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November 14, 2012

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Gregory Hlibok  
Chief, Disability Rights Office  
Bureau of Consumer and Governmental Affairs  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *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

Dear Ms. Dortch and Mr. Hlibok:

Purple Communications, Inc. hereby submits the attached redacted comments and expert report pursuant to the *Second Protective Order* issued in the above-captioned proceedings on May 31, 2012.

As required by paragraph 12 of the *Second Protective Order*, Purple submits: (a) two copies of the filing in redacted form to the Secretary's Office along with this cover letter. Separately, Purple submits (b) one copy of the filing containing Highly Confidential Information to the Secretary's Office along with a Highly Confidential cover letter; and (c) two copies of the filing containing Highly Confidential Information to Gregory Hlibok along with a Highly Confidential cover letter. We will also file a copy of the redacted version via ECFS.

As required by paragraph 3 of the *Second Protective Order*, we have received written approval from Commission staff for the confidentiality designations in the filing.

Sincerely,

**PURPLE COMMUNICATIONS, INC.**

John Goodman  
Chief Legal Officer

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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 PUBLIC NOTICE ON STRUCTURE AND PRACTICES  
OF THE VIDEO RELAY SERVICES PROGRAM**

**PURPLE COMMUNICATIONS, INC.**

John Goodman  
Chief Legal Office  
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595 Menlo Drive  
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November 14, 2012

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

Purple Communications, Inc. (“Purple”) provides the following comments to the Federal Communications Commission’s (the “Commission’s”) October 15, 2012 Public Notice seeking additional comment on the Structure and Practices of the video relay services (“VRS”) program (the “Notice”).<sup>1</sup>

**I. EXECUTIVE SUMMARY**

The Internet-based Telecommunications Relay Services (“iTRS”) program is more than a government benefit program for deaf and hard-of-hearing Americans; it is a service designed to further their civil rights as mandated by Congress through the Americans with Disabilities Act (the “ADA”).<sup>2</sup> For this reason, in seeking a framework that enables the VRS program to serve the greatest number of consumers at the lowest possible cost, the Commission must also promote functional equivalence.

Functional equivalence will not be met by selecting a single, or government, sponsored provider that ultimately will provision lower quality service and equipment than a competitive marketplace. Instead, functional equivalence requires that deaf and hard-of-hearing consumers have a choice of service providers, just as hearing consumers do. Indeed, the Commission has reaffirmed the value of consumer choice on numerous occasions: “if TRS users are not able to use their carrier of choice and are forced to select an alternate provider, they may pay rates that are higher than those charged by their preferred carrier, or may not have access to particular

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<sup>1</sup> *In the Matter of 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, Additional Comment Sought on Structure and Practices of the Video Relay Service (VRS) Program and on Proposed VRS Compensation Rates, DA 12-1644 (Oct. 15, 2012) (*Public Notice*).

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

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services. [B]oth results are inconsistent with the ADA<sup>3</sup>; “consistent with functional equivalency, all VRS consumers must be able to place a VRS call through any of the VRS providers’ service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer<sup>4</sup>; “[b]ecause local numbers are readily portable and toll free numbers are not, the automatic issuance of personal toll free numbers limits user choice and reduces competition, raising concerns about functional equivalency.”<sup>5</sup>

The Commission also has long recognized that a competitive marketplace best facilitates consumer choice and thus the functional equivalence mandated by Congress. Put simply, consumer choice requires provider differentiation through characteristics like interpreter quality, products and software. The design and implementation of the iTRS program’s tiered-rate structure, in particular, illustrates the Commission’s acknowledgement of the value of competition:

These tiers are intended to reflect likely cost differentials between small providers (including new entrants); mid-level providers who are established but who do not hold a dominant market share; and large, dominant providers who are in the best position to achieve cost synergies. . . . We therefore believe that using three tiers is appropriate to ensure both that, *in furtherance of promoting competition*, the newer providers will cover their costs, and the larger and more established providers are not overcompensated due to economies of scale.<sup>6</sup>

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<sup>3</sup> *In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67; *Americans With Disabilities Act of 1990*, CG Docket No. 03-123, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12379, ¶ 54 (Jun. 17, 2003) (citing 47 U.S.C. § 225).

<sup>4</sup> *In the Matter of 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, ¶ 34 (May 9, 2009).

