

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Implementation of the Twenty-First Century
Communications and Video Accessibility Act of
2010, Section 105, Relay Services for Deaf-Blind
Individuals
CG Docket No. 10-210

ORDER

Adopted: March 20, 2012

Released: March 20, 2012

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order and for the reasons discussed below, we conditionally waive Section 64.610(f)(2) of the Commission's rules to the extent it only permits entities that are certified to participate in the National Deaf-Blind Equipment Distribution Program (NDBEDP) to submit claims for reimbursement every six months, rather than on a monthly or quarterly basis.

II. BACKGROUND

2. On April 4, 2011, in accordance with Section 105 of the Twenty-First Century Communications and Video Accessibility Act (CVAA), the Commission adopted the NDBEDP Pilot Program Order. In that Order, the Commission established a two-year pilot program to certify and provide funding to one entity in each state for the purpose of distributing communications equipment to low-income individuals who are deaf-blind. The CVAA authorizes the Commission to allocate up to \$10 million annually from the Interstate Telecommunications Relay Services Fund (TRS Fund) for this nationwide equipment distribution effort. The goal of the NDBEDP is to ensure that low-income

1 See 47 C.F.R. § 64.610(f)(2).

2 See Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.); see also Pub. L. 111-265, 124 Stat. 2795 (2010) (technical corrections to the CVAA). Section 105 of the CVAA adds Section 719 to the Communications Act of 1934, as amended, which is codified at 47 U.S.C. § 620.

3 See In the Matter of Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, CG Docket No. 10-210, Report and Order, FCC 11-56, 26 FCC Rcd 5640 (2011) (NDBEDP Pilot Program Order).

4 Although the rules adopted are set to expire at the termination of the NDBEDP pilot program, 47 C.F.R. § 64.610(k), the NDBEDP Pilot Program Order gives the Commission the option of extending this pilot program for one additional year if additional time is needed to fully assess the results of the pilot program. NDBEDP Pilot Program Order, 26 FCC Rcd at 5644, ¶ 6. The Commission is committed to launching the NDBEDP pilot program by July 1, 2012. See id., 26 FCC Rcd at 5649, ¶ 22.

5 See 47 U.S.C. § 620(c).

individuals who are deaf-blind receive the equipment they need to effectively access telecommunications services, Internet access services, and advanced communications services.<sup>6</sup>

3. Under the NDBEDP Pilot Program, certified programs may seek reimbursement of costs from the TRS Fund, up to the funding allocation for the state, for the equipment they distribute, the reasonable costs of providing related services, and an allowance for costs associated with administering these programs. In the *NDBEDP Pilot Program Order*, the Commission adopted a funding mechanism that allows for periodic reimbursement to NDBEDP-certified programs for these authorized costs. The Commission decided that periodic reimbursement – as compared to advance lump sum payments to certified entities – would both provide the necessary incentives for certified programs to actively locate eligible deaf-blind individuals within their states and distribute equipment to these persons in a timely manner, and provide greater accountability and protection against waste, fraud, and abuse.<sup>7</sup> In addition, the Commission adopted a rule permitting certified programs to request reimbursement every six months, commencing with the start date of the pilot program.<sup>8</sup> To obtain reimbursement for authorized costs, certified programs must provide the Commission with documentation and a reasonably detailed explanation of the costs actually incurred during the prior six-month period of the funding year.<sup>9</sup> Specifically, Section 64.610(f)(2) of the Commission’s rules state:

Within 30 days after the end of each six-month period of the Fund Year, each program certified under the NDBEDP pilot must submit documentation that supports its claim for reimbursement of the reasonable costs of the following:

- (i) equipment and related expenses, including maintenance, repairs, warranties, returns, refurbishing, upgrading, and replacing equipment distributed to consumers;
- (ii) individual needs assessments;
- (iii) installation of equipment and individualized consumer training;
- (iv) maintenance of an inventory of equipment that can be loaned to the consumer during periods of equipment repair;
- (v) outreach efforts to inform state residents about the NDBEDP; and
- (vi) administration of the program, but not to exceed 15 percent of the total reimbursable costs for the distribution of equipment and related services permitted under the NDBEDP.<sup>10</sup>

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<sup>6</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5641, ¶ 2.

<sup>7</sup> *Id.*, 26 FCC Rcd at 5679, ¶ 88.

