

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

In the Matter of
Telecommunications Relay Services
And Speech-to-Speech Services for
Individuals with Hearing and Speech Disabilities
Purple Communications, Inc.
Request for Review of Withholding of TRS
Payments
CG Docket No. 03-123

ORDER

Adopted: November 7, 2014

Released: November 7, 2014

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, the Consumer and Governmental Affairs Bureau (CGB or Bureau), grants in part and denies in part a request by Purple Communications, Inc. (Purple) for review of the Telecommunications Relay Service (TRS) Fund administrator's withholding of TRS compensation because of Purple's failure to handle emergency calls as required by the Commission's TRS rules. This Order addresses the period from the commencement of Purple's IP CTS in January 9, 2011, through August 31, 2014. We find that throughout this period, Purple failed to operate the web and wireless applications of its ClearCaptions Internet Protocol Captioned Telephone Service (IP CTS) in compliance with this Commission's TRS emergency calling requirements. Therefore, we find that Purple was not entitled to payment of compensation for any calls placed through its web and wireless IP CTS applications from January 9, 2011, through August 31, 2014, and we affirm the administrator's withholding of compensation for Purple's web and wireless IP CTS. We also find that compensation should not be withheld for otherwise compensable calls placed through other IP CTS applications.

II. BACKGROUND

A. TRS Emergency Calling Requirements

2. The Commission repeatedly has emphasized the critical importance of access to 911 emergency services, including in the specific context of TRS.1 TRS providers must be capable of

1 See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket 03-123, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, 5456, ¶¶ 35-36 (2006); Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers, CG Docket No. 03-123, WC Docket No. 05-196, Report and Order, 23 FCC Rcd at 5255, 5271, ¶ 29 (2008) (Emergency Call Handling Order). See also 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, 5183-84, ¶¶ 100-101 (2000) (2000 TRS Order); Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Americans With Disabilities Act of 1990, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, (continued...)

handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so.² In addition, section 64.605 sets forth specific requirements for the processing and routing of emergency calls to 911.³

3. When the Commission began authorizing Internet-based forms of TRS, it recognized the technological challenges associated with determining the geographic location of TRS calls originating over the Internet. Accordingly, for Internet-based TRS providers, the Commission temporarily waived the then-existing requirement for TRS providers to automatically transfer emergency TRS calls and location information to an appropriate Public Safety Answering Point (PSAP).⁴ The Commission did not, however, waive the general rule requiring that TRS providers be capable of handling all types of calls, including 911 calls.⁵

4. In 2008, the Commission amended section 64.605 of the rules to provide detailed emergency calling requirements for Internet-based TRS and terminated the previously granted waivers.⁶ Under the new requirements, Internet-based TRS providers, including providers of IP CTS⁷ that allows

(Continued from previous page) _____
CC Docket No. 98-67, CG Docket No. 03-123, 18 FCC Rcd 12379, 12406-09, ¶¶ 40-46 (2003) (*2003 TRS Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket Nos. 90-571, 98-67, CG Docket No. 03-123, 19 FCC Rcd 12475, 12502, ¶ 54 (2004) (*2004 TRS Order*). TRS enables an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to communicate by telephone or other device through the telephone system. See 47 U.S.C. § 225(a)(3) (defining TRS). TRS is provided in a variety of ways. Currently, interstate TRS calls and all Internet Protocol (IP) based TRS calls, both intrastate and interstate, are supported by the Interstate TRS Fund. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379, 380, ¶ 3, 381, ¶¶ 5-6, 390, ¶ 25 (2007) (*2007 IP CTS Order*).

² 47 C.F.R. § 64.604(a)(3)(ii).

³ *Id.* § 64.605 (TRS emergency call handling rule).

⁴ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, 17 FCC Rcd 157, 161-62, ¶¶ 11-14 (CGB 2001) (*VRS Waiver Order*); *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-67, 17 FCC Rcd 7779, 7789, ¶ 30 (2002) (*IP Relay Declaratory Ruling & FNPRM*); *2007 IP CTS Order*, 22 FCC Rcd at 391-93, ¶ 30 & n. 100.

