

December 9, 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, 10-51, and 13-24
Purple Communications, Inc.**

Dear Ms. Dortch:

On Thursday, December 5, John Goodman, Chief Legal Officer for Purple Communications, Inc. (“Purple”), Dan Luis, advisor to Purple, and I, outside counsel to Purple, held a series of meetings with personnel from the FCC. The meetings were with Kris Monteith, Gregory Hlibok, Eliot Greenwald, and Elaine Gardner from the Consumer and Governmental Affairs Bureau; David Schmidt, Andrew Multz, and Diane Mason from the Office of Managing Director; Maria Kirby, Legal Advisor to Chairman Wheeler; Nicholas Degani, Legal Advisor to Commissioner Pai; Commissioner O’Rielly and Amy Bender, Legal Advisor to Commissioner O’Rielly; Adonis Hoffman, Chief of Staff and Senior Legal Advisor to Commissioner Clyburn; and Christiana Barnhart, Acting Legal Advisor to Commissioner Rosenworcel. The discussion focused on the following points.

I. Competition.

We emphasized that Purple is greatly encouraged by Chairman Wheeler’s recent remarks regarding the importance of competition and the recognition that competition requires a level playing field:

It is important to remember, however, that competition does not and will not produce adequate outcomes in the circumstance of significant, persisting market power or of significant negative externalities. Where those occur, the Communications Act and the interests of our society – the public interest – compel us to act and we will.

I will not hesitate to invoke the full authority granted to us by Congress to protect competition, and I will not hesitate to use the full authority granted us by Congress where competition is not available to secure the public interest through the

promotion of competitive markets.¹

We noted that these remarks are particularly relevant to the issues faced by competitive providers of Telecommunications Relay Services (“TRS”) such as Purple. We asked that the Commission consider that each provider is differently situated, and that in a Fund so heavily dominated by one provider, it would be wrong for the Commission to view all providers as the same. As an example, we discussed the Office of Inspector General’s independent audit reports, which reflect that Sorenson Communications is the only VRS provider being *overcompensated* from the Fund while Purple and CSDVRS, LLC (“CSDVRS”) are being fairly compensated.² We emphasized that as the Commission moves forward with reform initiatives related to TRS, it is critical that the Commission ensure that the environment is structured to facilitate meaningful and fair competition. We also emphasized the critical need for strong enforcement of specific, existing TRS rules.

II. Video Relay Service FNPRM.

We discussed the points addressed in Purple’s comments filed in response to the Commission’s Further Notice of Proposed Rulemaking regarding Video Relay Service (“VRS”) reform.³ We emphasized that Purple supports the Commission’s goals of achieving market-based pricing for VRS and fostering a competitive VRS marketplace through which multiple providers will continue delivering high-quality, innovative services to consumers. We noted, however, that the rate schedule adopted by the Commission in its June 10, 2013 Report and Order will not accomplish these goals. To the contrary, the rate schedule adopted by the Commission creates significant programmatic risk for the delivery of VRS with respect to sustainability, quality, competition, and innovation. This outcome would harm the public interest and negatively impact the very consumers the VRS program was designed to serve.

¹ Prepared Remarks of FCC Chairman Tom Wheeler at Ohio State University (Dec. 2, 2013), *available at*: <http://www.fcc.gov/document/remarks-fcc-chairman-tom-wheeler-ohio-state-university>.

² See Office of Inspector General Memorandum, Report on the Audit of the Use of Funds Disbursed to and Received by Telecommunications Relay Service Providers – Sorenson Communications, Inc. at 1 (dated Sept. 27, 2012), *available at*: http://transition.fcc.gov/oig/Sorenson_Audit_Report_09272012_Redacted.pdf (“TRS funds received by Sorenson for VRS did **not** compensate for only the reasonable costs of providing access to VRS.”) (emphasis added); see also Office of Inspector General Memorandum, Report on the Audit of the Use of Funds Disbursed to and Received by Telecommunications Relay Service Providers – Purple Communications, Inc. at 1 (dated Jan. 25, 2013), *available at*: http://transition.fcc.gov/oig/Final_Redacted_Purple_Audit_Report_030613.pdf (“TRS funds received by Purple for VRS compensated the provider for only the reasonable costs of providing access to VRS.”); see also Office of Inspector General Memorandum, Report on the Audit of the Use of Funds Disbursed to and Received by Telecommunications Relay Service Providers – CSDVRS, LLC at 1 (dated Jan. 25, 2013), *available at*: http://transition.fcc.gov/oig/Final_Redacted_CSDVRS_Audit_Report_030613.pdf (“TRS funds received by CSDVRS for VRS compensated the provider for only the reasonable costs of providing access to VRS.”).

³ See Comments of Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123 (filed Aug. 19, 2013); Reply Comments of Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123 (filed Sept. 18, 2013); see also *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, 28 FCC Rcd 8618, n. 122 (2013) (“VRS Reform Order”).

To guarantee the long-term viability of the VRS program, we urged the Commission to adopt Purple's proposal to establish rates through a multi-winner auction process with share caps. By implementing a reasonable auction process with share caps the Commission can guarantee continued competition in this industry, thereby sustaining consumer choice and facilitating marketplace competition. Further, we emphasized that Purple's proposal will enable the Commission to hold VRS providers accountable for high performance in quality and innovation through enforceable obligations, and ensure that the Commission is paying a market-based rate. In so doing, the Commission can achieve its goals of ensuring that the VRS program remains effective, efficient and sustainable for the benefit of all consumers now and in the future.

