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

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

COMMENTS OF PURPLE COMMUNICATIONS, INC.

I. INTRODUCTION.

Purple Communications, Inc. ("Purple") submits the following comments regarding the Federal Communications Commission's ("Commission" or "FCC") plan to reform the rates and structure of the video relay service ("VRS") program. As emphasized in previous filings, Purple strongly supports the Commission's goal of reforming the VRS program to foster more robust competition and greater efficiencies in the VRS marketplace, including the elimination of small-provider subsidies and *gradual* transition to unitary rates for all providers regardless of size. Purple is concerned, however, that the timeline currently being considered by the Commission for implementation of rate cuts for lower-volume providers would unfairly and disproportionately disadvantage those smaller providers and undermine the Commission's goal of cultivating increased competition.

The Commission may be considering implementing a two-tier rate structure – the first tier rate would be paid for the first 500,000 minutes per month for all providers, and the second tier rate would be paid for all minutes generated in excess of 500,000 per month. To the extent that the

Commission is considering a systematic reduction in rates for each of the tiers, Purple urges the Commission to implement rate reductions for Tier I (under 500,000 minutes per month) over the course of five years – not three – with a two-year delay in cuts following the initial reduction potentially planned for July 1, 2013. Doing so would provide adequate time for the Commission's other competition-related VRS reforms to take hold and begin working, strengthen competition, afford providers of all sizes a fair opportunity to compete in the marketplace, and allow lower-volume providers time to achieve greater market share and operating efficiency before their rates are further reduced. This approach still achieves the goals of eliminating small-provider subsidies and does not result in excessive payments to smaller providers, who, according to the independent auditor of the FCC's Office of Inspector General, are not overcompensated even at current rates.[1] Moreover, the alternative five-year timeline proposed by Purple would have a minimal cost impact on the Interstate Telecommunications Relay Service Fund ("Fund"). Depending on the cost reductions under consideration, the total "cost" to the Fund of a five-year Tier I rate reduction likely amounts to approximately 1-2% per month from the savings that would be realized under, for example, a three-year reduction.

Providing a predictable, five-year runway over which the rates of the smaller providers will be reduced avoids the problems caused by prematurely eliminating small-provider subsidies before removing the very barriers and anticompetitive practices that are the chief cause of them remaining

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[1] *See, e.g.,* Purple's Reply Comments to Public Notice on Structure and Practices of the Video Relay Services Program, CG Docket Nos. 03-123 and 10-51, 12, dated Nov. 29, 2012 ("…[T]o Purple's knowledge, the record is devoid of any evidence that smaller providers are overpaid. To the contrary, the same third party auditor concluded in its recent audit report of Purple that Purple was ***not*** overcompensated.") ("Purple Nov. 29 Reply Comments"); Letter from Jeff Rosen, General Counsel, CSDVRS, LLC, to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51, 2, dated Dec. 17, 2012 ("As with Purple, the 2012 preliminary audit report conducted on behalf of the Commission's Office of Inspector General indicates that ZVRS was not overcompensated for VRS services provided in 2011, concluding that 'TRS funds received by CSDVRS for VRS were for the reasonable costs of providing VRS.'").

"small" providers. The FCC should provide an adequate runway for its reforms to take effect and the playing field to become more level. Only by creating a level playing field in a competitive marketplace with multiple providers can the FCC ensure *permanent* cost reductions for the provision of this service.

II. BACKGROUND.

Purple believes that the Commission's expected reform of the VRS program will make significant strides in improving interoperability standards and facilitating greater competition. In particular, reforms such as requiring an independent testing lab to certify equipment and software interoperability as a condition of a provider receiving compensation will greatly improve competition and create a level playing field for smaller providers. Purple strongly supports the Commission's goals of increasing competition in the marketplace in order to realize greater VRS efficiencies. However, as valuable as such reforms will be, they will take significant time to define, implement and take effect to reform the marketplace. Given that the Commission's competition-related reforms cannot have an overnight impact, it is critical that the Commission's corresponding rate reforms are also not imposed overnight – as the two concepts are inextricably linked. As has been recognized through the FCC's own staff report, Sorenson Communications, Inc. ("Sorenson") is the largest provider in the market today and the <u>only</u> provider the FCC has indicated is overcompensated.[2] Affording smaller providers the opportunity to grow market share and scales of efficiency, before the Tier I rates are dramatically reduced, is consistent with the Commission's aggressive and laudable goals for broad industry reform.