<sup>5</sup> *In the Matters of 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, *Internet-Based Telecommunications Relay Service Numbering*, WC Docket No. 10-191, Notice of Proposed Rulemaking, 25 FCC Rcd 13767, ¶ 13 (Sep. 17, 2010).

<sup>6</sup> *See In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, ¶¶ 46-47, 52-54 (Nov. 19, 2007) (*2007 TRS Rate Methodology Order*); *see also In the Matter of*

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The Commission has additionally concluded that “the adoption of the [tiered] VRS rates . . . [are] consistent with its obligations under Title IV of the ADA, codified as *section 225* of the Communications Act. . . . [A]nd furthermore reflect full awareness of the Commission’s obligations under *section 225* and a commitment to further the goals of functional equivalency through strengthening and sustaining VRS.”<sup>7</sup>

Now is not the time for the Commission to abandon the progress it has made towards an industry model that promotes competition, unless it is prepared to abandon its commitment to consumer choice and functional equivalence, a cornerstone of the ADA. With the release of the Notice, the Commission appears to seek final comment on a slate of questions aimed at disaggregating the components of VRS. Complete or significant disaggregation amounts to reform that will impair competition, restrict consumer choice, and threaten functional equivalence. Accordingly, Purple makes the following policy proposals further detailed in sections II and III, below:

- Disaggregation of the VRS industry will reduce competition, innovation, and consumer choice, thereby reducing quality of service and jeopardizing functional equivalence;
  - Development and implementation of technical standards are a more efficient and appropriate means of enhancing interoperability, portability, and quality of service and are more efficient and practical than a single application to be used on off-the-shelf hardware;

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*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 25 FCC Rcd 8689, ¶ 17 (Jun. 28, 2010) (*2010 TRS Rate Order*).

<sup>7</sup> *2010 TRS Rate Order* at ¶¶ 18, 20.

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- Enhanced iTRS database features should be limited to third-party registration and verification functionalities that provide industry-wide protections for providers and consumers and should not interfere with functions that allow for innovation and distinction in the marketplace;
- Adoption of a weighted average cost formula for the determination of VRS rates is fundamentally flawed and must be rejected because it will result in a VRS market dominated by one VRS provider with little consumer choice, innovation and service quality;
  - As an alternative to a weighted average cost formula, the Commission should adopt transitional tiered rates as a bridge to a long-term unitary rate with a price cap designed to promote stability; and
  - VRS rates must take into account outreach, marketing, and research and development costs in addition to a reasonable return to investors to continue to attract capital to the VRS market.

Purple believes the policy proposals highlighted in this filing can preserve competition and choice for consumers while making the program more financially efficient. These goals are not mutually exclusive.

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**II. STRUCTURAL REFORMS TO DISAGGREGATE THE INDUSTRY ARE PROBLEMATIC**

**A. Multiple Providers Offering Distinct Services That Are Subject To Common Technical Standards Will Ensure Interoperability And Portability And Will Best Serve Consumers.**

While Purple supports the use of off-the-shelf hardware equipment in the delivery of VRS to consumers,<sup>8</sup> Purple opposes migration of all VRS access technologies (“VRS Access Technology”) to a standard application that could be used on commonly available off-the-shelf hardware. First, there are limitations to a standard application and off-the-shelf solution that consumers certainly consider important in their use of VRS. These include features such as integrated light signaling to indicate incoming calls, integrated video mail associated with a phone number, integrated text pre-call instructions with communication assistances (“CAs”), and other call-based user profile settings such as voice carry over (“VCO”).

Moreover, a standard application would leave no room for distinctions among provider services, style and nuance. Consequently, consumers will have fewer bases for exercising personal preference and the choice essential to functional equivalence. Providers also will lose incentive to compete on quality and innovation thereby stifling the competitive marketplace that best facilitates consumer choice. Thus, standard application ultimately sacrifices consumer choice and free-market competition in favor of a one-size-fits-all government-issued baseline service which does not satisfy the functional equivalence mandate of the ADA.

In Question No. 1, the Commission seeks specific comments regarding a process for developing a standard application and/or establishing standards for an application. The

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<sup>8</sup> See, e.g., Comments of Purple Communications, March 8, 2012, CG Dockets 10-51 & 03-123; Reply Comments of Purple Communications, March 30, 2012, CG Dockets 10-51 & 03-123; Purple VRS Program & Policy Recommendations, February 11, 2011, CG Docket 10-51.

