



# PUBLIC NOTICE

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## NOTICE OF GRANT OF CONDITIONAL CERTIFICATION FOR PURPLE COMMUNICATIONS, INC., TO PROVIDE INTERNET PROTOCOL CAPTIONED TELEPHONE SERVICE

CG DOCKET NOS. 03-123 & 10-51

By the Acting Chief, Consumer and Governmental Affairs Bureau:

### I. INTRODUCTION

1. In this Public Notice, the Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (Commission) conditionally grants the application of Purple Communications, Inc. (Purple) for renewal of its certification as a provider of Internet Protocol Captioned Telephone Service (IP CTS) supported by the Telecommunications Relay Services (TRS) Interstate Fund (Fund). However, as described below, we find that Purple has failed to operate the web and wireless applications of ClearCaptions IP CTS in compliance with this Commission's TRS 911 emergency calling requirements, from the commencement of service in 2011 through the date of this Public Notice. We therefore condition this renewal of certification on, among other things, Purple's discontinuance of the Fund-supported provision of IP CTS through web and wireless applications, effective 35 days after the date of this Public Notice. This condition may be removed if Purple demonstrates that it has adopted and is utilizing measures sufficient to ensure full compliance with the Commission's TRS minimum standards and other applicable rules and orders.

2. As further discussed below, we also condition Purple's renewal of certification on (1) Purple's timely submission of the information required by section 64.606(a)(2)(ii)(F) of the Commission's rules<sup>1</sup> and (2) the Bureau's determination, based on further assessment and inspection of Purple's IP CTS operations, that Purple is actually complying and will continue to comply with all applicable minimum TRS standards, as well as other applicable rules and orders. To assist it in reaching a final determination as to Purple's qualifications for certification, the Bureau may conduct one or more additional unannounced on-site inspections of Purple's facilities and request additional documentation relating to Purple's provision of IP CTS and compliance with applicable rules and orders.<sup>2</sup>

<sup>1</sup> 47 C.F.R. § 64.606(a)(2)(ii)(F) (requiring all IP CTS providers and applicants for certification to provide IP CTS to submit "a description of measures taken by such applicants or providers to ensure that they do not and will not request or collect payment from the TRS Fund for service to consumers who do not satisfy the registration and certification requirements in § 64.604(c)(9), and an explanation of how these measures provide such assurance").

<sup>2</sup> In the *iTRS Certification Order* the Commission reserved the right, after initial review of an application, to conditionally grant certification to an applicant, subject to one or more subsequent on-site inspections of the applicant's facilities, where the Commission, upon initial review of the application, determines that the application facially meets the certification requirements, but the Commission needs to verify some of the information contained in the application. *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second

(continued....)

## II. BACKGROUND

### A. Forms of IP CTS Provided by Purple

3. The Commission's rules for certifying Internet-based TRS (iTRS) providers as eligible for compensation from the Fund are intended 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.<sup>3</sup> Our rules provide that certification of Internet-based TRS providers will be granted if the provider has established that it will meet or exceed all non-waived minimum standards for TRS.<sup>4</sup> Each applicant for iTRS certification is required to submit specific types of documentary evidence demonstrating its compliance with Commission rules and orders.<sup>5</sup>

4. Purple provides various forms of TRS,<sup>6</sup> including IP CTS.<sup>7</sup> Purple was granted certification to provide IP CTS on November 14, 2008,<sup>8</sup> and commenced providing IP CTS on January 9, 2011.<sup>9</sup> Purple's IP CTS is known as "ClearCaptions" and can be accessed in a number of ways. Some Purple customers access the service by means of telephones that are connected directly to the public switched telephone network (PSTN). For example, a Purple customer using an Ensemble phone, sold by Clarity, has a direct connection to the PSTN and can place and receive calls in much the same way as hearing users do. Captions are provided and appear on the screen for such phones by means of a separate broadband connection between the telephone and a Purple call center. Similarly, with Purple's enterprise-

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Report and Order and Order, 26 FCC Rcd 10898, 10914, ¶ 37 (2011) (*iTRS Certification Order*); *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Memorandum Opinion and Order, Order, and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14895, 14906-07, ¶¶ 26-28 (2011) (*iTRS Certification Clarification Order*) (confirming that such inspections may be unannounced). 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." *iTRS Certification Order*, 26 FCC Rcd at 10914, ¶ 36. See also 47 C.F.R. § 64.606(a)(3).

