

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

REPORT AND ORDER

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By the Commission: Commissioner Copps issuing a statement.

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I. INTRODUCTION

1. In this order, the Commission establishes a National Deaf-Blind Equipment Distribution Program (“NDBEDP”) to certify and provide funding to entities in each state so that they can distribute specialized customer premises equipment (“CPE”) to low-income individuals who are deaf-blind. These individuals need such specialized CPE to effectively access telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services. Every American should have the ability to use our nation’s communications services. The ability to communicate enables people to be independent, productive, safe and secure. In recent years, technological innovation has dramatically changed the ways that we communicate and acquire information. Most Americans can now choose among a wide selection of digital and Internet-based voice, text, and video communication methods to meet their individual and daily needs. The proliferation of these technologies has provided new ways to secure employment, shop, learn, acquire health care, and participate in civic affairs. Until now, however, accessibility barriers confronting people who are deaf-blind have largely prevented this community from enjoying these benefits. The actions we take today are intended to help change that.

II. BACKGROUND

2. This order implements a provision of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), signed into law by President Obama on October 8, 2010. The CVAA requires the Commission to take certain steps to ensure that individuals with disabilities have access to emerging communications technologies in the 21st century.¹ Section 105 of the CVAA directs the Commission to establish rules within six months of enactment (*i.e.*, by April 8, 2011) that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized CPE to low-income individuals who are deaf-blind.² The goal of the NDBEDP established herein is to ensure that individuals who are deaf-blind will receive the specialized CPE needed to effectively access telecommunications services, Internet access services and advanced communications services.

¹ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (S. 3304, 111th Cong.) (as codified in various sections of 47 U.S.C.); *see also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-265, 124 Stat. 2795 (2010), also enacted on October 8, 2010 (S. 3828, 111th Cong.), making technical corrections to the CVAA.

² Section 105 adds Section 719 to the Communications Act of 1934, as amended (“Act”), and is codified at 47 U.S.C. § 620. For purposes of Section 719, the term “individuals who are deaf-blind” has the “same meaning given such term in the Helen Keller National Center Act, as amended by the Rehabilitation Act Amendments of 1992 (29 U.S.C. 1905(2)).” 47 U.S.C. § 620(a). *See also* Section IV.A, *infra*.

3. The Consumer and Governmental Affairs Bureau (“CGB”) issued a Public Notice on November 3, 2010, seeking comment on a range of issues related to the Commission’s implementation of the NDBEDP.³ The comments filed in response to the *NDBEDP PN* informed the preparation of a Notice of Proposed Rulemaking that the Commission released on January 14, 2011.⁴ In the *NDBEDP NPRM*, the Commission proposed ways to support the distribution of specialized CPE to enhance and promote access to telecommunications service, Internet access service, and advanced communications by low-income individuals who are deaf-blind, and sought comment on those proposals. This Report and Order adopts interim rules to govern a pilot program to support the distribution of such specialized CPE and the provision of associated services. We are hopeful that the experience gained during this pilot program will help inform future Commission action to establish a permanent NDBEDP that effectively meets the goals of this CVAA requirement.

4. Most communications-related statutes and regulations have not specifically addressed the communication needs of the deaf-blind population. Although telecommunications relay services (“TRS”) have provided some communications options for people who are deaf-blind,⁵ often these individuals have needed expensive supplemental equipment, such as Braille displays, to effectively use these services. In addition, even where individuals had such equipment, the inability to use more than one type of relay service in a single call sometimes further hindered the ability of these individuals to effectively use these services.⁶ Similarly, although Section 255 of the Act generally requires telecommunications equipment and services to be accessible by people with disabilities, under that law, companies need only incorporate such access where it is readily achievable to do so.⁷ Commission rules define “readily achievable” as “easily accomplishable and able to be carried out without much difficulty or expense”;⁸ a standard that does not necessarily assure the provision of services and equipment designed for the unique and highly specialized communication needs of the deaf-blind population. Finally, as we noted in the *NDBEDP NPRM*, although several states do have their own equipment distribution programs (“EDPs”), the high cost of communications equipment needed by many people who are deaf-blind has impeded the efforts to distribute equipment to this community.⁹ The urgent need for an effective, nationwide equipment distribution program to enhance communications access for people who are deaf-blind is apparent, as documented both in the legislative hearings on the CVAA¹⁰ and the record in this proceeding.¹¹ Arthur Gould, a technology trainer for people with multiple disabilities, including visual and hearing loss, states:

³ *Consumer and Governmental Affairs Bureau Seeks Comment on Implementation of Requirement to Define Programs for Distribution of Specialized Customer Premises Equipment Used by Individuals who are Deaf-Blind*, CG Docket No. 10-210, Public Notice, 25 FCC Rcd 15288 (CGB 2010) (“*NDBEDP PN*”).

⁴ *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 (2011) (“*NDBEDP NPRM*”).

⁵ See, e.g., 47 C.F.R. §§ 64.601-64.613 (Commission rules governing the provision of relay services).

⁶ For example, a person who is deaf-blind might need to use video relay services to communicate expressively in American Sign Language and use text relay services to receive communication back in text that is then converted into Braille. A call using TRS, as redefined in the CVAA, may utilize more than one type of relay service. Pub. L. 111-260, Sec. 103(a), to be codified at 47 U.S.C. § 225(a)(3).

⁷ 47 U.S.C. § 255.

⁸ 47 C.F.R. §§ 6.3(h), 7.3(h).

⁹ *NDBEDP NPRM*, 26 FCC Rcd at 689-90, ¶ 3. See also para. 33 and note 112, *infra*.

¹⁰ See, e.g., *Hearing on Draft Legislation Enhancing Access to Broadband Technology and Services for Persons with Disabilities Before the House Subcommittee on Telecommunications and the Internet*, 111th Cong. 7 (2008),

(continued....)

Imagine for a minute that the telephone is a barrier to communication. Then imagine the printed word is another barrier. Now picture a visually and hearing impaired grandmother using assistive technology on a computer to communicate with her grandchildren by e-mail. I have personally experienced amazing transformations on the part of people with multiple disabilities. I have seen through the use of this type of technology and specialized training, people rediscover their lives and even find new purposes to get behind. This technology and training is much more than connecting people to information. It's about improving our collective state by including everybody.¹²

5. The NDBEDP established herein is designed to provide people who are deaf-blind with meaningful access to communications equipment through channels that will also provide them with the support services needed to effectively use this equipment. No two people who are deaf-blind are exactly alike, and very few such individuals have been completely blind and deaf for their entire lives.¹³ Rather, this population is characterized by people with a wide range of hearing and vision loss, some of which may have been present at birth, and some of which may have developed or progressively increased in later years. In addition, many individuals who are deaf-blind have other disabilities, further adding to the challenges they face.¹⁴ As we noted in the *NDBEDP NPRM*, the wide range of this population's experiences and disabilities, together with their geographical diversity, presents the Commission with significant and novel challenges in our efforts to craft a nationwide equipment program that will both rapidly and effectively provide members of this community with communications access.¹⁵

(Continued from previous page) _____
written statement of Jamaal Anderson on behalf of the Coalition of Organizations for Accessible Technology (COAT), also found at: <http://www.coataccess.org/node/58> (visited Apr. 4, 2011). *See also* Congressional Testimonies of Bobbie Beth Scoggins (President, Natl. Assn. of the Deaf) at http://commerce.senate.gov/public/?a=Files.Serve&File_id=d1599ce3-4dbe-432f-bfd4-69b2c581d60c and Lise Hamlin (on behalf of the Hearing Loss Assn. of America and COAT) at http://energycommerce.house.gov/documents/20100610/Hamlin_Testimony.2010.06.10.pdf; and Resolution to Support Equal Access to Communications Technologies by People with Disabilities in the 21st Century, National Association of Regulatory Utility Commissioners ("NARUC") (Feb. 20, 2008) ("NARUC Resolution") (noting that the tens of thousands of people who are deaf-blind living in the United States "lack even the most basic access to telecommunications services"). NARUC further noted that the problem is particularly "acute in rural communities where people with disabilities are the least employed and can least afford expensive specialized customer premises equipment that can cost upwards of five thousand dollars." Letter from David C. Coen, President, NARUC, to Reps. Henry Waxman, Joe Barton, Rick Boucher and Cliff Stearns (Dec. 10, 2009).

¹¹ *See, e.g., NDBEDP NPRM*, 26 FCC Rcd at 690, ¶¶ 4-5; AADB Comments at 2 and 12 (stating that "these technologies provide an essential platform for these individuals to communicate with the world"); Lighthouse Comments at 2 (noting a "huge gap in the availability of usable technology" for people who are deaf-blind); National Coalition Comments at 2 (citing a "clear need for a coherent long-term structure that ensures consistency of results nationwide . . . to provide, as soon as possible, people who are deaf-blind with meaningful access to costly communications equipment through familiar, reliable and sustainable channels").

¹² National Coalition Comments at 10.

¹³ *Id.* at 7; ACB Reply at 7.

¹⁴ *See, e.g., National Coalition Comments* at 5-6 (discussing CHARGE syndrome, an extremely complex syndrome, involving extensive medical and physical conditions that differ from child to child).

¹⁵ *NDBEDP NPRM*, 26 FCC Rcd at 691, ¶ 6.

6. The CVAA authorizes the Commission to allocate \$10 million annually from the Interstate TRS Fund (“TRS Fund”) for this nationwide equipment distribution effort.¹⁶ Because of the many novel issues before us, and in the interest of enabling the NDBEDP to begin operating as quickly as possible, we establish in this Order a two-year pilot program with interim regulations. During this period, the program will rely on both existing state EDPs and other programs that apply for and receive NDBEDP certification to distribute specialized CPE and provide the related services needed to implement this program. We create comprehensive reporting requirements for these certified programs, designed to collect data on the best ways to meet the communications needs of individuals who are deaf-blind. We are hopeful that the experiences of these certified programs during the pilot period will inform our efforts to create a permanent NDBEDP by providing a comprehensive and practical understanding of how to best apply the limited funding available under this program for the intended population. We may extend this pilot for up to an additional one year, for a total of three years, if we determine that additional time is needed to fully assess the results of the pilot before establishing a permanent program.¹⁷ We expect that this 24- to 36-month period will give the Commission sufficient time to conduct and analyze the results of the pilot program and determine its effectiveness.

7. We believe that the approach that we adopt in this Order will enable certified programs participating in the pilot to structure their distribution and service delivery systems to effectively meet the needs of their participants, and will result in a variety of equipment distribution and service delivery models that can better inform the structure of the permanent NDBEDP. We are mindful of inconsistencies that consumers have experienced with equipment distribution efforts across the states in the past,¹⁸ and believe that the criteria and rules that we adopt in this pilot program will go a long way toward achieving uniformity in program quality nationwide.

III. PILOT PROGRAM

8. In the *NDBEDP NPRM*, we proposed a pilot program that would invite an estimated 45 existing state EDPs to apply for certification to receive support from the TRS Fund for distributing equipment to their deaf-blind residents.¹⁹ Under this proposal, we explained that each EDP that became certified would become the sole entity eligible to receive TRS Fund support for distributing equipment in that state.²⁰ For states that do not have an EDP or that have an EDP that does not apply for or is not selected to participate in this pilot program, we proposed allowing other public programs (*e.g.*, vocational rehabilitation programs, assistive technology programs, or schools for the deaf, blind or deaf-blind) or private entities (*e.g.*, independent living centers, organizational affiliates, or private schools) to apply for certification to participate in the NDBEDP to receive support for distributing this equipment in those states.²¹ We further proposed a number of factors to be considered in determining whether to grant certification to a state EDP or other programs.²² Acknowledging that not all deaf-blind individuals may

¹⁶ 47 U.S.C. § 620(c).

¹⁷ In the *NDBEDP NPRM*, the Commission proposed an 18-month pilot program, with an option to extend the pilot for an additional six months, for a total of two years. *NDBEDP NPRM*, 26 FCC Rcd at 691, ¶ 7. See para. 22, *infra*, for discussion of the duration of this pilot program.

¹⁸ See, *e.g.*, National Coalition Comments at 1 (reporting the “great inconsistencies” in experiences that consumers who are deaf-blind have had with the current state EDPs).

¹⁹ *NDBEDP NPRM*, 26 FCC Rcd at 692-93, ¶ 10.

²⁰ *Id.* at 693, ¶ 11.

²¹ *Id.* at 692-93, ¶ 10.

²² *Id.*

live close to a state EDP center, we proposed to support collaborations or partnerships between a state's EDP and other state programs (*e.g.*, vocational rehabilitation, education, and/or assistive technology program) to meet the needs of these individuals.²³ Finally, for states without any EDPs, we asked whether multiple entities should be permitted to oversee the distribution of and receive compensation for equipment to different regions of those states, or whether we should select a single entity to assume this oversight role across the state.²⁴

9. Many of the commenters responding to the *NDBEDP NPRM* support our proposal to rely on both state EDPs and other qualified entities to distribute equipment under the NDBEDP. For example, Deaf-Blind Young Adults in Action (“DBYAA”) states that the distribution of equipment through state EDPs and local channels “would be more effective than establishing a national distribution program.”²⁵ Similarly, Missouri Assistive Technology (“MoAT”) notes that having established EDPs handle this responsibility is beneficial because these entities provide “existing infrastructures for the program rather than expending dollars on developing new distribution systems.”²⁶ MoAT further supports our proposal to allow other entities to step in where a state EDP is unable or willing to participate in the NDBEDP.²⁷ Finally, the Telecommunications Equipment Distribution Program Association (“TEDPA”), which represents EDPs across the country, claims that its members are “best situated” to distribute specialized CPE to people who are deaf-blind.²⁸ It notes that some state EDPs already have been providing services to people who are deaf-blind for years and have the proficiency needed to communicate with this population, while others can create partnerships for this purpose and should be given the option to “maintain this proven service delivery system under the NDBEDP.”²⁹

10. Other commenters were less supportive of relying on state EDPs. For example, the Lighthouse for the Blind, Inc. (“Lighthouse”) notes that EDPs have varied in their effectiveness in serving people who are deaf-blind and that many have only limited knowledge and experience with this population.³⁰ Instead, the Lighthouse recommends that a variety of service models and programs be included in the pilot program.³¹ The suggestion to evaluate a range of models with respect to their program structures, equipment distribution mechanisms and approaches to training and support, is echoed by the National Coalition on Deafblindness (“National Coalition”)³² and the American Council of the

²³ *Id.* at 693, ¶ 11.

²⁴ *Id.*

²⁵ DBYAA Comments at 1. Where no state EDP exists, DBYAA suggests that a single entity within a state be designated to assume responsibility for distributing equipment. *Id.*

²⁶ MoAT Comments at 1.

²⁷ *Id.*

²⁸ TEDPA Comments at 1.

²⁹ *Id.*

³⁰ Lighthouse Comments at 2. *See also* NAD Comments at 2 (urging more stringent certification factors to ensure equal quality of services in all states).

³¹ Lighthouse Comments at 2.

³² National Coalition Comments at 2 (noting its preference for a regionalized or national system).

Blind (“ACB”).³³ The National Coalition further favors a program of subcontractors to be overseen by a national or regional entity with experience serving the deaf-blind community.³⁴

11. Virtually all commenters encourage collaboration, partnerships, and other types of cooperative arrangements between entities, in-state and out-of-state, to provide the needed expertise to meet the needs of this diverse population.³⁵ For example, the Lighthouse recommends that the Commission give preference for certification to projects that “have a history of working collaboratively with organizational partnerships and connections to the communities of people served.”³⁶ It further suggests that people who are deaf-blind be given the flexibility to “choose the EDP or model organization with whom they are most comfortable working, regardless of location.”³⁷ The National Coalition also recommends allowing certified programs to enter into cooperative agreements or coordinated ventures across state lines because the number of individuals in the United States that have expertise on the needs of people who are deaf-blind is so limited, and having this flexibility would best serve this population.³⁸ Likewise, the Helen Keller National Center for Deaf-Blind Youths and Adults (“HKNC”), which provides adaptive technology training for teaching deaf-blind individuals, notes that because there is a critical shortage of qualified personnel trained to work with individuals who are deaf-blind, consumers should have the right to get services related to equipment distribution – for example, training – from another agency, in or out of state, if their EDP is not meeting their needs.³⁹

12. *Discussion.* After reviewing the record, we adopt a modified version of the proposal on which we sought comment in the *NDBEDP NPRM*. Specifically, as we proposed in the *NDBEDP NPRM*, we conclude that we will certify only one entity per state as eligible to receive support for the distribution of equipment to individuals who are deaf-blind.⁴⁰ But while we also proposed a multi-stage certification process in the *NDBEDP NPRM* (first accepting applications for certification from state EDPs, and then accepting applications for certification from other entities in states without a certified state EDP),⁴¹ we conclude here that the better course is to permit all qualified entities to apply for certification and to select from among them based on the criteria set out below. As noted by several of the commenters, many existing state EDPs already have both experience in working with the deaf-blind population, as well as the infrastructures in place to distribute this equipment.⁴² At the same time, we think that greater flexibility in choosing the certified entity will permit the Commission to certify the best qualified entity to

³³ ACB Reply at 2. *See also* Parker Comments at 1 (suggesting that multi-year pilot projects be designed around sub-populations like seniors and youth).

³⁴ National Coalition Comments at 4. *See also* NAD Comments at 2 (favoring a national center with several regional service centers).

³⁵ *See, e.g.*, NAD Comments at 3; National Coalition Comments at 3; TEDPA Comments at 1. For example, such collaboration could be used to locate qualified personnel to perform individual assessments and provide training, as needed, to equipment recipients.

³⁶ Lighthouse Comments at 3.

³⁷ *Id.* at 2.

³⁸ National Coalition Comments at 4.

³⁹ HKNC Comments at 2.

⁴⁰ *See NDBEDP NPRM*, 26 FCC Rcd at 693-94, ¶ 10.

⁴¹ *Id.*

⁴² *See* para. 9, *supra*.

utilize TRS Fund support to effectuate the purposes of the CVAA. In many cases, the certified entity may well be the state EDP,⁴³ but under this approach we retain the flexibility to approve other entities.

13. Accordingly, we delegate authority to CGB to certify a single entity per state to receive funding for the distribution of equipment under the NDBEDP for that state.⁴⁴ Each certified entity will have primary oversight and responsibility for compliance with program requirements, but certified entities may fulfill their responsibilities either directly or through collaboration, partnership, or contract with other individuals or entities in-state or out-of-state (including other state EDPs).⁴⁵ We note, for example, that collaboration with other entities that have specific expertise in working with people who are deaf-blind may be necessary and appropriate to provide both individual assessments needed to ascertain which devices are appropriate for distribution, as well as the training that is needed for the recipient to effectively use that equipment.⁴⁶ In addition, some entities may not have distribution networks that reach all parts of their states and may wish to collaborate with partners who do. We believe that this program structure will establish accountability in each of the states by giving programmatic responsibility to one certified program that will be authorized to oversee that state's distribution efforts, while permitting such designated entity to draw upon the expertise of other in- and out-of-state resources.

14. We will require the submission of certification applications within 60 days after the effective date of these interim rules,⁴⁷ and will announce the selected participants, starting date, and funding allocations as soon as possible thereafter.⁴⁸ We believe that this single-stage application process for purposes of the pilot program will achieve greater efficiency, conserve staff resources, and achieve implementation of the equipment distribution efforts more promptly than a multi-stage application process.⁴⁹ Certification will be granted for the duration of the pilot program, subject to compliance with program requirements.⁵⁰

⁴³ See, e.g., MoAT Comments at 1 (noting state EDPs have existing infrastructures for equipment distribution); TEDPA Comments at 1 (asserting that state EDPs are "best suited" to distribute specialized CPE to deaf-blind individuals). *But see* Lighthouse Comments at 2 (claiming state EDPs have varied in their effectiveness in serving deaf-blind individuals).

