Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Relay Services And	)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals with	)	
Hearing and Speech Disabilities	)	
	)	

APPLICATION FOR REVIEW

EXECUTIVE SUMMARY

Purple Communications, Inc. ("Purple") respectfully submits this Application for Review, seeking reversal of the Consumer and Governmental Affairs Bureau's dismissal of Purple's Petition for Rulemaking and correction of a declaratory interpretation by the Bureau that misstates the Commission's precedent to the extent it purports to limit the scope of TRS/VRS services available to hearing and speech-impaired individuals for calls among hearing and speech-impaired individuals.

The Bureau impermissibly dismissed Purple's Rulemaking Petition under Section 1.401 of the Commission's rules, which only permits the Commission to deny or dismiss petitions for rulemaking that "are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission." The Bureau dismissed Purple's Rulemaking Petition based on an alleged conflict between this Petition and a previously filed Petition by Purple and eight other VRS providers. The Bureau is substantively wrong in suggesting that the two petitions are in conflict. Purple's Rulemaking Petition explicitly seeks clarification regarding VRS reimbursement for multi-party calls. The Industry Petition does not address multi-party calls, and instead asks the Commission to clarify that current TRS and VRS rules allow reimbursement for calls that involve multiple communications assistants ("CAs"), interpreters or technologies to connect individuals who are deaf, hard-of-hearing, speech-disabled or deaf-blind.

Moreover, the Bureau states that VRS calls not involving a hearing individual unambiguously are *not* compensable under current law. This declaration misstates the Commission's precedent, which includes various types of calls that generally do involve *only* deaf or hard-of-hearing individuals that have been considered compensable under TRS rules.

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APPLICATION FOR REVIEW

Purple Communications, Inc. ("Purple"), by counsel and pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, hereby submits this Application for Review of the Order issued by the Consumer and Governmental Affairs Bureau (the "Bureau") in the above-captioned proceeding.[1]

Purple respectfully submits that the Bureau impermissibly dismissed, in part, Purple's Petition for Rulemaking (Rulemaking Petition), which requests further implementation of the Americans with Disabilities Act to address core issues of functional equivalence raised by technological advancements since the Commission's earlier implementation. The sole basis of the Bureau's denial is a purported conflict between Purple's Rulemaking Petition and a petition for clarification that nine companies, including Purple, filed earlier this year ("Industry Petition").[2] However, as demonstrated below, these petitions plainly are not in conflict because they concern different TRS issues. The Bureau's mischaracterization of the Industry Petition is

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1 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CG Docket No. 03-123, DA 09-2084 (rel. Sept. 18, 2009) ("Order").

2 *Id.* ¶ 3.

particularly egregious because in spite of the critical, time-sensitive nature of the issues presented, the Bureau has failed to invite public comment on it. At its core, Purple's Rulemaking Petition asks the FCC to resolve by prospective rule the proper scope of section 225 concerning use of TRS by deaf, hard-of-hearing, and speech-impaired individuals seeking to contact one another.[3] Full Commission review of this dismissal is necessary because the Bureau's Order cavalierly disregards the agency's failure to address whether rules it adopted in 1993 should be updated to promote section 225's mandate that individuals with hearing or speech impairments should have "functionally equivalent" access to communications services as hearing individuals have *today*.[4]

Commission review is also necessary to correct a declaratory interpretation by the Bureau that misstates the Commission's precedent to the extent it purports to limit the scope of TRS/VRS services available to hearing and speech-impaired individuals for calls among hearing and speech-impaired individuals.

I. PURPLE'S PETITION FOR RULEMAKING WAS IMPROPERLY DISMISSED UNDER SECTION 1.401 OF THE COMMISSION'S RULES.

As explained in Purple's Rulemaking Petition, the Americans with Disabilities Act of 1990[5] mandated that the Commission "ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-

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[3] Purple Communications, Inc., Petition for Rulemaking to Clarify Part 64.601, *et seq.* of the FCC's Rules Regarding Telecommunications Relay Services And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (filed Aug. 12, 2009) ("Rulemaking Petition").

[4] 47 C.F.R. § 1.115(b)(2)(i).

