

Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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In the Matter of )  
)

Emergency Request for Review of the )  
Decision by the TRS Administrator to )  
Withhold TRS Funding from Purple )  
Communications, Inc. )  
)  
\_\_\_\_\_

CG Docket No. 03-123

**Emergency Request for Review of the Decision by the TRS Administrator**

John Goodman  
Chief Legal Officer and Secretary  
Purple Communications, Inc.  
595 Menlo Drive  
Rocklin, CA 95765

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Patton Boggs LLP  
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(202) 457-6000

*Counsel to Purple  
Communications, Inc.*

February 20, 2014

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

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In the Matter of )

Emergency Request for Review of the Decision )  
by the TRS Administrator to Withhold TRS )  
Funding from Purple Communications, Inc. )

CG Docket No. 03-123

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To: The Commission

**Emergency Request for Review of the Decision by the TRS Administrator**

Purple Communications, Inc. (“Purple”), through counsel, and pursuant to Sections 1.41 and 64.605(a)(2) of the Federal Communication Commission’s (“Commission”) rules,<sup>1</sup> respectfully submits this *Emergency Request for Review of the Decision by the TRS Administrator* seeking immediate reversal of a decision by the Administrator of the interstate Telecommunications Relay Service (“TRS”) Fund, Rolka Loube Saltzer Associates (the “Administrator”) to withhold reimbursement for all IP

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<sup>1</sup> 47 C.F.R. § 1.41; 47 C.F.R. § 64.605(a)(2) (“Emergency Call Handling Requirements”); see also, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities Internet-based Captioned Telephone Service, Declaratory Ruling*, 22 FCC Rcd 379 (2007) (“2007 IP CTS Declaratory Ruling”) and *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers, Report and Order*, 23 FCC Rcd 5255 (2008) (“March 2008 Emergency Call Handling Order”).

Captioned Telephone Relay Service (“IP CTS”) minutes processed by Purple for November 2013.<sup>2</sup>

Without analysis or investigation, the Administrator has decided to withhold reimbursement for all IP CTS minutes processed by Purple for November 2013, apparently based on the incorrect and summary conclusion that Purple is not in compliance with the Commission’s Emergency Call Handling Requirements.<sup>3</sup> As explained in detail in prior communications with FCC staff, the Emergency Call Handling Requirements do not apply to Purple’s IP CTS web and wireless applications through which the user does not initiate the call.<sup>4</sup> The Administrator did not attempt to address any of the substantive arguments raised in the responses Purple provided to Commission staff regarding questions concerning Purple’s e911 call handling, or even ask any questions regarding the operations of Purple’s systems. Purple will reiterate that information here.

## **I. BACKGROUND**

Purple offers text relay, video relay, telephone captioning, and community interpreting services. This breadth of services, coupled with its technical acumen, distinguishes Purple as an industry leader in innovation and service offerings for its

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<sup>2</sup> See Letter from David Rolka, President, Rolka Loube Saltzer Associates, to Purple Communications c/o John Goodman (via email), February 14, 2014, *Re: Emergency Call Completion Request for Information* (Exhibit A).

<sup>3</sup> *Id.*

<sup>4</sup> See Letters from John Goodman, Chief Legal Officer and Secretary, Purple Communications, Inc. to Greg Hlibok, Chief, Disability Rights Office, Federal Communications Commission, dated January 17, 2014 (Exhibit B) and February 7, 2014 (Exhibit C). Purple notes that the Administrator chose to withhold all reimbursement for IP CTS minutes due the company for November 2013, despite Purple’s explanation that the services in question constitute only approximately 25% of the IP CTS minutes Purple handled in that timeframe. Exhibit C at 2.

customers. Purple is also an industry leader in compliance efforts. Its executives have been invited to serve on FCC Advisory Committees, including the VPAAC and EAAC – vital committees assisting in the implementation of the 21st Century Video Accessibility Act. Purple was also elected to represent the industry on the TRS Council and its delegate served as the Chair. Purple assiduously tracks the Commission’s rule making process and pronouncements to thoughtfully and carefully maintain its ongoing compliance programs, and exceed Commission requirements.