<sup>8</sup> *Id.*; 47 C.F.R. § 64.610(f)(2). Few parties responded to the Commission’s request for comment on the appropriate means of allocating NDBEDP funding, and the sole commenter that provided input on the appropriate interval for disbursing funds recommended reimbursing certified program participants every six months, noting this approach to be “more viable,” because it would “ensure better accountability and efficient distribution.” *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5678, ¶ 87, citing *Deaf-Blind Young Adults in Action Comments* at 6. See also *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, CG Docket No. 10-210, Notice of Proposed Rulemaking, 26 FCC Rcd 688, 705, ¶ 46 (2011) (“*NDBEDP NPRM*”).

<sup>9</sup> 26 FCC Rcd at 5678, ¶ 87; 47 C.F.R. § 64.610(f)(2).

<sup>10</sup> 47 C.F.R. § 64.610(f)(2).

### III. FREQUENCY OF REIMBURSEMENT CLAIMS

4. The interim rules establishing the NDBEDP pilot program became effective on September 21, 2011.<sup>11</sup> The Commission subsequently announced that it would accept applications through November 21, 2011, from programs interested in receiving certification to participate in the NDBEDP pilot program.<sup>12</sup> In response, the Commission received 58 applications from entities representing each of the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands.<sup>13</sup> All applications are from state or local government agencies or non-profit entities.

5. More than half of the applications received for NDBEDP certification include a request for the Commission to permit claims for reimbursement of NDBEDP expenses more frequently than once every six months.<sup>14</sup> Many of the applicants assert that the inability to receive compensation more frequently than once every six months will compromise significantly their ability to staff their programs, purchase equipment, actively conduct program outreach, and handle other required tasks.<sup>15</sup> Accordingly, they claim that the once every six-months reimbursement interval will severely and profoundly limit their ability to serve eligible low-income, deaf-blind individuals in a timely manner. Several applicants also assert that permitting more frequent claims for reimbursement is necessary to maintain financial stability and to ensure timely payments to vendors and contractors.<sup>16</sup> Still others raise questions about their ability to participate in the NDBEDP program at all if not permitted to receive compensation on a more frequent basis, especially given their non-profit status, the sizeable expenditures they must incur for covered equipment, and recent budget reductions experienced by state and local government agencies that make reliance on regular funding critical to their participation in this program.<sup>17</sup>

6. Generally, the Commission may waive any provision of its rules on its own motion for good cause shown.<sup>18</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>19</sup> In sum, a waiver of

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<sup>11</sup> See 76 Fed. Reg. 58,412 (Sept. 21, 2011).

<sup>12</sup> See Public Notice, DA 11-1591, 26 FCC Rcd 13118 (Sept. 22, 2011).

<sup>13</sup> The Commission received more than one application in five of the 53 jurisdictions covered by the NDBEDP pilot program, resulting in a total of 58 applications submitted.

<sup>14</sup> Of the 58 applications received, a total of 35 applications (60%) include requests for more frequent reimbursement cycles (29 request monthly reimbursements; 5 request quarterly reimbursements; and 1 requests bi-monthly reimbursement).

<sup>15</sup> See, e.g., applications received from entities in Arizona (will be unable to actively market the program without a waiver); Georgia; Louisiana (reimbursement every six months will restrict ability to purchase the equipment and handle other required tasks); Michigan; New Hampshire (waiver needed to ensure ability to hire consultants and staff); Rhode Island; and West Virginia.

<sup>16</sup> See, e.g., applications received from entities in California (requests waiver due to current economic uncertainty and to maintain current financial stability to ensure contractors and vendors are reimbursed timely) and Connecticut (more frequent intervals will allow for more timely payments to external entities conducting assessments, installation, and training).

<sup>17</sup> See, e.g., applications received from entities in Maine (six-month wait for reimbursement for sizeable expenditures is not feasible); Minnesota (has experienced a near 20% loss of permanent funding as a result of state budget reductions over the past five years); Nebraska (application contingent on the grant of a waiver), Nevada (non-profit organization unable to provide services without monthly reimbursement); and Utah (large upfront expenses for equipment necessitate requesting waiver).

<sup>18</sup> See 47 C.F.R. § 1.3.

<sup>19</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed*, 459 F.2d 1203 (D.C. Cir. 1972).

our rules is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>20</sup>

7. For good cause shown, and to reduce the financial burden on programs that the Commission certifies to participate in the NDBEDP and better enable selected participants to fully meet the needs of eligible low-income, deaf-blind individuals in a timely manner, we conditionally waive our rules to permit such programs to submit claims for reimbursement from the TRS Fund more frequently. We find persuasive applicants' assertions that a six-month reimbursement cycle will impose a hardship that could prevent many entities from participating in the NDBEDP. Many of the non-profit and state or local programs who have applied for certification report that they operate on limited funding that will be strained if forced to wait a full six months for compensation. This is especially true given the high costs of equipment generally required by individuals who are deaf-blind. Indeed, as the Commission noted in the *NDBEDP Pilot Program Order*, the cost for some of the specialized equipment used by this population can run between \$5,000 and \$10,000 per device.<sup>21</sup> We find that the large upfront expenses needed for such equipment justifies a waiver to permit more frequent reimbursement.

