

February 28, 2014

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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 and 10-51
Purple Communications, Inc.**

Dear Ms. Dortch:

On Wednesday, February 26, Monica Desai of Patton Boggs, LLP, counsel to Purple Communications, Inc. (Purple or the Company), John Ferron, Chief Executive Officer for Purple, and John Goodman, Chief Legal Officer for Purple, met with Robert Aldrich from the Consumer and Governmental Affairs Bureau (Bureau). The discussion focused on issues raised in Purple's Emergency Request for Review of the Decision by the TRS Administrator filed on February 20.¹

Purple and its counsel emphasized the points in the Emergency Petition and in particular, the need for the Commission to expeditiously review and immediately reverse the decision by the TRS Administrator to withhold reimbursement for all IP Captioned Telephone Service (IP CTS) minutes processed by Purple for November 2013. During the meeting Purple discussed in detail the technology and call protocol the Company employs related to web and wireless IP CTS, and why, as a result of the fact that the assisted user does not initiate the call under this protocol, the Company is in compliance with the Commission's emergency call handling requirements.²

Purple's Call Back Protocol. Purple provided further detail explaining that Purple uses ClearCaptions as a call back service for users operating via the website and wireless applications.³ For that subset of IP CTS, the assisted user never initiates a call, and thus, the

¹ *Purple Communications, Inc. Emergency Request for Review of the Decision by the TRS Administrator*, CG Docket No. 03-123 (filed Feb. 20, 2014)(Emergency Petition).

² *Id.* at 5-7.

³ This call back scenario is just another example of the "numerous ways" in which IP CTS may be provided consistent with the Commission's rules. See *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, 5257 para. 1 n.7. (2008)(March 2008 Emergency Call Handling Order).

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Commission's emergency call handling requirements do not apply.⁴ Instead, an assisted user requests a call from Purple by first logging into an account via a mobile application or on the ClearCaptions website. The user then clicks a box and enters two numbers—one is the telephone number of the party with whom the assisted user wants to communicate, and the other is the telephone number on which the user would like to be called back. The user clicks "Send" and a call request is routed through the ClearCaptions servers, is queued, and then delivered to the next available agent. By completing this process, the assisted user has sent a message via the Internet requesting that a ClearCaptions agent calls the user back at the phone number requested via the Internet message. At that point in time, there is no active telephone call.

When the next available ClearCaptions agent receives notification of the message that a call is being requested, the *agent* then initiates a call to the number the user provided to receive the call.⁵ The agent then dials the number to reach the assisted user, and when the assisted user answers the phone, it is only at that point that a call between the assisted user and the agent is established.⁶ The assisted user then waits on the phone line while the agent places a second call to the party that the assisted user desires to reach. When the called party answers, the user and called party are linked through a conference call, allowing the called party and the assisted user to speak directly to each other through the phones on which the agent called each of them.

Captioning begins when the called party answers the telephone and begins speaking. As the agent listens to and captions the words of the called party, those captions appear for the user on the screen of the device through which the call request was submitted. When either the user or the called party hangs up, the call is terminated. Thus, in this protocol, it is the *agent*, and not the assisted user, who initiates the call; there is no phone call that has taken place until the agent places a call to the assisted user at the requested phone number. As a result, Purple's web and

⁴ *See id.*

⁵ Emergency Petition, Exhibit B at 1. Purple's platform works similar to that of Uber, where users access an app that allows them to *request* the services of a driver who will then take them to their chosen destination. *See Uber—Requesting a Ride* (available at <http://support.uber.com/entries/22340336-how-do-i-request-a-ride>) (last visited on Feb. 27, 2014).

⁶ It is at this point in time that the "session" begins. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, CG Docket No. 03-123, 22 FCC Rcd 20140, 20147 para. 9 n.30 (2007) (citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, CG Docket No. 03-123, 21 FCC Rcd 8379, 8385 para. 9 n.41. (2006) ("As the Commission noted, presently the Fund compensates providers for conversation minutes (or completed minutes), which are measured by conversation time between the calling and called party. Conversation minutes do not include time for call set-up, ringing, waiting for the called party to answer, or call wrap-up, and do not encompass calls that reach a busy signal or are not answered. Session minutes include all the time the [agent] spends on a call to the relay center, i.e., from the time the call is connected to the [agent], regardless of whether the called party answers the call.") The Commission's explanation here further illustrates that an Internet-based request for a call-back does not qualify as the "initiation" of an IP CTS "call."

