

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

In the Matter of)	
)	
Misuse of Internet Protocol Captioned (IP-CTS))	
Telephone Service)	CG Docket No. 13-24
)	
Telecommunications Relay)	
Services and Speech-to-Speech Services for)	
Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	
To: The Commission)	

PETITION FOR LIMITED WAIVER

Pursuant to Paragraph 35 of the January 25, 2013 Order¹, Purple Communications, Inc. (Purple) hereby files a petition for limited waiver of the March 7, 2013 effective date for interim rule 47 C.F.R Part 64.604(c)(10)(i) requiring that IP CTS equipment and services have a default setting of captions off so that new and existing users must affirmatively turn on captioning for each telephone call initiated or received before captioning is provided. Purple seeks a 30-day waiver only for service provided through Cisco IP Phones, for Purple to have completed its software upgrade to enable the functional requirements of the Order. Thereafter, Purple seeks a waiver related to the installation of those software upgrades in enterprise IT environments at the workplaces of our customers using Cisco IP Phones. As set forth below, these limited waivers for IP CTS provided through Cisco phones, which are located only in dedicated work spaces, is necessary in order to allow sufficient time to bring existing

¹ *Misuse of Internet Protocol (IP) Captioned Telephone Service: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Order and Notice of Proposed Rulemaking, FCC 13-13, January 25, 2013 (the "Order").

equipment and services into compliance with all aspects of the rule, and to allow third party IT departments sufficient time to install the compliant software.

ClearCaptions Use through Third-Party Equipment

Purple's IP CTS service, ClearCaptions, is delivered through web and wireless access, the Clarity® Ensemble™ Phone and multiple versions of the Cisco IP Phone. The use of the Ensemble and Cisco IP phones for delivery of IP CTS services is consistent with the Commission's efforts to encourage providers to deliver relay services through off-the-shelf products in order to promote competition and innovation in the relay marketplace. The drawback to this approach is that providers such as Purple are dependent on third parties to execute major redesign changes such as the one required in the interim rule 47 C.F.R Part 64.604(c)(10)(i).

ClearCaptions accessed through both the Ensemble and Cisco IP phones already had automatic and manual settings in place prior to the Order. Registration for both devices already includes a self-certification requirement. From its release, the Ensemble phone has been shipped in a default-off setting, and users must register for the IP-CTS service prior to using captions on the phone. The Cisco IP phone can only become a caption-enabled phone for consumers after they first request the service through the appropriate department at the government agency, business or organization in which they work, and then they must complete registration for the service.

Despite these protocols already in place, based on the new interim rule requirements adopted in the Order, the software in both phones needs to be redesigned to remove the ability of the individual customer to set an automatic default-on option and to enable a manual mode for captions on each call initiated or received. Purple has been working quickly and diligently to develop the software specifications to comply with the interim rule, and has already provided

these specifications to Ensemble and Cisco IP phone third party developers for their review, approval, and implementation.

Through strenuous and dedicated efforts of Clarity and Purple's staff, we believe will be able to deploy the required changes for the Ensemble devices prior to the March 7 deadline. So, for the Ensemble phones, Purple does not require a waiver.

Despite best efforts, the software redesign to remove the automatic default-on option will not be completed for the Cisco devices by the deadline. An affidavit from Purple's Director of Research and Development is attached describing actions taken and delivery date information provided by Cisco third party software developers. Based on this information, Purple asks for limited waiver of 30 days for the completion of software coding and development needed to upgrade the multiple versions and models of the Cisco IP phone to remove the automatic captioning option. In that time, Purple will continue its diligent work with the third party developers to complete the required updates.

Access to Consumers at Work

In addition to partnering with third party developers, Purple must work with outside corporations and organizations that control access to the consumer's Cisco IP phone in order to deploy any software updates. Release notes must be run through numerous government agency and corporate change processes before being introduced into IT production environments. Communication to users is managed through internal HR/ADA/or EEO offices, not by Purple. In addition, government agencies and corporations set the timeline for allocating resources, schedule changes, installations and tests at their facilities. Purple will inform them of the requirements of the Order, and will make every effort to expedite the deployment schedule.

However, each employer controls the final date of compliance with the Order, based on various external and internal factors

For the reasons listed above, Purple seeks a limited waiver for use of captions by Cisco IP CTS phone users until such time as their employers -- the government agencies, corporations and organizations that own and control the consumer's phone and access to the phone network -- implement the software changes provided by Purple. Some of these enterprises are likely to implement within days of delivery of the upgrade from Purple, while others are likely to present longer periods to install compliant software.

Minutes of Use

Finally, Purple seeks a limited waiver to obtain compensation from the interstate TRS Fund Administrator for calls made on Cisco IP phones during the limited waiver request period, and during the time that a business, government agency or organization delays implementation of the software changes provided to it by Purple. A waiver in this situation is justified since the necessary upgrade and propagation process is not within Purple's control. The software for the multiple models of Cisco IP phones used with ClearCaptions may only be redesigned through Cisco approved third party developers who operate independently from Purple, and upon development and testing of the upgraded software, the public and private enterprises who employ captions users control the timing of implementation of the upgrades on their networks.

Additionally, reference is made to Purple's comments filing in response to the Commission's IPCTS NPRM questions contained in the Order. Purple has advocated that the Commission should balance the risk of unintentional misuse of a given IPCTS enabled device against the loss of functional equivalence that occurs through the delayed connection to the captions call center that results from manually-initiating captions on a call. As stated above,

consumers accessing ClearCaptions on their Cisco IP phone are in their work place, on a dedicated extension, in a private office or work cubicle. It is extremely unlikely that these phones will be misused. The phone is dedicated for use by the assigned employee. To receive captioning service through the phone, the employee must have contacted their internal personnel department to request the service and have provided a self-certification that they are a qualified user of the service. As such, these devices are specifically intended for exclusive use by the eligible user, and are not common-area, general purpose phones accessible to multiple users.

