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July 16, 2010

*Via Electronic Filing*

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

Re: *Purple Call Forwarding Petition for Clarification or Waiver*
CG Docket No. 10-51

Dear Ms. Dortch:

On June 14, 2010, Sorenson Communications, Inc. ("Sorenson") filed comments in response to the "Petition for Clarification or Waiver" filed by Purple Communications, Inc. ("Purple"), which sought "clarification or waiver of FCC Rule §64.613(a)."[1]

Sorenson filed its initial comments pursuant to Rule 1.45(b).[2] Subsequently, on July 2, 2010, the Consumer and Governmental Affairs Bureau issued a Public Notice seeking comment on Purple's Petition.[3] In an abundance of caution, Sorenson is re-filing its prior comments following issuance of the Public Notice to ensure that the comments are properly included in the record of this proceeding.

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1 Petition for Clarification or Waiver of Purple Communications, Inc., CG Docket No. 10-51, at 1 (June 2, 2010) ("Petition").

2 47 C.F.R. § 1.45(b); *see also id.* § 1.4(j).

3 *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Public Notice, "Comments Sought on Purple Communications, Inc. Petition for Clarification or Waiver to Implement Call Forwarding Service for Internet-Based Telecommunications Relay Service Users," DA 10-1253 (rel. July 2, 2010) ("Public Notice").

Please do not hesitate to contact the undersigned if you have any questions or require anything further.

Sincerely,

*/s/ Gil M. Strobel*
Gil M. Strobel

Attachment

cc: Kelby Brick, Purple Communications
Best Copy & Printing, Inc. (BCPI)

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

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| In the Matter of | ) | |
| | ) | |
| Purple Communications, Inc.'s | ) | CG Docket No. 10-51 |
| Request for Clarification or Waiver | ) | |

## COMMENTS OF SORENSON COMMUNICATIONS, INC.

Sorenson Communications, Inc. ("Sorenson") hereby responds to the "Petition for Clarification or Waiver" ("Petition") filed by Purple Communications, Inc. ("Purple") seeking a "clarification or waiver of FCC Rule §64.613(a)."[1] As explained below, the Federal Communications Commission ("FCC" or "Commission") must deny Purple's Petition because Purple has failed to show special circumstances justifying a waiver of the Commission's generally applicable rules.[2] A change to the rule in question – or any other rules relating to the FCC's numbering regime – should be accomplished through a formal notice-and-comment rulemaking proceeding that would allow the Commission to develop the record needed to properly evaluate the ramifications of any proposed modifications.

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[1] Petition for Clarification or Waiver of Purple Communications, Inc., CG Docket No. 10-51 (June 2, 2010) ("Purple Petition"). Section 64.613(a) requires that the TRS Numbering Directory "contain records mapping the NANP telephone number of each Registered Internet-based TRS User to a unique Uniform Resource Identifier (URI)" and that "[f]or each record associated with a VRS user, the URI shall contain the user's Internet Protocol address." 47 C.F.R. §64.613(a)(1)-(2).

[2] Purple tries to avoid some of the procedural defects of its Petition by also styling it as a petition for "clarification." Purple fails to demonstrate any ambiguity in the current rule that requires clarification, however. Moreover, even if the rule were unclear, Purple's Petition is duplicative of its previously filed Petition for Clarification, which is currently pending before the Commission. *See* Request for Clarification of Requirements for Populating the iTRS Database of Purple Communications, Inc., CG Docket No. 03-123 and WC Docket No. 05-196 (July 21, 2009).

## I. PURPLE HAS FAILED TO MAKE THE SHOWING REQUIRED TO JUSTIFY A WAIVER

The FCC has repeatedly stated that requests for waiver will not be routinely granted[3] and that petitioners must plead specific facts that demonstrate that strict compliance with the FCC's rules would be inconsistent with the public interest, taking into account, *inter alia*, considerations of "hardship, equity, or more effective implementation of overall policy on an individual basis."[4] Simply put, waiver is appropriate only where "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[5] Purple has failed to meet this threshold.

