

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)	

REPLY 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 standards and process for all Internet-based relay providers.

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

There is a general consensus among commenters 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. Purple believes having the Commission determine the qualification of a provider to receive reimbursement from the TRS fund will promote regulatory consistency within the industry by ensuring that that all providers are evaluated by the same criteria and remain compliant with the Commission’s rules.

We concur with AT&T, who although they resist exclusive Commission jurisdiction for certification, concedes that “if the Commission imposes a certification mandate for all Internet-based TRS providers, the process should focus exclusively on the qualifications of the applicant to provide Internet-based TRS within the confines of the TRS rules.”¹ This is an important distinction and should be the primary, if not only, focus of the certification process. Adding other elements into the certification process such as employee names, employee compensation, non-essential subcontracting agreements, financing agreements, and “all other agreements”², does nothing to advance the cause of ensuring high-quality relay service and program integrity, goes beyond the Commission’s authority, and further detracts from its intent of maintaining compliance among providers in the TRS program.

Any new certification process should be focused on providing the Commission the assurance that processes and systems are in place to adhere to the Commission’s rules and standards and the applicant is adequately capitalized to provide the services if certified. To that end, Purple supports FCC measures to require a showing of financial security and stability of all applicants. Similar to certain state TRS contracts, the concepts of performance bonding, letters of credit or other means of confidential credit underwriting, are worthy of consideration.

The Certification Process should Require Compliance Plans.

The Commission’s current certification process appropriately focuses on operational, technical, and functional standards and the demonstration of ability to comply. However, Purple also believes that adherence to other FCC rules, and a common understanding in the workplace

¹ Comments of AT&T, June 1, 2011, Docket CG-10-51.

² 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).

and among sub-contractors of the substance of those rules, are equally important criteria for certification.

Internal compliance programs and training are an ordinary part of many industries, particularly those which are regulated. If the Commission's goal is to maintain the integrity of the TRS Fund, a written compliance plan and evidence of comprehensive training thereon should be required from every applicant for certification along with annual reporting requirements. As we have offered before, Purple will gladly share elements of our Compliance Program with other industry participants if desired by the Commission³. In Purple's opinion, a requirement of a compliance plan and annual training along with designated administrative staffing for oversight will help standardize the industry and contribute to the Commission's goals of maintaining the integrity of the TRS program while promoting an industry-wide culture of compliance.

Other certification requirements, as currently proposed, are overly broad, likely irrelevant, and potentially violate the PRA.

Commenters seem unanimous that many of the proposed certification requirements are burdensome and excessive and would fail to achieve the important purpose that provider certification should achieve. Additionally, those proposed requirements would seem to be inconsistent with the Paperwork Reduction Act (PRA).⁴ Most of the information sought in the proposed certification process has limited relevancy to the Commission's ability to ensure

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. An excerpt is included in this document as Attachment A.

⁴ 44 U.S.C. 3501 et seq.

oversight of relay providers to ensure compliance with Commission rules.⁵ Most of the proposed rules seem to reflect an imprecise effort to collect documents without a targeted strategy to identify necessary specific information that would reflect how a provider intends to comply with minimum standards and other TRS rules. This lack of precision will ultimately overwhelm the Commission with more information than they can possibly digest. The Commission already seems overtaxed with its lack of capacity to follow through its existing rules and deadlines.⁶ The Commission should not compound its own challenges by issuing even more rules and deadlines that, from all appearances, will face the same challenges as previous rules and deadlines have received.⁷

The Commission should, instead, focus on refinement and enforcement of existing rules, and issue specifically-targeted new rules that it can implement while achieving the Commission's objectives of qualifying relay providers and verifying their continued compliance

⁵ Chairman Julius Genachowski testified on May 13, 2011 at the Congressional hearing on FCC Process Reform that the Commission is identifying data collections from various industries for reform as part of a broader Data Innovation Initiative (DII). Genachowski explained that the DII will ensure that the "Commission is efficiently collecting and utilizing data – making sure a fact-based and data-driven agency collects the information it needs, but no more than what it needs." Purple urges the Commission to follow the Chairman's guidance as it pertains to relay provider certification.

⁶ The Commission, for example, issued strict rules on April 6, 2011 to improve the integrity of the TRS program while establishing a rigorous waiver process to allow applicants to continue service past implementation date of June 1, 2011. The Commission even issued guidance on May 17, 2011 saying that waiver requests should be filed on or before May 24, 2011 "so as to provide Commission staff sufficient time to review and take action on the waiver request by June 1, 2011". At great expense of time and money, numerous organizations sought waivers in accordance with the Commission's instructions, only to have the Commission issue a stay on May 31, 2011, rendering all such requests "moot". This confusing turn of events underscores the need for a clear process that seeks relevant content and has reasonable deadlines for implementation. As it is, because of this confusion, numerous white-label providers continue to offer VRS seemingly in violation of the rules that became effective on June 1, 2011.

⁷ The Commission currently has a severe backlog of relay-related petitions and open requests for enforcement. Purple believes that many of those petitions and requests, if acted on a timely basis, would have addressed many of the challenges the Commission faces today in providing appropriate oversight over the relay industry. Purple urges the Commission to act on those backlogged petitions and requests.

with the rules. Accumulation of documents without a correlated capacity to utilize those documents to achieve meaningful objectives represents a waste of government and private resources and thus should be avoided.

VRS rules for call center ownership should not be applied to other forms of relay services.

There is no information on record that would warrant requiring call center ownership for non-VRS services. Numerous Fortune 500 companies routinely contract out for call center services. Special skills, technology or expertise is not needed for those centers. Requiring ownership of text operations call centers will reduce investment, increase costs and limit innovation by removing competition for call center services contracting with relay providers. There has been very limited, if any, support for extending VRS rules on call center ownership or ownership of ‘core operations’ to other form of relay services.

