

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.

PURPLE COMMUNICATIONS, INC.

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EXECUTIVE SUMMARY

Purple Communications, Inc. (“Purple”) appreciates the Commission’s continuing focus on strengthening the important Video Relay Services (“VRS”) program and appreciates the opportunity to express its views on the issues raised for comment in this proceeding. Although Purple has concerns about certain proposals discussed in the Further Notice, it supports many initiatives being considered by the Commission.

As the Commission recognizes, it is critical to ensure functional equivalence to eligible users, and equally critical to ensure the efficiency, sustainability and integrity of the Fund. The transition to a market-based compensation methodology, if structured appropriately, will ultimately result in lower costs to the Fund and more choice and innovation for consumers. Purple emphasizes that a properly structured, fair and open competitive bidding process for predetermined market share positions via auctions will be a more effective compensation mechanism in the provision of VRS than using the cost of a neutral video communications services provider contract as a benchmark, or the auctioning of certain VRS call types. It is, however, important for the Commission to gain experience from its auction process with VRS before it considers extending auctions or the concept of a neutral VRS provider to other forms of iTRS.

The Commission’s desire to promote continued innovation for consumers is laudable. As part of this effort, the Commission must extend funded research not only to the National Science Foundation, but to other entities as well, including TRS providers, which have a long history improving functional equivalence for consumers through innovation.

Purple draws the Commission’s attention to the operational realities of sustaining a TRS business, and the fact that significant costs, including investments necessary to meet required

standards, are incurred by providers well before the FCC disburses payments. It is critical that the FCC is sensitive to the impact of its decisions related to, for example, certification, payment timing, speed of answer requirements, and labor issues, on provider operations and cost.

Purple continues to emphasize that true competition requires the aggressive enforcement of violations, and notes that providers are already required under the rules not to block video mail messages left by competitor point-to-point callers.

Purple looks forward to a robust discussion on these and other important issues raised for comment in the Further Notice, as detailed below.

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COMMENTS OF PURPLE COMMUNICATIONS, INC.

Purple Communications, Inc. (“Purple”) hereby responds to the FCC’s Report and Order and Further Notice of Proposed Rulemaking (“Report and Order” or “FNPRM”) released on June 10, 2013, seeking further comment on various options and proposals to ensure functional equivalence of the video relay service (“VRS”) program and to insulate it as much as possible against waste, fraud, and abuse.¹

Purple provides fast and convenient communications solutions and services tailored for people who are deaf or hard of hearing throughout the United States using a variety of different platforms. Specifically, Purple is a leading provider of on-site interpreting services, VRS, text relay services (IP Relay), caption services (IP CTS) and video remote interpreting (“VRI”). Besides providing critical communications services to the deaf and hard of hearing

¹ See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 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) (hereinafter cited as “Report and Order” or “FNPRM” depending upon which section of the document is being referenced).

communities, Purple has been a leading innovator in the relay industry, allowing deaf and hard of hearing Americans, as well as the hearing individuals with whom they communicate, to enrich their lives through accessible communications. Purple is committed to promoting equal communications access and actively supports deaf schools and organizations across the country.

I. PURPLE’S RESPONSES TO SPECIFIC ISSUES RAISED FOR COMMENT.

Purple applauds the Commission’s efforts to strengthen the vital VRS program and appreciates the opportunity to weigh in on the various issues raised by the Commission to ensure that the VRS program “is an effective, efficient, and sustainable program for the future.”² In order to assist the Commission with this important endeavor, Purple responds to each of the categories of issues posed in the FNPRM in detail below.

A. Transition to a Market Based Compensation Methodology.

1. Using the Cost of the Neutral Video Communications Services Provider Contract as a Benchmark.

In the FNPRM, the Commission tentatively concludes that “the contract price that the Commission pays to the neutral video communication service provider for the disaggregated video communication service component of VRS will serve as a benchmark for setting appropriate compensation applicable to any VRS provider that chooses to continue offering a fully integrated service.” The Commission also asks how this contract price should “determine the appropriate additional compensation for fully integrated service [providers].”³ In Purple’s view, the Commission’s tentative conclusion and inquiry are not only premature, but they are not

² See Report and Order at 8620, ¶ 1.

³ See FNPRM at 8707, ¶ 222.

relevant to achieving the desired end goal of a “market-based compensation rate.”⁴ Instead, Purple believes there is a simple, effective way to achieve the Commission’s objectives: a competitive bidding process where providers compete for predetermined market share positions. As will be discussed further in these Comments, Purple’s proposal allows the Commission to continue its trajectory to lower the total cost of the VRS program without impairing quality for consumers. An auction process among incumbent providers with deep operational experience, competing with the Commission’s new neutral VRS provider and CA-only providers, will likely yield a more favorable economic outcome for the Commission as long as the Commission auctions all VRS minutes, not just those with certain calling patterns. A new operator such as the neutral VRS provider will not have the operational cost history upon which any full industry benchmark could be established, which is why having that provider compete directly with experienced operators will likely derive an optimal outcome for the Commission.

