

**STAMP-OUT**

Monica Desai  
202-457-7535  
mdesai@pattonboggs.com

January 17, 2012

**VIA HAND DELIVERY**

**FILED/ACCEPTED**

**JAN 17 2012**

Federal Communications Commission  
Office of the Secretary

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: **REDACTED – FOR PUBLIC INSPECTION**

*In the Matter of Structure and Practices of the Video Relay Service Program, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 10-51*

Dear Ms. Dortch:

On behalf of Purple Communications, Inc. (“Purple”), and pursuant to Section 0.459 of the Commission’s rules,<sup>1</sup> please find enclosed an original and four copies of the redacted version of Purple’s Request for Review of the Decision by the TRS Administrator (“Request for Review”) and Exhibits A through H. The Confidential version of the Request for Review and Exhibits A through H is being filed simultaneously on paper with the Office of the Secretary under separate cover.

---

<sup>1</sup> 47 C.F.R. § 0.459.

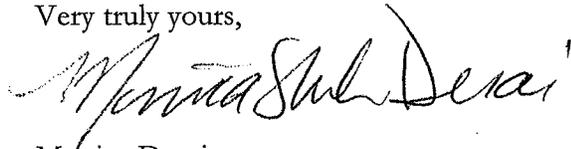
**PATTON BOGGS**<sup>LLP</sup>  
ATTORNEYS AT LAW

Ms. Marlene H. Dortch

January 17, 2012

Page 2

Very truly yours,



Monica Desai  
Patton Boggs, LLP  
2550 M Street, NW  
Washington, DC 20037  
(202) 457-7535

*Counsel for Purple Communications Inc.*

Enclosures

Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

\_\_\_\_\_  
In the Matter of )

Request for Review of the Decision of the )  
TRS Administrator to Withhold TRS Funding )  
from Purple Communications, Inc. )  
)  
)  
)  
\_\_\_\_\_

CG Docket No. 10-51

Request for Review of the Decision by the TRS Administrator

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

Monica Desai  
Patton Boggs LLP  
2550 M Street NW  
Washington, DC 20037  
(202) 457-6000

*Counsel to Purple  
Communications, Inc.*

January 17, 2012

TABLE OF CONTENTS

I. BACKGROUND ..... 2

    A. Purple Provides Services in Full Compliance With Commission Rules ..... 2

    B. The Speed of Answer Rule; Staffing Based on Projected Call Volume Rule ..... 3

    C. The Administrator, Without Providing Notice of the Change in Interpretation of the SOA Standard, Withheld Reimbursements Owed to Purple ..... 6

II. COMMISSION PRECEDENT, EQUITY, AND DUE PROCESS DIRECT THAT PURPLE’S REIMBURSEMENT BE RELEASED ..... 9

III. IN THE ALTERNATIVE, PURPLE SEEKS A WAIVER OF THE NEW SOA INTERPRETATION FOR THOSE DAYS THAT PURPLE EXPERIENCED AN UNFORESEEN SPIKE ABOVE FORECASTED CALL VOLUMES ..... 15

IV. AS A FURTHER ALTERNATIVE, PURPLE REQUESTS THAT IT BE REIMBURSED FOR DAYS ON WHICH IT HANDLED AT LEAST 65% OF CALLS IN TEN SECONDS..... 19

V. CONCLUSION AND REQUEST FOR RELIEF ..... 21

SUMMARY

Purple Communications, Inc. ("Purple") provides Telecommunications Relay Service (TRS), including IP-enabled text relay service, and is eligible to receive reimbursement for the provision of its services. As a provider, Purple adheres to the mandatory minimum standards of service, including the standard for Speed of Answer (SOA). ~~For over twenty years, providers~~ have been required to substantially, but not absolutely, comply with mandatory minimum standards of service. Historically, the SOA standard for IP-enabled text relay required providers to substantially, but not absolutely, "answer 85% of all calls within 10 seconds" as measured on a daily basis. The TRS Fund Administrator ("Administrator"), consistently issued TRS Fund reimbursements for days that did not absolutely meet the SOA benchmark.

On September 20, 2011, the Administrator notified Purple that it had adopted a new interpretation of the SOA standard. Specifically, for the first time, the Administrator applied the 85/10 SOA standard to refuse providing any reimbursement at all on those days that did not meet the benchmark with absolute exactitude. Unfortunately, the Commission and the TRS Administrator elected to apply the new interpretation retroactively to providers without notice and while they were still operating under the prior interpretation. The result, for Purple, was the withholding of { [REDACTED] } of reimbursement for services Purple already provided (or provided within { [REDACTED] } following notice of the new interpretation).

Equity and due process direct that retroactive application of the TRS Administrator's new interpretation of the SOA standard should not be permitted. Purple acted in good faith during the time it provided service under the pre-existing interpretation. Purple provided service in reliance on that historic interpretation and in reliance on rules that specified that staffing and

**REDACTED, FOR PUBLIC INSPECTION**

network operations should be set based on “projected call volumes.” To apply a new interpretation requiring a different unknown level of staffing and other operational changes to somehow plan for unprojected and unforeseen call volume spikes, without notice and without opportunity for Purple to adjust its operations accordingly, is simply unfair and not in the public interest. Purple is more than willing to comply prospectively with the Administrator’s new interpretation for SOA. Purple simply seeks the reimbursement to which it is entitled for the time it was operating in good faith on the prior interpretation of the SOA standard.

Alternatively, Purple seeks a waiver of the new SOA interpretation for the days on which Purple did not meet the new SOA interpretation resulting from unforeseen and aberrational spikes in call volume that materially exceeded forecasted call volume, combined with partial reimbursement for those remaining days, consistent with the approach applied in the series of private letter rulings issued by Commission staff. As a further alternative and at a minimum, Purple requests at least partial reimbursement for days on which Purple’s actual SOA performance is at least 65% of calls answered in 10 seconds, consistent with the approach applied to other providers in the series of private letter rulings issued by Commission staff.

In summary, Purple should be reimbursed the complete { [REDACTED] } being withheld by the Administrator for services rendered on certain days in the months of July, August, September and October 2011. In the alternative, Purple seeks reimbursement of at least { [REDACTED] }, which represents an adjustment for unforeseen and aberrant spikes in call volume, and applying a graduated scale approach for the remaining days withheld. As a further alternative minimum, Purple should be reimbursed based on the graduated formula used by the Commission in private letter rulings, resulting in the return of { [REDACTED] }.

Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

---

In the Matter of )

Request for Review of the Decision of the )  
TRS Administrator to Withhold TRS Funding )  
from Purple Communications, Inc. )

---

CG Docket No. 10-51

To: The Commission

**Request for Review of the Decision by the TRS Administrator**

Purple Communications, Inc. (“Purple”), through counsel, and pursuant to Sections 64.604(c)(5)(iii)(L), 1.115, and 1.3 of the Federal Communication Commission’s (“Commission”) rules,<sup>1</sup> respectfully submits this Request for Review of the Decision by the TRS Administrator seeking reversal of a decision by the Administrator of the interstate Telecommunications Relay Service Fund (“TRS Fund”), Rolka Loube Saltzer Associates (“RLSA” or the “Administrator”), to withhold reimbursement for IP Relay minutes processed by Purple for certain days during the months of July, August, September, and October 2011. Purple further requests that the Commission grant a waiver of Section 64.604(b)(2) of the Commission’s Rules regarding “speed of answer” (“SOA”) technical standards, as may be appropriate.<sup>2</sup>

The Administrator’s decision to withhold reimbursement for failure to follow a new interpretation applied retroactively and without notice is contrary to Commission precedent and

---

<sup>1</sup> 47 C.F.R. §§ 64.604(c)(5)(iii)(L), 1.115, 1.3.

<sup>2</sup> 47 C.F.R. § 64.604(b)(2).

principles of equity and due process. Equity and due process direct that the Administrator should not be permitted to retroactively apply a new “absolute compliance” interpretation of the SOA rules without notice or opportunity for Purple to comply with the new interpretation or otherwise take action consistent with the new interpretation of the SOA rules.

Alternatively, Purple seeks a waiver of the SOA rules for the days on which Purple missed the SOA benchmark due to unforeseen, unprojected and aberrant spikes in call volume that exceeded both the forecasted call volume and the seven-week rolling average call volume for such days.<sup>3</sup> Upon a showing of good cause, a provider may be eligible for full reimbursement pursuant to a waiver for periods during which the SOA benchmark was missed.<sup>4</sup>

As a further alternative, consistent with the Commission’s treatment of other providers in accordance with its private letter rulings, Purple should be provided, at a minimum, a partial reimbursement for days on which its actual SOA performance is at least 65% of calls answered in 10 seconds.<sup>5</sup>

## **I. BACKGROUND**

### **A. Purple Provides Services in Full Compliance With Commission Rules**

Purple offers text relay, video relay, telephone captioning, and community interpreting services. This breadth of services, coupled with its technical acumen, distinguishes Purple as an industry leader in innovation and service to its customers. Recently, Purple was featured on

---

<sup>3</sup> Purple seeks relief in connection with any “spike” in call volume that exceeded 110% of the forecasted volume for any day in question for the months of July through October, 2011.

<sup>4</sup> Letter from Catherine W. Seidel, Chief, Consumer and Government Affairs Bureau, FCC, to Marin Beaulac, Nordia, Inc. (Jan. 23, 2008) (“Nordia”) (See Exhibit A); Letter from Catherine W. Seidel, Chief, Consumer and Government Affairs Bureau, FCC, to Davida Grant, Senior Counsel, AT&T Services, Inc. (Jan. 23, 2008) (“AT&T”) (See Exhibit B).

