

SECTION 305 NGECE Executive Board

MINUTES

FEBRUARY 14,
2012

NOON EASTERN

CONFERENCE CALL

FACILITATOR	<i>Bill Bronte, Chair, S305 NGECE Executive Board</i>
ATTENDEES	Board Members: <i>Bill Bronte, Mario Bergeron, Alan Ware, DJ Stadtler, Paul Nissenbaum, Eric Curtit, Kevin Lawson, George Weber, Ray Hessinger, Pat Simmons, John Sibold, Ron Adams, Joe Kyle, (Ron Adams as proxy for Tammy Nicholson)</i> Support Staff and guests: <i>Steve Hewitt, Leo Penne, David Ewing, Chad Edison, Melissa Shurland, Dale Engelhardt, Nico Lindenau, Ryan Swick, Ken Uznanski, Dave Warner, Jeff Schultz, Larry Salci, Gordon Hutchinson, Gary Talbot, Stan Hunter, Ken Johnson, Bob Ashby, Richard (OST), Brenda Martin, Jeff Schultz</i>
ABSENTEES	Board Members: <i>Tammy Nicholson – as noted represented, via proxy, by Ron Adams,</i> Support Staff/Observers: <i>Whitney Phend, Drew Galloway, Robin McCarthy, Shayne Gill, Andy House, Tim Hoeffner, John Tunna, Kevin Kesler, Jeff Gordon, Dave Warner, Nancy Greene</i>

DECISIONS MADE

Welcome – Bill Bronte, Chair:

Bill welcomed all to today's special call of the Executive Board and asked Steve Hewitt to call the roll.

Roll Call – Steve Hewitt, Manager, S305 NGECE Support Services:

Steve Hewitt took the roll of Board members and support staff. After calling the roll, it was determined that a quorum was present.

Approval of the Minutes of the February 7, 2012 Executive Board Conference Call– Bill Bronte:

On a motion by Ray Hessinger, NYSDOT, and a second by Alan Ware, Georgia DOT, the Minutes from the February 7, 2012 Executive Board call were approved without objection.

Agenda Items

Discussion: Accessibility recommendations – Bob Ashby, OST:

Bob Ashby from the USDOT Office of the Secretary joined the call to help clarify some of the issues raised in regards to accessibility.

He was, primarily, asked to clarify two key areas of concern:

1. If changes to accessibility standards are made above the minimum required standards, will letters of equivalent facilitation be required?
2. Clarify whether or not there is a concern that there will be lawsuits due to making accessibility changes without rulemaking, the result of which will lead to mixed equipment and possible circumstances in which some cars will have the added lift capacity and dimensions and some will not, etc.

In responding to the first question, Mr. Ashby stated, "ADA standards are minimum standards" in the case of lift capacity, for example, the minimum requirement is at least 600 lbs passenger and wheel chair capacity. The suggested changes will exceed that minimum. Exceeding the minimum "is compliant, and no letter is necessary if meeting or exceeding requirements", only if it fails to meet the minimum standards would a letter be required. He added, "a letter of equivalent facilitation is superfluous."

In regards to the civil rights/lawsuit question, Mr. Ashby responded, "Anyone can sue anyone, at any time, but the likelihood of successful litigation is not strong." ADA requirements "must meet standards. It is common place in other areas, such as transit, for a variety of chairing capacities and vehicles." There are many differences among different pieces of equipment and "...I do not expect this to be a big source of litigation."

Bill Bronte raised the issue, as it relates to California, "In California challenges of accessibility has become a

cottage industry. The thought has been, even if I don't win, I bring an action and someone settles rather than take it to court for action." Bill also noted "a concern for us is that of unstaffed stations". If a passenger gets off one train and tries to get on another which does not have the same capacity, the passenger could be stranded until a train with the capacity comes along.

Mr. Ashby replied, "In reality this is probably a low incidence event. Failing to meet low requirements is where liability comes in – and that doesn't really exist." He added, "Lift technology, even though a lift is weighted at 600lbs in order to meet the requirements; it has to have a safe capacity of 2 or 3 times that amount. There is a judgment factor...to say one should not provide equipment exceeding compliance because of a hypothetical event strikes me as poor judgment."

After some further discussion, Mr. Ashby again elaborated, "We have a lot of experience from transit having a great variety of equipment and no court cases or complaints, that I am aware of, have occurred because some of the equipment exceeds compliance."