2. Using Auctions to Establish a Per Minute Rate for CA Service.

Purple fully supports the Commission’s proposal to employ an auction process for awarding the right to provide VRS CA service. As Purple has previously emphasized, a properly structured, fair and open competitive bidding process will facilitate competition and remedy marketplace imbalance in the provision of VRS.⁵

However, such an auction process should not be limited to only a relatively minor segment of the market for VRS, such as the roughly 12% proposed in the NPRM.⁶ Limiting

⁴ See Report and Order at 8625, ¶ 10. This will of course, require the Commission to take sincere and concrete steps in implementing the multi-winner auction process in an effort to correct market imbalances and optimize the cost delivery of VRS.

⁵ See Purple Communications, Inc., Comments To FNPRM To Structure And Practices Of The Video Relay Services Program, March 8, 2012, filed in CG Docket Nos. 10-51 and 03-123 (“Purple March 2012 Comments”).

⁶ See FNPRM at 8708, ¶¶ 223-226.

bidding to a small fragment of the market based on calling patterns or call types adds a layer of complexity that may not achieve the Commission's goals for an efficient marketplace. There are numerous factors impacting calling patterns, such as the time of day, day of the month, and anomalies such as earthquakes, carrier outages, or weather-related issues. Because of staffing anomalies, these factors could result in higher bids than would be made if the total base of VRS CA call volumes/types is considered. Therefore, Purple reiterates its recommendation that the Commission adopt a competitive bidding process for all VRS call types and minutes.⁷

Such a process could not be structured for a "winner-take-all" result. Despite all the industry re-engineering that the Commission is proposing regarding the establishment of a neutral provider and CA-only providers, an incumbent with an absolute cost advantage (and sufficient information about its competitors' costs) could win such an auction by only slightly underpricing a higher cost rival. And, any process that leaves consumers and the VRS program with only one VRS provider will stifle innovation, eliminate consumer choice, cause public safety concerns and potentially impede the Commission's obligations under the Americans with Disabilities Act. This would clearly be contrary to the Commission's goals and the public interest. Therefore, the auction process must allow for multiple winners.⁸

This result can be achieved by dividing all VRS CA calls into blocks or shares on which certified providers could compete to serve based on their capacity to support the particular block's volume over a given period of time. For optimal pricing efficiency, no single bidder would be permitted to "win" more than a majority of the calls allocated to the auction process.

⁷ See Purple March 2012 Comments at 25-27.

⁸ In Purple's view, there should be an opportunity for multiple winners even if the Commission were to decide to limit the auction to only a segment of the market.

This would help preserve a competitive marketplace where consumers have options and are not tied to a single provider.⁹

Provision for multiple providers of relay services based on allocation of relay service traffic is not without current precedent. In California, under the California Relay Services (“CRS”) contract for text telephone (“TTY”)-based relay services, the California Public Utilities Commission (“CPUC”) has in the past allocated CRS traffic to as many as three call center service providers.¹⁰ While the VRS model may differ slightly, this example demonstrates that the use of allocated shares is neither radical nor novel.

As a potential rough model for this framework, the Commission could look to the single-round sealed bid auction process employed for the successful Mobility Fund Phase I auction.¹¹ Each bidder would submit a bid that indicates a per-minute reimbursement rate in connection with a particular block or share of calls. After bidding closes, the Commission could select winning bidders pursuant to established share caps. To protect against any regression in the Commission’s objective to eliminate small provider subsidies, the Commission could also establish a reasonable rate as a bid ceiling by which any bid higher than the pre-established ceiling would be disqualified.

⁹ The FNPRM asks how to ensure “sufficient bidders for a competitive auction.” FNPRM at 8710, ¶ 235. Allowing for multiple winners could certainly help do so.

¹⁰ See California Public Utilities Commission RFP08PS5800 for California Relay Services, CPUC Document 368851, January 21, 2009, Section 3, page 4 *available at* <https://www.bidsync.com/DPX?ac=view&auc=130943> (“CRS 3”).

¹¹ See Public Notice, “Mobility Fund Phase I Auction Scheduled For September 27, 2012 Notice and Filing Requirements and Other Procedures For Auction 901,” 27 FCC Rcd 4725 (Wireless Telecom. Bur.2012) (“Mobility Fund Phase I Notice”); *see also* Public Notice, “Tribal Mobility Fund Phase I Auction Rescheduled For December 19, 2013 – Notice and Filing Requirements and Other Procedures for Auction 902,” DA 13-1672, Wireline Compet. Bur., Wireless Telecom. Bur. (rel. Aug. 7, 2013).