At the same time, Purple encouraged the Commission to recognize the technical and operational complexities of establishing a neutral video communications service platform, and the importance of carefully and comprehensively testing any video platform of scale before implementation. Because VRS is often a lifeline for its users, the Commission should not experiment with such a critical service without rigorous testing at scale. The Commission has recognized the importance of thorough testing before implementation of similarly novel and complex concepts.⁴

III. Clarification of Footnote 122 in VRS Reform Order.

We noted that Purple has, for five months, sought clarification as to whether footnote 122 in the Commission's *VRS Reform Order* applies to web and wireless Internet Protocol Captioned Telephone Service ("IP CTS").⁵ We emphasized that because Purple had not received a definitive answer from the Commission since raising this issue in the summer, Purple expended resources in August and September to successfully develop a solution that would comply with a reading of footnote 122 that would allow inbound web and wireless traffic, using a system similar to that used by Hamilton Relay, Inc. and Sorenson Communications.⁶ We further emphasized the need for the Commission to either expeditiously clarify that footnote 122 was not intended to apply to inbound web and wireless IP CTS calls; or, alternatively, if the Commission decides that footnote 122 does apply to such calls, (a) clarify whether the inbound and outbound calls can operate on more than one technology, and

⁴ See, e.g., "The Path to a Successful Incentive Auction," Tom Wheeler, Chairman, FCC (dated Dec. 6, 2013), available at: <http://www.fcc.gov/blog> ("... we must also exhaustively test the operating systems and the software necessary to conduct the world's first-of-a kind incentive auction. ... As any responsible manager knows, managing a complex undertaking such as this also requires an ongoing commitment to continuously and honestly assess its readiness and its project plan. ... As part of our auction system development, we will check and recheck the auction software and system components against the auction requirements, and under a variety of scenarios replicating real life conditions.").

⁵ See Reply Comments of Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123 (filed Oct. 23, 2013); see also *VRS Reform Order*, n. 122; see also 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); see also Letter from Monica Desai, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 03-123 and 10-51 (filed Nov. 18, 2013) ("Purple Nov. 18 Ex Parte").

⁶ See Purple Nov. 18 Ex Parte at 2.

(b) grant a waiver for Purple’s web and wireless IP CTS minutes generated between August 5, 2013 and September 30, 2013, during which time Purple was awaiting clarification from the Commission.

IV. IP Relay.

With respect to the Petition for Reconsideration filed by Sprint Corporation,⁷ we emphasized that Purple agrees that the Commission, upon reconsideration, should adopt an Internet Protocol (“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.⁸ We reiterated, however, that Purple works very hard to provide extremely high-quality IP Relay service under unpredictable call volumes and operating conditions, and strongly disagrees with any assertion that Purple’s service quality is anything but the highest quality. As discussed in Purple’s comments, the Paisley Group “study,” which Sprint cites as support for its argument that quality is impacted by rates, 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’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. Independent testing by the Commission, or a third party hired by the Commission, would confirm this conclusion. Purple would welcome regular quality testing by an independent third party and believes such testing would be beneficial to both consumers and service providers.

V. VRS Speed of Answer Waiver Petitions.

Purple expressed support for the Collective Providers’ Petition for Waiver on the issue of the Commission’s new speed of answer (“SoA”) requirements.⁹ We emphasized that Purple supports the Commission’s goal of ensuring that consumers receive quality service and faster speed of answer. Purple agrees with the Collective Providers, however, that the new SoA standard is neither operationally practical nor ultimately in the best interests of the VRS consumers for whom the new standard is intended to improve service quality.

To ensure that VRS providers are able to meet the Commission’s SoA goals and continue to provide consumers with quality service, we emphasized that the Commission should, before requiring daily – rather than monthly – measurement of SoA, more fully develop the record on the impact this change will have on consumers and VRS providers. While the Commission’s 2011 VRS Reform FNPRM generally discussed whether the SoA standard needed to be modified, the Commission did not specifically propose or seek public comment on the daily measurement standard subsequently

⁷ Petition for Reconsideration of Sprint Corporation, CG Docket Nos. 03-123 and 10-51 (filed July 31, 2013).

⁸ See Comments of Purple Communications, CG Docket Nos. 03-123 and 10-51 (filed Dec. 5, 2013).

⁹ See Letter from Jeff Rosen, General Counsel, CSDVRS, LLC, *et al.*, to the Honorable Tom Wheeler, Chairman, FCC, *et al.*, CG Docket Nos. 03-123 and 10-51 (filed Dec. 6, 2013).

adopted by the Commission.¹⁰ Purple emphasized that the Commission should seek public comment on the daily measurement standard, as well as the penalty framework for non-compliance based on whatever standard is ultimately adopted. Purple also urged the adoption of a “sliding scale” approach to the SoA penalty framework, as the Commission had utilized in the past, which would vastly improve efficiency of providers’ staff loading to meet an elevated service level standard. Purple reiterated that the optimal way to achieve this heightened service level, while factoring the associated costs into the applicable rates, is to include it in the bid specifications at auction. Service providers could then factor these variables into their respective bid submissions.

Respectfully submitted,



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cc:
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¹⁰ See *Structure and Practices of the Video Relay Service Program*, Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 and 03-123, 26 FCC Rcd 17367, ¶¶ 77, 83, 86-87 (2011)