[5] 42 U.S.C. § 12101, *et seq.*

impaired and speech-impaired individuals in the United States."[6] The Commission is required to adopt regulations and ensure that such regulations do not "discourage or impair the development of improved technology."[7] Given the great advancements in technology, the Commission is, by virtue of this statutory provision, required to re-evaluate and reformulate TRS rules to ensure they do not discourage or impair this improved technology. The Commission has itself explained that "*[f]unctional equivalence is, by nature, a continuing goal that requires periodic reassessment*" because the "ever-increasing availability of new services and the development of new technologies continually challenges us to determine what specific services and performance standards are necessary to ensure that TRS is functionally equivalent to voice telephone service."[8] After almost 20 years, the technology that exists today is vastly different from the technology that was available at the time this statute and initial regulations were adopted; what was "possible" and "most efficient" then has changed dramatically. However, despite this obvious need to reassess the Commission's TRS rules, the Bureau summarily dismissed Purple's Rulemaking Petition.

Section 1.401 of the Commission's rules only permits the Commission and its various divisions to deny or dismiss petitions for rulemaking that "are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission."[9] The Bureau has not shown that Purple's Rulemaking Petition meets any of these criteria. The Rulemaking

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6 47 U.S.C. § 225(b)(1).

7 47 U.S.C. § 225(d)(1) & (2).

8 *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Americans with Disabilities Act of 1990,* Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12379, ¶ 4 (2003) ("*2003 TRS Second Report and Order*").

9 47 C.F.R. § 1.401(e).

Petition is not moot because the Commission has not promulgated any regulations or issued any orders which clarify the issues raised by Purple.[10] The Petition is not premature because there are no proceedings open that would resolve the issues raised by Purple.[11] Furthermore, because no pending petitions or rulemakings or recent orders address these issues, the Rulemaking Petition is not repetitive.[12] Finally, given the Commission's mandate to ensure that TRS rules do not discourage or impair technology improvements, this Petition is obviously not frivolous, and clearly warrants—in fact requires—the Commission's consideration.

Any claim that Purple's Rulemaking Petition is moot, premature, repetitive, or frivolous is particularly troublesome given the requests for action from members of the deaf and hard-of-hearing community and industry who have filed letters supporting the need for Purple's

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10 *Compare Mobile Satellite-Based Communications Services by Crescomm Transmission Services, Inc. and Qualcomm Incorporated*, Order, 11 FCC Rcd 10944 (1996) (dismissing as moot a Petition for Rulemaking where the Order granted a waiver to resolve the issue).

11 *Compare Motion Picture Association of America, Inc., Petition for Rulemaking to take measures limiting the distribution of television broadcast signals to cable television systems via satellite*, Memorandum Opinion and Order, 68 FCC 2d 57 (1978) (finding that Petition for Rulemaking was premature where five year period had previously been established to evaluate issues).

12 *Compare 1998 Biennial Regulatory Review-- Amendment of Part 97 of the Commission's Amateur Service Rules Petition for Repeal of Rule 47 C.F.R. Appendix 2 to Part 97 and All Other Rules Associated with Same Petition for Amendment of the Commission's Rules to Establish New Band Plan Authorization in the Amateur Service Amendment of Part 97 of the Commission's Rules to Allow Increased Frequency Privileges to Amateurs Having Proficiency in Telegraphy in Accordance with the International Requirements Amendment of Part 97 of the Commission's Rules Regarding Examination Element Credit for Advanced, General and Conditional Class Amateur Operator Licenses Issued Before November 22, 1968*, Memorandum Opinion and Order, 16 FCC Rcd 8076 (2001) (dismissing as repetitive two Petitions for Rulemaking seeking changes in frequency privileges for certain operator classes of amateur service licensees where a request for comprehensive restructuring of amateur service frequency privileges was considered and rejected in a contemporaneous Report and Order).

