

August 2, 2013

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Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: **Notice of Ex Parte – CG Docket Nos. 03-123 and 10-51  
Purple Communications, Inc.**

Dear Ms. Dortch:

In its July 8 petition, Purple Communications, Inc. (“Purple”) requested clarification that footnote 122 in the Commission’s June 10, 2013 Order,<sup>1</sup> stating that “[c]alls that are completed using a technology that does not provide both inbound and outbound functionality are not compensable from the TRS Fund,” does not apply when users access IP CTS through web and wireless services.<sup>2</sup> In our discussions with Commission staff, we have explained that while technology exists to enable delivery of a captioned call to an IP CTS customer’s number, such technology would not satisfy the requirements of footnote 122 as we interpret it, nor would it satisfy the Commission’s “default-off” requirement.

**(1) There is not “a technology” that allows calls to be “completed” using “both inbound and outbound functionality” as required under footnote 122.**

The plain language of the footnote requires that *a technology* that is used to *complete* an outbound call must be capable of handling an inbound call. And conversely, *a technology* that is used to *complete* an inbound call must be capable of handling an outbound call. As we analyze how to comply with the requirements of footnote 122, we reviewed the technical details of alternative approaches employed by other providers, to evaluate whether such structures would comply. As we interpret the footnote, they would not, absent further clarification from the Commission.

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<sup>1</sup> *Structures 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, 28 FCC Rcd 8618 (rel. June 10, 2013).

<sup>2</sup> See Petition of Purple Communications, Inc. for Expedited Clarification or Partial Reconsideration or, Alternatively, a Waiver, CG Docket Nos. 10-51 and 03-123 (filed July 8, 2013).

Inbound calls: It is critical to understand that other providers do not, as Purple understands, have a technology that allows for direct captioning of inbound calls for web or wireless applications.<sup>3</sup> Instead, the technology utilized by other providers requires the calling party to dial a separate local or toll-free number that rings at the provider’s IP CTS call center (not directly to the caption user). When the call center network answers the inbound call, the calling party enters the ten-digit number (“TDN”) or other identifying information of the caption user he wishes to call. The call center network then calls the caption user’s TDN, and simultaneously links in the caption CA (similar to a three-way call). If the caption user is not logged into his account, the call is not delivered. If the caption user is logged into his account, the user’s phone rings, and upon answering, the caption user receives captions for the inbound call through his web/wireless account or app. For purposes of this letter, we refer to the above local or toll-free number call flow and technology for web/wireless IP CTS calls as the “TFN Approach.”

Outbound Calls: Contrast the above call flow with the technology used by the captions customer to place a captioned outbound call: For providers whose technology enables the captions user to caption calls on his own TDN: the captions user opens his web/wireless app, enters the number of the called party, and the number he (the captions user) wishes to use for their outbound call. The app transmits both numbers to the call center-based CA, who then places calls to both numbers. When the called and calling party both answer, the calls are joined (similar to a three-way call), and the CA delivers captions to the assisted user’s web/wireless interface.

It seems painfully evident to Purple that the TFN Approach implements two entirely distinct technologies to complete inbound and outbound calls. Different call flows represent different technologies – different call routing and different TDNs. While the captioning software application may be the same, the use of the separate local or toll free number itself is a different technology than using one’s own TDN. The network interface used by the call center to receive the calling party’s input of the caption user’s TDN is different than the network interface used by the call center when the captions user places an outbound call by directly inputting the called party’s TDN. While the TFN Approach ultimately connects back to the same software application on the caption user’s web or wireless device, it seems impossible to view the technologies used for each of the inbound and outbound calls as being the same technology.<sup>4</sup>

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<sup>3</sup> Purple excludes from this discussion the features and functionality of Sprint’s wireless IP CTS technology, as Sprint is the owner of the proprietary wireless network over which the call is routed. As a wireless network carrier, Purple expects that Sprint is able to route and handle the transmission itself in a manner that is only possible for the wireless network carrier. Unless the Commission intended footnote 122 to exclude web/wireless IP CTS service provided by any provider that is not a wireless network carrier, which Purple presumes was not the Commission’s intent, footnote 122 cannot be interpreted to require IP CTS carriers to support features or functionality that require control of wireless network infrastructures.

<sup>4</sup> Purple contrasts these different technologies to those present in non-web/wireless application, such as Purple’s Ensemble and Cisco solutions, which provide inbound and outbound functionality using the same TDN, call flow and call routing.

