



PUBLIC NOTICE

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NOTICE OF CONDITIONAL GRANT OF APPLICATION OF PURPLE COMMUNICATIONS, INC. FOR RECERTIFICATION AS A PROVIDER OF VIDEO RELAY AND INTERNET PROTOCOL RELAY SERVICE ELIGIBLE FOR COMPENSATION FROM THE INTERSTATE TELECOMMUNICATIONS RELAY SERVICE (TRS) FUND

CG DOCKET NO. 10-51

By the Chief, Consumer and Governmental Affairs Bureau:

On March 8, 2011, Purple Communications, Inc. (Purple) filed an application¹ for Commission recertification² as a provider of video relay service (VRS) and Internet Protocol relay (IP Relay) service that is eligible for compensation from the Interstate TRS Fund (Fund).³ For the reasons discussed below,

¹ Purple Communications, Inc., *Application for Re-Certification as an Eligible VRS and IP Relay Provider*, CG Docket No. 03-123 (filed Mar. 8, 2011), amended on October 5, November 18, and December 27, 2011 (Purple Recertification Application). See 47 C.F.R. § 64.606; *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898 (2011) (*iTRS Certification Order*).

² The Consumer and Governmental Affairs Bureau (Bureau) initially granted Purple (formerly GoAmerica, Inc.), certification for the provision of VRS and IP Relay on June 9, 2006, for five years, until June 9, 2011. See *Notice of Certification of GoAmerica, Inc., as a Provider of Internet Protocol Relay (IP Relay) and Video Relay Service (VRS) Eligible for Compensation from the Interstate Telecommunications Relay Service (TRS) Fund*, CG Docket No. 03-123, Public Notice, DA 06-1244 (rel. June 9, 2006). The Bureau twice extended this certification period for Purple, and other affected providers, in order to maintain the *status quo* while the Commission considered reform of the Internet-based certification process. See *Consumer and Governmental Affairs Bureau Announces Extension of Expiring Certifications for Providers of Internet-based Telecommunications Relay Services*, CG Docket Nos. 03-123 & 10-51, Public Notice, 26 FCC Rcd 6737 (2011) (extending expiring certifications to November 4, 2011); *Consumer and Governmental Affairs Bureau Extends Expiring Certifications for Certain Providers of Video Relay Service and IP Relay Service*, CG Docket Nos. 03-123 & 10-51, Public Notice, 26 FCC Rcd 15157 (2011) (extending expiring certifications to January 4, 2012).

³ The Communications Act of 1934, as amended, defines telecommunications relay services (TRS) as:

... telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.

47 U.S.C. § 225(a)(3) (as amended by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Pub. L. No. 111-260, § 103(b), 124 Stat. 2751, 2755 (2010); Pub. L. No. 111-265 (technical amendments to CVAA)). VRS is a form of Internet-based TRS (iTRS) that uses a broadband Internet connection between the VRS user and the communications assistant (CA) to enable a person using American Sign Language to communicate over video with another party through a CA. During a VRS call, the CA relays the communications

the Consumer and Governmental Affairs Bureau (Bureau) hereby grants the Purple Recertification Application on a conditional basis,⁴ pending inspection of Purple's facilities and confirmation of Purple's compliance with all applicable rules and orders, as well as our determination that Purple is qualified to receive compensation from the Fund and that grant of full certification would be consistent with the objective of preventing waste, fraud, and abuse to the Fund, as embodied in our VRS rules and orders.

In the *iTRS Certification Order* released on July 28, 2011, the Commission amended its requirements and processes for certifying iTRS providers as eligible for compensation from the Fund, to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules, and to eliminate waste, fraud, and abuse through improved oversight of such providers.⁵ These new rules require that all iTRS providers obtain certification from the Commission to be eligible to receive compensation from the Fund.⁶ They further require that all VRS applicants for certification lease, license or own, as well as operate, essential facilities associated with iTRS call centers and employ their own CAs to staff those centers on the date of their application for certification.⁷ Each iTRS applicant for certification is also required to submit specific types of documentary evidence that demonstrate its compliance with Commission rules, including those adopted in the *VRS Practices R&O*.⁸ On October 17, 2011, the Commission released the *iTRS Certification Clarification Order*,⁹ clarifying certain aspects of the certification requirements adopted in the *iTRS Certification Order*, and modifying section 64.606 of the Commission's rules to lessen the burdens on applicants for certification associated with the submission of certain documentation to the Commission.¹⁰

between the two parties, signing what the other party says to the deaf or hard of hearing user and responding in voice to the other party to the call. The Fund compensates eligible providers of VRS and other forms of interstate TRS for their reasonable costs of providing these services. See 47 C.F.R. § 64.604(c)(5)(iii).

⁴ Purple has also requested that the Bureau renew its certification for Internet Protocol Captioning Telephone Service (IP-CTS). The Bureau declines to take action on this request at this time, as Purple's existing certification for IP-CTS will remain in effect until November 14, 2013. See *Notice of Certification of GoAmerica, Inc., as a Provider of Internet Protocol Captioning Telephone Service (IP CTS) Eligible for Compensation from the Interstate Telecommunications Relay Service (TRS) Fund*, CG Docket No. 03-123, Public Notice, DA 08-2514 (rel. Nov. 14, 2008). We advise Purple to file for IP-CTS recertification closer to the expiration date of that certification, but at least 90 days before that expiration.

⁵ *iTRS Certification Order*, 26 FCC Rcd at 10899, ¶ 1. The measures adopted in the *iTRS Certification Order* were part of the Commission's ongoing and transitional efforts to reform the structure and practices of the VRS program, and the new certification processes by which this grant of conditional certification is awarded may be superseded or modified by future Commission actions on VRS reform.

