

**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	)	

**EMERGENCY PETITION FOR LIMITED WAIVER**

Purple Communications, Inc. (“Purple”) hereby petitions the Federal Communications Commission (“Commission” or “FCC”) for an emergency, limited 120-day waiver of the Commission’s speed-of-answer requirements, contained in Section 64.604(b)(2) of the Commission’s rules, with respect to Purple’s IP Relay service, with an effective date retroactive to the date of this filing.<sup>1</sup> This limited waiver is necessary for Purple to continue providing IP Relay service following the recent decisions of three of the five providers of IP Relay service to exit the IP Relay marketplace, which Purple anticipates will cause a significant, imminent shift in IP Relay call volume to Purple. Most recently, on July 8, 2013, Sorenson Communications (“Sorenson”) announced that it will cease providing IP Relay service due to the Commission’s decision last week to reduce the compensation rate for IP Relay by more than 20%.<sup>2</sup> Sorenson’s exit from IP Relay service follows

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<sup>1</sup> 47 C.F.R. § 64.604(b)(2); *see also* 47 C.F.R. § 1.3.

<sup>2</sup> *See* Letter from John T. Nakahata, Counsel, Sorenson, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (July 8, 2013); *see also* *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, et al.*, CG Docket Nos. 03-123 and 10-51, Order, DA 13-1483 (rel. July 1, 2013). Purple had warned the Commission that with such a dramatic rate cut, providers would be likely to exit the IP Relay market. *See* Purple’s Comments, CG Docket Nos. 10-51 and 03-123, at 5 (May 31, 2013) (“Purple’s May 31 Comments”).

on the heels of Hamilton Relay's and AT&T's recent abandonment of their IP Relay services.<sup>3</sup>

As these providers abandon the IP Relay sector, the customers they previously served, who require IP Relay service, will obtain such service from one of the two remaining IP Relay providers. In the case of Sorenson, it offers IP Relay services exclusively through applications connected to an America Online Instant Messenger ("AIM") account, and Purple is the only remaining provider of IP Relay service that offers AIM-based solutions (in addition to multiple other forms of access). Therefore, Purple expects the majority of former Sorenson customers to register with Purple. However, it is impossible to predict the number of, and rate at which, such customers will register and use Purple's IP Relay service, and thus, it is impossible for Purple to predict with certainty the resulting impact on Purple's actual daily minute volumes. Nonetheless, Purple anticipates a significant increase in demand for its IP Relay services as a result of these providers' exit from the IP Relay marketplace, and has already begun to see its effects. In order to handle the resulting unpredictable but likely shift in daily call volume, Purple requires at least 120 days from the date of this filing to quantify the resulting demand, then recruit and train additional IP Relay staff, so that it can comply with the Commission's strict speed-of-answer requirements. Purple requires immediate relief in order to continue providing its IP Relay service and simultaneously: (a) monitor porting and minute volume activity to enable revised forecasting, and (b) begin recruiting and training additional staff to handle the increasing demand.

Purple's hiring, training and certification process for new IP Relay CAs requires a minimum of eight weeks – four weeks for recruitment and four weeks for intensive training – for each class of new agents. Purple's initial hiring stage includes testing, background checks, and qualifying proficiency in typing, grammar and language skills. Qualifying candidates then enter Purple's 160-hour training program, covering subjects such as grammar, spelling, punctuation, typing speed, and

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<sup>3</sup> See Purple's May 31 Comments at 5.

accuracy, as well as procedural and technical training specific to providing IP Relay, including products, conduct and extensive confidentiality and ethics curricula. Finally, at the end of training, all candidates must pass certification calls before graduating to the production floor. Since Sorenson has given notice of cessation of service on July 31, 2013, this hiring/training cycle does not permit Purple to increase staff at a rate sufficient to meet the expected-but-yet-unknown demand increase.

And as a result of the Commission's dramatic reduction of IP Relay rates on July 1, 2013, Purple cannot afford to incur the costs associated with simply guessing that all of the existing traffic will automatically flow immediately to Purple, and then staffing based on the *possibility* of such demand; rather, Purple must first test demand in this rapidly (and unpredictably) shifting environment, then calculate necessary labor requirements, and then adjust staff to handle changes in traffic patterns to meet the minimum standards. This is also the responsible and efficient way to handle these changes from a Fund management perspective.

While Purple continues to evaluate its long-term ability to remain a provider of high-quality IP Relay services under the drastically reduced rate structure, in the near term, Purple remains committed to serving customers who rely on this important service. IP Relay serves a unique niche, as it provides accessible communications not only for individuals who are deaf, but also people who are deaf-blind, have speech impairments, who do not know American Sign Language or who do not have sufficient broadband speed to use VRS.<sup>4</sup> Indeed, Acting Chairwoman Clyburn has recognized the necessity of telecommunications services for populations with unique needs, such as those who

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<sup>4</sup> See Letter from Monica Desai, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51 (June 26, 2013); see also Letter from Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc., et al., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51 (June 26, 2013). Several individual consumers also have expressed the importance of IP Relay. See, e.g., Letter from Dan Brubaker, available at: <http://apps.fcc.gov/ecfs/document/view?id=7520925354>; Letter from Tracy Stine, available at: <http://apps.fcc.gov/ecfs/document/view?id=7520925207>; Letter from Jennifer Ann Cook, available at: <http://apps.fcc.gov/ecfs/document/view?id=7520925337>.

are deaf-blind or have a speech disability.<sup>5</sup> IP Relay is also frequently used by VRS users in situations where VRS is either not available or not preferred. In such situations, calls are placed through IP Relay that would otherwise be placed through the higher-cost VRS service, which results in savings to the Fund.