Rulemaking Petition.[13] Shortly after Purple's Rulemaking Petition was filed, eight consumer groups, Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc., American Association of Deaf-Blind, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, Deaf and Hard of Hearing Consumer Advocacy Network, and the American Association of People with Disabilities, filed a letter in support of this Petition, urging the Commission to place the filing on public notice as early as possible because "consumers will benefit from these clarifications" and explaining that the consumer groups "support[ed] Purple's request that the Commission tackle the difficult issues related to the rights afforded people who are deaf, late-deafened, deaf-blind, hard-of-hearing or speech-impaired to use the telephone system in a manner that is functionally equivalent to hearing counterparts."[14] *See attached Deaf Organizations Letter in Support of Purple's Petition.* The Registry of Interpreters for the Deaf ("RID") also filed a letter in support of Purple's Rulemaking Petition, stating that "[p]eople who are deaf should have equivalent tools that hearing persons have in the workplace and be[] able to perform functions that would use the telephone in the ordinary performance of their job,

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[13] Letter from Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc., American Association of Deaf-Blind, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, Deaf and Hard of Hearing Consumer Advocacy Network, American Association of People with Disabilities to Chairman Julius Genachowski, Docket No. 03-123 (filed Sept. 11, 2009) ("*Deaf Organizations Letter in Support of Purple's Petition*"); Letter from Clay Nettles and Cheryl Moose, Registry of Interpreters for the Deaf, to Chairman Julius Genachowski (Sept. 28, 2009) ("*RID Letter in Support of Purple's Petition*"); Letter from Tony Coelho to Chairman Julius Genachowski, filed in Docket No. 03-123 (Aug. 12, 2009) ("*Tony Coelho Letter in Support of Purple's Petition*").

[14] Deaf Organizations Letter in Support of Purple's Petition at 1-2 .

including the use of business focused conference calls."[15] *See attached RID Letter in Support of Purple's Petition.* Moreover, in a letter to Chairman Genachowski supporting the need for the Commission to address the issues raised in the Rulemaking Petition, former Congressman and co-sponsor of the ADA legislation, Tony Coelho explained that

> conference calls play a major role in connecting companies with their clients and employers with their employees throughout the Nation. Deaf, hard of hearing, and speech impaired individuals cannot participate fully in the business world without complete access to these services. Indeed, to eliminate any discrimination against such individuals, the ADA requires that these individuals have functionally equivalent access to communication services in today's workplace. For this reason, the FCC should clarify that minutes associated with multi-party TRS calls between deaf and hard of hearing individuals and persons who may or may not have such disabilities are reimbursable from the interstate TRS Fund. With this clarification, the FCC would remove a significant obstacle to further employment of deaf and hard of hearing individuals.[16]

The extensive support for Purple's Rulemaking Petition from consumers and the deaf and hard-of-hearing industry makes it abundantly clear that the issues raised by Purple require further action by the Commission.

However, rather than addressing these consumer concerns or explaining how Purple's Rulemaking Petition satisfies any of the criteria in the dismissal rule, the Bureau instead bases its dismissal of Purple's Rulemaking Petition on an alleged conflict between this Petition and a previously filed Industry Petition by Purple and eight other VRS providers[17] and the apparent clarity of the Commission's rules regarding point-to-point VRS calls. As explained below, the

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15 RID Letter in Support of Purple's Petition at 2.

16 Tony Coelho Letter in Support of Purple's Petition at 1.

17 Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Petition for Declaratory Ruling (filed Jan. 28, 2009) ("Industry Petition").

Rulemaking Petition is clearly not in conflict with the Industry Petition. Moreover, Purple's Rulemaking Petition does not even discuss point-to-point VRS calls, which are not reimbursable calls under the FCC's existing rules. The Bureau's rationale for dismissing the Rulemaking Petition is seemingly based on a misreading by the Bureau of the clarification Purple seeks through the Rulemaking Petition. Because the Bureau did not show that Purple's Rulemaking Petition was moot, premature, repetitive, frivolous, or was plainly unworthy of consideration by the Commission, the FCC must reverse the Bureau's dismissal order.

II. PURPLE'S RULEMAKING PETITION IS NOT IN CONFLICT WITH THE PREVIOUSLY FILED INDUSTRY PETITION.

The Bureau's dismissal of Purple's Rulemaking Petition is based in large part on an alleged conflict with the Industry Petition, which was filed by Purple and eight other VRS providers. The Bureau is simply mistaken. First, although it was filed many months ago, the Industry Petition was never even placed on Public Notice by the Bureau or the Commission; it is specious to dismiss Purple's Rulemaking Petition because of a supposed conflict with a petition that has essentially been ignored by the Bureau.

