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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Ex Parte – CG Docket No. 03-123**
Purple Communications, Inc.

Dear Ms. Dortch:

On February 20, 2014, Purple Communications, Inc. (“Purple”) filed an Emergency Request for Review seeking reversal of a decision by the Administrator of the Interstate Telecommunications Relay Service (“TRS”) Fund to withhold reimbursement for all Internet Protocol Captioned Telephone Service (“IP CTS”) minutes processed by Purple for November 2013.¹ Purple has not yet received a formal response to the Emergency Request, which currently remains pending before the Commission. Purple respectfully urges the Commission to expeditiously reverse the Administrator’s unjustified decision. Nonetheless, Purple has moved forward with implementation of e911, as also explained in detail below, despite the fact that it does not believe that emergency call handling requirements are applicable to Purple’s IP CTS web and wireless service.

As explained in the Emergency Request, the Fund Administrator, without any analysis or investigation, summarily concluded that Purple was “in violation” of the Commission’s emergency handling requirements for IP CTS with respect to calls handled through web and wireless devices.² As Purple explained, however, the emergency call handling requirements do not apply to Purple’s web and wireless IP CTS service because users of this service do not “initiate calls.” In the March 2008 Emergency Call Handling Order, the Commission specified that the emergency call handling

¹ Emergency Request for Review of the Decision by the TRS Administrator, Purple Communications, Inc., CG Docket No. 03-123 (filed Feb. 20, 2014) (“Emergency Request”); *see also* Letter from Monica Desai, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 10-51, 03-123 (filed Feb. 28, 2014); Letter from Monica Desai, Counsel, Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, CG Docket Nos. 10-51, 03-123 (March 7, 2014).

² *See* Letter from David Rolka, President, Rolka Loube Saltzer Associates, to Purple Communications c/o John Goodman (via email) (dated Feb. 14, 2014), attached to Purple’s Emergency Request at Exhibit A; *see also* *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Speech and Hearing Disabilities*, Report and Order, CG Docket No. 03-123, *et al.*, 23 FCC Rcd 5255 (2008) (2008 TRS Order); *see also* 47 C.F.R. § 64.605.

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requirements 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.”³ Although the Commission did not define “initiate” when it set forth this language in 2008, the Commission subsequently explained “that a person or entity ‘initiates’ a telephone call **when it takes the steps necessary to physically place a telephone call.**”⁴ Furthermore, the Commission recently confirmed Purple’s interpretation of what it means to “initiate” a call, finding that a company initiated a call where it actually dialed the calls in question.⁵

Based on the Commission’s interpretation of “initiating” a call, Purple continues to believe that the emergency call handling requirements do not apply to Purple’s web and wireless IP CTS service (ClearCaptions). As explained in the Emergency Request, the ClearCaptions service provided via web and wireless devices is a call back service through which a user logs in to send an electronic request via email for a separate call back from ClearCaptions. By doing so, the assisted user requests that a call bridging the user with the called party be initiated by ClearCaptions. No call has been dialed or initiated by the assisted user in any way. When the next available ClearCaptions Communications Assistant (“CA”) receives the email request, *the CA then initiates the call* by making a phone call *to the assisted user*. This is the first time that any call has been initiated. Critically, it is the CA, not the assisted user, who initiates and bridges the call between the assisted user and the called party because the CA is the person who takes the physical steps to dial and place the call.⁶ Accordingly, Purple maintains that its web and wireless IP CTS service does not violate the Commission’s emergency call handling requirements because the requirements do not apply in circumstances, such as the web and wireless ClearCaptions service, where the assisted user does not initiate the call.

Furthermore, as explained in the Emergency Request, Purple determined it is not in the public interest to handle emergency communications through a call-back service because of the additional time this would entail. 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 then wait for a CA to initiate a call back 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. Purple is not aware that any of its customers have ever attempted to place an emergency call through its website or wireless application. Previously, Purple had explicitly provided notice to its users that

³ *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”).

⁴ See *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, ¶ 26 (2013) (“*DISH Declaratory Ruling*”) (emphasis supplied) (concluding that a seller does not necessarily “initiate” a call placed by a third-party telemarketer on the seller’s behalf).

⁵ *Dialing Services, LLC*, Notice of Apparent Liability for Forfeiture, FCC 14-59, ¶¶ 16-17 (rel. May 8, 2014) (citing *DISH Declaratory Ruling*).

⁶ See Emergency Request at 6.

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it does not provide emergency call handling for IP CTS provided through web and wireless IP CTS. Registrants also had to affirmatively accept this as part of the service terms of use when registering for web and wireless caption service. Purple has updated its website to remove this notice, to reflect that it is now providing e911, as explained below.

Despite the fact that Purple's web and wireless IP CTS service neither triggered nor violated the Commission's emergency call handling requirements, the Fund Administrator continues to withhold the entirety of Purple's IP CTS reimbursement even though the only subject of any controversy is whether IP CTS calls handled through Purple's web and wireless devices (approximately 22% of Purple's IP CTS traffic) are subject to those requirements. The amount of reimbursement being withheld is very significant to Purple, and the withholding of this funding continues to be extremely disruptive.

Notwithstanding Purple's disagreement with the Fund Administrator's apparent interpretation of the emergency call handling rules (which has never been formalized), and despite having received no formal response from the Commission regarding the Emergency Request, Purple has expended significant resources to develop e911 capability for its web and wireless service consistent with the Fund Administrator's apparent interpretation of those rules.

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⁷ In order to receive incoming calls through the Hamilton CapTel service without use of a special number assigned by Hamilton, the person calling must first dial the Hamilton CapTel Call Center at 1-855-318-8818 and then enter the user phone number, followed by the pound (#) signs. *See* http://www.hamiltoncaptel.com/pc_mac/receiving_calls.html. A similar call flow would be implemented by Purple to allow the PSAP to directly call back an assisted user in the event of a disconnected call.

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Based on the foregoing – as well as the information in the Emergency Request and subsequent ex parte notices – the Commission should expeditiously reverse the decision of the Fund Administrator to withhold Purple’s IP CTS reimbursement.

Respectfully submitted,



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