Purple has failed to demonstrate that granting its waiver request would serve the public interest.[6] At base, Purple requests that it be permitted to avoid compliance with an industry-wide technical standard so that it can implement a feature that may be inconsistent with the FCC's carefully considered numbering regime. While such a waiver is clearly in *Purple's* interest, there is no evidence that the requested waiver would be in the *public* interest. Moreover, Purple has not provided sufficient information regarding its "call forwarding" feature to allow either the

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3 *See, e.g., Telephone Number Portability; Sprint Local Telephone Companies Petition for Waiver*, Order, 19 FCC Rcd 23962, ¶ 4 (2004) ("waivers are not routinely granted"); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) ("*WAIT Radio*") ("An applicant for waiver faces a high hurdle even at the starting gate.").

4 *Numbering Resource Optimization; Petition of California Public Utilities Commission for Waiver of the Federal Communications Commission's Contamination Threshold Rule*, Order, 18 FCC Rcd 16860, ¶ 9 (2003) ("*Numbering Resource Waiver Order*") (citing *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*")); *see also Northern Telephone & Data Corp.*, Order, 25 FCC Rcd 274, ¶ 6 (2010) ("when an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances that warrant such action").

5 *Northeast Cellular*, 897 F.2d at 1166 (referencing *WAIT Radio*).

6 Purple Petition at 6-8 (offering only an unsupported assertion that waiver would serve the public interest).

FCC or commenters to assess the potential ramifications of its proposed waiver.[7] As a result, it is impossible for the Commission to determine that granting Purple's waiver request would be in the public interest.[8]

Based on the limited information provided by Purple, it seems that its Petition may simply be an attempt to make an end run around the Commission's recently promulgated numbering regime. In adopting the current numbering rules, the Commission considered several options for populating the TRS Numbering Directory before finding that "[p]rovisioning URIs containing [the end users'] IP addresses to the central database will result in a simplified, and more efficient, call setup process by eliminating the need to query an Internet-based TRS user's default provider before completing every call."[9] Purple presents no compelling argument that

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[7] Purple's Petition also raises potential concerns regarding whether the company's *current* practices comply with either the letter or the spirit of the Commission's rules. For example, Purple indicates that it "has offered the Follow Me call forwarding feature to users who desire it for relay calls coming to a deaf or hard of hearing user from hearing individuals." Purple Petition at 2. Based on the limited information provided in the Petition, it is unclear whether Purple's voice-to-video call forwarding system is consistent with the FCC's interoperability principles (*e.g.*, does Purple's call forwarding feature work for "dial-around" voice-to-video calls?) or whether Purple even provides outbound calling for all numbers it has assigned for use with its call forwarding functionality. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing Disabilities*, CG Docket No. 03-123, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, ¶ 1 (2006).

[8] Because of the lack of detail provided by Purple, Sorenson expresses no view on the substance of Purple's Petition. Instead, Sorenson hopes that the FCC will consider the issues raised by Purple as part of a rulemaking proceeding regarding possible changes to the numbering rules governing the TRS Numbering Directory. *See infra* Section II.

[9] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, First Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, ¶ 53 (2008) ("*First Report & Order*"). The Commission also addressed the call forwarding issue raised by Purple, recognizing that while a default provider "that has provisioned a user with multiple numbers for the same service [may be able to offer] call-forwarding-type features," "an Internet-based TRS provider that is not the default provider of these numbers may not be able to replicate the same feature." *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, ¶¶ 42-44 (2008)

there has been a change with respect to either the policy determinations that led to these decisions or in the technological landscape that would obviate the concerns raised in the FCC's orders.

