

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 OF PURPLE COMMUNICATIONS, INC.

Purple Communications, Inc. (“Purple”) submits these comments in reply to the Federal Communications Commission’s (“FCC” or “Commission”) Further Notice of Public Rule Making, released April 6, 2011, seeking comments on proposed modification of the certification process for all Internet-based relay providers.

An efficient and transparent relay industry begins with the certification process.

Purple supports the Commission’s efforts to ensure that all providers are “fully qualified to provide Internet-based relay service in compliance” with various FCC rules and requirements¹ which we believe will lead to an industry that operates with greater efficiency, transparency, and consistency. The process needs to begin with certification.

Purple outlines its policy support for, 1) the FCC’s sole jurisdiction and governance of all Internet-based forms of TRS, 2) a certification process that is clear, consistent, and seeks relevant content from applicants without being overly burdensome or limiting the Commission’s ability to regulate, 3) a certification duration that is perpetual and subject to regular maintenance

¹ FCC Report and Order and Further Notice of Proposed Rulemaking, released April 6, 2011, CG Docket 10-51, ¶95.

requirements, and 4) clarity around call center ‘own-operate’ standards for the various forms of Internet-based relay services.

All Internet-based relay service providers must be certified by the Commission.

Purple concurs with the proposed rule that all Internet-based relay service providers be required to receive certification from the Commission and that this certification be the sole method by which an Internet-based relay provider would be eligible to receive compensation from the TRS Fund. The Commission already has a full record supporting its view that “alternative eligibility methods have facilitated participation in the VRS program by unqualified, non-compliant providers”² and that the states lack the incentive or resources to properly govern participants in the TRS fund who are eligible due to one or more state TRS contracts.

The Commission’s proposal that all eligible providers be required to apply to the Commission for certification is sound. Purple endorses an approach that would prohibit “grandfathering” of existing certified providers and would require any provider who wishes to seek reimbursement from the TRS fund for Internet-based relay services to submit to the Commission’s new certification regime in order that all providers are evaluated by the same criteria which will promote regulatory consistency within the industry.

The certification process needs to be consistent, efficient and transparent.

Process Consistency. As part of establishing new criteria by which provider applications are evaluated, Purple also believes it is important that the Commission establish a more structured and predictable process for certification than has existed in the past. Purple suggests

² Ibid, ¶96.

the evaluation of other agencies application review processes, such as those of the Securities and Exchange Commission (“SEC”), for guidance on how to revise the FCC’s review of certification applications. For example, companies that wish to sell securities on the public exchanges must gain clearance from the SEC by filing a Form S-1. That process entails an initial application followed by a 30-day required response deadline from the SEC to provide initial comments on the application. The application proceeds through successive rounds of amendments and time-driven SEC responses, until approved by the SEC or withdrawn by the applicant. If a process like this were adopted by the FCC, it would provide clarity to applicants and still preserve the Commission’s ability to affirmatively approve or reject every application received. The SEC example was chosen simply to illustrate how a structured application and review process might work to the benefit of all involved, without the burden of “inventing” a new process. The required response timeline concept is arguably more appropriate within the context of provider certifications, as the certification is a pre-requisite to participate in the relay industry – not simply a path to the capital markets.

Content Consistency. In its FNPRM, the Commission has raised the question as to the relevancy of certain materials to be submitted by applicants seeking certification. Purple concurs that each applicant for certification or recertification needs to demonstrate its ability to comply with all the Commission’s rules. It is important that applicants be able to provide evidentiary support of their ability to meet all rules rather than mere attestation. In Purple’s view every applicant should furnish, at least the following information:

- Ownership structure of the entity seeking certification and a list of names of Board members and Executive Officers; or if the applicant is a large corporation for which relay

is a small component, the applicant would also furnish the names of the executive team of the relay business unit.

- Demonstration of financial viability to meet operating costs and ability to perform if certified.
- Demonstration of ability to satisfy operational, technical, functional, and compliance standards as promulgated by the FCC.
- List of sub-contractor relationships utilized in the performance of meeting the operational, technical, functional, and compliance standards.
- Copy of written compliance plan and training program to ensure all employees and subcontractors are trained on the industry's rules and that this training is refreshed annually³.
- Copy of process control procedures for submission of minutes to the TRS fund administrator which demonstrates the various checks and balances providers implement prior to executive certification of the submission.
- Access to facilities for any on-site visit requested by the Commission prior to granting certification. Such an approach (using the on-site review coupled with sufficient documentary information) would be effective and efficient for providers and the Commission.

Purple, however, is concerned about the lengthy list of documentary evidences that the Commission proposes to require in the FNPRM and believes the believes the above materials would satisfy the essential items needed by the Commission to properly evaluate and regulate a

³ See, for example, Purple White Paper and Presentation to the FCC on Program and Policy Recommendations, February 11, 2011, Docket CG 10-51, page 8.

certified provider. Seeking items such as employee lists, compensation, copies of license agreements, non-essential sub-contracting agreements, financing agreements, and “all other agreements”⁴ is overly broad, burdensome to produce, likely not to be effective in the evaluation or reviewed in a timely manner, and unnecessary with other compliance plans and checks and balances in place. The Commission is not likely to have nearly enough staffing resources to review the volume of content it proposes to require of applicants.⁵ Additionally, the list, as currently proposed, would seem to be inconsistent with the Paperwork Reduction Act (PRA) starting at 44 U.S.C. 3501 et seq. The PRA focuses on ensuring the paperwork burden is not overly-burdensome while ensuring that the costs of paperwork is minimized and of practical utility. The list, as currently proposed, is voluminous and will be of little practical value to the Commission. In order to meet this list, applicants will spend countless hours creating copies and furnishing dozens, if not hundreds, of boxes of content to the Commission. The compilation of all those documents will increase the administrative costs of every provider as well as burying Commission staff with irrelevant paperwork.

