

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

In the Matter of)
)
Structure and Practices of the Video) CG Docket No. 10-51
Relay Service Program)
)
To: The Commission)

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

PURPLE COMMUNICATIONS, INC.

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Purple Communications, Inc. (“Purple”) herewith comments on the balance of issues set forth in the Commission’s May 27, 2010 Declaratory Order, Order and Notice of Proposed Rulemaking (“NPRM”):¹

I. INTRODUCTION AND SUMMARY

Purple commends the Commission for instituting this proceeding to bring needed guidance to the industry. In these comments, Purple addresses the balance of issues raised by the NPRM which were not previously addressed in its Comments filed on September 7, 2010.

Purple urges the Commission to:

- Provide additional guidance for providers and consumers for handling certain classes of calls and on policies for self-policing calls;
- Establish a fast track review process and a TRS ombudsman to provide expedited guidance concerning TRS matters;
- Adopt procedures and due process safeguards relating to the withholding of TRS Fund payments;
- Require the use of IP geo-location software to prevent international-to-international TRS calls;

¹ See *Structure and Practices of the Video Relay Service Program*, FCC 10-88 (May 27, 2010). In accordance with the procedures set out in the NPRM, Purple previously responded to issues V.A., V.B. and V.E.5. See *Comments on Notice of Proposed Rulemaking* (September 7, 2010).

- Permit privacy screens under limited circumstances for callers;
- Codify rules on financial incentives to curb concerns regarding remote training;
- Require automated billing software to ensure integrity in provider minute reporting;
- Provide for greater transparency of provider data;
- Require that providers offer service in the name of the provider seeking compensation from the TRS Fund;
- Maintain rules on provider audits; and
- Make permanent the requirement that providers certify submissions to the TRS Fund administrator.

II. DISCUSSION

A. Guidance Is Needed For Handling And Policing Calls Coupled With Procedures For The Suspension Of Payments.

In the past year, the TRS Fund administrator, in consultation with the Consumer and Governmental Affairs Bureau (“CGB” or “Bureau”), has suspended payments to various VRS providers for certain minutes pending further review of the legitimacy of those minutes.² The NPRM acknowledges, however, that the rules lack procedures for the suspension of payment and the resolution as to the compensability of those minutes. The NPRM seeks comment on the adoption of rules addressing procedures for the suspension or withholding of payments to providers where the TRS Fund administrator believes minutes may not be legitimate or otherwise were not submitted in compliance with the TRS rules. NPRM at paras. 22-23.

The Commission acknowledges that such rules must afford the providers due process and tentatively concludes that the rules must, at a minimum: (1) give timely notice to the providers of the minutes for which payment is being withheld, as well as the reason(s) for the withholding;

² See 47 C.F.R. 64.604(c)(5)(iii)(E).

(2) afford providers an opportunity to show why they believe the withheld minutes are compensable; and (3) require that providers be given, in a timely fashion, a final determination as to payment for the minutes with a supporting explanation.

The NPRM also tentatively concludes that the rules should place the burden on the provider to show that the minutes in question are compensable and were handled in accordance with the TRS rules. NPRM at paras 24-25. The NPRM seeks comment on the type of justification providers should make to fulfill this burden and establish that minutes submitted for payment are legitimate. The NPRM seeks to balance the competing interests of providers in having a reasonable expectation that they will be paid timely for the compensable minutes they submit and the FCC's obligation to ensure the integrity of payments from the TRS Fund. NPRM at para. 26.

Purple fully supports the adoption of rules to afford providers clear procedures and due process when the TRS Fund withholds compensation for claimed minutes. However, Purple urges the Commission to simultaneously resolve, with specificity, the compensability of certain call classes, thereby alleviating the need for NECA to withhold minutes associated with these calls. Specifically, pursuant to FCC Rule §64.604(a)(3), providers must handle all calls normally handled for hearing persons except where the Commission has waived this minimum mandatory standard. Accordingly, under §64.604(a)(3), providers must handle calls by consumers to conference bridge lines and so-called podcast calls. However, conference bridge lines and calls to podcasts comprise some of the calls for which NECA has reportedly withheld payment without any FCC public ruling or waivers for these calls. If the FCC intends to prohibit these calls, Purple urges immediate action to give providers clear notice to restrict such calls and consumers notice that such calls are not permissible. Denying compensation after the fact places

providers in an untenable situation of being statutorily required to handle such calls with little or no probability of payment. It also places an awkward burden on conscientious consumers who remain unsure whether placing such calls breaches any FCC rule or policy.