The blocks/shares subject to bidding would be established to ensure that there could be participation/competition from certified bidders with varying capacities so that the bidding process would not in effect be limited only to the largest capacity provider(s) of VRS.¹²

Purple's suggested bidding model would require input of stakeholders, new technical standards and centralized call routing algorithms to distribute calls to providers in accordance with the blocks/shares for which they were the winning bidder. Nevertheless, this is achievable from a technical perspective with VRS. The CRS system implementing multi-vendor contracts for TTY-based relay services demonstrates this feasibility.¹³ Instead of the network management services ("NMS") function only routing certain call types to winning bidders as it did with the CRS3 contract, the NMS for VRS would be the routing mechanism for all inbound and outbound VRS calls, and the traffic would be allocated per the allocation established in accordance with the winning bids.

To qualify to bid, the provider should have to be certified or conditionally certified by the Commission to provide VRS at the time of submission of a short form application to participate in the auction. Additionally, the Commission should conduct site visits and evaluate each bidder's technical and operational ability to handle the minutes for which it is bidding over a reasonable transition and implementation period. Finally, the Commission would issue a set of standards that bidders would need to meet, including greater progress towards functional equivalency and the improvement of speed of answer performance as will be described later in these Comments.

¹² Such a share mechanism is analogous to varying spectrum blocks established by the Commission in the context of spectrum auctions.

¹³ See CRS3, *supra*, Section 3, page 2 outlines how the calls are allocated in California using the tracking capability of the NMS.

Purple believes that the foregoing represents an auction mechanism that will allow for the operation of competitive marketplace forces to the benefit of consumers, who will be afforded choice of software or hardware options, improved service performance and functional equivalence through higher speed of answer standards, and provide for reasonable, competitively bid rates, permit the Commission to meet its obligations under the ADA, and help ensure that VRS is “effective, efficient and sustainable for the future.”¹⁴

3. Other Transitional Issues.

a. Compensation for Integrated Providers.

The Commission asks whether it is reasonable to assume that the sum of the cost for the neutral video communications service provider and the winner(s) of the segregated minutes would be sufficient to compensate integrated VRS providers.¹⁵ Without knowing the scope and costs incurred by the neutral video communications service provider, it is not possible to answer this question. Instead, Purple supports moving to a market rate via competitive bidding and letting market forces determine pricing.

b. Providers of Multiple Forms of iTRS.

The Commission asks how providers of multiple forms of iTRS allocate costs that may be shared across services, and how to ensure such providers are not overcompensated for shared resources.¹⁶ Purple notes that the Commission has this information in hand, as a result of providers having provided this information through several rounds of extensive audits by the Commission’s Office of Inspector General (“OIG”) and the TRS Fund Administrator. Purple suggests that it would be efficient and sensible for the Commission to evaluate the audit results

¹⁴ See Report and Order at 8620, ¶ 1.

¹⁵ See FNPRM at 8710, ¶ 236.

¹⁶ See FNPRM at 8710, ¶ 237.

of the OIG and TRS Fund Administrator to understand how the industry allocates costs for iTRS services and excludes costs for non-regulated lines of business. If it appears that any providers are not following the appropriate rules, this will be identified in the Notice of Findings and Recommendations and in the final audit reports.

If the Commission wanted to define the allocation methodology for costs among providers of multiple forms of iTRS, it could do so based on the percentage of time spent by personnel on one service over another, or, in the case of administrative staff who support the entire business, it could use a revenue allocation. These methodologies are among the most common in any industry where overhead is allocated to lines of business.

c. Using Auctions for Other Forms of iTRS.

Purple does not believe that it would be appropriate to establish the compensation rate for other forms of iTRS by conducting similar types of auctions as would be conducted for VRS.¹⁷ For Internet Protocol Relay Service (“IP Relay”), there is little value to be gained from auctioning a service where there are only two providers. The time and energy spent auctioning a mature service in which minutes are declining is not warranted. In the case of Internet Protocol Captioned Telephone Service (“IP CTS”), utilizing an auction process would be premature. Because there are no interoperability standards today among devices used in IP CTS, the “winner” of an auction would also then need to furnish consumers with equipment that works on its network. For these reasons, Purple urges the Commission to start its auction process with VRS so that it can evaluate the merits and shortcomings of the process before deciding whether it would be effective to replicate such auctions for other forms of iTRS.

¹⁷ See FNPRM at 8710, ¶ 238.

