

December 24, 2013

Monica S. Desai
Direct Tel: 202-457-7535
Direct Fax: 202-457-6315
mdesai@pattonboggs.com

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:

Purple Communications, Inc. (“Purple”) submits this letter in support of the recent filings of CSDVRS, LLC (“ZVRS”) regarding the need for greater interoperability in the Video Relay Service (“VRS”) industry.¹ As Purple has long emphasized, the use of legacy equipment is the largest switching barrier preventing free consumer choice of providers, further perpetuating the highly concentrated market status quo.² There remain significant negative consequences for switching providers while trying to use current equipment, and lack of interoperability when trying to communicate when making calls to someone using the equipment of Sorenson Communications, Inc. (“Sorenson”), when the call is made through the equipment of any other provider.

Consumers should be able to export their personal address books to other devices or applications – but currently, Sorenson’s VRS consumers lose access to their personal address book and speed dialing lists if they want to switch equipment. And, deaf consumers, just like hearing consumers, obviously must be able to receive and leave video mail messages irrespective of the default provider of the calling and called party – and providers cannot take discriminatory actions against consumers

¹ See Letter from Jeff Rosen, General Counsel, CSDVRS, LLC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 10-51 and 03-123 (filed Dec. 17, 2013); Letter from Jeff Rosen, General Counsel, CSDVRS, LLC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 10-51 and 03-123 (filed Nov. 27, 2013) (“ZVRS Nov. 27 Ex Parte”); Letter from Jeff Rosen, General Counsel, CSDVRS, LLC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 10-51 and 03-123 (filed Oct. 21, 2013).

² See, e.g., Letter from Kelby Brick, Vice President, Regulatory & Strategic Policy, Purple Communications, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket No. 10-51 (filed Jan. 26, 2011); Letter from Kelby Brick, Vice President, Regulatory & Strategic Policy, Purple Communications, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket No. 10-51 (filed Feb. 15, 2011).

based on their choice of default provider. But Sorenson does not allow consumers calling through a competitor's equipment or service to leave video mail messages for Sorenson customers. The FCC should not allow such consumer-hostile and anticompetitive practices to persist.

Purple strongly agrees with ZVRS that the Commission should mandate interoperability of video mail for point-to-point video calls.³ Purple also agrees that the Commission should mandate the portability of VRS users' address books. As ZVRS emphasizes, and as Purple has long argued, video mail interoperability and address book portability are critical to meeting the Commission's objective of providing consumers with functional equivalence. Purple agrees with ZVRS that it will not take long for the industry to achieve interoperability, as well as address book portability, if the Commission provides clarity on these requirements, acts with urgency, and effectively applies its enforcement authority.

The assertions made by Sorenson regarding video mail interoperability are inaccurate.⁴ Neither Purple, ZVRS, nor Convo blocks the receipt of video mail messages originating through the equipment of other VRS providers (including when the call originates from Sorenson). The suggestion that it would "cost millions of dollars and would require at least a year of intensive engineering work" to make Sorenson video mail interoperable with other providers' VRS access technology must be viewed with skepticism.⁵ If Purple, ZVRS, and Convo – each with only the fraction of the resources available to Sorenson – can successfully manage to allow this basic, functionally equivalent operation, Sorenson should similarly be able to figure out how not to block calls coming to consumers using the equipment of other providers, and should be able to do so in a relatively short amount of time and without significant costs.⁶ The logical conclusion is that Sorenson purposefully designed the system to block calls, and the system is working as Sorenson had anticipated it would. The Commission should view Sorenson's assertions in the context of Sorenson's position as a monopolist VRS provider that is the sole beneficiary of the current lack of interoperability.

³ 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, Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123 (filed April 11, 2013) ("Purple Request for Immediate Public Notice").

⁴ See Letter from John T. Nakahata, Counsel, Sorenson Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket Nos. 10-51 and 03-123 (filed Nov. 14, 2013) ("Sorenson Nov. 14 Ex Parte"); see also ZVRS Nov. 27 Ex Parte.

⁵ *Id.* at 3.

⁶ See Letter from Jeff Rosen, General Counsel, CSDVRS, LLC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 10-51 and 03-123 (filed Dec. 17, 2013); See also Letter from John Goodman, Chief Legal Officer, Purple Communications, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 10-51 and 03-123 (filed May 14, 2013) (linking a video demonstration showing that Purple and ZVRS customers can receive video mail messages from users of any other provider, including Sorenson, while Sorenson customers can only receive video mail from other Sorenson users; also attaching an interoperability comparison chart).

Sorenson has a long history of anticompetitive practices aimed at maintaining its monopolist position – controlling more than 80% of the VRS market – by keeping its customers locked into its service. These actions include blocking video mail messages from competing customers, threatening equipment removal and unauthorized porting, delaying action on deployment of bug fixes, instituting non-compete clauses for interpreters, preventing transfer of address books as a porting disincentive, using intercept messages with thinly veiled threats of degraded service on calls made through other providers, and failing to properly pass through Caller ID information to non-Sorenson users.⁷ This conduct has led to numerous consumer complaints, many of which have been filed with the Commission. The Commission should evaluate any assertions by Sorenson regarding its purported inability to achieve interoperability against this backdrop. By taking the steps recommended by ZVRS to accelerate interoperability in the VRS industry, the Commission can take a further step towards providing consumers with functional equivalence.

While Purple applauds the Commission’s ongoing efforts to advance interoperability,⁸ more urgent action is needed. Six months have passed since the Commission has recognized the need to move forward, yet the Commission has not yet formulated a definition of interoperability, much less provided a timeline or roadmap for achieving it. In contrast, the Commission acted quickly and with specificity to implement the declining VRS rate structure. Purple has commented repeatedly that rate reform must necessarily follow market competition reform because, without a level playing field, small service providers have no way to grow and achieve the efficiencies of scale that are necessary to remain viable under the sharply declining rates.⁹ Simply put, the Commission is placing the cart before the horse. If the Commission does not act with urgency to implement competition reform, the declining rate structure will drive providers out of the industry before the results of any reforms can be achieved.

Purple strongly supports the Commission’s goal of cultivating competition so that more than one service provider can grow to scale and become a competitive auction bidder, and consumers can more freely avail themselves of the benefits of competitive services and offerings. This goal cannot be achieved, however, under the Commission’s current trajectory. It is critical that the Commission act quickly to increase market competition by mandating interoperability within 90 days and

⁷ See Purple Request for Immediate Public Notice at 7-9.

⁸ *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618 (2013).

⁹ See, e.g., Comments of Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123 (filed April 26, 2013); Letter from Monica Desai, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 10-51 and 03-123 (filed April 29, 2013); Letter from Monica Desai, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 10-51 and 03-123 (filed May 3, 2013); Comments of Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123 (filed August 19, 2013).

effectively utilizing its enforcement authority to eliminate anticompetitive behavior. Doing so will benefit consumers and help to ensure the long-term viability of the VRS industry.

Respectfully submitted,



Monica S. Desai
Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-7535
Counsel to Purple Communications, Inc.

cc:

Maria Kirby
Adonis Hoffman
Christianna Barnhart
Nicholas Degani
Amy Bender
Kris Monteith
Karen Peltz Strauss
Robert Aldrich
Gregory Hlibock
Eliot Greenwald
Jonathan Chambers