<sup>3</sup> *iTRS Certification Order*, 26 FCC Rcd at 10898-99, ¶ 1.

<sup>4</sup> 47 C.F.R. § 64.606(b)(2).

<sup>5</sup> See, e.g., *id.* § 64.606(a).

<sup>6</sup> 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, including calls using Purple's IP CTS, 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*). Purple currently holds conditional certifications to provide video relay service (VRS) and Internet Protocol relay service (IP Relay), as well as IP CTS.

<sup>7</sup> 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).

<sup>8</sup> *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 17055 (2008). On January 10, 2008, the company name changed from GoAmerica, Inc., to Purple Communications, Inc., pursuant to a merger arrangement.

<sup>9</sup> Email from John Goodman, Vice President and Chief Legal Officer, Purple, to David Rolka, President, Rolka Loube Saltzer Associates (RLSA) (Mar. 19, 2014). RLSA, the TRS Fund administrator, recently was renamed Rolka Loube (RL).

based IP CTS, the IP CTS user receives captions on the screen of a Cisco phone that is connected to the PSTN through the same enterprise telecommunications system as that used for voice telephone calls.

5. Purple's web and wireless applications for accessing IP CTS, however, use a differently configured network connection. A user of these applications who wishes to place a call connects to Purple's web site and enters the user's own telephone number and the destination number. After receiving this information from the user, Purple's call center sets up a voice connection to both the user and the destination number. The call is essentially set up as a three-way conference call with the IP CTS communications assistant (CA) at the call center muted. The CA then produces captions for what the called party says for delivery to the IP CTS user.

## **B. Application for Certification**

6. Purple's certification to provide IP CTS was initially set to expire on November 13, 2013.<sup>10</sup> On August 14, 2013, Purple filed an application for renewal of its certification to remain eligible for compensation from the Fund.<sup>11</sup> In addition to reviewing Purple's application filing, the Bureau has taken a number of steps to assess Purple's eligibility for full certification as an IP CTS provider. Prior to the initial November 13, 2013, expiration date, the Bureau extended the term of Purple's certification for 90 days to allow the Bureau additional time to evaluate Purple's application and to conduct on-site inspections of Purple's IP CTS facilities.<sup>12</sup> On January 10, 2014, the Bureau sought additional information from Purple regarding its handling of 911 calls.<sup>13</sup> Subsequently, the Bureau extended the term of Purple's certification for an additional 90-day period.<sup>14</sup> On February 25, 2014, the Bureau conducted an inspection of Purple's IP CTS call center in Norfolk, Virginia. Purple commenced providing IP CTS from a call center located in Quezon, Philippines, in February 2014<sup>15</sup> and closed all its IP CTS call centers in the United States at the end of April 2014.<sup>16</sup> On May 12, 2014, the Bureau

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<sup>10</sup> Certifications for the provision of IP CTS and other forms of Internet-based TRS are granted for a period of five years. 47 C.F.R. § 64.606(b)(2).