In addition, Purple has not alleged any "special circumstances" that would warrant a deviation from the standard application of the Commission's rules.[10] Nor has Purple made any attempt to explain how grant of a waiver to a single provider permits "more effective implementation of overall policy on an individual basis."[11] To the contrary, the issues Purple raises apply universally to all VRS providers. The rules governing the TRS Numbering Directory affect all VRS providers, and any changes to those rules would have an impact on all providers. Accordingly, it would be inappropriate to grant Purple a provider-specific waiver of the numbering rules. Indeed, grant of such a waiver would constitute an unlawful and discriminatory application of the Commission's authority.[12] Granting a general waiver to all VRS providers would be equally inappropriate, however. As discussed more fully below, a generally applicable change to the FCC's numbering rules would have "far-reaching implications and should be addressed in a rulemaking proceeding . . . instead of in an adjudication or waiver proceeding."[13]

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("*Second Report & Order*"); *see also First Report & Order*, ¶ 41 n.114 (noting that remote call forwarding "may inhibit some functionally equivalent services").

10 *See* Purple Petition at 6-8.

11 *Numbering Resource Waiver Order* ¶ 9.

12 *Northeast Cellular*, 897 F.2d at 1166 (If an agency chooses to grant a waiver request, it must "prevent discriminatory application" of its waiver.).

13 *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, ¶ 218 (2002) (citations omitted) ("[A] rulemaking under the Administrative Procedure Act's provisions for notice and broad public participation assures fairness, the opportunity to develop the record and mature consideration.").

## II. ANY CHANGE TO THE NUMBERING RULES SHOULD BE ACCOMPLISHED THROUGH A FORMAL RULEMAKING PROCEEDING

When the Commission first addressed the issues raised in Purple's Petition, it did so in the context of adopting the current numbering rules. These rules, including the specific rule from which Purple now seeks a waiver, were adopted only after all parties were afforded prior notice and an opportunity to comment, as required by Section 553 of the Administrative Procedure Act ("APA").[14] Any modification of these rules must also comply with the APA's notice-and-comment rulemaking procedures.[15] Accordingly, the Commission must deny Purple's Petition.[16]

It would be particularly inappropriate to make the changes requested by Purple without a rulemaking proceeding in light of the extensive debate about the architecture of the TRS Numbering Directory that took place among providers prior to the adoption of the current

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[14] 5 U.S.C. § 553.

[15] *See, e.g., SBC Inc. v. FCC,* 414 F.3d 486, 498 (3d Cir. 2005) ("[I]f 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"); *see also 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); *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) ("[T]he APA expressly contemplates that notice and an opportunity to comment will be provided prior to agency decisions to repeal a rule."); *Patel v. INS*, 638 F.2d 1199, 1203-05 (9th Cir. 1980) (agency abused its discretion and circumvented rulemaking procedures of APA in using adjudication to modify regulatory standard for granting immigrant visas that had been adopted in prior rulemaking proceeding).

[16] In the alternative, the Commission could choose to treat Purple's petition as a petition for rulemaking and issue a Notice of Proposed Rulemaking ("NPRM") to more fully consider the issues Purple has raised. Sorenson would support such an action as a means to expedite consideration of the potential implementation of server-based routing in a manner that is consistent with the rest of the FCC's numbering rules and policies. *See* Letter from Gil M. Strobel, Counsel for Sorenson, to Marlene H. Dortch, FCC Secretary, CG Docket No. 03-123 and WC Docket No. 05-196, at 2-3 (Aug. 20, 2009) (supporting adoption of an NPRM).

numbering rules. Parties expressly addressed the issues raised in Purple's Petition.[17] Based on the record before it, the Commission chose to require that each record associated with a VRS user in the TRS Numbering Directory contain the end user's IP address.[18]

Further, granting Purple's Petition without additional analysis may result in a number of unintended consequences. Changes to a single regulatory provision that is part of a complex regulatory regime – such as the FCC's numbering rules – can have widespread, unanticipated, and potentially harmful results. To prevent any such unintended consequences, the Commission must carefully consider whether any rule revisions or modifications would lead to technical problems or otherwise be inconsistent with the remaining numbering rules. The Commission should also assure itself that the proposed changes do not ultimately harm or frustrate VRS users. For example, the Commission must be certain that allowing providers to engage in the type of call forwarding contemplated by Purple will not result in VRS calls being forwarded in an endless, or inconveniently lengthy, loop from one call forwarding system to the next.[19] The

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[17] *See, e.g.,* "Responses to FCC Questions at May 15, 2008 Ex Parte," attached to letter from George L. Lyon, Jr., Counsel for GoAmerica, Inc. (now Purple) to Marlene H. Dortch, FCC Secretary, 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 L. Lyon, Jr., Counsel for GoAmerica, to Marlene H. 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).

