

Interstate TRS Advisory Council
Meeting Minutes for April 7, 2015
Harrisburg, Pennsylvania

ATTENDEES

Mark Tauscher, Chair, TRS Providers
Ron Bibler, Vice Chair, TRS users
Celia Nogales, Secretary, Interstate Telecommunications Providers/Contributors
Andrew Phillips, TRS Users
Commissioner Sally Talberg, State Representative
Al Sonnenstrahl, Deaf Community
Jack Cassell, State Relay Administration
Jeremy Jack (for Jeff Rosen), TRS Providers
BJ Gallagher, Hearing/Speech Disability Community
Brenda Kelly-Frey, State Relay Administration
Phillip Hupf, Interstate Telecommunications Providers/Contributors

RLSA

Dave Rolka
Robert Loube

FCC

Greg Hlibok
Dave Schmidt

CONVENE

Chairman Tauscher greeted audience and called to order the spring meeting of the TRS Advisory Council at 9:07 a.m. He requested that council member introduce themselves. The Chair welcomed new member Sally Talberg and expressed thanks to Jack Cassell, attending his last meeting as a Council member.

SEPTEMBER 21, 2014 MINUTES

The Chair asked for any edits to the Fall meeting minutes and none were offered. Following a motion and second, the minutes from the Fall meeting in Portland, Maine, were approved.

SUBCOMMITTEE REPORTS

Tauscher and Nogales provided brief updates with regard to the two monthly Providers and Health of Fund conference calls. Tauscher stated that approximately 30 individuals participate on the Providers calls, that they continue to provide an invaluable opportunity for industry discussion on a variety of issues (such as CDR changes) and as the lead for these calls, he intends to continue them indefinitely. Nogales agreed and added that another benefit is that the Administrator shares information on recent FCC actions which could impact the TRS Fund.

FCC PRESENTATION

Chair introduced the first speaker on the agenda, Greg Hlibok, Chief of the FCC's Disability Rights Office for his presentation to the Council. Hlibok indicated earlier that he intended to focus on four topics:

- (1) IP Relay transition in November 2014
- (2) IP CTS registration process
- (3) VRS Reform implementation updates and
- (4) The National Deaf Blind Equipment Distribution Program (NDBEDP) permanent rules proceeding.

He, however, wanted to also provide an update on the FCC's new Disability Advisory Committee (DAC).

The DAC held its first meeting on March 17th which resulted in valuable discussion and action items. The four subcommittees of the DAC will focus on Video Programming Access, Telecommunications Relay Services and Equipment Distribution Program (including NDBEDP), Access to 9-1-1 Emergency Services and Access to Advanced Communications Services. Hlibok also highlighted that several iTRS Advisory Council members are on the DAC including Brenda Kelly-Frey, Ron Bibler, Al Sonnenstrahl and Andrew Phillips who is chairing the DAC. Because there will be frequent DAC subcommittee meetings taking place on a conference call, staff is exploring technologies that will allow DAC members to participate fully in a conference call. It is going to be a good testing experience for all to use such as multiple video screen environment with multiple signing participants integrated on the same screen. Hlibok then spoke about MITRE, a non-profit research and development firm that the Commission recently contracted for multiple projects relating to video access, including interoperability.

With respect to IP Relay, Hlibok reported that IP Relay has been stabilized although there is only one IP Relay provider in the market. He noted that when IP Relay providers leave the market the minutes leave with them for the most part. The Commission continues to put effort to insure a smooth transition to a single provider. Hlibok noted that Sprint has been working on making continuing changes with its software to make it more user-friendly for the deaf-blind consumers. Hlibok reported that the FCC has engaged in several on-site visits to relay call centers, including an IP Relay center overseas. It is expected that the FCC took on this inspection task as part of its obligation to protect the fund and prevent fraudulent call activity. Hlibok stressed that the FCC has never requested or attempted to inspect any specific call content. The DRO will continue to produce ASL videos and post them on its website so to ensure that the correct information is being disseminated to the public. Because the district court vacated the new rules adopted in the IP CTS Report and Order, the FCC is back to square one in exploring several possible options with respect to the structure and oversight responsibility of the program. It is the Commission's ultimate obligation in ensuring that the rapid growth in IP CTS usage wouldn't jeopardize the Fund. Thus, it must find a way to ensure that this service is available for those who truly need it.

