The Commission convened via teleconference at 12:00 p.m., David Kladney, Subcommittee Chair, presiding.

PRESENT:

DAVID K Ladney, Commissioner
DEBO P. ADEGBILE, Commissioner
GAIL HERIOT, Commissioner

MAURO MORALES, Staff Director
MAUREEN RUDOLPH, General Counsel
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OPERATOR: Good day and welcome to the United States Commission on Civil Rights Commission telephonic meeting. At this time, it is now my pleasure to turn today's call over to Chair Kladney. Please go ahead, sir.

COMMISSIONER KLADENY: Thank you very much. This meeting of the subcommittee of the U.S. Commission on Civil Rights comes to order at 12:00 p.m. eastern time, actually 12:02 on December 20, 2019.

This subcommittee was approved to explore site visits for our subminimum wages project. This meeting takes place over the phone.

I'm Commissioner David Kladney. I was appointed by Chair Catherine Lhamon to chair this subcommittee. Also serving on the subcommittee are Commissioner Debo Adegbile, Commissioner Gail Heriot, and Commission Chair Catherine Lhamon.

I'd like to confirm that each of the commissioners on the subcommittee is on the line, so I'll call the roll. I would note that Chair Lhamon will not be joining us today. So, Commissioner Adegbile, are you here?
COMMISSIONER ADEGBILE: Here.

COMMISSIONER Kladney: Commissioner Heriot?

COMMISSIONER HERIOT: I'm here, but, you know, I object to calling this a subcommittee since the commission is a commission. This is actually a committee, not a subcommittee. I don't know how we got started with the tradition of calling things subcommittees.

COMMISSIONER Kladney: Perhaps you could educate me after the meeting.

COMMISSIONER HERIOT: Sorry, I can't help but have fun here.

COMMISSIONER Kladney: Yes, thank you. Thank you, Commissioner Heriot, and thank you all. Based on that, a quorum of the subcommittee is present. Is the court reporter present?

COURT REPORTER: Yes, sir.

COMMISSIONER Kladney: Thank you, and is the staff director present?

MR. MORALES: I am present.

COMMISSIONER Kladney: The meeting will now come to order.

I. APPROVAL OF AGENDA

COMMISSIONER Kladney: Is there a
motion to approve the agenda for this business meeting?

COMMISSIONER ADEGBILE: So moved, Commissioner Adegbile.

COMMISSIONER HERIOT: Second.

COMMISSIONER KLANDNEY: Thank you. Are there any amendments to our agenda? If there are no amendments, let's vote to approve the agenda. All those in favor, say, "Aye."

(Chorus of aye.)

COMMISSIONER KLANDNEY: Commissioner Heriot? Okay, two vote aye. Hopefully Commissioner Heriot is with us.

COMMISSIONER HERIOT: I'm here.

COMMISSIONER KLANDNEY: Did you vote?

COMMISSIONER HERIOT: No, I did not. I abstain. I haven't seen the agenda.

COMMISSIONER KLANDNEY: Oh, okay, the motion passes, two in favor, no opposed, and one abstained.

The agenda pretty much calls for the planning of the site visits to inform the Commission's project on subminimum wages paid under Section 14(c) of the Fair Labor Standards Act to people with disabilities. That is the only item on
the agenda for discussion and vote, is the proposed framework to conduct site visits on our minimum wages project.

To open our discussion, I move the Commission adopt the proposed framework circulated by my special assistant, Amy Royce, on Wednesday, December 18th. Do I have a second for this motion?

COMMISSIONER ADEGBILE: Second, Commissioner Adegbile seconds.

COMMISSIONER Kladney: Thank you.

II. SUBCOMMITTEE MEETING

COMMISSIONER Kladney: I'll begin our discussion with a few points regarding the proposal. I'm very grateful the Commission is willing to commit the resources to conduct site visits on this project. In particular, I appreciate that OCRE has worked with my office to think through the issues we anticipate. Thank you very much.

I believe we will gain valuable insight from visiting the physical spaces where 14(c) programs are conducted and where alternatives for 14(c) are implemented.

We will have the opportunity to speak directly to people who have knowledge of these
programs and who are directly affected by the provision of the Fair Labor Standards Act allowing the payment of subminimum wages to people with disabilities.

As detailed in my proposal, I think it is very important for the Commission to gain an understanding of an example of the 14(c) program as currently operating, and also to visit a state where they employ a different model.

I proposed Vermont as a state because of their long history of implementing disability employment services without the use of 14(c) certificates.

So a few states have gone down this road. Vermont will be able to offer us the most information about the transformation over many years as they have the longest history.

We will gain more information about change on a system level by visiting a state that has transformed their entire system than from individual providers who have discontinued 14(c) on their own.

The travel efficiency is also a place relatively close to the Commission headquarters, as is the Virginia site that OCRE is working to
select.