⁴⁴ A maximum of 53 entities may be selected to participate in the NDBEDP pilot – the 50 states plus the District of Columbia, Puerto Rico, and the Virgin Islands, each of which currently administers an intrastate TRS program. Future references to "states" in this Order shall apply to all of these jurisdictions.

⁴⁵ As noted below in Section V, *infra*, the NDBEDP entails not only the distribution of equipment, but also the provision of related services, including individual assessments and training, that may be needed to effectively provide a person who is deaf-blind with the equipment that he or she needs to access the communications services covered by the CVAA.

⁴⁶ See, e.g., National Coalition Comments at 4 (urging flexibility to best utilize limited number of individuals with expertise on the needs of individuals who are deaf-blind); HKNC Comments at 2 (noting shortage of qualified personnel trained to work with individuals who are deaf-blind).

⁴⁷ These rules will be effective upon notice in the Federal Register announcing OMB approval of the information collection requirements subject to the Paperwork Reduction Act.

⁴⁸ *But see* National Coalition Comments at 3 (recommending a three-month process).

⁴⁹ The Commission may, however, accept certification applications at any time during the pilot program, as may be needed to fill program gaps, with the goal of ensuring that one certified program is operating in every state.

⁵⁰ See TEDPA Comments at 1 (recommending certification for the duration of the pilot program). *But see* DBYAA Comments at 1 (recommending annual recertification).

15. We adopt, with the following minor modifications, the proposed criteria for certification to participate in the NDBEDP pilot, and require applicants for certification to provide information in their applications demonstrating that they meet each of these criteria.⁵¹ First, we require expertise in the field of deaf-blindness to ensure that equipment distribution and the provision of related services occurs in a manner that is relevant and useful to consumers who are deaf-blind. We clarify that “expertise in the field of deaf-blindness” should include familiarity with the culture and etiquette of people who are deaf-blind as necessary to serve this population effectively. Many commenters emphasize the importance of ensuring that employees or agents of programs certified under the NDBEDP demonstrate a high level of knowledge about and familiarity with the communication needs of people who are deaf-blind. In this regard, TEDPA notes its support for the certification criteria proposed in the *NDBEDP NPRM*,⁵² in particular the requirement for proficiency in communicating with deaf-blind individuals.⁵³ Likewise, the Lighthouse asserts that it is “essential that [an equipment distribution] program has a high level of expertise in deaf-blindness” including communication fluency in multiple languages, techniques, and modalities; cultural competency; input from deaf-blind consumers; and leadership by members of the deaf-blind community.⁵⁴

16. Second, we require the ability to communicate effectively with people who are deaf-blind by, among other things, using sign language and providing materials in Braille. Effective communication with members of this community requires a wide range of unique capabilities – including various forms of tactile communication, as well as the patience to impart information in a manner that ensures that participants fully understand the information and instructions they are given.⁵⁵ Without adequate communication between certified program staff and these individuals, such individuals will not be able to effectively benefit from the communication equipment they receive. To this end, we also require that programs have the ability to ensure that their program information made available online is accessible to the intended population, and that they know how to use other assistive technologies and methods to achieve effective communication.

17. Third, we require staffing and resources that are sufficient to administer the program.⁵⁶ This includes the ability to distribute equipment and provide related services to eligible individuals throughout the state, including to remote areas.⁵⁷ The appropriate number of employees and facilities will depend on the size and location of the program, but the program should be capable of meeting the demand for equipment and services supported by the NDBEDP. For example, if a state is given sufficient funds to distribute 20 devices to 20 individuals, staffing should be sufficient to meet the demands of those individuals.

⁵¹ *NDBEDP NPRM*, 26 FCC Rcd at 692, ¶ 10.

⁵² *Id.*

⁵³ TEDPA Comments at 1. *See also* NAD Comments at 3.

⁵⁴ Lighthouse Comments at 1. *See also* HKNC Comments at 2 (urging the Commission to allow for meaningful input from deaf-blind consumers and appropriate experts when assessing whether a program is qualified to serve as a distribution center).

⁵⁵ HKNC Comments at 3 (explaining that presenting information on the appropriate language level and in accessible formats for individuals who are deaf-blind is a significant challenge). *See also* Section V.G, *infra*.

⁵⁶ *See NDBEDP NPRM*, 26 FCC Rcd at 692, ¶ 10.

⁵⁷ *Id.*

18. Fourth, we require experience with the distribution of specialized CPE, especially to people who are deaf-blind.⁵⁸ Various programs across the country already have this or similar experience, whether part of a state EDP, a vocational rehabilitation program, or a technical assistance center.⁵⁹ Having such experience at the start of the NDBEDP will help expedite delivery of these devices to this underserved population.

19. Fifth, we require experience in training deaf-blind individuals on how to use the equipment, knowledge of how to set up this equipment, and experience in ensuring that deaf-blind individuals can effectively use the equipment.⁶⁰ The equipment distributed under the NDBEDP will often need to be configured to meet the unique needs of such individuals. A qualifying program will be familiar with these unique needs so that it can effectively instruct program recipients on how to get the most out of their new communication devices.

20. Finally, we require familiarity with the telecommunications, Internet access, and advanced communications services that will be used with the distributed equipment, so that the recipient is able to benefit from the full range of communications technologies available to the general public.⁶¹ For example, if a device has the capability to use instant messaging and e-mail along with TTY communications,⁶² the program must be able to teach its recipients how to use each of these communication features.

21. In order to facilitate collaboration among interested parties, we will require that an applicant provide information in its application indicating whether it is able to meet the requirements for certification alone, or in conjunction with other programs or entities. We believe that granting certification to the strongest application in each state will encourage applicants to collaborate to provide the most effective and efficient services, thus benefitting the ultimate program recipients, the deaf-blind community. Program applicants may also include recommendations with their certification applications from members of the deaf-blind community in their state, appropriate experts, or others with direct knowledge of their capabilities and qualifications.

22. Given the time needed to evaluate the pilot program and engage in a rulemaking process for the permanent program, we will operate the NDBEDP pilot for two years, from the pilot program start date, with an option to extend the program for an additional year. We delegate authority to CGB to establish the pilot program start date, as soon as possible, but not later than July 1, 2012, the start of the 2012-2013 TRS Fund year. Commenters generally agreed that a multi-year program is appropriate and necessary “to accumulate data on [the] effectiveness of services as well as to account for needed start up time, public outreach to the Deaf-Blind community, and collection of input from program participants in a

⁵⁸ *Id.*

⁵⁹ See MoAT Comments at 1 (noting that state EDPs have existing infrastructures for equipment distribution).

⁶⁰ See *NDBEDP NPRM*, 26 FCC Rcd at 692, ¶ 10. See also Section V.E, *infra*.

⁶¹ In the *NDBEDP NPRM*, we proposed to require “a strong familiarity with the communications needs of this population” which one commenter interpreted as meaning familiarity with the languages and communication modes used by individuals who are deaf-blind. See *NDBEDP NPRM*, 26 FCC Rcd at 692, ¶ 10; Lighthouse Comments at 3.

⁶² A TTY, also called a “text telephone,” is a text device that employs graphic communication in the transmission of coded signals through a wire or radio communication system. See *Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657, ¶ 1 n.1 (1991).

relevant manner.”⁶³ We believe that the experiences gained during this pilot program, as reported in the data required by this Order,⁶⁴ will provide us with a comprehensive understanding of how to ensure the most efficient and effective use of the funds available under this program to meet the needs of this population on a more permanent basis.

IV. CONSUMER ELIGIBILITY

A. Definition of Individuals who are Deaf-Blind

23. Under the CVAA, persons eligible to receive equipment under the NDBEDP must be “deaf-blind,” as this term is defined by the Helen Keller National Center Act (“HKNC Act”), as amended by the Rehabilitation Act Amendments of 1992.⁶⁵ As noted in the *NDBEDP NPRM*, the HKNC Act defines an “individual who is deaf-blind” as any individual:

(i) who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both these conditions; (ii) who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and (iii) for whom the combination of impairments described in clauses (i) and (ii) cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.⁶⁶

Although the HKNC Act prescribes a specific standard against which one’s disability must be measured, it also allows a person to be considered deaf-blind if, in those instances in which the individual cannot be measured accurately for hearing and vision loss because of cognitive and/or behavioral constraints, through functional and performance assessment, he or she is determined to have “severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities.”⁶⁷ In the *NDBEDP NPRM*, we noted that most commenters urged a flexible interpretation of this definition, to allow determinations of eligibility to be based on an individual’s functional abilities.⁶⁸ The majority of such commenters felt that a narrow interpretation would exclude many individuals who are unable to access traditional communications equipment because of their disabilities.⁶⁹

24. In response to these concerns, in the *NDBEDP NPRM*, we asked whether certified programs should consider the settings in which a deaf-blind applicant is likely to establish telephone-type communication with others when determining eligibility based on disability. We gave as an example a

⁶³ Lighthouse Comments at 3 (suggesting three years as a reasonable time frame). *See also* Parker Comments at 1 (urging multi-year funding); National Coalition Comments at 3 (recommending three years); RERCs Reply at 3 (suggesting two years might be better with an option to extend for six or 12 months); ACB Reply at 2.

⁶⁴ *See* Section VII, *infra*.

⁶⁵ 47 U.S.C. § 620(b), *citing* 29 U.S.C. § 1905(2).

⁶⁶ 29 U.S.C. § 1905(2)(A); *NDBEDP NPRM*, 26 FCC Rcd at 693, ¶ 12.

⁶⁷ 29 U.S.C. § 1905(2)(B); *NDBEDP NPRM*, 26 FCC Rcd at 693-94, ¶ 13.

⁶⁸ *NDBEDP NPRM*, 26 FCC Rcd at 694, ¶ 14

⁶⁹ *Id.*

blind person with a moderate hearing loss who might have no trouble hearing a conversation in a quiet room, but who under the second prong of the HKNC definition, might not be able to hear telephone speech even “with optimum amplification,” in a noisy public setting.⁷⁰ Similarly, we proposed that the ability of an individual to use the communications services covered under Section 719 of the Act (telecommunications, Internet access, and advanced communications services) should be considered when determining the degree of difficulty caused by the combination of the individual’s hearing and vision loss in “attaining independence in daily life activities” under the third prong of the definition.⁷¹

25. The commenters to this proceeding support a functional approach when determining whether an individual is “deaf-blind” under the HKNC Act definition.⁷² For example, MoAT urges “consideration of settings in which the deaf-blind individual is likely to establish telecommunications with others” in determinations as to whether an individual is deaf-blind.⁷³ The National Coalition notes that an individual’s ability to function is impacted by environmental and other factors, such as being able to read large print with optimal light, but requiring Braille in other settings.⁷⁴ Similarly, the RERCs support the use of evaluations of deaf-blindness “in real environments and not in a quiet evaluation room.”⁷⁵ Finally, AADB claims that “[r]emaining focused on functional equivalency aligns with Congress’s overall goal to ensure the availability of existing and emerging communication technologies for the deaf-blind population.”⁷⁶

26. *Discussion.* We are required to incorporate into this program the HKNC Act definition of “individuals who are deaf-blind.” That definition contains three prongs. In considering the latter two of these prongs, we agree with commenters that the intent of the CVAA will best be fulfilled if we also consider an individual’s ability to engage independently in the communications-related activities covered under Section 719, *i.e.*, the ability to use telecommunications, Internet access, and advanced communications services.

27. The first prong of the definition requires assessment of the individual’s vision. The statute provides clear, measurable standards of loss of visual acuity, and we are bound by the statute to apply these standards.⁷⁷ The second and third prongs of the definition are more flexible in that they permit the consideration of other factors. The second prong asks whether the individual has a hearing loss so severe “that most speech cannot be understood with optimum amplification.”⁷⁸ We believe this prong

⁷⁰ *Id.* at 694-95, ¶ 15; 29 U.S.C. § 1905(2)(A)(ii).

⁷¹ *NDBEDP NPRM*, 26 FCC Rcd at 694-95, ¶ 15; 29 U.S.C. § 1905(2)(A)(iii).

⁷² *See, e.g.*, AADB Comments at 4; DBYAA Comments at 2 (urging a “flexible interpretation that allows eligibility to be based on an individual’s functional abilities”); Lighthouse Comments at 3; MoAT Comments at 1; NAD Comments at 4; National Coalition Comments at 4; RERCs Reply at 3. *See also* TEDPA Comments at 2 (HKNC Act definition is sufficiently flexible).

⁷³ MoAT Comments at 1.

⁷⁴ National Coalition Comments at 4. *See also* ACB Reply at 4.

⁷⁵ RERCs Comments at 3.

⁷⁶ AADB Comments at 4.

⁷⁷ The first prong also includes a provision for a progressive visual loss having a prognosis leading to one or both of the vision standards described. 29 U.S.C. § 1905(2)(A)(i). As noted above, the HKNC Act provides a different standard for individuals whose hearing or vision cannot be measured accurately due to cognitive and/or behavioral constraints. *See* para. 23, *supra*.

⁷⁸ 29 U.S.C. § 1905(2)(A)(ii).

permits us to take into account such considerations as whether the speech is being perceived over the telephone.⁷⁹ Similarly, the third prong asks whether the individual's combined visual and hearing losses "cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation."⁸⁰ We read this prong as broad enough to take into account communications-related activities, which are commonly associated with attaining "independence in daily life activities, achieving psychosocial adjustment, and obtaining a vocation."⁸¹ We believe that we have the authority to direct consideration of this criterion as necessary in order to give full effect and meaning to the statute, and to identify the full range of individuals for whom the program is intended. Further, we conclude that consideration of these functional capabilities is in keeping with Congress's overall goal to ensure the accessibility of existing and emerging communications technologies for the deaf-blind population. When applied in this manner, this functional approach will provide the flexibility requested by many of the commenters in this proceeding. Accordingly, we direct NDBEDP certified programs to consider an applicant's functional abilities with respect to using telecommunications, Internet access, and advanced communications services in various environments, when determining whether the individual is deaf-blind under prongs two and three of the definition.

B. Verification of Disability

28. In both the *NDBEDP PN* and the *NDBEDP NPRM*, we asked how best to verify a person's disability for purposes of participating in this program.⁸² To ensure that verification is not overly burdensome, we tentatively concluded in the *NDBEDP NPRM* that individuals claiming eligibility under the NDBEDP should be permitted to obtain verification from any practicing professional who has direct knowledge of the individual's disability, such as a vocational rehabilitation counselor, audiologist, speech pathologist, educator, hearing instrument specialist, or physician.⁸³ We sought comment on the content of the attestations of such professionals and proposed that the professional provide his or her name, title, and contact information, including address, phone number and e-mail address in the certification.⁸⁴ We also asked whether such professionals should be required to certify to the best of their knowledge or under penalty of perjury that the individual's disability satisfies our eligibility requirements.⁸⁵

29. Commenters support our efforts "to make the verification process less burdensome."⁸⁶ Like the majority of commenters responding to the *NDBEDP PN*, the Lighthouse reiterates the need for a simplified verification process, noting the logistical challenges that an individual who is deaf-blind faces to obtain written documentation (*i.e.*, "scheduling appointments without the benefit of telecommunications, requesting/finding qualified interpreters, and coordinating transportation to the appointment").⁸⁷ Other commenters approve of permitting individuals to obtain verification of disability

⁷⁹ See MoAT Comments at 1; RERCs Reply at 3.

⁸⁰ 29 U.S.C. § 1905(2)(A)(iii).

⁸¹ See National Coalition Comments at 4; AADB Comments at 4.

⁸² *NDBEDP PN*, 25 FCC Rcd at 15289; *NDBEDP NPRM*, 26 FCC Rcd at 695, ¶ 16.

⁸³ *NDBEDP NPRM*, 26 FCC Rcd at 695, ¶ 17.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ National Coalition Comments at 5; ACB Reply at 5.

⁸⁷ Lighthouse Comments at 4.

from a wide range of practicing professionals.⁸⁸ AADB urges us to keep verification of disability “as simple as possible,” and to allow this to be obtained from a qualified medical professional, state agency, or community based service provider.⁸⁹ Jeff Rosen, a disability attorney and advocate, strongly endorses permitting verification from a “community based service provider,” such as disability oriented organizations with direct knowledge of the individual to attest to his/her disability, as well as “other independent, knowledgeable and objective sources who are not . . . professionals or service providers.”⁹⁰ MoAT similarly proposes that individuals be able to obtain certification of a disability from “any practicing professional who has direct knowledge of the individual’s disability,” whether that is an allied health professional or an agency professional, such as someone who works in the field of vocational rehabilitation services.⁹¹

30. Comments were mixed with respect to the form that such attestations must take. MoAT urges the Commission not to require professionals to have to attest under penalty of perjury because this “would mean that already existing certifications of disability [that are not made under penalty of perjury] could not be used,”⁹² and applicants would have to go through the burden of obtaining a second verification. MoAT further notes that its experience as a state EDP suggests that “certifying professionals are truthful within their scope of practice in attesting to disability and a ‘penalty of perjury’ certification is not necessary.”⁹³ Similarly, the National Coalition recommends that professionals be permitted to sign a form that certifies “to the best of their knowledge [that] the individual’s disability satisfies the eligibility requirements for the NDBEDP.”⁹⁴

31. *Discussion.* We agree with commenters that NDBEDP applicants who are deaf-blind are likely to face significant logistical challenges, including the very types of communication barriers the NDBEDP is itself designed to eliminate, in their attempts to obtain verification of their disabilities. Arranging for appointments and traveling for the purpose of obtaining certification from a professional can be exceedingly difficult for individuals who are deaf-blind.⁹⁵ In order to facilitate access to the NDBEDP by the intended population, while at the same time implementing measures to prevent potential fraud or abuse of this program, we adopt a rule requiring individuals seeking equipment under the NDBEDP to provide verification from any practicing professional that has direct knowledge of the

⁸⁸ See, e.g., National Coalition Comments at 5 (vocational rehabilitation counselors, audiologists, speech pathologists, educators, hearing instrument specialists or physicians); ACB Reply at 5.

⁸⁹ AADB Comments at 4. See also National Coalition Comments at 6 (encouraging the Commission “to ensure that the process for determining eligibility is easy for the consumer”).

⁹⁰ Rosen Reply at 1. See also Jee Comments at 2 (urging the Commission to allow advocates or counselors from disability organizations such as independent living centers, state commissions for the deaf and hard of hearing, and other deaf institutions to provide verification of disability).

⁹¹ MoAT Comments at 1.

⁹² *Id.* See also DBYAA Comments at 2 (proposing that certification of disability by a practicing professional be “to the best of the professional’s knowledge”). But see, e.g., AADB Comments at 4 (supporting verification under penalty of perjury); TEDPA Comments at 2 (supporting attestations under penalty of perjury).

⁹³ MoAT Comments at 2.

⁹⁴ National Coalition Comments at 5. Both the National Coalition and TEDPA further recommend that the NDBEDP develop a standard application form so that state EDPs and individual applicants are clear as to what qualifications are required. *Id.*; TEDPA Comments at 2. We are taking this recommendation under advisement, and may, depending on the data collected during this pilot program, seek input on a standardized form for the permanent program.

⁹⁵ See NDBEDP NPRM, 26 FCC Rcd at 695, ¶ 16.

individual's disability.⁹⁶ Any such professionals must be able to attest to the individual's disability, as defined above, and may include information about the individual's functional abilities with respect to using telecommunications, Internet access, and advanced communications services in various settings. We expand our proposed, non-exhaustive list of acceptable sources of disability verification to include community-based service providers, vision or hearing related professionals, vocational rehabilitation counselors, educators, audiologists, speech pathologists, hearing instrument specialists, and medical or health professionals.