## II. EMERGENCY CALL HANDLING RULES

In March 2008, the Commission appropriately required Internet-based TRS providers, including IP CTS providers, to meet specific emergency calling requirements, including the requirement to “accept and handle emergency calls.”<sup>5</sup> Because of the way it defined IP CTS,<sup>6</sup> the Commission also appropriately recognized that IP CTS delivery designs and protocols may vary, stating that IP CTS “may be initiated, set up, and provided in numerous ways.”<sup>7</sup> In the First Numbering Order, issued later in 2008, the Commission further delineated IP CTS as separate from VRS and IP Relay as “IP CTS raises distinct technical and regulatory issues.”<sup>8</sup>

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<sup>5</sup> March 2008 Emergency Call Handling Order; *see also* 47 CFR 64.605.

<sup>6</sup> 2007 IP CTS Declaratory Ruling at ¶ 22 (“[a] service will be considered [IP CTS] as long as it allows the user to simultaneously listen to, and read the text of, what the other party in a telephone conversation has said, and the connection carrying the captions between the service and the user is via the Internet rather than the PSTN.”)

<sup>7</sup> 2007 IP CTS Declaratory Ruling at ¶ 22; *See also* March 2008 Emergency Call Handling Order at ¶ 1, fn. 7, and ¶ 13, fn. 59.

<sup>8</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers, Report and Further Notice of Proposed Rulemaking*, 23 FCC Rcd 11591 ¶ 1, fn. 5 (2008) (“First Numbering Order”).

In the March 2008 Emergency Call Handling Order, based on these very factors, the Commission specified that the emergency call handling requirements adopted therein would apply to IP CTS providers “only in circumstances where the call is *initiated*, or can be *initiated*, by the user contacting the provider via the Internet.”<sup>9</sup> While the Commission did not define “initiate” when it set forth this language in 2008, the Commission recently concluded “that a person or entity ‘initiates’ a telephone call when it takes the steps necessary to physically place a telephone call”.<sup>10</sup>

The March 2008 Emergency Call Handling Order is consistent with the Commission’s recent common-sense conclusion that “initiating” requires some active step to physically place and make a call, because the obligation of providers to “*accept* emergency calls and to deliver them to an appropriate PSAP,” implies that the IP CTS provider must route an active telephone call.<sup>11</sup>

### **III. PURPLE’S CALL BACK PROTOCOL COMPLIES WITH THE COMMISSION’S EMERGENCY CALL HANDLING REQUIREMENTS, BECAUSE THE USER DOES NOT INITIATE THE CALL.**

When using Purple’s IP CTS (ClearCaptions) website and wireless applications, the assisted user does not initiate a call. Accordingly, the Commission’s Emergency Call Handling Requirements explicitly do not apply. As explained in prior communications,<sup>12</sup> ClearCaptions service provided via the website and wireless applications is a call back

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<sup>9</sup> March 2008 Emergency Call Handling Order at ¶ 1, fn. 7 (emphasis added).

<sup>10</sup> See, e.g., *The Joint Petition Filed by DISH Network, LLC, the United States of America, and the States of California, Illinois, North Carolina, and Ohio for Declaratory Ruling Concerning the TCPA Rules, et al.*, Declaratory Ruling, 28 FCC Rcd 6574, FCC 13-54, ¶ 26 (2013) (concluding that a seller does not necessarily “initiate” a call placed by a third-party telemarketer on the seller’s behalf).

<sup>11</sup> March 2008 Emergency Call Handling Order at ¶ 13 & fn. 59 (emphasis supplied).