[2] *See* Office of Inspector General Memorandum, dated September 27, 2012, *available at* http://transition.fcc.gov/oig/Sorenson_Audit_Report_09272012_Redacted.pdf ("TRS funds received by Sorenson for VRS did not compensate for only the reasonable costs of providing access to VRS.").

III. IF THE TWO-TIER STRUCTURE IS ADOPTED, THE COMMISSION SHOULD IMPLEMENT A FIVE-YEAR TIMELINE FOR REDUCING RATES FOR LOW-VOLUME TIER I PROVIDERS.

If the Commission adopts the two-tier structure with Tier I being less than 500,000 minutes per month and Tier II being over 500,000 minutes per month, Purple strongly urges the Commission to implement rate reductions for Tier I over the course of five years – not three years.

Consistent with annual rate-setting, it is likely that the current rate for each tier would be cut on July 1, 2013. To the extent that the Commission is considering a systematic reduction in rates within each tier over time, Purple proposes a five-year timeline for Tier I, with the initial rate reduction implemented on July 1, 2013. Purple advocates that, after the initial cut, no additional cuts would be implemented for a period of two years. This two-year "freeze" in the first tier would allow sufficient time for the Commission's competition-related reforms to take effect, and for the smaller providers to make the significant investments necessary to compete in the marketplace. Following that two-year "freeze" period, the Commission would continue with any planned systematic rate reductions, with the Commission's proposed Tier I ending rate taking effect as of July 1, 2017. Purple does not advocate for a delay with respect to Tier II, even if those rate reductions are planned over a three-year period.[3]

Purple's proposed five-year timeline for Tier I is consistent with the Commission's repeated calls for reforms that are timely, predictable, and fair for the private sector and consumers, alike. Indeed, Commissioner Clyburn recently remarked: "…Americans are in need of and will always

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[3] Notably, Purple is the only provider with monthly minute billings spread nearly equally across the proposed Tiers I and II. As a result, Purple's proposal to delay the implementation of Tier I rate cuts for two years would not serve to insulate Purple from the impact of rate cuts. Purple's compensation would still be reduced significantly as a result of the cuts implemented with respect to its billings in the proposed Tier II.

benefit from world-class technology and innovation that often comes from the private sector, but both must have assurances that the rules which govern this space are timely, clear, and fair."[4]

Similarly, Commissioner Rosenworcel emphasized in recent testimony that Commission policies "must always do two simple things. First, they must promote confidence for private investment in digital age infrastructure. Second, they must promote confidence for consumers to realize the full potential and opportunity that our emerging digital world provides."[5] This also is consistent with Commissioner Pai's remarks, in the context of universal service reform, urging the adoption of Commission policies that provide the private sector with long-term financial predictability.[6]

The five-year timeline proposed by Purple is exactly the type of policy called for by the Commissioners. By adopting Purple's proposal, the Commission would afford lower-volume VRS providers the financial certainty and time necessary to invest, grow their market share, and realize greater efficiencies by increasing their scale. The resulting increase in marketplace competition and VRS efficiencies would benefit not only the private sector but also the American consumers, who rely on these important services, by fostering innovation and providing better consumer choice. Indeed, as the Commission has acknowledged, cultivating a competitive VRS marketplace in which

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[4] Statement of Commissioner Mignon L. Clyburn, FCC, before the U.S. Senate Committee on Commerce, Science, and Transportation, 1-2 (March 12, 2013) (emphasis added).

[5] Statement of Commissioner Jessica Rosenworcel, FCC, before the U.S. Senate Committee on Commerce, Science, and Transportation, 1 (March 12, 2013).

[6] *See* Statement of Commissioner Ajit Pai, FCC, before the U.S. Senate Committee on Commerce, Science, and Transportation, 6 (March 12, 2013).

consumers have a choice of multiple providers serves to "enhance competition," as well as "advance technological development, increase quality of service, and **reduce costs**."[7]

The Commission will only be able to achieve its goal of greater VRS competition and efficiency, however, if the Commission's competition-related reforms are given sufficient time to take effect **before** rates are reduced for smaller providers. Purple would anticipate that the Commission's expected reforms to promote a more competitive environment in the provision of VRS will require more than a few months to implement. For example, if the FCC's decisions require additional regulatory processes to define and effectuate the competition-related reforms, then the Commission cannot expect that the final parameters of those pro-competitive efforts will be sufficiently articulated to the market for at least a year. Only then would VRS providers understand how their businesses would benefit from such measures and be able to plan accordingly. The end result would be that an additional year (*i.e.*, two years out from an initial FCC order) would likely pass before the full impact of the FCC reforms would be experienced by the market.

