

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: December 24, 2020

AT (OFFICE): NHPUC

FROM:  Kath Mullholand, Director – Regulatory Innovation and Strategy Division

SUBJECT: Docket No. DT 20-208
Starlink Services, LLC
Request for Designation as an Eligible Telecommunications Carrier
Staff Recommendation

TO: Commissioners
Debra A. Howland, Executive Director

CC: David K. Wiesner, Legal Division Director

On December 23, 2020, Starlink Services, LLC (Starlink) filed a letter with the Commission seeking designation as an Eligible Telecommunications Carrier (“ETC”) in New Hampshire. According to Starlink, its parent company, Space Exploration Technology Corporation (SpaceX) was recently named a winning bidder in the Federal Communications Commission’s (FCC) Rural Digital Opportunity Fund (RDOF) auction. SpaceX assigned its right to receive RDOF funding to Starlink. Winning bidders in the RDOF auction are required to seek designation as an ETC as a condition of their eligibility. Accordingly, Starlink is seeking confirmation that the Commission lacks jurisdiction to designate it as an ETC.

Starlink intends to offer satellite broadband internet access and Voice-over-Internet-Protocol (VoIP) service to consumers in New Hampshire. Starlink asserts that, as a provider of only VoIP services and IP-enabled services, it is not a public utility subject to the Commission’s regulatory jurisdiction, pursuant to RSA 362:7, II. In particular, under that statute, the Commission may not

enact, adopt, or enforce, either directly or indirectly, any law, rule, regulation, ordinance, standard, order, or other provision having the force or effect of law that regulates or has the effect of regulating the market entry, market exit, transfer of control, rates, terms, or conditions of any VoIP service or IP enabled service or any provider of VoIP service or IP-enabled service.

While state commissions such as this Commission are the primary authorities for designating ETCs under 47 U.S.C. § 214(e)(2), in cases where a provider’s services are not subject to state jurisdiction, federal law authorizes the FCC to grant the ETC designation. *See* 47 U.S.C. § 214(e)(6).¹ Applications to the FCC must be made no later

¹ Section 214(e)(6) provides that, “[i]n the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the [FCC] shall upon

than January 7, 2021 in order for the ETC designation to be in place when the RDOF funds are awarded. Accordingly, Starlink requested that the Commission issue a secretarial letter confirming that Starlink's designation as an ETC is not subject to the Commission's jurisdiction under New Hampshire law.

Staff notes that, pursuant to RSA 362:7, II, providers of VoIP service or IP-enabled service are not public utilities and the services they provide are not public utility services. VoIP and IP-enabled service providers are subject only to the limited regulation specifically listed in RSA 362:7, III, which does not address market entry.² As such, the Commission lacks statutory authority to approve an ETC designation request with respect to a provider of VoIP services or IP-enabled services. Starlink's request is nearly identical to that of the New Hampshire Electric Cooperative Inc. (NHEC) in Docket No. DT 20-194. In that docket, the Commission adopted Staff's recommendation and issued a secretarial letter affirming that NHEC's designation as an ETC is not subject to the Commission's jurisdiction under New Hampshire law.

Based on the foregoing analysis, Staff recommends that the Commission issue a secretarial letter affirming that Starlink's designation as an ETC is not subject to the Commission's jurisdiction under New Hampshire law.

Staff also notes it has received indications that there will be several similar requests, all requiring expedited treatment, within the next few business days. Staff therefore requests authorization from the Commission to handle future similar requests at the Staff level without further approval by the Commission.

request designate such a common carrier that meets the requirements of paragraph (1) as an [ETC] for a service area designated by the [FCC] consistent with applicable Federal and State law."

² Such providers may also be subject to Commission assessment under RSA 363-A:2, I (d).

DT 20-208 SERVICE LIST

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