<sup>12</sup> Exhibit B at 1-2.

service. The assisted user enters the telephone number of the party with whom the assisted user wants to communicate and the telephone number on which the user would like to be called back. By doing so, the assisted user requests that a call bridging the assisted user with the called party be initiated by ClearCaptions. At that point in time, there is no active telephone call. When the next available ClearCaptions Communications Assistant receives the request, that Communications Assistant then initiates the call between the assisted user and the called party by first calling the assisted user. Only when the assisted user answers does the system connect to the called party. Captioning begins when the called party answers and begins speaking. Critically, it is the Communications Assistant, and not the assisted user, who initiates and bridges the call between the assisted user and the called party, because the Communications Assistant is the person who takes the physical steps necessary to place the call.<sup>13</sup> This call back scenario is just another example of the “numerous ways” in which IP CTS may be provided.<sup>14</sup> Therefore, Purple’s web and wireless IP CTS service is not in violation of the Commission’s Emergency Call Handling Requirements for a very basic reason – the requirements explicitly do not apply in circumstances where the assisted user does not initiate the call.

In addition, as explained in prior communications, Purple determined it is not in the public interest to handle emergency communications through a call back service because of the additional time involved. In an emergency situation, it is not ideal for an assisted user to turn on a device, open a device, open an app, log into a service, place a request for a call back, and wait for the Communications Assistant to initiate a call back

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<sup>13</sup> Exhibit B at 1.

<sup>14</sup> 2007 IP CTS Declaratory Ruling at ¶¶ 22; *See also* March 2008 Emergency Call Handling Order at ¶¶ 1, fn. 7.

to the assisted user. From a public safety perspective, it is much safer for the assisted user to dial emergency personnel directly through the assisted user's standard phone.<sup>15</sup>

By contrast, when an assisted user uses ClearCaptions in a means other than through the website or wireless application (such as on the Ensemble phone), the service is not configured as a call back service. Instead, the assisted user dials the phone number or receives a call and presses the ClearCaptions Button on the Ensemble phone. These actions initiate the call. Once the Communications Assistant hears the audio of the call, captioning begins. Under these circumstances, the caller is connected directly to the applicable PSAP through their telecommunications provider.

The Administrator did not address the language of the March 2008 Emergency Call Handling Order limiting the applicability of the emergency call handling requirements for IP CTS providers "only in circumstances where the call is *initiated*, or can be *initiated*, by the assisted user contacting the provider via the Internet."<sup>16</sup> Nor did the Administrator explain why it withheld Purple's entire November IP CTS reimbursement, when only approximately 25% of Purple's IP CTS traffic is at issue.

Purple is not aware that any of its customers have ever attempted to place an emergency call through its website or wireless application.<sup>17</sup> And Purple explicitly provides notice to users that it does not provide emergency call handling for IP CTS provided through web and wireless.<sup>18</sup> Further, registrants affirmatively accept this as part of the service terms of use when registering for web and wireless caption service.

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<sup>15</sup> Exhibit B at 2.

<sup>16</sup> March 2008 Emergency Call Handling Order at ¶ 1, fn. 7 (emphasis added).

<sup>17</sup> Exhibit B at 2.

<sup>18</sup> "LIMITATIONS OF CAPTION-BASED EMERGENCY 911 CALLS

### III. CONCLUSION AND REQUEST FOR RELIEF

The Commission must immediately reverse the Administrator's arbitrary and unjustified decision to withhold IP CTS reimbursement from Purple. In the alternative, and at bare minimum while this proceeding is pending, Purple should immediately be reimbursed for IP CTS provided by Purple that is not related to the ClearCaptions website and wireless application at issue, since those amounts are not at issue.

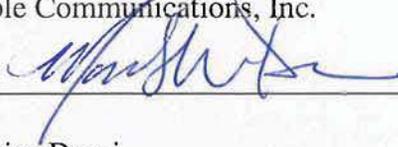
The Administrator's action has created a financial hardship for Purple, and has been extremely disruptive. As detailed in this Petition, Purple has been operating with the reasonable and good faith belief that it was (and continues to be) in full compliance with the Commission's Emergency Call Handling Requirements. Purple incurred all the cost of delivering IP CTS services in November 2013, in addition to providing a timely response and full explanation to the questions it has received from the Commission's Disability Rights Office regarding its services. Purple has the right to be reimbursed for its provisioning of these services.

