

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-07-TC-4008
)	
Hands On Video Relay Services, Inc.,)	File No. EB-07-TC-2806
)	
Go America, Inc. and)	File No. EB-09-TC-238
)	
Purple Communications, Inc.)	Account. No. 201032170006
)	
)	FRN 0015419872

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Purple Communications, Inc., the successor in interest to Hands On Video Relay Services, Inc. and Go America, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's Investigations into whether certain of the Company's programs directed at users of Telecommunications Relay Services ("TRS") were in compliance with Section 225 of the Communications Act of 1934, as amended, and Commission rules 64.601 *et seq.*

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Compliance Plan" means the program described in this Consent Decree at Section III, paragraph 9.
 - (f) "Demands for Payment" means all of the demands made on the Company by the Commission in connection with the subject matter of the Investigations, including the demands made on February 19, 2010 and February 25, 2010.
 - (g) "Effective Date" means the date on which Purple executes the Note or the Bureau releases the Adopting Order, whichever is later.
 - (h) "FCC Claim" means the amount of required refunds identified by the Commission in the Demands for Payment.

- (i) “February 25, 2010 Declaratory Ruling” means the Declaratory Ruling by the FCC’s Consumer and Governmental Affairs Bureau, released on February 25, 2010, CG Docket No. 10-51.
- (j) “Investigations” means the inquiries undertaken by the Enforcement Bureau regarding the Company’s compliance with Section 225 of the Act, 47 U.S.C. § 225, and Section 64.604 of the Rules, 47 C.F.R. § 64.604, in File No. EB-07-TC-2806, File No. EB-07-TC-4008, and File No. EB-09-TC-238.
- (k) “NECA” means National Exchange Carrier Association, Inc.
- (l) “Note” means the Deferred Payment Plan Promissory Note, executed by Purple on September 16, 2010, in which the Company agrees to pay the FCC Claim over a five-year period.
- (m) “Parties” means Purple and the Bureau, each of which is a “Party.”
- (n) “Purple” means Purple Communications, Inc., Hands On Video Relay Services, Inc. (“HOVRS”), and Go America, Inc. (“Go America”), and their predecessors-in-interest and successors-in-interest. (Purple, HOVRS, and Go America are also herein referred to collectively as the “Company.”)
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (p) “Standstill Agreement” means the agreement entered into on March 8, 2010, by and among the Commission, Purple, Churchill Financial LLC, Ableco Finance LLC, and Clearlake Capital, L.P.
- (q) “TRS Fund” means the Telecommunications Relay Services Fund. See Section 64.604(c)(5)(iii) of the Rules, 47 C.F.R. § 64.604(c)(5)(iii).
- (r) “TRS Fund administrator” means the entity selected by the Commission to administer the TRS Fund. See Section 64.604(c)(5)(iii) of the Rules, 47 C.F.R. § 64.604(c)(5)(iii).

II. BACKGROUND

2. The FCC commenced the Investigations into the Company in 2007.¹ The FCC and the Company have entered into several tolling agreements (collectively, the “Tolling Agreement”) to extend the statute of limitations for taking enforcement action for the potential violations of the Act, Rules, Commission orders, and policies under investigation and to enable the Parties to engage in negotiations regarding a potential resolution of the Investigations through a consent decree. The Investigations include:

¹ In 2007, the FCC began investigating GoAmerica and HOVRS. The companies subsequently merged on January 10, 2008. GoAmerica officially changed its name to Purple Communications, Inc. on February 12, 2009.

(a) *File No. EB-07-TC-2806*: On May 7, 2007, the Bureau issued a Letter of Inquiry (“LOI”) concerning GoAmerica’s marketing and outreach efforts. On February 4, 2009, the Company received another LOI in File No. EB-07-TC-2806 addressed to Go America concerning a marketing program called the “Road Trip.”