Second, the Bureau is substantively wrong in suggesting that the two petitions are in conflict. The Bureau appears to misread what each of these separate petitions requests. Purple's Rulemaking Petition explicitly seeks clarification regarding VRS reimbursement for multi-party calls. Specifically, Purple has asked the Commission to "adopt rules that confirm that the ADA permits the reimbursement of multi-party VRS calls, regardless of whether a hearing individual is on the call."[18] As clearly explained by Purple, the Rulemaking Petition urges the Commission to adopt a rule to clarify that functional equivalence mandates that the deaf and hard-of-hearing

[18] Rulemaking Petition at 15.

community are able to participate in multi-party calls without regard to whether hearing persons are on the call.[19] This requires the Commission to resolve any tension that may exist in section 225 concerning the scope of the TRS obligation.

The Industry Petition does not address multi-party calls. In fact, footnote 10 of the Industry Petition explicitly carves out this issue: "[t]he clarification requested herein is not meant to address multi-CA calls involving only a single technology (*e.g.,* calls involving multiple TTY users or calls involving multiple VRS users)."[20] The Industry Petition instead asks the Commission to clarify that current TRS and VRS rules, as currently written, allow reimbursement for calls that involve multiple communications assistants ("CAs"), interpreters or technologies to connect individuals who are deaf, hard-of-hearing, speech-disabled or deaf-blind.[21] For example, as explained in the Industry Petition, if a VRS user places a call via a VRS interpreter to a TTY user, the communication will require the use of both ASL provided by an interpreter and typing provided by a CA.[22]

As explained in the instant example, the calls at issue in the Industry Petition are not multi-party calls; they are calls which involve only two deaf or hard-of-hearing individuals, like a point-to-point call, but which nevertheless require relay to effect communication. Because the Industry Petition and the Rulemaking Petition seek entirely different substantive rules or clarifications, they cannot be in conflict, and the "conflict" imagined by the Bureau cannot form the basis for dismissal of the Rulemaking Petition.

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19 *Id.* at 16.

20 Industry Petition at 4, note 10.

21 Industry Petition at 5.

22 *Id.* at 9.

Third, the requests made to the Commission by these separate petitions are procedurally distinct and cannot by their very nature be in conflict. The Industry Petition asks the Commission to find that the current state of the law supports the petitioners' understanding of the law.[23] By contrast, Purple's Rulemaking Petition is inherently prospective and asks the Commission to adopt a new rule that would clarify the state of the law.[24] It is difficult to understand how a petition which seeks clarity on the current state of the law on a different issue can be in conflict with a petition seeking the adoption of a new rule. Indeed, the Commission itself recently argued that it is wrong to suggest "that an agency may not conduct an adjudication while rulemaking proceedings involving similar issues are pending." *See* Brief for Respondents at 54, *Comcast Corp. v. FCC* , No. 08-1291, (D.C. Cir. Sept. 21, 2009).

III. THE COMMISSION'S RULES REGARDING CALLS NOT INVOLVING A HEARING INDIVIDUAL ARE AMBIGUOUS.

Rather than address the issues raised in the Rulemaking Petition, the Bureau took "this opportunity to reiterate and emphasize to all providers that VRS calls not involving a hearing individual unambiguously are *not* compensable under current law."[25] However, as explained below, the Bureau Order uses sleight of hand to suggest a clear restrictive rule for all VRS calls by reference to a restriction that the Commission has only considered, to the extent that it has considered this language at all, in the context of *point-to-point calls*. Because the Rulemaking Petition specifically requests clarification regarding multi-party calls, Purple respectfully submits

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23 *See* 47 C.F.R. § 1.2 (allowing the Commission "on motion or on its own motion issue a declaratory ruling . . . removing uncertainty.")

24 *See* 47 C.F.R. § 1.401(a) (allowing "any interested party [to] petition for the issuance, amendment, or repeal of a rule or regulation.")

