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. 10–213
Telecommunication Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
To: The Commission	)	

COMMENTS OF PURPLE COMMUNICATIONS, INC.

Purple Communications, Inc. ("Purple") submits these comments in reply to the Federal Communications Commission's ("FCC" or "Commission") April 14, 2011 Notice of Public Rule Making seeking comments on the rates and compensation for video relay service (VRS) for the 2011-12 Interstate Telecommunication Relay Service (TRS) Fund (Fund) year. The Commission specifically sought further comment on the VRS market structure and compensation method.

Purple incorporates by reference its previous filings on this very matter.[1]

[1] This includes, but is not limited to: Purple Ex Parte, May 7, 2010, CG Docket 03-123; Purple Comments, May 14, 2010, CG Docket 03-123; Purple Reply Comments, May 21, 2010, CG Docket 03-123; Purple Ex Parte, May 28, 2010, CG Docket 03-123; Purple Ex Parte, June 17, 2010, CG Docket 03-123; Purple Ex Parte, July 21, 2010, CG Docket 03-123; Purple Comments, August 18, 2010, CG Docket 10-51; Purple Reply Comments, September 2, 2010, CG Docket 10-51; Purple Comments, September 13, 2010, CG Docket 10-51; Purple Ex Parte, September 15, 2010, CG Docket 10-51; Purple Ex Parte, November 24, 2010, CG Docket 10-51; Purple Ex Parte, December 23, 2010, CG Docket 10-51; Purple Ex Parte, January 21, 2011, CG Docket 10-51; Purple Ex Parte, January 26, 2011, CG Docket 10-51; Purple Ex Parte, January 31, 2011, CG Docket 10-51; Purple Ex Parte, February 15, 2011, CG Docket 10-51; Purple Ex Parte, March 2, 2011, CG Docket 10-51;

As previously stated, Purple believes the TRS Program must serve the greatest number of people, with the highest quality service, at the lowest possible cost, while preserving consumer choice and pursuing functional equivalence.

To achieve these objectives and for the VRS program to be sustainable, and administratively and financially efficient, Purple believes the optimal outcome for the FCC is found only through a truly competitive marketplace with multiple certified providers operating at scale and competing fairly on the basis of quality, innovation and cost.

As to the specifics of the Commission's April 15, 2011 NPRM related to continuance of current video relay service (VRS) rates into the 2011-2012 fund year, Purple offers the following comments in support of interim VRS rate continuance while urging action on the long term market structure and VRS rate NPRM:

1. Use of Part 32 Uniform System of Accounts.

In the 2010 NOI on VRS market reform and in the April-15, 2011 NPRM, the Commission asks whether Part 32 Uniform System of Accounts is suitably applied to the relay industry and whether providers have similar costs. As stated previously, Purple believes the accounts contained in Part 32 appear adequate for VRS purposes and that while provider costs are similar in terms of categories, those costs can vary greatly as minutes of use increase and providers realize economies of scale in both call center expenses as well as general and administrative expenses.[2] Additionally, the Commission has the authority to perform financial

[2] Purple Comments, August 18, 2010, CG Docket 10-51

audits of providers on a regular basis. The consistent application of the Part 32 Uniform System of Accounts, coupled with regular financial audits will result in continued provider transparency and a fully informed Commission as to the costs to provide VRS both by individual providers and the industry in the aggregate. Accordingly, Purple supports the continued use of Part 32 Uniform System of Accounts.

2. Capital Structure Costs

In the April 15 NPRM, the Commission asks how the cost of capital should be considered in determining VRS rates and whether interest expenses and debt repayment should be allowed, and whether costs of raising capital should be reimbursed or not.

Purple's view is that debt repayment and interest expenses should continue to be excluded elements of the cost-basis of the VRS rate; unchanged from today's structure. Further, Purple believes the FCC's obligation should be to set a fair and reasonable rate against the costs to provide the services plus a reasonable profit, stopping short of getting involved in capital structure[3] decisions made by private enterprise or designing rates based on one form of capital structure over another. With that said, some allowance for interest expense from ordinary course working capital facilities, such as interest on capital leases or revolver facilities, can be justified within the typical cost of business operations. These financing instruments are distinct from permanent or acquisition financing facilities, such as term debt, shareholder or related-party financing, or high-yield debt instruments.