(b) *File No. EB-07-TC-4008*: On August 6, 2007, the Bureau issued a subpoena in File No. EB-07-TC-4008 initiating an investigation into the legal structure of HOVRS, its eligibility to receive payments from the TRS Fund, and HOVRS programs designed to attract new customers or increase the number of Video Relay Service (“VRS”) calls made by existing HOVRS customers. The Company received a second subpoena dated January 30, 2008, inquiring into specific programs that may have violated FCC Rules, orders, and policies, which also related to File No. EB-07-TC-4008. The second subpoena included requests regarding certain HOVRS marketing programs (including gift cards and educational programs), contractual arrangements, and cost submissions.

(c) *File No. EB-09-TC-238*: On April 1, 2009, the Bureau issued a subpoena and LOI in File No. EB-09-TC-238 to Purple investigating international calls and programs designed to attract new customers or increase the number of VRS calls made by existing Purple customers (including marketing programs, third-party outreach, conference calls, surveys, contact with new customers, technical support, button programs, and customer confirmation calls).

3. The FCC issued two Demands for Payment concerning matters related to the Investigations. Additionally, the Company and the FCC entered into a Standstill Agreement on March 8, 2010. The details of the FCC’s Demands for Payment and the Standstill Agreement are as follows:

(a) *February 19, 2010 Demand for Payment*: On February 19, 2010, the Commission issued to the Company a demand for payment of \$1,740,406.26. In its February 19, 2010, correspondence, the Commission explained that certain claimed monthly TRS minutes of use were either unsubstantiated or ineligible for payment by the TRS Fund, and that Purple had received erroneous overpayments for VRS minutes associated with international-to-international calls. The Commission stated that such recoverable overpayments constituted a debt due and owing by Purple to the Federal Government.

(b) *February 25, 2010 Demand for Payment*: On February 25, 2010, the Commission issued to the Company a second demand for payment of \$16,523,252.87. In its February 25, 2010, correspondence, the Commission explained that certain claimed monthly TRS minutes of use were either unsubstantiated or ineligible for payment by the TRS Fund, and that Purple had received erroneous overpayments for VRS minutes associated with calls made by or to its employees and subcontractors. The Commission stated that such recoverable overpayments constituted a debt due and owing by Purple to the Federal Government.

(c) *March 8, 2010 Standstill Agreement*: The Standstill Agreement noted that the FCC had identified required refunds by the Company to the TRS Fund. Interpreting the February 25, 2010 Declaratory Ruling as applying retroactively, the Company acknowledged that the FCC Claim is a debt amounting to \$18,459,064, and determined not to challenge the FCC’s position. Purple and the Commission agreed to negotiate in good faith during the 180-day period following the date of the Standstill Agreement to reach a final and binding settlement concerning claims made by the Commission in connection with the Demands for Payment and matters related to the Investigations,

including a plan for repayment of the full amount of the FCC Claim that complies with the requirements of 47 C.F.R. § 1.1914. Purple and the Commission also agreed that the statute of limitations under 47 U.S.C. § 503 would be tolled until thirty (30) days after the expiration of the Standstill Period (as defined in the Standstill Agreement) with respect to the subject matter of the Investigations and the subject matter of the subpoenas and LOIs issued therein.

4. Purple and the FCC agree that this Consent Decree constitutes a settlement of the Investigations and the Demands for Payment. However, the Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the FCC's Rules and orders.

III. TERMS OF AGREEMENT

5. **Adopting Order**. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction**. Purple agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations**. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. **Termination of Investigations**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigations. In consideration for the termination of the Investigations, Purple agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigations through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Purple concerning the matters that were the subject of the Investigations or with respect to Purple's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations, *provided, however*, that the Bureau or Commission may consider the facts in this proceeding in any future proceeding involving violations by Purple of the same Rules and orders at issue in this proceeding or involving misrepresentation by Purple in its dealings with the Commission. The Bureau or the Commission shall not claim, demand, or require, by setoff, recoupment or otherwise, any further amounts or payments (including without limitation for overpayments from the TRS Fund) or impose any monetary penalties against Purple for alleged violations, in excess of the amount set forth in the Note and the amount of the voluntary contribution described in paragraph 18 below, relating to conduct prior to March 8, 2010, that is within the subject matter of the Investigations, or the subject matter of the subpoenas and LOIs issued therein. The Bureau represents that, except for the Investigations, it has no other enforcement investigation or inquiry underway against Purple that involves the same subject matter as the Investigations.

