

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held August 25, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Statement
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Petition of the Pennsylvania Telephone Association
Requesting the Commission to Approve
Implementation of Pennsylvania Relay Service for
the Deaf, Hearing and/or Speech Impaired
Community within the Commonwealth of
Pennsylvania

M-00900239

TENTATIVE ORDER

BY THE COMMISSION:

Pursuant to 66 Pa.C.S. § 703(g) of the Public Utility Code (Code), the Pennsylvania Public Utility Commission (Commission) proposes to amend its prior Order entered May 29, 1990 (*1990 Order*)¹ that established the Telecommunications Relay Service Board (TRS Board) and assigned various entities, including Commission personnel, a representational role on the TRS Board. With this Order, the Commission clarifies that the Commission shall no longer have any representational role on the TRS Board.

¹ *Petition of the Pennsylvania Telephone Association Requesting the Commission to Approve Implementation of Pennsylvania Relay Service for the Deaf, Hearing and/or Speech Impaired Community within the Commonwealth of Pennsylvania*, Docket No. M-00900239 (Order entered May 29, 1990) (*1990 Order*).

BACKGROUND

The Pennsylvania Telecommunications Relay Service (TRS) was established by the Commission in 1990 pursuant to a petition filed by the Pennsylvania Telephone Association (PTA). Pursuant to the *1990 Order*, the Commission established the TRS Advisory Board for the purpose of reviewing the success of TRS in Pennsylvania. The relevant provision from the *May 29, 1990 Order* is reproduced below:

The PTA, based on its Task Force recommendation, suggests that we establish a Relay Service Advisory Board for the purpose of reviewing the success of the Relay Service System in Pennsylvania and identifying additional improvements which should be implemented. We believe, given the introduction of the new service, that **an advisory Board, comprised of representatives of the Service Provider, the Pennsylvania Telephone Association, the Commission, the Office for the Deaf and Hearing Impaired and the hearing and speech impaired community should be established.**

With respect to the hearing and speech impaired community, the initial representatives to the board should be individuals nominated by the Pennsylvania Society for the Advancement of the Deaf, the Self Help for the Hard for Hearing of Pennsylvania and the Pennsylvania Alliance for Citizens who are Deaf Blind. The advisory board will function as a user group providing guidance in such areas as operator training, problem solving and future enhancements. We shall designate the specific individuals to participate on the Board at a future Public Meeting.

May 29, 1990 Order at 34-35 (emphasis added). Per the *1990 Order*, these TRS Board representatives are appointed to two-year terms by an Order that is approved and adopted at the Commission's public meetings.

After its creation in 1990, the TRS Board adopted bylaws which appointed fourteen member positions to the Board. In compliance with the specific directives in the *1990 Order*, the initial members of the TRS Board included two representatives from the

Commission: one from the Bureau of Technical Utility Services (TUS) and one from the Bureau of Consumer Services (BCS); five institutional representatives: one representative from each of the two Relay Service Providers, a representative from the PTA, one representative from the Office for the Deaf and Hard of Hearing (ODHH) of the Pennsylvania Department of Labor & Industry, and one representative from the TDDP implementing entity; and seven public members: representatives aged 18 and older who are individuals with disabilities that impact their access to telecommunications services (or who represent disability organizations).

The TRS Board bylaws further established that all fourteen members, including the members from Commission staff, would each have one vote in matters that require voting. The TRS Board has continued to operate with this basic membership structure since 1990.

Given that over 30 years have passed since the TRS Board's creation, we found it appropriate to reassess the TRS Board's structure and operations. With the goal of promoting continued transparency and ensuring public and objective decision-making, we conducted an internal review the TRS Board's structure and bylaws to determine what, if any, changes might be necessary. Based on our findings, we propose to amend the *1990 Order*, as described in detail below in this Order below.

DISCUSSION

The Commission may, at any time, after notice and after opportunity to be heard, amend any prior order. 66 Pa.C.S. § 703(g). Any order amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as an original order. *Id.*

Legal Issue

We note that, under Section 319(a)(1) of the Code of Ethics in the Code, the Commission is required to avoid both improper conduct and the appearance of improper conduct. 66 Pa.C.S. § 319(a)(1). To this end, we have identified the following areas where the continued participation of Commission staff as voting TRS Board members may potentially implicate the above section of the Code of Ethics.

1. TRS Board Recommendations to the Commission

The TRS Board will, from time to time and pursuant to deliberations and a vote by its membership, submit recommendations to the Commission concerning TRS matters. We perceive that the continued participation of Commission staff as voting members in TRS Board actions that could ultimately be placed on a Public Meeting agenda for Commission consideration and a vote may give the impression that the Commission is improperly influencing the advisory function of the TRS Board to achieve a desired outcome. We are also cognizant that members from the Commission staff may, by virtue of their position as Commission employees, be perceived by other TRS Board members and the public as having specialized expertise in the utility field, resulting in their position on a vote being accorded more weight in determining how other members will vote on any given issue.