32. We will not at this time require professionals who attest to an individual's disability to do so under penalty of perjury. We are concerned that imposition of this requirement would render existing certifications of disability that were not made under penalty of perjury invalid for purposes of the NDBEDP, and impose upon the population intended to benefit from this section of the CVAA the added and unnecessary burdens associated with finding, communicating with, and traveling to a professional's office to obtain such verification, tasks that are particularly difficult for this group of individuals.⁹⁷ We therefore adopt, for the pilot program, a rule that permits professionals to verify disability to the best of their knowledge. Also, for purposes of the pilot program, we will accept as verification existing documentation that a person is deaf-blind, such as an individualized education program ("IEP") that indicates that the person receiving equipment is deaf-blind, or a statement from a public or private agency, such as a Social Security determination letter that a person is deaf-blind.⁹⁸ We also adopt a requirement that such verification of disability include the attesting name, title, and contact information, including address, phone number, and e-mail address of the professional.

C. Income Eligibility

33. Section 719 of the Act limits NDBEDP eligibility to "low-income" individuals, but leaves to the Commission the task of determining how to define this limitation.⁹⁹ In the *NDBEDP NPRM*,

⁹⁶ For purposes of this verification, we consider a professional to be a person who has expertise or specialized knowledge in a field in which that person is practicing. Such professionals may include either paid or volunteer individuals who have sufficient knowledge and experience to verify that a person is deaf-blind, and are not limited to medical professionals. See Rosen Reply at 1.

⁹⁷ MoAT Comments at 1.

⁹⁸ In order to obtain disability-related accommodations under other disability civil rights laws, such as the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, a verification of disability signed under penalty of perjury is not required. Rather, while an employer or other entity covered under the ADA may require *reasonable* documentation of disability, in many if not most cases, the disability and the accommodation needed are so obvious that no documentation is required (*e.g.*, a person who is deaf needing a sign language interpreter to obtain training on the job). See, *e.g.*, EEOC, *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act* (2002) ("When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional limitations."), *citing* 29 C.F.R. pt. 1630 app. § 1630.9. In other cases, some documentation, such as a student's individualized education program ("IEP"), is used to serve as verification of the disability, to describe the impact of the disability on the task to be undertaken (*i.e.*, education, testing), and to make requests for specific accommodations. See, *e.g.*, 28 C.F.R. §§ 36.309(b)(1)(iv) and (v) (requests for documentation, by testing services, must be reasonable and limited to the need for the requested accommodation, and considerable weight must be given to documentation of past accommodations provided in similar situations and in response to an IEP or Section 504 Plan). See also ADA Title III Technical Assistance Manual, III-4.6100 Examinations ("Appropriate documentation might include a letter from a physician or other professional, or evidence of a prior diagnosis or accommodation, such as eligibility for a special education program."), <http://www.ada.gov/taman3.html> (visited March 10, 2011).

⁹⁹ 47 U.S.C. § 620(a).

we noted that several parties responding to the *NDBEDP PN* had urged an income threshold of 400 percent to 500 percent of the Federal Poverty Guidelines (“FPG”).¹⁰⁰ Commenters explained that this high threshold would take into consideration both the unusually high medical and related costs commonly associated with being deaf-blind (*e.g.*, personal assistants, medical care, and independent living costs), and the very high cost of some specialized CPE (between \$5,000 and \$10,000) used by this population.¹⁰¹ In response to these concerns, and to reduce the burdens associated with conducting individual evaluations of such personal expenses, we proposed an income threshold of 400 percent of the FPG as the income eligibility criteria for the *NDBEDP*.¹⁰² We further asked whether state EDPs that apply for certification under the *NDBEDP* should be permitted to use income thresholds that are different than this threshold.¹⁰³

34. Commenters responding to the *NDBEDP NPRM* continue to support an income eligibility threshold of 400 percent to 500 percent of FPG, to account for the considerably higher medical and disability-related expenses often incurred by individuals who are deaf-blind.¹⁰⁴ The National Coalition states that, “[e]ven this level will unfortunately exclude certain individuals who are deaf-blind because of their family situation and the high costs of their transportation, medical, home support and other needs,” even before considering the costs to meet their extensive adaptive technology needs.¹⁰⁵ The National Coalition goes on to explain that individuals who are deaf-blind often have multiple disabilities and complex medical challenges that can result in “extraordinary expenses due to their unique needs.”¹⁰⁶ They note that the leading syndrome causing deaf-blindness in the student population is the CHARGE syndrome, a medical condition that typically requires extensive medical care (*e.g.*, g-tube, tracheotomy, liquid nutrition, and braces for scoliosis) with “deductibles and co-payments that add up to thousands of dollars annually” that often leaves families and individuals with very little disposable income. MoAT adds that too low of an income threshold, for example 100 percent of the FPG (\$10,830 annually in 2010), “would make it impossible for all but the most impoverished individuals who are deaf-blind from being able to access the program.”¹⁰⁷

35. Commenters differ as to the extent to which the Commission’s income threshold should replace or supplement the thresholds set by existing state EDPs. MoAT recommends that state EDPs be authorized to apply their own income eligibility limits only when those limits are higher than 400 percent of the FPG.¹⁰⁸ In contrast, TEDPA suggests that state EDPs always should be permitted to use their own income eligibility criteria and that those without income thresholds should not be required to implement

¹⁰⁰ *NDBEDP NPRM*, 26 FCC Rcd at 696, ¶ 19.

¹⁰¹ *Id.* at 696-97, ¶¶ 19-20.

¹⁰² *Id.* at 697, ¶ 20. The 2010 federal poverty level is \$10,830 for an individual; 400 percent of this level would be \$43,320. See <http://aspe.hhs.gov/poverty/10poverty.shtml> (retrieved December 10, 2010). These guidelines are regularly updated by the U.S. Department of Health and Human Services at 42 U.S.C. § 9902(2). *NDBEDP NPRM*, 26 FCC Rcd at 697, ¶ 20 n.47.

¹⁰³ *NDBEDP NPRM*, 26 FCC Rcd at 697, ¶ 20.

¹⁰⁴ See, *e.g.*, DBYAA Comments at 2 (400 percent); Lighthouse Comments at 5 (500 percent); MoAT Comments at 2 (400 percent); NAD Comments at 5 (400 percent as a base); National Coalition Comments at 5 (400 percent to 500 percent); ACB Reply at 5 (400 percent to 500 percent).

¹⁰⁵ National Coalition Comments at 5.

¹⁰⁶ *Id.*

¹⁰⁷ MoAT Comments at 2.

¹⁰⁸ *Id.*

any income eligibility requirements.¹⁰⁹ The National Coalition urges uniform application of the NDBEDP income threshold because “providing equal access to NDBEDP is paramount” and using different income criteria would limit the rights of individuals who are deaf-blind in certain states.¹¹⁰

36. *Discussion.* We conclude that the unusually high medical and disability-related costs incurred by individuals who are deaf-blind discussed in the comments above,¹¹¹ together with the extraordinarily high costs of specialized CPE typically needed by this population,¹¹² support an income eligibility rule of 400 percent of the FPG for the NDBEDP pilot program. In order to give this program the meaning intended by Congress – “to ensure that individuals with disabilities are able to utilize fully the essential advanced technologies that have developed since the passage of the ADA and subsequent statutes addressing communications accessibility”¹¹³ – we must adopt an income threshold that takes into account these unusually high medical and disability-related expenses, which significantly lower one’s disposable income. In addition to considering the views and expertise of advocacy organizations and state EDPs who have had first-hand experience with this population, which we find persuasive, we note that individual testimony was also submitted in this proceeding. For example, a family from Ohio reports having paid more than \$14,000 for medical coinsurance and deductibles last year, and predicts such costs in 2011 to be as high as \$20,000, due to changes in insurance.¹¹⁴ Similarly, a family in New York reports that because their daughter’s CHARGE syndrome results in extremely high out-of-pocket health insurance costs, co-pays, and payments to doctors that do not accept insurance, they must “think twice before [they] can purchase a very expensive piece of equipment, such as a CCTV for home or a hand held CCTV device for shopping and independence purposes.”¹¹⁵

37. We believe that an income eligibility requirement of 400 percent of the FPG furthers the goal of the CVAA to provide communications equipment to low-income people who are deaf-blind because it takes into account the additional challenges, such as the high cost of medical treatment and personal assistance expenses, typically experienced by people who are deaf-blind. We do not believe that people who are deaf-blind should have to choose between paying for medical treatment and obtaining the equipment that they need to be able to communicate. Having to make such choices would defeat the very purpose of the CVAA, a law that is designed to give people with disabilities the communication tools they need to be independent and productive members of society. Specifically, we find that expenses of upwards of \$10,000-\$20,000 for medical care on an income under \$43,320 (400 percent of the FPG) would make it exceedingly difficult, if not impossible for an individual to acquire specialized CPE, some of which can cost \$5,000-\$10,000, without assistance. For this reason, we disagree with commenters who propose that NDBEDP certified programs should be permitted to apply income eligibility limits that are

¹⁰⁹ TEDPA Comments at 2.

¹¹⁰ National Coalition Comments at 5.

¹¹¹ See para. 33, *supra*.

¹¹² HumanWare, a manufacturer of specialized CPE for people who are deaf-blind, has submitted documentation showing that the cost of an 18 cell Deaf Blind Communicator (“DBC”), which enables TTY, e-mail, texting and face-to-face communication, is \$6,379 and that the cost of a 32 cell DBC is \$8,239. HumanWare Feb. 15 *Ex Parte* at 28. Persons who already have a BrailleNote device can add on DBC capabilities for the lesser, but still very high price of \$2,569. *Id.* HumanWare developed the DBC through a 2006 grant provided by the State of Washington Office of Deaf and Hard of Hearing to develop a modern technology tool to help facilitate communication between sighted and deaf-blind individuals. *Id.* at 4.

¹¹³ S. Rep. No. 111-386 at 3 (2010) (“Senate Report”).

¹¹⁴ See National Coalition Comments at 6.

¹¹⁵ See *id.* at 5-6.

lower than the limit we adopt herein.¹¹⁶ We note that state EDPs or alternate entities with income eligibility criteria for other programs they administer that are different from the NDBEDP criteria may still be certified under the NDBEDP, but they must use NDBEDP-compliant income eligibility criteria to assess individuals who will participate in the federal NDBEDP pilot.

D. Verification of Income Eligibility

38. To simplify the income verification process for certified programs, we proposed in the *NDBEDP NPRM* to permit determination of income eligibility under the NDBEDP pilot program by an applicant's enrollment in federal programs with low income eligibility requirements, such as Supplemental Security Income ("SSI"); Federal Public Housing Assistance or Section 8; Supplemental Nutrition Assistance Program, formerly known as Food Stamps; Low Income Home Energy Assistance Program; Medicaid; National School Lunch Program; and Temporary Assistance for Needy Families.¹¹⁷ We also asked about enrollment in other programs that should determine automatic income eligibility under the NDBEDP and the manner in which income should be verified for an individual who is not enrolled in another low income program.¹¹⁸

39. In response to the *NDBEDP NPRM*, commenters agree that individuals enrolled in certain federal programs should be automatically income-eligible for participation in the NDBEDP.¹¹⁹ Commenters also agree that individuals enrolled in state or other programs that have income eligibility criteria that do not exceed the NDBEDP threshold should be deemed eligible under the NDBEDP.¹²⁰ TEDPA asserts that state EDPs are "experienced with performing comprehensive assessment[s] to ensure that applicants meet the eligibility requirements," and suggests that where the individual has no connection with other low income programs, reviewing a copy of the individual's most recent income tax return should be sufficient.¹²¹

40. *Discussion.* We adopt a rule to allow individuals enrolled in federal subsidy programs with income thresholds lower than 400 percent of the FPG threshold to automatically be deemed income eligible for the NDBEDP pilot program.¹²² We believe that this approach is reasonable, reliable (since the only way to qualify for one of these programs is by meeting the same or a more stringent income threshold), and will simplify the income verification process for both applicants and the certified programs to which they apply. In addition, this rule is consistent with the approach adopted for our Universal Service low income program.¹²³ We also adopt a rule that permits the NDBEDP Administrator to authorize other federal or state programs with income eligibility thresholds that do not exceed 400

¹¹⁶ Also, we decline to adopt TEDPA's suggestion that state EDPs with no income eligibility requirement not be required to implement the threshold we establish for this pilot program. TEDPA Comments at 2. Such an approach is inconsistent with the statutory language that limits program participation to low-income individuals.

¹¹⁷ *NDBEDP NPRM*, 26 FCC Rcd at 697, ¶ 21.

¹¹⁸ *Id.* at 697-98, ¶¶ 21-22.

¹¹⁹ *See, e.g.*, MoAT Comments at 2; National Coalition Comments at 6; TEDPA Comments at 2.

¹²⁰ *See, e.g.*, DBYAA Comments at 2; MoAT Comments at 2.

¹²¹ TEDPA Comments at 2.

¹²² Some individuals, such as minors, may be enrolled in certain federal programs as a member of a family or household.

¹²³ *See NDBEDP NPRM*, 26 FCC Rcd at 697, ¶ 20 n.48, *citing* 47 C.F.R. § 54.409(a), (b); <http://www.lifelinesupport.org/li/low-income/eligibility/federal-criteria.aspx>.

percent of the FPG to be the basis for determining income eligibility under the NDBEDP. Where applicants are not already enrolled in a qualifying low-income program, low-income eligibility must be verified by the certified program using appropriate and reasonable means, for example, by reviewing the individual's most recent income tax return.

E. Other Eligibility Requirements and Considerations

1. Access to telephone or Internet service.

41. We sought comment in the *NDBEDP NPRM* on other eligibility requirements that might be appropriate for the NDBEDP, including a requirement that deaf-blind individuals have access to telephone or Internet service.¹²⁴ We also noted that the MoAT program requires recipients of its equipment to have access to telephone or Internet service before being able to receive the equipment that is used with those services.¹²⁵ In response to the *NDBEDP NPRM*, MoAT states that it imposes this requirement because it “would be useless if such service is needed in order to use the equipment/software,” and recommends that the availability of these services be verified prior to having the EDP expend equipment funds.¹²⁶ However, MoAT also asks for clarification on the definition of CPE, specifically whether the term “premises” refers to the location of the consumer at the time of use.¹²⁷ The National Coalition also supports a service prerequisite, but urges the Commission to stipulate that access to telephone or Internet service may include free services available through a public library, public Wi-Fi, a friend, family, local non-profit, or other source.¹²⁸ Similarly, the Lighthouse notes that some individuals may be able to use available WiFi at remote locations, and uses this as a basis for opposing criteria that would require equipment recipients to have their own phone lines or Internet access.¹²⁹ TEDPA reports that state EDPs currently vary in the extent to which they require access to telephone or Internet services.¹³⁰

42. *Discussion.* We agree that NDBEDP recipients should have available for their use the services that distributed equipment are intended to access because, as noted above, giving equipment to an individual who does not use the communication services for which such equipment is intended would unnecessarily drain the program's limited funds, taking the program's resources away from other deaf-blind participants who could benefit from the program. Accordingly, during the NDBEDP pilot program, we will permit certified programs to require that NDBEDP equipment recipients demonstrate that they have access to the “telecommunications service, Internet access service, and advanced communications” that the equipment is designed to use and make accessible.¹³¹ We note, however, that states choosing to impose this qualification criterion must allow access to such services to be in the form of wireless, WiFi,

¹²⁴ *NDBEDP NPRM*, 26 FCC Rcd at 698, ¶ 23.

¹²⁵ *Id.*

¹²⁶ MoAT Comments at 2. *See also* DBYAA Comments at 2 (applicants “must have existing services, or have the intention of setting up such services, for which the distributed equipment will be used”).

¹²⁷ MoAT Comments at 2.

¹²⁸ National Coalition Comments at 6. *See also* ACB Reply at 6.

¹²⁹ Lighthouse Comments at 4.

¹³⁰ TEDPA Comments at 2.

¹³¹ 47 U.S.C. § 620(a). We note that although we permit states to establish this as a prerequisite to obtaining equipment, we do not require states to make this a qualification for the receipt of equipment at this time.

or other free services made available by public or private entities (*e.g.*, public libraries or coffee shops), or by the recipient's family, friends, neighbors, or other personal contacts.

2. Employment.

43. In the *NDBEDP NPRM*, we reported that certain state assistance programs pay for communications equipment only if the deaf-blind applicant requesting a device has a job or is actively seeking employment.¹³² We proposed prohibiting NDBEDP certified programs from adopting this and other employment-related eligibility criteria.¹³³ In response, commenters uniformly support a prohibition on employment-related eligibility criteria.¹³⁴ A parent from Ohio writes:

Equipment should go to all persons who are deaf-blind, regardless of age (beyond a minimum age, say five years old). By the time a child is five years old, he or she is learning to access the Internet and communicate on the phone, whether to call Grandma or learn the skills to dial 911. Every child who is deaf-blind has the right to develop the same skill set as every child who is not deaf-blind. To not provide equipment to every person, including children, is to subvert the intent of the Act and continue to isolate a population that is unnecessarily closed off in an age when technology is available to break down communication barriers.¹³⁵

44. *Discussion.* We agree that access to telecommunications should not be dependent on employment status. Moreover, there is no statutory basis for such a requirement under the CVAA. We are also concerned that requiring NDBEDP recipients to be employed or actively seeking employment would limit the scope of the NDBEDP in a manner that would be inconsistent with the underlying purpose of this program to expand communication access in the deaf-blind population. Such a requirement potentially could exclude children, students, retirees, and senior citizens. Moreover, as noted by the Lighthouse, "access to telecommunications is not restricted to people who are hearing and sighted based on their employment status."¹³⁶ Thus, we prohibit certified programs from adopting or imposing employment-related eligibility requirements for individuals to participate in the NDBEDP pilot program.

V. COVERED EQUIPMENT AND RELATED SERVICES

A. Scope of Specialized Customer Premises Equipment

45. Section 719 authorizes support for programs for the distribution of specialized CPE needed to make telecommunications service,¹³⁷ Internet access service,¹³⁸ and advanced

¹³² *NDBEDP NPRM*, 26 FCC Rcd at 698, ¶ 24.

¹³³ *Id.*

¹³⁴ *See, e.g.*, AADB Comments at 6; DBYAA Comments at 2; Lighthouse Comments at 4; National Coalition Comments at 6; ACB Reply at 6.

¹³⁵ National Coalition Comments at 12.

¹³⁶ Lighthouse Comments at 4. While possibly appropriate for vocational rehabilitation and other targeted employment programs, a limitation based on employment status would thwart the objectives of the NDBEDP.

¹³⁷ "Telecommunications service" is defined in the Communications Act as the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(52). "Telecommunications" is further defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(49).

communications,¹³⁹ including interexchange services¹⁴⁰ or advanced telecommunications and information services,¹⁴¹ accessible to low-income individuals who are deaf-blind.¹⁴² We noted in the *NDBEDP NPRM* that these include, *inter alia*, voice, data and video services provided over the Internet, along with equipment needed to access more traditional telephone-based wireline and wireless services.¹⁴³ We also set out, in both the *NDBEDP PN*¹⁴⁴ and in the *NDBEDP NPRM*¹⁴⁵ the definition of “customer premises equipment” contained in the Act as “equipment employed on the premises of a person (other than a carrier) to originate, route or terminate telecommunications,”¹⁴⁶ as well as the definition of “specialized CPE” contained in the Commission’s rules as “customer premise equipment which is commonly used by individuals with disabilities to achieve access.”¹⁴⁷ As we noted above, there is considerable variation in the degree to which people who are deaf-blind have hearing or vision loss. As a consequence, a wide range of such equipment is needed to enable access to the various communications services covered under the CVAA by this unique and diverse population.¹⁴⁸

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¹³⁸ The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”) defines “Internet access service” as “a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers.” 47 U.S.C. § 231(e)(4).

¹³⁹ The CVAA defines “advanced communications service” as “(A) interconnected [voice over Internet protocol (VoIP)] service; (B) non-interconnected VoIP service; (C) electronic messaging service; and (D) interoperable video conferencing service.” Pub. L. 111-260, Sec. 101, to be codified at 47 U.S.C. § 153(1).