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Users may not place 911 calls through the ClearCaptions website or application. The Company strongly advises you that any 911 emergency call should be made through a standard telephone, or if necessary because of severe hearing impairment, by a traditional text telephone (TTY), whenever possible." <http://www.clearcaptions.com/Content/terms>

Respectfully submitted,

Purple Communications, Inc.

By: 

Monica Desai  
Patton Boggs LLP  
2550 M Street NW  
Washington, DC 20037  
(202) 457-6000

*Counsel to Purple Communications, Inc.*

Dated: February 20, 2014

# Exhibit A

# Rolka Loube Saltzer Associates

David W. Rolka  
President  
Voice: 717-231-6661  
drolka@r-l-s-a.com  
www.r-l-s-a.com

FEIN: 30-0410008

February 14, 2014

Re: Emergency Call Completion Request for Information

Purple Communications  
c/o John Goodman via email

Dear Mr. Goodman:

I am writing to you in our capacity as the Administrator of the Interstate Telecommunications Relay Service and seek specific information to assist us in processing your firm's requests for reimbursements.

The issue is Purple's non-compliance with the emergency call handling requirements for IP CTS calls handled through web and wireless devices.<sup>1</sup> Effective as of May 21, 2008, pursuant to the interim Emergency Call Handling Order adopted in March 2008, Internet-based TRS providers, including IP CTS providers are required to accept and handle emergency calls.<sup>2</sup> The minutes submitted for November are non-compliant based on Purple's own assertions in its response to CGB's questions regarding Purple's application for re-certification to provide IP CTS. Accordingly, as the TRS Administrator, we must abide by the TRS rules, including the requirements set forth in 47 C.F.R. 64.605(a)(2) on emergency calling .

The ability for TRS consumers to place an emergency call through TRS is among the key elements of a functionally equivalent TRS call and to our knowledge there is no record of a waiver of the TRS emergency calling requirement.

In order to process your company's requests for reimbursement, we require answers to the following questions and submission of the following information:

1. On what date did Purple begin offering TRS users the ability to place calls using a web based application?
2. On what date did Purple begin offering TRS users the ability to place calls using a wireless or mobile application?
3. Please identify all records of calls completed, from the inception dates to the present, using the web based and wireless based applications that do not support calls to emergency 911 services.

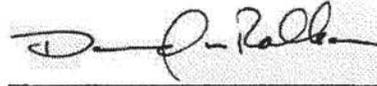
<sup>1</sup> 47 C.F.R. § 64.605(a)(2)..

<sup>2</sup> See FCC 08-78, Report and Order, Rel. 3/19/2008.

Page 2 of 2  
February 14, 2014

Please respond to this request no later than March 4, 2014. Please contact me if you have any questions. In addition, please provide to the Commission's Enforcement Bureau a copy of all information filed with RLSA in response to this request as well as the initial correspondences concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Rolka", written over a horizontal line.

David Rolka, President

cc: Sharon Lee  
Greg Hlibok  
Robert Aldrich

# Exhibit B



January 17, 2014

Gregory Hlibok, Chief  
Disability Rights Office  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

***Subject: Purple IP CTS Recertification Filing***

Dear Mr. Hlibok:

In response to your letter of January 10, 2014 requesting additional information on Purple's IP CTS recertification filing, Purple provides the below responses.

- 1. Explain in full the inconsistency between the representation made in Purple's application that Purple is in full compliance with section 64.605 of the Commission's rules governing the handling of emergency calls and the warning posted on Purple's website instructing callers *not* to place handle 911 calls through its ClearCaptions website or application.**

There is no inconsistency between the statements in Purple's application and the notice to customers on Purple's website. Purple operates in compliance with the applicable emergency call handling rules for all types of IP CTS calls offered.

