

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
)	
To: The Commission)	

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

Purple Communications, Inc. (“Purple”) herewith comments on Issues V.A., V.B. and V.E.5. as set forth in the Commission’s May 27, 2010 Declaratory Order, Order and Notice of Proposed Rulemaking (“NPRM”),¹ in the above captioned proceeding, and shows the following:

I. INTRODUCTION.

Purple applauds the Commission for instituting this proceeding to bring needed guidance to the industry. In these comments, Purple addresses three issues the NPRM raises: (1) location of call centers outside the United States, (2) virtual call centers, where video interpreters work from home or a remote location; and (3) whistleblower protection for relay provider employees.

II. DISCUSSION.

A. Location Of VRS Call Centers.

The NPRM acknowledges that some providers have established VRS call centers outside the United States. As noted in the NPRM, American Sign Language (“ASL”) is not the primary form of sign language used in countries outside North America, and thus VRS providers may not

¹ See *Structure and Practices of the Video Relay Service Program*, FCC 10-88 (May 27, 2010).

be able to find qualified ASL interpreters to staff these call centers.² NPRM at 10. The NPRM further notes only 190 of more than 15,000 members of the Registry of Interpreters for the Deaf (“RID”), the national membership organization for professional sign language interpreters in the United States, are located outside the United States.³ Likewise, there are only 600 members of the Association of Visual Language Interpreters of Canada (“AVLIC”), which is Canada's national professional association representing interpreters whose working languages are English and ASL.⁴ *Id.* The NPRM also expresses a concern that VRS call centers outside the United States may lack appropriate supervision and otherwise not operate in compliance with the Commission’s rules, and that these call centers may be (or have been) a source of fraud and otherwise may not be handling legitimate VRS calls. *Id.* at 10-11.

In light of these concerns, the NPRM tentatively concludes that the FCC will amend its rules to require that all VRS call centers be located in the United States. Furthermore, in light of the unease regarding fraud, the NPRM indicates that this rule should become effective immediately upon publication in the Federal Register. *Id.* at 11.

Purple is aware of at least one provider that operates several call centers in Canada. Purple understands that these Canadian call centers have negatively affected the availability of interpreters for deaf and hard-of-hearing persons in Canada.⁵ Nevertheless, Purple does not consider the proposed restrictions on VRS call center locations to be necessary or appropriate,

² 47 C.F.R. §64.601(a)(16) (A VRS interpreter must be a qualified interpreter “who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary”).

³2009 Annual Report of the Registry of Interpreters for the Deaf (RID), at 53; <http://www.rid.org/UserFiles/File/2009RIDAnnualReport.pdf>.

⁴ AVLIC Mission Statement found at <http://www.avlic.ca/index.php> (visited April 13, 2010); AVLIC News Fall/Winter 2009 at 14, http://www.avlic.ca/files/pdf/newsletters/2009_avlic_fall_winter.pdf.

⁵ We note the comments filed by the Canadian Association of the Deaf in this proceeding. The concerns expressed therein are in large part the reasons why Purple has declined to open a VRS call center in Canada despite the presence of at least one other VRS provider.

and that there are less restrictive means of addressing the Commission's concerns regarding service quality and potential for abuse.

We do not believe non-United States call centers are likely to suffer appreciably in terms of quality. Providers have an incentive to ensure that interpreters are qualified, and there is no evidence that providers have been using unqualified interpreters offshore. Providers who employ unqualified or lesser qualified interpreters provide substandard service and will ultimately lose customers to those who employ qualified interpreters. Moreover, if interpreter qualifications are the Commission's predominant concern, this issue could be remedied by requiring providers to employ only interpreters who hold an appropriate certification.

We note that foreign VRS call centers have not been affirmatively identified as a source of inappropriate VRS traffic. In the absence of any demonstrated abuse, fashioning a rule prohibiting employment of foreign labor would be arbitrary and unsupported by substantial evidence in the record.

Moreover, Purple is concerned that the proposed restriction would violate the United States's commitments with respect to trade in telecommunications services under the WTO and the General Agreement on Tariffs and Trade.⁶ Rulemaking by the FCC to prohibit foreign call centers would likely be reciprocated by the Canadian authorities, who are currently considering how to best implement video relay service in that country. This would serve as a substantial impediment to future participation in the Canadian VRS market by United States providers. In any event, given the paucity of ASL interpreters residing outside the United States, it is unlikely that there would be any appreciable increase in foreign VRS call centers in the medium to long term, with the exception of Canada. The United States and Canada have a tradition of close

⁶ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, 12 FCC Rcd 23891, 10 CR 750 (1997).

cooperation on communications matters. Moreover, any abuse originating from Canadian call centers is likely to receive close scrutiny from Canadian authorities.