¹⁴⁰ Interexchange services are generally services between local exchanges in different geographic areas (local access and transport areas, otherwise known as LATAs). Traditionally, these have been commonly called long-distance services. See *Union Telephone Co. v. Qwest Corp.*, 2004 WL 4960741 (D.Wyo. Sept. 3, 2004) (NO. 02-CV-209-D) at 2 (“long distance” (also known as “toll” or “interexchange”) service refers to service offered to subscribers that permits them to place (or originate) calls that terminate outside of their local calling area).

¹⁴¹ See note 137, *supra* (defining “telecommunications service”). “Information service” is defined as the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. 47 U.S.C. § 153(24).

¹⁴² 47 U.S.C. § 620(a).

¹⁴³ *NDBEDP NPRM*, 26 FCC Rcd at 698, ¶ 26, citing *NDBEDP PN*, 25 FCC Rcd at 15290 nn.6-8.

¹⁴⁴ *NDBEDP PN*, 25 FCC Rcd at 15288.

¹⁴⁵ *NDBEDP NPRM*, 26 FCC Rcd at 698-99, ¶ 26.

¹⁴⁶ 47 U.S.C. § 153(16).

¹⁴⁷ 47 C.F.R. § 7.3(i). See also 47 C.F.R. § 64.607(a) (offering examples of specialized CPE); *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6435, ¶¶ 34-36 (1999) (providing further guidance on this definition).

¹⁴⁸ *NDBEDP NPRM*, 26 FCC Rcd at 699, ¶ 27. We noted in the *NDBEDP NPRM* that examples of such equipment and technologies include the following: TTYs with Braille or large visual displays; amplified phones; captioned telephones; phones with extra-large buttons; high volume speakerphones; accessories that permit voice dialing; talking Caller ID; number announcers; software to enable instant messaging; devices used for video communications; Braille reader applications on touch screen cell phones and mobile devices for text messaging; optical character recognition software; screen magnification programs; and tactile signal alerting systems. *Id.*

46. In addition to having the NDBEDP cover specialized CPE, the *NDBEDP NPRM* sought comment on the extent to which equipment that is available to the general public (“off-the-shelf” or “mainstream” equipment), such as computers or smart phones, may be adaptable to provide the access needed – either as stand-alone products or for use with specialized CPE – and therefore made available for distribution under the NDBEDP.¹⁴⁹ We also sought comment on whether funding caps should be established to limit the amount of equipment that an NDBEDP certified program can provide to an eligible individual over a specified period of time, and, if so, what that amount and time period should be.¹⁵⁰ Finally, seeking to balance the limited NDBEDP funding with advances in technology, we sought comment on whether eligible individuals should be permitted to obtain new equipment every five years and new software on an as needed basis, and whether such software upgrades should be limited by a monetary cap.¹⁵¹

47. In response to the *NDBEDP NPRM*, commenters uniformly support a broad definition of covered equipment and technology eligible for distribution under the NDBEDP,¹⁵² without restrictions on specific brands, models, or types of technology.¹⁵³ The National Coalition emphasizes that “[e]ach person with combined vision and hearing loss is unique, and their communication and technology needs are just as unique and individual to them. No two people can be expected to need or want exactly the same device.”¹⁵⁴ According to Gayle Yarnall, founder of Adaptive Technology Consulting:

There are very few people who are totally blind and totally deaf. . . . Most people are some combination of hearing impaired and visually impaired. This means that the range of products, and needs, and learning styles vary greatly. Products will include anything from screen enlargement software to braille displays. Where one person will want to work with a screen reader using head phones to increase and concentrate the volume another will want the combination of speech and braille. . . . Adding a TTY to a phone system may be all someone needs, while someone else will need a Deaf-Blind Communicator.¹⁵⁵

48. Several commenters urge that certified programs not be permitted to restrict the way that equipment distributed under the NDBEDP is used by consumers, or be permitted to disable certain capabilities on the equipment they distribute.¹⁵⁶ As an example, AADB notes that a deaf-blind person might be in a situation where she is unable to use the telephone functions on a device, but may be able to access the Internet to achieve communication; in this situation, the individual would remain isolated if unable to use the Internet functions.¹⁵⁷ AADB further explains that being able to use multiple forms of communication can reduce isolation and better achieve functional equivalency, and that even face-to-face communication may be needed by a person who is deaf-blind, depending on the location and the

¹⁴⁹ *Id.* at 700, ¶ 30.

¹⁵⁰ *Id.* at 700, ¶ 31.

¹⁵¹ *Id.*

¹⁵² *See, e.g.*, AADB Comments at 1-2 (to safeguard and enhance consumer choice, promote competition, and assure access to communications services) and 6-7; DBYAA Comments at 2; Lighthouse Comments at 4; National Coalition Comments at 7; RERCs Reply at 3; Wheeler Comments at 2.

¹⁵³ *See, e.g.*, Lighthouse Comments at 4; National Coalition Comments at 7.

¹⁵⁴ National Coalition Comments at 7; *see also* ACB Reply at 7.

¹⁵⁵ National Coalition Comments at 7.

¹⁵⁶ *See, e.g.*, AADB Comments at 6; National Coalition Comments at 7; ACB Reply at 7.

¹⁵⁷ AADB Comments at 6.

communication method used by that individual.¹⁵⁸ Others similarly raise concerns about the practice by some state EDPs of restricting the availability of features on multi-function devices.¹⁵⁹ For example, TEDPA notes that some state EDPs, per state statute, only allow telecommunications devices to be distributed.¹⁶⁰

49. Most commenters specifically support the distribution of off-the-shelf equipment under this program if it effectively meets the needs of the deaf-blind individual.¹⁶¹ The Lighthouse urges the Commission to cover mainstream equipment when it is part of a package of necessary equipment or when it is the most effective option that fits the individual's need.¹⁶² Similarly, the RERCs recommend allowing mainstream product-based solutions because this may sometimes be less expensive than specialized CPE.¹⁶³ AADB notes that automatic software and firmware updates, which are sometimes free from the Internet, may minimize the need to return devices to the EDP as a result of "declining functionality."¹⁶⁴ The RERCs also support coverage of software, noting that low cost mainstream products can often be made accessible with proper software, but that the software itself can be expensive, often exceeding the price of the hardware.¹⁶⁵

50. Commenters believe it would be helpful for the Commission to provide a non-exclusive list of examples of equipment that can and cannot be provided through NDBEDP.¹⁶⁶ Some also urge not allowing the states to decide which equipment to make available because of the unequal treatment that people who are deaf-blind have experienced in the current EDP system, noting that "access to equipment has been dictated by the EDP rather than based on the individual's needs."¹⁶⁷

¹⁵⁸ *Id.* See also HumanWare Feb. 15 *Ex Parte* at 15 and 17.

¹⁵⁹ See National Coalition Comments at 7; ACB Reply at 7.

¹⁶⁰ TEDPA Comments at 3.

¹⁶¹ See, e.g., National Coalition Comments at 8; AADB Comments at 1-2 (noting that the iPhone4 connected via a USB cord to a Braille reader may be more accessible for some deaf-blind people than other specialized products specifically designed for the deaf-blind community); DBYAA Comments at 2-3 (also noting that an iPhone or Blackberry can be combined with another product to enable access to a communications technology, and requesting that the end result be classified as specialized CPE).

¹⁶² Lighthouse Comments at 4.

¹⁶³ RERCs Reply at 3-4.

¹⁶⁴ AADB Comments at 7. See also NAD Comments at 5-6 (supporting automatic software updates).

¹⁶⁵ RERCs Reply at 4.

¹⁶⁶ See, e.g., MoAT Comments at 2; TEDPA Comments at 3 (recommending that this list be included in the application packet when the permanent program is established).

¹⁶⁷ ACB Reply at 6-7.

51. With respect to limits or caps on the amount of equipment that can be distributed to a single individual, responses were mixed.¹⁶⁸ The National Coalition supports allowing distribution of multiple pieces of equipment to the same person if the equipment is needed for different functions.¹⁶⁹ It reports the story of one mother from California:

Telephone access for my daughter, who is 29 years old and deaf-blind, is a vitally important lifeline. . . . She started out as a child with large print TTY, and the day is coming rapidly when she will need Braille telecommunications equipment. It is also important to have portable Braille communication options away from home. . . . All Braille equipment is very expensive It's been through the large screen TTY my daughter is able to have in depth conversations with her father and grandmother who are not fluent in ASL. It's how she makes appointments for herself, arranges her social and business life, calls for help if she needs it, and all the many things we all do via the phone.¹⁷⁰

52. *Discussion.* We agree with commenters that covered equipment and technology eligible for distribution under the NDBEDP should be defined broadly, without restrictions on specific brands, models, or types of technology, including hardware, software, and applications, separately or in combination, needed to achieve access. As noted by the comments in the record, the communication and technology needs of individuals who are deaf-blind are as unique as the individuals themselves and the combinations of vision and hearing loss found in this population.¹⁷¹ We also conclude that, during the NDBEDP pilot program, certified programs will have the discretion to determine the specific equipment needed and to be provided, as long as that equipment can make telecommunications service, Internet access service, and advanced communications accessible by the consumer who is deaf-blind.¹⁷² As discussed further below, individual assessments will need to be conducted to determine which equipment is needed.¹⁷³ Certified programs must not be limited by state statute or otherwise to distribute equipment to make only some communications accessible; certified programs must be permitted to distribute equipment to enable deaf-blind individuals to access the full spectrum of communication options covered under Section 719, as needed by those individuals.¹⁷⁴

¹⁶⁸ See, e.g., DBYAA Comments at 3 (suggesting an annual cap of \$10,000 to \$12,000 per person, with an allowance granted to individuals needing additional equipment components to be able to utilize the phone, Internet, and advanced communications systems); Lighthouse Comments at 4-5 (monetary cap is reasonable, with software replacements every two years and hardware every five years, with reasonable exceptions, for example, when a person's hearing or vision loss necessitates different equipment); NAD Comments at 6 (not opposed to per person funding cap); National Coalition Comments at 5 (consider caps for the permanent, not pilot program, such as hardware every five years and software, with exceptions for new technology); TEDPA Comments at 3 (suggesting monetary cap on equipment and related services, such as up to \$40,000 over five years).

¹⁶⁹ National Coalition Comments at 8.

¹⁷⁰ *Id.* at 8-9.

¹⁷¹ See para. 47, *supra*.

¹⁷² 47 U.S.C. § 620(a). Certified programs under the NDBEDP pilot program must have the ability to distribute the full range of equipment covered under Section 719, and not be restricted by state statute or otherwise from doing so.

¹⁷³ See Section V.D, *infra*.

¹⁷⁴ See para. 48, *supra*.

53. We further conclude that certified programs may distribute “off-the-shelf” equipment to serve as specialized CPE,¹⁷⁵ or as needed for use with specialized CPE, as long as it meets the needs of an individual covered under this program. As noted in the record, some mainstream equipment, alone or packaged in combination with specialized software or hardware, can effectively and cost efficiently meet the needs of some individuals who are deaf-blind.¹⁷⁶ Mainstream technologies can have other advantages as well. Commenters point out that in addition to being easier to locate such products and technical support than is the case for specialized CPE,¹⁷⁷ such devices are often more socially acceptable, especially for students.¹⁷⁸ This is consistent with principles of universal design, which seek to ensure that products available to the general public are available to as many individuals as possible, regardless of their functional differences. We will examine the kinds of equipment that are requested and distributed during the NDBEDP pilot program to assess both the demand for varied technologies and to make any necessary adjustments in the scope of covered equipment when we conduct the rulemaking proceeding for the permanent program. We also will use the data gathered during our reporting process¹⁷⁹ to consider the need to develop a non-exclusive list of specific devices eligible for compensation in a subsequent proceeding.

54. In response to concerns raised by commenters about the practice of some state EDPs to restrict the availability of or disabling certain features or functions on multi-function devices,¹⁸⁰ we further adopt a rule prohibiting certified programs from disabling or otherwise making more difficult to access, capabilities, functions or features on distributed equipment that are needed to access communications services covered by Section 719. Among other things, this rule will prohibit NDBEDP certified programs from intentionally requiring manufacturers and vendors to make access to certain communication functions more difficult than other functions by having the manufacturer bury access to those functions into deeper menus.¹⁸¹ Further, we note that for the deaf-blind population, face-to-face communications may be essential to achieving access to some of the communication functions covered under Section 719.

55. As noted above, there was no consensus among commenters on the need for caps on the quantity or cost of equipment distributed to individuals, the time period that should be covered by such caps, or exceptions that should be made for certain circumstances.¹⁸² Because of the lack of guidance in

¹⁷⁵ Specialized CPE is CPE “commonly used by individuals with disabilities to achieve access.” 47 C.F.R. § 7.3(i). *See also* note 147, *supra*.

¹⁷⁶ *See* para. 49, *supra*.

¹⁷⁷ *See* National Coalition Comments at 8 (the more that off-the-shelf equipment can be made accessible to people who are deaf-blind, the greater access this group will have to advanced communications technology).

¹⁷⁸ *See* Wheeler Comments at 2.

¹⁷⁹ *See* Section VII, *infra*.

¹⁸⁰ *See* para. 48, *supra*.

¹⁸¹ For example, we note that the Deaf Blind Communicator has a first level, easy-to-access menu for the following basic functions: TTY, SMS, face-to-face communications, and address list. HumanWare Feb. 15 *Ex Parte* at 15. However, more advanced communication functions, such as e-mail, Internet access, and chat, are only available via a deeper menu option. *Id.* at 17. While the arrangement and design of a device’s menu options should generally be left up to manufacturers, we wish to avoid situations where NDBEDP certified programs intentionally direct such manufacturers to design those menus or features so as to make them more difficult to access for people who are deaf-blind.

¹⁸² *See* para. 51, *supra*.

the record, and because we would like to first gather experience under the NDBEDP on the costs associated with the various devices and services that will be funded under the certified programs, we will not establish equipment or funding caps for individual recipients of equipment during this pilot program. We will, however, analyze the information that we receive in the program reports required by our rules¹⁸³ to determine whether any such caps should be adopted as part of the permanent NDBEDP. We note that certified programs may distribute more than one device to an individual who is deaf-blind to achieve access to more than one type of covered communications service or to achieve such access in more than one setting, within the constraints of the state's annual funding allocation, and the desire to make communications accessible for as many individuals who are deaf-blind as possible.

56. Commenters further noted the need to permit and cover the cost of new equipment or equipment upgrades to keep current with changes in technology and individual needs.¹⁸⁴ We note that replacements may be appropriate, for example, if the recipient experiences a change in vision or hearing or if new technologies diminish the functionality of equipment already distributed.¹⁸⁵ Therefore, the NDBEDP will also cover the reasonable costs of upgrades and replacements, as determined by certified programs.

B. Loans Versus Ownership

57. In the *NDBEDP NPRM*, we noted that some state EDPs loan equipment while other state EDPs confer ownership to their residents and sought comment on which approach should be adopted for the NDBEDP.¹⁸⁶ Comments were divided on the benefits of each of these approaches.¹⁸⁷ TEDPA reports that some state statutes dictate a particular distribution method and recommends that state EDPs be allowed to comply with their respective statutes, lest they be forced to seek a legislative change to participate in the NDBEDP.¹⁸⁸ TEDPA also asserts that, whether loaned or owned, NDBEDP recipients should not be permitted to sell or give away the equipment and that violations of this policy should result in consequences to the offending party, such as termination from the program.¹⁸⁹ Finally, TEDPA recommends that NDBEDP recipients who “move to another state be allowed to keep their existing CPE and transfer their account to the new certified state EDP or entity without having to reapply.”¹⁹⁰

¹⁸³ See Section VII, *infra*.

¹⁸⁴ See para. 49, *supra*.

¹⁸⁵ For example, if new digital technologies that allow real-time text eventually replace the functions now provided by TTYs and those new technologies are not backward compatible with TTYs, individuals owning these devices might benefit from replacing them with more modern technologies.

¹⁸⁶ *NDBEDP NPRM*, 26 FCC Rcd at 704, ¶ 42.

¹⁸⁷ See, e.g., AADB Comments at 9 (favoring loan program, permitting states to swap malfunctioning equipment rather than provide loaner equipment); DBYAA Comments at 4 (favoring ownership program); Lighthouse Comments at 5 (favoring loan program); MoAT Comments at 3 (favoring permitting both loan and ownership programs, as long as the loan is for as long as the equipment is needed, and permitting loan-only program for very expensive equipment); and RERCs Reply at 7 (noting the pros and cons of both approaches).

¹⁸⁸ TEDPA Comments at 4.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

58. *Discussion.* Given the high costs of the specialized CPE covered under the NDBEDP,¹⁹¹ we conclude that lending equipment to deaf-blind recipients is the preferable approach for distributing equipment under the pilot program. At the same time, we are concerned that disallowing ownership may result in the exclusion from this pilot program of some EDPs that are bound by state statutes to use this method of distribution. Accordingly, while we strongly recommend that certified programs lend equipment distributed under the NDBEDP to equipment recipients, we will not require that they use this exclusive method of distributing equipment. We believe that allowing certified programs to either lend or give away equipment under the pilot will enable us to assess which method works best, based on the data collected from all certified programs. It will also avoid excluding participation in the NDBEDP by state EDPs that would need state legislative action to change their distribution method.¹⁹²

59. For those programs that do choose to lend equipment, we require that recipients be permitted to keep their devices for as long as needed. We further agree with commenters that under either a “loan” or “ownership” program, equipment recipients should not be permitted to sell, give away, or otherwise transfer equipment distributed under the NDBEDP, and that recipients who relocate to another state be permitted to keep their equipment.¹⁹³ In addition, when a recipient relocates to another state, the certified program must transfer the recipient’s account and any control of the distributed equipment to the new state’s certified program, so that the individual need not reapply.

C. Research and Development

60. One of the purposes of the NDBEDP is to ensure that people who are deaf-blind are not left behind as new 21st century communications technologies become available.¹⁹⁴ But, as we noted in the *NDBEDP NPRM*, significant gaps already exist. Commenters to this proceeding report that existing equipment does not meet the needs of the full spectrum of people who are deaf-blind to access current communications technologies.¹⁹⁵ However, we also noted that, without a better grasp of the specific gaps in current technologies used by the deaf-blind community, and without a fuller understanding of what the costs of closing those gaps are likely to be, it may be premature to set aside NDBEDP funds for research and development (“R&D”) efforts that may be needed to close those gaps.¹⁹⁶ We further expressed the concern that the limited NDBEDP funding that we could allocate to R&D might be insufficient to have an appreciable impact on the development of new technology and that any funding set aside for R&D will reduce the amount of funding available to distribute existing equipment.¹⁹⁷ Although we proposed not to allocate funding for R&D at this time, we sought comment on the extent to which R&D is needed to fill equipment gaps to ensure that the NDBEDP is effective,¹⁹⁸ and whether we have the discretion under Section 719 to set aside NDBEDP funds for this purpose.¹⁹⁹ We also sought input on other ways that we

¹⁹¹ Loaned equipment would be owned by the certified program distributing that equipment. Should the individual return the equipment, the certified program may redistribute such equipment as appropriate.

¹⁹² TEDPA Comments at 4.

¹⁹³ *Id.*

¹⁹⁴ *NDBEDP NPRM*, 26 FCC Rcd at 701, ¶ 34.

¹⁹⁵ *Id.* at 701-02, ¶ 32.

¹⁹⁶ *Id.* at 701, ¶ 34.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 701-02, ¶ 34.