B. Cost Recovery.

The Commission asks whether a cost recovery mechanism should be implemented in relation to the new requirements adopted in the current Order, as was done in connection with the *First Internet-Based TRS Numbering Order*, and if so, what costs would be appropriate to recover and for how long.¹⁸ Purple believes that given the range of complexity of the newly adopted requirements, coupled with a relatively uncertain process and timeframe for certain of the requirements to be solidified,¹⁹ providers should be able to submit for the exogenous costs involved in adapting to the changes required by the Order through the final date of such transition. For example, specific technical requirements relating to both the new TRS URD database and the VRS Access Technology Reference platform have yet to be determined, and may be determined over some period of time. As requirements are solidified and providers adapt to changes, they should be able to submit for the costs involved in meeting the new requirements as they are implemented.

Additionally, the Fund Administrator should be obligated to perform a timely review of such submitted costs. If any submitted expenses are deemed to be unreasonable, a provider should have the ability to respond in kind. For all allowable expenditures, providers should receive prompt payment within 30-days of the invoice submission.²⁰ To be consistent with all

¹⁸ See FNPRM at 8711, ¶ 240, citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 03-123, WC Docket No. 05-196, 23 FCC Rcd 11591, 11593, ¶¶ 96-101 (2008) (“First Internet-Based TRS Numbering Order”).

¹⁹ For example, the timing for when specific technical requirements relating to both the new TRS user registration database (“TRS-URD”) and the VRS Access Technology Reference platform will be determined is not clear.

²⁰ In connection with the 10-digit numbering Order, providers were allowed to submit exogenous costs for reimbursement, however the process of review and approval was not well defined and resulted in the TRS Fund Administrator making payment reimbursement years after the direct

other submissions to the TRS Fund Administrator, such costs must be clearly identified in connection with the activities performed, supported with documentation, subject to detailed audit, and submitted under penalty of perjury.

C. Research and Development.

In the Order, the Commission directs the Managing Director (and/or TRS Fund Administrator) to enter into an agreement with the National Science Foundation (“NSF”) to conduct research and development (“R&D”) on TRS, with the NSF’s Chief Technology Officer to serve as the Commission’s primary “point of contact.”²¹ The creation of this outsourced resource function raises significant questions. For example, how will NSF develop priorities and who will drive the decision-making process? What specifically will the NSF tackle beyond listening to consumer input and designing future enhancements accordingly? How much emphasis will be placed on innovation? In addition to NSF and the Commission, the TRS Advisory Council should have input into the criteria for choosing research projects.

While Purple ultimately agrees that the Commission and VRS customers would benefit from independently funded R&D,²² Purple strongly urges the Commission to not depend on the NSF as the only source of funded R&D. Instead, the Commission should provide funding and incentives for individual providers to continue to innovate as well. Providers have a far bigger incentive to develop new products and services and bring them to market faster and more efficiently than any independent body. In fact, the history of VRS is full of providers coming out

inurrence of the expenses by providers. Purple advocates the prompt review, approval and payment of legitimate costs incurred in connection with the FCC’s adopted technical transitions for VRS.

²¹ Report and Order at 8630, ¶22.

²² Purple believes that the criteria to identify appropriate research should be developed in conjunction with NSF and the advisory council.

with new products and services that have helped close the gap of functional equivalence that are now considered standard industry wide.²³ For example, by investing in innovation, Purple has pioneered several critical products and services that have transformed VRS, including:

- Real local phone numbers instead of IP addresses.
- Access to VRS from Apple platforms.
- Text and video software combo
- Mobile videophones
- iPhone stand-alone app
- 24/7 Spanish relay services
- Phone messages (video mail) on mobile phones

These innovative products and ideas have benefitted all consumers – not just customers of Purple. It is critical that the Commission ensure this type of innovation continues to take place, by funding and incentivizing R&D by individual providers in addition to NSF.

The R&D expenses incurred by many providers, in connection with employing dedicated technology professionals with deep industry experience, are legitimate operating expenses, which benefit all VRS industry stakeholders. Those costs should continue to be included in provider cost submissions, to the extent they are validly incurred. If the NSF is successful in developing viable technical alternatives, providers should be encouraged to use them – but not penalized if they do not. To that end, Purple suggests that the FCC consider a mechanism through which providers who opt in to the NSF platform and service offering receive a modestly reduced rate for their services, compared with those who do continue to invest in R&D.

D. TRS Fund Contribution and Calculations.

The Commission proposes to adopt a rolling quarterly update of projected minutes of use in order to “allow for greater flexibility in addressing increases or decreases in requests for

²³ The adoption of innovative products and services by the VRS industry that were developed and released by Purple runs counter to the Commission’s premise that individual provider development of enhancements benefit only that particular provider. *See* Report and Order at 8629, ¶ 21.

reimbursement and projections of service requirements from TRS providers.”²⁴ Purple strongly supports any actions the Commission and the Administrator determine are reasonably necessary to avoid volatility in the disbursement schedule to TRS providers of the nature that has been experienced during the first half of 2013. The TRS industry is largely composed of providers whose primary (if not exclusive) business is providing accessible communication services to deaf and hard of hearing Americans. These services, provided under the Commission’s operational and technical standards for performance, require considerable labor investments which are incurred well ahead of the FCC’s disbursement to pay for services provided. Few business interruptions present the same level of financial distress for providers as when established and published disbursement schedules are abandoned.