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Commission also inquires whether the standard application or key components should be “open source.” While Purple opposes any standard application and off-the-shelf approach, Purple endorses the establishment of clear technical standards to improve consumer choice by better enabling consumers to move easily among providers.<sup>9</sup> Purple emphasizes that the Commission must enforce these technical standards for the standards to be effective. Purple also points out that clear and stringent technical standards are a far simpler means of establishing the interoperability and portability that is essential to consumer choice than a standard application.

By way of example, Purple believes that one of the most significant barriers to consumer choice and movement among providers is the lack of address book portability across the industry. The Commission could quickly and easily establish a technical standard requiring address book portability. Such a technical standard requires no field implementation and should be among the first of the technical standards adopted by the Commission. If such a technical standard existed and was implemented within 3-6 months from the effective date of such creation by the Commission, then consumers immediately would be free to move their address books to the providers of their choice.

Address book functionality is just one example of how a technical standard could improve interoperability and portability, and thus consumer choice, without the creation of a standard application. Moreover, as set forth in more detail below, Purple believes that if software is designed against clear technical standards and validly tested through a third-party for compatibility and interoperability, then software need not be “open source” as that would quash

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<sup>9</sup> The Commission has acknowledged that “VRS access technology standards may be insufficiently developed, frustrating the program’s technology goals, and potentially resulting in inappropriate lock in of VRS users.” *See In the Matter of 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, 26 FCC Red 17367, ¶ 11 (Dec. 15, 2011) (*December 2011 FNPRM*).

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providers' incentives to innovate and stifle the competitive marketplace that fosters consumer choice and functional equivalence.

In response to Question No. 3 seeking specific comment regarding whether providers should be able to continue to offer their own internally developed applications, Purple states that it strongly believes that providers should be able to continue to offer their own internally developed applications. As a related matter, Purple also supports the implementation of an interoperability testing process. Purple recommends that the Commission first set out a range of technical standards by which VRS Access Technology is measured. Then, Purple endorses the Commission's use of a third-party testing lab<sup>10</sup> that can conduct compatibility and interoperability testing prior to a provider's release of new VRS Access Technology, whether it is software, hardware, or both. Similar to Part 68 testing, providers would pay to have their software tested by a Commission-approved third-party contractor. This costs the Commission little more than the selection of a qualified vendor, improves interoperability, and thus facilitates consumer choice, competition, and functional equivalence.

In addition, the Commission could require that providers create a new identifying "flag" in their call detail records reflecting which version of software or hardware was used to place a call. By way of auditing, any call that was generated by a non-certified application would be ineligible for compensation by Rolka Loubé Saltzer Associates LLC (the "TRS Fund Administrator"). This would keep the industry accountable to a set of technical standards and would provide the Commission with the assurance that VRS Access Technology met the technical standards adopted by the Commission to ensure interoperability and portability.

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<sup>10</sup> See Comments of Purple Communications, March 8, 2012, CG Dockets 10-51 & 03-123.

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While Purple previously has provided recommendations regarding off-the-shelf hardware,<sup>11</sup> Purple declines to offer specific comments in response to Question Nos. 2, 4, 5, 6, and 7 as they ultimately relate to the details of a premise with which Purple has expressed its disagreement, as stated above. Indeed, Purple notes that the technical support and troubleshooting issues relating to a standard application and off-the-shelf equipment and raised by the Commission in Question No. 7 lend further support to Purple's position opposing this approach.

Finally, in Question Nos. 8, 9 and 10, the Commission seeks specific comments regarding the process for selection of a standard application, transition to a new VRS system, and the necessity of changes to the Commission's rules. In response to Question Nos. 8, 9 and 10, Purple reiterates its concern that the Commission's efforts to further reform the industry may actually set back the progress that has been made in clarifying industry expectations and establishing a more competitive marketplace to support the consumer choice that promotes functional equivalence. The necessity of inventing a process for the selection of a standard application is just the beginning of a Pandora's Box of bureaucracy, clarifications and new rulemaking that a re-invented VRS industry would require.

