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Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Purple's Request to Amend the Numbering Rules
CG Docket No. 03-123; WC Docket No. 05-196

Dear Ms. Dortch:

Sorenson Communications, Inc. ("Sorenson") files this letter to alert the Federal Communications Commission ("Commission" or "FCC") to the procedural defects in the "Request for Clarification" filed by Purple Communications, Inc. ("Purple").¹ Although Purple styled its filing as a petition for "clarification," its request would require a change in the Commission's existing rules and thus should be treated as a petition for reconsideration.² The

¹ Request for Clarification of Requirements for Populating the iTRS Database of Purple Communications, Inc., CG Docket No. 03-123 (July 21, 2009) (asking the FCC to allow providers to assign multiple uniform resource identifiers ("URIs") to a single 10-digit number in the numbering database maintained by NeuStar and to permit VRS providers to provision "provider server address" information instead of end-user routing information in the database in order to enable "server routing").

² See, e.g., *Amendment of Parts 1, 21, 73, 74 & 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling, 23 FCC Rcd 5992, ¶¶ 38-39 (2008) (concluding that a "request for clarification, which was filed after the deadline for petitions for reconsideration . . . is an untimely filed petition for reconsideration").

time for a petition for reconsideration has passed, however.³ Thus, the proper procedural vehicle would have been for Purple to file a petition for rulemaking,⁴ which would have led the Commission to issue a public notice seeking comment on Purple's petition.⁵

In light of the extensive debate about the architecture of the numbering database that took place prior to the adoption of the current numbering rules, it would be inappropriate to make the changes requested by Purple without a rulemaking proceeding.⁶ This is particularly true given that parties expressly addressed the question of whether providers should be permitted to provision the central database with URIs that point to the user's default provider or whether providers should be required to provision the database with URIs that include the end user's IP address.⁷ Sorenson expresses no view on the substance of Purple's petition, but would support

³ See 47 C.F.R. § 1.429(d).

⁴ See 47 C.F.R. § 1.401 (governing petitions seeking amendment or repeal of a rule or regulation).

⁵ See 47 C.F.R. § 1.403.

⁶ As courts have repeatedly found, an agency seeking to repeal or modify a rule promulgated by means of the Administrative Procedure Act's notice-and-comment procedures must use those same procedures to accomplish the modification or repeal. See, e.g., *SBC Inc. v. FCC*, 414 F.3d 486, 498 (3d Cir. 2005) ("if an agency's present interpretation of a regulation is a fundamental modification of a previous interpretation, the modification can only be made in accordance with the notice and comment requirements of the APA"); *Consumer Energy Council of Am. v. FERC*, 673 F.2d 425, 446 (D.C. Cir. 1982), *aff'd & reh'g denied sub nom. Process Gas Consumers Group v. Consumer Energy Council*, 463 U.S. 1216 & 463 U.S. 1250 (1983) ("the APA expressly contemplates that notice and an opportunity to comment will be provided prior to agency decisions to repeal a rule"); *Paralyzed Veterans of Am. v. D.C. Arena L.P.*, 117 F.3d 579, 586 (D.C. Cir. 1997), *cert. denied sub nom. Pollin v. Paralyzed Veterans of Am.*, 523 U.S. 1003 (1998) ("Under the APA, agencies are obliged to engage in notice and comment before formulating regulations, which applies as well to 'repeals' or 'amendments.'") (italics in original) (quoting 5 U.S.C. § 551(5)); *Am. Fed'n of Gov't Employees v. Fed. Labor Relations Auth.*, 777 F.2d 751, 759 (D.C. Cir. 1985) ("unless and until it amends or repeals a valid legislative rule or regulation, an agency is bound by such a rule or regulation") (citations omitted).

⁷ See, e.g., "Responses to FCC Questions at May 15, 2008 Ex Parte," attached to letter from George Lyon to Marlene Dortch, CG Docket No. 03-123 (May 28, 2008) (comparing GoAmerica's proposed database architecture to that proposed by NeuStar and noting that one of the major differences is that under the NeuStar proposal, the database would be provisioned with a URI that points to the user's default provider); "Presentation on TRS Numbering Issues and Default Provider Obligations" at 4 (Sept. 16, 2008), attached to letter from George Lyon, Counsel for GoAmerica, to Marlene Dortch, FCC Secretary, CG Docket No. 03-123 (filed Sept. 17, 2008) (urging the FCC to require each VRS provider to update the central numbering database with end users' IP addresses and telephone numbers).

the adoption of a Notice of Proposed Rulemaking (“NPRM”) to consider the issues raised by Purple. Such an NPRM would afford interested parties a chance to refresh the record on the issues raised by Purple, and the potential impact the proposed changes would have on consumers and providers.⁸

Accordingly, the Commission should deny Purple’s “Request for Clarification” as an untimely filed petition for reconsideration, but allow Purple the opportunity to make the necessary changes and re-file its request as a petition for rulemaking.

Pursuant to the Commission’s rules, this letter is being submitted for inclusion in the public record of the above-referenced proceeding.

Respectfully submitted,

/s/ Gil M. Strobel
Gil M. Strobel

Counsel to Sorenson Communications, Inc.

cc: Cathy Seidel
Thomas Chandler

⁸ Based on the record before it, the Commission previously declined to adopt server-based routing and instead, required that each record associated with a VRS user in the TRS Numbering Directory must contain the user’s IP address. 47 C.F.R. § 64.613(a)(2). The FCC also declined to allow providers to enter multiple URIs for a single local number. *See* 47 C.F.R. § 64.613(a)(1) (requiring that a user’s telephone number map to a “unique Uniform Resource Identifier”). At a minimum, the Commission should seek to refresh the record on these topics before revising its existing rules.