¹⁹⁹ *Id.* at 702, ¶ 34.

can encourage and facilitate innovations on a long-term basis to address the communications access needs of individuals who are deaf-blind.²⁰⁰

61. Comments received in response to the *NDBEDP NPRM* generally support R&D funding, in varying degrees. For example, AADB says that support for R&D is not an efficient use of funds at this time, but suggests that 10 percent of NDBEDP funds used as a matching grant could be an incentive to identify other R&D funding.²⁰¹ The Lighthouse believes that the funds available for the NDBEDP will not be sufficient to support R&D, but recommends that the Commission consider ways to work with other entities (federal, non-profit, and business) to leverage technology grants.²⁰² By contrast, DBYAA asserts that an R&D component is essential because current equipment distribution funding has not stimulated significant innovation, and it is not clear that the availability of NDBEDP funding for the purchase of equipment will stimulate investment in new technologies.²⁰³ DBYAA asks that the Commission consider allocating a “small portion” of NDBEDP funds to “special projects,” because it is within the Commission’s discretion to allocate funding for R&D to realize the congressional objective of the CVAA.²⁰⁴ The National Coalition also supports some amount of NDBEDP funding for R&D, suggesting that even amounts up to \$1 million can make a difference, particularly for non-profit entities.²⁰⁵ Likewise, the RERCs assert that the Commission’s rules should permit some R&D funding that is not company-specific.²⁰⁶

62. *Discussion.* Based on the record before us, we recognize the need to stimulate innovation to fill existing equipment and technology gaps to meet the communications technology access needs of this unserved and underserved population.²⁰⁷ However, we conclude that an allocation of NDBEDP funding is not appropriate at this time because of insufficient information about those gaps and the kinds of research and funding that are needed to fill them.²⁰⁸ With the data we collect during the pilot program, we will assess whether the funding support provided by the NDBEDP pilot program has provided the impetus needed for manufacturers to engage in the R&D that is necessary to fill the existing communications technology gaps. To the extent that these gaps remain unfilled, we may consider whether an allocation for R&D or other measures are needed to support certified programs in their efforts to distribute equipment in accordance with Section 719, as part of the permanent program.

D. Individualized Assessment of Communication Needs

63. In the *NDBEDP NPRM*, we recognized the need for qualified assistive technology specialists, familiar with both the manner in which deaf-blind people communicate and the range of

²⁰⁰ *Id.*

²⁰¹ AADB Comments at 7. *See also* NAD Comments at 7 (acknowledging compelling need for R&D funding, but notes this is not an appropriate use of limited funds at this time).

²⁰² Lighthouse Comments at 5.

²⁰³ DBYAA Comments at 3.

²⁰⁴ *Id.*

²⁰⁵ National Coalition Comments at 9.

²⁰⁶ RERCs Reply at 4-5. The RERCs provide as examples the development of a common open source “Braille transcoder/editor/driver,” and a market research study, to be conducted every two years, for the purpose of evaluating the availability of technologies, user needs, the impact of the program, and other factors.

²⁰⁷ *See* para. 60, *supra*.

²⁰⁸ *See* para. 61, *supra*.

specialized equipment available, to conduct assessments to ensure that equipment given out under this program effectively meets each recipient's unique communications needs.²⁰⁹ We proposed that certified programs be given the discretion to determine the need for such assessments on a case-by-case basis, and to select the appropriate personnel within their programs to carry out this responsibility.²¹⁰ We also asked whether the costs for such assessments should be reimbursable.²¹¹

64. Commenters stress the importance of conducting assessments to determine which equipment will effectively meet the needs of deaf-blind individuals and urge that these costs be covered under the NDBEDP.²¹² MoAT states that “[a]ssuring an appropriate match between the telecommunications technology and the individual needs will be essential to the cost-effective provision of equipment and to limit the abandonment of the equipment by the consumer because it does not meet his/her needs.”²¹³ Several commenters note the need for qualified assistive technology specialists to conduct these assessments.²¹⁴ AADB suggests that the Commission develop assessment guidelines to ensure recipients receive the proper equipment.²¹⁵ Finally, the RERCs urge the Commission not to underestimate the costs of assessments, and to exclude travel costs from any such cap, so as to not disadvantage rural consumers who may not be able to be evaluated at a nearby location.²¹⁶

65. *Discussion.* Based on the record, we conclude that certified programs may be reimbursed for the reasonable costs of making individualized assessments of a deaf-blind individual's communications needs under the NDBEDP pilot. We agree that qualified assistive technology specialists who are familiar with both the manner in which deaf-blind people communicate and the range of specialized equipment that is available under this program are necessary to ensure that the equipment provided to deaf-blind individuals effectively meets their needs.²¹⁷ We also agree with commenters that coverage of costs for conducting assessments is needed to ensure that the distributed equipment effectively meets the individual's needs, reduces the incidence of equipment being abandoned (because it is a poor match to the user's needs), and ensures that the program is effective and efficient.²¹⁸ We also conclude that certified programs may be reimbursed for the reasonable costs of travel to conduct individual assessments of applicants who are located in rural or remote areas, when necessary to support the distribution of equipment by certified programs and achieve the goal of accessible communications under Section 719.²¹⁹ We decline to establish funding caps for individual assessments during this pilot program because of insufficient data in the record on that issue, but will analyze the information that we

²⁰⁹ *NDBEDP NPRM*, 26 FCC Rcd at 702, ¶ 36.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *See, e.g.*, AADB Comments at 8; MoAT Comments at 2 (noting that device demonstration and short-term equipment loan programs provided by state assistive technology programs may be an assessment resource); RERCs Reply at 6.

²¹³ MoAT Comments at 2.

²¹⁴ *See, e.g.*, AADB Comments at 8; National Coalition Comments at 9; TEDPA Comments at 3.

²¹⁵ AADB Comments at 8. *See also* NAD Comments at 7-8.

²¹⁶ RERCs Reply at 6.

²¹⁷ *See* para. 64, *supra*.

²¹⁸ *See id.*

²¹⁹ *See id.*

receive in the program reports required by our rules²²⁰ to determine whether any such caps should be adopted as part of the permanent NDBEDP. Again, we believe that such assessments are essential to the efficient and effective distribution of equipment for use by people who are deaf-blind and, as such, are compensable activities under the NDBEDP pilot.²²¹

E. Installation and Training

66. We noted in the *NDBEDP NPRM* that the highly specialized nature of the equipment to be distributed under this program and the lack of communications technology experience by many of its future recipients will likely necessitate highly skilled and experienced professionals to provide individualized training on how to use the equipment distributed under this program.²²² We sought comment on whether funding should be available for the installation of equipment and such individualized training, and how this training can best be achieved, given the reported scarcity of experienced trainers, especially in remote and rural areas.²²³ To this end, we asked about the merits of setting aside NDBEDP funds to support a national training program to expand the number of qualified trainers, the structure and contents of such a training program, and whether online learning modules and remote technical assistance, including a technical support hotline could fill this void.²²⁴ In addition, we sought comment on ways that we may be able to work with equipment and software manufacturers to provide training for individuals receiving equipment under the NDBEDP.²²⁵

67. Commenters' responses to the *NDBEDP NPRM* strongly support funding for installation and individual training.²²⁶ The RERCs note the importance of installation and training, lest the equipment given out be underutilized or even abandoned.²²⁷ HumanWare, the company that manufactures the Deaf Blind Communicator, explains that the time it takes to train individuals who are deaf-blind on new communications equipment depends on the individual's age, knowledge of Braille, level of reading, experience with technology, and communication level.²²⁸ For the younger generation, it reports, three hours is generally enough; for the senior citizen population, training "can go on for at least 4 to 5 different visits and at least a few hours at a time."²²⁹ DBYAA explains that initial training "must be conducted face to face at the consumer's residence or at a training facility," because access to the Internet is a prerequisite to using online learning modules and accessing remote technical assistance.²³⁰ DBYAA also asks the Commission to require manufacturers of products distributed under the NDBEDP to include

²²⁰ See Section VII (reporting requirements) and paras. 91-92 (for additional discussion on funding caps), *infra*.

²²¹ See 47 U.S.C. § 620(a).

²²² *NDBEDP NPRM*, 26 FCC Rcd at 703, ¶¶ 38-39.

²²³ *Id.*

²²⁴ *Id.* at 703, ¶ 39. We also asked whether we have authority under the CVAA to allocate some of the program funds for such a training program. *Id.*

²²⁵ *Id.*

²²⁶ See, e.g., AADB Comments at 1 and 8; Martin Comments at 1; MoAT comments at 2; NAD Comments at 8; National Coalition Comments at 4; RERCs Reply at 6.

²²⁷ RERCs Reply at 6.

²²⁸ HumanWare Feb. 22 *Ex Parte* at 1. See note 112, *supra*, for an explanation of the capabilities of the Deaf Blind Communicator.

²²⁹ HumanWare Feb. 22 *Ex Parte* at 1.

²³⁰ DBYAA Comments at 4.

accessible user manuals and other materials that aid learning and utilization of equipment.²³¹ Training is so important to the HKNC, that it urges that equipment recipients should have the right to get training in a state other than the one that they live in, if they feel that their own NDBEDP certified program is not able to meet their needs.²³² TEDPA states that training should be provided as often as the consumer needs it to learn how to use the equipment.²³³

68. Commenters who responded to the *NDBEDP NPRM* also support expanding the number and availability of qualified individuals who can provide equipment training. For example, DBYAA suggests that regional training programs, coordinated by a national entity may be appropriate; such programs could ensure consistency and establish training certification standards.²³⁴ It also suggests the use of online training modules by skilled specialists to remotely train and assist other trainers, especially in rural areas.²³⁵ The National Coalition notes the severe shortage of trained professionals and recommends that \$1 million of NDBEDP funding be used for a national training effort that uses distance learning to address this shortage.²³⁶ TEDPA also supports expanding the number of qualified training specialists through an online “training the trainer” module, as well as regional “hands-on” training sessions that should be funded by the NDBEDP and provided by CPE manufacturers.²³⁷

69. *Discussion.* Based on the record in this proceeding, we conclude that equipment installation and individualized consumer training on how to use the distributed equipment are necessary and thus reimbursable under the NDBEDP pilot. In addition to having a wide range of capabilities and experiences with communications technologies,²³⁸ many deaf-blind individuals who will become equipment recipients under the NDBEDP pilot might never before have used communications services or the devices to access those services. Without assistance in setting up this equipment and training on how to use these devices, these individuals will not be able to effectively benefit from this program and the equipment will be underutilized or abandoned.²³⁹ Moreover, customized solutions to meet the unique needs of each deaf-blind individual will often be required, which may require trying out multiple pieces of equipment before settling on the right device and tailoring that device to meet the individual’s particular communication needs. Individualized consumer training through remote online or other standardized training modules alone would be challenging and impractical, if not impossible to achieve, given the wide range of capabilities of individuals who are deaf-blind, particularly for those individuals who are currently unable to access communications services.²⁴⁰ We conclude that installation and individualized training are essential to the efficient and effective distribution of equipment for use by

²³¹ *Id.*

²³² HKNC Comments at 2.

²³³ TEDPA Comments at 3. TEDPA seems to suggest, however, that it may be necessary for the specialist to reassess whether the equipment given to the user is a suitable fit if the consumer continues to have trouble learning how to use the product.

²³⁴ DBYAA Comments at 4.

²³⁵ *Id.*

²³⁶ National Coalition Comments at 10.

²³⁷ TEDPA Comments at 4.

²³⁸ *See* para. 67, *supra*.

²³⁹ *See id.*

²⁴⁰ *See* paras. 66-67, *supra*.

people who are deaf-blind and, as such, the reasonable costs associated with these services will be compensable for programs certified under Section 719.²⁴¹

70. With respect to the issue of qualified personnel needed to provide individualized training for equipment distributed to individuals who are deaf-blind, the record in this proceeding evinces a severe shortage of such qualified individuals.²⁴² We understand that this scarcity is keenly felt among consumers whose mode of receptive and/or expressive communication is in Braille or American Sign Language.²⁴³ However, because of the limited funding available in this program, and because the record is not clear on how programs to “train the trainer” should be set up at this time, we will not set aside NDBEDP funds or reimburse certified programs for the costs of regional or national programs for such purpose.²⁴⁴ We do, however, encourage certified programs to maximize the use of limited resources through collaboration and partnerships between and among certified NDBEDP programs on a national or regional basis, as well as partnerships or contracts with other individuals and entities, in-state or out-of-state, in order to locate qualified individuals who can provide appropriate and effective training to people who are deaf-blind. Although we decline at this time to set aside NDBEDP funds or cover the cost of such training for trainers, we may reconsider the need for this type of funding support in the future, based on assessments of data obtained through the pilot program.

F. Maintenance, Repairs, and Warranties

71. In the *NDBEDP NPRM*, we noted concerns about the high cost and extended time (often six to eight weeks) needed to repair specialized CPE used by people who are deaf-blind.²⁴⁵ Given these concerns, and the past practices of state EDPs to include the costs of maintenance and repairs under their programs, we tentatively concluded that the costs for maintenance and repairs should be covered under the NDBEDP, where these costs are not incurred as a result of negligence or misuse on the part of the consumer or certified program.²⁴⁶ We also asked whether the NDBEDP should cover the cost of warranties and loaner equipment during periods of repair.²⁴⁷ Finally, we asked whether certified

²⁴¹ 47 U.S.C. § 620(a). We note that under Part 6 of the Commission’s rules, which implements Section 255 of the Act, manufacturers of telecommunications equipment shall take readily achievable steps to make their equipment information and user manuals available to people with disabilities, including people who are deaf-blind, in accessible formats. *See* 47 C.F.R. § 6.11. In a separate proceeding, the Commission has proposed that manufacturers of equipment used with advanced communications services also be required to make their user manuals and other equipment information accessible to people with disabilities, pursuant to Section 716 of the CVAA. *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Amendments to the Commission’s Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision*, CG Docket No. 10-213, WT Docket No. 96-198, CG Docket No. 10-145, Notice of Proposed Rulemaking, 26 FCC Rcd 3133 (2011).

²⁴² *See* para. 68, *supra*.

²⁴³ HKNC Comments at 2 (technology trainers learning to work with individuals who are deaf-blind often comment that “they never realized the number of things that had to be considered,” such as when and how to use an interpreter, and how to use hand-over-hand instruction with individuals who communicate with their hands).

²⁴⁴ This does not affect our decision to allow certified programs to seek reimbursement for the reasonable costs of providing training to individuals receiving equipment under the NDBEDP. *See* para. 69, *supra*.

²⁴⁵ *NDBEDP NPRM*, 26 FCC Rcd at 703-704, ¶ 40.

²⁴⁶ *Id.* at 704, ¶ 41.

²⁴⁷ *Id.*

programs should provide recipients with a means of returning equipment they no longer need so it can be refurbished, as needed, and redistributed.²⁴⁸

72. Commenters generally support coverage under the NDBEDP for maintenance and repair costs, unless the need for repair or replacement is caused by owner negligence or misuse.²⁴⁹ For example, DBYAA notes that equipment used by deaf-blind individuals is often very expensive to repair and requires more frequent maintenance because of the “highly fragile nature” of Braille-based products.²⁵⁰ AADB suggests that because of the disruptions that occur when specialized CPE breaks down, manufacturers should make efforts to design equipment so that minor maintenance can be done by the consumer.²⁵¹ TEDPA further proposes that an inventory of loaner devices be available for use while equipment is being repaired.²⁵² TEDPA states that, when it is not cost effective to repair equipment, the equipment should be removed from the program.²⁵³

73. Commenters also support having the NDBEDP cover the cost of warranties, but are divided on what the warranties’ scope should be.²⁵⁴ AADB suggests that warranties on all devices that “cover the expected life of the equipment” should be required, and further notes the problems that consumers have had in the past when repairs stretch out over extended periods of time, such as eight weeks.²⁵⁵ It recommends that NDBEDP programs allow consumer participants to swap their malfunctioning equipment for new equipment, rather than use loaner equipment, so that they can avoid the burdens of dealing with warranty services and continue their daily activities with minimal disruption.²⁵⁶ DBYAA suggests that providing warranty coverage for up to five years is reasonable,²⁵⁷ a position supported by the RERCs, who suggest that the way to get the best price and encourage quality in design is to have a five-year warranty that covers maintenance, updates, and repairs.²⁵⁸ TEDPA agrees that, although costly, an extended manufacturer warranty may be worth it and recommends a five-year warranty be purchased for higher priced equipment, for example, devices costing over \$5,000.²⁵⁹

²⁴⁸ *Id.* at 704, ¶ 42.

²⁴⁹ *See, e.g.*, Lighthouse Comments at 5; MoAT Comments at 3; NAD Comments at 9-10; National Coalition Comments at 10; TEDPA Comments at 4 (maintenance not covered by warranty should be covered).

²⁵⁰ DBYAA Comments at 4.

²⁵¹ AADB Comments at 9.

²⁵² TEDPA Comments at 3.

²⁵³ *Id.* at 4.

²⁵⁴ MoAT Comments at 3.

²⁵⁵ AADB Comments at 9.

²⁵⁶ *Id.* *See also* NAD Comments at 10.

²⁵⁷ DBYAA Comments at 4.

²⁵⁸ RERCs Reply at 6.

²⁵⁹ TEDPA Comments at 4. We noted in the *NDBEDP NPRM* that the Virginia Statewide Interagency Team (Virginia SIT) similarly recommended, in response to the *NDBEDP PN*, that a five-year warranty for equipment distributed under this program would be appropriate. *NDBEDP NPRM*, 26 FCC Rcd at 704, ¶ 40.

74. Commenters uniformly support providing a means for NDBEDP recipients to return equipment that is no longer used or needed to their certified program for refurbishing and redistribution, as appropriate.²⁶⁰ The RERCs say that allowing consumers to return equipment would serve the dual function of reducing the chances that such equipment will be resold or transferred without authorization, and enabling NDBEDP certified programs to obtain feedback, based on the length of time people hold onto their equipment, as to its usefulness or appropriate placement.²⁶¹ They further suggest that a certified program be able to dispose of or transfer out-of-date equipment to another program, and that an interstate loan bank or exchange may be useful.²⁶² MoAT adds that, because most states already have a means of recycling and redistributing returned equipment, this may be an area ripe for collaboration across state programs.²⁶³

75. *Discussion.* We conclude that, for the NDBEDP pilot program, reasonable costs associated with equipment maintenance and repairs that are not covered under warranties are eligible for reimbursement, except when such repair costs are the result of consumer or program negligence or misuse. As noted above, commenters support including such services as necessary components of an effective NDBEDP because some specialized CPE require frequent maintenance and are expensive to repair.²⁶⁴ Commenters also support temporary loans of equipment to ensure accessible communications during periods of equipment repair that may last for many weeks.²⁶⁵ We encourage NDBEDP certified programs or manufacturers to provide equipment that can be loaned to the consumer during periods of equipment repair, especially when such equipment is under warranty. Reasonable costs associated with maintaining an inventory of equipment that can be loaned to the consumer during periods of equipment repair will also be covered under the NDBEDP pilot program.²⁶⁶ Commenters also uniformly support providing a means for equipment recipients to return equipment that is no longer needed or used.²⁶⁷ As such, we recommend that certified programs establish policies and the means for consumers to return equipment, particularly devices or other hardware that is no longer needed or used to the certified program for possible refurbishing and redistribution. We note that some of this once-used equipment may be particularly suitable for the inventory of equipment loaned when the consumer's primary equipment breaks down, and should minimize the costs for maintaining such an inventory. The reasonable costs of such return and refurbishing will be covered under the NDBEDP pilot program.

76. We further encourage manufacturers to provide and for NDBEDP certified programs to obtain warranties that cover five years of maintenance, updates, and repairs for any equipment costing

²⁶⁰ See, e.g., AADB Comments at 10; DBYAA Comments at 5; Lighthouse Comments at 5; MoAT Comments at 3; RERCs Reply at 7.

²⁶¹ RERCs Reply at 7.

²⁶² *Id.*

²⁶³ MoAT Comments at 3. TEDPA confirms that the policy of allowing consumers to return equipment that they no longer need is standard within EDP state loaner programs. TEDPA Comments at 4.

²⁶⁴ See para. 72, *supra*.

²⁶⁵ See paras. 72-73, *supra*.