⁵ 47 C.F.R. § 64.604(a)(3)(ii); see also *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4669, Appx. B (1991) (initial TRS rule explicitly requiring not only that TRS providers handle any type of call normally handled by common carriers, but also that “TRS providers shall handle emergency calls in the same manner as they handle any other TRS calls”); *VRS Waiver Order*, 17 FCC Rcd at 161, ¶¶ 11, 13 (citing a waiver petitioner’s statements that VRS providers “would be responsible for providing emergency call handling quickly and efficiently” and that “only the automation process would be waived” and granting “a temporary waiver of the automation requirement for emergency call handling”); *IP Relay Declaratory Ruling & FNPRM*, 17 FCC Rcd at 7789, ¶ 30 (granting IP Relay providers a waiver of “emergency call information requirements” (emphasis added)); *2007 IP CTS Order*, 22 FCC Rcd at 392, ¶ 30 n. 100 (specifying the rule waived for IP CTS providers as the requirement “to be able to automatically contact the appropriate Public Safety Answering Point when [providers] receive an incoming emergency call”).

⁶ *Emergency Call Handling Order*, 23 FCC Rcd at 5255-56, ¶ 1.

⁷ IP CTS, a form of telecommunications relay service (TRS), permits people who can speak, but who have a hearing loss and have difficulty hearing over the telephone, to speak directly to another party on a telephone call and to use an Internet Protocol-enabled device to simultaneously listen to the other party and read captions of what that party is saying. See 47 C.F.R. § 64.601(12).

users to initiate calls by contacting providers over the Internet,⁸ must accept and handle emergency 911 calls, give them priority over other calls, route them to an appropriate public safety answering point (PSAP) (or other appropriate answering point or local emergency authority) corresponding to the caller's location, and deliver specified name, location, and callback information to the PSAP.⁹ When handling such 911 calls, the provider must, among other things: (1) access, either directly or via a third party, a commercially available database that will allow the provider to determine an appropriate PSAP, statewide default answering point, or appropriate local emergency authority and to relay the call to that entity; (2) request, at the beginning of the call, the caller's name and location information; and (3) deliver to the PSAP or other appropriate entity such name and location information, as well as the provider's name, the communications assistant's (CA) callback number, and the CA's identification number, at the outset of the outbound leg of an emergency call.¹⁰

B. Bureau Inquiry Regarding Purple's Handling of IP CTS Emergency Calls and RLSA's Withholding of Compensation

5. Purple was granted certification to provide IP CTS in 2008.¹¹ However, Purple did not begin billing the TRS Fund for IP CTS until January 9, 2011.¹² In 2013, Purple sought renewal of its certification to provide IP CTS.¹³ In reviewing Purple's application, Bureau staff noticed that Purple's web site advised TRS callers as follows:

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. Dialing 911 from a traditional phone (or TTY) remains the most reliable and fastest method of reaching emergency response personnel. If you use any captioning services to place a 911 call, you should be aware that any such use is subject to important limitations and risks.¹⁴

6. In response to a follow-up inquiry, Purple acknowledged that it did not handle emergency calls to 911 by users of Purple's web and wireless IP CTS applications.¹⁵ Purple gave as its justification

⁸ See *Emergency Call Handling Order*, 23 FCC Rcd at 5257, ¶ 1 n. 7.

⁹ 47 C.F.R. § 64.605(a). Section 64.605(b) sets forth additional and alternative requirements applicable to providers of VRS and IP Relay when 911 calls are placed by registered users. *Id.* § 64.605(b).

¹⁰ *Id.* §§ 64.605(a)(2)(i), (iii), (iv). The requirement to request the caller's name and location information does not apply if the provider already has, or has access to, a Registered Location for the caller. *Id.* § 64.605(a)(2)(iii). A Registered Location is the most recent information obtained by the provider that identifies the physical location of an end user. *Id.* § 64.601(a)(28).

¹¹ *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, 23 FCC Rcd 16656 (CGB 2008).

¹² Email from John Goodman, Vice President and Chief Legal Officer, Purple, to David Rolka, President, Rolka Loube Saltzer Associates (RLSA) (Mar. 19, 2014).

¹³ Purple Communications, Inc., Amendment to Internet-Based TRS Recertification Application of Purple Communications, Inc., CG Docket No. 03-123 (filed Aug. 14, 2013).

¹⁴ Letter from Gregory Hlibok, Chief, Disability Rights Office, CGB, to John Goodman, Vice President and Chief Legal Officer, Purple (Jan. 10, 2014).