On a related issue, if the TRS Fund administrator maintains a database of “rejected” telephone numbers deemed non-compensable, Purple believes that the list should be shared with VRS providers. By distributing this list, providers may proactively screen and decline to process calls being attempted to or from those numbers. Through this process, providers would avoid the incurrence of expense in handling calls for which no compensation will be paid, and will likewise assist the TRS Fund administrator in limiting the activity on numbers it believes are being used illegitimately. There is little deterrence for bad actors using the service if their illegitimate or otherwise improper calls continue to be handled by unsuspecting providers.

In connection with assisting providers in policing the calls they handle and as recommended by Purple in its first set of comments on this NPRM, the FCC should require all certified providers to implement a compliance plan approved by the FCC. The compliance plan requirement should be coupled with: (1) a fast track process for providers to obtain clarification of the TRS rules and policies; and (2) establishment of a TRS ombudsman to administer the fast track program with authority to render binding interpretations of the rules and policies. As part of that fast track process, the FCC should designate the ombudsman to receive consumer or provider complaints of TRS rule or policy violations and to act expeditiously on those complaints either through clarification of policy or referral to the Enforcement Bureau.

As a related matter, Purple notes the need for further Commission guidance on whether and when providers may act to terminate user rights of persons suspected of abusing the service or refer misusers to law enforcement.

In connection with these efforts, Purple fully supports the imposition of clear rules and procedures for the TRS Fund administrator to police the submissions to the Fund. Purple proposes the following mechanism for the TRS Fund administrator to make rapid and transparent decisions on call compensability issues. The TRS administrator should notify providers at least 21 days in advance of a scheduled payment concerning any question of compensability for submitted minutes. This notification should: (1) identify the specific calls in question; (2) identify the specific concern or concerns with the calls; and (3) provide a citation to the specific FCC rule or policy justifying the withholding. Providers should then be afforded a reasonable time to respond to the inquiry. At the very least, providers should be entitled to 14 days to provide a response to justify the compensability of the minutes.

The type of justification providers should make to demonstrate the compensability of the calls will depend substantially on the reason(s) the TRS Fund administrator gives for questioning the calls. In addition to addressing the specific concerns raised by the TRS Fund administrator, a provider may offer a statement under oath to support compensability of the minutes. Such an oath could affirm that the calls in question were handled in good faith, that the provider knows of no reason why the calls are not compensable, that the provider did not solicit the making of the calls, and that the call record data is true and correct.³

Upon receipt of the response from the provider, the TRS administrator should be required to make a final determination within seven days, prior to or on the scheduled disbursement date.⁴

³ It would be plainly inappropriate for the TRS Fund administrator or the FCC to expect interpreters to supply information relating to call content, or call consumers and ask about the subject of their call to determine its compensability. Not only would this breach interpreter confidentiality and violate callers' privacy rights, providers are forbidden under the rules from maintaining any record of call content or from divulging call content. FCC Rule §64.604(a)(2).

⁴ The Commission should ensure that the TRS Fund administrator has sufficient resources at hand to meet this timetable.

If the TRS administrator determines that the minutes in question are compensable, payment should promptly be made to the provider. If the TRS Fund administrator concludes that the minutes in question are not compensable, the TRS Fund administrator should deny payment and provide a full statement of its reasons to the provider. The TRS Fund administrator should only be allowed to withhold payment when it can clearly and reasonably articulate why the call appears to be non-compensable. This procedure would balance the burden between providers and the TRS Fund administrator and encourage all parties to act reasonably and expeditiously. Moreover, this procedure should also be applied to claims for exogenous costs, such as numbering and 911 costs incurred to implement the Commission's TRS numbering orders, and if payment is delayed beyond a reasonable period, interest charges should accrue on unpaid balances owed to providers.

The provider should have the right to appeal the determination to the Bureau within 30 days of the TRS Fund administrator's denial, and the Bureau should commit to rendering a decision on appeals within 60 days. If the amount in dispute exceeds \$100,000, the provider should be entitled to request an expedited evidentiary hearing before an administrative law judge pursuant to the procedures set forth in FCC Rule §1.301 et seq.⁵ An appeal process is an important final step to ensure reasonableness, consistency and compliance with mandated processes by all parties involved.

⁵ The NPRM also seeks comment whether it should adopt new or modified rules to assist the TRS Fund administrator in executing its administrative and auditing responsibilities. NPRM at para. 26. The TRS Fund administrator currently conducts audits of providers. Purple is unaware that the administrator lacks any necessary tools to conduct such audits effectively.