Additionally, it is unclear why the legacy rule requiring certified providers to maintain common carrier status is needed for Internet-based services particularly when the Commission will have absolute discretion as to whether providers are in good standing and remain eligible for compensation from the TRS Fund based on other regulatory mechanisms and rules.

⁴ FCC Report and Order and Further Notice of Proposed Rulemaking, released April 6, 2011, CG Docket 10-51, Appendix D (Proposed Rules) §64.606(a)(2)(ii)(H).

⁵ The Commission’s May 31, 2011 Order suspending its own rules prohibiting subcontracting VRS functions despite ample evidence presented in its April 6, 2011 Order that such practices are rife with fraud and abuse is a strong example of the inefficiency of the process proposed as well as the limited resources in the Commission to follow through well-intentioned rules. The paper work and waiver process established in the April and then stayed on May 31 underscores the need for an improved process.

Certifications should remain in good standing as long as procedures are followed.

Once certified, requiring recertification after an artificial period of time is unnecessary if proper and regular certification and maintenance procedures are followed. Purple proposes certification, once granted, would last indefinitely, subject to providers meeting certification maintenance requirements and remaining in good standing with the Commission. Specifically, we believe certification maintenance requirements could include the following reporting requirements:

- Complaint logs – existing annual requirement that would continue.
- Call Center Location and Management – existing requirement which would continue.
- Network performance reports – this would be a new, annual, requirement that providers submit an uptime analysis to the Commission citing the amount of time their respective network was available to handle calls over the course of the year. Providers with sporadic quality will be easily identifiable and having this visibility into network performance gives the Commission the transparency to properly assess the aggregate network reliability of the industry. We propose this requirement in lieu of the various notice provisions outlined in the NPRM with the exception of immediate notice to the FCC for unforeseen catastrophic outages which are expected to persist, and timely advance notice (60-days) of planned long term network outage or discontinuation of services. Providers are, in a competitive market, at a disadvantage every minute their service is unavailable, so the motivation is high to deliver exceptional network performance and this is a metric that can be confidentially shared with the Commission annually.

- Compliance plan certification filed annually by a compliance director or similar person responsible for the certified provider's compliance efforts. This would be a new requirement based on the provider's submission of their written compliance plan and the implementation and annual training of its employees and subcontractors. This certification would attest that the plan has been promulgated by the certified provider and employees have received the appropriate training.
- Annual waiver reports.

Additionally, we believe certification maintenance would be enhanced through the following mechanisms:

- Periodic financial audits by OIG and/or related third party auditors. Repetition of this practice will result in long term industry consistency and a more informed FCC.
- Periodic site visits as deemed necessary by the Commission or the TRS Fund Administrator acting at the direction of the Commission. We believe the Commission would benefit greatly from directly experiencing how the relay business works from the perspective of a provider and this insight will make it a more effective and informed regulator.
- Ad hoc notification by providers of substantive changes to the Internet-based forms of relay offered by providers such as significant changes or discontinuation of products or services offered or branding or name changes, or a change in the ownership structure of the provider.⁶

⁶ Comments of Purple Communications, Inc. regarding Regulatory Treatment of Changes to Capital Structure, May 16, 2011, CG Dockets 10-51 and 03-123.

The certification maintenance proposals above would improve information flow and transparency between providers and regulator while not being overly burdensome for either party.

The requirement that certified providers own call centers should be limited to VRS.

The Order establishes a rule that VRS providers must own and operate their own call centers. The FNPRM does not explicitly state that there is a proposal that this requirement be extended to other forms of relay providers. The FNPRM perhaps suggests this only by implication. A comparison of language in Appendix D (Proposed Rule) and Appendix E (Final Rules) show that there is no proposed rule extending the VRS call center ownership requirement to other forms of relay services. Purple supports this demarcation of requirements between VRS and other forms of relay service, however, Purple reiterates its points above that any entity receiving compensation from the TRS Fund must be certified directly by the Commission and adhere to all its rules and requirements related to certification and compliance and ensure those same rules are followed by any subcontractor performing CA services on its behalf.

Lastly, in many cases State TRS programs, which are “certified” by the FCC, in turn sub contract out the provision of TRS based forms of relay to other parties through competitive contracts. This circumstance is unique to text and captioning forms of relay as these state services are often performed in the same centers where Internet-based services are performed. If States who are certified by the FCC can sub contract performance of certain text or speech-to-speech relay services to third parties who are held accountable to that state’s standards, private providers should be allowed to do the same.

Conclusion

Purple believes the Commission is on the right track to bring long-awaited clarity and consistency to the TRS program and specifically Internet-based forms of relay services. Certification is the first step in the process. The bar should be high, but achievable in a reasonable manner and defined period of time and the content sought should be relevant not simply voluminous. The positive steps taken by the Commission will benefit all stakeholders; fund contributors who know their contributions are being used for the intended purpose, consumers who can count on the TRS program being available for the long term, providers and their investors who can offer employment opportunities and have a reasonable expectation of profitability, and the Commission who will benefit from a more consistent and uniform approach to regulating the industry allowing it to serve more consumers, more efficiently.

Respectfully submitted,

PURPLE COMMUNICATIONS, INC.

By:

/s/

Kelby Brick, Vice President, Regulatory
and Strategic Policy

2118 Stonewall Road
Catonsville, MD 21228
(410) 988-4018

John Goodman
General Counsel
Purple Communications, Inc.
595 Menlo Drive
Rocklin, CA 95765

June 1, 2011