²⁶⁶ TEDPA asks whether manufacturers could be responsible for maintaining such an inventory under the terms of their extended warranties. TEDPA Comments at 3. This would be a matter for the manufacturer to determine in conjunction with the programs to which it is supplying equipment. In any event, as noted above, the cost for such loaner programs would be eligible for compensation under the NDBEDP, so long as these costs are reasonable.

²⁶⁷ See para. 74, *supra*.

more than \$5,000, as recommended by several commenters.²⁶⁸ Certified programs may also obtain warranties for distributed equipment of lesser value. The reasonable cost of such warranties will be covered to support certified programs during the pilot program. We will review warranty data provided by certified programs during the pilot program as part of the rulemaking for the permanent NDBEDP.

G. Outreach and Education

77. In the *NDBEDP NPRM*, we noted the importance of informing individuals who are deaf-blind about the NDBEDP and obtaining their input on the program, both initially and after it is underway.²⁶⁹ We sought comment on the level and types of outreach that will be needed to enable the NDBEDP to fulfill Congress's objective of bringing communication technologies to the deaf-blind community.²⁷⁰ We noted that, under a funding system that caps spending on a Fund-year basis, we expect that certified programs will conduct the outreach necessary to get equipment into the hands of their deaf-blind residents in a timely fashion so they can spend, rather than lose, the money allotted to them.²⁷¹ However, because some certified programs may not spend all of their available funding, we sought comment on whether to set aside a portion of NDBEDP funding for a contract that would be awarded to a national organization for the purposes of conducting outreach that may be needed to ensure effective distribution of equipment.²⁷² We asked for feedback on whether the Commission has the discretion under Section 719 to adopt this approach and for input on the duration, types of outreach needed, and accountability provisions of a contracted outreach effort.²⁷³

78. In response to the *NDBEDP NPRM*, commenters generally support state and local outreach efforts by certified programs.²⁷⁴ MoAT acknowledges that outreach is essential, but notes that "effective avenues for outreach can vary widely from state to state."²⁷⁵ DBYAA suggests that state agencies other than the designated NDBEDP certified program, such as vocational rehabilitation agencies, could participate in outreach efforts by informing consumers about the NDBEDP.²⁷⁶ The HKNC cautions that agencies and programs without significant experience working with individuals who are deaf-blind are not likely to be effective in their outreach efforts.²⁷⁷ It claims that over 1.2 million people have vision and hearing loss and that the greatest percentage of these individuals is age 55 and older.²⁷⁸ As such, it says, effective outreach will require interacting with a number of service delivery systems.²⁷⁹ In addition,

²⁶⁸ See para. 73, *supra*.

²⁶⁹ *NDBEDP NPRM*, 26 FCC Rcd at 704, ¶ 43.

²⁷⁰ *Id.* at 705, ¶ 44.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ See, e.g., AADB Comments at 10; DBYAA Comments at 5; MoAT Comments at 5; TEDPA Comments at 4. TEDPA also recommends that the TEDPA Outreach Committee work closely with the NDBEDP to design and develop an outreach campaign/program for state EDPs to implement. TEDPA Comments at 4.

²⁷⁵ MoAT Comments at 3.

²⁷⁶ DBYAA Comments at 5.

²⁷⁷ HKNC Comments at 3.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

HKNC reports that presenting information on the appropriate language level and in accessible formats is a significant challenge, one which the HKNC is currently meeting as part of a statewide needs assessment by gathering information through print, large print, and Braille surveys; conducting interviews in person, by telephone and via relay services; and gathering focus groups.²⁸⁰ The Lighthouse states that outreach efforts must be conducted in “culturally relevant ways that will reach all potential equipment recipients,” such as through community meetings, and that interpreter costs and transportation issues will need to be considered to have meaningful outreach.²⁸¹ AADB and DBYAA also support collaboration or contracting with non-profit, national deaf-blind consumer organizations to facilitate a national outreach effort with NDBEDP certified programs.²⁸² Finally, the National Coalition supports allocating at least \$500,000 per TRS Fund year for national outreach efforts that include agencies, providers, and families, as well as individuals who are deaf-blind.²⁸³

79. *Discussion.* We agree with commenters that a wide variety of outreach efforts is needed to reach the diverse population of individuals who are deaf-blind to make the NDBEDP effective.²⁸⁴ The CVAA authorizes funding support for programs approved by the Commission for the distribution of specialized CPE to low-income individuals who are deaf-blind.²⁸⁵ Because outreach must be done to inform individuals who are deaf-blind about the availability of equipment before the equipment can be distributed, we conclude that use of this funding to support certified programs through national outreach efforts and to support the outreach efforts of certified programs is necessary and appropriate to achieve the purpose of Section 719.²⁸⁶ We adopt a rule requiring certified programs participating in the pilot program to conduct outreach to inform residents of their states who are deaf-blind about the NDBEDP. Such outreach may include, but is not limited to, the development and maintenance of a program website that contains information about the NDBEDP certified program, contact information and information about available equipment, as well as ways to apply for that equipment and related services provided by the program. To this end, we also adopt a rule requiring that the information and materials that a certified program disseminates to potential equipment recipients be produced in accessible formats. The NDBEDP pilot will cover the reasonable costs of state and local outreach efforts in support of these certified programs. We also direct the NDBEDP Administrator to establish a website, accessible to deaf-blind consumers, that contains information about the NDBEDP, including a list of certified programs by state, with contact information and links to their respective websites, where available.²⁸⁷

80. We agree with commenters about the need to conduct outreach through a wide range of systems and using methods that address the language, communication, cultural, and experiential diversity of deaf-blind individuals.²⁸⁸ We also recognize that national organizations serving consumers who are deaf-blind are in a unique position to reach and inform consumers, service providers, and others about the

²⁸⁰ *Id.*

²⁸¹ Lighthouse Comments at 5.

²⁸² AADB Comments at 8 and 10; DBYAA Comments at 5.

²⁸³ National Coalition Comments at 11.

²⁸⁴ *See* para. 78, *supra*.

²⁸⁵ *See* 47 U.S.C. § 620(a).

²⁸⁶ *Id.*

²⁸⁷ *See* Section VIII, *infra*.

²⁸⁸ *See* para. 78, *supra*.

NDBEDP nationwide.²⁸⁹ We further believe that significant initial funding of outreach will be necessary to launch this pilot program and implement the NDBEDP in a way that extends access to the greatest number of deaf-blind individuals. Therefore, to supplement the outreach efforts of locally NDBEDP certified programs, and to support these programs in their efforts to distribute equipment as directed under the CVAA, the Commission will set aside \$500,000 for outreach during each TRS Fund year of the pilot program, an amount recommended by the National Coalition,²⁹⁰ and which we believe to be reasonable and sufficient for national outreach efforts. This outreach may be conducted by entities that have significant experience with and expertise in working with the deaf-blind community, and we delegate authority to CGB to select appropriate entities to conduct outreach. The NDBEDP Administrator may reallocate any unused outreach funding set aside during each TRS Fund year of the pilot program to NDBEDP certified programs for equipment distribution and the provision of related services during the 4th quarter of each TRS Fund year. We will assess the effectiveness of certified program and national outreach efforts throughout the pilot program.

VI. FUNDING

A. Allocation of Funding

81. In addition to seeking comment on proposals to allow portions of the NDBEDP funding to be used for specific purposes, discussed above, we sought comment in the *NDBEDP NPRM* on an appropriate means of dividing up the remainder of the NDBEDP \$10 million annual allocation.²⁹¹ We tentatively proposed a funding allocation proportional to the population of each state.²⁹² We also solicited input on whether there is a way to determine accurately the population of eligible deaf-blind residents in each of the states, and whether we should use those statistics as the basis to allocate NDBEDP funds among the states.²⁹³

82. In response to these inquiries, most commenters support an annual allocation of funding proportional to the population of each state.²⁹⁴ While the Lighthouse takes a different view, asserting that certain states have significantly higher populations of deaf-blind people and recommending that state funding allocations be based on the number of people who are deaf-blind, it admits that “it can be difficult to determine exact numbers” of such populations.²⁹⁵ DBYAA agrees to the difficulty of determining accurate numbers for state deaf-blind populations, but proposes that a “one-time allotment of funding be made for the purpose of conducting [population] research” or “to consult with experts on this particular matter.”²⁹⁶

83. *Discussion.* We agree with the majority of commenters that annual funding for the NDBEDP pilot program is most appropriately allocated on the basis of the population of each state to

²⁸⁹ *See id.*

²⁹⁰ *See id.*

²⁹¹ *NDBEDP NPRM*, 26 FCC Rcd at 705, ¶ 45.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *See, e.g.*, DBYAA Comments at 5; MoAT Comments at 3 (“best possible approach”); National Coalition Comments at 11; TEDPA Comments at 4-5; ACB Reply at 10.

²⁹⁵ Lighthouse Comments at 5.

²⁹⁶ DBYAA Comments at 5.

ensure that equipment is distributed nationwide as fairly as possible to individuals who are deaf-blind, regardless of where they may reside. While it may be true that certain states have larger populations of people who are deaf-blind than others, there is insufficient data in the record on which to base funding allocations in this manner at this time. To the extent that interested stakeholders are able to provide such data over the course of the pilot program, we will consider such data for the purpose of establishing future allocations of funding for the permanent NDBEDP program.

84. According to the most recent data provided by the U.S. Census Bureau, the estimated population of the United States as of July 1, 2010 was 309,050,816.²⁹⁷ California was the most populous state, with 37,266,600 people (12.058 percent of the total U.S. population) and Wyoming the least, with 547,637 people (0.177 percent of the total U.S. population). The considerable discrepancy in population across the states, as evidenced by these two extremes, suggests that dividing the available NDBEDP funding equally among the states would not be appropriate. At the same time, were we to determine each state's annual funding solely on the basis of its population, the annual amounts allocated to states with the least populations might be so small as to not provide meaningful support; indeed, if too small, such allocations might even discourage programs in these states from applying to participate in the NDBEDP pilot program. This is especially true given the very high cost of communications equipment needed by people who are deaf-blind.²⁹⁸ A state that is awarded only \$20,000-\$30,000 annually, for example, might not have sufficient incentive to apply for certification if it believes that such funding might only assist one or two people in its state. It is our goal to ensure that, to the extent possible, every certified program in the NDBEDP pilot program receives a level of support that will both provide it with the incentive to participate in the NDBEDP and permit the distribution of equipment to as many eligible residents as possible. To achieve this, during the pilot program, we will allocate a minimum base amount of \$50,000 to each state per TRS Fund year, with the balance of available funds allocated in proportion to the population of each of these jurisdictions. This allocation system will allow every certified entity to serve at least several residents within its state while ensuring that states with larger populations have adequate resources to serve a potentially higher number of deaf-blind individuals.²⁹⁹

85. We will make the full amount of authorized funding, \$10 million, available to the NDBEDP during each TRS Fund year (July 1 through June 30) of this pilot program. As described above in Section V.G, we will set aside \$500,000 for each Fund year of the NDBEDP pilot program for the purpose of conducting a nationwide outreach effort. As a result, a total of \$9.5 million will be available for initial allocations among certified programs during each of the Fund years of this NDBEDP pilot program. A list of the estimated amounts of those initial allocations for the first Fund year of the NDBEDP pilot program, assuming each state has a certified program, is presented in Appendix D. We delegate authority to CGB to adjust initial allocations, as needed and appropriate, for subsequent Fund years.³⁰⁰

²⁹⁷ Preliminary Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2000 to July 1, 2010 (NST-PEST2010-01), <http://www.census.gov/popest/eval-estimates/eval-est2010.html> (visited March 3, 2011).

²⁹⁸ See para. 33, *supra* (describing the high costs of this equipment).

²⁹⁹ We may reduce, raise, or reallocate funding allocations to any certified program as may be appropriate. See Section VI.B, *infra*. We also note that NDBEDP funding is available on an annual and ongoing basis, rather than in a single lump sum, which suggests that Congress intended to fulfill the communication needs of deaf-blind individuals over time, and to ensure that such needs are addressed as technology changes and evolves in the future.

³⁰⁰ See also para. 90, *infra*.

B. Funding Mechanism, Rollover, and Reallocation

86. In the *NDBEDP NPRM*, we described two possible methods of distributing funding under the NDBEDP: (1) distributing one-time, lump sum allocations to certified programs at the start of each funding year, and then letting these programs use such funds as they see fit throughout the funding year; or (2) reimbursing programs periodically for equipment that they distribute, up to each state's allotment.³⁰¹ We tentatively concluded that a funding mechanism that relies on reimbursement for distributed equipment would provide greater accountability, as well as the incentives needed for local distribution programs to actively locate and provide equipment to their deaf-blind communities.³⁰² With respect to the latter approach, we sought comment on the appropriate intervals for such payments,³⁰³ along with the feasibility – as well as our authority – to return remaining funds unspent by a state in one funding year to the TRS Fund, and then redistribute those monies to all states during a subsequent year.³⁰⁴ We noted that Section 719 limits the total amount of support that the Commission may provide to this program for any fiscal year to \$10 million and sought comment on whether we have the discretion to carry over unused allotments to subsequent years.³⁰⁵

87. Few parties responded to our request for comment on the appropriate means of allocating NDBEDP funding. DBYAA recommends reimbursing certified program participants every six months, noting this approach to be “more viable,” because it would “ensure better accountability and efficient distribution.”³⁰⁶ Although TEDPA does not express a preference for either funding method, it asserts that “not all state EDPs have sufficient funds readily available in order to incur the cost upfront,” suggesting that advance distributions may be more appropriate.³⁰⁷ Commenters were uniform in their support for rolling over unused funds from one year to the next.³⁰⁸ For example, AADB recommends reallocating unused funds based on distribution statistics, projects, and deaf-blind population demographics.³⁰⁹ According to AADB, the ability to roll over funds would ensure that “the failure of any program to fulfill its commitment to distribute devices would not penalize people who are deaf-blind because unused funds would continue to be available in future years for their communication needs.”³¹⁰ The Lighthouse also supports redistribution “as long as there is clear oversight to prevent state distribution programs from expending monies just to retain what they perceive is their ‘share’ in future years.”³¹¹ TEDPA notes that allowing rollover of unspent funds would permit states with a higher than expected distribution rate to continue providing equipment without putting qualified applicants on a waiting list.³¹² The National

³⁰¹ *NDBEDP NPRM*, 26 FCC Rcd at 705, ¶ 46.

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.* at 705-06, ¶ 46.

³⁰⁵ *Id.* at 706, ¶ 46. *See also* 47 U.S.C. § 620(c).

³⁰⁶ DBYAA Comments at 6.

³⁰⁷ TEDPA Comments at 4.

³⁰⁸ *See, e.g.*, AADB Comments at 10; Lighthouse Comments at 5; MoAT Comments at 11; National Coalition Comments at 11; TEDPA Comments at 5.

³⁰⁹ AADB Comments at 10.

³¹⁰ *Id.*

³¹¹ Lighthouse Comments at 5.

³¹² TEDPA Comments at 5.

Coalition further suggests allowing the reallocation of funds from one state that may not be using those funds, to another that needs additional funding.³¹³

88. *Discussion.* We conclude that a mechanism that allocates funding for reimbursement of authorized costs of equipment and associated services, up to each state's initial or adjusted allotment, is appropriate for the NDBEDP pilot program, and, for the following reasons, we adopt this approach. First, we believe that this type of funding mechanism will 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. We understand that state EDPs have varied considerably with respect to the extent to which they have reached out and served the deaf-blind community. We are concerned that providing upfront allocations to these jurisdictions would not provide sufficient incentive to actively seek out and provide the necessary services to achieve the goals of this NDBEDP. In addition, we believe that use of a reimbursement funding mechanism will provide greater accountability and protection against waste, fraud, and abuse. Under the approach that we adopt in this Order, we will permit certified programs to request reimbursement every six months, commencing with the starting date of the pilot program, as determined by CGB acting under delegated authority from the Commission. Certified programs may seek reimbursement of costs up to the funding allocation for the state, for the equipment they distribute, along with the reasonable costs of outreach, individual assessments, the installation of and consumer training on the distributed equipment, and costs associated with maintenance, repairs and warranties of the equipment distributed. As discussed below, we will also permit an allowance for costs associated with administering these programs. In order to be compensated for equipment distributed and services rendered, certified programs must 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. Costs submitted must be for those costs actually incurred during the prior six-month period. The TRS Fund Administrator and the NDBEDP Administrator shall review submitted costs and may request supporting documentation to verify the expenses claimed, and may also disallow unreasonable costs.

89. While we recognize the benefits of allowing the rollover of unused funds from one Fund year to another, we do not yet have sufficient data on the extent to which such rollovers are likely to be necessary or warranted, and therefore do not adopt the proposal to rollover unused funds at this time. We also believe that not having the option of carrying over unused funds to the next year will create greater incentives for NDBEDP certified programs to distribute communications equipment to their residents rapidly and efficiently. We will review NDBEDP funding data as it becomes available, and will consider whether to keep or revise this funding approach for the permanent NDBEDP.

90. We nevertheless delegate authority to CGB to reduce, raise, or reallocate funding allocations to any certified program as it may deem necessary and appropriate. For example, based on actual need, CGB may reduce the allocation of a certified program that underutilizes its funding allocation and may increase the allocation of another certified program that fully utilizes its allocation. Consistent with the statute, we will ensure that such reallocations, if any, will not result in expenditures over \$10 million for any funding year. Reasonable notice will be provided to any affected certified program prior to any such adjustments.

³¹³ National Coalition Comments at 11. By way of example, the National Coalition directs the Commission to a "quota system" implemented by the American Printing House for the Blind, through which funds are made available for equipment used by students who are visually impaired. *Id.*, citing <http://www.aph.org/fedquotpgm/fedquota.htm>. According to the National Coalition, this program allows funds not utilized in certain areas to be carried over from one state to another. *Id.*

C. Funding Caps and Administrative Costs

91. The *NDBEDP NPRM* also sought comment on the extent to which caps should be placed on the costs associated with individual assessments, installation, training, outreach, and reporting obligations associated with equipment distributed under this program, and whether such caps should vary based on factors such as state deaf-blind population numbers.³¹⁴ In response, DBYAA suggests that 20 percent to 30 percent of NDBEDP funds be allocated for training to ensure effective distribution and utilization of the equipment.³¹⁵ DBYAA further recommends that any caps on expenses vary depending on the state's deaf-blind population.³¹⁶ ACB recommends no funding caps for the pilot period, and that the Commission may determine appropriate caps as a result of lessons learned during this pilot program.³¹⁷ TEDPA proposes a "reasonable capped administrative fee of 15-20% of the total cost associated with distribution of CPE and related services during the pilot program to be reviewed in three (3) month intervals."³¹⁸

92. *Discussion.* For the NDBEDP pilot program, we adopt a rule allowing certified programs to receive reimbursement from the TRS Fund for administrative costs that do not exceed 15 percent of the total reimbursable costs for the distribution of equipment and related services permitted under this program. This cap is supported in the record.³¹⁹ We expect such administrative costs incurred through participation in the NDBEDP pilot program to typically cover expenses incurred through reporting requirements, accounting, regular audits, oversight, and general administration. Because there is insufficient information in the record to support specific caps or amounts that should be used for outreach, assessments, equipment, installation, or training out of each state's funding allocation, we will not adopt any such caps for the pilot program at this time. We do, however, require that all costs incurred through participation in the NDBEDP pilot program be reasonable and note that we will be carefully monitoring and evaluating the data submitted by certified programs for reimbursement of costs, as well as all other data and information submitted in the semi-annual reports filed by certified programs,³²⁰ to determine whether caps on outreach, assessments, equipment, installation, or training costs are necessary and appropriate in subsequent Fund years of the NDBEDP pilot program or for the permanent program.

VII. OVERSIGHT AND REPORTING

93. As noted in the *NDBEDP NPRM*, thorough reporting and oversight requirements of the NDBEDP are necessary to assess the effectiveness of our pilot program, to ensure that the TRS Fund is being used for the purpose intended by Congress, and to provide the Commission with the ability to detect and prevent potential fraud, waste and abuse of the TRS Fund.³²¹ Data on the distributed equipment and related services will provide the Commission with information about the technology needs and preferences of the deaf-blind community, along with how certified programs are able to meet those

³¹⁴ *NDBEDP NPRM*, 26 FCC Rcd at 705, ¶ 45.