At this point, Ken Johnson, California ADA, weighed in and said that he had been listening. Addressing Bob Ashby, Ken said, "all you have said is correct. There is no liability issue for expanding compliance. It will not happen. I see no liability consequences for Caltrans."

Bill Bronte responded, "this resolves our internal concerns, then. Thanks for coming on and bringing it forward."

Mr. Johnson added, "I have never known a successful suit for making better than minimum standards – don't let things like that hold you back."

At this point, Bill Bronte turned to Mario Bergeron, Chair of the Technical subcommittee and asked Mario to address the issues that the Board needs to take up in this area to come to a resolution.

Mario explained that Revision C "will include the greater standards", as recommended. "We in the Technical subcommittee brought a final draft of the recommendations to the Executive Board last week, to be considered. FRA was to take the recommendations and circle back with stakeholders (Amtrak, OST, Civil Rights, Access Board) to be sure the recommendations are ok". FRA was to then follow up with the Executive Board and provide the feedback they received from their discussions with the stakeholders, and recommend Board action. The Board was then to follow up with the approval of the revised requirements document, which was also submitted to the Board last week, and included changes consistent with the accessibility recommendations. The Board, if adopting the revised requirements document, would then return it to the Technical subcommittee, which would complete the DCRs for Revision C.

"The purpose of this special call of the Executive Board was to ensure that we are on the right track."

Melissa Shurland, FRA, reported that the recommendations were sent around to OST, the Access Board, Amtrak and FRA and "within FRA and DOT, the Access Board, and Amtrak, we are all fine with the recommendations put into the documents submitted to the Executive Board".

Melissa added that an additional issue is "communications, but it is to be a later discussion...everyone is on board with the dimensional changes" as proposed.

Gary Talbot, Amtrak, raised the issue of dual mode communications, "I thought we were to provide guidance for this procurement on communications –No?"

Melissa responded, "we can't do it for this procurement because we do not have the information we need yet. Until we know what Amtrak's communications system capability is we cannot do it. We cannot see if it is compatible with the bi-level ... The systems are not yet complete...so it is not safe to make a recommendation at this time for the California procurement."

Bill Bronte added, "right now, we simply do not know."

Stan Hunter clarified that "it will have placeholder language for provisions for Wi-Fi – for an on-board system...to be added through change orders when it is determined." He added, "We do not know who will be the Wi-Fi provider at this point."

Richard (last name not given) from OST, said that we must "ensure that we come back to this after this procurement..." He recommended that the AWG continues to move forward with dual mode communications requirements to ensure that the blind and deaf are able to communicate or be communicated with. An example cited was that "we must ensure that the blind and deaf can know if there is an evacuation taking place. We (OST) need to see that communication is addressed."

Brenda Martin, USDOT and FRA's Counsel's Office noted that "there are a whole host of issues out there that still need to be addressed" and "we will need to know that the FRA ensures" that these will be addressed.

Paul Nissenbaum, FRA, responded "the Board, today, is charged with voting on the recommendations put forward with comments from the stakeholders. It seems like maybe the AWG has not worked through the communications piece yet and it is not done. It seems to make sense to do it on a separate track – ok Richard?" Paul continued, "we have the Board vote on the recommendations from the working group to approve the new accessibility guidelines exceeding the minimum."

Richard responded, "ok, but it (the communications piece) needs to be followed up on."

After some discussion on what action was needed, it was clarified that the necessary Board action was to approve the revised requirements document which includes the AWG recommendations as submitted prior to the February 7, 2012 Executive Board call. Once the requirements document has been adopted, as revised, it is sent back to the Technical subcommittee, and serves as the subcommittee's mandate from the Board. The subcommittee can then make the recommended AWG changes through the DCR process consistent with the requirements document, and include them in Revision C of the Bi-Level car specification.

Board consideration for approval of the revised Requirements document with recommended accessibility changes – Bill Bronte:

DJ Stadler, Amtrak offered a motion to adopt the requirements document as revised and submitted to the Board just prior to its February 7, 2012 conference call. Al Ware, Georgia DOT, seconded the motion and Steve Hewitt was asked to poll the voting members of the Board:

Bill Bronte, Caltrans, Aye
Mario Bergeron, Amtrak, Aye
DJ Stadler, Amtrak, Aye
Alan Ware, Georgia DOT, Aye
Paul Nissenbaum, FRA, Aye
Eric Curtit, Missouri DOT, Aye
Kevin Lawson, Louisiana DOT, Aye
George Weber, Illinois DOT, Aye
Ray Hessinger, NYSDOT, Aye
Pat Simmons, NCDOT, Aye
Joe Kyle, Oklahoma DOT, Aye
John Sibold, Washington State DOT, Aye

With all members present voting in favor, the Chair determined that consensus had been achieved and the motion had carried.

