

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

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

COMMENTS OF PURPLE COMMUNICATIONS, INC.

Purple Communications, Inc. (“Purple”) hereby comments in response to the Petition for Reconsideration filed by Sprint Corporation (“Sprint”), requesting reconsideration of the Commission’s *2013 Rate Order*,¹ as well as an immediate suspension of the Internet Protocol Relay (“IP Relay”) compensation rate adopted in that *Order* and future automatic rate declines.² Purple agrees with Sprint that the Commission, upon reconsideration, should adopt an IP Relay rate that promotes competition, innovation, and service quality in the IP Relay market by ensuring that service providers are able to receive a reasonable return on their investments.³ Purple works very hard to provide extremely high-quality IP Relay service under unpredictable call volumes and operating conditions, and strongly disagrees with Sprint’s assertion – and the assertion of any commenter – that Purple’s service quality is anything but the highest quality.

¹ *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, 28 FCC Rcd 9220 (2013) (“*Order*”).

² *See Request for Comment on Petition Filed by Sprint Corporation for Reconsideration of the Commission’s Internet Protocol Relay Rate Order*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 13-2258 (rel. Nov. 25, 2013); *see also* Petition for Reconsideration of Sprint Corporation, CG Docket Nos. 03-123 and 10-51 (filed July 31, 2013) (“Sprint Petition”).

³ *See* Sprint Petition at 2.

Purple agrees with Sprint that the methodology used by the Fund Administrator and the Commission to develop “cost-based” rates is poorly designed to effectively measure the true costs of providing IP Relay service.⁴ As Purple has emphasized in previous filings, the Commission’s historical rate methodology, which is oriented toward capital intensive utility carriers, is misplaced as applied to TRS services, including IP Relay, because these are labor intensive services with very low capital investment requirements.⁵ Even the Fund Administrator has emphasized that this methodology does not make sense in a labor-intensive industry.⁶

In further support of Sprint’s petition, but absent from the arguments advanced in its petition, is the lack of any analysis in the rate setting process of the IP Relay industry’s current minute volumes, which are significantly lower than in any prior period, having declined steeply following the Commission’s long overdue decision to eliminate the Guest Access period that was mandated by Commission rules prior to June 2012. While Sprint focuses on the IP Relay rate itself, it is more important to consider the rate in the context of the IP Relay industry’s declining minute volumes, which have dropped by approximately 60% from 2011 levels, and now appear to be trending toward an industry volume run rate of approximately 20 million minutes per year.⁷ Given

⁴ See Sprint Petition at 6-8.

⁵ See Comments to Public Notice on Structure and Practices of the Video Relay Services Program, Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123, at 11-12, Addendum A (filed Nov. 14, 2012) (attaching report finding that the Commission should have rejected the weighted average cost formula in the VRS context because it is based on flawed assumptions and undermines the Commission’s goal of increasing competition).

⁶ See Rolka Loube Saltzer Associates (“RLSA”) Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, at 23 (May 1, 2013) (“RLSA May 1, 2013 Report”).

⁷ See RLSA Interstate TRS Fund Performance Status Reports, released March 2011 and Oct. 2013, available at: <http://www.r-l-s-a.com/TRS/reports/0311JandataTRSSstatus.pdf> and <http://www.r-l-s-a.com/TRS/reports/2013-10TRSSstatus.pdf> (reflecting a decrease from approximately 4.589 million IP Relay minutes in January 2011 to approximately 1.823 million minutes in July 2013).

this decline in minute volumes, preserving the previous rate of \$1.2855 per minute rather than implementing the reduced baseline rate adopted by the Commission for 2013-2014 would have a negligible impact of less than 0.4% on the total projected Fund.⁸ In contrast, implementing the reduced (and declining) rate combined with declining demand and increasing costs will have a serious detrimental effect on consumers and the IP Relay industry, threatening not only consumer choice but also the very existence of this critical service. There is virtually no reward to the Fund for exposing consumers to such a risk.

Furthermore, as Purple has explained, when demand is in decline, but service standards remain unchanged, per-minute costs naturally increase due to diminishing operating leverage and fewer dollars to cover fixed costs required to deliver the service.⁹ Given that lower minute volumes result in lower absorption of fixed costs, the Commission's "6% efficiency factor" – which is being used to reduce the IP Relay rate even further over the next three years – is illogical in the context of a declining industry. The Commission's rates are simply inadequate to ensure the long-term availability of IP Relay service for consumers who rely on it. The Commission instead should consider an *increasing* rate trajectory for IP Relay, because it is a mature, declining service, similar to traditional TRS rates, which declined steadily in use from 1,009,681 minutes in January 2008, to 308,427 minutes in July 2013. The Commission *increased* the rate over that period from

⁸ Calculated based on the previous 2012-2013 rate of \$1.2855, the reduced 2013-2014 rate of \$1.0147, an approximate minutes volume of 20 million per year, and the Administrator's projection of \$1.543 billion as the total Fund cash requirement for 2013-2014. *See Order*, ¶¶ 10-20 (adopting a new IP Relay baseline rate of \$1.0147 to replace the previous 2012-2013 rate of \$1.2855); *see also* RLSA May 1, 2013 Report at 6.

⁹ *See* Comments of Purple Communications, Inc. on Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the July 2013 Through June 2014 Fund Year, CG Docket Nos. 10-51 and 03-123, at 3-4, Figure 1 (filed May 31, 2013) (chart reflecting inverse relationship between TRS minute volumes and rates) ("Purple's May 31 Comments").

\$1.291/minute in January 2008, to \$2.1647/minute in July 2013.¹⁰

Purple's prior filings, as well as those from consumers and other providers, warned of the risk of adopting the Fund Administrator's recommended rates, including the likelihood that most or all providers would exit the IP Relay industry.¹¹ Unfortunately, as Purple had warned, Sorenson Communications, Inc. ("Sorenson") abandoned the IP Relay market almost immediately after the Commission adopted its reduced rates, following on the heels of the recent abandonment of IP Relay by Hamilton Relay, Inc. and AT&T.¹² Between the date of the Administrator's report and one week after the Commission adopted the Administrator's recommended rate, three of the five providers formally exited the industry, and a fourth (Sprint) subsequently warned that, absent an increased rate, it may also discontinue service.¹³

Notwithstanding the above-stated rationale supporting Sprint's petition, Purple strongly disagrees with Sprint's assertion that the IP Relay rate decline "has led the dominant provider to sacrifice quality in an effort to remain profitable"¹⁴ Sprint cites as support for its assertion a "study" conducted by the Paisley Group, which purports to evaluate provider quality.¹⁵ The Paisley

¹⁰ See RLSA Interstate TRS Fund Performance Status Report, released Feb. 2008, *available at*: <http://www.r-l-s-a.com/TRS/reports/0208JanuarydataTRSstatus.pdf>; *see also* RLSA Interstate TRS Fund Performance Status Report, released Oct. 2013, *available at*: <http://www.r-l-s-a.com/TRS/reports/2013-10TRSstatus.pdf>.

¹¹ See Emergency Petition for Limited Waiver, Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123 (filed July 11, 2013); *see also* Purple's May 31 Comments at 5; Letter from Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc., *et al.*, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 03-123 and 10-51 (filed June 26, 2013).

¹² Purple's May 31 Comments at 5.

¹³ See Sprint Petition at 3.

¹⁴ Sprint Petition at 8.

¹⁵ See Sprint Petition at 8, Attachment A (summarizing and attaching pages of the *National Relay Service Performance Index*, The Paisley Group Ltd (March 2013)).

report, however, is irresponsibly flawed and misleading in both methodology and conclusion – and is not remotely accurate with respect to its characterization of the performance of Purple’s IP Relay service. Purple has previously submitted its actual speed of answer and service level performance for its i711 service during the date range in which Paisley claims to have conducted its “study.”¹⁶ Purple’s own quality statistics, collected from a much broader sample as part of its regular quality-assurance program, offer a more accurate, comprehensive measure of the quality of Purple’s IP Relay services across all end points. These statistics reflect a proven record of consistently providing fast and high-quality IP Relay service. For example, according to Paisley, Purple provides only 48.4 average WPM and 93.5% typed accuracy. In truth, however, Purple tests its agents every 90 days – far more often than required – and requires a minimum average of 60 WPM at 98% accuracy. In the first quarter of 2013, the period when the Paisley “study” was issued, Purple provided an average of 71 WPM at 99.3% accuracy. As another example, according to the Paisley “study,” Purple has an average connect time of 23.5 seconds when, in fact, Purple’s average connect time is consistently between three and six seconds.

Purple’s performance statistics are based on random monitoring of 2,500-3,000 calls per month in eight different performance categories. Purple also can provide the Commission detailed documentation to support its calculations upon request. These statistics demonstrate that Purple has both accuracy and typing speed averages in excess of those IP Relay providers who received higher performance ratings in the Paisley “study,” some of whom happen to be clients of the Paisley Group who pay for that very “study” that purports to fairly present comparative quality statistics.¹⁷

The flaws related to the Paisley “study” are so remarkable as to be almost laughable but for

¹⁶ See Letter from Monica Desai, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 03-123, 10-51 and 13-24, at Exhibit 1 (filed July 31, 2013) (“Purple’s July 31 Ex Parte”).

¹⁷ See Purple’s July 31 Ex Parte at 2.

the seriousness of the purported conclusions. For example, Paisley apparently tested only Purple's i711 application for IP text relay, which represents only a minority of Purple's IP Relay traffic.¹⁸ The Paisley data on Purple's i711 service is entirely unreliable given that AIM-based applications deliver texts to the IP Relay user in a manner that does not allow the accurate measurement of either accuracy or typing speed. Moreover, Paisley's own report states that it did not test "words per minute" for Sorenson IP and AT&T because they "use an Instant Messaging based application," even though it tested and reported on Purple's i711 service, which also uses an Instant Messaging based application.¹⁹ Additionally, given that the Paisley "study" was allegedly conducted in February 2013, nearly six months prior to the effective date of the reduced IP Relay rates, Sprint's suggestion of a causal effect of the rate reduction on Purple's service quality is illogical and inaccurate.

As a practical matter, Purple would not have been able to consistently hold more than 50% of the IP Relay market for multiple years, while maintaining the most stringent compliance and fraud-prevention standards in the industry, if it performed anywhere near the levels suggested by Sprint and Paisley. Customers seek service from providers that offer fast speed of answer and high-quality performance, and Purple's market share is testimony to its consistently high performance standards, which is evident in Purple's quality statistics. Purple is unaware of any consumer complaints regarding Purple's service quality that would indicate any cause for concern.²⁰

¹⁸ See Letter from Monica Desai, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 03-123, 10-51, 13-24, at 2 (filed July 31, 2013) ("Purple's July 31 Ex Parte").

¹⁹ See Purple's July 31 Ex Parte at 2.

²⁰ In a recent ex parte filing there was a vague reference to certain unidentified asserted complaints, but Purple has not been given any information regarding these asserted complaints, and has never itself received such a complaint. See Letter from Andrew S. Phillips, Policy Counsel, National Association of the Deaf, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 03-123 and 10-51, at 2 (filed Nov. 6, 2013).

Due to the tremendous efforts at Purple IP Relay call centers, Purple maintained these high standards following the exit of Sorenson from the IP Relay market, when Purple missed ASA only nine days during August and September 2013 despite daily call volumes that at times exceeded 140% of forecasted call volumes. Furthermore, Purple's voluntary fraud prevention measures are unparalleled in the IP Relay industry, and are the most effective at combating abuse of the service by ineligible users.

CONCLUSION.

Purple supports reform of the methodology used by the Fund Administrator and the Commission to set IP Relay rates (as well as those of other TRS services), and strongly urges the Commission to adopt a basis for IP Relay rates that encourages industry competition, innovation and high service quality. Purple, however, strongly disagrees with any assertion that Purple's service quality is anything but the highest quality. Whether Purple is the only provider of IP Relay service, or one of many, Purple is dedicated to ensuring the long-term viability of this important service for the consumers who rely on it.

Respectfully submitted,



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