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[3] According to Investopedia, Capital Structure is defined as a mix of a company's long-term debt, specific short-term debt, common equity and preferred equity. The capital structure is how a firm finances its overall operations and growth by using different sources of funds. Debt comes in the form of bond issues or long-term notes payable, while equity is classified as common stock, preferred stock or retained earnings. Short-term debt such as working capital requirements is also considered to be part of the capital structure.
http://www.investopedia.com/terms/c/capitalstructure.asp

Once a fair rate is established, private market participants can then assess their role in the market, and opportunity and appetite for growth, and situate their capital structures to suit the level of risk they are willing to take relative to their investment and their outlook on the industry.

The real question to be answered is what is a fair rate for VRS and how can it be established when the gulf between the size of largest provider and the size of the next largest provider is more than ten-times?

As stated previously by Purple, a quantifiable, market-based competitive process for establishing rates makes the most sense for VRS, however such an approach cannot be implemented under conditions where a single provider has over 80% control of the market.[4] The operational cost efficiency of the dominant provider is a direct result of scale and the equipment bundling arrangements initially permitted at the VRS program's inception. Through in-person and ex-parte meetings, several providers have met with the Commission and have demonstrated through disclosure of financial data that economies of scale do exist and that with more minutes, average costs to provide VRS decline, particularly those costs which are more fixed regardless of volume, such as general and administrative expenses.[5]

Policy changes must be made to increase the competitiveness of the VRS market and then the marketplace must be given time to correct itself so that a market-based competitive process for long term rate setting is implemented from a level playing field. Until this is enacted, the optimal confluence of the service/cost is impossible. Purple, along with several other providers and consumer groups have suggested a proposed solution to the "fair rate" question

[4]Purple Presentation to the FCC; VRS Program & Policy Recommendations, February 11, 2011. Page 10.

[5] See, for example: Ex Parte of AT&T Services, Inc., Convo Communications, Inc., CSDVRS, LLC, Purple Communications, Inc., and Snap Communications, Inc., January 21, 2011, CG Docket 10-51; Comments of Convo Communications, Inc. May 14, 2010, CG Docket 03-123; Comments of CSDVRS, LLC, May 10, 2010, CG Dockets 03-123 and 10-51; Comments of Snap Telecommunications, Inc. May 14, 2010, CG Docket 03-123;

through the form of expanded tiers, which would reasonably pay providers as they grow in size, and average costs descend.[6]

With more than one "scale" operator handling more than one million minutes per month, the net result to the Commission becomes a lower overall cost of the program and more efficient use of the dollars associated with VRS.

It is directly relevant to note that when TRS was initially conceived, it was presumed that only traditional, well-established telecommunications companies would provide relay services as an extension of local dial tone or long distance service.

The reality is that despite the growth in Internet-based forms of relay, TRS remains a niche business in the broader context of a global communications market. Today this niche is primarily served by specialty companies who exclusively cater to the deaf and hard of hearing markets[7]. With few notable exceptions the relay market has historically been too small to warrant the full attention of traditional telecom providers. This, along with the Internet as a neutralizing force, created an opening for smaller, innovative, entrepreneurial communications companies to enter the market, the benefit of which has been an accelerated level of creativity and innovation that might not have otherwise been created by larger, established companies who would have been simply providing an extra accommodation to a pre-existing multi-billion dollar telecommunications business.

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[6] Ex Parte of AT&T Services, Inc., Convo Communications, Inc., CSDVRS, LLC, Purple Communications, Inc., and Snap Communications, Inc., January 21, 2011, CG Docket 10-51; Ex Parte of Consumer Organizations, February 4, 2011, CG Dockets 03-123 & 10-51.

[7] In the case of VRS, for the most recent NECA reporting period, of the 10 providers reimbursed, only two (Sprint and AT&T) could reasonably be considered traditional telecommunications companies. All other providers, and the majority of the market share represented in VRS, are attributable to investor-backed, entrepreneurial enterprises.

The VRS innovations that have been created, from the VP200 and OJO to software like P3, Z4, and ConvoAnywhere would not exist if private investors had not been willing to put money at risk with a reasonable expectation of an attractive return on their invested capital.

For these reasons, Purple encourages the FCC to adopt an expanded tier rate model with fairly set rates at each tier and reviewable at multi-year intervals. These policies will foster investment, spur competition and have the beneficial impact of lower long-term VRS rates as providers grow. With the stability of economic visibility providers and their investors can make intelligent, informed decisions, plan effectively, cost rationalize, and access investment capital as needed.

3. Regulatory Treatment of Changes to Capital Structure

Through greater policy clarity, established long-term rates, and higher operating standards, it is likely that new entrants might attempt to enter the market through financial transactions with existing providers. Accordingly, Purple believes the Commission is wise to set forth the exact guidelines by which financial transactions will be evaluated.