¹⁵ Letter from John Goodman, Vice President and Chief Legal Officer, Purple, to Gregory Hlibok, Chief, Disability Rights Office, CGB (Jan. 17, 2014) (Purple 911 Letter) (attached to Purple, Emergency Request for Review, CG Docket No. 03-123, as Exhibit B (filed Feb. 20, 2014) (Purple Request for Review)).

that Purple’s web and wireless applications are “call back” services in which

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.¹⁶

Purple asserted that for these applications, “Purple determined it is not in the consumer’s or the public interest to handle emergency calls through a call back service” because “[t]he 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.”¹⁷ Purple added that “[t]he benefit of receiving captions is outweighed by the necessity to route the emergency call expeditiously to the PSAP,” and that, accordingly, its website informs consumers “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.”¹⁸ Purple argued that this practice is permitted pursuant to the *Emergency Call Handling Order*, citing a footnote in the order stating 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.”¹⁹

7. On February 6, 2014, the TRS Fund administrator, Rolka Loube Saltzer Associates (RLSA), informed Purple that payment for all of Purple’s IP CTS calls 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.”²⁰ On February 14, 2014, RLSA identified the applications at issue as web and wireless applications and requested additional information from Purple regarding its processing of 911 IP CTS calls placed through web and wireless applications, including identification of the specific calls handled through such applications.²¹ On February 20, 2014, Purple filed a request for review of the withholding, in which it sought reversal of RLSA’s withholding or, in the alternative, reimbursement for IP CTS minutes not related to the web and wireless applications at issue.²² Purple claimed that payment is owed for the latter category of calls because there is no issue of compliance with the TRS emergency call handling rule for those calls.²³

III. DISCUSSION

A. Purple’s Failure to Comply with the TRS Emergency Calling Rule

8. Purple acknowledges that it did not handle 911 calls through its web and wireless applications prior to May 2014.²⁴ For the reasons stated below, we find that Purple’s practice of not

¹⁶ Purple 911 Letter at 1.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 2.

¹⁹ *Emergency Call Handling Order*, 23 FCC Rcd at 5257, ¶ 1 n. 7, cited in Purple 911 Letter at 1.

²⁰ Email from David Rolka, President, RLSA, to John Goodman, Vice President and Chief Legal Officer, Purple (Feb. 6, 2014).

²¹ Letter from David Rolka, President, RLSA, to John Goodman, Vice President and Chief Legal Officer, Purple (Feb. 14, 2014).

²² Purple Request for Review at 8.

²³ *Id.* at 8.

²⁴ Email from John Goodman, Vice President and Chief Legal Officer, Purple, to David Rolka, President, RLSA (June 6, 2014). Purple’s subsequent actions regarding compliance with the emergency calling requirements are discussed in section III.B below.

supporting or processing 911 calls through its web and wireless applications violates sections 64.604 and 64.605 of the Commission's rules and that its noncompliance with the emergency calling requirements has continued throughout the period covered by this order.²⁵

9. Purple contends that footnote 7 of the *Emergency Call Handling Order*²⁶ exempts its provision of IP CTS through web and wireless applications from any requirement to support 911 calling because those services are “call back” services in which the IP CTS user does not “initiate” the call.²⁷ We disagree. As described by Purple, the first step that happens when a consumer wishes to place a call using Purple's IP CTS web or wireless application is that the user connects to Purple via the Internet and enters the phone number the consumer wishes to call. In so doing, the consumer is clearly initiating the call. The fact that the *completion* of the call to the PSAP may be delayed for a few seconds²⁸ until a CA “calls back” the consumer does not make the CA the initiator of the call. Rather, against the backdrop of IP CTS providers' general emergency call handling obligations, we find that Purple's web and wireless applications enable IP CTS users to initiate a call within the meaning of the Commission's TRS 911 rules, and thus fall outside the footnote 7 exemption.