25 *Order*, ¶ 4 (emphasis in original).

that the Bureau's recitation of information regarding point-to-point calls is simply irrelevant.

Moreover, the Commission's requirements regarding TRS calls that do not include a hearing person, particularly multi-party calls, are, in fact, ambiguous. There are no written rules regarding deaf-only calls. To the contrary, the sole evidence cited by the Bureau is a footnote in the background section of the *2008 TRS Second Report*.[26] The footnote cites no precedent. It contains no analysis of the purposes underlying the ADA or the FCC's treatment of analogous situations. Purple submits that a decision regarding exactly what types of TRS and VRS calls are permitted under the Commission's rules—a decision of monumental importance to thousands of deaf and hard-of-hearing individuals—should not be treated as an administrative afterthought, devoid of any analysis regarding how the language of a statute applies to a particular situation. In fact, the D.C. Circuit has found that such backhand decision-making by the Commission is unreasonable.[27]

The Bureau's reliance on the footnote in this earlier order was particularly egregious because that analysis fails to even consider the obvious and significant tension in Section 225(a)(3)'s definition of TRS, which the Bureau considers in isolation, and other statutory goals such as "functionally equivalent" access and Section 225(d)(2)'s mandate that the Commission should encourage "the use of existing technology and ... not discourage or impair the

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[26] Order, ¶ 4, citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, ¶ 3, note 14 (2008) ("*2008 TRS Second Report and Order*").

[27] *McElroy Electronics Corp. v. FCC*, 990 F.2d 1351, 1362 (D.C. Cir. 1993) (reversing a Commission decision regarding the timely filing of applications which was based on one footnote in the order); *see also Trinity Broadcasting of Florida, Inc. v. F.C.C.*, 211 F.3d 618, 630 (D.C. Cir. 2000) (finding that a license applicant did not have fair warning that a non-profit station with minorities constituting the majority of its board was not minority controlled when notice was only provided in a footnote reference to a policy statement).

development of improved technology."[28] As the Commission itself has acknowledged, both Section 225(d)(2) and the language mandating "functional equivalent" access for hearing and speech-impaired individuals make clear that agency rules must evolve to embrace new technologies. As such, by implying a limitation in the definition of TRS, the Bureau has done nothing to help the Commission reconcile conflicting portions of section 225 to apply them in the context of multi-party calling.

Finally, the Bureau cannot claim that the agency has established a hard-and-fast rule that deaf-only calls are non-compensable. In fact, there are various types of calls that generally do involve *only* deaf or hard-of-hearing individuals *that have been permitted by the Commission.* As described in the Industry Petition, there are a number of different types of telecommunications relay services: text telephone ("TTY"), voice carry over ("VCO"), hearing carry over ("HCO"), captioned telephone voice carry over ("captioned telephone VCO"), IP captioned telephone, speech-to-speech ("STS"), IP Relay , and video relay service ("VRS").[29] The FCC has required carriers to provide combination of the different technologies available, including VCO-TTY, HCO-TTY, VCO-VCO, and HCO-HCO.[30] However, as a practical matter, many of these calls appear to involve two deaf or hard-of-hearing individuals and do not necessarily involve a hearing individual. Yet, the Commission has not suggested that reimbursement for such calls would violate TRS rules. Consequently, although the Bureau claims to have established a bright line, precisely the opposite is true. In fact, the Commission

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[28] 47 C.F.R. § 225(d)(2).

[29] Industry Petition at 3.

[30] Industry Petition at 12, citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Americans with Disabilities Act of 1990,* Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12379, ¶¶ 27, 32, and 34 (2003) ("*2003 TRS Second Report and Order*").

has not been consistent in determining what types of calls are compensable TRS calls. For this reason, among others, Purple submitted its Rulemaking Petition.[31]