Note: Joining the call after the vote – Ron Adams, Wisconsin DOT asked to add his vote and that of Tammy Nicholson, Iowa DOT, for whom he had a proxy. Ron voted in favor of the motion for Wisconsin and Iowa.

Review: NGE Current Expenses - Ken Uznanski:

Ken Uznanski reported that he had not completed compiling the current budget year's expenses to date, primarily due to having not received all of AASHTO's information. He will continue to work with AASHTO and get a complete compilation put together.

Review: NGE Budget and Scope of Work – 4-1-2012 thru 3-31-2013 – Ken Uznanski:

Ken reported that he had provided a Scope of Work and a budget for the 4-1-2012 through 3-31-2013 grant revision. He had compiled information received from all of the various subcommittees, task forces, AASHTO (for support services) and the Executive Board. He recognized that there is incomplete information on the Joint Procurement Task force budget and narrative, and sought further input. He also noted that the newly formed Structure and Finance Task Force information was taken from the outline document, and the draft Scope of Work proposal prepared by FRA to fill in the narrative portion of its scope.

Ken said that he had had discussions with Chad Edison, FRA, and understood that they want to make some edits.

Ken also noted that there were 2 placeholder items in the Executive Board budget for consulting, but they could be "rolled into the contingency item". If there is a specific purpose for the placeholders, he will need language to add to the narrative document.

Ken briefly summarized the inputs received from the Technical subcommittee, the Finance subcommittee and the Administrative task force, as well as the Structure and Finance task force. He also noted that the project manager position, as agreed, was now described/ defined more clearly and included deliverables.

Paul Nissenbaum, FRA, made a "general observation". He said "there appears to be quite a bit of overlap in regard to the proposed Scope of Work". He asked, "Is there a clear role" for each of the subcommittees or task forces, "or is it committee proliferation? Can some be consolidated?" He continued, "It is not clear from the Scope of Work..."

Ken Uznanski replied that "I understand the concerns. Chad (Edison) and I have gone through it in detail and I have identified in the budget where they go" Ken agreed he is "to try to make it real clear in the work plan" narrative.

Paul Nissenbaum asked "Is there a logic as to how we have identified the scope" for each of the subcommittees and task forces? "Clarity of purpose is needed". There also need to be "ownership by the Committee" rather than Amtrak. The NGEC, itself, needs to take ownership as a Committee.

Bill Bronte, agreed with Paul's observations about the lack of clarity of areas of responsibility among the different subcommittees and task forces. "I need to see more clearly, especially between the Finance subcommittee and the Structure and Finance task force".

Paul added, "we need to look at the Finance subcommittee and possibly reduce the number of calls it holds" which would free up time for those involved.

Bill Bronte added, "we are designing the plane without instruments. We need to breathe and think..."

David Ewing interjected "we reached the point where the SFTF plan and scope has been fleshed out now. For clarity we can take a look at the interlocking nature of the SFTF and the Administrative task force and the Finance subcommittee." He added "that process is underway within the groups." He reminded the members that the Finance subcommittee meets this Wednesday and the Administrative task force meets this Friday. These issues can be addressed as part of those agendas.

Paul stated that "these comments are helpful, but we need some conversations rather than just revising the text." He suggested a small working group "may make some sense".

Bill asked, "Now, how do we move it forward?"

David Ewing suggested that the Administrative task force, and the Finance subcommittee, both of which meet this week, should provide feedback to Ken Uznanski.

Ken reminded those on the call that the intent was to have this complete by 2-23-12 (The Annual Meeting) and asked "how do we package it all into something to be voted on?" The hope was that by the 23rd this would be a pro-forma discussion.

Bill Bronte replied "It does not appear as if it is going to be feasible to do by next Thursday. If that is the case, how do we move it forward?" He added "there will not be a vote next week."

Paul Nissenbaum responded "I agree. I think we need to have a caucus among the Board, but should make progress in the interim." He suggested, "pull it from the Annual Meeting agenda."

Bill Bronte asked "what is the drop dead date as far as completing the scope and budget for the grant revision?"

Paul agreed to follow up to see what the deadline is and, if there appears to be a problem with meeting that deadline, he will notify the Board right away.