With respect to IP CTS calls through Purple's website and wireless applications, Purple's current calling configuration is compliant with applicable commission rules on handling of emergency calls, as those rules do not apply to such calls. Footnote 7 from the Report and Order released March 19, 2008 states:

*The 2007 IP CTS Declaratory Ruling recognized that IP CTS "may be initiated, set up, and provided in numerous ways," using "various combinations of the PSTN and IP-enabled networks." 2007 IP CTS Declaratory Ruling, 22 FCC Rcd at 388, para. 22. For this reason, we note that the requirements adopted herein shall apply to IP CTS providers only in circumstances where the call is initiated, or can be initiated, by the user contacting the provider via the Internet.*

As the footnote explains, the requirements adopted by the Report and Order – "we require VRS, IP Relay, and IP CTS providers to accept and handle emergency calls..."<sup>1</sup> - which later was codified under 47 C.F.R. 64.605, applies to IP CTS providers only in circumstances where the *call is initiated*, or can be initiated, *by the user* contacting the provider via the Internet.

ClearCaptions service provided via the website and wireless applications does not allow the assisted user to initiate the call – the service provided is a call back service. When using the ClearCaptions website or application, the assisted user enters the phone number they want to dial and the phone number they would like to be called back on, and requests the call to be initiated. The next available agent receives the request and ClearCaptions initiates the call by calling the assisted user. Once the assisted user answers, the system connects to the called party. When the called party answers, captioning begins.

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<sup>1</sup> Paragraph 16, March 19, 2008 Report and Order FCC 08-78



In the above-described call flow, the assisted user does not initiate the call, the CA does. As such, IP CTS calls through a call-back service are not required to process emergency calls under the above-described caption website and application call flow. Such a configuration was contemplated by the 2008 Order, which provided Footnote 7 as guidance to limit application of the emergency call handling requirements.

Further, upon review of emergency call processing through the website and application call flow, Purple determined it is not in the consumer's or the public interest to handle emergency calls through a call back service. Should a user experience an emergency situation, they should not use a service that requires them to turn on their device, open the app, log in to the service, and then place a request for a call back. The time required to submit the request and the wait for the call back is avoided if the user initiates the call through other, faster services. The benefit of receiving captions is outweighed by the necessity to route the emergency call expeditiously to the PSAP. This is best done using a service or device where the user can initiate the call. Consistent with this determination, ClearCaptions' website contains a clear disclosure to the customers that they may not place 911 calls through the ClearCaptions website or application and that any 911 emergency call should be made through a standard telephone or TTY.

In addition, to our knowledge, no customer has attempted to place an emergency call through Purple's website or wireless application. This underscores the reality of the service configuration noted above, that in an emergency situation, it would not make sense that an assisted user would want to request a call be placed to 911 through a call back service when they can dial emergency personnel directly through their standard telephone. As a demographic, IP CTS customers are familiar with standard telephone use and know the functionality provided by directly initiating the call is preferable to a call back service.

When an assisted user uses ClearCaptions in a means other than through the website or application (for example, on the Ensemble phone), they dial a phone number or receive a call and press the ClearCaptions Button on the Ensemble phone. A call request goes to the ClearCaptions call center. The next available agent receives the call and the audio from that call is sent to the agent from the Ensemble phone. Once the agent begins to hear the audio of the call, captioning begins and the captions display on the screen of the assisted user's Ensemble phone. In this call flow, the caller is connected directly to the applicable PSAP and the IP CTS CA.

As explained above, Purple's caption recertification application filed August 14, 2013 states that Purple provides emergency call handling service in full compliance with the FCC's rules. In IP CTS, the caller is connected directly to the applicable PSAP and the IP CTS CA.

The Commission has recognized that caption service may be set up in a variety of ways that combine use of the PSTN and Internet. Based on the nature of the call flow, the Commission's requirements in respect to the call flow, and the desire to expedite emergency calls, Purple has taken the above described steps regarding website and application emergency call processing, which is compliant with the Commission's rules.

**2. Explain in full Purple's process for handling 911 calls through ClearCaptions's website or application in the event that a ClearCaption user places an emergency call to 911.**

As explained above, Purple does not handle 911 calls through ClearCaption's website or application.



**3. If Purple is not currently in compliance with section 64.605, explain in full how and when**

Please see response to Question 1.