An NPRM on IP Relay is close to being released and expectations are that the minutes will continue to decline gradually as individuals change their interpersonal communications norms,

potentially to text messaging options. The DRO is hosting a deaf-blind round table discussion meeting on May 29 to address accessibility issues.

With regard to the IP CTS registration process timeframe for former IP CTS users (prior to March 7, 2013) expired this past February. Recently CGB granted a waiver of the requirements for the last four digits of a registering user's social security number and offered multiple alternative options to fulfil the requirement for those who do not carry a SSN. On the progress with the VRS reform, Hlibok described a project that the FCC is working with MITRE. It is a direct video communication service which would allow people who are deaf to directly call businesses or government agencies using a general public phone access number rather than a separate videophone number. A router would identify the call as coming from a video phone and connect it appropriately. While the FCC as a dedicated support line it utilizes a separate video phone number and does not support the functional equivalency norm sought. Still, consumers have overwhelmingly supported the FCC sponsored line. This could also lead to increasing job opportunities for deaf people and the FCC is working with both the SBA and the SSA. A discussion followed on interoperability and included input from Dave Schmidt with the FCC's Office of Managing Director. He is managing the MITRE contract and shared that a "Center of Expertise" has been created. MITRE is investigating the possibility of using current or commercial off the shelf technologies to facilitate direct communications on a broader scale. The neutral platform project is currently on hold. An announcement shortly on the video access technology research procurement process is expected. Once a user registration database is established, we may consider allowing international travelers and hearing individuals who communicate in sign language to register for VRS and point-to-point video use (for hearing signers). The NDBEDP is in its third pilot year and it has clearly been a beneficial program. In order to strengthen the program as a whole, consumer advocates suggest funding for a train the trainer program. An NPRM will be coming out very shortly. The service of the newest IP CTS provider – Innocaption – is being suspended pending compliance with the 911 emergency calling. This is a non-negotiable requirement which applies to all providers, not just Innocaption. Dave Schmidt wanted to clarify that the Center of Expertise (COE) is not a FACA entity and while all providers have been asked for contact information for a potential member, only 2-4 will be selected, who will look at the challenges and make recommendations to MITRE. MITRE will then make recommendations to the Commission but the expectations are that a sitting member of the COE will communicate information to other non-member providers. With regard to testing calls for MITRE interoperability efforts, those are intended to be compensated and will have appropriate coding on the CDR. Jack suggested MITRE work closely with the SIPP interoperability forum and Hlibok agreed that was a good suggestion. Sonnenstrahl inquired about the transition of a 911 VRS call to VRI (video remote interpreting) status and Hlibok responded this could be an issue for a DAC subcommittee and would consider starting a dialogue with the smaller VRS providers on VRI cost issues. Cassell requested additional information on VRS speed of answer and quality of service issues. Hlibok remarked that a recent Federal District Court had ruled in support of the VRS Reform Order with the exception of the speed of answer requirement. He also that a petition had been filed recently by all six VRS providers proposing a freeze on rates and a modified speed of answer threshold – 80/45 – in addition to permit skills-based routing. Tauscher commented that he saw a benefit for the existence of the Advisory Council and the DAC and that while the purpose of the Advisory Council in 1993 had changed significantly, the lack of access to cost data would continue to

hamper its usefulness. Sonnenstrahl and Hlibok exchanged points on the difficulty of following the FCC rules and how they apply, or not, to the multiple services. Tauscher encouraged consideration of separating the rules to apply to specific service type. Hlibok indicated that input from commenters is critical but comments received in response to the rules reorganization proposal were have few and largely unhelpful.