Indeed, it would be entirely illogical for the Commission to implement marketplace reforms intended to level the playing field and enable smaller providers to compete more effectively, but then cut those smaller providers' rates, placing them at a severe market and economic disadvantage before the Commission's marketplace reforms can help to increase competition. Imposing rate reductions for lower-volume providers on a quicker timeline such as three years would decrease competition in the marketplace, not increase it. This is exactly the opposite of the Commission's objectives.

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[7] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Report and Order on Reconsideration, 20 FCC Rcd 20577, ¶ 26 (rel. Dec. 12, 2005) (emphasis added); *see also Structure and Practices of the Video Relay Services Program, et al.,* CG Docket No. 10-51, *et al.*, Notice of Inquiry, 25 FCC Rcd 8597, ¶ 63 (rel. June 28, 2010) ("We [the FCC] are particularly interested in knowing: (1) How can we encourage competition that would reduce the costs of VRS?").

Furthermore, the FCC Office of Inspector General's independent auditor has concluded that low-volume providers billing primarily in the lower tier are not overpaid, while the largest provider that bills primarily in the high-volume tier is overpaid.[8] Without at least a five-year transition to lower rates for low-volume providers in Tier I, those low-volume providers would be impacted nearly twice as severely as the higher-volume overpaid provider. Given the significant investments that the low-volume providers must make in order to effectively compete – even if the market is reformed to allow increased competition – a timeline less than five years (for example, a three-year timeline) would severely impair the low-volume providers' ability to compete in the VRS marketplace.

Finally, as noted above, the alternative five-year timeline proposed by Purple would have a minimal cost impact on the Fund. Indeed, depending on the cost reductions under consideration, the total "cost" to the Fund of a five-year Tier I rate reduction likely amounts to approximately 1-2% per month from the savings that would be realized under, for example, a three-year reduction.

Obviously, this impact is quite modest when compared to the potential cost to the Fund of driving the low-volume providers from the industry and being faced with a single-source supply chain for VRS services, or a future auction process with a single bidder because no other providers exist – or a scenario in which other providers exist but are so financially impaired that they cannot make the necessary investments to accommodate the growth required to service auctioned minutes.

[8] *See supra* nn. 1-2.

IV. EXPANSION OF CURRENT TIERS.

Finally, Purple has suggested in prior filings that the Commission strongly consider expanding the existing rate tiers.[9] Purple continues to believe that Fund savings can be maximized, and overpayments to providers minimized, by implementing a three-tier rate structure that includes tiers of 0-500,000 minutes per month, 500,000-2,000,000, and 2,000,000 and above. Purple believes such a structure not only promotes near-term savings and the correction of current overpayments, but also is the Commission's most effective way to cultivate the growth of competitors to Sorenson, and thus most quickly transition to a future unitary rate. If the Commission is not inclined to move to a modified three-tier rate, Purple believes that a two-tier rate would be better defined at a break point above 500,000.

As discussed in Purple's previous filings, significant operating efficiencies are enjoyed by providers who reach scale volume.[10] The absorption of a provider's fixed costs across higher minute volume results in a lower marginal cost for the provider to produce additional minutes. For this reason, a significantly lower reimbursement rate for very high-volume minutes can be easily supported. Likewise, in a two-tier system, a moderate increase in the break point between Tiers I and II would support the Commission's contemplated reduction of Tier I rates.

V. CONCLUSION.

If the Commission moves forward with adopting a two-tier VRS structure as described above, Purple respectfully urges the Commission to implement planned rate reductions for Tier I rates over the course of five years – not three – with a two-year delay in Tier I rate cuts following any initial rate reduction on July 1, 2013. Doing so would allow time for the Commission's

[9] *See, e.g.,* Purple's Comments to Public Notice on Structure and Practices of the Video Relay Services Program, CG Docket Nos. 03-123 and 10-51, 15-16, dated Nov. 14, 2012 ("Purple Nov. 14 Comments"); Purple Nov. 29 Reply Comments at 10-13.

[10] *See* Purple Nov. 14 Comments at 12; Purple Nov. 29 Reply Comments at 8.

competition-related VRS reforms to break down artificial barriers to competition in the current landscape, strengthen competition, allow lower-volume providers time to achieve greater market share and scales of efficiency before their rates are dramatically reduced, and afford providers of all sizes a fair opportunity to compete in the marketplace.

Respectfully submitted,

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