Both Hamilton and Purple in their respective comments on June 1, 2011, noted that the April 6, 2011 FNPRM does not seem to indicate a proposal that VRS rules for owning call centers should be extended to other forms of relay service. If the Commission intends to consider an extension of those rules, the Commission should make clear its intention of such consideration in a new NPRM. Purple concurs with Hamilton that providers of other IP based relay service be held responsible for all aspects of its operations including those functions that may be contracted out.

Definition of “substantive change” should be narrow to ensure sufficient oversight.

The Commission asked for comments on how to define the scope of substantive changes within a provider that would warrant a report to the Commission. Multiple providers have

weighed in supporting a narrowing of the definition of substantive change and Purple believes substantive changes should be limited to discontinuation or commencement of product or service offering, branding or name changes, or a change of control⁸ in the ownership of the provider.

Requirements for network outages reports and requests should not exceed those that are in place for other telecommunication service providers.

Purple concurs with Sorenson that the requirements for reporting network outages, whether planned or unplanned, should not exceed those that are already in place for other telecommunication service providers. Anything beyond that would be burdensome—especially when providers are already in a competitive market and highly motivated to ensure that their service is continuous and uninterrupted. Existing rules for reporting outages, whether planned or not, should be sufficient in providing the Commission with the information it needs to govern the industry.

Summary

Purple believes the Commission is on the right track in its desire to bring reform to the VRS industry through establishing clear certification standards and processes, and we urge the Commission to be focused on relevance not volume when it comes to information requests for applicants seeking certification. Doing so will aid the Commission in keeping its own self-imposed deadlines and improve the Commission's ability to effectively conclude whether an applicant is qualified to seek reimbursement from the TRS program.

⁸ Change of control defined as more than 50% of the equity ownership of a certified provider.

Attachment A

**(Excerpt from Purple's Presentation on VRS Program and Policy Recommendations)
February 11, 2011**

Increase Industry Accountability

Current Situation

Providing video relay services is a serious endeavor with considerable investment and great responsibility of service to consumers. Accordingly, the bar should be high for market participants. In support of the fresh approach desired by the FCC, Purple believes the health of the industry overall could be improved if rigorous certification was required and all certified providers were obligated to adhere to consistent and robust industry-wide compliance standards.

Recommended Solutions

Purple believes certification and compliance should be linked. Specifically, Purple recommends the following:

- The FCC should adopt rules that raise the bar for certification to ensure that bona-fide service providers are committed to the long term health and integrity of the industry.
- Minutes processed through non-certified providers must not be reimbursed. This rule should be effective July 1, 2011.
- At the same time, the Commission needs to strengthen its commitment to competition and innovation that may be brought in by new providers by moving quickly to grant certification to only those applicants who satisfy the more rigorous requirements for certification, which include the compliance recommendations below.
- Certified providers must form a sub-committee of their Board of Directors, or an executive committee if the provider has multiple lines of business and relay is immaterial to their financial operations (such as AT&T or Sprint), that meets quarterly with the Compliance Officer to review internal reports of potential rule violations, internal investigations and company remedies or interactions with NECA or the Commission.
- Certified providers must designate a Compliance Officer responsible for the implementation and administration of compliance programs within the company, and serve as part of a dual certification of monthly minutes submitted to NECA (in conjunction with designated financial executive) and annual reporting to the Commission.

- Certified providers must develop a written compliance plan and provide that plan to all employees and contractors who support the provision of relay services. This would be done in conjunction with an annual training requirement.
- Material components of the mandatory compliance plan would include:
 - All-Employee Training. Mandatory compliance training would be mandatory for all employees and contractors engaged in the marketing or provision of relay services. Training could be performed internally by the provider's staff or contracted out to a third party who has received the approval of the FCC in terms of the content of their training curriculum.
 - Hotline. Certified providers must install an employee hotline to report potential violations of policy to the Compliance Officer in a manner that is anonymous, safe and respected. The hotline information must be prominently distributed, including in the HR materials and through workplace posters, similar to other employee health and wellness postings required by labor law.
 - Compliance Audit of Minutes. The Compliance Officer and Finance departments implement and maintain internal audit controls to ensure that any submissions to the TRS administrator Fund are accurate. The Compliance Officer will review those audit controls as well as such information as necessary to confirm that policies and procedures have been followed, that all non-compensable minutes have been withheld from the submission, that the submission is true and accurate and consistent with applicable rules and FCC orders, and have responsibility for reporting any known violations promptly to the FCC.
 - Internal VRS use policy and Acceptable use by customers. Providers should implement and maintain adequate controls and procedures regarding (a) internal access and use of VRS services in connection with providers business or with other covered use by the provider's deaf and HOH employees, and (b) access and service agreements for provider's customers that cover basic relay use rules and regarding acceptable use policies for relay and provider's ability to deny service for violations.
- Additionally, to exchange best practices and to allow providers to work with the Commission to foster a common understanding of the rules, Purple recommends at least one annual and in-person meeting among all provider Compliance Officers and designated staff within the Commission to discuss current topics of interest on the part of both providers and the agency.

Even prior to its Consent Decree with the FCC, Purple had developed many of the above procedures. If the Commission chooses to implement such an approach universally among all

certified providers, Purple is willing to volunteer samples of such compliance materials that Purple has already developed and implemented according to its Compliance plan, such as its comprehensive compliance plan, training curriculum and hotline materials, in order to serve as further basis of an industry-wide compliance regime. Purple believes many other certified providers strive to achieve compliance in their operations; however such efforts are varied and inconsistent. Making these measures mandatory as part of a certification process emphasizes the importance of industry-wide integrity and consistency.