He also clarified that three NPRMs are coming out in the next few months:

- (1) NDBEDP
- (2) IP Relay and
- (3) IP CTS.

Gallagher asked for additional information on national outreach for iTRS. Hlibok replied that implementation of a national outreach program is covered under the 2013 VRS Reform Order which would undergo a procurement process. Rolka commented that the charter of the Advisory Council calls for it to provide advice to the administrator in advance of making recommendation to the FCC about reimbursement rates, the fund size and the contribution factor. He asked if it was within the scope of responsibility of the council to weigh in on streamlining or clarifying rules and regulations and Hlibok responded it was still possible to file an ex parte.

ADMINISTRATOR'S REPORT

Rolka stated he had received a letter from Dr. Bob Siegelman requesting that an RFP be issued to conduct outreach for speech to speech services and that preference be given to consumer organizations to conduct the outreach. He introduced Bob Loube who would take the lead with the power point document and deliver the 2015-2016 TRS Filing presentation. Loube highlighted that a difference between his presentation on fund requirements and the Rolka presentation on budget is that the former is based on the tariff year, July 1 through June 30th, while the latter includes a two month lag due to the current payment process. He started with a review of the MARS-based rate calculation that results in rates for traditional TTY at \$2.29, the STS outreach additive at \$1.13 for a rate of \$3.42 and CTS (which will also apply to IP CTS) at \$1.88. Certain states -- Michigan, Virginia, Maine and the Virgin islands -- are not included, explaining that Michigan, for example, combines CTS and TRS which he cannot separate, so that state data is excluded. In comparing the 2014 and 2015 results it is clear that IP CTS minutes are growing substantially. The fund requirement of IP CTS grew from \$238M to \$382M and that's where the growth is seen. The other services are either declining or growing very slowly so change in the fund requirement from those is minimal. The big change is driven by IP CTS. Jack commented that there is a concern with regard to STS outreach and that the responsibility plus funding should be allocated to a non-profit organization rather than the providers who market rather than perform outreach. Loube indicated this issue would not impact the Administrators recommendation but perhaps the Council could file an ex parte as suggested by FCC staff. Loube reviewed charts depicting service trends and a general discussion followed with regard to his cost charts. Rolka stated that specific to CTS, the rate is from the MARS calculation and applies to IP CTS and that will continue until the rules change. The chart shows that the resulting number, based on the rules, is not reflective of the company's costs. A similar exercise was complete for VRS. Bibler asked if the cost of compliance is captured and the RL response is that it could be in the indirect, other or in other categories -- such as additional personnel. The MARS formula does produce rates that may not be reflective of costs as