For these and the reasons set forth above, Purple opposes a standard application and off-the-shelf hardware solution.

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<sup>11</sup> *See id.*

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**B. Enhanced iTRS Database Operations Should Serve Only A Limited Role.**

Purple supports the use of a third-party vendor for certain functions that secure the service for use only by the deaf and hard-of-hearing. Purple believes that this limited third-party function will advance audits by the TRS Fund Administrator by improving transparency and assisting inquiries regarding anomalous call patterns. However, Purple does not endorse any industry structure that would, in effect, separate the video communication service component of VRS from the ASL relay CA service component by providing the functions of the former from an enhanced iTRS database. As explained below, Purple believes that the disaggregation of the VRS industry will threaten the competition that is integral to consumer choice and thus functional equivalence, while unwinding many improvements that the Commission has made to the industry since 2010.

Accordingly, in response to Question No. 1, Purple supports the use of a third-party vendor, such as Experian, for the express purposes of user identification and verification as part of a third-party managed registration process for VRS. This function provides independent protection to the industry, the TRS Fund and providers. Purple does not support the use of an enhanced iTRS database for development and distribution of VRS Access Technology, usage accounting, call routing or other value-added features. These functions support marketplace differentiation, innovation and competition, and thus consumer choice, and should be maintained by providers. Instead, as noted in Section II(A) above, Purple believes that stringent technical standards that are enforced by the Commission provide a simpler and more efficient solution to concerns about these functionalities and their impact on the interoperability and portability that supports consumer choice.

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In response to Question No. 2, Purple offers the following recommendations regarding the interface between a registration and verification vendor and the industry. Purple proposes that a registration and verification vendor would work closely with the Commission's iTRS numbering administrator to ensure that every 10-digit number issued was related to an eligible and verified consumer. The third-party vendor should independently analyze and verify the name, address, and eligibility of all registrants. Utilization of a third-party for this purpose ensures the integrity of the VRS program and the TRS Fund and allows providers to focus on quality of service and not the policing of illegitimate use, which compromises functional equivalence.

In Question Nos. 3 and 4, the Commission seeks comment regarding the necessity of multiple video communication service providers and changes to the Commission's rules. Purple believes that the issues raised by these questions simply confirm the logistical difficulties that such a system will pose to providers, consumers, and the Commission. The disaggregation of VRS among component vendors likely will reduce quality and innovation because no single provider will be accountable for a particular customer's experience. This approach likely will create a technical support nightmare for consumers—who should a consumer file a complaint against if they have difficulties connecting to VRS? The universal software company? The TRS Fund Administrator? The interpreting services provider? In addition to consumer confusion, additional vendors undoubtedly will create additional bureaucracy and, possibly, additional costs for a lower quality service.

If the Commission ultimately seeks to disaggregate VRS among a series of component vendors each operating under contract with the Commission, perhaps the Commission should consider simply issuing a request for proposal to operate the VRS program under a single

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vendor. Whether the Commission contracts with a series of component vendors or utilizes a single vendor with a monopolistic contract, marketplace competition, the innovation and quality that support consumer choice, and functional equivalence will be lost. Purple strongly opposes these approaches, which contravene the Commission's own stated objectives, as well as the letter and spirit of the ADA.<sup>12</sup>

For these and the reasons set forth above, Purple discourages the Commission from adopting an enhanced iTRS database for any function beyond registration and verification and from separating the video communication service component of VRS from the ASL relay CA service component.

**III. VRS RATES SHOULD BE FAIR, PREDICTABLE AND ALLOW FOR REASONABLE PROFITABILITY**

For the purposes of responding to the Notice, Purple has retained the services of telecommunications expert Steven E. Turner. Mr. Turner is a managing director at FTI Consulting, an independent third party consulting firm ("FTI"), and is responsible for the telecommunications practice in FTI's Network Industry Strategies group. Mr. Turner has held a variety of research, engineering, operations, and management positions in the telecommunications industry, including at AT&T. Among many other areas, Mr. Turner has expertise in network component costs, call center operations, and cost management.

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<sup>12</sup> As the Commission has previously stated:

Our overarching goal in this proceeding is to improve the VRS program so that it better promotes the goals Congress established in section 225 of the Act. Specifically, we seek to ensure that VRS is available to all eligible users, is provided efficiently, offers functional equivalence, and is as immune as possible to the waste, fraud, and abuse that threaten its long-term viability. We note that this is largely consistent with the goals outlined in the recent Consumer Groups' TRS Policy Statement, and that we seek to reform VRS in accordance with these goals to the extent possible.