8. In order to be compensated for equipment distributed and services rendered under the NDBEDP pursuant to this waiver, each certified entity must comply with certain conditions. Specifically, each certified entity that wishes to take advantage of this waiver will be permitted to elect a reimbursement schedule on either a monthly or quarterly basis. Such entity must notify the Telecommunications Relay Service Fund (TRS Fund) Administrator of its election at the start of each Fund Year, and maintain that schedule for the duration of the Year. Entities electing to seek reimbursement on a monthly basis will be required to submit documentation and a reasonably detailed explanation of costs incurred within 30 days after the end of each month of the Fund Year (July 1 through June 30). Those electing payment on a quarterly basis will be required to submit documentation and a reasonably detailed explanation of costs incurred within 30 days after the end of each three-month period of each Fund Year.<sup>22</sup> Entities that do not take advantage of this waiver do not need to so notify the Fund Administrator, but will be required to submit documentation and a reasonably detailed explanation of those costs incurred within 30 days after the end of each six-month period of the funding year, as required by the Commission's rules.<sup>23</sup> In each case, costs submitted must be for those costs actually incurred during each preceding (one-, three-, or six- month) period.

9. We further note that the waiver granted in this Order will be for the duration of the NDBEDP pilot program. The purpose of establishing the NDBEDP initially as a pilot program is to provide the flexibility needed to enable certified programs to structure their distribution and service delivery systems to effectively meet the needs of their participants. This flexibility is expected to result in a variety of equipment distribution and service delivery models that could serve as the foundation for establishment of the permanent NDBEDP.<sup>24</sup> We conclude that allowing certified entities to receive the needed funding in a timely manner will better enable such entities to make their programs effective and sustainable, which, in turn, will help inform future Commission decisions regarding a permanent NDBEDP that furthers the public interest.

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<sup>20</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>21</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5655, ¶ 33.

<sup>22</sup> In either case, the TRS Fund Administrator and the NDBEDP Administrator shall review the costs submitted and may request supporting documentation to verify the expenses claimed. See 47 C.F.R. § 64.610(f). See also *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5679, ¶ 88.

<sup>23</sup> See 47 C.F.R. § 64.610(f)(2).

<sup>24</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5655, ¶ 33.

#### IV. PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

10. This document modifies existing information collection requirements.<sup>25</sup> The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Order as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,<sup>26</sup> we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” In the present document, we have assessed the effects of the rules for the NDBEDP pilot program and find that the collection of information requirements will not have a significant impact on small business concerns with fewer than 25 employees.

#### V. CONGRESSIONAL REVIEW ACT

11. The Commission will not send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act,<sup>27</sup> because the conditional waiver adopted in this Order does not amend the Commission’s rules.

#### VI. ORDERING CLAUSES

12. IT IS ORDERED that, pursuant to Sections 4(i) and 719 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 620, and Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, Section 64.610(f)(2) of the Commission’s rules is conditionally waived to permit NDBEDP certified programs to submit claims for reimbursement more frequently than once every six months as required by Section 64.610(f)(2) of our rules and are permitted to submit reimbursement claims up to one time each month.

13. IT IS ALSO ORDERED that the waiver granted in this Order will be effective 30 days after publication of a summary in the Federal Register, except that the reporting requirement associated with Section 64.610(f)(2) of our rules, which will be modified as a result of the waiver and thus is subject to the Paperwork Reduction Act, shall become effective when the Commission publishes a notice in the Federal Register announcing OMB approval and the relevant effective dates.

14. This action is taken under delegated authority pursuant to Sections 0.141 and 0.361 of the Commission’s rules, 47 C.F.R. §§ 0.141, 0.361.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Acting Chief, Consumer and Governmental Affairs Bureau

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<sup>25</sup> Specifically, the Commission originally estimated 106 annual responses for this information collection (53 certified programs x 2 reimbursement claims per year). That estimate will be increased to 636 annual responses (53 certified programs x 12 reimbursement claims per year). In addition, this Order adds a new requirement for certified entities to notify the TRS Fund Administrator if they wish to take advantage of the waiver described herein.

<sup>26</sup> See 44 U.S.C. § 3506(c)(4).

<sup>27</sup> See 5 U.S.C. § 801(a)(1)(A).