<sup>5</sup> *Id.*

CNN for helping deaf business professionals compete as equals. Two of Purple's executives were selected to serve on separate FCC Advisory Committees – the VPAAC and EAAC – critical committees assisting in the implementation of the 21st Century Video Accessibility Act. Purple was also elected to represent the industry on the TRS Council and its delegate serves as the Chair of this council.

Purple is also an industry leader in compliance efforts. {

[REDACTED]

**B. The Speed of Answer Rule; Staffing Based on Projected Call Volume Rule**

TRS providers are required to conform to certain mandatory minimum standards of service, including standards related to SOA. The SOA standard for IP Relay is found in Section 64.604(b)(2) of the Commission's rules, which sets forth a call answer time for IP Relay of "85% of all calls within 10 seconds by any method which results in the caller's call immediately being

**REDACTED, FOR PUBLIC INSPECTION**

placed, not put in a queue or on hold.”<sup>6</sup> For IP Relay, the SOA is calculated on a daily average basis.<sup>7</sup>

Prior to September 20, 2011, neither the Administrator nor any predecessor had *ever* interpreted the 85/10 SOA benchmark to require an “all or nothing approach.” Indeed, the opposite is true. In interpreting the TRS rules in the *Publix* decision, the full Commission addressed this issue and explicitly determined that “absolute” compliance with the TRS mandatory minimum standards was not required for reimbursement:

We recognize that absolute compliance with each component of the rules may not always be necessary to fulfill the purposes of the statute and the policy objectives of the implementing rules, and that not every minor deviation would justify withholding funding from a legitimate TRS provider. We therefore hold that a TRS provider is eligible for TRS Fund reimbursement if it has substantially complied with Section 64.604.<sup>8</sup>

The Commission emphasized that its approach permitted a provider to remain eligible for reimbursement despite not absolutely meeting the mandatory minimum standards, as long as the provider “satisfied the underlying purposes of those requirements.”<sup>9</sup>

Similarly, in a series of letter decisions, the Commission’s Consumer and Governmental Affairs Bureau explained that a bright line “all or nothing” approach to assessing penalties related to SOA is contrary to public policy and not in the public interest, because providers would be incentivized to stop providing service altogether as soon as they realize, on any given day, that they will miss the 85/10 mark. Accordingly, the Bureau chose to apply a waiver of the

---

<sup>6</sup> 47 C.F.R. § 64.604(b)(2)(ii).

<sup>7</sup> 47 C.F.R. § 64.604(b)(2)(ii)(C).

<sup>8</sup> *In re Public Network Corp.; Customer Attendants, LLC; Revenue Controls Corp.; Revenue Controls Corp.; SignTel, Inc.; and Focus Group, LLC*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 11487, 11495 (2002) (“*Publix*”) (emphasis added).

<sup>9</sup> *Id.*

SOA standard in certain cases, or the application of a graduated formula in other instances, to assess any penalties associated with missing the SOA benchmark:

We further believe that, absent waiver of the 85/10 rule for a particular day, it is appropriate to apply a graduated formula where the provider misses compliance with the rule, but meets the test for at least 65 percent of its call volume on that particular day, and where the provider provides a plausible explanation for its lack of full compliance with the 85/10 rule on the particular day. Otherwise, we find it proper to require an entire day's compensation from the provider, because below the 65 percent threshold the failure to provide service is so severe that the service is not being provided on a functionally equivalent basis to voice telephone services.<sup>10</sup>

The Bureau recognized the strong public interest rationale supporting either a waiver as appropriate or partial reimbursement as appropriate:

For one thing, it averts a situation where a relatively small miss causes a provider to lose all compensation for the day, which could give the provider incentive to provide poor service or no service for the remainder of the day once it calculates that it would miss compliance with the 85/10 rule. In addition, a graduated formula takes into account that, on those days the provider missed compliance, it still provided a service of value, but also acknowledges that it should return some portion of its reimbursements for those days due to its noncompliance with the rule, and that the portion should increase commensurate with the degree of its noncompliance.<sup>11</sup>

Furthermore, the Commission's TRS rules reflect that the Commission expects providers to operate based on projected calling volumes, for both staffing and network capacity. Pursuant to Sections 64.604(b)(2)(i) and (ii), compliance with speed of answer requirements must be viewed by the Commission in the context of rules connecting TRS operations, projected call volumes and staffing. Specifically, TRS facilities must:

(1) "ensure adequate TRS facility staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA

---

<sup>10</sup> See Nordia at 5; see also AT&T at 5.

<sup>11</sup> *Id.* (emphasis added)

unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network”; and

(2) “ensure that adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.”<sup>12</sup>

If the Commission had intended providers to base staffing on any possible level of call volume, including unprojected call volumes, it would not have inserted “projected calling volumes” language into the rules. Otherwise, if providers had been expected to ignore projected calling volumes to meet the 85/10 standard under any circumstances whatsoever, including adding some unknowable number of additional staff to take into account the possibility of unpredicted spikes in calls, the TRS Fund size would dramatically increase and unnecessary inefficiencies would be created.

**C. The Administrator, Without Providing Notice of the Change in Interpretation of the SOA Standard, Withheld Reimbursements Owed to Purple**

The TRS Fund underwent an administration change in July of 2011. Effective July 1, 2011, RLSA was appointed the new Administrator of the interstate TRS Fund by the Commission. The TRS Fund had previously been managed by the National Exchange Carrier Association (“NECA”).

On September 20, 2011, the Administrator notified Purple that all reimbursements owed to Purple from the TRS Fund for the entire month of July would be withheld because Purple did not strictly meet the 85/10 mandatory minimum standard for {█} out of 31 days in July. The Administrator subsequently realized, after discussions with Purple and Commission staff, that

---

<sup>12</sup> 47 C.F.R. §§ 64.604(b)(2)(i) and (ii).

REDACTED, FOR PUBLIC INSPECTION

the SOA for IP Relay is calculated on a daily basis, and not a monthly basis, so RLSA later released the funds for the {█} days in July that Purple met the 85/10 SOA benchmark. However, the Administrator continued to interpret the SOA standard as requiring an “all or nothing” interpretation for reimbursement, and withheld funding for the entirety of the {█} days in July and subsequently withheld funding for {█} days in August, {█} days in September, and {█} days in October on which Purple did not meet the new interpretation of the 85/10 standard. The total funds withheld for these days totaled {█}. Prior to September 20, 2011, consistent with *Publix*, no Administrator had interpreted the SOA standard using RLSA’s new approach. Purple attempted to work with RLSA to explain that RLSA’s new interpretation was inconsistent with many years of precedent.

In November 2011, there was an industry-wide meeting during which numerous providers explained to RLSA that the new interpretation was inconsistent with precedent and had been specifically rejected by the Commission and the Consumer & Governmental Affairs Bureau. The providers also argued that flash-cutting to a new approach without notice was unfair, as they had, in good faith, relied on the historic interpretation in providing services. The industry-wide group meeting was followed by a separate meeting between Purple executives and the Administrator in which Purple presented, for each day in July-October 2011 for which RLSA had denied reimbursement under the new strict interpretation, detailed information and evidence of: (i) forecasting and operational efforts implemented to meet the SOA requirement based on those forecasts; (ii) efforts to combat questionable call activity; and (iii) forecasted and actual

**REDACTED, FOR PUBLIC INSPECTION**

call volume activity.<sup>13</sup> Purple provided the Administrator with a 57-page presentation setting forth this information (“Presentation”). The Presentation is attached as Exhibit C.

Purple explained that given the operational realities of relay call centers in the context of the FCC’s prescribed rules, including rules envisioning staffing based on projected call volumes, a new strict interpretation of the SOA standard should be harmonized with: (1) an allowance for unplanned call volume and the suspension of penalties in the event of significant, unforeseen, unprojected call volume spikes; and (2) a proportional penalty structure that provides a graduated formula to levy penalties in relationship to the magnitude of a performance shortfall, consistent with the Commission’s prior decisions.

On November 7, 2011, Purple filed an appeal with the Administrator regarding its decision to withhold reimbursement of payment for the months of July and August 2011, and petitioned the Administrator for future release of reimbursement payments for the months of September and October 2011.<sup>14</sup>

On December 22, 2011, the Administrator sent a letter to Purple denying the appeal.<sup>15</sup> The Administrator asserted that it lacked the authority to apply anything but its new interpretation of the 85/10 standard:

Conspicuously missing from the Administrator’s responsibilities is a delegation of authority to waive, or otherwise amend or interpret, the Commission rules applicable to the TRS Fund Administration. Absent such a delegation of authority, RLSA believes that we are without the requisite authority to either

---

<sup>13</sup> Letter from David Rolka, President, Rolka Loube Saltzer Assocs., to John Goodman, Chief Legal Officer, Purple Commc’n, at 1 (Dec. 22, 2011) (“TRS Decision”) (Exhibit D).

<sup>14</sup> Letter from John Goodman, Chief Legal Officer, Purple Commc’n, to David Rolka, President, Rolka Loube Saltzer Assocs., at 1-14 (Nov. 7, 2011) (“Amended Appeal”). A slightly amended appeal was filed on November 8, 2011. That amended appeal is attached hereto as Exhibit E.

<sup>15</sup> TRS Decision at 3.