B. Solutions For International Calling Issues.

The Bureau has confirmed that VRS calls must involve at least one endpoint located in the United States.⁶ Thus, VRS calls that both originate and terminate outside the United States are not compensable. The NPRM states that a review of VRS providers' monthly call data records reveals that a large volume of calls each month terminate overseas. The NPRM expresses concern that some of these calls may both originate and terminate overseas, and therefore be non-compensable,⁷ or that the calls may reflect schemes to create calls for the purpose of payment from the Fund. The NPRM also indicates a concern that some calls may be VCO VRS calls involving two voice telephone users that are made to avoid the long distance charges associate with overseas calls.⁸ NPRM at para. 28.

The NPRM seeks comment on ways to address fraud and misuse associated with international calls without undermining the legitimate use of VRS. The NPRM also seeks comment on the role of ten-digit numbering, registered locations, or other potential solutions (*e.g.*, particular software) to help ensure that VRS calls that terminate overseas are, in fact, legitimate TRS calls. NPRM at para. 29.

⁶ NPRM at para. 27, citing *Structure and Practices of the Video Relay Service Program*, 25 FCC Rcd 1868, 1872 (2010) ("*VRS Declaratory Ruling*"). Purple agrees with the recently submitted comments of AT&T that the Commission should apply this policy to all forms of Internet based relay. The adoption of 10 digit numbering and geo-IP software integration, now justify modification of the FCC's prohibition on international IP Relay calling.

⁷ The NPRM references the Bureau's observation in the *VRS Declaratory Ruling*, that analysis of the iTRS Numbering Directory suggests that some ten-digit numbers appear to have been assigned to non-United States residents. See *VRS Declaratory Ruling* 25 FCC Rcd at 1872 n.24. Furthermore, the Bureau notes that in its October 2009 petition suggesting rules and policies that the Commission could adopt to combat malfeasance related to IP-based relay services, Sorenson Communications, Inc. suggested that the registered location requirements, even coupled with verification requirements, still may be insufficient to combat the efforts of some users to cloak their true identities or locations. *Sorenson Petition for Rule Making*, Docket 03-123, at 21 n.43 (October 1, 2009).

⁸ See *VRS Declaratory Ruling*, 25 FCC Rcd at 1871-72.

Purple's experience is that the 10 digit numbering system coupled with the use of geo-location software has substantially limited the potential for international-to-international traffic. The geo-location software identifies the IP Address of incoming international traffic (even if the user has a domestic 10 digit number) and the platform prevents dialing out to an international number. Likewise, the platform recognizes an incoming voice to video call as international and prevents dialing out to an international IP Address. To minimize international-to-international traffic, Purple recommends that the Commission require all providers to integrate geo-location software with their Internet-based platforms as a mandatory minimum technical standard.

Purple has also adopted compliance procedures to prevent abuse of VCO calling in circumstances where it appears that calls may be used as a guise for hearing participants to avoid international long distance charges. Purple's video interpreters are trained to recognize such calls outside of call content and disconnect them. In addition, Purple generates periodic reports of multiparty international VCO traffic which are reviewed by the compliance team for anomalous calling patterns. Persons who appear to be misusing the service, after further investigation, may be blocked from continuing use of the service with the exception of 911 traffic.⁹ Moreover, as noted above and in Purple's previously submitted comments, the FCC should require all certified providers to implement a compliance plan approved by the FCC. As part of that compliance plan, providers should scrutinize international traffic, including international multiparty VCO traffic, for signs of potential misuse.

⁹ Purple as part of its compliance efforts also reviews international traffic patterns for high volume use which might indicate misuse of the service. Commission confirmation that providers may block apparent misusers of the service would help to eliminate uncertainty over the propriety of these efforts.

C. VRS Calls In Which The Caller's Face Does Not Appear On The Screen.

The NPRM notes that some VRS providers and VRS equipment permit a deaf or hard-of-hearing VRS caller to use a “privacy screen” during a call that will prevent the VRS interpreter from viewing the caller during the call. The NPRM acknowledges that although there may be a legitimate need for a privacy screen in certain circumstances, the practice could be susceptible to fraud or abuse. The NPRM adds that some VRS platforms allow the VRS interpreter to use a privacy screen as well.¹⁰ NPRM at para. 30. The NPRM tentatively concludes that VIs should disconnect the call if the caller's face does not reappear on the screen within two minutes.