In Purple's view, the best method for combating potential abuses involves enhanced compliance and unambiguous rules and regulations. Specifically, Purple urges the Commission to: (1) set clear rules; (2) require executive level certification of monthly submittals to the TRS Fund administrator; (3) adopt a "fast track" review process for providers who have questions about interpretation of the rules pertaining to the relay program; and (4) require each provider to adopt an agency-approved compliance plan, and be subject to FCC audits on the plan's implementation.

Approval of the compliance plan should be a pre-requisite to certification, and providers should be required to provide a confidential annual report on the results of their compliance plan to the Commission to retain their certifications. At a minimum, provider compliance plans should require annual compliance training of all employees and contractors involved in call handling, outreach, marketing and administrative functions directly related to the TRS program. Additionally, as discussed in detail in Section D below, compliance plans should require the establishment of a compliance hotline for complaints or information concerning violations, and a procedure for investigation of suspected or reported violations.

Ultimately, providers should be responsible for violations occurring in any call center from which they process calls, whether owned and operated, subcontracted, situated in the United States or located off-shore. Purple believes that holding providers responsible for the minutes they submit is a more appropriate and effective means of policing the industry than an outright prohibition on foreign call centers.

B. Purple Supports The Allowance Of Virtual Call Centers With Appropriate Safeguards.

The Commission questions whether video interpreters working from home (sometimes called a “virtual call center”) may compromise the integrity of the TRS program. The Commission notes that both the Communications Act⁷ and the Commission’s rules,⁸ specifically safeguard the confidentiality of calls. Accordingly, the practice of video interpreters working from home raises concerns about whether the confidentiality of calls can be guaranteed under that arrangement. NPRM at 11, The NPRM also queries whether interpreters working from home can meet the mandatory minimum standards applicable to the provision of relay, including the ability to handle emergency calls in accordance with the rules,⁹ or to transfer a call to another interpreter if the video interpreter cannot continue to handle the call.¹⁰ *Id.*

The Commission seeks comment on how to balance the goals of allowing VIs the convenience and flexibility that comes with working from home with the need to ensure that call confidentiality and mandatory minimum standards are met. *Id.* The NPRM specifically inquires about technologies and other ideas that would allow for appropriate supervision of VIs who work from home, including any specific examples of successful solutions that could serve as a model for future rules. NPRM at 11. In addition, the NPRM seeks comment on whether providers should be required to treat “virtual call centers” as separate “call centers” for purposes of TRS administration, as discussed in section V.E.3. of the NPRM. *Id.*

⁷ 47 U.S.C. §225(d)(1)(F).

⁸ 47 C.F.R. §64.604(a)(2).

⁹ See 47 C.F.R. §64.605(b)(ii) (requiring a VRS providers to transmit all 911 calls to “the PSAP, designated statewide default answering point, or appropriate local emergency authority”).

¹⁰ See 47 C.F.R. §64.604(a)(v)(2) (requiring a VRS CA to stay with a call for a minimum of ten minutes before transferring).

Purple believes virtual call centers should be permitted subject to certain required standards. Although Purple has not employed virtual call centers, Purple understands certain other providers have done so. Purple views virtual call centers as potentially beneficial in holding down the escalating cost of video interpreters, alleviating the shortage of interpreters and improving interpreter morale. Telecommuting has become a well-established practice in our economy and is prevalent in the Federal workforce because of its many benefits. Provided that proper standards are well-defined and commonly adopted among providers to ensure compliance with the rules, the FCC should not prohibit telecommuting in the video interpreter workforce.

Purple proposes the following safeguard requirements for a virtual call center: (1) physical privacy to prevent visual and auditory interruptions; (2) the technical ability to automatically transfer calls in progress; (3) automated versus manual billing tabulation of handled minutes; (4) minimum broadband speeds sufficient for video quality; (5) technical guards against video interpreters calling their own work stations using an outside telephone line; and (6) remote visual and audio supervision capability. However, it is not necessary to treat each virtual call center as a separate call center under the rules. Although treating each home as a call center could theoretically permit the TRS Fund administrator to spot anomalous calling patterns from individual telecommuting video interpreters, the administrative costs of undertaking these reviews would be substantial. Instead, providers should be required to institute processes for recognizing anomalous call patterns for interpreters who work from home as part of a mandatory compliance plan.