To the extent that the provider reimbursement schedules will enjoy greater predictability by a more regular forecasting process, Purple would support such a program. Similarly, Purple would support the Commission’s proactive regulation of emerging services – as Purple suggested the Commission do with the IP CTS services in early 2012.

E. Allowing Hearing Individuals to Purchase Access to the Neutral Video Communication.

The Commission requests comment on the proposal by consumer groups to allow hearing individuals to obtain ten-digit numbers that would allow them to make point-to-point calls with VRS users.²⁵ Purple supports this proposal and believes its adoption is overdue. The 21st Century Communications and Video Accessibility Act (“CVAA”) amended the definition of TRS to provide for “the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more

²⁴ See FNPRM at 8711, ¶ 242.

²⁵ See FNPRM at 8712, ¶ 243.

individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.”²⁶ Adoption of this proposal supports the functional equivalence mandated by the CVAA. There is a long history of support for this idea, as Purple’s predecessor, GoAmerica, Inc., and other parties have previously suggested this,²⁷ and the Commission itself has inquired about it previously.²⁸

The Commission should encourage hearing users who are able to communicate with deaf and hard of hearing users to register for iTRS numbers directly. Any (minimal at most) cost to the system will be far outweighed by significant savings when those users bypass relay services. The Commission should not impose any fees or other costs to enable hearing users to receive iTRS numbers, which would slow down or even prevent the realization of savings to the iTRS Fund. The Commission should, however, allow VRS providers to charge a minimum processing fee, if they wish, to enable hearing users to receive iTRS numbers and access video software or hardware. Equipment costs should also be permitted to be charged to hearing users if the providers determine such steps are appropriate.

²⁶ 47 U.S.C. 225(a)(3).

²⁷ See GoAmerica, Inc., Petition for Partial Reconsideration, CG Docket Nos. 03-123 and 98-67 and WC Docket No. 05-196 (January 29, 2009); see also Telecommunications for the Deaf and Hard of Hearing, Inc.; Association of Late-Deafened Adults, Inc.; National Association of the Deaf; Deaf and Hard of Hearing Consumer Advocacy Network; Hearing Loss Association of America; and the American Association of the Deaf-Blind, Petition for Partial Reconsideration, CG Docket No. 03-123 and WC Docket No. 05-196 (January 29, 2009); see also various stakeholders’ comments and reply comments filed in response to *Structure and Practices of the Video Relay Service Program*, Further Notice of Proposed Rule Making, CG Docket Nos. 10-51 & 03-123, 26 FCC Rcd 17367, FCC 11-184 (2011).

²⁸ See, e.g., *Structure and Practices of the Video Relay Service Program*, Notice of Inquiry, CG Docket No. 10-51, 25 FCC Rcd 8597, FCC 10-111 (2010).

Enabling such services will, in fact, reduce costs to the TRS Fund by decreasing the number of relay calls.²⁹ As an additional benefit, permitting hearing individuals to obtain ten-digit numbers to allow them to make point-to-point calls with VRS users can be an effective tool to combat fraud. The record reflects that a centralized system for registration and verification will enable the ability to track numbers provided to hearing persons, so that it will be easier to identify any calls that are not eligible for VRS reimbursement. As a result, to the extent there are concerns about hearing users incurring VRS minutes, those numbers could be enabled for point-to-point only or marked in such a way in the TRS URD that those numbers are filtered from provider minutes.

F. TRS Fund Advisory Council.

The Commission suggests the scope of the TRS Fund Council may need to be expanded beyond monitoring TRS cost recovery matters given the growing need for advice and focus on technology and other issues.³⁰ Purple agrees with the Commission's position that it will be beneficial to redefine the role and structure of the TRS Fund Council.³¹ Purple suggests that, rather than creating an entirely new council and building new rules and guidelines, it would be more efficient to repurpose the existing Council.

More importantly, before the Commission creates such a new or repurposed advisory committee, Purple believes it is important to answer two fundamental issues: (1) what authority does the committee have; and (2) who is the committee advising? If a new advisory committee is to be established with a charter more aligned with technology, efficiency, outreach, user

²⁹ See also Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123 (filed March 8, 2012).

³⁰ FNPRM at 8712-14, ¶¶ 244-249.

³¹ FNPRM at 8713, ¶ 246.

experience, and other topics, then the committee should report directly to the Commission, not to the TRS Fund Administrator. Even if the reporting process is different, the committee should continue to be funded by the Administrator and have its logistics handled by the Administrator.

