggested cost-based alternatives, particularly in the context of the Commission's prior cost-based rate adjustments which have driven providers out of the TRS market and reduced consumer choice. *Second*, Purple reiterates that the Commission should not utilize a weighted average cost to determine rates because, in an unequally distributed market,

---

[24] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-151 (2008).

[25] *Id.* ¶ 96.

[26] *2007 TRS Cost Recovery Order* ¶ 16.

the resulting rates would not result in fair compensation to any provider, and would create an anticompetitive environment for smaller providers, while rewarding those providers with larger market share. *Third*, consistent with the Commission's prior practice of reimbursing providers' technical costs associated with changes in the Commission's rules, the Commission should reimburse providers for their reasonable costs of supporting the implementation of the TRS URD. Purple looks forward to working with the Commission to develop a rate methodology appropriate for the entire TRS marketplace moving forward.

Respectfully submitted,

PURPLE COMMUNICATIONS, INC.

Monica S. Desai
Benjamin Tarbell
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

May 24, 2016