displayed in a Loubé chart. A discussion on the return on investment (11.25%) followed with Loubé commenting that the telephone service market is capital intensive whereas the TRS market is labor intensive which explains the difference. Loubé's VRS charts show the costs are trending downward and could be below \$3.00/minute by 2016 with the first half of the tariff year projected revenues at \$287M and the second at \$281M. Rolka reviewed the FCC's current glidepath with rate changes every six months for a four year period. And since this was action by the full Commission, the Consumer and Governmental Affairs Bureau cannot modify this rule under delegated authority. Cost data is collected and average rates are calculated but there are cost differences between the larger and smaller service providers and there are cost differences between the established service providers and newer entrants to the market. Rolka then yielded time for a VRS providers proposal presentation. Jeremy Jack distributed a document created by the VRS providers in consultation with consumers and with the registry of interpreters for the deaf. The proposal requests rate stabilization and proposes a new speed of answer requirement including a revised penalty structure for failures in meeting the requirement. It also proposes a skills-based routing trial and encourages the use of deaf interpreters. He outlined a process where consumers, who actually use the service, create the service structure and the interpreters develop standard practices to be shared with the DAC but these efforts begin first with the stabilization of existing rates. A general discussion with regard to the quality of the service and the quality of interpreters followed. Sonnenstrahl commented that while he agreed with the aim of the proposal, he wondered if the rate discussion was premature. Talberg inquired about FCC findings in July of 2013 that the VRS rates were substantially over-recovering. Rolka responded that the structure and rates were established based on data at the time and that the smallest providers now offering services were not really represented in the data in the Commission's hands when the decision was made. Bibler questioned the accuracy of the VRS costs and Loubé responded the data collected and submitted by the providers is bound by the FCC's determination of what is a legitimate cost – although he continues to collect outreach data. The big dollar difference between the costs the providers claim the FCC does not allow is interest. The FCC asserts the providers took on debt not associated with the provision of the service. Loubé added that on average, the costs of the three small providers is higher than the costs of the three large providers which is acknowledged with a tiering structure. Jack stated RL is calculating the rate based on allowable costs and not total actual costs. He added that in the last five years the 3rd tier has been cut by 30%. He also fears a parallel with the IP Relay market. Jack proposed that the Council recommend to the Fund Administrator that its recommendation to the FCC include the concept of speed of answer, skills based routing, use of CDIs and immediate VRS rate stabilization. The motion was seconded. Rolka was asked his opinion and he commented that based on the data reviewed, there does appear to be a mismatch between the pricing and the current tier structure. He added that the issue is what accommodation to make for new entrants in order to avoid a potential reduction in the number of service providers. He also reviewed the projected rates for the various tiers – tier 1 from \$5.29 to \$5.06, tier 2 doesn't change and tier 3 from \$4.25 to \$4.06. Nogales asked for confirmation of a \$.47 decrease for tier 1 (to \$4.82) for the second half of the tariff year and Loubé confirmed. A vote on the motion was taken and it passed 7-2 with 1 abstention.

Rolka then reviewed a second financial document with the Council. He indicated that the next USAC update should be received 4/25/15 with the data from the most current 499A filings used to calculate the contributions factor to recommend to the FCC next month. Rolka repeated his

concern that USAC number continues to decline gradually which impacts the contribution factor by pushing it up. He also (1) requested specific feedback from the Council with regard to including a two months average worth of distribution to the budget, estimated at \$1.6M, (2) highlighted the VRS rates reflected in the document, which are inconsistent with a vote taken by the Council earlier, (3) pointed to the continuation of the funding for the NDBEDP even though there is no specific directive from the FCC as to its future status, (4) changes to the IP Relay distribution due to a Sprint relief filing including the establishment of a second tier (+300,000 minutes receives \$1.67/minute but rate expires next month) otherwise the rate is \$1.37. However, based on existing rules, the IP Relay rate would decrease to \$1.03 (down from \$1.37) due to the mandated price cap formula. He recommends rate stabilization at the \$1.37 rate while the sole remaining service provider gathers additional cost information and asks for feedback from the Advisory Council. Ultimately, the contributions factor increases to .016 from .012 with a budget of just over one billion dollars. Last year the budgetary reserve was projected to be around \$130M but is likely to be closer to \$100M. He also clarified that RL would be gathering some additional information with regard to the costs of VRS service providers and also from the IP Relay provider. Loubé added that RL has actual cost data for the calendar year 2014 and some projected cost data for calendar 2015 but now seeks actual cost data for the 2015. RL would be in a position to report back at the September meeting. Sonnenstrahl moved that the Council accept the RL recommendation on rate stabilization which was seconded and approved by a 10-0 vote. Rolka asked if the Council had a recommendation with regard to Speech to Speech and HUPF recommended the letter received be forwarded to the FCC. Asked directly by Nogales if the Fund Administrator had the authority to issue an RFP, as requested in the Siegelman letter, Rolka responded that he has latitude under his contract with regard to legal representation or conducting audits. It is with the scope of the audits that some flexibility exists to propose a specific activity. Phillips moved that RL propose to include quality of service of Relay Services in its audit plan submission to the FCC. The motion was seconded and carried on a 10-0 vote by the Council.