Paul then suggested a three way call with DJ, Bill and Paul to have a "high level discussion – talk about high-level concepts" They would then bring the results of the discussion back to the Board on its next call which is scheduled for march 6, 2012.

Ultimately, it was agreed that Paul Nissenbaum, Bill Bronte and DJ Stadtler will try to schedule time to meet to discuss these things during the time that Bill is in Washington, DC next week for the SCORT and NGEC meetings. The group will then report back to the Board on March 6th. In the meantime, Paul Nissenbaum will check on the deadlines required for the grant agreement.

Other – All:

Steve Hewitt went over items in the Annual Meeting agenda that still needed to be clarified.

“Who will give the FRA overview report?” Answer – Kevin Kesler will give the report and Chad Edison will be there as well to assist with the report.

“Who will be designated as the FRA’s voting member for the Annual Meeting?” Paul responded that Chad Edison will be the voting member and asked if he needs to formalize that in writing. Steve said he thought it could be formalized by a simple email that he would keep on file, and that he (Steve) would have it in the minutes of this meeting as well.

It was also agreed that, for now, an agenda item for Accessibility will remain, but that could change since the pressing issues were resolved today.

There will be an agenda item to report on the NIST/MEP forums just completed in Sacramento and Chicago. Kevin Kesler will be listed, for now, as the agenda item owner.

One open item that still needs to be resolved is who will give the Amtrak overview report. Steve will check with DJ Stadtler on that.

With no other business to come before the Board today, the February 14, 2012 Executive Board call adjourned at approximately 2:20pm Eastern.

The next meeting is the NGENC Annual Meeting – February 23, 2012

The next Executive Board Conference call is March 6, 2012 11:30 am Eastern

Decisions/Action Items – 2-14-12 Executive Board Conference Call

Members agreed that a process needs to be developed to track and monitor contracts. Outlook and Microsoft Project were mentioned as possible tools to utilize for tracking, but nothing definite was decided at this point. This will be an agenda item for the Board to consider at some point. Most likely, a recommendation should come through the Administrative Task Force and the Finance subcommittee. (**carryover item**)

By February 23, 2012, The Administrative task force will have a draft proposal for handling outside requests for meeting with the Executive Board and for handling responses to letters. Jeff Gordon is drafting a strawman process for discussion on the next task force call – February 17, 2012. (**carryover**)

Bill Bronte will contact Tim Hoeffner of Michigan DOT to see if he has interest in becoming an NGEC Executive Board member, providing another state can be also found and added to keep the number of state members odd for voting purposes. (**carryover item**)

DJ Stadler will identify who will provide the Amtrak overview report at the February 23, 2012 Annual Meeting. (**Carryover item**)

Paul Nissenbaum will check on the status of FRA's perspective on NGEC members engaging with the press at the Annual meeting. (**Carryover item**)

The revised requirements document for the bi-level car was adopted as submitted, and will be returned to the Technical subcommittee. The subcommittee will address the changes, as identified, through the DCR process and include them in Revision C.

The Accessibility Working Group will continue to work on recommendations for other accessibility guidelines including dual mode communications.

Ken Uznanski will continue to work with AASHTO to complete a compilation of the current grant agreement expenditures to date.

The budget and scope of work for 4-1-2012 through 3-31-2013 needs further work and will not be included as an agenda item for the Annual Meeting

Paul Nissenbaum, DJ Stadler and Bill Bronte will schedule a meeting during the week of February 20, 2012 while Bill Bronte is in DC for SCORT and the NGEC meetings. They will report back on their discussion on the Board call on March 6, 2012.

Paul Nissenbaum will find out what the deadline is for completing the scope of work and budget for the grant agreement revision.

Steve Hewitt will send out a revised DRAFT agenda for the Annual Meeting based on today's discussions.

ATTACHMENTS



**S305 NGEC Executive Board "Special" Conference Call
February 14, 2012
1:00 – 2:00pm Eastern
Call in number: 866 299 7945 passcode: 1601544#**

Agenda

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| 1. Open the Meeting | Bill Bronte |
| 2. Roll Call to confirm the presence of a quorum | Steve Hewitt |
| 3. Approval of Minutes from February 7, 2012 | Bill Bronte |
| 4. Discussion: Accessibility recommendations | Bob Ashby, OST |
| 5. Board consideration: accessibility changes-Req. document changes | Bill Bronte |
| 6. Review: Current expenses – status of current budget | Ken Uznanski |
| 7. Review: NGEC Budget and Work Plans for 4-1-12 through 3-31-13 | Ken Uznanski |
| 8. Other: | All |