Purple believes, under certain circumstances, it may be appropriate for the caller to use a privacy screen. However, Purple does not believe permissible circumstances include the use of a privacy screen by a VI. We note that Consumer Organizations have addressed the privacy screen issue in detail. Purple agrees with and supports the position of the Consumer Organizations and refers the Commission to those comments rather than repeat the substance of those positions here.¹¹

D. Calls Involving Remote Training.

The NPRM raises a concern regarding remote training calls. The NPRM seeks comment on whether the Commission should establish a rule specifically providing that provider-involved VRS calls that enable a person to participate in remote training using VRS are not compensable. The NPRM queries whether a rule specifically barring compensation for remote training calls

¹⁰ The NPRM states (at para. 30 n.61) that when both parties communicating via video use a privacy screen, communication is no longer possible, and therefore the call is no longer a TRS call and should be terminated. Purple agrees, but sees no reason why a VRS interpreter should be using a privacy screen.

¹¹ See Comments of Telecommunications for the Deaf Inc., et al. at 9-10 (September 7, 2010).

initiated or promoted by or on behalf of a provider would serve as an additional deterrent against fraud and misuse of the service. NPRM at paras. 33-35.

In Purple's view, remote training calls should be treated the same as any other VRS call. Under the rules, providers cannot offer financial incentives for participating in remote training calls or solicit VRS users to make such calls. For example, it would be improper for a provider to sponsor, underwrite or produce a remote learning program and offer that program to the deaf and hard-of-hearing public. On the other hand, providers should be able to promote the use of VRS for all legitimate purposes, including remote training. Hence, Purple urges the FCC to codify its current policy prohibiting financial incentives to make relay calls rather than adopt a separate rule for remote training, which would be both unnecessary and potentially discriminatory.

E. Automated Call Data Collection.

The NPRM tentatively concludes that the Commission should modify the TRS rules to clarify that providers must automatically capture the conversation time, to the nearest second, for each call submitted for payment from the TRS Fund. The NPRM explains that automated call data collection will reduce opportunities for fraud and the erroneous submission of minutes for payment. The NPRM seeks comment on this conclusion, and information on how TRS providers presently record session and conversation times, as well as the other call data providers currently report to the TRS Fund administrator. NPRM at paras 36-37.

Purple agrees with the NPRM's tentative conclusion and believes automated data collection should be a minimum mandatory standard.

F. Data Filed With The TRS Fund Administrator To Support Payment Claims.

Beginning in May 2008, the TRS Fund administrator, at the direction of the Bureau, instructed VRS providers that monthly minutes of use submitted for payment must be supported

by call data records that include the following information: (1) the call record ID sequence; (2) Communications Assistant ID; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number or IP address; (6) outbound telephone number or IP address; (7) total conversation minutes; and (8) total session minutes. NPRM at para. 38. The NPRM tentatively concludes to amend the TRS rules to specifically require the filing of this call data information as a functional TRS mandatory minimum standard. The NPRM posits that the TRS Fund administrator must review this information to detect and deter the billing of illegitimate calls, and seeks comment on this tentative conclusion. The NPRM also inquires whether additional call record information should be submitted to the TRS Fund administrator to support payment claims. NPRM at paras. 39-40.

Purple supports the NPRM's tentative conclusion. Amending the rules to require submission of this data would alleviate current uncertainty concerning the authority of providers to supply this information to the TRS Fund administrator (*see* 47 U.S.C. §705 (limiting dissemination of the contents of communications or records thereof), while aiding in the expeditious review of the minute submissions by the TRS Fund administrator.

The NPRM proposes amending the TRS rules to require VRS and IP Relay providers to submit speed of answer compliance data electronically and in a standardized format. NPRM at para. 41. Purple supports this proposal as well. Although the data is currently provided to the TRS Fund administrator, Purple supports a requirement that the data be provided pursuant to a codified rule, rather than by FCC informal direction to providers or to the TRS Fund administrator.

G. Requiring Providers To Submit Call Center Information.

The NPRM proposes amending the TRS mandatory minimum standards to require VRS providers to supply information concerning their call centers to the Commission and the TRS

Fund administrator on a quarterly basis. Specifically, the NPRM proposes that providers should submit a statement detailing: (1) the name and address of each call center the provider owns or controls (including subcontractors operating call centers and entities operating calls centers for a subcontractor); (2) the number of CAs and CA managers at the call center; and (3) the name and contact information for the managers of the call center. In addition, the rule would require amendment to the most recent quarterly filing within 30 days each time a provider opens a new call center, closes a call center, or the ownership or management of a call center changes. NPRM at paras. 42-44.