IV. PUBLIC INTEREST DEMANDS THAT THE FCC SEEK COMMENT ON PURPLE'S RULEMAKING PETITION

In addition to the clear legal rationale which supports the Commission's reversal of the Bureau's decision, there is a public policy imperative for the Commission to address these ambiguous issues in order to provide clarity to the deaf and hard-of-hearing community, and companies that employ deaf and hard-of-hearing individuals. Specifically, the Commission should consider the implications the FCC's rules have on the employment of deaf managers in businesses or government agencies where they may frequently collaborate with deaf personnel who are geographically dispersed. Purple employs approximately 100 full-time deaf staff and over 350 part-time contractors who visit the homes customers and provide installation, outreach and training. Purple is committed to the development of deaf managers and is proud that its outreach organization is today managed by deaf individuals who have been promoted from within the company. Naturally, to best serve deaf customers, Purple's outreach organization is also deaf. The vast majority of interactions with customers and outreach representatives are done through video phone calls that are point-to-point and for which Purple does not submit for reimbursement. However, for larger group meetings among geographically dispersed managers and outreach representatives, the use of multi-party calls using VRS, some of which may include

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[31] The Commission's requirements have been so unclear in this area that the former Chairman of the House Telecommunications Subcommittee introduced a bill to clarify once and for all that deaf-only calls are compensable. 21st Century Communications and Video Accessibility Act, H.R. 6320, 110th Cong. (June 19, 2008) (Introductory remarks of H. Rep. Edward Markey (D-MA)).

deaf-only participants, is critical to effective communication and is the best proxy for functionally equivalent communication to hearing people as called for in the ADA.

To the extent that the Bureau's Order suggests that the presence of a single hearing person on a call would technically make that call valid for compensation from VRS in contrast to the same call without a hearing person, Purple respectfully asks the full Commission to reconsider this policy. The FCC should not endorse a policy that favors the use of hearing people on multi-party calls. Deaf, hard-of-hearing, and speech-impaired individuals bring special talents to leading a work force made up of similarly situated individuals. Moreover, any policy that favors the need for a hearing individual on all multi-party calls creates an unworkable operational standard for the use of these services by government agencies or non-profit Boards of directors.

As envisioned by the ADA, it should not be significantly more expensive to employ a deaf person and provide the same level of communications access as hearing counterparts; however, without reversal of the Bureau's Order and an appropriate rulemaking proceeding, the Commission's newly articulated policies may lead to such an outcome. Clearly, relay providers should not be in business to simply conduct workplace calls. As an advocate of transparency to ensure the legitimacy of all relay calls, Purple favors a "track and disclose" approach to the use of conference calls by providers so that the Commission can evaluate the minutes in the industry which are generated both from internal and external operations, and so that NECA can audit the legitimacy and scope of the minutes generated from workplace calls. Purple also would welcome dialogue with the Commission, providers, and consumers about an alternative re-imbursement approach for these calls that would neutralize the profit-motive but would not lead

to discriminatory hiring practices related to providing functional equivalence for deaf individuals without any offsetting reimbursement.

Finally, this is a complex and deeply significant issue for the rights of a deaf person to use the telephone in the performance of his or her work. As such, Purple respectfully implores the Commission to refrain from dismissing this matter simply out of administrative expediency without fully informing itself of the ramifications on the deaf community and their employers whether they be relay providers, other businesses, or government agencies.

V. CONCLUSION

For the foregoing reasons, the Commission should reverse the Bureau's dismissal and initiate a rulemaking proceeding to address various critical issues affecting the provision of TRS.

Respectfully submitted,

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Dated: October 14, 2009

Deaf Organizations Letter in Support of Purple's Petition

Telecommunications for the Deaf and Hard of Hearing, Inc.
National Association of the Deaf
California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.
American Association of Deaf-Blind
Association of Late-Deafened Adults, Inc.
Hearing Loss Association of America
Deaf and Hard of Hearing Consumer Advocacy Network
American Association of People with Disabilities

September 11, 2009

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities
Purple Communications, Inc. Petition for Rulemaking to Clarify Relay Rules, August 12, 2009
CG Docket No. 03-123

Dear Chairman Genachowski:

On behalf of the organizations listed above (the "Consumer Groups") representing millions of people across America who are deaf, hard of hearing, or speech-impaired and who rely on the availability of reliable telecommunications relay services, we feel compelled to share comments on the above-referenced recent filing by Purple Communications, Inc ("Purple").