That low risk is contrasted against a very costly impact in terms of functionality if eligible users using these phones specifically only in work settings are forced to experience a delay and miss portions of every call. The nature of the Cisco IP phones' captioning software creates a materially longer delay in connecting to the call center upon manual initiation of a captions session than the delay present when the phone is set to automatically caption. As a result, a significant percentage of the beginning of each phone call is lost in the captioning.² Purple argues that this loss of functionality presents an undue burden on the user that is not justified by the extremely low risk of unintended misuse. This is not a balanced trade off, and negatively and systematically impacts the ability of an eligible IP CTS user to perform duties in a functionally equivalent manner at work.

As an alternative to the waiver structure requested by Purple herein, Purple requests that the Commission approve a limited exception to the default-off requirements of the Order that would be applicable to users of Cisco IP phones in a work environment where the phone is not

² See Purple Comments in Response to Notice of Proposed Rule Making on IP CTS, CG Docket Nos. 13-24 and 03-123 (Feb. 26, 2013).

used by or accessible to others. Users eligible for the exception would be required to provide the form of "elevated certification" that Purple describes in detail in its NPRM comments.³

The Bureau, acting under delegated authority, may waive a rule when "good cause" is demonstrated.⁴ Under the good cause standard, the Bureau may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁵ In considering a waiver request, the Bureau may take into account considerations of hardship, equity, or the more effective implementation of overall policy on an individual basis.⁶ Thus, waiver of the Commission's rules is appropriate when special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁷ Further, courts have held that it is arbitrary and capricious to enforce requirements that cannot be satisfied.⁸

Purple has, and will continue to work expeditiously to bring Cisco devices in compliance sooner than the 30-day waiver requested. But, in deploying software changes to equipment not designed by Purple, Purple is dependent on third parties for execution of changes. In addition, Purple does not have direct access to consumer Cisco IP phones in corporate, government agency or organization environments.

³ See Purple Comments in Response to Notice of Proposed Rule Making on IP CTS, CG Docket Nos. 13-24 and 03-123 (Feb. 26, 2013).

⁴ 47 C.F.R. § 1.3; *see also* WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) ("WAIT Radio").

⁵ *See* Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("Northeast Cellular").

⁶ WAIT Radio, 418 F.2d at 1159.

⁷ *See* Northeast Cellular, 897 F.2d at 1166.

⁸ *See* Alliance for Cannabis Therapeutics v. DEA, 930 F.2d 936,940 (D.C. Cir. 1991); D.C. Transit Sys., Inc. v. Washington Metropolitan Area Transit Comm'n, 466 F.2d 394, 402 (D.C. Cir. 1972), cert. denied 409 U.S. 1086 (1972).

Purple has also demonstrated good cause that a waiver is in the public interest and that the failure of a waiver would cause unjust harm to deaf and hard of hearing IP CTS users and their colleagues, families and employers. A refusal to provide a waiver would mean that existing Purple IP CTS customers who use Cisco IP phones would immediately lose access to relay services. Such drastic consequences would be wholly inconsistent with the requirements of the Americans with Disabilities Act.

Purple looks forward to continuing its work with Commission staff to raise the bar in compliance and delivery of relay services.

Respectfully submitted,

PURPLE COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read 'J. Goodman', written over a horizontal line.

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

March 1, 2013

Affidavit of Jesse Odom
Director of Research and Development
Purple Communications, Inc.

March 1, 2013

I, Jesse Odom, declare the following is true and correct to the best of my knowledge and belief:

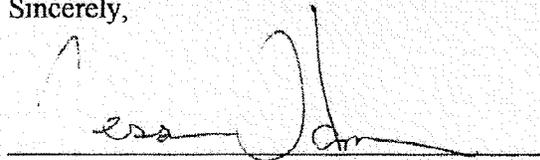
I am the Director of Research and Development for Purple Communications, Inc. ("Purple"), and am the primary person responsible for the delivery of technical updates to the ClearCaptions service required in the January 25, 2013 Order (the "Order").

ClearCaptions services are delivered to users through Cisco IP phone devices located in workplace environments. Purple does not control software coding, or the development and implementation of technical changes on Cisco IP phones. All such work is performed exclusively through a third party, Cisco-approved vendor (the "Vendors").

Upon receipt of the new default-off requirements of the Order, on or about February 4, 2013, I immediately started work on developing specifications for the upgrade of the captioning software for Cisco devices to be compliant with the default-off requirements of the Order. I then contacted our Vendor, Parsec Tech, and delivered to them the specifications for their review. After reviewing and refining the development specifications, they have identified an aggressive delivery date of March 18, 2013 for the software updates to be developed. This date was based on the complexity of the Cisco phone software, as well as the multiple variations of Cisco IP Phone models that required corresponding variations of the software code upgrade.

Based on best available information, I believe that the software upgrades will be fully tested, prepared and ready for installation on or about April 1, 2013. At that time, Purple will immediately deliver the upgraded code to enterprise IT departments and work with them to schedule installation of the upgrades. However, based on prior experience, some of these installations will occur swiftly, and others will take more time, depending on the nature, skill level and work load of the IT professionals who control and manage each of those networks.

Sincerely,



Jesse Odom
Director of Research and Development
Purple Communications, Inc.