Regarding the composition of the new Council, the Commission seems to suggest that any party receiving compensation from the TRS Fund should be excluded from membership. If this is accurate, then excluded entities would include, among others, the TRS Fund Administrator, all providers of TRS (including those who also are contributors), the third party numbering administrator, and any contractor or provider who is financially connected to the new neutral platform or reference specifications. Under this proposal, the new Council would primarily consist of consumers and non-TRS providers who are also contributors to the TRS Fund as its primary members.

Purple feels strongly that such a limited structure is the wrong approach. It is of course critical for consumers to participate on the TRS Council. But it is equally critical for direct stakeholders to participate and advise the Commission on the issues being contemplated through this new committee, such as technology, efficiency and outreach. Thus, to be most effective, the advisory committee should include members such as the TRS Administrator, the numbering administrator, TRS providers – all entities with a significant stake in the services being provided and significant influence on how they are provided.

Finally, Purples believes that a fifth area, “Program Administration,” should be included as a focus for the new advisory committee. With the Commission’s creation of a new TRS Liaison, participants will be able to provide real world feedback on how the Commission is administering the program and methods of making it more efficient and effective for all stakeholders.

G. Consistent Regulation of all Forms of iTRS.

1. Registration and the TRS-URD.

Purple believes it is appropriate and important for the Commission to know how many consumers are served by the TRS program and therefore supports centralized registration for all forms of iTRS.³² However, Purple does not support the notion of a “default provider” for IP CTS for two reasons: (1) the PSTN routing of these calls is different from iTRS database routing for VRS and IP Relay; and (2) the use of a particular provider in this context is more likely influenced by the phone equipment preferred by the consumer.

Furthermore, because current IP CTS phones are not interoperable with other provider platforms, default provider associations should not be applied to IP CTS. In addition, caption customers should not be limited to having one provider per number. For a variety of reasons, caption customers can and do choose to use a web application from one provider on their mobile device and a phone from another provider at their home, and these customers should have the option to continue doing so.

In addition, while Purple supports centralized registration for all services, it would be disruptive to IP CTS providers and customers to require the same registration information the Commission has just adopted in the VRS Reform Order (including date of birth and social security number information). In January of this year the Commission issued an interim ruling on IP CTS that required wide-scale registration changes by providers. A final Order is anticipated within the month. To mandate additional obligations for registration in a relatively short time span after providers have just made significant changes required by the interim and final IP CTS order would be unduly burdensome on providers and customers. Purple seeks

³² See FNPRM at 8714-15, ¶ 251.

clarification that the necessary registration information for each IP CTS user would be the information prescribed in the interim and final IP CTS Orders.

2. Verification Requirements.

Unlike IP CTS and VRS, which have well established verification standards and are less easy to “spoof” (a user must know how to sign to use VRS, and because of the PSTN of an IP CTS caller, they are more easily identifiable), IP Relay users should continue to be subject to a higher level of verification and certification in an effort to prevent suspicious users from accessing the service. Accordingly, Purple proposes that IP Relay providers continue to use a qualified third party identification service, and collect concrete verification based on the following required fields: first and last name, address, date of birth, last four digits of social security number and at least three other “out of wallet” questions. When the Commission determines to include IP Relay registration verification as part of the TRS URD (now planned for VRS only), these criteria should be considered in the verification process.

3. Neutral Platform.

The Commission asked whether it should extend the capabilities of the neutral video communications service provider to other forms of iTRS.³³ Purple believes that the Commission should learn from its experience with the use of a neutral provider through VRS before it considers adopting a similar approach for IP Relay and IP CTS. IP Relay is a market in decline and is served by only two providers.³⁴ Further investment of time and money developing a centralized platform for a service in this state of maturity is not practical – nor will it

³³ See FNPRM at 8715, ¶ 253.

³⁴ See Emergency Petition for Limited Waiver of Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123, at 1-2 (filed July 11, 2013); see also Letters from Monica S. Desai, Counsel, Purple Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, Notices of Ex Parte in CG Docket Nos. 03-123 and 10-51, dated June 26-28, 2013.

meaningfully improve the service experience for consumers. For IP CTS, given the hardware-centric nature of these services in the market today as well as the varying ways that such calls are translated into captions, the Commission would benefit by first working with industry to develop technical standards and potential interoperability requirements prior to contemplating a neutral platform for IP CTS.