NEW BUSINESS

Tauscher asked Bibler to take the lead on identifying the stakeholder presentation for the next council meeting. It was acknowledged that it may be challenging to schedule due to the timing and location of the Fall meeting but since it is being held before NASRA, it may be possible to have participation from state relay administrators who also run equipment distribution programs. Rolka expressed thanks to the representatives from Hamilton for the IP CTS presentation. Bibler suggested a VRS presentation and Gallagher suggested a panel of interpreters and a discussion of work-related issues. Tauscher reminded the members that there are two vacancies on the Council but that both Sherri Collins and Jack Cassell had offered the names of potential replacements for their slots. Tauscher also added that the Council bylaws have not been reviewed since 2011. He plans on consulting with Nogales on the impact of potential changes that may be needed and will solicit comments and feedback from all members.

PUBLIC COMMENT

Christopher Wright, representing Sorenson, stated that the reason it ceased its IP Relay business was because of the rate cut and for no other reason. He stated that IP CTS is likely to continue growing in popularity as the baby boomer generation ages and just as the need for handicap parking spaces is likely to increase, you can't just cut people off. With regard to VRS, the fund administrator's job is to count allowable costs but recognize there are other actual costs that don't count such as interest, tax, research and development, equipment, etc. These are real costs that have been audited. The DC Circuit upheld the main part of the rate reduction last year but it's important to note that Judge Ginsberg could set a rate that could pass judicial review standards and put VRS providers out of business leaving the service in the hands of the telecommunications carriers.

John Goodman, representing Purple, wanted to clarify that Purple exited the IP Relay market not because of the rate but rather the interruption in funding by the FCC and the failure to receive any substantive response from the FCC for the lack of payment for the services provided. He also respectfully disagreed with statements made earlier by Greg Hlibok (FCC) with regard to call content. As far as the FCC's position – it does not match with the facts that we experienced as a provider from whom call content was being requested. Finally, with respect to VRS rates and earlier comments on the 11.25% rate of return. Not all the costs incurred in the operation of a VRS business are allowable and there is a gap between what they say is cost and the costs that have actually been incurred. The 11.25% return is not on all the costs incurred – only a small percentage of the costs – and none on labor. He would urge the Council to push and urge the Fund Administrator to advocate to the FCC for a fundamental change in the calculation of the rate. He appreciates the support for the rate freeze but the flawed methodology used was not designed to apply to a labor intensive industry. Finally, the issues of service quality cannot be viewed in a vacuum separate from rates. Speed of Answer, the quality of interpreting, R&D, the ability to attract investment capital and provide consumers with better service, all are at the discretion of the Commission because they set the rates.

Everett Puckett, representing CAAG, expressed his appreciation for the support of the Council with regard to the joint VRS providers filing. It will allow the small providers to stay in and potentially encourage other providers to enter the VRS market. Deaf people drive VRS but interpreters drive the largest costs. Top quality interpreters are leaving as companies like CAAG are forced to freeze wages because of the declining reimbursement rate.

CLOSING COMMENTS/ADJOURNMENT

In closing comments, Rolka encouraged the Council, perhaps by establishment of a committee or sub-group, to consider developing a proposal or recommendation for changes to the existing mechanisms for the development of rates. He reported that the RL contract was extended and that in July it will enter into the 5th and final year. The FCC will have to over the next 14-15 months evaluate and determine how it wishes to proceed with respect to the administration of the TRS Fund. The purpose of the Council is to provide advice and direction to the Administrator. He thanked the services providers for so quickly providing the information necessary to enable the annual filing with the FCC next month. Tauscher remarked that the Health of Fund calls

would be used to continue the dialogue. Nogales reported that all council members would be added to the distribution lists for both the Health of Fund and the Providers monthly calls.

The meeting was concluded and adjourned at 2:45 p.m.