*December 2011 FNPRM at ¶ 11.*

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Purple has asked Mr. Turner to evaluate the TRS Fund Administrator's rate proposal filed on October 15, 2012,<sup>13</sup> based on publicly available information. As Mr. Turner details in his expert report attached hereto as Addendum A (the "FTT Report"),<sup>14</sup> contrary to providing fair and predictable rates and reasonable profits, the TRS Fund Administrator's rate proposal will have the effect of decreasing rates for non-dominant VRS providers to such an extent that they will be forced out of business, and, as a result, undermine the Commission's goal of increasing competition in the VRS industry to facilitate consumer choice and promote functional equivalence.

**A. The TRS Fund Administrator's Rate Proposal, Based On Weighted Average Cost, Is Fundamentally Flawed And Must Be Rejected.**

The Commission should categorically reject the TRS Fund Administrator's weighted average VRS rate formulation because it is based on flawed assumptions and will have a negative impact on service quality and competition, and ultimately consumer choice and functional equivalence.

First, the TRS Fund Administrator's weighted average approach does not fully take into account the fact that VRS costs are volume-sensitive and that the VRS industry is characterized by significant economies of scale, which means that the dominant VRS provider benefits the most if the Commission were to adopt a single, industry-wide target compensation rate while smaller VRS providers suffer due to lower volumes.<sup>15</sup> Indeed, the Commission itself has

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<sup>13</sup> Rolka Loube Saltzer Associates LLC, *Supplemental Filing of the Telecommunications Relay Services Administrator Regarding Reasonable Rates for VRS Services*, CG Docket Nos. 03-123 and 10-51 (Oct. 15, 2012).

<sup>14</sup> Hereinafter cited as *FTT Report*.

<sup>15</sup> *Id.* at ¶¶ 10-25.

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previously rejected applying a single weighted average rate to all VRS providers precisely because of this fundamental structure of the VRS industry and the need for tiered rates:

[W]e will no longer apply a single weighted average rate to all providers. Instead we will adopt tiered rates based on the monthly minutes of use provided. . . . We believe that doing so may more appropriately reflect the financial situation of all providers. [T]hese providers are not similarly situated with respect to their market share and their costs of providing service. For several years now, one provider has a dominant market share, and thus this individual provider’s projected minutes and costs largely determine the rate. The record reflects, however, that providers with a relatively small number of minutes generally have higher per-minute costs. . . .<sup>16</sup>

Additionally, the TRS Fund Administrator’s weighted average approach is based in part on the premise that VRS is a declining cost industry—a premise that is not accurate even when including a productivity factor.<sup>17</sup> By adopting the TRS Fund Administrator’s rate proposal, the Commission will exacerbate the market dominance of Sorenson to the detriment of all VRS participants, compromising consumer choice, and threatening functional equivalence.

**\*\*\*BEGIN HIGHLY CONFIDENTIAL INFORMATION\*\*\***

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<sup>16</sup> 2007 TRS Rate Methodology Order at ¶¶ 47, 52-54 (internal citations omitted); see also 2010 TRS Rate Order at ¶ 17 (“[W]e find that the current tier structure remains a workable, reliable to [sic] way to account for the different costs incurred by carriers based on their size and volume of TRS minutes relayed. The rationale for adopting the tiers in the 2007 TRS Rate Methodology Order remains applicable; that is, providers with a relatively small number of minutes generally have higher costs.”).

<sup>17</sup> FTI Report at ¶¶ 48-53.

[REDACTED]

[REDACTED]

[REDACTED]

**\*\*\*END HIGHLY CONFIDENTIAL INFORMATION\*\*\***

If the Commission wants to preserve the intent of the VRS reform process to ensure that VRS is “effective, efficient, and sustainable for the future,”<sup>18</sup> then the Commission will reject the TRS Fund Administrator’s rate proposal and adopt a way forward that both promotes competition and is financially prudent. As stated in the FTI Report, the single most important issue before the Commission is whether to pursue a compensation regime that will promote a VRS market with multiple providers (and reap the benefits of competition) or promote a VRS market that will yield the lowest short-term cost (but lose the benefits of a competitive market). This single decision will drive much of the Commission’s decision-making,<sup>19</sup> and implicates not only the cost of the VRS program, but the civil rights of deaf and hard-of-hearing Americans.