As part of annual cost data submittals, providers already furnish the TRS Fund administrator the location of each of its call centers. This list is actively maintained during the course of the year as monthly minute submittals to the TRS Fund administrator include the number of minutes handled by each center. The Commission, through the TRS Fund administrator, may already have the information it seeks and further reporting requirements related to the names of center managers and the number of interpreters at each location seems unnecessary.

H. Additional Issues Raised In The NPRM.

1. Requiring Service To Be Offered In The Name Of The Provider Seeking Compensation From The Fund.

Purple (previously, GoAmerica) has been an advocate for certification and proper labeling of provider services.¹² Purple has urged the Commission to prohibit white labeling practices and require “all Internet-based TRS providers [to] be subject to FCC certification requirements and oversight.”¹³ The NPRM seeks comment on pending proposals such as

¹² See Petition for Rule Making, Docket 03-123, at 1 (January 23, 2009).

¹³ *Id.* at 2 (internal quotation marks omitted).

Purple's relating to white label VRS providers. The Commission asks whether such providers should be required to register with the FCC. To the extent the FCC might prohibit "white-labeling," but allow subcontracting, the NPRM seeks comment on the precise nature and scope of such a prohibition. NPRM at paras. 45-48. As noted in prior filings, including Purple's filing on the recent Notice of Inquiry,¹⁴ Purple stands by its previous proposal that the FCC prohibit white labeling and require certification of all providers.

2. Transparency And The Disclosure Of Provider Financial And Call Data.

In connection with the 2009-10 rate proceeding, consumer groups argued that they could not meaningfully comment on the appropriateness of any particular VRS rates absent access to the underlying cost data.¹⁵ The NPRM notes the opposition of several providers to public requests for cost data.¹⁶ The NPRM queries whether it is consistent with public policy to keep provider-specific cost and demand data confidential. The NPRM acknowledges several competing interests in the regard, including the existence of competition in the provision of service, the public nature of the TRS Fund, and the need of consumers and other stakeholders to access underlying cost and demand data in order to meaningfully comment on compensation rates. The NPRM therefore seeks comment whether to require that all VRS provider cost and demand data be made available to the public and, if so, how such a requirement should be implemented. NPRM at paras. 51-54.

¹⁴ See Comments on Notice of Inquiry at 23-24 (August 18, 2010)

¹⁵ Telecommunications for the Deaf and Hard of Hearing, Inc., Motion for Protective Order, CG Docket No. 03-123 (May 20, 2009).

¹⁶ See, e.g., Sorenson Communications, Inc., Opposition of Sorenson Communications, Inc. CG Docket No. 03-123 (June 1, 2009); AT&T, Inc. *et al.*, Opposition to Motion for a Protective Order (June 1, 2009).

Purple has long supported additional transparency in the rate setting process and addressed this issue in its previously submitted comments on the pending Notice of Inquiry.¹⁷

3. Issues Concerning Provider Audits.

The NPRM seeks comment on whether the FCC should amend the TRS mandatory minimum standards to include more specific and stringent auditing rules to better safeguard the integrity of the TRS Fund. The NPRM asks how such audits should be conducted, by whom, and how frequently. NPRM at para. 55.

Purple finds the currently formulated rules to be sufficient. We note, however, the need for auditors to be fully conversant with the FCC's TRS rules and policies, as well as the TRS industry. In Purple's experience, contract auditors frequently lack sufficient knowledge concerning the relay rules and industry practices, and as a result, their reports contained substantial factual errors which resulted in erroneous conclusions.

4. Five Year Policy For Records Retention.

Purple concurs that a records retention period of five years as contemplated in the NPRM¹⁸ is sufficient. *See* NPRM at para. 56.

5. Purple Supports Provider Certification Of Data.

The NPRM seeks comment on whether the interim rule requiring an authorized executive to certify, under penalty of perjury, submissions made to the TRS Fund administrator should be made permanent. NPRM at para. 58. Purple supports making this requirement permanent.

¹⁷ *See* Comments on Notice of Inquiry at 25-26.

¹⁸ The NPRM explains that five years is the amount of time E-Rate eligible entities are required to retain records in accordance with FCC Rule §54.516. NPRM at para. 58 n.105.

III. CONCLUSION

Adoption of the procedures and rules Purple recommends herein will bring needed transparency and regulatory certainty to the TRS program, and will serve to protect the Interstate TRS Fund while preserving the interests of consumers, ratepayers and providers.

Respectfully submitted,

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