2. TRS Board Member Nominations and Bylaws

The TRS Board has selected most of its own members for the last 10-15 years. When the Board votes to nominate a new member candidate, the assigned Commission staff attorney drafts a proposed Order for Commission approval. Thus, the Commission makes the final decision regarding all such Board appointments.

Given the *1990 Order* and the present TRS Board bylaws authorizing membership and voting power for members from TUS and BCS, this may raise questions about whether the Commission representatives are biased in supporting candidates on one side

or another of TRS issues. As previously stated, Section 319(a)(1) of the Code of Ethics requires that the Commission avoid both *improper conduct and the appearance of improper conduct*. 66 Pa.C.S. § 319(a)(1). While there are no accusations or evidence of actual conflicts or improper conduct, we are interested in addressing even the appearance of a potential conflict caused by the Commission representatives on the TRS Board controlling two votes, which could potentially impact determinations of the TRS Board and prevent persons from ever being considered for service on the Board by the full Commission.

Moreover, the continued ability of said Commission members to cast two votes could specifically impact the TRS Board's ability to amend or repeal its bylaws at any meeting. Amendments to the TRS Board's bylaws are not effectuated unless a majority of the voting members that are present consent by casting an affirmative vote for the amendment. Again, the fact that the Commission representatives on the TRS Board have the ability to cast two votes on the bylaws that ultimately control the Board's composition and conduct may be a potential conflict of interest, or at least present appearance of one.

Proposed Administrative Resolution

To address these concerns, we propose to modify the *1990 Order* to alter the structure of the TRS Board so that the Commission no longer will have any representational role on the Board. The TRS Board was created by the Commission for the purpose of functioning as a user group that would provide guidance in such areas as operator training, problem solving and future enhancements. Thus, the TRS Board should have sufficient independence from the Commission in its composition and decision-making to advise the Commission on best practices.

Accordingly, we propose to modify the *1990 Order*, as follows:

The PTA, based on its Task Force recommendation, suggests that we establish a Relay Service Advisory Board for the

purpose of reviewing the success of the Relay Service System in Pennsylvania and identifying additional improvements which should be implemented. We believe, given the introduction of the new service, that an advisory Board, comprised of representatives of the Service Provider, the Pennsylvania Telephone Association, ~~[the Commission,]~~ the Office for the Deaf and Hearing Impaired and the hearing and speech impaired community should be established. With respect to the hearing and speech impaired community, the initial representatives to the board should be individuals nominated by the Pennsylvania Society for the Advancement of the Deaf, the Self Help for the Hard for Hearing of Pennsylvania and the Pennsylvania Alliance for Citizens who are Deaf Blind. The advisory board will function as a user group providing guidance in such areas as operator training, problem solving and future enhancements. We shall designate the specific individuals to participate on the Board at a future Public Meeting.

1990 Order at 34-35.

We have determined that this administrative change is necessary to remove the potential risk of any perceived conflicts and avoid the appearance of impropriety regarding actions of the TRS Board, in violation of Section 319(a)(1) of the Code. Commission members currently abstain from participating in TRS Board votes where they seek to avoid any appearance of impropriety; however, this proposed membership change reflects an even greater procedural protection of the impartial decision-making responsibility of the Board.

This proposal will have no substantive impact on TRS Board's operations. We emphasize that this Order is not intended to diminish the current level of staff support that the TRS Board receives. Although the Commission staff will be removed from TRS Board membership, the Commission will continue to facilitate the TRS Board's activities

by providing reasonable amounts of impartial administrative, legal, and technical support through the appropriate Commission bureaus.²

CONCLUSION

For the aforementioned reasons, we find it in the public interest to amend the *1990 Order*, consistent with this Tentative Order. To provide stakeholders with the opportunity to weigh in on this proposed modification to the TRS Board, and consistent with the requirements of Section 703(g) of the Code, we will open this Order to public comment for a period of 15 days. However, if no adverse Comments are received, this Tentative Order shall become final without further action by the Commission;

THEREFORE,

IT IS ORDERED:

1. That this Order be served on all jurisdictional telephone utilities, the Telecommunications Relay Service Board, the Pennsylvania Telephone Association, and the Office of Consumer Advocate with a comment period of 15 days after service.
2. Upon review and consideration of any adverse comments received in this matter the Commission shall issue a Final Order in this matter.
3. If no adverse comments are filed in response to this Tentative Order, upon expiration of the comment period, this Tentative Order will become effective as a Final Order by operation of law.

² We note that limiting the Commission's involvement to a support role for the TRS Board is consistent with the staff assistance we provide to the Commission's Consumer Advisory Council. *See* 52 Pa. Code § 91.5.

4. That the Secretary of the Commission place a copy of this Order in the folder at Docket No. M-00900239.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 25, 2022

ORDER ENTERED: August 25, 2022