**B. As An Alternative To The TRS Fund Administrator’s Rate Proposal, The Commission Should Adopt Tiered Rates As A Bridge To A Long-Term Unitary Rate.**

As demonstrated in the FTI Report and made clear in prior filings by Purple,<sup>20</sup> VRS providers operating with higher volume have lower costs due to efficiencies. For smaller providers the pathway to greater volume is a marketplace that operates under a set of stringent technology standards that ensure interoperability and portability. Under such a structure, consumers can freely move from provider to provider with their relevant calling information,

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<sup>18</sup> *December 2011 FNPRM* at ¶ 1.

<sup>19</sup> *FTI Report* at ¶ 61.

<sup>20</sup> *See Purple VRS Program & Policy Recommendations*, February 11, 2011, Purple Comments CG Dockets No. 10-51 & 03-123, March 8, 2012, and *Purple Reply Comments CG Dockets No. 10-51 & 03-123*, March 30, 2012.

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such as address books, and exercise the choice that is essential to functional equivalence.

Purple believes the Commission must first adopt and enforce clear technology standards that will facilitate interoperability and portability, thereby increasing competition and consumer choice. During this time period that technical standards are under development and implementation, size disparities among providers will persist as will cost disparities as evidenced in this filing. To accommodate for this economic reality, Purple proposes that the Commission preserve a tiered rate structure on a purely transitional basis. Purple has previously submitted a detailed proposal outlining how expanding the thresholds of the tiers and lowering rates could result in cost savings to the VRS program while enabling smaller providers to “climb the scale curve”<sup>21</sup> following the implementation of industry-wide technology standards to increase interoperability and portability.

Based on the Notice and the TRS Fund Administrator’s filing, Purple offers an updated approach to a three-tiered model that will enable VRS providers to gain additional market share during a period of limited duration with a known end date before conversion to a unitary rate compensation model. The rates and tiers proposed by Purple as a transitional rate structure are as follows:

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<sup>21</sup> Purple’s Notice of *Ex Parte* Conference, CG Dockets No. 03-123 & 10-51, April 19, 2012.

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<b>Tier</b>	<b>Minutes Per Month</b>	<b>Reimbursement Rate Per Minute</b>
Tier 1	0 – 500,000	\$5.92 <i>A 5% reduction from the current Tier-1 rate</i>
Tier 2	500,000 – 2,000,000	\$4.82 <i>A 5% reduction from the current Tier-3 rate</i>
Tier 3	More than 2,000,000	\$4.10 <i>A 15% reduction from the new Tier-2 rate</i>

The application of this rate structure will save the iTRS Program more than \$70 million annually<sup>22</sup> and still allow smaller VRS providers the ability to innovate and compete with the full understanding that the tiered system eventually will be eliminated in favor of a long term unitary rate.

**C. Following The Transitional Tiered Rate Structure, The Commission Should Adopt A Unitary, Three Year Price Cap Approach To Promote Stability.**

Once technology standards are implemented to provide for interoperability and portability, and a more openly competitive market is established, Purple recommends that the Commission adopt the lowest rate paid under the transitional tiered plan as the starting rate for a new three year unitary rate period. This new starting rate would be paid to all providers and adjusted annually for efficiency. Again, the stability that predictable rates would bring to the market would further innovation, efficiency and competition and thus consumer choice.

The rates for VRS should be regulated by price cap methodology. As previously stated in Purple’s August 18, 2010 Comments on Notice of Inquiry,<sup>23</sup> the stability provided by the price cap would optimize the incentives for VRS providers to lower costs and engage in long-term planning and investment in their VRS businesses thereby facilitating great competition and

<sup>22</sup> See Attached Exhibit 1 for detailed analysis of savings and estimated reimbursement rates by provider.

<sup>23</sup> See Comments on Notice of Inquiry by Purple, CG Docket No. 10-51, at 10 (Aug. 18, 2010).