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wireless IP CTS service is not in violation of the Commission's emergency call handling requirements for a very basic reason—the Commission explicitly limited applicability of those requirements “only [to] circumstances where the call is initiated, or can be initiated, by the user contacting the provider via the Internet.”⁷ Under these circumstances, where the assisted user is not initiating, and cannot initiate the call, the requirements do not apply.

In addition, as explained in the Emergency Petition, 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 agent to initiate a call back to the assisted user. As noted in the March 2008 Emergency Call Handling Order, 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.⁸

By contrast, when an assisted user employs 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 destination phone number or receives a call and presses the ClearCaptions button on the phone. These actions initiate the call. Once the agent connects to and hears audio of the existing call, captioning begins. Under these circumstances, the caller is connected directly to the applicable PSAP through their telecommunications provider.

Put simply, if the Commission had intended *all* IPCTS calls to be subject to the March 2008 Emergency Call Handling Order, it would not have explicitly stated that the emergency call handling requirements 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.”⁹

Purple's service illustrates a circumstance where the call is not initiated by the user. The fact that Purple IP CTS users do not initiate calls when using the ClearCaptions service via web and wireless applications is critical to the Commission's determination here.¹⁰ Accordingly, we

⁷ March 2008 Emergency Call Handling Order, 23 FCC Rcd at 5257 para. 1 n.7. *See also id.* at 5264 para. 13 n.59; 47 C.F.R. § 64.605.

⁸ March 2008 Emergency Call Handling Order, 23 FCC Rcd at 5258 para. 4 (explaining that “because the use of TRS . . . in an emergency situation represents a less efficient method of accessing emergency services, the Commission has encouraged TRS users to access emergency services directly . . . rather than making calls through a TRS provider.”). *Accord* Emergency Petition at 7. *See also id.*, Exhibit B at 2.

⁹ *See supra* note 7 (emphasis supplied).

¹⁰ As Purple explains in the Emergency Petition, the Commission recently clarified that “a person or entity ‘initiates’ a telephone call when it takes the steps necessary to physically place a telephone call.” Emergency Petition at 5 (citing *The Joint Petition Filed by DISH Network, LLC, the United States of America, and the States of California*,

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emphasize that, based on the protocol Purple employs, the Commission's emergency call handling requirements explicitly do not apply.¹¹

The TRS Administrator Decision. Purple and its counsel further emphasized that the TRS Administrator's notice of withholding to Purple neither addressed the March 2008 Emergency Call Handling Order, nor did it clarify why it would withhold 100% of Purple's entire November IP CTS funds when only 25% of Purple's IP CTS traffic was at issue.¹²

Purple also reminded the Bureau during the presentation that the Company previously requested that the Commission clarify that footnote 122 of the VRS Reform Order does not apply to web and wireless IP CTS.¹³ We reiterate that request here.

In addition, Purple and its counsel also raised competition concerns during the presentation and reiterated that the Commission must act to enforce current rules, especially those rules that ensure a level playing field and promote robust competition.

In conclusion, Purple would appreciate the Commission's quick review of these matters, as the funds being withheld at the Commission's direction are critical to the Purple's operations. We would appreciate very much getting this issue cleared prior to the TRS Administrator's planned distribution on Friday, March 7, so we can be compensated IP CTS services rendered.

Respectfully submitted,



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Illinois, North Carolina, and Ohio for Declaratory Ruling Concerning the TCPA Rules, et al., Declaratory Ruling, 28 FCC Rcd 6574, 6583 para 26 (2013)).

¹¹ It is worth noting that to Purple's knowledge, not one of its customers has attempted to place an emergency call through Purple's website or wireless application. See Emergency Petition at 7. See also *id.*, Exhibit B at 2.

¹² See Emergency Petition at 7.

¹³ See Purple Communications Notice of Ex Parte – CG Docket Nos. 03-123 and 10-51 (filed Nov. 18, 2014)(citing *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, 8642 para. 46 n.122 (2013))(VRS Reform Order). In the aforementioned Notice of Ex Parte, Purple expressed its concern that the VRS Reform Order was “not sufficiently clear on this point, and urged the Commission to expeditiously clarify the issue.” *Id.*

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cc:

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Kris Monteith

Robert Aldrich

Suzanne Tetreault