<sup>11</sup> Purple Communications, Inc., Amendment to Internet-Based TRS Recertification Application Purple Communications, Inc., CG Docket No. 03-123 (filed Aug. 14, 2013). Purple had previously requested renewal of its certification for the provision of IP CTS via an amendment to a pending application for renewal of its certification as a provider of video relay service (VRS) and Internet Protocol relay service (IP Relay). Purple Communications, Inc., Amendment to Application for Re-Certification as an Eligible Relay Provider (filed Oct. 5, 2011). On January 4, 2012, the Bureau advised Purple to reapply for renewal of its IP CTS certification on a date closer to the expiration date of its IP CTS certification. *Notice of Conditional Certification of Purple Communications, 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, 27 FCC Rcd 112 (2012). On August 14, 2013, Purple reapplied for renewal of its IP CTS recertification, incorporating by reference its previous filings.

<sup>12</sup> *Notice of Temporary Extension of Certification of Purple Communications, Inc., as a provider of Internet Protocol Captioned Telephone Relay Service*, CG Docket Nos. 03-123, 10-51, Public Notice, 28 FCC Rcd 15710 (rel. Nov. 13, 2013) (extending certification period to February 11, 2014). In July 2013, Purple had commenced providing IP CTS from a new call center.

<sup>13</sup> Letter from Gregory Hlibok, Chief, Disability Rights Office, CGB, to John Goodman, Vice President and Chief Legal Officer, Purple (Jan. 10, 2014).

<sup>14</sup> *Notice of Temporary Extension of Certification of Purple Communications, Inc., as a provider of Internet Protocol Captioned Telephone Relay Service*, CG Docket Nos. 03-123, 10-51, Public Notice, 29 FCC Rcd 1258 (CGB 2014) (extending certification period to May 12, 2014).

<sup>15</sup> See Purple Communications, submission to RLSA (Jan. 17, 2014).

<sup>16</sup> See Purple Communications, submission to RLSA (Mar. 21, 2014).

extended the term of Purple's certification for an additional 90-day period.<sup>17</sup> On July 22-23, 2014, the Bureau conducted an inspection of Purple's IP CTS call center in the Philippines. On August 5, 2014, the Bureau conducted an inspection of Purple's offices in Rockville, Maryland. On August 8, 2014, the Bureau extended Purple's IP CTS certification for an additional 90 days.<sup>18</sup> Subsequently, to test Purple's handling of emergency calls, the Bureau conducted multiple test calls to 911 using Purple's IP CTS web and wireless applications.

### III. FINDINGS

#### A. 911 Service Deficiencies

##### 1. Purple's Failure to Allow Any 911 Calling Prior to May 2014

7. As explained in the *Purple 911 Withholding Order*, released the same day as this Public Notice,<sup>19</sup> the Commission repeatedly has emphasized the critical importance of access to 911 emergency services, including in the specific context of TRS.<sup>20</sup> TRS providers must 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.<sup>21</sup> In addition, the Commission has established specific requirements for the processing and routing of emergency calls to 911 by providers of Internet-based relay services, including captioned telephone services that allow users to initiate calls by contacting providers over the Internet.<sup>22</sup> Specifically, such providers must accept and handle emergency calls to 911, 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.<sup>23</sup> When an IP CTS provider

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<sup>17</sup> *Notice of Temporary Extension of Certification of Purple Communications, Inc., as a provider of Internet Protocol Captioned Telephone Relay Service*, CG Docket Nos. 03-123, 10-51, Public Notice, 29 FCC Rcd 5051 (CGB 2014) (extending certification period to August 10, 2014).

<sup>18</sup> *Notice of Temporary Extension of Certification of Purple Communications, Inc., as a provider of Internet Protocol Captioned Telephone Relay Service*, CG Docket Nos. 03-123, 10-51, Public Notice, 29 FCC Rcd 9584 (CGB 2014) (extending certification period to November 8, 2014).

<sup>19</sup> *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, DA 14-1625, ¶ 2 (rel. Nov. 7, 2014).

<sup>20</sup> See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 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 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, ¶¶ 100-01 (2000) (*2000 TRS Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 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*).

<sup>21</sup> 47 C.F.R. § 64.604(a)(3)(ii).