³¹⁵ DBYAA Comments at 5.

³¹⁶ *Id.*

³¹⁷ ACB Reply at 8.

³¹⁸ TEDPA Comments at 4.

³¹⁹ *Id.*

³²⁰ See Section VII, *infra*, for the reporting obligations of all certified programs.

³²¹ *NDBEDP NPRM*, 26 FCC Rcd at 706, ¶ 49.

needs.³²² To this end, we proposed to require that certified programs submit certain data every six months until the completion of the pilot program.³²³ We sought comment on that proposal and asked for recommendations about other data we should require, such as reporting on best practices, the effectiveness of equipment, administrative expenses, and complaints or disputes.³²⁴ We also sought comment on appropriate record retention requirements and safeguards to protect the confidentiality of contact information of individuals who receive equipment under the NDBEDP.³²⁵ In addition, we proposed that certified programs be subject to regular audits by an independent entity and asked how often those audits should be conducted.³²⁶ Additionally, we tentatively concluded that certified programs not be permitted to accept any type of financial arrangement from equipment vendors that could incentivize the purchase of particular equipment, because such arrangements could run counter to the program’s purpose to provide equipment that meets each individual’s unique needs.³²⁷ Finally, we proposed that certified program administrators who submit any data to the Commission certify such data to be true and accurate under penalty of perjury.³²⁸

94. Commenters agree on the importance of ensuring proper oversight of the NDBEDP.³²⁹ TEDPA affirms that reporting and documentation are necessary, and urges the Commission to develop a simple reporting mechanism such as a web-based database for inputting data that could help reduce the amount of paperwork that is filed and stored.³³⁰ TEDPA suggests further that this database could be used by certified programs to prevent consumers from “double-dipping” and notes that some states already employ such databases.³³¹ DBYAA recommends that certified programs be required to maintain a database that records the number and types of devices used by individuals with varying degrees of deaf-blindness.³³² DBYAA also recommends the reporting of administrative expenses, to help ensure accountability and prevent abuse of the TRS Fund,³³³ as well as the submission of data on equipment reliability and usability.³³⁴ Finally, DBYAA recommends that certified programs be required “to develop a process for gathering and reporting to the Commission complaints and other consumer disputes.”³³⁵ AADB urges the Commission to promote transparency by requiring data about the types of equipment

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.* at 707, ¶ 50.

³²⁵ *Id.*

³²⁶ *Id.* at 707, ¶ 51.

³²⁷ *Id.*

³²⁸ *Id.* at 707, ¶ 52.

³²⁹ *See, e.g.*, AADB Comments at 10 (support for oversight and reporting); DBYAA Comments at 6 (support for six-month reporting requirement); MoAT Comments at 3 (six-month reporting requirement is reasonable); National Coalition Comments at 11 and ACB Reply at 11 (both expressing support for recommended oversight and reporting process to monitor equipment distribution).

³³⁰ TEDPA Comments at 5-6.

³³¹ *Id.*

³³² DBYAA Comments at 2.

³³³ *Id.* at 6. The National Coalition also notes that the Commission should measure the administrative cost efficiency of each of the models piloted. National Coalition Comments at 2.

³³⁴ DBYAA Comments at 6.

³³⁵ *Id.*

requested and provided to consumers to be made available for public review in a format that is accessible to individuals who are deaf-blind.³³⁶

95. Several commenters expressed interest in the ways that the Commission should assess the effectiveness and efficiency of certified programs during the NDBEDP pilot program. For example, the National Coalition is concerned that, as proposed in the *NDBEDP NPRM*, the pilot program would not include measures for evaluating its success.³³⁷ It suggests, among other things, that the pilot use objective measures to assess the effectiveness of the distribution program to the maximum extent possible, test and compare the relative effectiveness of a variety of program models, and actively seek direct consumer input on the pilot's success.³³⁸ The Lighthouse adds that "a new metric may be needed" in assessing cost efficiencies for a population that has been long underserved and that, "[m]easurements initially should evaluate the relative effectiveness of programs in a state or region with [a] goal [of] establishing a national standard over a reasonable period of time."³³⁹ It also suggests that any assessment of the pilot program's effectiveness must be informed, first and foremost, by input from deaf-blind consumers, advocacy groups, and leaders, and that such input must be obtained in a culturally relevant and fully accessible manner.³⁴⁰ The Lighthouse explains further that Commission-established public comment periods "are typically too short to solicit meaningful involvement from the Deaf-Blind community."³⁴¹ Likewise, AADB recommends that oversight and reporting responsibilities be shared with a national, non-profit, deaf-blind consumer organization, which "has the network with other consumer groups and the connections with members to make this [program] succeed."³⁴² Parker adds that "rich evaluation data (from focus groups of consumers, brief surveys, and from measuring consumer valued outcomes) is critical for building an effective and responsive system."³⁴³

96. With respect to the appropriate intervals for reporting, records retention and audits, several commenters supported the submission of reports to the Commission every six months.³⁴⁴ In addition, DBYAA recommends requiring retention of electronic records for five years to enable efficient audits and resolution of consumer complaints.³⁴⁵ TEDPA reports that some state EDPs have a three-year records retention policy, and recommends that all information be submitted electronically with hard copies being retained for two years, with the exception of financial records, which it says should comply

³³⁶ AADB Comments at 3.

³³⁷ National Coalition Comments at 2.

³³⁸ *Id.* See also ACB Reply at 2, recommending that the Commission conduct two pilot programs, one reliant on state programs and the other reliant on a regional model, so that the Commission may compare the success of each model against each other.

³³⁹ Lighthouse Comments at 3.

³⁴⁰ *Id.* at 2.

³⁴¹ *Id.*

³⁴² AADB Comments at 10-11.

³⁴³ Parker Comments at 1 (parenthetical in original).

³⁴⁴ See, e.g., DBYAA Comments at 6; MoAT Comments at 3; ACB Reply at 10 (supporting generally the Commission's processes to monitor equipment distribution).

³⁴⁵ DBYAA Comments at 6.

with state requirements.³⁴⁶ TEDPA further suggests that “[a]nnual audits should be sufficient as they are already required for state EDPs.”³⁴⁷

97. No comments were received on the issues of safeguards to protect the confidentiality of contact information of individuals who receive equipment under the NDBEDP, prohibitions on financial arrangements with equipment vendors, or requiring certified program administrators who submit any data to do so under penalty of perjury.

98. *Discussion.* We adopt a six-month reporting requirement as part of our NDBEDP pilot rules. This reporting requirement is necessary to provide us with timely data for the effective administration of the NDBEDP pilot; to assess the effectiveness of the pilot program in meeting the communications equipment and technology needs of deaf-blind individuals; to ensure that the TRS Fund is being used for the purpose intended by Congress; to detect and prevent potential fraud, waste and abuse of the TRS Fund; to ensure compliance with our rules; and to inform our rulemaking for the permanent NDBEDP. We agree with commenters that submission of reports to the Commission every six months is appropriate and consistent with program requirements.³⁴⁸ This reporting schedule also coincides with and complements the schedule for program reimbursements.³⁴⁹ During the pilot program, the Commission will continue to explore ways to simplify reporting for the permanent NDBEDP, including the submission of information through a web-based database. In response to comments received, we further conclude that, in addition to the data proposed for submission in the NDBEDP NPRM, certified programs will be required to report on the number and types of equipment requests that were denied by their programs, the average waiting times to acquire equipment after it is requested, the complaints received about their programs, and the number of unserved but qualified applicants on each program’s waiting lists. We believe that this additional information will help inform us about the ability of each program to fully meet the needs of the individuals it serves.

99. We require certified programs to file a report with the Commission every six months commencing with the start of the pilot program in an electronic format containing the following information:³⁵⁰

(A) for each piece of equipment distributed, the identity of and contact information, including street and e-mail addresses, and phone number, for the individual receiving that equipment;

(B) for each piece of equipment distributed, the identity of and contact information, including street and e-mail addresses, and phone number, for the individual attesting to the disability of the individual who is deaf-blind;

(C) for each piece of equipment distributed, its name, serial number, brand, function, and cost, the type of communications service with which it is used, and the type of relay service it can access;

³⁴⁶ TEDPA Comments at 6.

³⁴⁷ *Id.* at 5.

³⁴⁸ *See* para. 96, *supra*.

³⁴⁹ *See* Section VI.B, *supra*.

³⁵⁰ The NDBEDP Administrator will provide electronic filing instructions to the certified programs. The Commission may consider, as part of the rulemaking proceeding for the permanent NDBEDP, whether these reports should be made publicly available.

- (D) for each piece of equipment distributed, the amount of time, following any assessment conducted, that the requesting individual waited to receive that equipment;
- (E) the cost, time and any other resources allocated to assessing an individual's equipment needs;
- (F) the cost, time and any other resources allocated to installing equipment and training deaf-blind individuals on using equipment;
- (G) the cost, time and any other resources allocated to maintain, repair, cover under warranty, and refurbish equipment;
- (H) the cost, time and any other resources allocated to outreach activities related to the NDBEDP, and the types of outreach efforts undertaken;
- (I) the cost, time and any other resources allocated to upgrading the distributed equipment, along with the nature of such upgrades;
- (J) to the extent that the program has denied equipment requests made by its deaf-blind residents, a summary of the number and types of equipment requests denied and reasons for such denials;
- (K) to the extent that the program has received complaints related to the program, a summary of the number and types of such complaints,³⁵¹ and their resolution; and
- (L) the number of qualified applicants on waiting lists to receive equipment.

100. We are mindful that qualitative as well as quantitative data may be needed to appropriately assess the efficiency and effectiveness of the certified programs and the pilot program, and to better inform the structure and operation and the development of rules for a permanent NDBEDP. We take particular note of the need expressed by several commenters for input from deaf-blind consumers, advocacy groups, and leaders. We encourage certified programs to seek and obtain such qualitative data and preferences and to share that information with the Commission. We expect that certified programs will have the opportunity, particularly through personal contact with individuals who are deaf-blind, to obtain such qualitative feedback. As discussed further below,³⁵² the Commission is also exploring ways in which it can engage these and other stakeholders effectively as part of an advisory body or by other means. Further, the NDBEDP Administrator may confer with certified programs, as needed, about the operation and assessment of the pilot program, and the structuring and operation of, as well as development of rules for, a permanent program.

101. With respect to oversight and record retention, we conclude that, in order to receive compensation from the TRS Fund, each certified program must engage an independent auditor to perform an annual audit designed to detect and prevent fraud, waste and abuse.³⁵³ In addition, all such programs must submit, as necessary, to any audits directed by the Commission, CGB, the NDBEDP Administrator, or the TRS Fund Administrator for such purpose. We also require all certified programs to retain all records associated with the distribution of equipment and provision of related services under the

³⁵¹ Information about the types of complaints received will help to inform our efforts to assess certified program compliance and effectiveness. The summary of types of complaints received can be provided using brief descriptions, e.g., "equipment not available" or "equipment not working."

³⁵² See Section IX, *infra*.

³⁵³ The costs of these regular audits are reimbursable. See para. 92, *supra*.

NDBEDP for two years following the termination of the pilot program. We believe that adopting these policies will promote greater transparency and accountability.

102. To further prevent abuse, we also adopt a rule that prohibits certified programs from accepting any type of financial arrangement from an equipment vendor that could incentivize the purchase of particular equipment. We believe that such incentives could impede a certified program's ability to provide equipment that fully meets the unique needs of the deaf-blind persons it is serving. We will request during the initial certification application process and thereafter, as necessary, disclosure of actual or potential conflicts of interest with manufacturers or providers of equipment, software, or applications that may be distributed under the NDBEDP.

103. Finally, we require that each NDBEDP certified program filing these reports attest to the truth and accuracy of the information provided in these reports under penalty of perjury. This practice is a critical component of maintaining the integrity of the program, is needed to ensure the veracity of the signed statement, and to ensure that certified program administrators are held accountable for their submissions. Specifically, we will require the chief executive officer (CEO), chief financial officer (CFO), or other senior executive of the certified program, such as a manager or director, with first-hand knowledge of the accuracy and completeness of the information provided, to certify as follows:

I swear under penalty of perjury, that I am (name and title), an officer of the above-named reporting entity and that I have examined the foregoing reports and that all requested information has been provided and all statements of fact are true and an accurate statement of the affairs of the above-named certified program.

VIII. LOGISTICS AND DIVISION OF RESPONSIBILITIES

104. In the *NDBEDP NPRM*, we proposed to delegate authority to CGB to designate an NDBEDP Administrator who would work in collaboration with the TRS Fund Administrator on implementation of this pilot program.³⁵⁴ We further proposed that the TRS Fund Administrator (as directed by the NDBEDP Administrator) have responsibility for reviewing cost submissions, releasing funds, and collecting data as needed for delivery to the NDBEDP Administrator.³⁵⁵ We received only one response to these proposals. AADB suggests that, "due to the specialized and technical nature of stakeholders, a national deaf-blind consumer organization . . . would be able to complement the duties of the NDBEDP Program Administrator."³⁵⁶

105. *Discussion.* We delegate authority to CGB to take the administrative actions necessary to implement and administer the NDBEDP.³⁵⁷ CGB will designate an NDBEDP Administrator, who will have the authority to take the actions described herein. An NDBEDP Administrator is needed to review applications and certify programs for participation in the NDBEDP pilot; allocate funding; identify data needed to process reimbursement requests; establish and maintain an NDBEDP website and oversee other outreach efforts undertaken by the Commission; confer with stakeholders and obtain, review, and analyze data to assess the effectiveness of the pilot program; work with Commission staff on the adoption of rules for a permanent program; and serve as the Commission's point of contact for the NDBEDP. We expect that the NDBEDP Administrator will consult with a wide range of NDBEDP stakeholders, including

³⁵⁴ *NDBEDP NPRM*, 26 FCC Rcd at 708, ¶ 53.

³⁵⁵ *Id.*

³⁵⁶ AADB Comments at 11.

³⁵⁷ *See* 47 C.F.R. §§ 0.141(f), 0.361.

national deaf-blind consumer and service organizations that have expertise in the cultural, linguistic, and daily needs of members of the deaf-blind community, as needed, for the effective and efficient operation of the pilot program. The NDBEDP Administrator will be responsible for the following:

- (A) reviewing program applications received from state EDPs and alternate entities and certifying those that qualify to become certified to participate in the NDBEDP;
- (B) allocating NDBEDP funding as appropriate and in consultation with the TRS Fund Administrator;
- (C) reviewing certified program submissions for reimbursement of costs under the NDBEDP, in consultation with the TRS Fund Administrator;
- (D) working with Commission staff to establish and maintain an NDBEDP website accessible to individuals with disabilities, that includes contact information for certified programs by state and links to their respective websites, if any, and overseeing other outreach efforts that may be undertaken by the Commission;
- (E) obtaining, reviewing, and evaluating reported data for the purpose of assessing the pilot program and determining best practices;
- (F) conferring with stakeholders, jointly or separately, during the course of the pilot program to obtain input and feedback on, among other things, the effectiveness of the pilot program, new technologies, equipment and services that are needed, and suggestions for the permanent program;
- (G) working with Commission staff to adopt permanent rules for the NDBEDP; and
- (H) serving as the Commission's point of contact for the NDBEDP, including responding to inquiries from certified programs and consumer complaints filed directly with the Commission.³⁵⁸

106. We also conclude that the TRS Fund Administrator, as directed by the NDBEDP Administrator, shall have responsibility for the following:

- (A) reviewing cost submissions and releasing funds for equipment that has been distributed and authorized related services, including outreach efforts;
- (B) releasing funds for other authorized purposes, as requested by the Commission or CGB; and
- (C) collecting data as needed for delivery to the Commission and the NDBEDP Administrator.

IX. OTHER CONSIDERATIONS

A. Advisory Body

107. In the *NDBEDP NPRM*, we noted that commenters responding to the *NDBEDP PN* recommended the creation of an advisory body to help provide oversight, feedback, and evaluation of the

³⁵⁸ Informal complaints alleging a violation of the Commission's rules implementing Section 719 of the Act may be transmitted to the Commission via any reasonable means, *e.g.*, letter, facsimile transmission, telephone (202-418-2517 (voice); 202-418-2922 (TTY)), Internet-email (dro@fcc.gov), audio-cassette recording, and Braille.

NDBEDP, share consumer experiences, and gather input on new technologies.³⁵⁹ They stressed the importance of maintaining ongoing contact with the deaf-blind community in light of previous failures of existing programs to regularly consult with this community.³⁶⁰ Because of the specialized nature of the services to be provided by the NDBEDP, we sought comment on the need for such an advisory body, either as an independent entity, or as a subpart of the Commission's Consumer Advisory Committee³⁶¹ or the Interstate TRS Fund Advisory Council.³⁶²

108. In response to the *NDBEDP NPRM*, commenters continue to uniformly support the establishment of an NDBEDP advisory body. AADB recommends that such an advisory body include NDBEDP equipment recipients, consumer groups, equipment manufacturers, and certified programs.³⁶³ The Lighthouse notes the importance of having the pilot program informed by deaf-blind consumers, advocacy groups and leaders,³⁶⁴ and suggests that an advisory body "include members of the Deaf-Blind Community, as well those with expertise in technology development and service delivery in this community."³⁶⁵ DBYAA concurs that an advisory body could provide the Commission with feedback on the effectiveness of the NDBEDP and the reliability of equipment distributed under the program, emphasizing that there is a need for the NDBEDP to maintain "regular contact with experts on deaf-blindness and the assistive and mainstream technology industries."³⁶⁶ The National Coalition strongly agrees on the importance of assuring that individuals who are deaf-blind "play a leading role" on any such advisory committee.³⁶⁷ The HKNC and the National Coalition recommend an advisory body to help evaluate consumers' experiences, which is critical to assessing the effectiveness of the pilot program.³⁶⁸

109. *Discussion.* Commenters have consistently stressed the importance of input by individuals who are deaf-blind throughout the life of this pilot program, from the certification of the equipment distribution programs,³⁶⁹ to oversight and assessment of the pilot program.³⁷⁰ We agree that the participation of the consumers for whom this program exists is critical in all aspects of the NDBEDP to ensure that the program effectively meets the needs of this constituency. Similarly, because of the unique nature of this population, input from experts on deaf-blindness and the technologies that provide communications access for this population, is also essential to inform and supplement the hands-on experience of certified programs. The Commission is exploring the best means by which to engage and confer with these and other stakeholders. While we will not create a separate advisory body at this time, the NDBEDP Administrator will nevertheless meet with stakeholders, including consumers who are deaf-

³⁵⁹ *NDBEDP NPRM*, 26 FCC Rcd at 708-09, ¶¶ 54-55.

³⁶⁰ *Id.* at 708, ¶ 54.

³⁶¹ See <http://www.fcc.gov/cgb/cac/>.

³⁶² See <http://www.neca.org>; *NDBEDP NPRM*, 26 FCC Rcd at 709, ¶ 55.

³⁶³ AADB Comments at 11.

³⁶⁴ Lighthouse Comments at 2.

³⁶⁵ *Id.* at 5.

³⁶⁶ DBYAA Comments at 6.

³⁶⁷ National Coalition Reply at 1.

³⁶⁸ HKNC Comments at 2; National Coalition Comments at 11.

³⁶⁹ See Section III.C, *supra*.