[18] 47 C.F.R. § 64.613(a)(2). Sorenson originally was a proponent of server-based routing. In fact, Sorenson might still favor a change in the rules to allow for server-based routing, provided that the Commission develops a sufficient record to determine how such a change might affect its overall numbering regime and whether such a change requires amendment to other rules. *See, e.g.,* discussion at 6-7 and note 19, *infra*.

[19] Without specific rules governing call forwarding between numbers assigned by different providers, a customer could end up in a circular reference loop whereby one provider's call

result might be missed calls, lack of opportunity for callers to leave messages, and, ultimately, frustrated consumers. In order to avoid this problem as well as other, less obvious problems, the Commission must fully vet both technical implementation issues as well as policy considerations by receiving input from all interested parties.

Indeed, the most troubling aspect of Purple's request is the possibility that granting Purple's Petition may undermine the Commission's comprehensive numbering regime, which involves a delicate balance between several interrelated rules. Before making changes to its current rules, the Commission should therefore assess whether the proposed changes would frustrate any of the fundamental policies underlying its numbering rules. For example, the modifications requested by Purple may reduce providers' incentives to act as default providers by allowing providers to receive the benefits of handling a significant number of VRS calls without being subject to the obligations imposed on default providers. Similarly, the alterations proposed by Purple may be inconsistent with the Commission's local number portability system, which the Commission has designated as "a priority in any numbering plan for Internet-based TRS."[20]

Accordingly, if the Commission wishes to reconsider its prior conclusions in light of Purple's Petition, or in response to other concerns, it should first seek to refresh the record on these matters by issuing a Notice of Proposed Rulemaking ("NPRM").[21] Such an NPRM would afford interested parties a chance both to address the recommendations set forth in Purple's

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forwarding system forwards the call to a second provider's number, which in turn forwards the call back to the first provider.

20 *First Report & Order* ¶¶ 34-35.

21 As the Commission itself noted, "[a]s we garner experience with our numbering system, we will be better able to analyze possible solutions" that allow deviations from the current telephone numbering system but which are still "consistent with our emergency handling and interoperability rules." *Second Report & Order* ¶ 43.

Petition and the potential impact any proposed changes to the existing rules would have on consumers and providers.[22]

## III. CONCLUSION

For the foregoing reasons, the Commission should deny Purple's Petition. Purple has failed to adequately justify its waiver request or to demonstrate any ambiguity in the current rule. Moreover, the rule change Purple seeks should only be adopted after the FCC develops a record on the relevant issues as part of a formal notice-and-comment rulemaking proceeding. Accordingly, the FCC should issue an NPRM in the near future to address the issues raised by Purple's Petition and related concerns.

Respectfully submitted,

*/s/ Gil M Strobel*
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June 14, 2010

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[22] To expedite consideration of these issues, the FCC's order denying Purple's Petition could be accompanied by an NPRM seeking comment on changing the rules governing the routing of VRS calls. *See* note 16, *supra*.

**Certificate of Service**

I hereby certify that on this 14th day of June, 2010, I caused a true and correct copy of the foregoing Comments of Sorenson Communications, Inc. to be mailed by U.S. mail, postage prepaid, to:

Kelby Brick
Vice President, Strategic and Regulatory Policy
Purple Communications, Inc.
595 Menlo Drive
Rocklin, California 95765

*/s/ Ruth E. Holder*
Ruth E. Holder