We support the Commission for its efforts to examine the industry to eliminate instances of waste, fraud and abuse. Abuse in the form of manufactured minutes of any kind contributes to the severe shortage of interpreters in the community and damages the reputation and respect for telecommunication relay services that consumers have fought so hard to achieve. We believe these steps are important to the long term health of the industry and ensuring consumers have continued access to these important services.

We applaud Purple for its filing that raises legitimate questions regarding the rights and rules regarding TRS and support its request that the Commission further clarify the rules set forth in its filing. Since consumers will benefit from these clarifications, we request that the Commission place the filing on public notice as early as possible.

In follow up to Purple's petition, on September 1, 2009 CSDVRS filed a Request for Expedited Clarification on Marketing Practices. We acknowledge CSDVRS for its filing that also addresses the issues raised by Purple.

Consumer groups cannot stay silent on the fact that VRS companies perform a very important function - education and outreach, to encourage businesses and service entities to accept VRS calls from clients and consumers who are deaf or hard of hearing. Employees of VRS companies also rely on VRS for conference calls, phone meetings, and the like -- just like hearing persons who use telephones for the same purposes. This is functional equivalence, or rather, full and equal access to the telecommunications infrastructure. It is therefore imperative that the Commission takes steps to distinguish such legitimate activities from those that are aimed purely at driving up minutes.

Outreach. Purple notes that outreach is mandated under the ADA and comments that the current rules and regulations need further clarification regarding what constitutes appropriate and reasonable outreach. We agree that providers as well as the Commission must conduct outreach, and support Purple's request for greater clarity of the rules as to what is permissible, appropriate and reasonable. In order to have a healthy industry that can serve consumers well, there must be clear and consistent rules for the providers. Clear and consistent rules also provide the Commission with the legal foundation that it needs to rigorously enforce those rules against those who violate them.

VRS in the Workplace. We support Purple's request that the Commission tackle the difficult issues related to the rights afforded people who are deaf, late-deafened, deaf-blind, hard of hearing or speech impaired to use the telephone system in a manner that is functionally equivalent to hearing counterparts. We do not have specific solutions to offer at this time, but we support Purple's view that people in these communities should have equivalent tools that hearing persons have in the workplace, including the use of conference calls. We also agree with the recommendation to bring this issue into the public forum so we can collectively resolve these complicated civil rights issues and bring clarity to providers who employ many within the communities of people who are deaf, late-deafened, deaf-blind, hard of hearing or speech impaired across America. With clearer rules established and published, rigorous enforcement can better follow.

Free/Discounted Equipment. We support Purple's request that the Commission clarify the rules on providing free or discounted equipment to customers. It has been long understood that video equipment has been freely given away or subsidized by providers, which is vital to VRS users. The Consumer Groups have consistently supported availability of video equipment, most recently in its June 26, 2009 comments in response to the Notice of Proposed Rulemaking regarding VRS rates. We encourage the Commission to clarify that the current practice of offering free or subsidized video equipment is a permitted practice by providers. Although the issue of reimbursement from the Interstate TRS Fund for equipment costs should be addressed in the upcoming VRS rate proceeding, we think it important for the Commission to affirm the general principle that equipment may be subsidized or given away for free by iTRS providers at this time.

For all of the above reasons, we respectfully request that the Purple filing be placed on public notice as early as possible. The Consumer Groups support the right of any person to make or receive any calls, with or without the use of any relay service of the person's choice. As such, the Consumer Groups' formal comments in response to Purple's petition may be directed to assisting the Commission to look at the VRS providers' business ethics and conduct through

specific examples of policies they should have in place, and to determine the scope of activities within the ordinary course of business, including outreach and other activities, of VRS providers.

Very truly yours,

/s/

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Commissioner Meredith Attwell Baker

RID Letter in Support of Purple's Petition

Registry of Interpreters for the Deaf, Inc.

September 28, 2009

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Support for Deaf Consumers and Provider Request for VRS Rulemaking Petition

Dear Chairman Genachowski:

The Registry of Interpreters for the Deaf (RID) is the nation's largest membership organization representing the professionals who facilitate communication between people who are deaf or hard of hearing and people who can hear. Interpreters serve as professional communicators in a vast array of settings such as: churches, schools, courtrooms, hospitals and theaters, as well as on political grandstands, television and specific to this letter, in the provision of video relay services (VRS).