9. **Compliance Plan**. Purple agrees that it has implemented or will implement, within thirty (30) calendar days from the Effective Date, a Compliance Plan to ensure Purple's future compliance with

the Act, the Rules, and orders governing TRS/VRS cost recovery. Purple shall provide a copy of the Compliance Plan to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th St., S.W., Washington, D.C. 20554, within thirty (30) calendar days from the Effective Date, and within thirty (30) calendar days of implementing any revised Compliance Plan while this paragraph 9 is in effect. The Compliance Plan shall include, at a minimum, all of the obligations set forth at Exhibit A. The provisions of this paragraph 9 shall remain in effect for five (5) years from the Effective Date.

- (a) *Compliance Reports.* The Company shall submit Compliance Reports to the Commission twelve (12), twenty four (24), thirty six (36), forty eight (48), and sixty (60) months after the Effective Date. Each Compliance Report shall include a certification by the Company's Compliance Director, or other equivalent Company Officer, stating that he or she has personal knowledge that the Company: (1) has abided by the terms of the Compliance Plan at all times since its implementation; and (2) is not aware of any violations of the Act, Rules or FCC orders. If the Compliance Director or other equivalent Company Officer is not able to so certify, he or she shall explain fully the reason(s) therefor. All Compliance Reports shall be directed to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The certification must comply with Section 1.16 of the Rules,² and be substantially in the form set forth therein.
- (b) *Self-Disclosure.* The Company shall report any known (following an internal review) violations of the Act, Rules or orders, within thirty (30) calendar days of discovery to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The Company shall likewise report any known breach of the terms and conditions of this Consent Decree within thirty (30) calendar days of discovery.

10. **Waivers.** Purple waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an order adopting the Consent Decree without change, addition, modification, or deletion. Purple shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order or Consent Decree, neither Purple nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Purple shall waive any statutory right to a trial *de novo*. Purple hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

11. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rules or orders adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Purple does not expressly consent), this Consent Decree shall be amended in a manner consistent with the future Rules or orders. The Parties further agree that if, during the term of the Note, there is a retrospectively-applied change in the law or regulations that formed the basis of the Demands for Payment, the Consent Decree and the Note shall be modified to accommodate and be consistent with such changes.

² 47 C.F.R. § 1.16.

12. **Successors and Assigns.** Purple agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

13. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties.

14. **Modifications.** This Consent Decree cannot be modified or amended without the advance written consent of both Parties.

15. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

16. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

17. **Debt Payments by the Company.** The Parties agree that the FCC Claim will be satisfied in the following manner:

- (a) *Initial Payment by the Company.* Pursuant to the Standstill Agreement, Purple and the Commission agreed that one-half (50%) of the amount determined by the TRS Fund administrator, NECA, to be due and payable to the Company in connection with its 2009 costs for implementation of ten-digit geographic numbering (the "Ten-Digit Costs") would not be paid out to the Company, but instead would be retained by the TRS Fund as an initial payment toward satisfaction of the FCC Claim. On August 13, 2010, NECA notified the Company that it was still in the process of reviewing Purple's reimbursement request, but that it had identified \$799,659.15 of expenses eligible for reimbursement. Accordingly, one-half of that amount (\$399,829.58) has been retained by the TRS Fund and has been credited against the FCC Claim as set forth in the schedule of installment payments provided in the Note. Consistent with the Standstill Agreement, should the TRS Fund administrator approve payment of any additional Ten-Digit Costs, one-half of such amounts will be retained by the TRS Fund and credited against the Note as a payment.
- (b) *Subsequent Payments by the Company.* As a result of good faith negotiations to resolve issues arising out of the Investigations, Purple agrees to satisfy the FCC Claim on the terms set forth in the Note. However, the Parties recognize that changes in the reimbursement rates for VRS services may affect Purple's ability to make installment payments on the schedule agreed to in the Note. Should subsequent rate adjustments by the Commission reduce the reimbursement rate for Purple's VRS service by more than ten percent (10%) below the published rates for the 2010-2011 year, the Parties agree to negotiate to consider amending the subsequent installment payments to reflect the rate adjustment. In agreeing whether to revise the Note, the Parties agree to take into account not only the amount of the rate adjustment, but also the overall impact that the rate adjustment has on the Company's business and its ability to make payments under the plan set forth in the Note.

