

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

Dear Ms. Dortch:

Purple Communications, Inc. (“Purple”) supports the Competitive Providers’ request for a temporary waiver of the Commission’s revised speed of answer (“SoA”) requirements for Video Relay Service (“VRS”),¹ pending a more thorough review of the impact of the revised standard on VRS providers and service. Purple also agrees that the Commission should review its penalty framework for SoA non-compliance. Purple shares the Commission’s goal of ensuring that consumers receive quality service and faster SoA. However, without properly funding an elevated service level through increased VRS rates, the revised standard is neither operationally practical nor ultimately in the best interests of the consumers who are the intended beneficiaries of the standard.

As the Competitive Providers emphasize, the Commission failed to adequately seek public comment on the daily SoA measurement standard before adopting it. The Commission’s 2011 notice of proposed rulemaking only generally discussed whether the SoA standard needed to be modified – it did not propose or seek public comment on the daily measurement standard subsequently adopted by the Commission.² Before enforcing the daily SoA measurement standard, the Commission should develop a record to evaluate whether this standard is ultimately beneficial for consumers, and beneficial for the TRS program.

The daily measurement standard is impractical because it is impossible for providers to precisely forecast consumer demand on a daily basis. The most serious – and harmful – problem with the new standard, however, is the “all or nothing” penalty framework under which all compensation is withheld for any day on which a provider misses the SoA, even if the volumes are unpredictably high (for example, in the case of a natural disaster), and even if the miss is negligible. Given the

¹ 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) (“Competitive Providers Letter”).

² 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).

impossibility of precisely predicting and planning for demand on a daily basis, this strict penalty standard poses a serious financial risk to providers, results in severe inefficiencies in providers' labor management, and will result in perverse, consumer-unfriendly incentives.

Purple agrees with, and has consistently supported the Commission's objective of a lower SoA to deliver a functionally equivalent experience to VRS users and believes such an objective to be worthy of increased investment by the Fund.³ Purple has long emphasized, however, that, along with a lower SoA standard, the Commission should adopt a more efficient and workable penalty framework as a tool to allow providers to achieve more efficient staffing levels that are matched to expected consumer demand and should factor into the VRS rate analysis the increased costs of providers delivering increased service levels.⁴ Under the current penalty framework, providers are forced to incur costs for the woefully inefficient staffing structure they are forced to maintain in order to protect against full-day compensation penalties. While a waiver process is available to providers who fail to comply with SoA due to unforeseen circumstances, the Commission's current waiver process is broken. A waiver takes entirely too much time and is too unpredictable to be a viable solution. Moreover, the Commission's prior comments on this subject leave us dubious that the Commission would ultimately grant a waiver in such circumstances.

Furthermore, contrary to the Commission's goal of promoting service quality, the current penalty framework incentivizes lower service quality. As emphasized by the Competitive Providers, the current penalty framework creates a "perverse incentive" for providers to reduce their service on a given day when it becomes apparent that SoA will be missed and compensation will not be paid for any service provided on that entire day.⁵ If, for example, a provider realizes by noon on a given day that it will miss the SoA standard, therefore not receiving compensation for the service already provided for that day or any service that would be provided for the rest of the day, the provider would be logically and commercially incentivized to shut down for the rest of the day rather than incur additional labor costs by remaining open. Under this scenario, consumers would not have access to that provider's service, and call volumes from consumers who dial around or call using TDNs issued by the provider's competitors could exceed the other providers' capacities. As a result, a situation could arise where the entire VRS industry would quickly have the same incentive to shut down for the remainder of a given day rather than incur additional costs by remaining open.

Purple urges the Commission to avoid these unintended consequences by adopting a "sliding scale" approach to the SoA penalty framework, as the Commission has utilized in the past, and for which Purple has advocated previously.⁶ This approach would vastly improve efficiency of providers' staff loading to meet an elevated service level standard, thus encouraging faster SoA and ensuring quality service for consumers.

³ See Comments of Purple Communications, Inc., CG Docket Nos. 10-51 and 03-123, at 20 (filed Aug. 19, 2013) ("Purple Aug. 19 Comments").

⁴ See *id.*

⁵ Collective Providers Letter at 2.

⁶ See, e.g., Request for Review of the Decision by the TRS Administrator, Purple Communications, Inc., CG Docket No. 10-51, at 19-21 (filed Jan. 17, 2012).

Purple notes that the Commission decided to adopt the current strict compliance penalty framework in the interest of consumer service despite the fact that no consumer group had requested or commented on it. Indeed, the Commission declared its intention for the SoA standard to be strictly enforced only after the TRS Fund Administrator construed SoA under a strict liability approach, which was a different from the sliding scale approach most recently applied by the Commission at that time.⁷

Purple urges the Commission to waive the revised SoA standard for a period of six months in order to more fully develop the record on this issue and analyze the impact of the strict standard on service providers and consumers. The Commission should solicit public comment on, and review, the SoA penalty framework that should apply to VRS and other TRS services with a focus on properly balancing costs, service quality, and efficiency. Purple suggests that the optimal balance of these goals can be achieved through a “sliding scale” penalty framework for SoA noncompliance, as detailed in Purple’s prior filings on this issue.

Respectfully submitted,



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

⁷ See 2012 Appeal Order.