It is undisputed that a captions user cannot place an outbound call using the TFN Approach. And it is undisputed that if the calling party places a call directly to the same number the captions user uses for his outbound call – the call will not be captioned. Therefore, calls completed using the TFN Approach, as we interpret footnote 122, would not be compensable from the TRS Fund.

**(2) The TFN Approach Fails to Satisfy the Default-Off Rule**

In January, the Commission required that IP CTS technology be configured such that “...*IP CTS users must affirmatively turn on captioning for each telephone call initiated or received before captioning is provided.*”<sup>5</sup> In the TFN Approach for inbound calls, if the inbound call is answered on the caption user’s phone, captions are automatically delivered through the web or wireless interface, with no affirmative decision by the user. If the user affirmatively logs out of his web or wireless app prior to receiving the call, the inbound call never reaches their phone. As such, there is no technical way that Purple is aware of in which the TFN Approach enables a captions user to receive an inbound call for which an affirmative action is required for the user to receive captions.

As noted by the Commission in the January Order, the purpose of the default-off rule was to prevent unintentional misuse of captions by an ineligible user. In the case of web/wireless IP CTS calls, this risk seems just as present and/or probable as it would be on a special-purpose caption phone. If the inbound call arrives at a home phone at a time when the caption user and is logged in to their web/wireless app, the phone could foreseeably be answered by someone (ineligible) other than the eligible captions user. This risk of unintentional misuse could be even more pronounced with web/wireless service than with special purpose devices, because the ineligible party answering the phone may not even be aware that captions are running, since the application that presents the captions is not attached to the device, or necessarily visible to the answering party (or for that matter, the logged-in captions user, who may be near neither the phone nor the device that is at that time running captions of the answered call).

**(3) The TFN Approach Appears to Violate the ADA Functional Equivalency Mandate.**

In addition, Purple questions whether the requirement that an inbound captioned call must be placed through a separate local or toll-free number, discrete from the user’s own TDN, and which, to be utilized, essentially requires the user to disclose to the calling party the existence of a hearing disability, adequately fulfills the functional equivalency mandate of the ADA. While such mandate has been broadly construed, the TFN approach for captioning of an inbound call seems to fall far from the manner in which hearing parties receive inbound calls.

**(4) IP CTS Technologies Warrant Differentiation from Other iTRS Services.**

Finally, Purple notes that it commented on the proposed definition of iTRS Access Technology in its March 8, 2012 comment to the Commission’s FNPRM on Structure and Practices of the Video Relay Services Program. In its filing, Purple suggested to the Commission that by “...further defining the categories of ‘iTRS Access Technology,’ the Commission can further elucidate the

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<sup>5</sup> 47 C.F.R. §64.604(c)(10).

requirements for each category.”<sup>6</sup> Indeed, the technology and access method for IP CTS services vary significantly from those utilized by users of other relay services. As such, IP CTS includes PSTN-routed services which should be treated differently than those such as IP Relay or VRS, which include the iTRS database in the routing process.

For the reasons stated above, Purple suggests that the TFN Approach neither complies with the requirements of footnote 122, nor the default-off requirements of the January Order. In the first instance, the TFN Approach does not offer “a technology” that supports both inbound and outbound functionality, rather it requires discrete technologies for each call routing, neither of which supports the other. In the second case, the TFN Approach does not enable a user to receive an inbound and affirmatively turn on the captioning function.

Purple renews its requests to the Commission that it issue clarification that footnote 122 does not apply to web or wireless IP CTS services, or alternatively, to suspend the effective date of footnote 122 for 60 days to enable the Commission to more fully evaluate the impacts of the footnote on existing technologies and provide clear direction to industry as to continuing to offer such services in light of default-off requirements. However, if the Commission both (a) interprets footnote 122 to allow inbound and outbound IP CTS calls to transact over discrete, unrelated calls flows and TDNs (but utilizing the same software for both), and (b) interprets the default-off requirement to not prohibit the TFN Approach, Purple requests a limited 90-day waiver to enable it to continuing offering web/wireless IP CTS services through its existing configuration, while it develops a TFN Approach for its network.

Respectfully submitted,



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<sup>6</sup> Comments to FNPRM on Structure and Practices of the Video Relay Services Program, Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123, at 14 (filed March 8, 2012).