18. **Voluntary Contribution.** Purple agrees to pay a voluntary contribution to the U.S. Treasury of \$550,000. One-third of the voluntary contribution amount (\$183,333.33) must be paid within

two (2) years of the Effective Date. The remaining two-thirds (\$366,666.67) of the voluntary contribution amount must be paid within thirty (30) calendar days of satisfaction of the FCC Claim. The payments must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payments must include the Account Number and FRN Number referenced in the caption of the Adopting Order. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank - Government Lockbox 979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. Purple must also send electronic notification on the date said payment is made to the Chief, Telecommunications Consumers Division, Enforcement Bureau.

19. **Severability and Invalidity.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

20. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief, Enforcement Bureau
Federal Communications Commission

Date

Dan Luis
Chief Executive Officer
Purple Communications, Inc.

Date

EXHIBIT A**COMPLIANCE PLAN OBLIGATIONS**

I. Scope. The compliance plan that Purple is required to implement pursuant to the terms of the Consent Decree to which this Exhibit is attached (“Compliance Plan”) shall include, at a minimum, all of the provisions set forth in this Exhibit.

II. Distribution of the Plan. A copy of the Compliance Plan shall be provided to all Purple employees within ninety (90) calendar days of the Effective Date, to new hires at the time they are hired, and to persons or entities providing independent contractor services to the Company who are directly involved in the provision or marketing of relay services at the time the Company engages their services (collectively, “Employees”). Each and every Employee shall certify that s/he has received and read the Compliance Plan and that s/he will comply with the Compliance Plan in all respects.

III. Compliance Director. Within seventy-five (75) calendar days of the Effective Date, Purple will appoint a Compliance Director who will have direct responsibility for implementation of the Compliance Plan. The Compliance Director shall report to the General Counsel, the FCC Regulatory Committee (see paragraph IV below), and ultimately, the Board of Directors. The Compliance Director’s specific responsibilities shall include, among other things, issuing FCC regulatory compliance directives and guidance, compliance training, coordination of compliance review, evaluation of programs and activities, and follow-up regarding compliance issues brought to his/her attention, and s/he shall have access to all Company files and documentation that s/he deems necessary to fulfill this responsibility. The Compliance Director shall monitor ongoing Company activities and ensure that the Compliance Plan is properly distributed.

IV. Consultation with Compliance Director; Compliance Hotlines. Any Employee shall be entitled to consult with the Compliance Director concerning FCC regulatory compliance issues. The Company shall maintain a hotline for anonymous comments, complaints, or suggestions and publicize to all Employees the general hotline number and website address for the FCC’s Office of the Inspector General. The Company shall report any known (following an internal review) violation of the Act, Rules, or FCC orders within thirty (30) calendar days of discovery to the Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, 445 12th Street, S.W., Washington, D.C. 20554.

IV. FCC Regulatory Committee. Within sixty (60) calendar days of the Effective Date, Purple shall create and maintain an FCC Regulatory Committee of the Board of Directors. The Committee shall be charged with the responsibility to oversee the Company’s development, implementation, and periodic updating of the Compliance Plan, and to oversee, direct and make recommendations to the Board of Directors with regard to the Company’s regulatory and government initiatives. At least semi-annually, the Compliance Director and General Counsel shall report to the FCC Regulatory Committee on all pending or potential compliance issues and the overall effectiveness of Company compliance policies, procedures, personnel, and programs.

