

Telecommunication Carriers' Forum
Submission on Telecommunications
Relay Service Stakeholder Review
Draft Report

30 June 2006

**SUBMISSION ON THE TELECOMMUNICATIONS RELAY SERVICE STAKEHOLDER REVIEW
DRAFT REPORT**

30 June 2006

To:

The Manager
Information Technology and Telecommunications Policy
Ministry of Economic Development
PO Box 1473
Wellington
RelayService@med.govt.nz

This submission is made on behalf of:

The Telecommunications Carriers' Forum ("TCF").

Any enquiries with respect to the attached submissions should be made in the first instance to Susan Wells, Forum Administrator, Telecommunications Carriers' Forum (Organisers New Zealand Limited), 09 414 5552 or via email at susan.wells@organisers.co.nz.

No part of this submission is confidential and the TCF would be happy for it to be made publicly available.

Thank you for the opportunity to submit. The TCF would welcome the opportunity to discuss this submission.

SUBMISSIONS ON THE TELECOMMUNICATIONS RELAY SERVICE STAKEHOLDER REVIEW DRAFT REPORT

1. EXECUTIVE SUMMARY

- 1.1. The TCF supports the primary objectives of the NZTRS to meet the telephone communication needs of Deaf, hearing impaired and speech-impaired people. We appreciate that telecommunications connects those who might otherwise be excluded from community life.
- 1.2. This submission from the TCF follows from a submission made in March 2006 by the TSO Liable Persons as part of the Telecommunications Relay Service Stakeholder Review. That submission was made on behalf of Callplus NZ Ltd, Compass Communications Ltd, ihug Ltd, TeamTalk Ltd, Telecom NZ Ltd, TelstraClear Ltd, Vodafone NZ Ltd, WorldxChange Communications Ltd and Woosh Wireless.
- 1.3. It is pleasing to see that the Ministry of Economic Development's Telecommunications Relay Service Stakeholder Review Draft Report ("the Draft Report"), prepared by Ross Brereton Consulting endorses the recommendation made by the TSO Liable Persons (the parties responsible for funding the service) in the March 2006 submission that new relay services be made addenda to the TRS TSO Deed. We understand that the Speech to Speech trial, once confirmed as permanent, will be made an addendum.
- 1.4. The March 2006 TSO Liable Persons' submission proposed that a formalised consultation and forecasting process be put in place to notify the TSO Liable Carriers of any TRS developments and any associated financial and planning implications. Because in essence growth of the Relay Service is unconstrained, the lack of consultation with the TSO Liable Persons is a fundamental issue that needs to be addressed for greater transparency and ongoing goodwill between the TSO Liable Persons and other involved parties.
- 1.5. The Draft Report finds that sufficient opportunities exist for consultation and dismisses the request of the TSO Liable Persons for formalisation of this process. The TCF believes that the TSO Liable Persons' submission was well-founded and has not been treated with due gravity. The TCF asks that the MED implement a formalised consultation process with the TSO Liable Carriers for the addition of new services to the TRS TSO. We provide additional detail on this issue in section 2 of this submission.
- 1.6. In addition to this request, the TCF believes there needs to be greater transparency around the decisions to introduce new Relay Service products and services. The TCF would also like policy introduced to assess future Relay Service developments and whether they should be funded by TSO Liable Persons or by users.

2. GREATER CONSULTATION WITH TSO LIABLE PERSONS

- 2.1. The TSO Liable Persons are responsible for meeting costs incurred by the services covered by Clauses 3.1, 3.2 and 3.3 of the Deed, however, the Deed carries no explicit obligation to consult nor inform the TSO Liable Persons of any proposed additional services.
- 2.2. In our view this creates an environment of unconstrained development of the Relay Service which it would appear is without reference to any cost benefit analysis, potentially resulting in significant and ongoing TRS costs which may outweigh the benefit provided. This situation is not acceptable to the TCF. There is a definite case for greater accountability by those administering the TRS to the TSO Liable Persons. A formalised and meaningful consultation process should be implemented.
- 2.3. Recommendations made in the Draft Report and information in the accompanying Technology Changes report, leads the TCF to anticipate significant technological developments to the Relay Service in coming years. The Speech to Speech service for example will add \$150,000-200,000 in expense for the 2006/2007 year. Comments made in this submission and the previous March 2006 TSO Liable Persons' submissions reflect a concern at the potential for unfettered growth.
- 2.4. The Draft Report says that there are sufficient mechanisms in place to create consultation opportunities for TSO Liable Persons. The avenues listed in the Draft Report are insufficient, ad hoc and by no means a best practice model for effective consultation for those funding the service; sporadic notification of TRS usage and forecasts is token consultation and to date the NZRAG has not been an appropriate forum for the TCF and the MED to carry out the kind of consultative discussions the TCF believes are necessary for the future of involved parties.
- 2.5. The TCF and the Government have already had extensive correspondence on the need for consultation in introducing further TSOs. The former Minister of Communications, Hon Paul Swain, indicated that if he "were to consider further TSOs, the Government would, as part of the process:
 - a) issue a discussion paper to canvass the issues involved;
 - b) consider submissions and make a decision on whether there should be a TSO and what the TSO should broadly provide; and