<sup>22</sup> *Id.* § 64.605 (TRS emergency call handling rule); *Emergency Call Handling Order*, 23 FCC Rcd at 5258, ¶ 1 n. 7.

<sup>23</sup> 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 handling 911 calls placed by registered users. *Id.* § 64.605(b).

handles a 911 call from an Internet-based TRS user, 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 CA's callback number, and the CA's identification number, at the outset of the outbound leg of an emergency call.<sup>24</sup>

8. As explained in the *Purple 911 Withholding Order*, Purple's IP CTS, as configured for access using web and wireless applications, allows users to initiate calls by contacting providers over the Internet.<sup>25</sup> Accordingly, Purple must comply with section 64.605(a) of the Commission's rules, as well as the more general 911 call handling requirement under section 64.604.<sup>26</sup>

9. In December 2013, while reviewing Purple's application for renewal of certification, 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.<sup>27</sup>

In response to a follow-up inquiry from the Bureau, Purple acknowledged that it did not handle emergency calls to 911 by users of Purple's web and wireless IP CTS applications.<sup>28</sup>

10. As explained in the *Purple 911 Withholding Order*, Purple's practice of not supporting or processing 911 calls through its web and wireless applications violates sections 64.604 and 64.605 of the Commission's rules. Although Purple contends that its failure to support 911 calling was permitted pursuant to a footnote in the *Emergency Call Handling Order*,<sup>29</sup> Purple's construction of the *Emergency Call Handling Order* is clearly inconsistent with the text, context, and underlying policy of that

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<sup>24</sup> *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).

<sup>25</sup> *Purple 911 Withholding Order*, ¶¶ 9-10.

<sup>26</sup> *Id.*, ¶¶ 9-11.

<sup>27</sup> Letter from Gregory Hlibok, Chief, Disability Rights Office, CGB, to John Goodman, Vice President and Chief Legal Officer, Purple (Jan. 10, 2014).

<sup>28</sup> Letter from John Goodman, Vice President and Chief Legal Officer, Purple, to Gregory Hlibok, Chief, Disability Rights Office, CGB (filed 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)). Subsequently, RLSA withheld payment for Purple's IP CTS calls due to its failure to provide 911 calling for web and wireless based IP CTS applications.

<sup>29</sup> Purple Request for Review at 5. The footnote relied upon by Purple states 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." *Emergency Call Handling Order*, 23 FCC Rcd at 5258, ¶ 1 n. 7.

Commission order and the TRS emergency calling requirements.<sup>30</sup> Thus, the *Emergency Call Handling Order* does not exempt Purple's web and wireless IP CTS applications from the TRS emergency call handling rule.

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.<sup>31</sup>

12. Purple argues 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."<sup>32</sup> Under the Commission's rules, however, it is not for Purple to decide whether its customers should use Purple's relay service when making an emergency call.<sup>33</sup> Although the Commission has long recognized that the use of TRS, in general, "represents a less efficient method of accessing emergency services,"<sup>34</sup> it has nonetheless consistently required that all forms of TRS support 911 emergency calling.<sup>35</sup>

## 2. Purple's Post-May 2014 911 Calling Deficiencies

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 capabilities for its web and wireless applications.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup> Purple later informed the Bureau that it corrected this problem effective July 9, 2014.<sup>39</sup>

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<sup>30</sup> *Purple 911 Withholding Order*, ¶¶ 9-10.

<sup>31</sup> 47 C.F.R. § 64.604(a)(3)(ii). See also cases cited in *Purple 911 Withholding Order*, ¶ 3, n. 5. 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.

<sup>32</sup> Purple Request for Review at 6-7.

<sup>33</sup> 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).

<sup>34</sup> *Emergency Call Handling Order*, 23 FCC Rcd at 5258, ¶ 4.