**REDACTED, FOR PUBLIC INSPECTION**

interpret or apply operational criteria which would have the effect of modifying the express language of a rule. RLSA also believes that we are without authority to waive the implementation of the Commission rules.<sup>16</sup>

The Administrator also indicated that since the time of its September 20, 2011 decision, it had reviewed the Nordia and AT&T letter rulings and noted, among other things, that the rulings “were neither known to exist at the time of the change of administration to RLSA” and “have been superseded by contemporary consultation between the Administrator and the Commission.”<sup>17</sup>

**II. COMMISSION PRECEDENT, EQUITY, AND DUE PROCESS DIRECT THAT PURPLE’S REIMBURSEMENT BE RELEASED**

As the courts have explained, “[t]raditional concepts of due process incorporated into administrative law preclude an agency from penalizing a private party for violating a rule without first providing adequate notice of the substance of the rule.”<sup>18</sup> In fact, in *Satellite Broadcasting Company v. FCC*, the D.C. Circuit indicated that if the Commission used its regulatory power to effectively “punish a member of the regulated class for reasonably interpreting Commission rules” the result would be that “the practice of administrative law would come to resemble ‘Russian Roulette.’”<sup>19</sup> In a subsequent case, the D.C. Circuit further established an “ascertainably certainty” standard that is applicable to the situation at hand: “If, by reviewing the regulations and other public statements issued by the agency, a regulated party

---

<sup>16</sup> TRS Decision at 2.

<sup>17</sup> *Id.* (emphasis added).

<sup>18</sup> *Satellite Broad. Co. v. FCC*, 824 F.2d 1, 3 (D.C. Cir. 1987).

<sup>19</sup> *Id.* at 3. (“The Commission through its regulatory power cannot, in effect, punish a member of the regulated class for reasonably interpreting Commission rules. Otherwise the practice of administrative law would come to resemble ‘Russian Roulette.’ The agency’s interpretation is entitled to deference, but if it wishes to use that interpretation to cut off a party’s right, it must give full notice of its interpretation.”)

REDACTED, FOR PUBLIC INSPECTION

acting in good faith would be able to identify, with 'ascertainable certainty,' the standards which the agency expects to conform, then the agency has fairly notified a petitioner of the agency's interpretation."<sup>20</sup>

For two decades, the Commission and the Administrator never applied an "absolute" interpretation of the SOA standard in calculating reimbursements. While the Commission is free to change its interpretation, doing so without notice and opportunity to meet the new interpretation is unfair and inequitable. Given the *Publix* decision, the private letter rulings issued by the Commission, rules envisioning staffing based on projected call volumes, and many years of actual Fund administration, there is no reasonable way to argue that Purple could with any level of certainty ascertain that the RLSA interpretation would suddenly and without notice change to the Administrator's new "all or nothing" that can only be described as "absolute compliance."

Furthermore, the D.C. Circuit concluded that when deciding the appropriateness of retroactive application of a new rule, all of the relevant factors "boil down . . . to a question of concerns grounded in notions of equity and fairness."<sup>21</sup> The retroactive application of a new rule

---

<sup>20</sup> *Gen. Elec. Co. v. EPA*, 53 F.3d 1324, 1329 (D.C. Cir. 1995); see also *Trinity Broad. of Fla. v. FCC*, 211 F.3d 618, 632 (D.C. Cir. 2000) ("Where, as here, the regulations and other policy statements are unclear, where the petitioner's interpretation is reasonable, and where the agency itself struggles to provide a definite reading of the regulatory requirements, a regulated party is not 'on notice' of the agency's ultimate interpretation of the regulations, and may not be punished.") (quoting *Gen. Elec. Co.* at 1333-34.)

<sup>21</sup> See *Cassell v. FCC*, 154 F.3d 478, 486 (D.C. Cir. 1998) (declining to "plow laboriously" through the Clark-Cowlitz factors, which "boil down to a question of concerns grounded in notions of equity and fairness") (citation omitted). The Clark-Cowlitz test is a five-factor balancing test to determine if it would be equitable to apply a new rule retroactively. The factors include: (1) whether the particular case is one of first impression, (2) whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law, (3) the extent to which the party against whom the new rule is applied

REDACTED, FOR PUBLIC INSPECTION

will be denied “when to apply the new rule to past conduct or to prior events would work a ‘manifest injustice.’”<sup>22</sup> In the *Verizon Telephone Cos.* case,<sup>23</sup> the court stated that for a “manifest injustice” to occur from retroactive liability, the provider must have had reasonable reliance on the old rule.<sup>24</sup> According to the *Verizon* analysis, for reliance to be considered “reasonable,” the relied upon rule must be “settled” and “well-established.”<sup>25</sup> “Settled” means that the relied upon interpretation had not been in dispute, while “well-established” refers to an interpretation that spans more than a solitary proceeding.<sup>26</sup>

Based upon these factors, Purple acted in reasonable reliance in provisioning IP Relay service and expecting to be reimbursed for those days that RLSA denied reimbursement. The reasonable reliance was based on the Commission’s years of consistent reimbursement for IP Relay services rendered on days when the 85/10 SOA standard was substantially, but not strictly, met, combined with Commission rules requiring staffing based on projected call volumes – not unprojected spikes. First, up until September 20, 2011, the Commission had never applied a strict compliance standard. The Commission specifically articulated a substantial compliance

---

relied on the former rule, (4) the degree of the burden which a retroactive order imposes on a party, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard. *Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1081-86 (D.C. Cir. 1987) (en banc) (citing *Retail, Wholesale & Dep’t Store Union v. NLRB*, 466 F.2d 380, 390 (D.C. Cir. 1972)).

<sup>22</sup> See *Verizon Tel. Cos. v. FCC*, 269 F.3d 1098 (D.C. Cir. 2001) (citing *Clark-Cowlitz Joint Operating Agency v. FERC*, 264 U.S. App. D.C. 58, 826 F.2d 1074, 1081 (D.C. Cir. 1987)) (en banc) (quoting *Thorpe v. Housing Auth. of the City of Durham*, 393 U.S. 268, 282 (1969)); see also *Consol. Freightways v. NLRB*, 892 F.2d 1052, 1058 (D.C. Cir. 1989).

<sup>23</sup> *Verizon Tel. Cos.*, 269 F.3d at 1098.

<sup>24</sup> See *id.* at 1111.

<sup>25</sup> *Id.*

<sup>26</sup> See *id.*

**REDACTED, FOR PUBLIC INSPECTION**

interpretation of the TRS mandatory minimum standards in the *Publix* decision, and over the course of many years of administering and overseeing the Fund did not in practice require absolute compliance for reimbursement. Providers had no reason to anticipate RLSA's sudden application of strict compliance requirement for reimbursement. Moreover, since 2002, when the Commission articulated the substantial compliance standard, IP Relay service providers have never been required to forfeit payments for entire days on which they did not, with exactitude, meet the speed-to-answer benchmark. As a result, the new strict compliance interpretation is an abrupt departure from the "substantially complied" interpretation which had historically and consistently governed IP Relay since its inception.<sup>27</sup> Because the substantial compliance standard was settled and well-established, Purple's reliance on it was reasonable. Thus, to prevent Purple from suffering a "manifest injustice," the retroactive application of a "strict compliance" interpretation of minimum SOA standards must not be permitted.

In addition, the text of the SOA rule makes it unreasonable to conclude that Purple should have ascertained back in July, August, and early September that the Administrator would withhold funding if Purple did not meet an "absolute compliance" interpretation. Specifically, as explained above, Section 66.6049(b)(2)(i) and (ii) require that TRS facility: (1) "ensure adequate TRS facility staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network"; and (2) "ensure that adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response

---

<sup>27</sup> See *Clark-Cowlitz Joint Operating Agency*, 826 F.2d at 1081-86.

due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.”<sup>28</sup>

This is exactly what Purple has done. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The new interpretation of the SOA rule has raised the service level requirement for providers. To meet the new interpretation, providers must recalibrate operations and materially increase staffing and resources for call centers to handle the increase in call volume. For example, on { [REDACTED] } the forecast reflected that { [REDACTED] } agents would be needed at peak levels. However, on that day, due to an aberrational spike, { [REDACTED] } agents would have been required to meet the new interpretation of the SOA standard – an additional { [REDACTED] } agents. The following table reflects the number of additional bodies Purple would have been needed on a sample of four dates to maintain an absolute 85/10 SOA based on actual versus forecasted volumes:

{

<sup>28</sup> 47 C.F.R. § 64.604(b)(2)(i) and (ii) (emphasis added).

<sup>29</sup> { [REDACTED]

<sup>30</sup> See Exhibit C.



being withheld by the Administrator for services rendered on certain days during the months of July, August, September, and October 2011.

**III. IN THE ALTERNATIVE, PURPLE SEEKS A WAIVER OF THE NEW SOA INTERPRETATION FOR THOSE DAYS THAT PURPLE EXPERIENCED AN UNFORESEEN SPIKE ABOVE FORECASTED CALL VOLUMES**

Under the Commission's rules, the agency may waive any provision of the rules "if good cause therefor is shown."<sup>31</sup> In fact, the Commission has stated that a provider experiencing an unforecasted spike in call volume on a particular day should, in some circumstances, receive relief from any penalties or withholdings related to a missed SOA via a waiver:

A provider supplying evidence that call volumes on a specific day or a portion thereof represented such a pronounced and unforeseen divergence from normal call volumes, and are beyond the providers control, could, in appropriate cases, qualify for a waiver of the 85/10 rule.<sup>32</sup>

In addition, the Commission has consistently waived its rules "where particular facts would make strict compliance inconsistent with the public interest" and stated that it can take equitable considerations into account when granting a waiver.<sup>33</sup> In the TRS context, the Consumer and Government Affairs Bureau recently granted waivers to providers applying for TRS certification in which it recognized the importance of having adequate time and notice to comply with a rule.<sup>34</sup> In the case of *CSDVRS, LLC*, the Bureau found a TRS provider's

---

<sup>31</sup> 47 C.F.R. § 1.3.