⁶ *Id.* at ¶ 2.

⁷ *Id.*

⁸ See, e.g., 47 C.F.R. § 64.606(a); see also *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545 (2011) (*VRS Practices R&O*).

⁹ *Structure and Practices of the Video Relay Service Program, Sprint Nextel Corporation Expedited Petition for Clarification, Sorenson Communications, Inc. Petition for Reconsideration of Two Aspects of the Certification Order, AT&T Services, Inc. Petition for Reconsideration of AT&T*, CG Docket No. 10-51, Memorandum Opinion and Order, Order, and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14895 (2011) (*iTRS Certification Clarification Order*).

¹⁰ See *id.* at 14902-14904, ¶¶ 16-20.

Based on our review of the Purple Recertification Application, we grant conditional certification to Purple to provide VRS and IP Relay services. In the *iTRS Certification Order*, the Commission reserved the right, after initial review of an application, to conditionally grant certification subject to one or more subsequent on-site visits to the applicant.¹¹ The Commission noted that such visits would “better enable the Commission to verify the information provided in a certification application, and help us to better assess an applicant’s ability to provide service in compliance with our rules.”¹² This grant of conditional certification is without prejudice to the Commission’s final determination of Purple’s qualifications, and is dependent on the Commission verifying the information provided in the Purple Recertification Application, as amended, and on the veracity of the applicant’s representations that it will provide service in compliance with all pertinent Commission requirements.¹³

To allow the Commission to make such a determination, we reserve the right to conduct one or more on-site inspections of Purple’s facilities by designated personnel, and to request additional documentation relating to Purple’s provision of VRS and IP Relay. Ultimate conversion to full certification will be granted if, based on on-site visits and our review of such additional documentation, the Commission finds that Purple is in compliance with the Commission’s rules and orders, including those rules designed to ensure the accuracy and integrity of Fund payments,¹⁴ and is qualified to receive compensation from the Fund for the provision of VRS and IP Relay.¹⁵ If at any time during the period in which Purple is operating pursuant to this conditional certification, the Commission determines that Purple has failed to provide sufficient supporting documentation for any of the assertions in Purple’s application or that any of those assertions cannot be supported, or finds evidence of any apparent rule violation, fraud, waste, or abuse, the Commission will take appropriate action, including the possible denial of the Purple Recertification Application. In the event of such denial, Purple’s conditional certification will automatically terminate 35 days after such denial.¹⁶ If, however, the Commission grants full certification, Purple, like all VRS and IP Relay providers, must continue to operate in compliance with all relevant Commission rules and orders.

We are particularly concerned with Purple’s recent speed of answer performance for IP Relay. The speed of answer rule requires that “TRS facilities shall, except during network failure, answer 85% of all calls within 10 seconds by any method which results in the caller’s call immediately being placed, not put in a queue or on hold.”¹⁷ According to the Fund administrator, Purple failed to meet the speed of answer rule on certain days during some recent months.¹⁸ In amending the speed of answer rule in 2000, the Commission emphasized that “[f]or a TRS user, reaching a CA to place a relay call is the equivalent of picking up a phone and getting a dial tone. Any interpretation of our rule that delays a customer’s ability to place a call through the relay center clearly compromises the functional equivalence of relay

¹¹ 47 C.F.R. § 64.606(a)(3); *see also iTRS Certification Order*, 26 FCC Rcd at 10914, ¶ 37.

¹² *iTRS Certification Order*, 26 FCC Rcd at 10914, ¶ 36.

¹³ *Id.* at ¶ 37.

¹⁴ *See* 47 C.F.R. § 64.604(c)(5)(iii).

¹⁵ *See iTRS Certification Order*, 26 FCC Rcd at 10914, ¶ 37; 47 C.F.R. § 64.606(b)(2),(c)(2).

¹⁶ *See iTRS Certification Order*, 26 FCC Rcd at 10914-15, ¶ 37. If the Commission terminates a conditional certification, the provider must give at least 30 days’ notice to its customers that it will no longer offer service.

¹⁷ *See* 47 C.F.R. § 64.604(b)(2)(ii).

¹⁸ Providers submit the speed of answer performance data on a monthly basis to the TRS Fund administrator, Rolka Loube Salter Associates (RLSA).

service.”¹⁹ Because this rule was designed to ensure that relay users obtain a functionally equivalent TRS service, the ability to comply with the speed of answer requirements is of a paramount importance. Notwithstanding Purple’s past operation, because it has more recently achieved compliance with our speed of answer rule, we will grant it conditional certification, but will be closely monitoring its performance in this regard. We note that grant of a full certification to Purple is conditioned on its continued full compliance with the speed of answer rule for both VRS and IP Relay. We emphasize that we will not hesitate to take appropriate enforcement action against Purple, should there be a showing of consistent failure to comply with the speed of answer rule, including the immediate termination or suspension of this conditional certification.

Redacted copies of the Purple Recertification Application, including all amendments, are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Suite CY-A257, Washington, DC 20554, (202) 418-0270. The full text of this *Public Notice* is similarly available for public inspection or copying. These documents may also be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI at its web site: www.bcpweb.com, or by calling 1-800-378-3160. Redacted copies of the Purple Recertification Application and amendments may also be found by searching on the Commission’s Electronic Comment Filing System (ECFS) at <http://www.fcc.gov/cgb/ecfs> (insert CG Docket No. 10-51 into the Proceeding block).

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For further information, please contact Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 559-5158 (voice/videophone), (202) 418-0431 (TTY), or e-mail at Gregory.Hlibok@fcc.gov.

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¹⁹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5165-5168, ¶¶ 59-66 (2000) (amending the speed of answer rule).