V. Mandatory Regulatory Training. Purple shall provide comprehensive training programs for all Employees regarding FCC rules and regulations, using programs tailored to the specific positions held by the Employees. The goal of the training programs shall be to ensure that Employees have an appropriate level of understanding regarding the obligations of TRS providers and are thus able to effectively assist in implementing the Compliance Plan and detect areas of potential compliance risk. Purple shall provide such training for current Employees within one hundred twenty (120) calendar days of the Effective Date, to all Employees hired after the Effective Date within thirty (30) calendar days of their hiring, and for all Employees at least once annually. As statutory and regulatory obligations change, Purple shall revise its training materials and provide training on those new obligations to its Employees within sixty (60) calendar days after the regulatory changes take effect.

VI. Compliance and Legal Department Review Procedures. The Compliance Director will be responsible for reviewing and approving new programs expected to involve the generation of compensable minutes and for periodically monitoring and auditing Purple's existing programs. The functional departmental manager responsible for any such new programs shall be required to initiate a review by the Compliance Director. The Compliance Director will maintain a compliance manual that contains the statutory and regulatory rules and requirements established or promulgated by the FCC or the TRS Fund administrator.

VII. Certification of Minutes. Before Purple submits (or causes to be submitted) to the TRS Fund administrator any report of TRS minutes for payment, the Compliance Director shall review such submission to ensure that it has been subject to the appropriate compliance considerations. The Company shall maintain internal audit controls to ensure that any submissions to the TRS Fund administrator are accurate. The Compliance Director shall review those audit controls as well as such additional information as is necessary to confirm that the Company's policies and procedures have been followed, that all non-compensable minutes have been withheld from the submission, and that the submission is true and accurate and consistent with applicable Rules and FCC orders. The Compliance Director shall thereafter provide a certification as to the internal review and audit of minutes submitted to the TRS Fund administrator. If non-compensable minutes are inadvertently submitted for compensation, the Company shall make immediate remedial efforts, including the repayment of money to the TRS Fund, or a reduced request for reimbursement to the TRS Fund Administrator, equal to the amount of the incorrect submission. The Company shall send written notification to the TRS Fund administrator and the FCC's Consumer and Governmental Affairs Bureau and Enforcement Bureau within fifteen (15) calendar days of verifying such overcompensation.

VIII. Additional Compliance Measures. Other compliance issues to be addressed by the Compliance Plan shall include:

1. ***Acceptable Use Acknowledgement by Purple's Customers.*** Purple's core device agreements for customers shall contain language regarding the Company's acceptable use policy and the ability of Purple to deny service if known violations of the policy exist. Companies seeking Purple's assistance to improve access to TRS for their deaf, hard-of-hearing, or speech impaired employees shall be required to review and sign an agreement regarding basic relay use terms and acknowledge: (1) the permitted uses of TRS; (2) that TRS is provided on a non-exclusive basis; and (3) that there is no direct or indirect financial arrangement between the company and Purple.
2. ***Internal Use Restrictions Applicable to TRS.*** The Company shall issue 10-digit numbers for business use to its deaf and hard-of-hearing Employees ("Work Number"). When an Employee must access VRS for business purposes, whether or not at the workplace, the Employee must use the Work Number. When an Employee makes use of the Company's services for non-business related calls while at the workplace, s/he must use the Work Number and may not use an alternative 10-digit number. The Company will segregate the Employees' use of relay through these 10-digit numbers to ensure that Employee relay calls made in connection with business activities are not submitted to the TRS Fund administrator for compensation.
3. ***Calling Pattern Analysis.*** Purple shall review monthly minute submissions to the TRS Fund administrator for anomalous calling patterns potentially indicating misuse or abuse of the service. The Company shall refer known (following an internal review) violations of the Act, Rules or FCC orders identified through this process to the FCC within thirty (30) calendar days of discovery, by notifying the Chief, Telecommunications Consumers Division, Enforcement Bureau.
4. ***Compliance Support.*** Purple shall provide adequate resources to ensure the Compliance Director can fulfill the duties enumerated in this Exhibit A.