<sup>35</sup> *2000 TRS Order*, 15 FCC Rcd at 5183-84, ¶¶ 100-01; *2003 TRS Order*, 18 FCC Rcd at 12406-09, ¶¶ 40-46; *2004 TRS Order*, 19 FCC Rcd at 12502, ¶ 54 (2004). 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 relay service provider is supporting emergency calling.

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

<sup>37</sup> *Id.* at 3.

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

14. Subsequently, however, multiple test calls were attempted by registered users during September and October 2014, under FCC staff supervision, using Purple's web and wireless applications for accessing ClearCaptions IP CTS, to assess Purple's handling of 911 calls placed through those applications. Those test 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 letter to the Commission.<sup>40</sup> Instead, the test calls were routed to a police station or local 911 PSAP serving Purple's Rocklin, California headquarters. Based on the results of these recent Commission-supervised tests, we find that Purple's ClearCaptions IP CTS remained out of compliance with the 911 emergency calling requirements when accessed through web and wireless applications, at a minimum, through October 9, 2014.<sup>41</sup>

### **3. Certification Conditioned on Discontinuance of Fund-Supported IP CTS via Web and Wireless Applications**

15. In light of Purple's history of noncompliance with TRS 911 emergency calling requirements since the inception of its service, as well as the continuing uncertainty as to Purple's current ability to comply,<sup>42</sup> we are unable to determine that Purple's current practices with respect to its provision of IP CTS to users via its web and wireless-based applications meet or exceed the TRS minimum standards for handling emergency calls.<sup>43</sup> Therefore, as a condition of the grant of Purple's application to provide IP CTS, Purple is required to cease providing Fund-supported IP CTS via its web or wireless applications, effective 35 days after the date of this Public Notice. In other words, Purple may not request or receive Fund compensation for IP CTS provided via web or wireless applications. Further, to the extent that Purple continues to provide IP CTS via such applications without requesting compensation from the Fund, Purple must provide clear, unambiguous warnings to users that these applications may not be used for emergency calls.

16. These conditions may be removed if Purple demonstrates that it has adopted and is utilizing measures that are sufficient to ensure that its provision of IP CTS, for web and wireless-based IP CTS users, including acceptance and handling of emergency calls to 911,<sup>44</sup> meets or exceeds all TRS minimum standards and complies with all applicable Commission rules and orders. In this regard, recent

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<sup>39</sup> *Id.*

<sup>40</sup> 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).

<sup>41</sup> At a meeting with FCC staff on October 16, 2014, Purple representatives acknowledged that Purple had determined that at least one emergency call had been misrouted; the Company assumed that this call was a test call made by the Commission. They then explained the problem that Purple identified that it believes resulted in the misrouting of the call. Purple also claims that it has corrected the problem and that its own test calls, conducted on October 10, 2014, confirmed Purple's current ability to route 911 calls in compliance with the TRS rules.

<sup>42</sup> As noted in the preceding footnote, Purple claims it has identified and corrected a problem with its routing of emergency calls. Notwithstanding this claim, in light of the results of the Commission's repeated testing and Purple's history of noncompliance with the emergency calling rule, the Commission cannot determine at this time that Purple will consistently handle 911 calls in accordance with the Commission's rules.

<sup>43</sup> See 47 C.F.R. § 64.606(b)(2)(i).

<sup>44</sup> With respect to 911 calling, such demonstration must include, but not be limited to, a detailed description of Purple's proposed method of handling 911 calls, complete documentation of Purple's arrangements with its service provider for routing and transmitting 911 calls with appropriate location and callback information, and a detailed description and commitment to adhere to an effective program and protocol for periodic testing of Purple's emergency calling process.

tests have also raised questions about whether Purple's handling of incoming (non-emergency) calls placed to registered users with IP CTS web and wireless applications complies with TRS minimum standards. In October 2014, Bureau staff conducted tests to assess Purple's performance in handling incoming calls to a registered user who accesses IP CTS through Purple's web or wireless applications. In two out of the three test calls, the calls were not completed to the registered user's telephone more than two minutes after initiation of the call.<sup>45</sup> Therefore, Purple also must demonstrate, among other things, that it will accept and handle, in compliance with all applicable Commission rules and orders, including the TRS speed-of-answer rule,<sup>46</sup> incoming calls to registered users who access IP CTS through its web and wireless applications.