<sup>32</sup> See Nordia at 3.

<sup>33</sup> *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see, e.g., Nordia at 2.

<sup>34</sup> *Notice of Conditional Grant of Application of Convo Communications, LLC For Certification as a Provider of Video Relay Service Eligible for Compensation from Interstate Telecommunications Relay Service Fund*, Public Notice, 26 FCC Rcd 15956, 15958-59, n.21 (2011); *Notice of Conditional Grant of Application of Hancock, Jahn, Lee & Pucket, LLC, d/b/a Communications Axess Ability Group for Certification as a Provider of Video Relay Service*

**REDACTED, FOR PUBLIC INSPECTION**

explanation of internal system changes and the fact that it corrected the issue at hand sufficient to warrant a waiver of the TRS rules and allowance of reimbursement.<sup>35</sup> As discussed in this appeal, Purple had neither adequate time nor notice to apply the new interpretation of the SOA rule to the disputed days in July, August, September, and October 2011. Moreover, Purple is now able to meet the new strict interpretation of the SOA standard.

Here, as set forth in the attached Exhibit C, Purple has presented call volume data for each day it seeks reimbursement that demonstrates the special circumstances surrounding this request. In each case, the call volume markedly exceeded the forecasted call volume and the seven-week average call volume for such day.

Call volume spikes can occur for multiple reasons, including aberrant weather patterns or significant national or global events. Also, despite robust blocking and prevention methods, Purple receives calls to its network which turn out to be questionable. The Commission has made it a point to reiterate to providers, however, that despite indications of misuse, “under applicable TRS regulations, TRS providers cannot refuse to make an outbound call requested by

---

*Eligible for Compensation from the Interstate Telecommunications Relay Service Fund*, Public Notice, 26 FCC Rcd 15965, 15967-68, n.27 (2011); *Notice of Conditional Grant of Application of ASL Services Holdings, LLC for Certification as a Provider of Video Relay Service Eligible for Compensation from the Interstate Telecommunications Relay Service Fund*, Public Notice, 26 FCC Rcd 15960, 15963-64 n.27 (2011). See also *In re Structure and Practice of the Video Relay Service Program*, Order, 26 FCC Rcd 15660 (2011).

<sup>35</sup> Letter from Joel Gurin, Chief, Consumer and Government Affairs Bureau, FCC, to William Banks, CSDVRS, LLC, 25 FCC Rcd 1257 (Feb. 3, 2010) (“CSDVRS”); see also Letter from Joel Gurin, Chief, Consumer and Government Affairs Bureau, FCC, to Gil M. Strobel, Lawler, Metzger, Kenney & Logan, 25 FCC Rcd 5836 (May 27, 2010) (“Sorenson”) (finding explanation of technical difficulties was sufficient to warrant a waiver of the TRS rules and justified allowance of reimbursement).

a TRS user.”<sup>36</sup> The Commission explains that as part of the mandate of functional equivalency, communications assistants are prohibited from refusing calls:

Under the functional equivalency mandate, TRS is intended to permit persons with hearing and speech disabilities to access the telephone system to call persons without such disabilities. TRS is intended to operate so that when a TRS user wants to make a call, a CA is available to handle the call. The Commission has noted that the “ability of a TRS user to reach a CA prepared to place his or her call ... is fundamental to the concept of ‘functional equivalency.’ For this reason, the TRS regulations provide that CAs are prohibited from refusing calls.<sup>37</sup>

The underlying rationale for prohibiting CAs from refusing calls stems from the concept that CAs are intended to be “invisible conduits” that merely serve to process calls – they are not allowed to make independent judgments regarding calls, and are prohibited from “policing” calls:

The Commission has received complaints from vendors, consumers, and TRS providers that people are using the IP Relay to make telephone purchases using stolen or fake credit cards. Although such purchases are illegal, and the Department of Justice and the FBI can investigate, *due to the transparent nature of the CA’s role in a TRS call the CA may not interfere with the conversation.*

---

<sup>36</sup> *Telecommunications Relay Service (TRS) Providers Must Make All Outbound Calls Requested By TRS Users and May Not “Block” Calls to Certain Numbers at the Request of Consumers*, Public Notice, DA 05-2477, 20 FCC Rcd 14717 (Sept. 21, 2005) (“2005 TRS Provider Public Notice”) (emphasis added); see also 47 C.F.R. § 64.604(a)(3)(i).

<sup>37</sup> 2005 TRS Provider Public Notice at 14718 (citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, ¶ 39 (Mar. 6, 2000) (FCC 00-56) (“2000 Improved TRS Order”) (emphasis added) (“all relay services either mandated by the Commission or eligible for reimbursement from the interstate TRS Fund must comply with the mandatory minimum standards”) (also citing 47 C.F.R. § 64.604(a)(3)(i) (stating that “[c]onsistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls using relay services”)) (emphasis supplied).

REDACTED, FOR PUBLIC INSPECTION

*The TRS statutory and regulatory scheme do not contemplate that the CA should have a law enforcement role by monitoring the conversations they are relaying.<sup>38</sup>*

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }.

Granting a limited waiver of the SOA rules under these special circumstances will serve the public interest, because immediate disbursement of these funds are important for Purple to continue to meet the Commission's standards and provide high quality services to its customers. In addition, Purple has met the TRS Administrators new interpretation of the SOA rules every day since { [REDACTED] }.

Withholding these funds has created a significant financial hardship for Purple. A retroactive penalty in excess of \$5,000,000 is extremely impactful for a small company that's sole business is delivering services to Americans with hearing or speech disabilities. Operating with the reasonable and good faith belief in the established reimbursement model, Purple incurred all the cost of delivering IP Relay services in July, August and September, by the time

---

<sup>38</sup> See *FCC Reminds Public of Requirements Regarding Internet Relay Service and Issues Alert*, Public Notice, 19 FCC Rcd 10740 (2004) (emphasis added); see also *IP Relay/VRS Misuse FNPRM*, FCC 06-58, 21 FCC Rcd 5478 at ¶ 12; see also 47 C.F.R. § 64.604(a)(2).

the Administrator communicated the new standard, and had made full preparations to deliver those services in October. Had Purple known *in advance* that a 20+ year payment/penalty practice was being abandoned effective July 1, along with the concept of staffing based on projected call volumes as articulated in the TRS rules, Purple could have been proactive in adding a significant and unknown number of additional staff at peak times to prepare for unprojected spikes in calls.

Accordingly, in the alternative, Purple seeks a waiver of the SOA benchmark for those days on which the actual call volume exceeded 110% of the forecasted call volume based on the seven-week rolling average daily volume. Purple seeks reimbursement of { [REDACTED] }, for service provided on those days detailed in Exhibit G, pursuant to a waiver of the SOA rule for good cause, combined with and a graduated scale approach as described below in Section IV for those days detailed in Exhibit H, for the remaining days withheld.

**IV. AS A FURTHER ALTERNATIVE, PURPLE REQUESTS THAT IT BE REIMBURSED FOR DAYS ON WHICH IT HANDLED AT LEAST 65% OF CALLS IN TEN SECONDS**

As a further equitable alternative, the Commission should partially reimburse Purple for the days in which it missed the 85/10 SOA standard based on the "sliding scale" approach the Commission used with other providers and documented in a series of letter rulings. In those letter rulings, the Commission provided proportional reimbursement on a graduated scale on policy grounds. This table used by the Commission for providing reimbursement on a graduated scale is included with the Nordia and AT&T rulings attached hereto as Exhibits A and B. The Commission applied this graduated formula where the provider met the 10-second test for at

**REDACTED, FOR PUBLIC INSPECTION**

least 65% of its call volume on a that day, where the provider set forth "...a plausible explanation for its lack of full compliance with the 85/10 rule on the particular day."<sup>39</sup>

As the Commission explained, there is a strong public interest rationale supporting the implementation of the sliding scale approach:

For one thing, it averts a situation where a relatively small miss causes a provider to lose all compensation for the day, which could give the provider incentive to provide poor service or no service for the remainder of the day once it calculates that it would miss compliance with the 85/10 rule. In addition, a graduated formula takes into account that, on those days the provider missed compliance, it still provided a service of value, but also acknowledges that it should return some portion of its reimbursements for those days due to its noncompliance with the rule, and that the portion should increase commensurate with the degree of its noncompliance.<sup>40</sup>

In fact, this rationale is similar to the explanation provided by the Commission in 2002 when it issued the *Publix* decision (which is still controlling) holding that "a TRS provider is eligible for TRS Fund Reimbursement if it has substantially complied with Section 64.404."<sup>41</sup> In that case, the Commission recognized "that absolute compliance with each component of the rules may not always be necessary to fulfill the purposes of the statute and the policy objectives of the implementing rules, and that not every minor deviation would justify withholding funding from a legitimate TRS provider."<sup>42</sup>

Therefore, at a minimum, for those days on which Purple experienced unanticipated spikes in excess of projected call volume, Purple hereby requests release of partial

---

<sup>39</sup> See Nordia at 5.

<sup>40</sup> *Id.*

<sup>41</sup> *Publix* at 11495.

<sup>42</sup> *Id.*

reimbursement of {REDACTED}, pursuant on a “sliding scale” consistent with the formula previously used by the Commission, as set forth in Exhibit H.

**V. CONCLUSION AND REQUEST FOR RELIEF**

Purple should be reimbursed {REDACTED} being withheld by the Administrator. In the alternative, Purple also hereby seeks reimbursement of at least {REDACTED}, which covers reimbursement of those days detailed in Exhibit G pursuant to a waiver of the 85/10 rule for good cause, and a graduated scale approach for the remaining days withheld. As a further alternative, at a minimum, Purple should be reimbursed {REDACTED} based on the graduated scale formula used by the Commission in private letter rulings as detailed in Exhibit H.

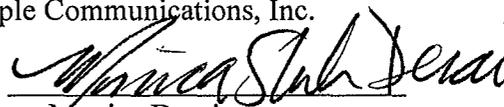
As stated previously, withholding these funds has created a significant financial hardship for Purple. A retroactive penalty in excess of \$5,000,000 is extremely impactful for a small company that’s sole business is delivering services to Americans with hearing or speech disabilities. Operating with the reasonable and good faith belief in the established reimbursement model, Purple incurred all the cost of delivering IP Relay services in July, August and September, by the time the Administrator communicated the new standard, and had made full preparations to deliver those services in October. Had Purple known in advance that a 20+ year payment/penalty practice was being abandoned effective July 1, along with the concept of staffing based on projected call volumes as articulated in the TRS rules, Purple could have been proactive in adding a significant and unknown number of additional staff at peak times to prepare for unprojected spikes in calls.

REDACTED, FOR PUBLIC INSPECTION

Respectfully submitted,

Purple Communications, Inc.

By:



Monica Desai

Patton Boggs LLP

2550 M Street NW

Washington, DC 20037

(202) 457-6000

Its Counsel

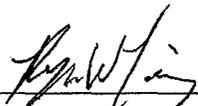
Dated: January 17, 2012

REDACTED, FOR PUBLIC INSPECTION

**CERTIFICATE OF SERVICE**

I, Ryan W. King, certify on this 17th day of January, 2012, a copy of the foregoing Request for Review of the Decision by the TRS Administrator has been served via first class mail, postage pre-paid, to the following:

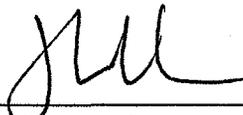
David W. Rolka  
President  
Rolka Loube Saltzer Associates  
12<sup>th</sup> Floor, One South Market Square  
Harrisburg, PA 17101

  
\_\_\_\_\_  
Ryan W. King

**DECLARATION OF JOHN GOODMAN**  
**PURPLE COMMUNICATIONS, INC.**

I have reviewed the foregoing Request for Review of the Decision by the TRS Administrator and declare under penalty of perjury that the facts stated therein are true and correct to the best of my knowledge and belief.

Executed on this 17 day of January, 2012.

  
\_\_\_\_\_  
John Goodman  
Chief Legal Officer  
Purple Communications, Inc.

EXHIBITS

- A. Nordia Letter Ruling, January 23, 2008
- B. AT&T Letter Ruling, January 23, 2008
- C. Purple Presentation: IP-Text Relay, Speed of Answer and Penalty Analysis, November 2, 2011
- D. TRS Administrator Decision, December 22, 2011
- E. Amended Appeal of Withholding Due to Speed of Answer in July-September, November 8, 2011
- F. Summary of Reimbursements Under Three Approaches
- G. Data Supporting Reimbursement Under Extenuating Circumstances & Sliding Scale Approach
- H. Data Supporting Reimbursement Under Sliding Scale Approach

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT A**



Federal Communications Commission  
Washington, D.C. 20554

January 23, 2008

**SENSITIVE AND CONFIDENTIAL**

Mr. Martin Beaulac  
Nordia, Inc.  
3100 boul. De la Cote Vertu, Office 510  
Saint-Laurent, Canada H4R2J8

Re: Compliance with the IP Relay Speed of Answer Rule

Dear Mr. Beaulac:

On June 15, 2006, the Consumer and Governmental Affairs Bureau (Bureau) notified Nordia, Inc. (Nordia) that our records reflected violations by Nordia of the IP Relay speed-of-answer rule. *See* 47 C.F.R. 64.604(b)(2)(ii) (the 85/10 rule).<sup>1</sup> Specifically, Nordia missed compliance with the 85/10 rule on 142 days during the twelve-month period from May 2005 through April 2006.<sup>2</sup> The total compensation paid to Nordia from the Interstate TRS Fund for those 142 days was \$ [REDACTED].<sup>3</sup> The Bureau requested either that Nordia remit that amount to NECA, or file a petition for waiver of the 85/10 rule for those days on which the rule was not met, including specific reasons or detailed explanations of mitigating circumstances as to why the rule was not met on those days.

On August 2, 2006, Nordia filed its response, including a request for waiver of the 85/10 rule from May of 2005 through April, 2006.<sup>4</sup> Nordia filed supplemental information on December 12, 2006.<sup>5</sup> In its waiver request, Nordia provides explanations for 128 of the 142 days on which it was not in compliance with the 85/10 rule. Nordia argues that the primary reason it failed to meet the minimum speed-of-answer rule was due to "massive and persistent pattern of illegitimate calls" during its first year of operations.<sup>6</sup> Nordia asserts that this pattern of calls, generally referred to as "IP Relay fraud," was beyond its control and resulted in a situation in which it was not possible for Nordia to plan for and maintain adequate staffing or to devise

<sup>1</sup> Letter from Monica Desai, Chief, Consumer and Governmental Affairs Bureau, FCC, to Martin Beaulac, Nordia, dated June 15, 2006 (June 15 Letter).

<sup>2</sup> Compliance with the 85/10 rule is measured daily. 47 C.F.R. § 64.604(b)(2)(ii)(C).

<sup>3</sup> The National Exchange Carrier Association (NECA) administers the Fund.

<sup>4</sup> *Compliance with the IP Relay Speed of Answer Rule, Nordia, Inc. Response and Petition for Waiver*, filed August 2, 2006 (Nordia Petition).

<sup>5</sup> Letter from Gregory C. Staple, Vinson & Elkins, to Jay Keithley, Deputy Chief, Consumer and Governmental Affairs Bureau, FCC, dated December 12, 2006 (Supplemental Letter).

<sup>6</sup> Nordia Petition at 8.

adequate call handling procedures. Nordia argues that the onslaught of fraudulent calls coupled with its efforts to accommodate a growing volume of legitimate calls took time and experience to develop adequate staffing plans and training.<sup>7</sup>

Nordia also argues that burdens placed on its system from fraudulent calls were sufficient to constitute a "network failure."<sup>8</sup> Nordia asserts that the Commission has not defined "network failure" for TRS purposes; however, it cites section 4.5 of the Commission's rules defining "outage" as "a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in performance of a communications provider's network."<sup>9</sup> Accordingly, Nordia maintains that on the days it experienced significant volume of illegitimate calls, the systems used to provide relay services either failed or suffered degradation in performance that impacted the ability of legitimate IP Relay customers to "establish and maintain a channel of communication."<sup>10</sup>

In addition to the above arguments concerning IP Relay fraud, Nordia provides specific days during which there were specific technological failures due to system faults, flooding and network outages.<sup>11</sup> Nordia also provides information of specific days during which it experienced unpredictable traffic volume increases relating to the introduction of wireless instant messaging.<sup>12</sup>

Generally, the Commission's rules may be waived for good cause shown.<sup>13</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>14</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>15</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>16</sup> The Commission must take a "hard look" at applications for waiver and must

---

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 14.

<sup>9</sup> *Id.* (citing 47 C.F.R. § 4.5(a)).

<sup>10</sup> Nordia Petition at 14.

<sup>11</sup> Nordia Petition Exh. A at 3.

<sup>12</sup> Nordia Petition Exh. A at 6. In its Supplemental Letter, Nordia provides, in spreadsheet format, a listing of the dates on which it failed to comply with the 85/10 rule, including: its answer performance (percentage); the number of minutes handled on each date; the amount of compensation for each date; and a brief explanation that Nordia contends represents "special circumstances" justifying a waiver for each day. This information, except for the "special circumstances" explanations, was also provided in Nordia's initial petition.

<sup>13</sup> 47 C.F.R. § 1.3.

<sup>14</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>15</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>16</sup> *Northeast Cellular*, 897 F.2d at 1166.

consider all relevant factors when determining if good cause exists.<sup>17</sup> Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.<sup>18</sup>

Data Conflicts. As an initial matter, we observe that there are discrepancies between data provided to Nordia in our June 15<sup>th</sup> Letter, which was based on information provided to the Commission by NECA, and the data included in Nordia's petition and its supplemental information. Specifically, there are differences between the number of minutes for each given day and the percentages of compliance. Some of these differences are significant. Nordia has not provided any support for the calculation of its compliance percentages; however, it has provided affidavits with declarations, under penalty of perjury, to the veracity of the data submitted.<sup>19</sup> Therefore, we base our decisions herein on the data submitted by Nordia and supported by its affidavits.

Special Circumstances. Nordia's assertion of "special circumstances" for noncompliance with the 85/10 rule are of three types: "call fraud," "network failure," and "substantial compliance." We address each of these below:

Call Fraud and High Call Volumes. Section 64.604(b)(2)(i) of the Commission's rules provides:

TRS providers shall ensure adequate TRS facility staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA [Communications Assistant] unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.<sup>20</sup>

A provider supplying evidence that call volumes on a specific day or portion thereof represented such a pronounced and unforeseeable divergence from normal call volumes, and are beyond the providers control, could, in appropriate cases, qualify for a waiver of the 85/10 rule. However, Nordia has not provided such evidence. For each day during which Nordia failed to comply with the 85/10 rule due to "call fraud," Nordia merely states "[x]% of calls from suspect IP addresses." Nordia does not explain or define "suspect IP addresses" and fails to make a case that the indicated percentages fall beyond reasonable projected call volumes. Evidence supplied by Nordia shows the total IP Relay calls handled for the twelve-month period at issue on a month-by-month basis.<sup>21</sup> This data reveals that Nordia experienced significant growth in the number of calls handled from month to month, including a thirty-eight percent growth from October to November and an almost 100 percent growth from January to February. Therefore, anticipating additional calls should have been foreseeable.