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consumer choice. Under a price cap system, rates would remain steady, subject to standard adjustment factors based on well-established and objective indexes. Moreover, a price cap structure motivates providers to operate efficiently because providers obtain the benefits of those cost reductions until rates are reset.<sup>24</sup> When providers succeed in decreasing costs and increasing efficiency, the resulting surplus of funds can be invested in innovations and improved services for consumers.

**D. Inclusion Of Outreach, Marketing, And Research And Development Costs Is Absolutely Necessary, As Is A Reasonable Return To Investors.**

If lower costs are derived through more than one VRS provider operating at scale, and the best way for smaller VRS providers to grow is through innovation once technology standards are uniformly enforced, then it would be counterproductive for the Commission to exclude the costs of outreach, marketing, and research and development from the very firms that need to grow in order to achieve a market structure that can support lower rates and the consumer choice essential to functional equivalence. Properly constructed, the transitional tiered rate structure could be designed to ensure each VRS provider is paid equitably for outreach, marketing, and research and development. For example, one approach is that outreach, marketing, and research and development are paid on a per minute basis up to the first 2 million minutes per month for each provider. For minutes above 2 million, the reimbursement rate would be lowered and not include any allocation for these items. An approach like this incentivizes and funds the innovation of the smaller VRS providers without giving the dominant VRS provider an undue marketing, outreach, or research and development windfall from which it can continue to fund its dominant position, a position that threatens consumer choice and functional equivalence.

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<sup>24</sup> See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order. 5 FCC Red 6786, 6787 (Oct. 4, 1990).

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With respect to the amount of capital costs that are allowed to be recovered, and as the FTI Report states, a traditional rate of return investment analysis approach is not a suitable option for VRS, which is a labor-intensive industry.<sup>25</sup> Instead, as the FTI Report points out, there are a “number of ways that the Commission can properly regulate the VRS market while achieving its public policy objectives. However, in doing so, it is essential that the Commission look toward an approach that continues to foster innovation and competition,”<sup>26</sup> and that provides a return on investors’ money. Indeed, it is important that the Commission not dismiss the benefits to the marketplace and consumers of providing a reasonable return on investor money. If the VRS industry becomes entirely unattractive to investors, innovation and competition will substantially decline.<sup>27</sup> The Commission should follow the guidelines for the valuation of enterprises, which is based on earnings and discounted cash flow analysis.<sup>28</sup> As suggested in the FTI Report, earnings require a policy structure that rewards competition and efficient operations and allows for reasonable profitability, all of which may be established based on industry proxies.<sup>29</sup>

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<sup>25</sup> *FTI Report* at ¶ 56.

<sup>26</sup> *Id.* at ¶ 59.

<sup>27</sup> *Id.* at ¶¶ 58-61.

<sup>28</sup> *Id.* at ¶ 58.

<sup>29</sup> *Id.* at ¶¶ 58-59.

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**E. In Light Of The Above, Purple Proposes A Three-Phase Implementation Timetable For VRS Reform.**

Purple offers the following three-phase implementation schedule for VRS reform:

<b>Phase</b>	<b>Phase Description</b>
Phase 1	During Phase 1, which would last for 12-months from the effective date of the FCC's Order, technical standards would be developed and implemented for the centralized registration and verification, device interoperability, portability and the third party testing of VRS Access Technology. Rates during this period would be the transitional tiered rate structure.
Phase 2	During Phase 2, the technical standards would be implemented and enforced across the industry. Consumers would have new flexibility to choose providers and move their information from one provider to the other. This Phase would last for no more than 36-months and could last for less time if at least two other providers were operating with at least [20%] market share which would reflect the achievement of scale and serve as a trigger by which unitary rates could be applied industry wide. In any case, at the end of 36-months, regardless of market share re-allocation, all providers regardless of size would be paid a unitary rate. This provides the Commission and providers with a known "end date" to any notion of small provider subsidization.
Phase 3	During Phase 3, a new three-year, unitary rate would be implemented for all providers regardless of size and would be evaluated annually under a price cap efficiency factor calculation.