4. Outreach.

The Commission requested comment on the current extent of outreach and other alternatives.³⁵ Purple believes that industry and consumers would benefit from national awareness campaigns for all forms of iTRS, but that such campaigns should not preclude or economically penalize providers from promoting their own branded services or providing in-home installation, repair, and training services to consumers. In the case of VRS and IP CTS, some providers have “outreach specialists,” “trainers,” or “installers,” which serve important customer facing functions to help consumers get their service established, provide home visits to resolve technical issues and so forth. Because these services are in the best interest of consumers, they must continue and must be compensated for as a support cost to providers. If these costs are prohibited in any way, consumers will quickly find themselves without help for critical lifeline services.

5. Other Rules and Obligations.

Purple believes compliance standards should be uniform across all service types, to the extent such standards are applicable to a particular service. For instance, creation of a centralized user database is applicable across all forms of TRS. However, the differentiation of technology platforms, call routing and service type among various services limit how broadly

³⁵ See FNPRM at 8715, ¶ 254.

certain standards can be applied. For example, because slamming provisions seem to apply only to services that require a default provider, those standards should not apply to IP CTS, which does not require a default provider.

H. Disaggregation of Emergency Calls to 911.

The Commission seeks comment on ways to ensure that VRS users have 911 access that is functionally equivalent to the 911 access available to the general population, including whether VRS 911 calls should be routed “to pre-identified CAs [Communications Assistants] who, under contract, would be specially trained to handle the safety and medical issues that typically characterize emergency calls.”³⁶ While this proposal could provide a benefit to VRS users by creating a centralized service for 911 that results in skilled and swift processing, there are some potential issues that deserve consideration including:

- The high potential for employee burnout and turnover resulting from handling only emergency calls.
- The special skills required for handling these calls would need to be clearly defined and additional training required.
- Wage costs for paying specially-skilled CAs could potentially be higher.
- There would need to be a sufficient number of specially trained CAs to properly schedule 24/7 service, presumably at multiple centers to ensure service availability.

Purple notes that all CAs should receive core training on 911 call handling given that there is always the potential that a regular call can become a 911 call (for example, a call to a police station or doctor’s office, or a call in which an emergency event happens during the course of the call). Currently, Purple provides specialized 911 training to its CAs, so 911 calls received are routed to CAs who have received appropriate training.

³⁶ See FNPRM at 8716, ¶ 257.

Ultimately, Purple sees both advantages and disadvantages to the Commission's proposal and therefore takes a neutral stance. The Commission should consider further discussions including a series of meetings involving all stakeholders.

I. Speed of Answer.

Regarding the Commission's proposed formulas for calculating speed of answer, Purple supports the formula that would use the sum of abandoned and answered calls less than the service level, divided by total calls.³⁷ This is the formula presently used by the TRS Fund Administrator for IP Relay and is effective at neutralizing the impact of callers who may hang up within the service level threshold.

Likewise, Purple supports further reducing the permissible wait time for VRS calls. Purple notes, however, that increasing performance standards comes at a corresponding economic cost. Quite simply, answer speed is a direct function of CA staffing loads. For a provider to answer a given number of calls faster, that provider must employ more CAs at its call centers. If the Commission wishes providers to do so, it should carefully analyze the staffing and cost implications to providers, and should adjust its per-minute reimbursement rates accordingly.

Furthermore, Purple believes that the costs associated with complying with increased speed of answer standards are elevated, given the Commission's "strict liability" approach towards penalizing providers for missed speed of answer performance, and the reality that call volumes are neither guaranteed nor entirely predictable. For instance, given the rigid penalty framework, Purple has no choice but to staff its call centers to a volume forecast well in excess of the call volumes it predicts for a given day or interval. Purple suggests that as it analyzes the staffing impacts of elevated minimum standards, the Commission should do so in the context of

³⁷ See FNPRM at 8718, ¶¶ 261-262.

its draconian penalty framework for non-compliance, with the goal of creating a more efficient overall staffing approach for VRS providers.

Purple further suggests that, if the Commission is unwilling to change the existing rate structure to offset providers' additional costs of staffing to faster answer times, the Commission defer implementation of such standards until the time of an auction process. At such time, the auction framework can identify both the Commission's desired answer speed and the penalty structure that will apply to missed speed of answer – and providers can factor such variables into the analysis applied to their bid submissions.

J. Administrative, Oversight and Certification Rules.

The Commission should move to synchronize certification renewal dates among providers, creating a more orderly, fair and unified process for relay provider certification.³⁸ In addition, the Commission should outline a process and timeline for conditional certification status so that conditional certification does not become an indefinite status.

K. Restructuring Section 64.604.

Purple supports reorganizing Section 64.604 to make the rules service-specific and transmission-specific, where appropriate.³⁹ For clarity and ease of reference, rules applicable to each service should be placed in a single section dedicated to that service. By placing the rules that are applicable to each service in a designated section for that service, the FCC will make it easier for providers and consumers to clearly identify and understand the standards for that service.

³⁸ See FNPRM at 8719, ¶ 266-268.

³⁹ See FNPRM at 8720, ¶ 269.

L. Temporary Registration.

Purple concurs with the Commission's proposal to eliminate the temporary guest user procedure for VRS.⁴⁰ This is one area where harmonizing policy across service platforms (VRS and IP Relay) makes sense. Significantly, prohibiting VRS providers from handling non-emergency calls made by new VRS registrants will not detract from the ability of consumers to call 911 in case of an emergency. Moreover, as far as Purple understands, there have been no consumer complaints associated with elimination of guest access in IP Relay.

M. Access to Video Mail.

The Commission proposes "to explicitly require that, if a VRS provider offers a video mail feature to its customers, the provider must ensure that video mail messages can be left by point-to-point callers who are customers of other VRS providers and are using access technology provided by such other providers."⁴¹ While Purple has already made clear to the Commission in its recent Request for Immediate Public Notice that the rules already require this and that blocking practices are in violation of the rules,⁴² Purple supports further clarification of provider responsibilities and continuing investigation and the assessment of enforcement penalties against any provider's past practices which violate the Congressional directive set forth in Section 225 of the Communications Act, as well as the Commission's implementing rules.

As Purple's recent filing outlines, intentional violations create a "walled garden" which serves as a strong deterrent to switching that is by its nature anti-competitive. Furthermore, complying with this requirement for video mail is not technically complicated. Purple's recent

⁴⁰ See FNPRM at 8722, ¶ 274.

⁴¹ See FNPRM at 8722, ¶ 275.

⁴² See Purple Communications, Inc., Request for Immediate Public Notice: VRS Providers May Not Discriminate Against Consumers Using Competing Service Providers in Their Ability to Leave a Video Mail Message, CG Docket Nos. 10-51 and 03-123 (filed April 11, 2013).

filing demonstrates that competitive providers support this functionality as a matter of serving customers, as they should.

N. Non-Competition Agreements in VRS CA Employment Contracts.

The Commission seeks comment on a variety of issues related to the use of non-competition agreements for CAs by VRS providers, including whether such agreements have an adverse effect on the provision of VRS, whether such agreements should be allowed, and whether the Commission has the appropriate authority to prohibit non-competition agreements in VRS CA employment contracts.⁴³ Purple and other competitive providers have consistently advocated for the Commission to prohibit non-competition agreements in CA employment contracts. These agreements are an anti-competitive tactic used to further constrain an already limited labor pool – and are against the public interest. Non-competition agreements directly result in artificially reducing the number of available interpreters for hire which in turn increases the costs to recruit and employ CAs, limits the ability of competing providers to serve their customers adequately, and raises the overall cost of VRS.⁴⁴ Ultimately, consumers suffer because non-competition agreements in VRS employment contracts preclude the full benefits of competition.

The Commission is authorized to establish a requirement under Section 225(d)(1)(A) that, to be eligible for reimbursement, VRS providers may not use non-competition agreements in contracts with CAs. This prohibition will ensure that VRS is “available, to the extent possible and in the most efficient manner” by maximizing the labor pool of CAs, increasing competition,

⁴³ See FNPRM at 8723-29, ¶¶ 278-279.

⁴⁴ See letter from Monica Desai, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket Nos. 13-24, 03-123, and 10-51, Notice of Ex Parte, dated March 11, 2013.

lowering costs, and promoting consumer choice, all of which promote the goals of Section 225.⁴⁵ Purple urges the Commission to take immediate action to prohibit such artificial market control mechanisms employed by the monopolist provider.

O. CA Working from Home Environments During Overnight Hours.

The Commission seeks comment on whether it should permit VRS CAs to work from home during the overnight hours.⁴⁶ Purple supports the Commission's broad consideration of operating models that could increase provider efficiency and decrease cost, while maintaining service quality and the integrity of the Fund. Given the recent and forecasted reduction in VRS rates, such creativity and flexibility is essential to the preservation of the industry and the service. And while Purple encourages consideration of at-home interpreting as a limited portion of providers' labor supply, Purple also cautions about the history of this model, as historically employed by "white-label" providers. As such, Purple encourages the Commission to closely review the limits, methods and standards that would apply to such a model, to ensure that any implementation would not come at the cost of service quality to consumers or the integrity of the Fund.

II. CONCLUSION.

Purple appreciates the opportunity to provide specific comments to the various proposals presented by the Commission in its continuing efforts to reform the vital VRS program. Purple hopes that the comments detailed herein, which are all based on its substantial experience in the

⁴⁵ See 47 U.S.C. § 225(b)(1).

⁴⁶ See FNPRM at 8725, ¶ 282.

VRS market, will help the Commission to improve the structure, efficiency, and quality of the VRS program so that it will remain a viable program for the future.

Respectfully submitted,

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