

August 23, 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:

On August 21, 2013, John Goodman, Chief Legal Officer for Purple Communications, Inc. (“Purple”), Jesse Odom, Director of Research and Development for Purple, and Monica Desai, Purple’s outside counsel, had a series of meetings with Federal Communications Commission (“FCC” or “Commission”) staff. From the Consumer and Governmental Affairs Bureau, Purple met with Karen Peltz Strauss (Deputy Bureau Chief), Robert Aldrich (Legal Advisor to the Bureau Chief), Gregory Hlibok (Chief of the Disability Rights Office), Eliot Greenwald (Attorney Advisor in the Disability Rights Office) and Elaine Gardner (Disability Rights Office). From the Enforcement Bureau, Purple met with Rick Hindman (Chief, Telecommunications Consumers Division), Sharon Lee (Deputy Chief, Telecommunications Consumers Division), and Eric Bash (Associate Bureau Chief). Purple also met with David Schmidt of the Office of Managing Director; Nicholas Degani, Legal Advisor to Commissioner Pai; and Henning Schulzrinne, Chief Technology Officer.

During the meetings, Purple discussed the following four topics:

1. Definition of iTRS

Purple repeated what it had filed in its Petition for Waiver filed on July 8, 2013,¹ and in subsequent filings,² concerning the need for clarification of footnote 122 of the Video Relay Services

¹ See Petition of Purple Communications, Inc. for Expedited Clarification or Partial Reconsideration or, Alternatively, a Waiver, *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 (filed July 8, 2013).

² See Letter from Monica S. Desai, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte in CG Docket Nos. 03-123 and 10-51, dated August 1, 2013 (“Purple’s Aug. 1, 2013 Ex Parte”); see also Letter from Monica S. Desai, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte in CG Docket Nos. 03-123 and 10-51, dated August 2, 2013 (“Purple’s Aug. 2, 2013 Ex Parte”).

Report and Order and Further Notice of Proposed Rulemaking (“Order”) released on June 10, 2013. Footnote 122 of the Order provides 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.”³ Purple explained why it is impossible to comply with the language of footnote 122 as Purple interprets it, given that there is not “a technology” that allows calls to be “completed” using “both inbound and outbound functionality.”⁴ Said another way, the technologies currently used by providers to make outbound web/wireless IP CTS calls are different than the technologies used by providers to support inbound web/wireless IP CTS calls. Furthermore, Purple suggested that footnote 122, if applied to web/wireless IP CTS, attempts to solve a problem that Purple does not believe exists, as very few of its customers have requested or inquired about its availability.

Forcing Purple to cut off this service or asking Purple not to seek reimbursement for minutes while the Commission evaluates this issue and considers what clarification to provide would be particularly unfair, given that (1) Purple had originally commented on the iTRS definition in March 2012, specifically emphasizing the need for granularity in defining iTRS – and doing so would have avoided the very problem Purple is now facing;⁵ (2) Purple could not have known that the Commission would apply a definition of iTRS in a way that would require it to, by default, provide automatic captions “on” for IP CTS given that the Commission had, in January, implemented rules requiring that IP CTS be defaulted to captions “off”;⁶ nor could the Commission have meant such a result; (3) Purple contacted Commission staff within days after the Order was published to better understand the meaning of footnote 122 and whether it applied to IP CTS at all; (4) Purple filed a petition for waiver related to this on July 8, and has continued to wait for clarification on this issue; and (5) the Commission could not have meant for web and wireless IP CTS to be shut off. Moreover, during the time Purple has been waiting for clarification, it could have started work on implementing a solution to address the Commission’s new directive.

Purple reemphasized the need for the Bureau to take the following steps: (1) explain whether footnote 122 was intended to apply to inbound web and wireless IP CTS calls, which, given existing technology, would require all inbound calls to automatically be captioned; (2) clearly define “technology” in the context of the language of footnote 122; and (3) if, based on such clarification, Purple needs to change its existing system, allow Purple sufficient time to update its software to comply. Without a waiver allowing Purple sufficient time (approximately 120-180 days) to create and implement any necessary software updates, Purple will have to discontinue providing web and wireless IP CTS to its customers.

³ 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, n. 122 (rel. June 10, 2013) (hereinafter cited as “Order” or “FNPRM” depending upon which section of the document is being referenced).

⁴ See Purple’s Aug. 1, 2013 Ex Parte; see also Purple’s Aug. 2, 2013 Ex Parte.

⁵ 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).

⁶ 47 C.F.R. §64.604(c)(10)(i) (“IP CTS providers must ensure that equipment and software used in conjunction with their service have a default setting of captions off, so that new and existing IP CTS users must affirmatively turn on captioning for each telephone call initiated or received before captioning is provided.”).

2. IP Relay Waiver Order

Purple expressed its deep appreciation for the Commission's quick action in granting emergency relief from the Internet Protocol relay service ("IP Relay") speed of answer rule after Hamilton, AT&T and Sorenson all exited the IP Relay market in quick succession.⁷ Purple explained, however, that the longer term relief granted through October 31 by the Bureau may not work as intended under certain circumstances.⁸ This is because the Bureau provided a *monthly* waiver for speed of answer, while Purple remains subject to *daily* penalties. Depending on the level of the *monthly* call volumes received, Purple may not receive compensation for certain days with call volume levels that dramatically exceed its current forecasts. As a result, Purple noted that there is a possibility it may need to ask the Bureau to rework the language of the waiver order, or otherwise seek additional relief.

3. Concerns Regarding False Information in the Paisley Report

Purple reiterated its concerns related to the blatantly false and misleading information regarding Purple's IP Relay service contained in the Paisley Group Ltd. "study" submitted to the FCC in an attachment to two Sprint filings.⁹ In light of the troubling implications with respect to potential waste, fraud and abuse of the TRS Fund resulting from the conduct of the "study," including inappropriate calls that may have been billed to the Fund for the creation of the "study," Purple requested that the Enforcement Bureau thoroughly investigate how Paisley conducted the "study."

4. Need for Regularly Scheduled Timeframes for Reimbursement

Purple emphasized the critical importance for the Fund Administrator to make timely reimbursements consistent with Commission rules.¹⁰ Purple explained 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 Administrator disburses payments. It is imperative that the FCC provide adequate oversight to ensure the Administrator is adhering to the required timeframe for reimbursements. Currently, the Administrator's apparent disbursement schedule will result in Purple's monthly disbursement being received several days after the

⁷ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Interim Waiver Order (rel. Aug. 2, 2013).

⁸ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Waiver Order (rel. Aug. 13, 2013).

⁹ See Letter from Scott R. Freiermuth, Counsel, Sprint Corporation, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 03-123, 10-51 and 13-24 (filed July 26, 2013) ("Sprint Ex Parte") (attaching a summary of information from the *National Relay Service Performance Index*, published by the Paisley Group Ltd., in March 2013); see also Petition for Reconsideration of Sprint Corporation, *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 (filed July 31, 2013).

¹⁰ See 47 C.F.R. § 64.604(c)(5)(iii)(L)(1) (stating, "The Fund administrator will continue the current practice of reviewing monthly requests for compensation of TRS minutes of use within two months after they are filed with the Fund administrator.").

Commission's rules require it to be made, which will be the second time in three months that Purple is paid late.

5. IP CTS Demonstration

In addition to the policy discussions summarized above, Purple provided live demonstrations of its IP CTS service, showing how the service worked with captions set to "default on" and with captions set to "default off." The following FCC personnel attended the demonstrations: Robert Aldrich, Nicholas Degani, Elaine Gardner, Eliot Greenwald, Rick Hindman, Greg Hlibok, Sharon Lee, Commissioner Ajit Pai, David Schmidt, Henning Schulzrinne, and Karen Peltz Strauss.

Respectfully submitted,



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