The proposal also examines mechanisms we will employ to capture information on this site visit for incorporation into our report. Through the use of a court reporter, along with note taking and possible audio recording, we will develop a record that we can use in our analysis of this program and the civil rights implications.

With those points made, I open the floor for discussion.

COMMISSIONER ADEGBILE: Commissioner Adegbile here. Thank you, Commissioner Kladney. It seems like a reasonable plan and a way to further inform us by virtue of seeing the way some of these facilities operate in practice, and I think it's also helpful that we're doing it in a way that is endeavoring to be efficient and take accounts of the resources that we are planning to invest in it.

COMMISSIONER Kladney: Thank you, Commissioner Adegbile. Commissioner Heriot, do you have anything to add?

COMMISSIONER HERIOT: What I wanted to talk about was the timing of all of this. I am not going to be able to be on the east coast the last week of February, which is one of the options that
is given there.

However, the University of San Diego School of Law is on spring break for the first week of March, and so that would be my strong preference for scheduling this as early in that week as possible since I need to grade midterms during that week, and so I would like to be able to crush this in as short amount of time as possible.

COMMISSIONER KLADNEY: Perhaps one of the ideas I had -- and we spoke, Commissioner Heriot and I. One of the ideas I had is perhaps we can ask the Commission, the Commission chair maybe, to move its March meeting, its February meeting on February 28 to March 2, and --

COMMISSIONER HERIOT: I have no problem with that, yes.

COMMISSIONER KLADNEY: Okay, then we could proceed forthwith after that to go see the Virginia site, the Vermont site, and that would be our work. We would be done hopefully by Wednesday.

So, would the subcommittee, Commissioner Adegbile, would you have a problem with that if I asked the Commission Chair about that move?

COMMISSIONER ADEGBILE: That looks
clear on my calendar. The plan would be to have the meeting March 2, and then what other work would happen around that, those days?

COMMISSIONER KLADNEY: We would go see, hopefully -- hopefully there wouldn't be much to do at the March 2 meeting, and we could go to Virginia that day to see the work center.

We're trying to find a CRP there that's adequate and I've been in discussions with several people regarding which ones they think are good people who are advocates as well as staff, and then the next day, go up to Vermont and get there in the morning and hopefully see everything, and then finish up and go home that night on Tuesday, or Wednesday, oh, Tuesday. I'm sorry. We're trying to squeeze it into two days.

COMMISSIONER ADEGBILE: Yeah, that looks like it could work for me.

COMMISSIONER KLADNEY: Okay, also I guess, well, let's take a vote then on the motion if there's nothing else to discuss on that.

Although, in discussions with Commissioner Heriot, she has been invited by some CRPs or a CRP group to see other facilities, and she was interested in effectuating that although
whatever is seen there will not be captured for purposes of the report, and I was wondering how everybody felt about that.

COMMISSIONER HERIOT: I have to go to one of these facilities here on the west coast with you, Dave, and, you know, if you can make it, but as far as whether I go by myself if you can't make it, I don't think there is anything that the subcommittee has to say about that.

COMMISSIONER KLANDNEY: Oh, no, I don't either. I just wanted to let people know that that's occurring if that's okay. And then, so, okay, so let's see if the -- take a vote --

COMMISSIONER ADEGBILE: Sorry, David, can I just interject?

COMMISSIONER KLANDNEY: Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Yes, sorry, before we call the vote, I just wanted to note that I, too, have been invited by a local facility to visit their facility and have been in communication with them to notify them that the Commission was trying to determine a process about how to proceed with respect to all of this. You know, I take today's vote to be in furtherance of that
objective.

I have not yet determined whether I will go separately to see the local facility in Long Island, I believe it is, but I may. I may be able to make time to go see that one as well, so it's kind of an east coast version of what Gail has described.

COMMISSIONER Kladney: Right, so I just thought I'd mention that to let everybody know that has occurred, and like I said, how do you vote, Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KLADNEY: Commissioner Heriot?

COMMISSIONER HERIOT: I vote yes.

COMMISSIONER KLADNEY: And I vote yes, so the motion passes, three Commissioners in favor, none opposed, none abstained.

III. ADJOURN MEETING

This concludes the business of our subcommittee meeting today. If there is nothing further, I would adjourn the meeting at, oh, my gosh, 9:14, sorry, 12:14 eastern time. Anybody have anything else?

(Simultaneous speaking.)
COMMISSIONER ADEGBILE: Happy holidays.

COMMISSIONER HERIOT: Very efficient, chair, then, great.

COMMISSIONER KLADNEY: Okay, thank you very much.

COMMISSIONER ADEGBILE: Happy holidays.

COMMISSIONER HERIOT: Happy holidays to everybody.

COMMISSIONER KLADNEY: Yes, absolutely, and be safe. Bye-bye. Thank you.

OPERATOR: Thank you, ladies and gentlemen. This concludes the teleconference. You may now disconnect.

(Whereupon, the above-entitled matter went off the record at 12:14 p.m.)