**IV. CONCLUSION**

The mandate of the ADA is not met by a VRS program supported by a single provider devoid of incentives to innovate, preserve quality, and create the consumer choice that fosters functional equivalence. The Commission has always sought to promote innovation, quality and competition, because those factors increase consumer choice and functional equivalence. The Commission should not abandon these policies. Efficient cost structures should not come at the cost of creating a monopoly that provides a base-line standardized service. The recommendations offered herein harmonize the Commission's policy objectives of competition,

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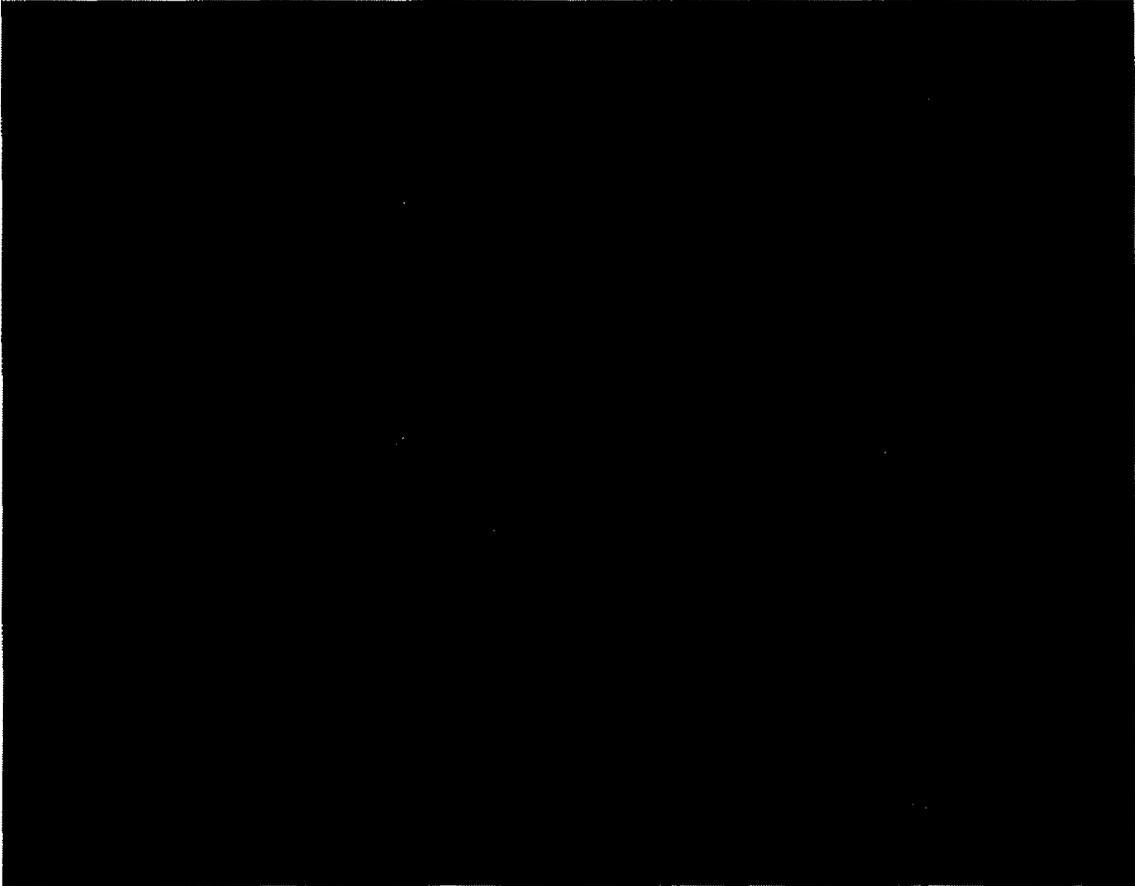
consumer choice, and functional equivalence while ensuring that the VRS program is “effective, efficient, and sustainable” into the future.

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**EXHIBIT 1**

**Reimbursement Rate Analysis**

**\*\*\*BEGIN HIGHLY CONFIDENTIAL INFORMATION\*\*\***



**\*\*\*END HIGHLY CONFIDENTIAL INFORMATION\*\*\***

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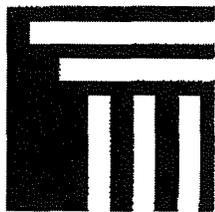
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## **ADDENDUM A**

**REDACTED – FOR PUBLIC INSPECTION**

**REPORT OF  
STEVEN E. TURNER**

**November 14, 2012**



**F T I**<sup>TM</sup>  
**CONSULTING**