Purple acknowledges through the Commission's Public Notice regarding the transferability of provider certifications[8] that under certain circumstances, the Commission appropriately seeks to stay aware of, and involved in, ownership changes related to certified providers. Specifically the Commission has said that:

Because the Commission certifies providers based on the attestations of their owners or their representatives, who are ultimately responsible for compliance with the

[8] http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-08-1589A1.doc

Commission's rules, the certification of a provider does not automatically transfer to new owners. Therefore, in the event that an entity not certified pursuant to section 64.605 purchases, acquires, or merges with another TRS provider, the acquiring or surviving provider must be certified under section 64.605 (or otherwise eligible for compensation from the Fund) before it can receive payments from the Fund. On the other hand, if an entity that is certified pursuant to section 64.605 purchases, acquires, or merges with another TRS provider, the acquiring or surviving provider need only notify the Commission of the change in its TRS program and provision of service within 60 days pursuant to section 64.605(f)(2).[9]

Purple believes the Commission's prior actions on this matter can be applied to capital structure transaction scenarios as follows:

- Scenario: Provider issues debt, but no change to ownership control of the enterprise. Action: No FCC review or approvals necessary. The same ownership structure is accountable to the Commission and there is no change to the operating obligations of the certified provider.

- Scenario: Provider sells stock in the enterprise; however there is no change of ownership control[10]. Action: No FCC review or approvals necessary. The same

[9] 47 C.F.R. § 64.605(f)(2) (requiring that certified providers "notify the Commission of substantive changes in their TRS programs, services, and features within 60 days of when such changes occur, and … certify that the … provider continues to meet federal minimum standards after implementing the substantive change").

[10] A change of control would occur when more than 50% of the ownership interests are conveyed to a new entity.

ownership structure is accountable to the Commission and there is no change to the operating obligations of the certified provider.

- Scenario: Provider engages in a merger, acquisition, or the sale of a majority of the shares of the company, where the surviving entity is already certified. Action: The Commission's July 3, 2008 Public Notice contemplated this scenario and calls for a 'notice' provision. Purple proposes the Commission's existing notice requirement continue to be operative in this scenario, however Purple would add an obligation of providers to update the Commission as to the new ownership structure of the entity at the next reporting interval as contemplated under the proposed certification requirements.[11]

- Scenario: Provider engages in a merger or acquisition where surviving entity is not certified. Action: The Commission's July 3, 2008 Public Notice contemplated this scenario and calls for the acquiring party to become certified in order to be eligible to receive compensation from the TRS Fund. Purple proposes that changes to a provider's capital structure that meet this criteria be subject to pre-merger notification, similar to the process followed for transactions that meet Hart-Scott-Rodino testing thresholds[12], through which parties to the transaction submit an FCC-issued notification form and the parties may not close their transaction until a brief waiting period has passed or the FCC grants early termination of the waiting period.

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[11] Report and Order and Further Notice of Proposed Rule Making, Structure and Practices of the Video Relay Service Program, CG Docket No. 10-51, April 5, 2011.

[12] http://www.ftc.gov/bc/hsr/index.shtm

> This approach respects the capabilities and processes that underlie the acquired company's certification, and provides the FCC the opportunity to address concerns, without unnecessarily delaying or quashing a potentially beneficial transaction.

Purple Supports Interim VRS Rate Continuance and Urges Action on Long Term NPRM

Purple agrees with the Commission that a continuance of current rates promotes short-term stability, avoids interruptions to service, and will not impose a financial burden on entities, including small businesses.

While supportive of a short-term continuance on rates, Purple believes that long term stability and the benefits of greater competition (cost and quality) are hindered due to a lack of clarity regarding the long-term policies that will govern the industry. Many providers and investors will take a "wait and see" attitude until the Commission concludes its analysis of the proposals on the record and renders an outcome that is clear and offers companies the ability to evaluate contemplated investment decisions over a longer term time horizon.

For this reason Purple agrees with the Commission's proposal to continue the current reimbursement of VRS into the 2011-2012 fund year. Due to numerous ideas and proposals made to the FCC over the past year, Purple expects the Commission to issue a NPRM that will reflect the Commission's analysis of those various ideas and proposals and allow stakeholders to comment on the specifics of this proposal prior to enactment.

In order to allow the industry to move forward in closing the functional equivalence gap, Purple respectfully urges the Commission to move with all due speed in concluding its analysis and issuing an NPRM shortly.

Respectfully submitted,

PURPLE COMMUNICATIONS, INC.

By:
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