

STATE OF NEW HAMPSHIRE
Inter-Department Communication

DATE: August 21, 2020
AT (OFFICE): NHPUC

FROM: Kath Mullholand, Director, Regulatory Innovation and Strategy Division
Amanda Noonan, Director, Consumer Services and External Affairs *an*

SUBJECT: IR 20-110 Investigation into Administration and Oversight of the
Telecommunications Relay Service Fund
Staff Recommendation on Process

TO: Commissioners
Debra Howland, Executive Director

CC: David K. Wiesner, Director, Legal Division
Eric Wind, Staff Attorney

On July 14, 2020, the Commission issued an Order of Notice opening the instant docket relating to the administration and oversight of New Hampshire's intrastate telecommunications relay service fund (TRS Fund). In that Order of Notice, the Commission raised the question of whether, in light of telephone industry deregulation, the Commission remains the appropriate agency to administer the TRS Fund.

By way of general background, pursuant to Section 225 of the Communications Act of 1934, the Federal Communications Commission (FCC) has the ultimate obligation to ensure that interstate and intrastate telecommunications relay service (TRS) is available to individuals who are deaf, hard of hearing, deaf-blind, or who have a speech disability. Based on the state's traditional role in regulating intrastate telecommunications services, states may certify that they oversee intrastate TRS that meet or exceed FCC requirements. All 50 states have elected to make this certification and oversee state TRS programs. Since 1991, the Commission has overseen New Hampshire's intrastate TRS program, including the TRS provider, a cost recovery mechanism based on a per access line charge from carriers, and the TRS Fund. *See Dual Party Relay Service-Telecommunications Relay Service*, Order No. 20,236 (September 10, 1991), in Docket No. DE 90-225.

The last decade has ushered in an era of deregulation for New Hampshire's telecommunications industry, as well as a transition to alternative technologies to facilitate TRS and communication generally. In 2012, Senate Bill 48 broadly curtailed the Commission's jurisdiction over telecommunications services and providers. Beginning in 2020, the FCC's interstate TRS Fund will assess carriers based on intrastate revenue to recover costs associated

with internet Protocol Captioned Telephone Service, which the FCC provides on both an interstate and an intrastate basis. *See* TRS Fund Contributions, 85 FR 462-02. As traditional state-based intrastate TRS and related services decline in usage, it is unclear whether state programs will continue in their current form, ultimately assume responsibility for internet-based intrastate TRS services, or change in other ways.

Commission Staff (Staff) currently oversees New Hampshire's intrastate TRS program. This entails: 1) annual reporting to the FCC of program funding and complaint information; 2) re-certifying the program with the FCC every 5 years; 3) maintaining a presence on the Relay Advisory Board; 4) ensuring the cost recovery mechanism is adhered to by all carriers; 5) authorizing monthly payments to the TRS provider; 6) overseeing the TRS Fund; and 7) responding to requests for program or rate modifications from the TRS provider. Staff believes that maintaining New Hampshire's intrastate TRS program is in the public interest because preserving high service standards, as well as established protocols and relationships, benefit all state residents. Staff, however, no longer benefits from dedicated analysts with telecommunications expertise, making it difficult to oversee the ongoing tasks of ensuring that cost recovery is taking place in accordance with requirements, and overseeing day-to-day TRS Fund management, including payments to the TRS provider.

On July 31, 2020, New Hampshire's Incumbent Local Exchange Carriers, operating pursuant to RSA 362:7, I(c)(2) as Excepted Local Exchange Carriers (ILEC-ELECs), jointly filed a preliminary statement of position (Statement), as required by the Order of Notice. The ILEC-ELECs are either party to, or successors in interest to, stipulations filed in Docket No. DE 90-225, upon which the TRS Fund was initially established. Item 5.0 of the cost recovery stipulation, titled "Escrow of Dual Relay Service Charge," authorizes a fund administrator role with responsibilities for annual reporting and ongoing payment of invoices. The ILEC-ELECs summarized the terms of the current Trust Agreement for the TRS Fund, stating that the Commission's "authority over the TRS Trust Fund [is] coextensive with the [Commission]'s regulatory jurisdiction over TRS service itself. The PUC's jurisdiction over TRS service and the TRS Trust Fund rest firmly on state law and on the PUC's delegated authority under federal law." Statement at 5. The ILEC-ELECs concluded that, in light of industry deregulation and the current staffing structure of the Commission, it was timely and appropriate for the Commission to undertake an open, public and transparent process to designate a third-party administrator to serve as a successor TRS Fund administrator, and they indicated that they expected to actively participate in that selection and designation process. Statement at 7.

Based on its review and analysis of the issues as summarized above, Staff recommends that the Commission authorize the development and implementation of a competitive solicitation process to identify and engage a cost-effective TRS Fund administrator to oversee the tasks currently performed by Staff: *i.e.*, ensuring the cost recovery mechanism is adhered to, ongoing fund management, and payment of TRS service provider invoices. Staff agrees with the ILEC-ELECs that the development of that competitive solicitation process should occur in this docket and in a manner that is transparent and open for stakeholder input. Staff believes that the ILEC-ELECs should be involved in the establishment of selection criteria for a new TRS Fund

administrator. Staff recommends that the Commission authorize Staff to engage in further efforts to achieve those objectives.