10. Our construction of the *Emergency Call Handling Order* is clearly consistent with the text, context, and underlying policy of the *Emergency Call Handling Order* and the TRS emergency calling requirements, while Purple's construction is not. An examination of the footnote cited by Purple shows that the Commission exempted IP CTS calls that are not “initiated . . . by the user contacting the provider via the Internet” because in such cases, the provision of 911 support – *i.e.*, 911 routing and caller information – can be provided by the consumer's underlying telephone company. Specifically, the Commission excluded from the emergency call handling rule methods of accessing 911 where “the user first makes a voice telephone call to the called party, and then can elect to contact the provider via the Internet to receive captions.”²⁹ The Commission noted that in that configuration, “the user (like voice telephone users) is calling 911 directly using a phone service otherwise subject to 911 obligations while the relay provider plays no role in determining the appropriate PSAP to call or calling that PSAP.”³⁰ Otherwise stated, with this configuration, the caller dials 911 directly; thus, there is no need for the TRS provider to assist in completing the call connection to 911. Therefore, as the footnote goes on to conclude, with this calling method, “the [emergency call handling] requirements set forth herein would not be applicable,” and “a waiver of the emergency call handling requirements would not be necessary.” By contrast, in the situation presented by Purple's web and wireless applications, the consumer can only place calls by first “contacting the provider via the Internet.” To exempt such calls from the *Emergency Call Handling Order* requirements would be inconsistent with the clear purpose of the emergency call handling rule and the narrow scope of circumstances the Commission intended to exempt in footnote 7 of the *Emergency Call Handling Order*.

²⁵ This order addresses Purple's compliance with the TRS emergency calling rule from the commencement of its provision of IP CTS on January 9, 2011, through August 31, 2014. Purple's requests for payment for calls placed after August 31, 2014, remained pending with Rolka Loube as of the date of this Order. (RLSA was recently renamed Rolka Loube.)

²⁶ *Emergency Call Handling Order*, 23 FCC Rcd at 5257, ¶ 1 n. 7.

²⁷ Purple Request for Review at 5-6.

²⁸ Although Purple does not specify the typical length of this delay, we assume that it ordinarily does not last more than a few seconds. See 47 C.F.R. § 64.604(b)(2)(ii) (speed-of-answer rule requiring 85 percent of TRS calls to be answered by TRS facilities within 10 seconds, measured on a daily basis).

²⁹ *Emergency Call Handling Order*, 23 FCC Rcd at 5257, ¶ 1 n. 7. This method is typically utilized in IP CTS applications involving use of a dedicated phone with a caption screen, where there is a dual connection with the PSTN and the Internet. In web and wireless applications, by contrast, calls are placed and captions received entirely through an Internet connection.

³⁰ *Id.* at 5258, ¶ 1 n. 7.

11. Further, during this period Purple not only failed to comply with the specific emergency call handling requirements of section 64.605, but also prohibited its customers from even placing 911 calls through Purple's IP CTS web and wireless applications and from obtaining captions on such calls. Independently of the *Emergency Call Handling Order*, TRS providers were and are required to be capable of handling any type of call normally provided by telecommunications carriers, including 911 calls, unless the Commission determines that it is not technologically feasible to do so.³¹ The referenced footnote in the *Emergency Call Handling Order* does not relieve any TRS provider of its obligation to allow 911 calls to be placed by users of its relay service.

12. Purple also argues that it reasonably determined that "it is not in the public interest to handle emergency communications through a call back service because of the additional time involved" in placing the call, and that "[f]rom a public safety perspective, it is much safer for the assisted user to dial emergency personnel directly through the assisted user's standard phone."³² Under the Commission's rules, however, it is for the consumer to decide whether to use a relay service when making an emergency call.³³ Indeed, the Commission has long recognized that the use of TRS, in general, "represents a less efficient method of accessing emergency services,"³⁴ but it has nonetheless required that all forms of TRS support emergency calling.³⁵

B. Purple's Subsequent Actions Regarding Compliance with the 911 Rules

13. On June 2, 2014, while continuing to maintain that its web and wireless applications need not comply with the Commission's 911 rules, Purple reported to the Commission that it had taken the necessary steps to provide 911 capability for web and wireless applications of its IP CTS.³⁶ Purple stated that IP CTS web and wireless 911 calls are routed to a national emergency call center, where the operator confirms the address with the caller and then routes the call to the local PSAP.³⁷ In a June 12, 2014, conference call with Bureau staff, Purple acknowledged that the process put in place did not provide callback information to the PSAP that would enable the 911 caller to receive captions on a return call from the PSAP.³⁸ Purple later informed the Bureau that it corrected this problem effective July 9, 2014.³⁹

14. Subsequently, however, test calls were conducted under FCC staff supervision to assess Purple's handling of 911 calls through its web and wireless applications. Multiple test 911 calls were attempted by registered users on Purple's wireless and web-based ClearCaptions services. Those calls were not routed to a PSAP or other emergency authority serving the test caller's registered location or actual location, nor were they routed to a national emergency call center, as represented in Purple's June 2

³¹ 47 C.F.R. § 64.604(a)(3)(ii). See also decisions cited in note 5 above.