#### **B. Measures to Prevent Fund-Supported Service to Non-Registered and Non-Certified Users**

17. In the *IP CTS Reform Order*,<sup>47</sup> the Commission adopted a requirement that all IP CTS providers and applicants for certification to provide IP CTS must submit "a description of measures taken by such applicants or providers to ensure that they do not and will not request or collect payment from the TRS Fund for service to consumers who do not satisfy the registration and certification requirements in § 64.604(c)(9), and an explanation of how these measures provide such assurance."<sup>48</sup> To help ensure that we have all information needed to evaluate Purple's application for full certification, we require Purple, as an additional condition of this grant of certification, to submit the information required by section 64.606(a)(2)(ii)(F) within 30 days of the release of this Public Notice.

#### **IV. CONCLUSION**

18. We grant conditional certification to Purple subject to the specific conditions set forth herein. This conditional certification permits Purple to provide Fund-supported IP CTS through non-web, non-wireless applications, pending a final determination of Purple's qualifications.<sup>49</sup> To assist it in reaching a final determination, the Bureau may conduct one or more unannounced on-site inspections of Purple's facilities and request additional documentation relating to Purple's provision of IP CTS.

19. 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 Purple's application, including its supplemental filings and the additional information provided pursuant to this Public Notice, and on the veracity of the applicant's representations that it will provide service in compliance with all pertinent Commission requirements.

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<sup>45</sup> Purple instructs registered users to tell incoming callers to dial a toll-free number to reach the ClearCaptions call center and, when prompted, enter the registered user's phone number and press "#". After following this procedure, the test caller waited for 2 minutes 52 seconds and 11 minutes, respectively, before hearing any ringing or receiving any other indication that the call had been connected. During the waiting period, the caller intermittently heard a recorded voice saying: "Thanks, hold a moment while we connect your call."

<sup>46</sup> 47 C.F.R. § 64.604(b)(2).

<sup>47</sup> *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24, 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13420 (*IP CTS Reform Order*), rev'd in part, *Sorenson Communications Inc. and CaptionCall, LLC v. FCC*, 755 F.3d 702 (D.C. Cir. 2014).

<sup>48</sup> See 47 C.F.R. § 64.606(a)(2)(ii)(F). This provision became effective July 11, 2014. See 79 FR 40003 (July 11, 2014). Providers are also required to include an updated submission, if necessary to reflect changes, in their annual reports. 47 C.F.R. § 64.606(g)(1).

<sup>49</sup> As noted above, upon an appropriate demonstration of compliance, Purple may also be permitted to resume the provision of Fund-supported IP CTS through web and wireless applications.

20. Ultimate conversion to full certification will be granted if, based on on-site inspections and our review of documentation and other relevant information, the Commission finds that Purple is in compliance with the Commission's rules and orders and that Purple is qualified to receive compensation from the Fund for the provision of IP CTS. 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, determines 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, which may include the denial of Purple's application. In the event of such denial, Purple's conditional certification will automatically terminate thirty-five (35) days after such denial. If, however, the Commission grants full certification, Purple, like all iTRS providers, must continue to operate in compliance with all applicable Commission rules and orders.

21. Redacted copies of Purple's application and supplemental filings 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](http://www.bcpweb.com), or by calling 1-800-378-3160. Redacted copies of Purple's application and supplemental filings 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).

22. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This Public Notice can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

23. For further information, please contact Gregory Hlibok, Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 559-5158 (voice/videophone) or [Gregory.Hlibok@fcc.gov](mailto:Gregory.Hlibok@fcc.gov) (email).

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