C. Reasonable Compensation Bonus Arrangements Promote Productivity Without Encouraging Inappropriate Behavior.

The NPRM seeks comment on video interpreter compensation schemes which may provide an incentive for VIs to place calls for the purpose of generating minutes for the employer

provider. NPRM at 12. The NPRM contemplates that most VIs are salaried or paid by the hour, resulting in payment irrespective of the number of relay minutes processed. However, the NPRM suggests that some VIs have received bonuses for working through scheduled breaks or working overtime to relay more minutes. *Id.* The NPRM expresses the concern that this may have resulted in schemes by VIs to initiate or participate in fraudulent VRS calls. *Id.*

The NPRM seeks comment on whether “such bonus schemes” or similar types of compensation arrangements exist, and if so, whether they provide an inappropriate incentive for VIs to arrange calls that would not otherwise be made. The NPRM further queries what type of safeguards can be adopted to deter and prevent use of such improper compensation schemes. *Id.* Finally, the NPRM seeks comment on how VIs are typically compensated, whether working from home makes any such arrangements easier to carry out, and requests possible solutions to prevent abuse. *Id.*

With respect to video interpreter compensation arrangements, Purple understands that interpreters, like most employees, are generally subject to some type of incentive arrangements designed to increase productivity.¹¹ Increasing the productivity of VIs helps reduce the overall cost of the VRS program. Purple is aware of instances in the workforces of providers, including Purple, where a very small number of interpreters have tried to “game the system” to earn performance bonuses. On balance, however, Purple has observed high ethical standards within the interpreting profession, and that reasonable bonus arrangements promote productivity, help manage the cost of VRS and do not encourage questionable behavior.

¹¹ Purple does employ an incentive arrangement that is call center based, not based on individual interpreter performance.

D. Whistleblower Protections For VRS Interpreters And Other Provider Employees.

The NPRM notes that video interpreters and other employees of providers are often in the best position to detect possible misconduct. However, the NPRM suggests that employees are often reluctant to report possible wrongdoing because they fear retaliation from their employers. NPRM at 21. The NPRM tentatively concludes that a whistleblower protection rule should be adopted to protect employees or subcontractors of TRS providers who report possible wrongdoing to his or her employer or to the Commission, the Fund administrator, or any federal or state law enforcement entity. *Id.*¹² The NPRM also tentatively concludes that the rule should require providers to inform their employees that they can report fraud and misuse to the Commission's Office of Inspector General and that this rule should become effective immediately upon adoption. *Id.* The NPRM asks comment on these tentative conclusions and other related issues. *Id.*

Purple supports the Commission's proposed adoption of a whistleblower rule. Adoption of the rule will help to ensure that employees will not be inhibited in reporting misconduct. In addition to informing employees about their option to report fraud and misuse to the Commission's Office of Inspector General, Purple proposes a process that would encourage employees to raise issues directly with the provider. As discussed above, the whistleblower rule should be coupled with a requirement that providers adopt a compliance plan. The plan should

¹² The NPRM notes that Sorenson proposes a rule requiring providers to "permit any employee, agent, or contractor to disclose to a designated manager any known or suspected violations of FCC rules, or any other activity that the reporting person believes to be unlawful, wasteful, fraudulent, or abusive, or that otherwise could result in the improper billing of minutes to the Interstate TRS Fund" and that providers must make available at least one means by which such disclosure may be made anonymously. Providers must promptly investigate any report of wrongdoing and, when warranted, take appropriate corrective action. Providers may not discipline any employee, agent, or contractor solely for reporting under this provision." NPRM at 21 n.93, citing Sorenson's VRS Call Practice Petition, App. A, at 9 (October 1, 2009). As discussed below, Purple is supportive of each of these elements being part of new whistleblower and compliance rules.

include a compliance officer or similarly designated individual at the company to whom employees may report suspected fraud or abuse. The plan should also provide for a compliance hotline where employees may bring questionable matters to the attention of the compliance officer with the option of remaining anonymous. The compliance plan should require the compliance officer to investigate and respond to the complainant or a hotline complaint within 30 days by issuing written findings to management. The plan should further provide that employees raising matters with the compliance officer will be protected from retaliation for making any such report. The compliance officer would be required to notify the Commission or appropriate law enforcement if his investigation reveals confirmed violations of the law. This procedure would allow the provider the opportunity to take corrective action immediately, minimizing potential fraud or abuse and help clear up any misunderstandings employees may have concerning provider activities or the FCC's rules. Self corrective action by providers will also save the Commission time and resources.

Adopting a whistleblower policy along with requiring compliance programs and company-wide training would allow providers to educate employees as part of the rollout of their approved compliance programs. The uniform application would contribute greatly to harmonizing industry workforce knowledge of TRS rules, obligations of employees, and escalation procedures.

In 2009, Purple joined with several other providers to form a Compliance Working Group with the goal of establishing best practices for compliance and determining how these practices should be used implemented. The group's work is formative, but to the extent the Commission would like to discuss the creation and adoption of a common set of compliance practices, Purple

would gladly participate in such a discussion and volunteer whatever information it can share that would be constructive to the Commission's broader goals.

III. CONCLUSION.

Purple encourages the Commission to adopt the proposals herein with respect to issues V.A., V.B. and V.E.5. as set forth in the Commission's May 27, 2010 Declaratory Order, Order and NPRM.

Respectfully submitted,

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September 7, 2010