The interpreting services provided by our members are essential to the delivery of video relay, and our members are employed by a variety of providers of these services. Accordingly, our members are keenly aware of the FCC's inquiries into the various practices within the industry, and as a member of the Deaf and Hard of Hearing Consumer Action Network (DHHCAN), we would like to take this opportunity to individually echo the previously filed Consumer letter[1] which supports the Commission in its efforts to examine the industry to eliminate instances of waste, fraud and abuse, resulting in the preservation of the important trust relationship between service providers, interpreters and deaf consumers.

RID is an independent organization representing the interests of our members, and we do not endorse one service provider over another, however in this case, we do join the sentiments of the Consumers in applauding Purple Communications for its leadership in submitting a filing that raises legitimate questions regarding the rights and rules of TRS. We support the request from Consumers and Purple that the FCC place the filing on public notice as soon as practicable so that the voices of all stakeholders can be heard in this process.

[1] Letter of Support for Purple Petition for Rulemaking, dated September 11, 2009 sent to Chairman Genachowski from a coalition of Consumer groups including; Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc., American Association of Deaf-Blind, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, Deaf and Hard of Hearing Consumer Advocacy Network, American Association of People with Disabilities.

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The growth of video relay has transformed the interpreting profession in profound ways, and we believe if the FCC is successful in its policy efforts to widen the availability of broadband services to all Americans that more deaf consumers will have access to these important services and use of video relay and the need for qualified interpreters will continue to rise. This poses a wonderful opportunity for broader access to these vital services and growth in our profession, but in our view, it also poses a potential problem if ambiguities and confusion that exist regarding the rules in the VRS market persist.

Specifically, our members abide by a strict code of conduct and confidentiality (NAD-RID Code of Professional Conduct) that must never be breached. This confidentiality is the bond of trust we have with deaf consumers who place confidence in us each and every time we are asked to interpret, whether in a church, school, courtroom or behind the camera of a video relay terminal. In the case of VRS, this bond cannot be weakened by providers or regulators asking interpreters to be arbiters of VRS call content, breaking transparency rules and determining which calls are for legitimate purposes and which are not. That is outside the scope of the interpreter's duties and erodes our core obligations to the Deaf community.

We join with Consumers in support of Purple's request that the Commission tackle the difficult issues related to the rights afforded a deaf person to use the telephone system in a manner that is functionally equivalent to hearing counterparts. People who are deaf should have equivalent tools that hearing persons have in the workplace and being able to perform functions that would use the telephone in the ordinary performance of their job, including the use of business focused conference calls. In the spirit of transparency and fact-gathering, we also agree with the recommendation to bring this issue into the public forum so all stakeholders can discuss these complicated civil rights issues and bring clarity to our interpreters who are in the middle of a situation where a deaf consumer needs access and their job is to deliver it. As interpreters, our members want to make sure their duties are always lawful, and we believe clearer rules established and published will help improve the industry and make the enforcement process more clear.

The challenge all stakeholders (FCC, consumers, providers and interpreters) face in the delivery of these vital services is how to distinguish legitimate use of the service from one that is not, while preserving the code of professional conduct and confidentiality ethos that is absolutely essential to a healthy and properly functioning relationship between consumers and interpreters. Interpreters cannot speak "for" deaf consumers. We work 'with' them, and accordingly, we should not be the arbiters of which of their calls are appropriate and which are not, otherwise we risk eroding this delicate and important trust relationship.

RID realizes that some of the topics included in the petition for rulemaking are also the subject of ongoing industry-wide inquiries, but in our view, the lack of rule clarity may likely be a contributor to some of the inquiries, and policy clarity is essential for all stakeholders sooner than later.

RID looks forward to working with consumer advocacy groups and all VRS providers to ensure that equal communication access is achieved. With that, we extend our support to Purple and Consumers in respectfully requesting the FCC to place on public notice the Purple Petition for Rulemaking.

Respectfully,

Clay Nettles
RID Executive Director

Cheryl Moose
RID President

cc: Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker