

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

In the Matter of)	
)	
Structure and Practices of the Video Relay)	CG Docket No. 10-51
Service Program; Telecommunications Relay)	
Services and Speech-to-Speech Services for)	
Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	
To: The Commission)	

**COMMENTS TO FNPRM ON STRUCTURE AND PRACTICES
OF THE VIDEO RELAY SERVICES PROGRAM**

PURPLE COMMUNICATIONS, INC.

Kelby Brick, Vice President, Regulatory
and Strategic Policy
Purple Communications, Inc.
2118 Stonewall Road
Catonsville, MD 21228

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

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COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

Purple Communications, Inc. (“Purple”) is pleased to provide comments on the efforts of the Federal Communications Commission (the “Commission”) to ensure that Video Relay Service (VRS) is “effective, efficient, and sustainable for the future.”¹ A summary of Purple’s response to the Further Notice of Proposed Rulemaking on Structure and Practices of the VRS Program dated December 15, 2011 (“FNPRM”) is also available in American Sign Language (“ASL”) at the following location: www.purple.us/2012fnprm.

I. EXECUTIVE OVERVIEW

The Internet-based Telecommunication Relay Services (“iTRS”) program is a vital part of the civil rights of deaf and hard of hearing Americans.² Over the past decade the program has made tremendous progress improving the quality and variety of communications options available to people who are deaf and hard of hearing. Recent efforts to improve the program have led to, among other things, the appointment of a new fund administrator, clarity of compensable call types, elimination of non-certified white label providers, higher standards for call handling and reporting, and elevated requirements for iTRS program eligibility.

Purple respects the Commission’s desire to bring about additional structural reform without unraveling positive changes already brought to the industry. Purple supports the Commission’s goal to develop VRS policy that enables the Commission to serve the greatest number of consumers, with the highest quality service, at the lowest possible cost, while

¹ *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Further Notice of Proposed Rulemaking, 2011 FCC LEXIS 5101, ¶ 1 (Dec. 15, 2011) (FNPRM).

² See generally Karen Peltz Strauss, *A New Civil Right: Telecommunications Equality for Deaf and Hard of Hearing Americans*, (Gallaudet University Press) (2006).

preserving consumer choice and pursuing functional equivalence. The query of this FNPRM is to define an industry model that most effectively balances those oft-competing objectives and achieve the desired goal.

The Commission's desired outcome will only result from a truly competitive marketplace with multiple certified providers operating at scale and competing fairly on the basis of quality, innovation and cost. Although a single provider currently dominates the VRS market, eliminating all VRS market competition would result in total loss of consumer choice, raise public safety concerns, significantly hamper innovation and impede the Commission's obligations under the Americans with Disabilities Act of 1990, as amended (the "ADA"). Therefore, Purple's proposals herein seek a correction to existing market imbalances to achieve a competitive marketplace that fulfills the statutory mandate of providing functionally equivalent relay services in the most efficient manner.

As described in more detail below, Purple offers the following recommendations in support of the Commission's goals to lower costs, improve efficiency, strengthen oversight, sustain competition and facilitate innovation:

- The severe market imbalance must be corrected for the Commission to fulfill its obligations under the ADA. To rectify the market disparities, Purple advocates for the introduction of market share caps with no single provider having more than a majority of the market share.
- To achieve functional equivalence and regardless of the rate methodology chosen by the Commission, VRS customers should be offered a choice of providers and the option of multiple accounts.

- An independently operated VRS User Database should be implemented to register customers with providers, verify customer eligibility and identity, and assist with broadband subsidies.
- Providers should include the promotion of broadband subsidy programs as part of their on-going outreach efforts, which should remain reimbursable by the iTRS Fund (the “Fund”).
- The Commission should establish technical standards and contract with a third-party to outsource testing and provide certification of technology submitted by providers.
- Additional standards and policies should be modernized, including an update of the speed of answer requirements, the allowance for skill-based routing for specialized interpreters, permitting hearing users proficient in ASL to obtain ten-digit numbers for point-to-point calls only, and mandating elements of provider compliance policies.
- Sub-scale provider subsidies should be eliminated; in their place, the Commission should adopt multi-year, unitary rates to improve the efficiency of the program for the Commission and the predictability of reimbursements for providers. Purple proposes a 4-year transition to a unitary per minute rate with share caps which will result in near-term and long-term Fund savings for the Commission, the correction of market imbalances and the creation of a predictable transition path for providers and consumers.

While Purple believes the Commission’s reform efforts will be furthered under a modified per minute model or a per user model, Purple believes a per user model bears significant implementation complexity, may exacerbate consumer quality and safety concerns, and exposes the Fund to potential new risks of misuse and abuse by both providers and consumers. Purple proposes alternative models herein each with the goal of bringing about the

desired reform and accountability, while also being practical enough to be smoothly implemented over time. Specifically, Purple recommends the adoption of a modified per minute single rate structure and a bidding model with market caps to correct the significant marketplace imbalance.

II. THE CURRENT MARKET IMBALANCE AMONG VRS PROVIDERS PREVENTS THE COMMISSION FROM FULFILLING ITS OBLIGATIONS UNDER THE ADA

The FNPRM acknowledges that one provider, Sorenson Communications (“Sorenson”), is handling the “vast majority of VRS minutes.”³ Based on Fund administrator data, Sorenson handles more than 80 percent of the market share of the VRS industry.⁴ This acknowledgement, standing alone, should be a call to comprehensive reform of the VRS industry by the Commission. For too long the Commission has not taken comprehensive action to resolve the impact of Sorenson’s improper accumulation of market share. Ironically, and surprisingly, the FNPRM queries whether other providers are even necessary to the provision of VRS given the monopoly it allowed be created.⁵ We trust that it is not the Commission’s intentions with such references to suggest that it endorses, supports or seeks to further business practices that may violate the laws of the United States. Monopolies, tying arrangements and similar unfair business practices are not accretive to a healthy economy or industry. Such practices do not

³ FNPRM at ¶ 24.

⁴ *Id.* at ¶ 24 n.83.

⁵ The FNPRM notes that Sorenson enjoys significant economies of scale while the remaining providers are able to cover costs only because of the Commission’s current tiered rate structure. *Id.* at ¶ 24. Indeed, the FNPRM states that “[f]rom the perspective of the Fund, the most efficient solution might be to simply enter into a contract with a single provider so as to maximize the chances of that provider operating at minimum efficient scale. *Id.* at App. C, ¶ 24.

create long-term stable markets that provide consumer choice or promote innovation.

Thankfully, we note, and take comfort in, the Commission's statement in the FNPRM that a single provider "could lead to an unacceptable lack of consumer choice" and that it seeks "a reasonable balance between efficiency and freedom of users to have more than one choice of VRS service provider."

A competitive marketplace is critical to provide consumer choice and innovations in technology. To date, the many private companies who offer relay services have created a multitude of valuable communications options for deaf Americans. Such options go to the core principles of the ADA. While the tiered rate structure has allowed for smaller providers to compete, the vast majority of market share continues to belong to a single provider illustrating that tiered rates alone have been insufficient to correct a gross market imbalance. Additional proposals in the FNPRM, such as technology standards, broadband subsidies and feature portability, should foster real competition and allow smaller providers to gain additional market share. Purple also proposes market caps to bring swift, certain and efficient market changes. The reforms proposed herein, such as temporarily modified tiered rates, can be gradually phased out in lieu of a lower single rate per minute.⁶ This will be cost effective for the Fund while diminishing the market structure imbalance in video relay services that currently prevents the Commission from accomplishing its ADA mandate.

A. History of Market Share Accumulation in VRS

From 1987 to 1996, Alfred Sonnenstrahl served as the Executive Director of Telecommunications for the Deaf, Incorporated, the nation's leading consumer organization devoted to the telecommunications rights of people who are deaf or hard of hearing. Mr.

⁶ The modified tiered rate structure could also be phased out in lieu of a per user model, but as discussed further below, Purple believes that a single rate per minute model is the superior option for providers, customers and the Fund.

Sonnenstrahl participated in the development of Titles 2 and 4 of the ADA prior to it becoming law and saw firsthand the creation of the telecommunications relay services industry. During that period of time Mr. Sonnenstrahl bore witness to the remarkable technology advancements in the industry.

In recent years, through public statements to the Commission and in open letters published online, Mr. Sonnenstrahl offered his eye-witness account of the emergence of the VRS market structure imbalance now prevalent in the industry:

When Sorenson Communications learned about the VRS and the FCC's federally managed reimbursement program, they created the company's own VRS network and loaned their videophones, which were originally designed for telemedicine, to deaf and hard of hearing people at no cost with the understanding that these individuals were to use their services at least 30 minutes each month. These videophones were programmed to be operable only with Sorenson VRS, meaning that they were non-operable with any other video relay services including the federal relay services. Also, they isolated their Internet network to create segregation from the videophones developed by competing companies, which thereby resulted in a monopoly.

After several years of lengthy prodding from deaf and hard of hearing consumer-oriented national organizations such as Telecommunications for the Deaf, Inc. (TDI), Deaf and Hard of Hearing Consumer Action Network (DHHCAN) and National Association of the Deaf (NAD), the FCC finally issued a succinct order to discontinue the 30-minute requirement and minimize the non-interoperability of services without any reprimand. Sorenson cooperated with this order but took a long time to discontinue the 30-minute requirement and inform the public of the discontinuance, which left users with the fear of losing their access to the videophone network if they did not adhere to the 30-minute requirement.⁷

Today, Sorenson processes more than 80 percent of VRS minutes and controls more than 110,000 videophones being used to access VRS.⁸ As described by Mr. Sonnenstrahl's open

⁷ Comments of Alfred Sonnenstrahl, WC Docket No. 10-51 (Mar. 23, 2010), <http://apps.fcc.gov/ecfs/document/view?id=7020397161>.

⁸ Sorenson Reply Comments, CG Docket No. 03-123, ¶ 13 n.34 (May 21, 2010).

letter, Sorenson entered the VRS market in the spring of 2003 with an integrated, yet restricted, equipment-service tie-in arrangement. In 2006, the Commission took action and recognized that the tight linkage between Sorenson's VRS and its propriety equipment created anti-competitive and public-safety issues for consumers. The Commission prohibited Sorenson's practices and found their market behavior inconsistent with long-standing Commission policies on open network architecture, equipment interoperability and consumer choice in service.⁹

Unfortunately, the damage to the industry was done and a tiered rate structure, on a stand-alone basis, did not remedy the market imbalance. While the Commission may express frustration with the speed at which smaller providers are gaining market share, Sorenson's market share is not the result of operating excellence. Sorenson became the dominant provider through unfair practices that were ultimately prohibited by the Commission. As detailed herein, policy changes must be made to at least address the source of the anti-competitive environment (such as technology standards) and then the market must be given sufficient time to correct itself. History has shown that market share imbalance will not be fixed by adjustments to the rate structure alone.

B. Quantifiable VRS Market Concentration – Herfindahl-Hirschman Index

The Herfindahl-Hirschman Index ("HHI")¹⁰ is a method by which analysts and the United States Department of Justice and Federal Trade Commission can evaluate market concentration. Markets which score between 1,000 and 1,800 points are considered moderately concentrated while scores greater than 1,800 are considered concentrated. A maximum HHI

⁹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Declaratory Ruling and Further Notice of Proposed Rulemaking*, 21 FCC Rcd 5442, ¶¶ 28-41 (May 9, 2006) (*2006 Interoperability Order*).

¹⁰ Dept. of Justice, *The Herfindahl-Hirschman Index*, <http://www.justice.gov/atr/public/testimony/hhi.htm> (last visited Mar. 7, 2012).

score of 10,000 is a complete monopoly. The market for video relay services generates an HHI score of over 7,000.¹¹ Put in perspective, the concentration of market share by Sorenson is greater than the *combined* market share of AT&T, Verizon, Sprint, and T-Mobile in the United States market for wireless communications services; as of the Commission's latest report to Congress, the wireless industry had an HHI score of 2,848 (significantly less than the score of over 7,000 in the video relay market).¹²

Recently, AT&T and T-Mobile were forced to terminate their merger, largely due to regulator concerns over further market concentration and the negative impacts on consumers. While Purple supports the efforts of the Commission to improve efficiencies over Fund resources, the FNPRM rightly acknowledges that the VRS market structure imbalance is inappropriate to achieve the statutory goals of delivering functionally equivalent service in the most efficient manner possible while preserving consumer options for choice and service quality. Purple is aware of no public interest served by implementing competitive controls in the VRS industry different than would be applied to any other regulated industry.

Accordingly, the proposals Purple sets forth herein are designed to foster competition and allow multiple providers to gain market share and operate within efficient scales to preserve the resources of the Fund. To create a regulatory framework which would further the imbalance in the current marketplace, or to contract solely with the dominant provider, would put the Commission in the position of endorsing unfair business practices, eliminating competition, inhibiting innovation and choice and, ultimately, undermine the Commission's ability to fulfill

¹¹ Calculation assumptions are: Sorenson (83% share); Purple (11% share); ZVRS (4% share); SnapVRS (1% share); and Others (1% share).

¹² *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66 (terminated), Fourteenth Report, 25 FCC Rcd 11407, ¶ 51 (May 20, 2010) (*Fourteenth Report*).

its obligations to deaf Americans under the ADA. Indeed, any reform structure of the VRS industry that *does not* aggressively combat Sorenson's dominant market share will be a disservice to consumers and the Fund. Efficient use of Fund resources is a proper goal, but that goal should not be accomplished through means which may violate the law and are anti-competitive in nature.

III. UNDER ANY RATE STRUCTURE, VRS CUSTOMERS SHOULD HAVE A CHOICE OF PROVIDERS SIMILAR TO HEARING TELEPHONE USERS

The FNPRM proposes altering the current per minute payment structure to a per user payment structure. However, the per user proposal in the FNPRM assumes that each VRS customer would have to select a single provider and that provider would be paid accordingly.¹³ Purple notes that a hearing person is able to choose a carrier for a home telephone number, a separate carrier for mobile service, and that person may have yet a different carrier associated with their work telephone number. Purple believes VRS users must have the equivalent menu of choices and ability to select their preferred provider for their home phone, their mobile phone, and their workplace phone. Accordingly, if a per user model is adopted Purple endorses the ability of the consumer to have at least three accounts, with the flexibility to have each account tied to a different provider: a work account, home account, and mobile account. Similarly, if the Commission adopts a modified per minute compensation model, Purple proposes that consumers should continue to have the ability to have multiple accounts with the providers of their choosing.

¹³ See *FNPRM* at ¶¶ 79-81.

In the absence of such functionally equivalent choice of service providers, there is an inherent unfair advantage to the incumbent provider. As noted above, requiring customers to select a single provider would serve to reinforce, or potentially grow, the market position of the dominant provider. In fact, leading deaf consumer groups recently met with the Commission on this topic and have indicated that “based on conversations with members in the community, the Consumer Representatives believe that if VRS users must choose one VRS provider, the majority of users would choose the dominant provider.”¹⁴ This outcome would defeat the reform efforts sought by the Commission and is avoidable through allowing customers to have multiple accounts and a choice of providers among those accounts.

Moreover, Purple believes that having one provider tied to each account will not create unnecessary complexity or increase fraud or misuse of the system. As explained below, Purple supports the implementation of an independent centralized database that would register and verify users. Accordingly, the operator of the database could clearly track the multiple accounts of the single user to avoid the potential for overcompensation or confusion. Moreover, as discussed below, the new VRS user database should verify the identity of all VRS customers through the use of social security numbers. This step should significantly reduce any uncertainty or potential for inaccurate tracking.

Finally, it should be noted that permitting customer choice of providers for each device similar to hearing persons will not frustrate the Commission’s proposal of a per user rate.

Instead of proportioning a per user rate for each single customer, the Commission will need to

¹⁴ Notice of Ex Parte Meeting, CG Docket Nos. 03-123 and 10-51 (Feb. 8, 2012), *available at* <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021859001> (summarizing February 6, 2012, ex parte meeting between FCC and Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc., Andrew S. Phillips, Policy Attorney, National Association of the Deaf, Cheryl Heppner, National Advocacy Director, Association of Late Deafened Adults, Inc.).

adopt a rate per device per customer. Purple believes further industry dialog and data is necessary to determine the appropriate reimbursement rate for particular devices.

IV. A CENTRALIZED, BUT INDEPENDENT, REGISTRATION PROCEDURE AND UNIVERSAL DATABASE SHOULD BE IMPLEMENTED

The Commission asks whether a centralized VRS User Database (“VRSURD”) should be established.¹⁵ Purple believes a centralized registration and verification database, similar to the iTRS database with which all providers interact, would provide the optimal way to establish a homogenous system of registration and verification of customers for providers. All VRS customers should be required to re-enroll, whereupon the VRSURD can engage in identity verification and require the selection of a default provider for a particular service. This process would also provide the industry valuable information about consumers, including the number and nature of VRS customers. Purple notes that such information would be beneficial in the ultimate decision to reform the rate structure, and would be of particular value in the event the Commission adopts a per user rate system.

A VRSURD should be managed by an independent third-party under a separate contract.¹⁶ An independent VRSURD would prevent providers from having to police the identity of their own customers and would unify verification standards across providers. Purple agrees with the Commission’s proposal to put this function out to bid¹⁷ with the winner of the bid tasked

¹⁵ *FNPRM* at ¶ 68.

¹⁶ *Id.* at App. D, ¶¶ 19, 22.

¹⁷ *Id.* at App. D, ¶ 25.

to work with providers to develop the architecture and ensure integration with provider networks.¹⁸

The Commission also seeks comment on the form of unique identifier to be used in the VRSURD.¹⁹ Purple believes the implementation of a unique identifier is critical to preventing fraud and misuse of the system because it can provide instant and reliable verification of customer identity and encourage fair play among providers. To facilitate such a system, there are various companies that have online, real-time verification tools available for use. For illustration purposes, one such company, Experian, has a product called PreciseID²⁰ that enables a provider (or in this case all providers) to verify the identity of the individual requesting the service using a variety of advanced methods, including the use of an individual's social security number, either in full, or only the last four digits. Purple believes such a system could be implemented in a manner that is respectful of privacy rights of consumers.²¹ A system that uses social security numbers as a unique identifier could provide instantaneous verification of the customer during the registration process and thereby remove any delay between registration and customer verification when unauthorized calls could be placed.

Similar to the implementation of the ten-digit numbering orders,²² providers will be required to incur additional expenses to support the development and implementation of a

¹⁸ This centralized registration and verification database should most likely be integrated with the iTRS database to minimize redundancy and technical complexity.

¹⁹ *Id.* at App. D, ¶ 8.

²⁰ Experian, *Fraud Detection and Prevention Solutions for Your Business*, <http://www.experian.com/decision-analytics/identity-and-fraud/fraud-detection-and-prevention.html> (last visited Mar. 7, 2012).

²¹ Under a potential per user model, a centralized information-sharing based system among all providers is critical to the proper administration of the program and should be implemented from the beginning. Purple also proposes that a centralized system be deployed even if the Commission adopts a modified per minute or other form of compensation model. This system should also comply with CPNI requirements.

²² See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591 (Jun. 24, 2008) (*First*

centralized database and registration process. Accordingly, providers should be reimbursed in a timely manner for incurred and documented exogenous costs associated with this transition.

V. OPEN TECHNICAL STANDARDS ARE NECESSARY FOR MARKETPLACE BALANCE

Purple agrees with the Commission’s statement that “establishing VRS access technology standards may give providers a fair chance to compete and grow and could resolve the problem of users being locked in to their existing providers because of iTRS technology constraints.”²³

An open standard is a prerequisite for innovation and competition. In the context of smart grids (which have parallel issues to VRS), the White House has emphasized the importance of interoperability standards to ensure that “equipment or software from different vendors can work together or communicate.”²⁴ In fact, the White House noted that the federal government has promoted the development of interoperability standards in a “wide array of fields” because this would “enable competition, improve consumer choice, and yield economies of scale,” and as a result “help keep prices lower.”²⁵

An open, standards-based approach to video relay will promote use of off-the-shelf equipment and expand choices available to consumers, while creating a platform of innovation for providers. Specifically, Purple recommends the following with respect to the technology standards topics raised in the FNPRM:

Internet-based TRS Order); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *E911 Requirements for IP-Enabled Service Providers*, Docket No. 09-1323, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791 (Dec. 19, 2008) (*Second Internet-based TRS Order*).

²³ FNPRM at ¶ 44.

²⁴ Exec. Office of the President, Nat’l Sci. & Tech. Council, *A Policy Framework for the 21st Century Grid: Enabling Our Secure Energy Future* 26 (June 2011) (*White House Policy Framework*) (citing PCAST 2010).

²⁵ *Id.*

- Purple agrees with the Commission’s proposal to modify *sections* 64.605 and 64.611 to establish “iTRS Access Technology” as defined in the FNPRM with separate references to VRS access technology and IP Relay access technology.²⁶ For clarity, Purple recommends further defining “iTRS Access Technology” in four categories: (1) VRS Provider Furnished Hardware with Proprietary Software; (2) Off-the-Shelf Hardware Modified with VRS Provider Software; (3) Off-the-Shelf Unmodified Hardware and/or Software; and (4) Off-the-Shelf Unmodified Hardware and/or Software with a VRS Provided Gateway. By further defining the categories of “iTRS Access Technology”, the Commission can further elucidate the requirements for each category.
- Purple endorses the proposed Technology Requirements in Section IV, Parts A, B, C, and D covering communications, remote feature access, user interface, and private data transfer, respectively.
- Purple endorses the proposed standards for VRS Access Technology as defined in Section V Parts A and B, VRS standards profile and transitional interoperability requirements respectively. Purple also supports the proposal to phase in the requirement that off-the-shelf hardware be standardized for VRS compensable calls. However, current commercially available hardware and software have varying degrees of interoperability and portability,²⁷ which may limit access to the desired technology. Purple proposes the requirements matrix in Figure A when defining interoperability and portability. It is also important to note that there are currently several off-the-shelf solutions where VRS providers are unable to make functional changes to the core call routing systems, such as Skype and AIM. Through engineering efforts VRS providers

²⁶ FNPRM at ¶ 41.

²⁷ *Id.* at ¶ 48.

could support these closed systems from VRS calling services (i.e. E-911 and registration), but would have no control or access to the hardware or software providers “closed network” as illustrated in Figure A.

FIGURE A

Technology	Interoperability		Portability	Example Devices
	VRS Access	Point-to-Point		
VRS provider provided hardware with proprietary software	Required	Required	Required	VP200 NVP MVP
Off-the-shelf hardware modified with VRS provider software	Required	Required	Not in provider control	iOS (iPhone/iPad) Android PC or MAC
Off-the-shelf unmodified hardware and/or software	Required	Required	Not in provider control	Cisco E20 Tandberg T150 Polycom PVX Counterpath Bria
Off-the-shelf unmodified hardware and/or software with a VRS provider provided gateway	Not Required. Does not support dial around.	Not in provider control.	Not in provider control	Skype AOL AIM Apple Facetime Google +

The Commission asks “[i]f our interoperability and portability rules are not effectively enforced with respect to the existing customer base of VRS users and new-to-category users, will this prevent smaller providers from growing, and hence prevent a more efficient industry structure from being attained?”²⁸ Purple believes the answer to that question is an emphatic, “yes” and offers the following suggestions for preventing such an outcome.

A. Third-party Certification Process For Technology

Purple agrees with the proposals made by the Commission regarding the establishment of technology standards, but also recommends the establishment of a separate third-party

²⁸ *Id.* at ¶ 45.

“certification” process for VRS Access Technology. A VRS certification process for access technology would be similar to the Commission’s outsourcing of testing and certification to third-party labs to approve hardware for operating on the public telephone network. Under Purple’s proposed process, a VRS provider wanting to release a new VRS Access Technology solution would submit the application or device to a Commission-approved independent third-party test lab, which would pass or fail the submission based on testing it against the set of functional VRS Access Technology Requirements as enumerated in Section IV, Parts A, B, C and D. In addition, in response to the Commission’s concern as expressed in Paragraph 33 of Appendix B of the FNPRM, Purple proposes that a set of mandatory uses for interoperability be clearly defined. Purple suggests the formation and use of a VRS provider industry consensus group to propose such definitions. This would ensure that only “certified” applications or devices are allowed to access a provider’s VRS and to interoperate with other VRS providers and other “certified” applications and devices. Submitting to both third-party lab testing and to well-defined interoperability tests would ensure optimal function and compliance with technology standards.

Purple commends the Commission’s recent efforts to create opportunities for interoperability testing and strongly encourages the Commission to continue this process. For example, in January 2012 the iTRS Numbering Directory Administrator (“Neustar”) hosted a SIP Interoperability event in which Purple and several other VRS providers participated. At this event, VRS providers identified technical issues and fostered relationships through which to resolve these issues. As a result of this positive experience, Purple suggests that Neustar or a similar neutral organization be assigned the charter to conduct certification tests and to orchestrate interoperability tests.

If this concept is adopted, all providers would be required to submit their existing applications to the third-party test lab to ensure that both in-use legacy and prospective VRS Access Technology are compliant with the functional standards and mandatory use cases by the end of Phase 1 in Purple's proposed transition timetable (as shown in Exhibit 1, below). Failure to pass all tests of the functional standards and mandatory use cases would result in non-payment associated with non-compliant VRS Access Technology from that point forward.

B. Implementation Cycle

Purple agrees with the Commission's proposed three-phase implementation cycle with dates and steps outlined in Exhibit 1 to this filing. Since rate changes are tied to the implementation of device portability, there must be measurable milestones on device portability prior to triggering changes in rates.

VI. MODERNIZING OTHER STANDARDS AND POLICIES IS NECESSARY

The Commission requested comment on other modifications that would improve the services delivered to consumers. Purple proposes several improvements: (1) update the VRS speed of answer to reflect improvements in technology and systems; (2) implement skill-based routing; (3) allow hearing users of American Sign Language to obtain ten-digit numbers; (4) use marketing, outreach and national education efforts regarding the availability of iTRS; and (5) mandate compliance policies and procedures to prevent waste, fraud and abuse.

A. Update the VRS Speed of Answer Requirement

The current VRS speed of answer standard requiring 80 percent of calls to be answered within 120 seconds²⁹ was established at a time of rapid growth in the VRS market, and when

²⁹ 47 C.F.R. § 64.604(b)(2)(iii).

VRS was in a more experimental phase of development. It is appropriate to update the speed of answer rules for VRS and bring the rules more in alignment with other forms of iTRS. Purple proposes the VRS speed of answer standard be amended to reflect an elevated threshold of 80 percent of all calls answered within 30 seconds.

B. Allow Skill-Based Routing

Purple proposes the ability for a consumer to select a VRS interpreter through “skill-based routing” – in other words, by a particular specialty. If deployed, a deaf consumer desiring to make a telephone call involving significant legal jargon could, for example, select a specific interpreter that is fluent with the vocabulary of the legal profession, thus resulting in a more effective call for the consumer and more efficient call for the program. This is critical for ensuring the transparency of the interpreter in such calls because a skilled interpreter will be more invisible and less intrusive in the call itself. Providers could distinguish themselves based on the quality and diversity of their interpreters and this competition would improve the resulting service to the consumer.

If adopted, the consumer could make an active choice to (if necessary) wait for the availability of the interpreter that matches the desired skill set, thereby “opting out” of the speed of answer requirement only for that call. Highly skilled interpreters by subject matter such as legal and medical are scarce and those that might support a deaf employee in a technical or business field would benefit greatly from repetitive interaction with those callers, just as the VRS user would benefit in the performance of their work by having someone familiar with their specific industry jargon. Accordingly, Purple’s endorsement of skill-based routing is conditioned on a speed of answer exemption only for those calls which the customer proactively makes the choice to use an interpreter with those unique skills. Calls of this type could be

identifiable through call detail records (“CDRs”) as directed by the Fund Administrator or the Commission.

C. Allow Hearing Users of American Sign Language to Obtain Ten-Digit Numbers for Point-to-Point Calls Only

As previously filed in 2009 Petitions for Partial Reconsideration by Purple³⁰ and Consumer Groups,³¹ Purple continues to believe a provider’s ability to issue ten-digit numbers to hearing parties fluent in sign language will reduce use of VRS and encourage more point-to-point communications. These comments echo statements by Consumer Groups in further support of this enhancement to the TRS program stating, “Elimination of this exclusion will also, in fact, reduce costs to the TRS Fund by decreasing the number of relay calls and telephone calls made through VRS.”³²

Direct videophone telecommunication between hearing individuals and VRS users does not require the assistance of a video interpreter communications assistant. By enabling direct videophone telecommunication in what is otherwise a closed system, costs incurred by VRS providers will be reduced and hence their draw upon the Fund will be less. Moreover, if the Commission implements a centralized system for registration and verification, ten-digit numbers provided to hearing persons can be tracked for appropriate use. Accordingly, instead of establishing a blanket policy forbidding hearing individuals from acquiring and using ten-digit numbers for videophone telecommunications with VRS users, and vice versa, the Commission

³⁰ Petition for Partial Reconsideration and Waiver by Purple, Docket Nos. 03-123, 98-67, and 05-196 (Jan. 29, 2009), *available at* <http://apps.fcc.gov/ecfs/document/view?id=6520194427>.

³¹ Petition for Partial Reconsideration of Telecommunications for the Deaf and Hard of Hearing Inc. by Association of Late Deafened Adults, Inc.; National Association of the Deaf; Deaf and Hard of Hearing Consumer Advocacy Network; Hearing Loss Association of America; and American Association of the Deaf-Blind, Docket Nos. 03-123 and 05-196 (January 29, 2009), *available at* <http://apps.fcc.gov/ecfs/document/view?id=6520194419>.

³² *Id.* at p. 5.

should recognize the cost savings that will result from the reduction in VRS calls, the greater efficiencies for users of the system, and the achievement of functional equivalency.

Additionally, Purple believes with cooperation from stakeholders the system of issuing ten-digit numbers to hearing parties fluent in sign language could be designed in such a way as to prevent those users from having any access to VRS.

D. Marketing, Outreach and Proposed New Incentive Payments

The Commission seeks comment on whether to implement a financial incentive for providers to bring “new to category” users to the VRS community and cease reimbursement for marketing and outreach expenses. Purple believes either the modified per minute rate or the per user rate must include appropriate compensation for marketing and outreach. The Commission specifically recognizes the need for provider-based competition and contestability of the installed base but later raises the question of whether this competition should be funded.³³ Until there are multiple providers operating at an efficient scale, failure to fund provider marketing and outreach will undermine the very objectives the Commission seeks through this reform effort. It appears counterintuitive to enable a competitive process through technology standards then weaken the providers who are attempting to climb the scale curve by eliminating marketing and outreach. Moreover, as previously discussed, the marketing and outreach efforts of providers could be aptly utilized to assist in educating deaf and hard of hearing Americans about broadband subsidies.

Purple believes the proposed new to category users should not result in any additional “one time” incentive payments for providers. This one time payment will be extremely difficult to audit and opens the door for potential abuse and provider liability in terms of consumer

³³ *FNPRM* at ¶ 15.

honesty as to their VRS history. Providers should be motivated to expand the market simply through the economics of the per minute or per user models and to make profits through those mechanisms alone instead of relying on supplemental payments for new-to-market users.³⁴

Finally, on the topic of outreach, the Commission asks how it might raise the awareness of VRS nationally and educate businesses to build national acceptance of VRS.³⁵ Purple believes a campaign of televised Public Service Announcements (“PSAs”) delivered via national television networks, over a sustained period of time, with differing campaign themes, would be a tremendously effective national educational tool.³⁶ Similar to National Broadcasting Corporation’s (“NBC”) “The More You Know”³⁷ series of PSAs, the FCC could work with broadcasters and providers to facilitate the distribution of campaign content educating the nation about the availability of iTRS services and reminding the public about the importance of not hanging up on relay calls.

E. The Importance of Provider Compliance Policies in Eliminating Waste, Fraud and Abuse

In the FNPRM, as well as in recent public meetings³⁸ and in testimony to Congress,³⁹ Commission staff have voiced their desire and intention to continue to deploy preventative

³⁴ Purple also encourages the Commission to examine its incentive rules to determine if financial or technical inducements provided to consumers in a “win back” scenario (encouraging a former customer to return) are in violation of any of the Commission’s existing rules pertaining to call incentives.

³⁵ *FNPRM* at ¶¶ 32, 39.

³⁶ There is evidence of success for this kind of approach. The Pennsylvania Utilities Commission, for example, took steps to conduct a community-based outreach effort to increase awareness of TTY relay services. A specific campaign in the Winter of 2003-2004, for example, resulted in a 33 percent increase of awareness of TTY relay services among the “hearing public in Pennsylvania.” *See* Comments on Notice of Inquiry by Purple Communications, Inc., CG Docket No. 10-51, p. 14 n.14 (Aug. 18, 2010).

³⁷ *The More You Know*, http://www.nbc.com/nbc/footer/tmyk/pgv_tmyk_overview.shtml (last visited Mar. 7, 2012).

³⁸ Remarks of Karen Peltz-Strauss during Commission-hosted VRS stakeholder meeting (Feb. 13, 2012) (inviting comments and ideas for how the Commission might more effectively combat waste, fraud, and abuse).

³⁹ Testimony of David Hunt, Inspector General of the Federal Communications Commission, before Congress (Feb. 16, 2012).

measures to combat waste, fraud, and abuse in the iTRS program. Purple believes the Commission's desires can be furthered by strong, tailored provider compliance policies submitted to the Commission for review and comment. Indeed, participants in programs such as Lifeline are required to provide the Commission with a compliance plan. Specifically, the plans must provide for:

A detailed explanation of the carrier's procedures and efforts to prevent waste, fraud and abuse in connection with Lifeline funds, including but not limited to, procedures the carrier has in place to prevent duplicate Lifeline subsidies within its own subscriber base, procedures the carrier undertakes to de-enroll subscribers receiving more than one Lifeline subsidy per household, information regarding the carrier's toll limitation service, if applicable, and the carrier's nonusage policy, if applicable.⁴⁰

Purple believes compliance plans designed to prevent waste, fraud and abuse are a best practice and should be required of all providers. Specifically, Purple believes the Commission should publish guidance on the content of the compliance plans; however, at a minimum compliance plans should: (i) include and require the appointment of a dedicated Compliance Officer, (ii) identify curriculum; (iii) require training for employees and contractors involved in the provision of iTRS; (iv) mandate internal and external hotlines where employees can safely report observed abuses; and (v) mandate a detailed description of monthly internal audit processes prior to executive certification of minutes submitted to the Fund Administrator. Such policies should be required to be updated annually to stay abreast of changes in technological and legal requirements. Purple believes provider compliance policies could only serve to benefit the industry's battle against waste, fraud and abuse with minimal resource cost to the Commission for the review and comment on provider policies.

⁴⁰ *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, WC Docket. Nos. 09-197, 11-42, Public Notice, 2012 FCC LEXIS 956, at *7 (Feb. 29, 2012).

VII. PURPLE ADVOCATES FOR THE ELIMINATION OF SUB-SCALE PROVIDER SUBSIDIES THROUGH THE ADOPTION OF A MODIFIED PER MINUTE MODEL

The Commission implemented the tiered rate structure to allow smaller providers to gain market share. Unfortunately, a single provider continues to dominate the market. The Commission notes that with a single provider handling the vast majority of VRS minutes, the current tiered market structure lends itself to certain inefficiencies.⁴¹ The problem has been compounded by the increased use of VRS. The current tiered rate model was established in the spring of 2007 when the industry was producing approximately 5 million minutes per month.⁴² While the reimbursement rate per minute, per tier has changed,⁴³ the tier structure itself has remained unchanged since the 2007 rate order despite the fact that today the VRS industry has increased by over 60 percent to more than 8 million minutes per month.⁴⁴

While the tiered rate structure has been instrumental in supporting the existence of sub-scale providers and facilitating consumer choice, Purple believes that technology standards will now become a centerpiece of making the market more competitive. Improved technology standards have the capacity to substantially remedy the market imbalance and thus improve Fund inefficiencies. In this regard, Purple echoes the Commission's comment that "[a]ppropriate VRS access technology standards must be in place before VRS providers can be expected to compete

⁴¹ See *FNPRM* at ¶ 24.

⁴² TRS Fund Administrator Website, *VRS Minutes January 2002 – October 2010*, http://www.r-l-s-a.com/TRS/reports/VRS_Growth112010.pdf (last visited Mar. 7, 2012).

⁴³ TRS Fund Administrator Website, *Relay Services' Reimbursement Rate, Contribution Factor & Fund Size History*, <http://www.r-l-s-a.com/TRS/RELAYRATESHISTORY.pdf> (last visited Mar. 7, 2012).

⁴⁴ TRS Fund Administrator Website, *Interstate TRS Fund Performance Status Report*, <http://www.r-l-s-a.com/TRS/reports/2011-12TRSSStatus.pdf> (last visited Mar. 7, 2012).

effectively for VRS users.”⁴⁵ Accordingly, should the Commission seek a unitary per minute rate for all providers, Purple believes the Commission should firmly establish technology standards. These technology standards should initially be introduced under a modified tiered rate structure which will ultimately become a unitary rate for all providers.

Purple has previously submitted a detailed proposal outlining how expanding the thresholds of the tiers and lowering the rate paid at the highest tier could result in significant cost savings to the program while still providing smaller providers with the opportunity to “climb the scale curve.”⁴⁶ Under Purple’s modified tier proposal, this opportunity for smaller providers to gain additional market share would have a limited duration and a known end date by which all providers would be paid a unitary scale rate per minute. This clarity gives the Commission certainty for ending sub-scale provider subsidies and gives providers the clarity they need to grow organically, explore strategic business combinations or adjust business operations to handle the scale rate paid in the future. Purple believes this approach is practical and would achieve the Commission’s goal of a more efficiently run program with multiple providers operating at scale and receiving identical compensation. A proposed timetable for such a model is outlined in Exhibit 1.

Regardless of which compensation model the Commission adopts, Purple supports an orderly transition completed in three phases over a period of four years from the effective date of the order as outlined in Exhibit 1. Should new providers become certified during this period,

⁴⁵ *FNPRM* at ¶ 116.

⁴⁶ See Purple, *FCC Presentation: VRS Program & Policy Recommendations* (Feb. 11, 2011), <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021029525>. Purple’s modified tier proposal called for tier 1 being up to 1 million minutes, tier 2 from 1 million to 2 million minutes, and tier three being 2 million minutes or more. *Id.* at p. 11.

they would be paid the same rate as other providers of their size during Phase 1 and 2, and then the same rate as all providers in Phase 3 and beyond.

VIII. A BIDDING MODEL FOR THE VRS MARKET SHARE WOULD REMEDY MARKETPLACE IMBALANCE THROUGH A FAIR PROCESS

As Commission notes, VRS users are “effectively ‘locked in’ to their existing providers” and that users are “reluctant to switch to a new default provider” due to costs associated with changing providers, including the loss of functionality.⁴⁷ The Commission asks whether more robust competition would be facilitated by moving to a bidding process where only one or a limited number of VRS providers are selected. As noted above, Purple believes any process that leaves consumers and the program with only one VRS provider will stifle innovation, eliminate consumer choice, cause public safety concerns and impede the Commission’s obligations under the ADA. These effects would be lasting and present a marked and impermissible disservice to consumers by impeding their ability to effectively communicate, as well as learn and work in a competitive environment in a period of rapid advancements in communications technology.

A bidding process allowing a limited number of VRS providers has the potential to facilitate more robust competition, but only if the Commission also institutes share caps. In the absence of share caps, an incumbent with an absolute cost advantage (and sufficient information about its competitor’s costs) can win an auction by only slightly under-pricing a higher cost rival. Because of cost asymmetries, the winning bid may be slightly lower than the next lowest bid, but considerably above the incumbent’s costs. Essentially, in the presence of cost asymmetries, the lowest-cost provider likely will receive a rate consistent with the costs of the second lowest cost

⁴⁷ *FNPRM* at ¶ 17.

provider. If the cost difference between the first and second lowest cost providers is significant, the resulting rate through a reverse auction will be significantly higher than under other pricing mechanisms, such as an effective price cap mechanism.⁴⁸ Hence, adoption of a reverse winner-take-all auction will result in the dominant provider becoming the sole VRS provider, with a dampening effect on innovation, a reduction in the quality of service for consumers, a consumer safety issue and an impediment to the Commission's goals.

As it pertains to bidding, Purple would support a multi-winner bidding model with share caps which would allow certified providers to compete based on their capacity to support a pre-determined volume over a given period of time. The use of share caps is neither radical nor novel; Purple notes that the Commission has recently utilized "market based" models for regulated services to foster competition, such as in the Mobility Fund announced in February 2012.⁴⁹

Purple believes no single provider in VRS should have more than a majority share. As discussed in Section II(B), above, Purple believes the wireless industry presents a reasonable standard by which market competitiveness can be quantitatively measured. For illustration purposes, if the largest VRS provider had a 40 percent share position, the result would be a score of 2,850 on the Herfindahl-Hirschman Index if other providers obtained shares of 30 percent, 15 percent, 10 percent and 5 percent. An HHI score of 2,850 is achievable; the Commission can use the HHI score of today's wireless industry, which currently scores 2,848, as a benchmark for

⁴⁸ See generally Estelle Cantillon, *The Effect of Bidders' Asymmetries on Expected Revenue in Auctions*, 62 *Games and Economic Behavior* 1 (2008); see also Comments on Notice of Inquiry by Purple, CG Docket No. 10-51, pp. 16-17 (Aug. 18, 2010).

⁴⁹ *FCC Announces Steps to Close Nation's Gaps in Advanced Mobile Service Through the Mobility Fund Phase I Auction; New Interactive Map Illustrates Potentially Eligible Areas for Support*, 2012 FCC LEXIS 710, at *1 (Feb. 10, 2012).

appropriate competition. Purple does not believe justification exists to apply different standards to the competitive features in the VRS industry than those applied to other regulatory industries.

Purple's proposed bidding model is achievable with VRS from a technical perspective. Indeed, a similar model exists in California's implementation of multi-vendor contracts for TTY-based relay services. This scenario would also require the input of stakeholders and would require new technical standards and centralized call routing algorithms to distribute calls to winning bidders based on their pre-determined share of the market.

IX. A PER USER MODEL SHOULD ONLY BE CONSIDERED IN CONJUNCTION WITH CLEAR RULES, CODIFIED TECHNICAL STANDARDS, ACCESS TO MULTIPLE CONSUMER ACCOUNTS, AND A COMPREHENSIVE EVALUATION OF THE RISKS ASSOCIATED WITH ITS INHERENT COMPLEXITIES

Purple is encouraged to see that the "Commission would like to create stability and long-term predictability in the compensation mechanism, to the benefit of the providers, contributing carriers and all consumers."⁵⁰ Visibility into long-term compensation enables providers and their owners to make informed investment decisions and will bring a level of stability to the industry which benefits all involved. While Purple believes a modified per minute model is the optimal solution, a per user model could be implemented, albeit with potentially more questionable results. Indeed, as set forth in Section XI below, Purple believes that a per user model is wrought with risks for misuse by both providers and consumers. Moreover, a per user model is complex and will require significant interaction with all stakeholders and additional time to fully

⁵⁰ *FNPRM* at ¶ 22.

develop. However, if the Commission ultimately elects to pursue the per user model, Purple proposes the Commission consider the following:

A. Establish and Enforce Open Technical Standards

As previously indicated, the implementation and enforcement of technical standards are essential to lowering costs, sustaining innovation and fostering competition regardless of the compensation model chosen by the Commission.

B. Allow Multiple Accounts (Work, Home, Mobile)

As set forth above, Purple believes VRS users must have the same menu of choices and ability to select their preferred provider for their home phone, their mobile phone, and their workplace phone as hearing users. Allowing this choice will further functional equivalence, increase market competition and consumer choice, and limit the potential for a universal relay service disruption if there are technical problems with the selected provider's service.

C. Contracts and Early Termination Fees

For provider predictability and to hedge against consumer concerns about discrimination against high volume users, Purple acknowledges that term contracts have merit. In a contract period the provider is bound to deliver service consistent with the Commission's operational, functional and technical standards which could help alleviate concerns by consumers that high volume users might suffer from discriminatory tactics. However, when combined with early-termination fee elements, Purple is opposed to term contracts and the ability of deep pocketed providers to buy out consumer contracts by paying for early termination fees on behalf of the consumer. Purple believes this provides an unfair advantage and will resemble the early days of long distance incentive wars whereby carriers provided various inducements and financial payments to consumers simply to have them change carriers, many of which may be in violation

of other Commission rules pertaining to call incentives. Additionally, term contracts favor Sorenson because: (1) Sorenson already has a large, established customer base that is easily reachable; and (2) Sorenson may seek to shed its highest minute users. Accordingly, Purple opposes term contracts. However, if term contracts are adopted Purple encourages the Commission to revisit its rules on marketing incentives and update the rules to account for these circumstances under the per user model.⁵¹

D. Ensure Non-Discrimination of High Volume Users

The per user model essentially asks providers to assume a fixed form of revenue which is charged against a variable rate of labor costs. Under this approach, the arbitrage among a large base of consumers will theoretically net desired profits based on averaging. As acknowledged in the FNPRM, this profit model is optimized for providers by matching the absolute lowest amount of variable costs (interpreter labor) against the highest income rate. More plainly, low volume users who reach the minimum threshold of usage are the “ideal” customer in this scenario from a provider perspective.

High volume consumers may potentially experience a discriminatory impact under a per user model. This potential impact merits consideration and new rules to guard against such potential discrimination. For example, a large provider could direct its outreach toward those users it knows are more profitable under the new model, thus shifting the burden of providing services for high-volume/low-profit users to sub-scale providers. This subtle shedding of high volume users through inattention may in fact shift the absolute count of users to other providers, and on the surface, would have the optics of redistributing market share, when in reality, the highest cost users could end up with the service providers least able to absorb their volume due

⁵¹ This would include clarity on the appropriateness of win-backs as well.

to the economics of the per user model.⁵² The Commission should be careful in its implementation of the per user model, if adopted, to ensure that customers are fairly, reasonably and evenly handled among industry participants. Similarly, the per user model could be in conflict with the Commission’s goal of incenting providers to “increase the availability of VRS in the workplace.”⁵³ Under this model, providers will have disincentives to oversize their customer base with new-to-category high-volume business users.

The disincentive for courting and maintaining high volume customers illustrates why a per user rate structure may be inappropriate for the VRS industry. Under a per minute system, the majority of provider revenue is tied directly to each conversation minute processed by a provider. In other words, the system is designed to pay for exact amounts of consumer use – no more and no less. Under the per user model, the volume of calls processed and the service provided will be largely irrelevant to provider revenue.

Although the Commission proposes the per user model as a solution to Fund inefficiencies, the per user model places all VRS consumers in two broad categories: personal and enterprise users. It is counterintuitive to believe that a model which pays for exact minutes of use would ultimately be less efficient than a per user model based on gross averages of VRS consumer usage rates. Accordingly, Purple advocates for the adoption of an improved per minute structure culminating in a unified single tier rate on a per minute basis.

⁵² Providers may not be in direct control of the types of users they acquire and retain, but the largest provider is at a competitive advantage when it comes to identifying specific low-volume customers.

⁵³ *FNPRM* at ¶ 21 n. 91.

E. Dial Around for E-911 Access

At a minimum, for public safety reasons alone, dial around for emergency calls should be permitted in a per user model. Consistent with the Commission's rationale underlying the 2006 Interoperability Order,⁵⁴ it is critical there be no restrictions on a consumer's ability to reach E-911 services. For example, in a regional crisis consumers could flood a particular provider's network in that area. If consumers are restricted to processing calls only through that provider, they may be met with delays in answering and should be able to try any provider they wish in order to connect their E-911 call. Additionally, in a per user model, absent a complicated revenue sharing arrangement among providers or separate credit card billing, Purple fails to see a solution to how to preserve the ability for consumers to dial around their default provider for non-emergency calls.

F. A Per User Model Creates Challenges for Implementation

Prior to the implementation of a per user model, providers will need the opportunity to plan for expansion or contraction to their call center operations in a manner that preserves the Commission's objective of bringing stability and predictability to the program. This process requires further dialog among all stakeholders. However, Purple notes that the Commission has several options for re-enrollment of VRS customers in a VRSURD in conjunction with the adoption of a per user model.

- Pre-Enrollment with Delayed Provider Default: Under this scenario, consumers would pre-select their default providers for each device through the VRSURD at least 4-6 months in advance of implementation of the per user payment structure.

⁵⁴ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, *Declaratory Ruling and Further Notice of Proposed Rulemaking*, 21 FCC Rcd 5442 (May 9, 2006) (*2006 Interoperability Order*).

Once these advance determinations are made, providers would be notified of their user base and could adjust operations accordingly. Similar to the ten-digit implementation, all customers would be re-routed to their new default providers on a date certain.

- Progressive Enrollment: Under this option, the Commission and providers would establish an integrated plan by which, as of an effective date, each provider would be required to re-route an absolute number of customers to the VRSURD for the consumers to select new default providers for their devices. This transition would occur over a period of time until all consumers have been re-registered, allowing for providers to adjust call center capacity in an orderly manner.

Purple believes the Commission should engage all stakeholders in further dialog to ensure the smoothest transition for both customers and providers. If the Commission elects to move forward with a per user model, Purple welcomes the opportunity to work collaboratively to develop an implementation model that both supports competition and is not unnecessarily disruptive to consumers. However, as described herein, Purple believes there are more reasonable, efficient and effective alternatives to a per user model.

G. Development and Enforcement of New Rules to Address Incentives for Abuse

Under the existing per minute model, the Commission fears that providers have an incentive to maximize the reimbursable minutes they process. As a result, the Commission has promulgated extensive rules and audit procedures – with some of the most effective and far-reaching rules enacted within the last twelve months. To this end, Purple encourages the Commission to consider the administrative, audit and enforcement aspects of switching to a per user model. Indeed, many of the current rules will not be applicable in a per user system and

therefore, the Commission will need to develop and enact new rules in order to properly oversee such a program. The success of any system is dependant on the Commission creating a structure that has clear and discernible rules and procedures that provide predictability to providers and the Commission.

H. The Per User Model May Create A Greater Risk Of Abuse And Encourages Customers To Misuse The System

Purple acknowledges the Commission has spent considerable time developing an alternative to the current per minute model. However, Purple believes that a per user model would create significant challenges for the Commission, providers and VRS customers. For example, a per user model with a use threshold of a mere two minutes is ripe for abuse. As noted in the FNPRM, the current per minute model creates an inherent incentive for providers to seek ways to generate minutes of use solely for the purpose of generating “compensable minutes,” rather than to provide legitimate service to VRS users.⁵⁵ However, a per user model merely trades this concern for the uncharted risk of fraudulent registration of and by VRS users.

For providers, a per user model only requires the act of registering a user and incenting that customer to make a two minute call to collect from the Fund – a theoretically easier task than generating minutes by making repeated VRS calls. Moreover, Purple questions whether the incentives for abuse in a per user model also shift from providers to consumers. The Commission has received, through *ex parte* communications, the input of multiple consumer groups proclaiming that consumer choice is of paramount importance to consumers in any reform structure. If customers are motivated to preserve choice in a regulatory structure that restricts their options (i.e., if the Commission limits each user to a single provider for all

⁵⁵ FNPRM at ¶ 26.

devices), an incentive is created at the consumer level to violate the per user rules. Purple notes the challenge – for providers, the Commission and the third party VRSURD administrator – to detect such violations and create an effective enforcement regime to prevent them.

For example, a consumer could attempt to exceed the account limitation rules by creating multiple accounts with different providers by using slightly different names or identities, each containing valid unique identifiers. Purple notes the use of social security numbers will help to significantly reduce this concern, but Purple questions whether the Commission (or provider or the administrator) would possess effective tools to regulate and enforce such violations. If the third party VRSURD administrator is charged with policing registrations, how will the administrator be accountable when presented with seemingly valid but improper registration information? What is the administrator's recourse against the consumer who is violating the rules? Perhaps more importantly, what is the Commission's recourse against that consumer?

In sum, if the per user model is appealing to the Commission because of the elimination of the perverse incentives of the per minute model, Purple questions whether the per user model will not simply create new avenues for fraud and misuse. Purple foresees that a per user model will create new incentives for gaming and abuse by providers (who will now be motivated to obtain minimal-use customers rather than generate minutes). Moreover, Purple believes that a per user model will create a new motivation for abuse by VRS customers who may now violate the rules to obtain a prohibited choice of providers. Purple queries whether the Commission can adequately audit such consumer misuse and whether the Commission would have adequate recourse against consumer violations.

X. PROVIDER OUTREACH PROGRAMS CAN INCORPORATE BROADBAND EXPANSION

Purple supports the Commission's goal of expanding participants in the VRS program and shares the Commission's concern that "the broadband penetration ceiling may have become a constraint on the availability of the program."⁵⁶ As the Commission recognized in the National Broadband Plan and reiterated last month in its Lifeline and Link Up Reform and Modernization Order and Further Notice, people with disabilities disproportionately do not have broadband at home.⁵⁷

Purple believes the most efficient means to achieve the objective of expanded broadband availability to the deaf and hard of hearing community is to leverage the existing outreach efforts of VRS providers. TRS providers already engage in outreach efforts and are naturally well-positioned to educate the deaf community about Lifeline and Link Up options for broadband and other broadband subsidy options such as Internet Essentials by Comcast.⁵⁸ Purple would also encourage the continued investment and experimentation of the National Telecommunications and Information Administration's broadband subsidy program, with future funding specifically tied to expanding broadband access to new deaf or hard of hearing broadband users.

Once customers learn about the ability to apply for assistance to obtain broadband service, the third-party administrator of the centralized VRSURD could help these individuals obtain the service. Moreover, under a scenario where providers are simply facilitating

⁵⁶ *Id.* at ¶ 13.

⁵⁷ *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Lifeline and Link Up*, WC Docket No. 03-109, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, 2012 FCC LEXIS 709, ¶ 321 (Feb. 6, 2012); *see also* The Commission, Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan* 167 (2010) (*National Broadband Plan*), available at <http://www.broadband.gov/plan>.

⁵⁸ *See* Comcast, *Internet Essentials*, <http://www.internetessentials.com/> (last visited Mar. 7, 2012) (offering home Internet services for \$9.95 per month to qualified applicants).

educational services of Lifeline and Link Up with a third-party ultimately administering the program, there would be no requirement for the Commission to pay providers a fee for bringing a new to category user to the market, since the provider will already benefit financially under either the per user or per minute compensation model.

XI. SUMMARY

Purple agrees with the Commission that “ignoring the last ten years of experience with the TRS program, both good and bad, and the technological progress that has occurred over the same period, and simply continuing with the program as currently structured (perhaps with relatively minor tinkering around the margins) is simply not a viable option for the Commission in its duty to manage responsibly the contributions of millions of Americans to a program that disburses over half a billion dollars a year.”⁵⁹ Purple commends the Commission for the thoughtful proposals in the FNPRM. Purple believes that its proposals, if adopted, can meaningfully improve the current model. Purple welcomes the opportunity to work with the Commission and other stakeholders to address such challenges by putting VRS on solid footing through an industry model that serves the greatest number of consumers, with the highest quality service, at the lowest possible cost, while preserving consumer choice and pursuing functional equivalence.

⁵⁹ *FNPRM* at ¶ 142.

EXHIBIT 1

Proposed Transition Phases

Phases	Activities Undertaken	Reimbursement Model	Duration
Phase 1 - Implementation	Technical standards developed and implemented for VRSURD, device interoperability, portability, and implementation.	Per Minute with a continuation of current interim rates and tiers.	Months 1-12 from the approval date of the Order.
Phase 2 – Growth	<p>Customers are contestable based on implementation of portability standards.</p> <p>Over a designated period of time, every customer re-commits to a default provider by interacting with the new VRSURD (database) and registration system.</p>	<p>If per minute, Purple proposes a modified tier structure as described in its comments.</p> <p>If per user, providers would be paid a unique rate for work, home, and mobile accounts for those users who have migrated to the new program⁶⁰.</p>	<p>Months 13-48 from the approval date of the Order, provided technical standards and VRSURD are prepared for deployment.</p> <p>The implementation of Phase 2 is directly tied to the contestability of the installed base.</p>
Phase 3 – Scale	<p>Ordinary course operations.</p> <p>Marks end of sub-scale provider subsidies.</p>	<p>If per minute, a unitary rate would be set for 3-years with annual efficiency factor adjustments.</p> <p>If the per user model is adopted, there would also be a 3-year unitary “per user” rate for each account type (home, work, mobile).</p>	Commencing the 49th month from the approval date of the Order.

⁶⁰ If done in phases, there may be a hybrid model of per-minute and per user until all consumers were moved to per user.