Moreover, IP Relay fraud calls in and of themselves do not present a "special

<sup>17</sup> *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

<sup>18</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>19</sup> Nordia attached affidavits to both its Petition and Supplemental Letter.

<sup>20</sup> 47 C.F.R. § 64.604(b)(2)(i).

<sup>21</sup> Nordia Petition Exh. A.

circumstance" because all providers of IP Relay Service receive "attacks" of IP Relay fraud.<sup>22</sup> In fact, from reviewing the data for all providers of IP Relay Service, we determined that several providers were able to meet the 85/10 requirement despite attacks from fraudulent calls. Furthermore, the rule specifically directs providers to "ensure that adequate network facilities" are used so that "loop trunk congestion shall be functionally equivalent to what a voice caller would experience . . . ."<sup>23</sup> The purpose of the rule -- to provide a standard of service consistent with the rule -- would not be met by waiving the 85/10 rule in this instance, therefore we find that granting the waiver due to fraudulent calls would not be in the public interest.

As with IP Relay fraud, "spikes" and other "unpredictable" increases in call volumes are not unique to any single provider. While significant, unforeseeable spikes in call volumes may, in appropriate circumstances, support a waiver of the 85/10 rule, Nordia has not provided evidence to make such a showing. Moreover, as we found for fraudulent calls, there are providers that operate their IP Relay offerings in a manner such that the 85/10 rule is met despite variations in call volumes. Additionally, we find that waiving the 85/10 rule because of insignificant and predictable increases in call volumes would not be in the public interest. Therefore, we deny Nordia's request for waiver related to call volumes.

**Network Failure.** Nordia provides specific days during which there were specific technological failures due to system faults, flooding and network outages.<sup>24</sup> Nordia states that Sprint network failures led to an involuntary increase in call volumes of as much as 200 percent on May 11, 2005, December 16, 2005 and January 9, 2006. A network switch failure impeded Nordia's operations on August 8, 2005. In these circumstances, it appears that significant increases in call volumes resulted from network failures that were beyond Nordia's control. In such circumstances, where the divergence from normal call volumes is so pronounced, unforeseeable, and outside of the provider's control, we believe that a waiver is reasonable. We decline, however, to grant a waiver for June 1, 2005 based on CA workstation outages. Maintenance of these workstations is wholly within Nordia's control, and Nordia is required to maintain adequate facilities to provide service in accord with all applicable Commission rules, including the 85/10 rule. Granting a waiver in such a case is manifestly contrary to the public interest.

**Substantial Compliance.** We reject Nordia's argument that eighty percent or better constitutes "substantial compliance" with the rule. The 85/10 rule is specific to the percentage for which compliance can be found. Furthermore, Nordia offers no evidence to mitigate its failure to comply with the rule for these ten days. It only states that there was "substantial compliance."

**Reimbursement Calculation.** Mandatory minimum standards for IP Relay speed of answer, as expressed through the Commission's 85/10 rule, are not optional. Compliance with the 85/10 rule is important as a matter of public policy because, as the Commission concluded

<sup>22</sup> Commission staff met with IP Relay providers on this issue in May 2004, and the Commission issued a Public Notice alerting consumers and businesses to the potential for such calls in June 2004. *FCC Reminds Public of Requirements Regarding Internet Relay Service and Issues Alert*, Public Notice, 19 FCC Red 10740 (CGB 2004). Moreover, this issue has been the issue of press reports at least since April 2004. See, e.g., *Out of Africa: International Scam Artists Steal Big Money Through a New Telephone Service for the Deaf - and AT&T and the State of Maryland Benefit*, Baltimore City Paper, Apr. 14, 2004.

<sup>23</sup> 47 C.F.R. § 64.602(b)(2)(ii).

<sup>24</sup> Nordia Petition Exh. A at 5.

when it originally adopted the standard, it "best meet[s] our goal of providing relay services which are functionally equivalent to voice telephone services."<sup>25</sup> Nevertheless, we find that it is reasonable to impose a graduated formula for Nordia's return of portions of its Interstate TRS Fund reimbursements for days that it missed compliance with the 85/10 rule, rather than require forfeiture of the entire day's reimbursements. For one thing, it averts a situation where a relatively small miss causes a provider to lose all compensation for the day, which could give the provider incentive to provide poor or no service for the remainder of the day once it calculates that it would miss compliance with the 85/10 rule. In addition, a graduated formula takes into account that, on those days the provider missed compliance, it still provided a service of value, but also acknowledges that it should return some portion of its reimbursements for those days due to its noncompliance with the rule, and that the portion should increase commensurate with the degree of its noncompliance. Such noncompliance not only causes inconvenience for consumers, but also may undermine consumers' faith in the reliability of IP Relay services, in contravention of Congress' stated goals for relay services.<sup>26</sup>

We further believe that, absent waiver of the 85/10 rule for a particular day, it is appropriate to apply a graduated formula where the provider misses compliance with the rule, but meets the test for at least 65 percent of its call volume on that particular day, and where the provider provides a plausible explanation for its lack of full compliance with the 85/10 rule on the particular day. Otherwise, we find it proper to require an entire day's compensation from the provider, because below the 65 percent threshold the failure to provide service is so severe that the service is not being provided on a functionally equivalent basis to voice telephone services.

Consistent with the above, and set forth in the Table below and in the Appendix, we calculate that Nordia must repay the Interstate TRS Fund \$ [REDACTED] of monies reimbursed by the Fund to Nordia where it rendered service in violation of the Commission's rules. The repayment that we order here is separate and apart from any potential enforcement action that the Commission or its Enforcement Bureau may take against Nordia for failure to comply with the Commission's rules, but will not be deemed an admission of liability in any such enforcement action.

**TABLE: Calculation of Reimbursements that Nordia Must Repay**

<u>Month</u>	<u>Dates and Speed of Answer Performance</u>	<u>Nos. Minutes</u>	<u>Amount of Compensation</u>	<u>% Must Repay</u>	<u>Amount Must Repay</u>
May 2005	3rd	75%	[REDACTED]	10%	\$ [REDACTED]
	5th	84%	[REDACTED]	1%	\$ [REDACTED]
	6th	77%	[REDACTED]	8%	\$ [REDACTED]

<sup>25</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Red 4657, 4661, para. 21 (1991).

<sup>26</sup> See 47 U.S.C. § 225(b)(1) (goal "to make available to all individuals in the United States a rapid, efficient nationwide communication service . . . [through] ensur[ing] that interstate and intrastate telecommunications relay services are available to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States").

Redacted  
IN FULL

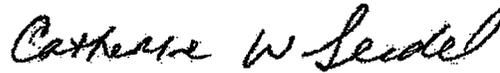
6-9

Accordingly, IT IS ORDERED that, pursuant to the authority granted by sections 1, 4(i), 4(j), 5, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155 and 225, and pursuant to the authority delegated in sections 0.141, 0.361, and 64.604 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, and 64.604, Nordia, Inc. MUST REMIT \$481,077 to NECA, TRS Fund Administration, attention John Ricker, 80 South Jefferson Road, Whippany, NJ, 07981. Remittance of this amount will not be deemed an admission of liability in any Commission enforcement action. This Order shall be effective upon the date appearing at the top of this letter, in accordance with section 1.4(b)(5) of the Commission's rules, 47 C.F.R. § 1.4(b)(5).

IT IS FURTHER ORDERED that the Waiver Request filed by Nordia, Inc. IS GRANTED IN PART AND DENIED IN PART as provided above.

If you have any questions, please contact Tom Chandler, Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau, FCC, at (202) 418-1475, TTY (202) 418-0597, or [thomas.chandler@fcc.gov](mailto:thomas.chandler@fcc.gov).

Sincerely,



Catherine W. Seidel  
Chief  
Consumer and Governmental Affairs Bureau

Cc: Kris Monteith, Chief  
Enforcement Bureau

APPENDIX

TABLE: Percentage of Reimbursements that Provider Must Return

<u>% Calls Answered Within 10 Seconds</u>	<u>Cumulative Days Missed Per Month</u>	
	<u>1<sup>st</sup> - 5<sup>th</sup> Day Missed</u>	<u>Greater than 5 Days Missed</u>
84%	1%	2%
83%	2%	4%
82%	3%	6%
81%	4%	8%
80%	5%	10%
79%	6%	12%
78%	7%	14%
77%	8%	16%
76%	9%	18%
75%	10%	20%
74%	11%	22%
73%	12%	24%
72%	13%	26%
71%	14%	28%
70%	30%	30%
69%	32%	32%
68%	34%	34%
67%	36%	36%
66%	38%	38%
65%	40%	40%
<65%	ALL	ALL

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT B**



Federal Communications Commission  
Washington, D.C. 20554

January 23, 2008

**SENSITIVE AND CONFIDENTIAL**

Davida Grant  
Senior Counsel  
AT&T Services, Inc.  
1120 20<sup>th</sup> Street, N.W.  
Suite 1000  
Washington, D.C. 20036

Re: Compliance with the IP Relay Speed of Answer Rule

Dear Ms. Grant:

On June 15, 2006, the Consumer and Governmental Affairs Bureau (Bureau) notified AT&T, Inc. (AT&T) that our records reflected violations by AT&T of the IP Relay speed of answer rule. *See* 47 C.F.R. § 64.604(b)(2)(ii) (the 85/10 rule).<sup>1</sup> Specifically, AT&T missed compliance with the 85/10 rule for 26 days during the 12 month period from May 2005 through April 2006.<sup>2</sup> The total compensation paid to AT&T from the Interstate TRS Fund (Fund) for those 26 days was \$ [REDACTED].<sup>3</sup> The Bureau requested either that AT&T remit that amount to NECA, or file a petition for waiver of the 85/10 rule for those days on which the rule was not met, including specific reasons or detailed explanations of mitigating circumstances as to why the rule was not met on those days.

On July 31, 2006, AT&T filed its response, including a request for waiver of the 85/10 rule for all 26 missed days during this period.<sup>4</sup> As a general matter, in light of the number of missed days and the reasons it provides for most of them, AT&T urges the Bureau to find that it

---

<sup>1</sup> Letter from Monica Desai, Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, to David Hill, AT&T (dated June 15, 2006) (June 15 Letter).

<sup>2</sup> Compliance with the 85/10 rule is measured daily. 47 C.F.R. § 64.604(b)(2)(ii)(C).

<sup>3</sup> The National Exchange Carriers Association (NECA) administers the Fund. In the June 15 Letter, the Bureau tabulated the total payment to AT&T from the Fund for those 26 days as \$1,239,619. In its response to the June 15 Letter, however, AT&T correctly points out that the number of IP Relay minutes and compensation received for May 26, 2005 should be 29,880 and \$40,308, respectively, rather than 298,880 and \$403,189. *See* AT&T Response at 2 n.3. Therefore, the correct amount for the total payment to AT&T from the Fund for those 26 days is \$876,737.

<sup>4</sup> AT&T later supplemented its response with further explanations for its noncompliance and with an affidavit under penalty of perjury attesting to the veracity of its assertions. Letter from Toni R. Acton, Associate Director, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission (filed Dec. 13, 2006) (Supplemental Filing). In conjunction with its response, AT&T also filed a request for confidential treatment of certain information contained in its response.

is operating "in substantial compliance" with the 85/10 rule, "and thus is entitled to retain its TRS Fund reimbursement."<sup>5</sup>

Noncompliance Due to Excessive Call Volume. As to its noncompliance with the rule on specific days, AT&T attributes seven days to "extremely high call volumes" during certain periods relative to other volumes on the same day or on corresponding days during prior weeks. AT&T reports that as an example, the call volumes for January 4, 2006 were on average 26 percent higher than the volumes experienced during the same day of the week during the prior two weeks.<sup>6</sup>

For another three days, AT&T states that it experienced high volumes due to "radio-induced prank calls." According to AT&T, in May 2005, Howard Stern highlighted AT&T's Relay services during his radio show, and advised listeners that they could call AT&T and get the CAs to say anything they wanted to a called party.<sup>7</sup> Furthermore, AT&T determined that another IP Relay provider's service was down on "at least one of the days," though AT&T concedes it is difficult to determine whether an increase in call volumes for the day(s) was attributable to that factor, one of the other aforementioned factors, or a combination thereof.<sup>8</sup>

Noncompliance Due to Unscheduled Leave of CAs. For 11 of the days, AT&T claims that a "significant number" of IP Relay Communication Assistants (CAs) took unscheduled leave from work, and that AT&T was unable to secure sufficient replacement staffing to handle call volumes during certain of those times.<sup>9</sup> In support of this justification, AT&T states that there is a dearth of available CAs in the industry, and that where a number of CAs "coincidentally take unscheduled leave on a given day," it is impossible in some instances for a provider to secure sufficient additional staffing to handle call volumes, whether anticipated or unanticipated.<sup>10</sup>

Noncompliance Due to Inclement Weather. AT&T also cites Hurricanes Katrina and Rita "and other inclement weather" for a shortage of CAs and abnormal call volumes on four days.<sup>11</sup>

Aside from its justifications for noncompliance with the rule on specific days, AT&T also presents general reasons to waive its noncompliance with the rule on those days. First, it argues that there are critical distinctions between traditional TRS and IP Relay that make it more difficult for IP Relay providers to ensure compliance with the 85/10 rule than their traditional TRS counterparts. AT&T elaborates that the maximum number of potential customers for a traditional TRS provider is the maximum number of hearing and speech-impaired customers in a state, while for an IP Relay provider, it is *all* TRS users in and outside of the United States. Therefore, according to AT&T, given the large base of potential users of IP Relay, it is

---

<sup>5</sup> AT&T Response at 7.

<sup>6</sup> *See id.* at 6.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 7. AT&T originally presented this explanation for nine days, but raised that number to 11 in its Supplemental Filing. It also added call "volume spikes" as an additional explanation for three of the 11 days that it claimed limited CA resources. *See* Supplemental Filing Attach. 1.

<sup>10</sup> AT&T Response at 9.

<sup>11</sup> *Id.* at 7.

"extremely difficult" for IP Relay providers to forecast reasonably call volumes day over day.<sup>12</sup> Second, AT&T contends that it would be inefficient and costly for AT&T to schedule staffing to handle maximum potential call volumes, because if it and other providers did that, overall industry costs for TRS would be inflated, and ultimately would result in higher rates for consumers. AT&T maintains that its approach to staffing appropriately balances the interests of providing functional equivalence to voice services and avoiding wasteful expenditures.<sup>13</sup>

Generally, the Commission's rules may be waived for good cause shown.<sup>14</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>15</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>16</sup> Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>17</sup> The Commission must take a "hard look" at applications for waiver and must consider all relevant factors when determining whether good cause exists.<sup>18</sup> In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.<sup>19</sup>

Noncompliance Due to Excessive Call Volume. We find that AT&T's largely unsupported claims of "extremely high call volumes" for its noncompliance with the 85/10 rule for seven days do not meet the "high hurdle" required for a waiver.<sup>20</sup> For instance, AT&T only provides variance-in-volumes figures for three of the seven days, and it is unclear how AT&T measured these variances.<sup>21</sup> In the absence of such information, we have no basis for concluding that high call volumes directly affected AT&T's speed of answer performance on those seven days.

Noncompliance Due to Unscheduled Leave of CAs. We also are not persuaded by AT&T's allegations that it failed to comply with the 85/10 rule on 11 days due to a combination of a "significant number" of CAs taking unscheduled leave from work and purported call volume spikes. It is AT&T's responsibility to manage properly the scheduling of its workforce and proper staffing of its call centers. While we are sympathetic to AT&T's arguments that it would be inefficient, costly and contrary to the public interest for AT&T to schedule staffing to handle maximum potential call volumes, the sole focus of AT&T's justification for eight days of noncompliance is insufficient staffing, not unmanageable call volumes. For the three days where AT&T also claims call volume spikes, it provides no data in support.<sup>22</sup> Given these circumstances we do not believe that a waiver is merited for the 11 days at issue.

---

<sup>12</sup> *Id.* at 8.

<sup>13</sup> *See id.* at 6 n.12, 9.

<sup>14</sup> 47 C.F.R. § 1.3.

<sup>15</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>16</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>17</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>18</sup> *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

<sup>19</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>20</sup> *WAIT Radio*, 418 F.2d at 1157 (a waiver applicant "faces a high hurdle even at the starting gate").

<sup>21</sup> *See* AT&T Response at 6; Supplemental Filing Attach. 1.

<sup>22</sup> *See* Supplemental Filing Attach. 1.

Noncompliance Due to Inclement Weather. AT&T's attribution to Hurricanes Katrina and Rita "and other inclement weather" for a shortage of CAs and abnormal call volumes on four days also is not sufficient to justify a waiver for those days. Again here, AT&T's showing is devoid of key information necessary to justify a waiver.<sup>23</sup> For instance, AT&T does not specify what the "abnormal" call volumes on those days were. In addition, in the cases of the hurricanes, AT&T does not describe where its call centers are, or where the bulk of the calls occurred. In sum, AT&T has not met its burden of demonstrating a nexus between unusually severe weather and its noncompliance with the 85/10 rule on the four days in question. Absent such a showing, AT&T's case for a waiver for these four days essentially comes down to a reiteration of its arguments concerning high call volumes and unscheduled leave of CAs, both of which we reject above and find no more supported or compelling with respect to the four days in question.

Noncompliance Due to High Volume of Prank Calls. Like with AT&T's assertions regarding "extremely high call volumes," we find that ATT's largely unsupported claims of a high volume of radio-induced prank calls for its noncompliance with the 85/10 rule for three days do not warrant a waiver. AT&T, for instance, provides no data concerning how call volumes on the days for which it alleges noncompliance due to radio-induced prank calls varied from the same days in previous weeks. AT&T also does not provide transcripts, nor even days or times, of the broadcasts that purportedly triggered waves of fraudulent IP-Relay calls.<sup>24</sup> In sum, AT&T has not demonstrated any nexus between radio broadcasts and spikes in call volumes. Without such a demonstration, it does not warrant a waiver for these three days.

Noncompliance Due to Another IP Relay Provider's Service Being Down. We decline to waive the 85/10 rule for AT&T's unsupported assertion that another IP Relay provider's service being down caused AT&T's noncompliance "on at least one of the days."<sup>25</sup> The vagueness of AT&T's claim in this regard is borne out by its concession that it is unable to determine whether an increase in call volumes for the day(s) was attributable to that factor, one of the other aforementioned factors, or a combination thereof.<sup>26</sup> For instance, for its noncompliance on June 3, 2005, AT&T merely points to a volume increase due to "probable" migration from another Relay provider with reported service problems.<sup>27</sup> AT&T may not secure a waiver from such vague claims and where it provides no evidence to support its justification.

Reimbursements Calculation. Mandatory minimum standards for IP Relay speed of answer, as expressed through the Commission's 85/10 rule, are not optional. Compliance with the 85/10 rule is important as a matter of public policy because, as the Commission concluded when it originally adopted the rule, it "best meet[s] our goal of providing relay services which are

---

<sup>23</sup> See *id.*; AT&T Response at 7.

<sup>24</sup> See AT&T Response at 7; Supplemental Filing Attach. 1.

<sup>25</sup> AT&T Response at 7.

<sup>26</sup> See *id.*

<sup>27</sup> Supplemental Filing Attach. 1. AT&T also cites another IP Relay provider's service outage as a secondary cause of its noncompliance on January 9, 2006. See *id.* We have addressed AT&T's noncompliance on January 9, 2006 above in relation to its claims of "extremely high call volumes" on seven days. For that day, AT&T only states that volume increases were due "in part" to another IP Relay service provider's service outage, without providing any further information such as the identity of the provider or time and duration of the outage.

functionally equivalent to voice telephone services.<sup>28</sup> Nevertheless, we believe that under certain circumstances, it would be reasonable to impose a graduated formula for AT&T's return of portions of its Fund reimbursements for days that it missed compliance with the 85/10 rule, rather than require forfeiture of the entire days' reimbursements. For one thing, it averts a situation where a relatively small miss causes a provider to lose all compensation for the day, which could give the provider incentive to provide poor or no service for the remainder of the day once it calculates that it would miss compliance with the 85/10 rule. In addition, a graduated formula takes into account that, on those days the provider missed compliance, it still provided a service of value, but also acknowledges that it should return some portion of its reimbursements for those days due to its noncompliance with the rule, and that the portion should increase commensurate with the degree of its noncompliance. Our belief in the propriety of applying a graduated formula is bolstered further by the facts that AT&T's worst speed of answer performance during its 26 days of noncompliance during the May 2005 through April 2006 time period was 78%,<sup>29</sup> and that there have been only three instances of AT&T's noncompliance with the 85/10 rule since May 1, 2006.

We further believe that, absent waiver of the 85/10 rule for a particular day, it is appropriate to apply a graduated formula where the provider misses compliance with the rule, but meets the test for at least 65 percent of its call volume on that particular day, and where the provider provides a plausible explanation for its lack of full compliance with the 85/10 rule on the particular day. Otherwise, we find it proper to require an entire day's compensation from the provider, because below the 65 percent threshold the failure to provide service is so severe that the service is not being provided on a functionally equivalent basis to voice telephone services.

Consistent with the above, and as set forth in the Table below and in the Appendix, we calculate that AT&T must repay the Fund \$[REDACTED] where it did not render service in compliance with the Commission's rules. The repayment that we order here is separate and apart from any potential enforcement action that the Commission or its Enforcement Bureau may take against AT&T for failure to comply with the Commission's rules, but will not be deemed to be an admission of liability in any such potential enforcement action.

**TABLE: Calculation of Reimbursements that AT&T Must Repay**

<u>Month</u>	<u>Dates and Speed of Answer Performance</u>	<u>Nos. Minutes</u>	<u>Amount of Compensation</u>	<u>% Must Repay</u>	<u>Amount Must Repay</u>
May 2005	2 <sup>nd</sup> 84%	[REDACTED]	\$[REDACTED]	1%	\$[REDACTED]
	3 <sup>rd</sup> 83%	[REDACTED]	\$[REDACTED]	2%	\$[REDACTED]
	6 <sup>th</sup> 80%	[REDACTED]	\$[REDACTED]	5%	\$[REDACTED]
	16 <sup>th</sup> 82%	[REDACTED]	\$[REDACTED]	3%	\$[REDACTED]
	24 <sup>th</sup> 82%	[REDACTED]	\$[REDACTED]	3%	\$[REDACTED]

<sup>28</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4661, para. 21 (1991).

<sup>29</sup> See June 15 Letter at 2.

<u>Month</u>	<u>Dates and Speed of Answer Performance</u>		<u>Nos. Minutes</u>	<u>Amount of Compensation</u>	<u>% Must Repay</u>	<u>Amount Must Repay</u>
	26 <sup>th</sup>	84%	[REDACTED]	\$ [REDACTED] <sup>30</sup>	2%	\$ [REDACTED]
Jun. 2005	3 <sup>rd</sup>	79%	[REDACTED]	\$ [REDACTED]	6%	\$ [REDACTED]
Jul. 2005	26 <sup>th</sup>	83%	[REDACTED]	\$ [REDACTED]	2%	\$ [REDACTED]
Aug. 2005	5 <sup>th</sup>	83%	[REDACTED]	\$ [REDACTED]	2%	\$ [REDACTED]
	25 <sup>th</sup>	83%	[REDACTED]	\$ [REDACTED]	2%	\$ [REDACTED]
Sep. 2005	3 <sup>rd</sup>	81%	[REDACTED]	\$ [REDACTED]	4%	\$ [REDACTED]
	25 <sup>th</sup>	83%	[REDACTED]	\$ [REDACTED]	2%	\$ [REDACTED]
Oct. 2005	5 <sup>th</sup>	84%	[REDACTED]	\$ [REDACTED]	1%	\$ [REDACTED]
Nov. 2005	6 <sup>th</sup>	84%	[REDACTED]	\$ [REDACTED]	1%	\$ [REDACTED]
	13 <sup>th</sup>	84%	[REDACTED]	\$ [REDACTED]	1%	\$ [REDACTED]
Dec. 2005	4 <sup>th</sup>	81%	[REDACTED]	\$ [REDACTED]	4%	\$ [REDACTED]
	5 <sup>th</sup>	84%	[REDACTED]	\$ [REDACTED]	1%	\$ [REDACTED]
	14 <sup>th</sup>	78%	[REDACTED]	\$ [REDACTED]	7%	\$ [REDACTED]
	15 <sup>th</sup>	82%	[REDACTED]	\$ [REDACTED]	3%	\$ [REDACTED]
	25 <sup>th</sup>	81%	[REDACTED]	\$ [REDACTED]	4%	\$ [REDACTED]
Jan. 2006	4 <sup>th</sup> <sup>31</sup>	84%	[REDACTED]	\$ [REDACTED]	1%	\$ [REDACTED]
	9 <sup>th</sup>	82%	[REDACTED]	\$ [REDACTED]	3%	\$ [REDACTED]
Feb. 2006	21 <sup>st</sup>	81%	[REDACTED]	\$ [REDACTED]	4%	\$ [REDACTED]
Apr. 2006	3 <sup>rd</sup>	82%	[REDACTED]	\$ [REDACTED]	3%	\$ [REDACTED]
	18 <sup>th</sup>	83%	[REDACTED]	\$ [REDACTED]	2%	\$ [REDACTED]
	21 <sup>st</sup>	78%	[REDACTED]	\$ [REDACTED]	7%	\$ [REDACTED]
<b>TOTAL</b>				\$ [REDACTED]		\$ [REDACTED]

<sup>30</sup> AT&T correctly points out that the number of IP Relay minutes on and compensation received for May 26, 2005 should be 29,880 and \$40,308 respectively. See *supra* note 3; AT&T Response at 2 n.3.

<sup>31</sup> This date was reported as January 5, 2006 in the June 15 Letter. June 15 Letter at 2. AT&T correctly points out, however, that it missed compliance with the 85/10 rule on January 4, 2006, not January 5, and that the speed of answer performance, minutes, and compensation reported for January 5 actually are correct for January 4. See AT&T Response at 2 n.3.

Accordingly, IT IS ORDERED that, pursuant to the authority granted by sections 1, 2, 4(i), 4(j), 5, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 155 and 225, and pursuant to the authority delegated in sections 0.141, 0.361, and 64.604 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, and 64.604, AT&T, Inc. MUST REMIT \$25,424 to NECA, TRS Fund Administration, attention John Ricker, 80 South Jefferson Road, Whippany, NJ, 07981. This Order shall be effective upon the date appearing at the top of this letter, in accordance with section 1.4(b)(5) of the Commission's rules, 47 C.F.R. § 1.4(b)(5).

IT IS FURTHER ORDERED that the Waiver Request filed by AT&T IS GRANTED IN PART AND DENIED as provided above.

If you have any questions, please contact Tom Chandler, Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau, FCC, at (202) 418-1475, TTY (202) 418-0597, or [thomas.chandler@fcc.gov](mailto:thomas.chandler@fcc.gov).

Sincerely,



Catherine W. Seidel  
Chief, Consumer and Governmental Affairs Bureau

Cc: Kris Monteith, Chief  
Enforcement Bureau

APPENDIX

TABLE: Percentage of Reimbursements that Provider Must Return

<u>% Calls Answered Within 10 Seconds</u>	<u>Cumulative Days Missed Per Month</u>	
	<u>1<sup>st</sup> - 5<sup>th</sup> Day Missed</u>	<u>Greater than 5 Days Missed</u>
84%	1%	2%
83%	2%	4%
82%	3%	6%
81%	4%	8%
80%	5%	10%
79%	6%	12%
78%	7%	14%
77%	8%	16%
76%	9%	18%
75%	10%	20%
74%	11%	22%
73%	12%	24%
72%	13%	26%
71%	14%	28%
70%	30%	30%
69%	32%	32%
68%	34%	34%
67%	36%	36%
66%	38%	38%
65%	40%	40%
<65%	ALL	ALL

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT C**

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT REDACTED**

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT D**

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT REDACTED**

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT E**

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT REDACTED**

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT F**

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT REDACTED**

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT G**

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT REDACTED**

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT H**

**REDACTED, FOR PUBLIC INSPECTION**

**EXHIBIT REDACTED**