- c) provide a process whereby liable persons and other relevant parties could provide comment on the technical or implementation related issues of establishing a TSO.”¹

2.6. The TCF considers that a similar process should be followed for the addition of new services to the TRS. This would ensure a consultation process consistent with the principles for consultation established by the Court of Appeal in the case of *Wellington Airport Ltd v Air New Zealand*. The Court held that consultation is more than mere prior notification. To quote Mackay J:

“If the party having the power to make a decision after consultation holds meetings with the parties it is required to consult, provides those parties with relevant information and with such further information as they request, enters the meetings with an open mind, takes due notice of what is said, and waits until they have had their say before making a decision, then the decision is properly described as having been made after consultation [emphasis added].”²

3. INCREASED RIGOUR AROUND INTRODUCING ADDITIONAL PRODUCTS AND SERVICES

- 3.1. The TCF would expect that any proposed new TRS service would be subject to the same level of scrutiny as if the Government were paying for the service itself.
- 3.2. Due to the lack of transparency around decisions to implement additional Relay Service developments, it is difficult for TSO Liable Persons to ascertain whether the same rigour is applied as would be expected for a totally Government funded initiative. The TCF believes there should be a cost benefit analysis undertaken for each new proposed service or a modification to an existing service and the TSO Liable Persons should have the opportunity to review and comment on these.

4. FUNDING CORE RELAY SERVICE FUNCTIONS vs VAULE ADDED SERVICES

- 4.1. The TCF appreciates that because telecommunications is a fast moving sector that new products and services will continue to be considered as ways to improve the Relay Service user experience. However, the TCF does not see that our financial support of the Relay Service is an “open chequebook”. Measures should be introduced to assess what core operations TSO Liable Persons should be expected to fund.

¹ Hon Paul Swain, Minister of Communications, Letter to Malcolm Alexander, Chair, Telecommunications Carriers’ Forum, 20 June 2003.

² *Wellington International Airport Ltd v Air New Zealand*, [1993] 1 NZLR 671.

- 4.2. The TCF believes that new Relay Service products and services should be evaluated by the MED as either core relay services or value added services. It is acceptable to the TCF for core relay services to be funded through the TRS TSO Deed but that services deemed to be value added should be funded by the users. This user pays concept is not uncommon amongst relay services in other countries and we are encouraged that the Draft Report notes that the Video Relay service is not offered free of charge to users in other countries.
- 4.3. The Local Residential Service TSO identifies particular basic services that are funded by the TSO. If customers wish to purchase value-added services on top of the basic TSO services, that is for them to decide and they pay the full value of those services. The TRS TSO should be no different.
- 4.4. Policy should be developed to guide categorisation of core and value-added services and provide clarity on who pays for new products and services. This would provide a much needed transparency to the existing Relay Service development process.

5. **RECOMMENDATIONS**

- 5.1 The TCF proposes that the following steps be undertaken to build transparency, ongoing understanding and goodwill between the TSO Liable Persons and other involved parties:
 - a) A process is implemented whereby the MED provides TSO Liable Persons one year notification of projected technology developments, user forecasts, additions to the services offered under the NZTRS and any other information that may have financial and planning implications.
 - b) A cost benefit analysis is undertaken whenever a new service or an amendment to an existing service is proposed to ensure the benefits of the service outweigh the costs.
 - c) Policy should be introduced to specify what should be funded by TSO Liable Persons and what should be funded by the user. This policy should be used to assess each proposed new product or service. Decision processes should be transparent;
 - d) consultation on whether new services should be added to the existing service should include the following actions by MED:
 - (i) issue a discussion paper to canvass whether there is a need for additional services and whether these should be funded by the TRS TSO;

- (ii) consider submissions and make a decision on whether there should be additional TRS services and, if so, what these should be and whether they should be funded by the TRS TSO; and
- (iii) provide a process whereby liable persons and other relevant parties could provide comment on the technical or implementation related issues of introducing the new services.

6. SUMMARY OF SUBMISSION

6.1. In summary:

- a) The TCF supports the primary objectives of the NZTRS to meet the telephone communication needs of Deaf, hearing impaired and speech-impaired people. Telecommunications offer a powerful way to connect communities.
- b) In recognition of the open-ended nature of the TRS TSO Deed and in the interests of ongoing goodwill between TSO Liable Persons and NZTRS stakeholders, greater communication through meaningful consultation should be undertaken with the TSO Liable Persons before the introduction of additional NZTRS services.
- c) That action is taken to create greater transparency around the process of introducing new products and services and that this information is made available to the TCF.