³² Purple Request for Review at 6-7.

³³ We note that the ability to make a 911 call is critical not only so that first responders can be quickly summoned to the scene of an emergency, but also so that telephonic assistance or guidance may be provided to the caller during a 911 call. For example, a 911 caller may seek assistance with performing cardio-pulmonary resuscitation. See <<http://www.911.gov/whencall.htm>> (last accessed Oct. 17, 2014).

³⁴ *Emergency Call Handling Order*, 23 FCC Rcd at 5258, ¶ 4.

³⁵ *2000 TRS Order*, 15 FCC Rcd at 5183-84, ¶¶ 100-101; *2003 TRS Order*, 18 FCC Rcd at 12406-09, ¶¶ 40-46; *2004 TRS Order*, 19 FCC Rcd at 12502, ¶ 54. As noted above, while in some configurations IP CTS is not subject to the emergency call handling rule, in those configurations the user can call 911 directly while receiving captions through a separate Internet connection. *Emergency Call Handling Order*, 23 FCC Rcd at 5257, ¶ 1 n. 7. Thus, even in those configurations, by providing captions for a direct-dialed 911 call, the TRS provider is supporting emergency calling.

³⁶ Letter from Monica Desai, Patton Boggs LLP, to Marlene H. Dortch, Secretary, FCC (filed June 2, 2014).

³⁷ *Id.* at 3.

³⁸ Email from Lydia Yomogida, Sr. Manager Legal and Compliance Director, Purple, to CGB Staff (July 9, 2014).

³⁹ *Id.*

letter to the Commission.⁴⁰ Based on the results of these recent tests, we find that Purple's wireless and web-based ClearCaptions services remained out of compliance with the emergency calling requirements throughout the period covered by this Order.⁴¹

C. Conclusions Regarding Compensation Payment

15. Because Purple failed to comply with the TRS emergency calling rule from the inception of its web and wireless based service through August 31, 2014, we conclude that Purple is not entitled to compensation for any calls handled using its web and wireless applications from the commencement of service through August 31, 2014.⁴² Based on information provided by RLSA, during the period from May 1, 2011, through August 31, 2014, Purple provided 918,173.8 minutes of IP CTS through web and wireless applications. Purple is denied compensation for these minutes, in the amount of \$1,629,411.35.⁴³

16. We further conclude that Purple is entitled to payment for IP CTS calls placed during this period through other IP CTS applications, to the extent that such calls are otherwise compensable and adequately identified.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 5, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 155, 225, and sections 0.141, 0.361, 64.604, and 64.605 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 64.604, 64.605, that the request for review of Purple Communications, Inc., IS GRANTED IN PART AND DENIED IN PART, as provided above.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief
Consumer and Governmental Affairs Bureau

⁴⁰ Letter from Gregory Hlibok, Chief, Disability Rights Office, CGB, to John Goodman, Vice President and Chief Legal Officer, Purple (Sept. 25, 2014); Email from Robert Aldrich, CGB, to Monica Desai, Patton Boggs LLP (Oct. 10, 2014).

⁴¹ At a meeting with FCC staff on October 16, 2014, Purple representatives acknowledged that Purple had determined that an emergency call had been misrouted; Purple assumed that this call was a test call by the Commission. They then explained the problem that Purple had identified and that it believed resulted in the misrouting of the call. Purple also claimed that it had corrected this problem and that its own test calls conducted on Friday, October 10, 2014, confirmed Purple's current ability to route 911 calls in compliance with the TRS rules. Because this Order does not cover calls completed after August 31, 2014, Purple's claim that, based on its adjustments and testing in October 2014, its web and wireless based IP CTS is currently in compliance is not addressed by this Order.

⁴² See 47 C.F.R. § 64.604(c)(5)(iii)(E) ("The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604"). See also *id.* § 64.604(c)(5)(iii)(L).

⁴³ The number of minutes of web and wireless IP CTS provided by Purple prior to May 1, 2011, were not available to CGB as of the date of this order and are not included in this total.