Purple maintains a nearly perfect record in meeting speed-of-answer requirements due to the company's careful forecasting, strong anti-fraud efforts, and intensive training of its staff.<sup>6</sup> However, without an expeditiously granted limited waiver of at least 120 days, with an effective date retroactive to the date of this filing, Purple will be forced to suspend service, given the Commission's strict liability standard for violations of the speed-of-answer rule. Indeed, the Commission has emphasized that "the Administrator is authorized to withhold payment for the full day's service when the provider fails to meet the minimum [speed-of-answer] threshold on that day," and put "all providers on notice" that providers committing multiple misses of the 85/10 standard also risk incurring penalties and forfeitures through enforcement proceedings, as well as risk losing their certification, in addition to not getting reimbursed for days of missed compliance.<sup>7</sup>

The Commission's strict liability standard for speed of answer means that Purple must try to predict daily call volume and invest in staffing a sufficient number of employees to handle potential increases in call volume, or risk not getting paid at all, without any guarantee of actual call volume.

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<sup>5</sup> See *Structure and Practices of the Video Relay Service Program, et al.*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, Statement of Acting Chairwoman Mignon L. Clyburn, FCC 13-82 (rel. June 10, 2013) ("Americans who are deaf, hard of hearing, deaf-blind, or have a speech disability rely on this critical service to communicate with family, friends, and emergency personnel. This program is a necessity in their daily lives.").

<sup>6</sup> In 2012 and 2013, Purple met ASA over 99.5% of the time.

<sup>7</sup> *Structure and Practices of the Video Relay Service Program, Purple Communications, Request for Review of the Decision of the TRS Administrator to Withhold TRS Payments*, CG Docket No. 10-51, Order, 27 FCC Rcd 8014, ¶¶ 1, 27 (2012).

But, if Purple is understaffed, the company will lose compensation for a full day as a result of violating the strict speed-of-answer requirements.<sup>8</sup> In light of this strict compliance standard, combined with the anticipated but unpredictable shifting of call volumes to Purple, the risk to Purple of not being compensated is too great, and the potential cost and other risks too high, for Purple to continue offering IP Relay absent an expeditious, temporary short-term waiver to allow it to understand and calibrate the likely increased demand, then recruit and train additional staff so that it can meet the speed-of-answer standard at increased call volume levels.

The risk to Purple is further exacerbated by the increasingly difficult operating environment in the IP Relay marketplace and high ongoing regulatory costs associated with the service. And, as emphasized by Purple in prior filings, the cost of providing IP Relay is increasing, not decreasing.<sup>9</sup> The minutes of use of the service have steadily declined for several years, and recently declined sharply, coinciding with recent regulatory changes. This decline in use makes it more expensive to provide the service. Moreover, the costs of providing the service go beyond the costs that are reported to the Fund Administrator. For example, Purple invested substantial funds in implementing robust anti-fraud measures that far exceed the minimum standards required by federal regulations.

Despite these risks and difficult operating environment, and while it continues to evaluate whether to remain a provider of IP Relay services in the long-term, Purple remains dedicated to providing IP Relay service to its customers, but will only be able to do so if the Commission grants a

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<sup>8</sup> Providers are expected to staff based on anticipated call volume, but are penalized for SOA based on actual call volume regardless of whether they have actually staffed based on the projections. Contrast 47 C.F.R. § 64.604(b)(2)(i), requiring TRS providers to “ensure adequate TRS facility staffing” based on “projected calling volumes,” with 47 C.F.R. § 64.604(b)(2)(ii), stating that TRS providers “shall, except during network failure, answer 85% of all calls within 10 seconds.”

<sup>9</sup> *See, e.g.*, Letter from Monica Desai, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 03-123 and 10-51 (June 27, 2013).

limited waiver allowing Purple sufficient time to estimate the increased demand, then recruit and train the necessary additional staff. Through the duration of any such waiver period, Purple will take every available measure to deliver service within the minimum speed-of-answer standard in order to minimize the impact on the customers the company serves. However, given the unpredictable nature of this exogenous marketplace dynamic, Purple cannot guarantee full and continuous compliance with the speed-of-answer standard.

Pursuant to Section 1.3 of the Commission's rules, the Commission may waive its rules when there is "good cause" to do so.<sup>10</sup> Good cause exists for expeditiously granting Purple a limited and temporary waiver because the particular facts described above would make strict compliance with the speed-of-answer requirements inconsistent with the public interest.<sup>11</sup> The Commission should immediately grant a limited 120-day waiver of the speed-of-answer requirements, with an effective date retroactive to the date of this filing, to enable Purple to continue providing IP Relay to members of the public who rely on this important service, and simultaneously recruit and train staff so that it is able to continue providing IP Relay as call volumes shift due to other providers exiting this market.

Respectfully submitted,



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<sup>10</sup> 47 C.F.R. § 1.3.

<sup>11</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).