**4. Please provide information on all of Purple's IP CTS call centers currently in operation by listing each center's street address and contact information, the number of full-time CAs and the number of part-time CAs currently employed in each center and the hours of operation for each center.**

ClearCaptions' IP CTS service is currently processed in two call centers:

1. 2510 Walmer, Suite C, Norfolk, VA, 23513. The point of contact is Sean Hampton, Sr. Director of Operations, phone number 757-448-1160. There are 11 full-time CAs. The center operates 24 hours a day, 7 days a week.
2. 7045 Clairton Road, West Mifflin, PA, 15122. The point of contact is Marietta Koch, Operations Manager, phone number 412-650-3851. There are 21 full-time and 2 part-time CAs. The center operates 24 hours a day, 7 days a week.

Any update in call center location will be reported to the FCC and TRS Fund Administrator.

Please let me know if we can provide additional information.

Sincerely,  
**PURPLE COMMUNICATIONS, INC.**

A handwritten signature in black ink, appearing to read "JG", written over a horizontal line.

John Goodman  
Chief Legal Officer and Secretary

# Exhibit C



February 7, 2014

VIA ELECTRONIC MAIL

Gregory Hlibok, Chief  
Disability Rights Office  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

***Subject: Purple IP CTS Withholding and e911 Compliance***

Dear Mr. Hlibok:

On January 17, 2014, in response to your email request, I sent you a letter explaining emergency call handling of IP-CTS calls over Purple's ClearCaptions web and wireless applications. That letter is attached here. Yesterday, without prior warning, Purple was informed by the Administrator that the full support payment for November IP-CTS minutes billed was being withheld at the direction of the Commission "until Purple is able to explain to the Commission's satisfaction that certain applications are able to properly address emergency call handling." We were surprised and dismayed by the Administrator's notification, as we responded to your question three weeks ago, and Purple is aware of no open information request from the Commission on this point.

As we explained in my January 17 letter, ClearCaptions' current calling configuration is fully compliant with applicable commission rules on handling of emergency calls. Calls handled through those applications are configured as a "call-back" service, and the calls are initiated by the Communications Assistant, NOT the user. Footnote 7 from the Report and Order released by the Commission March 19, 2008 is explicit that the IP CTS E911 requirements apply only to calls that are initiated or can be initiated by the user:

*The 2007 IP CTS Declaratory Ruling recognized that IP CTS "may be initiated, set up, and provided in numerous ways," using "various combinations of the PSTN and IP-enabled networks." 2007 IP CTS Declaratory Ruling, 22 FCC Rcd at 388, para. 22. For this reason, we note that the requirements adopted herein shall apply to IP CTS providers only in circumstances where the call is initiated, or can be initiated, by the user contacting the provider via the Internet. (emphasis supplied)*

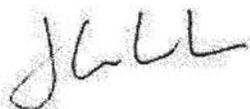
We are aware of no subsequent inquiry by the Commission on this subject, nor any further interpretation of the above language by the Commission that would suggest that ClearCaptions' IP-CTS services are not fully compliant with the Commission's rules.

In addition, ClearCaptions web and wireless services generate a small percentage of the company's total IP-CTS volume – only approximately 25% of Purple's IP-CTS minutes handled by ClearCaptions in November were processed over those web and wireless applications where the call was initiated by the Communications Assistant and not the user. Therefore, the withholding of 100% of Purple's November IP-CTS minutes is wholly unjustified, and Purple respectfully requests the Commission to authorize the Administrator to immediately release the support payment.

We also note that the Commission's temporary extension of ClearCaptions' IP-CTS certification expires next Tuesday, February 11, 2014. If the Commission requires additional information on this subject, please promptly notify us so we may respond.

Sincerely,

**PURPLE COMMUNICATIONS, INC.**



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John Goodman  
Chief Legal Officer and Secretary

Cc: Maria Kirby, Legal Advisor to Chairman Wheeler  
David Schmidt, Office of Managing Director  
Andrew Mulitz, Office of Managing Director  
Kris Monteith, Chief, Consumer and Governmental Affairs Bureau  
Karen Peltz-Strauss, Deputy Chief, Consumer and Governmental Affairs Bureau  
Eliot Greenwald, Disability Rights Office  
Jonathan Sallet, Acting General Counsel