³⁷⁰ See Sections VII and VIII, *supra*. David Wiley also notes the importance of having consumers who use the equipment be "an integral part of planning and implementation of the final regulations." Wiley Comments at 1.

blind, consumer groups, experts on deaf-blindness, technical experts, manufacturers, vendors, and certified programs, jointly or separately, during the course of the pilot program to obtain such input and feedback. We note that several such meetings have already taken place to inform the Commission on laying the groundwork for the NDBEDP.³⁷¹

B. Central Repository

110. In the *NDBEDP NPRM*, we noted that there is no centralized source of information about specialized CPE that provides individuals who are deaf-blind with access to communications or about the programs that provide equipment and services for this population.³⁷² We also noted that this gap may be filled by coordinating such efforts with the Commission's clearinghouse of accessible products and accessibility solutions, required elsewhere in the CVAA.³⁷³ We sought comment on the use of the future clearinghouse for this purpose, including ways in which the administrators of the NDBEDP and the clearinghouse could work together to inform individuals who are deaf-blind about the NDBEDP, the certified programs, and equipment available to them.³⁷⁴

111. Commenters support the establishment of a central website for the NDBEDP. TEDPA recommends that the NDBEDP maintain a separate website to allow the public to locate the information easily.³⁷⁵ DBYAA urges the Commission to ensure that the central website is accessible to individuals who are deaf-blind.³⁷⁶ The National Coalition and ACB also agree that a clearinghouse of accessible products and accessibility solutions is vital.³⁷⁷

112. *Discussion.* As noted above, we require the NDBEDP Administrator to work with Commission staff to establish and maintain an NDBEDP website that will be accessible by individuals with disabilities,³⁷⁸ including individuals who are deaf-blind, which will include contact information for certified programs by state, as well as links to their websites, where available. The rules that we adopt in this Order also require certified programs to report to the Commission about the equipment they distribute,³⁷⁹ which the NDBEDP Administrator may use to provide examples of specialized CPE and accessibility solutions on the NDBEDP website. We believe that the best means of ensuring that the public has up-to-date information about the equipment made available by NDBEDP certified programs is

³⁷¹ For example, Commission staff met with representatives of Helen Keller Services for the Blind and the Helen Keller National Center (Thomas Edwards, Joseph McNulty, and Suzanne Ressa) on December 20, 2010; with representatives of the National Coalition on Deafblindness (Betsy McGinnity, Steve Rothstein, and Mark Richert) on January 26, 2011; and with representatives of HumanWare (Dominic Gagliano and Greg Stilson) on February 15, 2011, and (Gilles Pepin, Ivan Legace, Stephane Langevin, Dominic Gagliano, and Lucia Gomez) on March 16, 2011. See *HKNC Ex Parte*; *National Coalition on Deafblindness Ex Parte*; *HumanWare Feb. 15 Ex Parte*; *HumanWare March 17 Ex Parte*. In addition, Commission staff held a mini-summit with 12 members of the DBYAA, along with representatives of the AADB and HKNC, on June 15, 2010.

³⁷² *NDBEDP NPRM*, 26 FCC Rcd at 709, ¶ 56.

³⁷³ *Id.* The clearinghouse is required by Pub. L. 111-260, Section 104(a), to be codified at 47 U.S.C. § 618(d).

³⁷⁴ *NDBEDP NPRM*, 26 FCC Rcd at 709, ¶ 56.

³⁷⁵ TEDPA Comments at 5.

³⁷⁶ DBYAA Comments at 6.

³⁷⁷ National Coalition Comments at 11; ACB Reply at 10.

³⁷⁸ See Section VIII, *supra*.

³⁷⁹ See Section VII, *supra*.

to include such information in the clearinghouse on accessible products and services that the Commission will be establishing over the next year under the CVAA.³⁸⁰ The CVAA clearinghouse will provide information on the availability of accessible products and services and accessibility solutions required under Sections 255 (telecommunications services and equipment),³⁸¹ 716 (advanced communications services and equipment),³⁸² and 718 (Internet browsers on mobile devices)³⁸³ of the Act, and will include an annually updated list of products and services with their access features. We hope to gather extensive information about the equipment provided under the NDBEDP for inclusion within this clearinghouse from the reports submitted during this pilot program.³⁸⁴ Because it will take a while to certify programs under the NDBEDP and then gather information about equipment being distributed by those programs, this time frame for the CVAA clearinghouse should prove effective in providing consumers with the information that they need as this program gets underway.

C. NDBEDP as a Supplemental Funding Source

113. When it is established, the NDBEDP will be one of several federal laws or programs that either mandate or authorize the provision of specialized CPE to individuals who are deaf-blind.³⁸⁵ These laws or programs include the Individuals with Disabilities Education Act (“IDEA”),³⁸⁶ which requires education agencies to provide the equipment and services that children with disabilities need to receive a free and appropriate public education; vocational rehabilitation programs, which provide specialized equipment to people with disabilities seeking employment; and Section 501 of the Rehabilitation Act,³⁸⁷ which requires reasonable accommodations to be provided to federal employees with disabilities.³⁸⁸ In the *NDBEDP NPRM*, we sought comment on whether the NDBEDP should work with these other entities and programs to serve as a supplement to, rather than as a replacement for, their equipment distribution efforts, to maximize the availability of NDBEDP funds for individuals who are unable to qualify for equipment from the other sources.³⁸⁹ In addition, we sought comment on the need for safeguards to ensure that individuals seeking equipment under the NDBEDP do not “double dip” or receive the same devices from more than one source, such as by requiring individuals to so certify as part of the application process.³⁹⁰ We noted, too, that individuals who are deaf-blind may require multiple devices to achieve the communications accessibility intended by Congress under the CVAA.³⁹¹ Finally, given the NDBEDP purpose to distribute end-user equipment to as many individuals as possible who are underserved, we

³⁸⁰ 47 U.S.C. § 618(d).

³⁸¹ 47 U.S.C. § 255.

³⁸² 47 U.S.C. § 617.

³⁸³ 47 U.S.C. § 619.

³⁸⁴ See Section VII, *supra*.

³⁸⁵ *NDBEDP NPRM*, 26 FCC Rcd at 709, ¶ 58.

³⁸⁶ 20 U.S.C. § 1400 *et seq.*

³⁸⁷ 29 U.S.C. § 791 *et seq.*

³⁸⁸ The Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, also requires the provision of reasonable accommodations, which may include assistive technology devices, by employers, state and local governments, and public accommodations.

³⁸⁹ *NDBEDP NPRM*, 26 FCC Rcd at 710, ¶ 58.

³⁹⁰ *Id.*

³⁹¹ *Id.*

asked for comment about disqualifying individuals who are eligible under or have already received equipment from another source from participation in this pilot program.

114. In response to the *NDBEDP NPRM*, the National Coalition concurs that NDBEDP funds should be supplemental to other funding sources, such as under the IDEA or Rehabilitation Act, and that safeguards should be put in place to ensure that NDBEDP funds are not used to fulfill these other programs' obligations.³⁹² It recommends that certified programs educate parents of children who are deaf-blind about the responsibilities of state and local education agencies under the IDEA to provide needed equipment to meet the provisions of the child's individual education program.³⁹³ At the same time, it urges the Commission not to adopt a rule that disqualifies from participation individuals who are eligible for or who have received equipment from other sources.³⁹⁴ TEDPA proposes that the NDBEDP website include a password-protected resource area for certified programs to input applications and other information, and to generate reports for the purpose of keeping track of equipment given out to deaf-blind individuals.³⁹⁵ It advises that some state EDPs have mechanisms in place to ensure that consumers do not "double dip" within the state. By using both the NDBEDP and state EDP databases, it states, consumer "double dipping" can be prevented.³⁹⁶

115. *Discussion.* We conclude that the NDBEDP provides a new funding resource for the distribution of equipment that supplements rather than supplants any existing legal mandates or programs for equipment available to consumers today, including but not limited to the IDEA and the Rehabilitation Act. This conclusion is consistent with stated congressional intent "to ensure that individuals with disabilities are able to utilize fully the essential advanced technologies that have developed since the passage of the ADA and subsequent statutes addressing communications accessibility."³⁹⁷ As demonstrated by the record,³⁹⁸ individuals who are deaf-blind may be eligible for support for equipment under more than one program and may need such support to access communication in various settings and for different purposes. The National Coalition provides examples where equipment from several sources may be necessary. First, the IDEA will provide a student who is deaf-blind with accessible communications equipment in her classroom and dorm room, but not the equipment she needs at home during the summer to keep in touch with her friends.³⁹⁹ Second, an employer will provide the equipment needed for a young man to do his job, but not the equipment he needs at home for social networking.⁴⁰⁰ A parent from Massachusetts agrees:

[I]ndividuals need to have the same or nearly identical equipment at home as they may get on the job. There must be access to social networking at home and off the job. This would support an

³⁹² National Coalition Comments at 11.

³⁹³ *Id.* at 3.

³⁹⁴ *Id.* at 12.

³⁹⁵ TEDPA Comments at 5. *See also* Section VII, *supra*.

³⁹⁶ TEDPA Comments at 5.

³⁹⁷ Senate Report at 3.

³⁹⁸ *See* paras. 113-114, *supra*.

³⁹⁹ National Coalition Comments at 12.

⁴⁰⁰ *Id.*

individual's right to learn on their own and establish the same relationships signed and hearing people have access to.⁴⁰¹

116. For these reasons, individuals who are deaf-blind should not be disqualified from participating in the NDBEDP pilot program because they may also be eligible for or receive equipment under other programs for other purposes (*e.g.*, education or employment related equipment). Instead, individual assessments must be conducted to determine each deaf-blind person's needs for different settings. We encourage NDBEDP certified programs to collaborate with other programs to achieve the goal of addressing the communication technology needs of this underserved population while avoiding duplicative services.

D. Program Compliance

1. Program certification under penalty of perjury.

117. In the *NDBEDP NPRM*, we proposed that certified program administrators who submit any data to the Commission certify such data to be true and accurate under penalty of perjury.⁴⁰² As noted above, we received no comments on this proposal.⁴⁰³

118. *Discussion.* In addition to the certification we require for submissions of required program information reports,⁴⁰⁴ we require that each NDBEDP certified program requesting reimbursement for equipment and related services under this program attest to the truth and accuracy of the claims for reimbursement submitted, under penalty of perjury. This practice is a critical component of maintaining the integrity of the program, is needed to ensure the veracity of the signed statement, and to ensure that certified program administrators are held accountable for their submissions. Specifically, we will require the CEO, CFO or other senior executive of the certified program, such as a director or manager, with first-hand knowledge of the accuracy and completeness of such claims, to certify as follows:

I swear under penalty of perjury that I am (name and title), an officer of the above-named reporting entity and that I have examined all cost data associated with equipment and related services for the claims submitted herein, and that all such data are true and an accurate statement of the affairs of the above-named certified program.

2. Whistleblower protection.

119. The NDBEDP involves the use and management of funds which may, like any funding program, be susceptible to waste, fraud, and abuse.⁴⁰⁵ As part of the Commission's obligation to ensure that these funds are used for the purposes intended by Congress, we sought comment on whether we should adopt a specific whistleblower protection rule for the employees of certified programs under the

⁴⁰¹ *Id.*

⁴⁰² *NDBEDP NPRM*, 26 FCC Rcd at 707, ¶ 52,

⁴⁰³ *See* para. 97, *supra*.

⁴⁰⁴ *See* Section VII, *supra*.

⁴⁰⁵ *NDBEDP NPRM*, 26 FCC Rcd at 709, ¶ 57.

NDBEDP, the scope and contents of such a rule, and our authority to adopt it.⁴⁰⁶ We received no comments in response to this inquiry.

120. *Discussion.* In order to ensure that individuals with knowledge of program abuses are encouraged to come forward, we conclude that adopting a whistleblower protection rule is appropriate for the NDBEDP pilot program. We believe that this will serve to protect the integrity of and funding provided to the NDBEDP and that it is within our authority to adopt such a rule. We also conclude that whistleblower protections should be provided to a wide range of individuals who may have knowledge about possible waste, fraud, and abuse and who might otherwise be subject to reprisal as a result of good faith disclosures. We therefore adopt a rule that protects current or former employees, agents, contractors, manufacturers, vendors, applicants, or equipment recipients from reprisal in the form of an adverse personnel action, purchase or contract cancellation or discontinuance, or eligibility disqualification if they disclose information they reasonably believe evidences a violation of the Act or the Commission's rules (or that otherwise could result in the improper distribution of equipment, provision of services, or billing to the TRS Fund) to a designated official of the certified program, the NDBEDP Administrator, the TRS Fund Administrator, the Commission's Office of Inspector General, or to any federal or state law enforcement entity. For a disclosure to be protected, the covered individual must have a reasonable belief that the information is true, but the truthfulness of any disclosure will not affect whether a disclosure is protected. NDBEDP certified programs shall include these whistleblower protections with the information they provide about their program in employee handbooks or manuals, if any, on their websites, and in other appropriate publications.

3. Suspension or Revocation of Certification

121. We reserve the right to suspend or revoke NDBEDP certification if, after notice and opportunity for hearing, we determine that such certification is no longer warranted. For example, certification may no longer be warranted for a program that engages in no or only negligible efforts to conduct any outreach or individual assessments, distribute equipment, or provide training, during two reporting periods. Alternatively, decertification may be warranted where a program has received a large number of actionable consumer complaints. In cases where a program's certification has been suspended or revoked, we delegate authority to CGB to take such steps as may be necessary, to ensure continuity of the NDBEDP for that state. We may also, on our own motion, require a certified program to submit documentation demonstrating ongoing compliance with our rules if we have reason to suspect that a state program may not be in compliance with our program rules or requirements.

X. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Certification

122. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 603, the Commission has prepared a Final Regulatory Flexibility Certification of the possible significant economic impact on small entities of the policies and rules addressed in this Order. The final certification is set forth in Appendix C.

⁴⁰⁶ *Id.* The Commission proposed a similar whistleblower protection rule for employees and subcontractors of video relay service providers. *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, 25 FCC Rcd 6012, 6032, ¶ 50 (2010).

B. Final Paperwork Reduction Act of 1995 Analysis

123. This document contains new and modified information collection requirements. 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 Report and 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 107-198,⁴⁰⁷ 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 this 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.

C. Congressional Review Act

124. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁴⁰⁸

XI. ORDERING CLAUSES

125. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), and 719 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 620, that this Report and Order IS ADOPTED and the Commission’s rules ARE HEREBY AMENDED as set forth in the final rule changes appendix (Appendix A) attached to this Report and Order.

126. IT IS ALSO ORDERED that the rules adopted in this Report and Order WILL BE EFFECTIVE 30 days after publication of a summary in the Federal Register, except that rules that contain information collection requirements subject to the Paperwork Reduction Act shall become effective when the Commission publishes a notice in the Federal Register announcing OMB approval.

127. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁰⁷ See 44 U.S.C. § 3506(c)(4).

⁴⁰⁸ See 5 U.S.C. § 801(a)(1)(A).

APPENDIX A

Rules for NDBEDP Pilot Program

For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

Part 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B),(c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, 254(k), and 620, unless otherwise noted.

SUBPART F – TELECOMMUNICATIONS RELAY SERVICES AND RELATED CUSTOMER PREMISES EQUIPMENT FOR PERSONS WITH DISABILITIES

2. The authority citation for subpart F is revised to read as follows:

Authority: 47 U.S.C. 151-154; 225, 255, 303(r), and 620.

3. § 64.610 is added to subpart F to read as follows:

§ 64.610 Establishment of a National Deaf-Blind Equipment Distribution Program.

(a) The National Deaf-Blind Equipment Distribution Program (NDBEDP) is established as a pilot program to distribute specialized customer premises equipment (CPE) used for telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, to low-income individuals who are deaf-blind. The duration of this pilot program will be two years, with a Commission option to extend such program for an additional year.

(b) *Certification to receive funding.* For each state, the Commission will certify a single program as the sole authorized entity to participate in the NDBEDP and receive reimbursement for its program's activities from the Interstate Telecommunications Relay Service Fund (TRS Fund). Such entity will have full oversight and responsibility for distributing equipment and providing related services in that state, either directly or through collaboration, partnership, or contract with other individuals or entities in-state or out-of-state, including other NDBEDP certified programs.

(1) Any state with an equipment distribution program (EDP) may have its EDP apply to the Commission for certification as the sole authorized entity for the state to participate in the NDBEDP and receive reimbursement for its activities from the TRS Fund.

(2) Other public programs, including, but not limited to, vocational rehabilitation programs, assistive technology programs, or schools for the deaf, blind or deaf-blind; or private entities, including but not limited to, organizational affiliates, independent living centers, or private educational facilities, may apply to the Commission for certification as the sole authorized entity for the state to participate in the NDBEDP and receive reimbursement for its activities from the TRS Fund.

(3) The Commission shall review applications and determine whether to grant certification based on the ability of a program to meet the following qualifications, either directly or in coordination with other programs or entities, as evidenced in the application and any supplemental materials, including letters of recommendation:

(i) expertise in the field of deaf-blindness, including familiarity with the culture and etiquette of people who are deaf-blind, to ensure that equipment distribution and the provision of related services occurs in a manner that is relevant and useful to consumers who are deaf-blind;

(ii) the ability to communicate effectively with people who are deaf-blind (for training and other purposes), by among other things, using sign language, providing materials in Braille, ensuring that information made available online is accessible, and using other assistive technologies and methods to achieve effective communication;

(iii) staffing and facilities sufficient to administer the program, including the ability to distribute equipment and provide related services to eligible individuals throughout the state, including those in remote areas;

(iv) experience with the distribution of specialized CPE, especially to people who are deaf-blind;

(v) experience in how to train users on how to use the equipment and how to set up the equipment for its effective use; and

(vi) familiarity with the telecommunications, Internet access, and advanced communications services that will be used with the distributed equipment.

(c) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Equipment.* Hardware, software, and applications, whether separate or in combination, mainstream or specialized, needed by an individual who is deaf-blind to achieve access to telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, as these services have been defined by the Communications Act.

(2) *Individual who is deaf-blind.* Any person: (i) who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both these conditions; (ii) has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and (iii) for whom the combination of impairments described in clauses (i) and (ii) cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation. This definition also includes any individual who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining vocational objectives. An applicant's functional abilities with respect to using telecommunications, Internet access, and advanced communications services in various

environments shall be considered when determining whether the individual is deaf-blind under clauses (ii) and (iii) of the definition.

(d) *Eligibility criteria.*

(1) *Verification of disability.* Individuals claiming eligibility under the NDBEDP must provide verification of disability from a professional with direct knowledge of the individual's disability.

(i) Such professionals may include, but are not limited to, community-based service providers, vision or hearing related professionals, vocational rehabilitation counselors, educators, audiologists, speech pathologists, hearing instrument specialists, and medical or health professionals.

(ii) Such professionals must attest, either to the best of their knowledge or under penalty of perjury, that the applicant is an individual who is deaf-blind (as defined in 47 CFR 64.610(b)). Such professionals may also include, in the attestation, information about the individual's functional abilities to use telecommunications, Internet access, and advanced communications services in various settings.

(iii) Existing documentation that a person is deaf-blind, such as an individualized education program (IEP) or a statement from a public or private agency, such as a Social Security determination letter, may serve as verification of disability.

(iv) The verification of disability must include the attesting professional's name, title, and contact information, including address, phone number, and e-mail address.

(2) *Verification of low income status.* An individual claiming eligibility under the NDBEDP must provide verification that he or she has an income that does not exceed 400 percent of the Federal Poverty Guidelines as defined at 42 U.S.C. § 9902(2) or that he or she is enrolled in a federal program with a lesser income eligibility requirement, such as the Federal Public Housing Assistance or Section 8; Supplemental Nutrition Assistance Program, formerly known as Food Stamps; Low Income Home Energy Assistance Program; Medicaid; National School Lunch Program's free lunch program; Supplemental Security Income; or Temporary Assistance for Needy Families. The NDBEDP Administrator may identify state or other federal programs with income eligibility thresholds that do not exceed 400 percent of the Federal Poverty Guidelines for determining income eligibility for participation in the NDBEDP. Where an applicant is not already enrolled in a qualifying low-income program, low-income eligibility may be verified by the certified program using appropriate and reasonable means.

(3) *Prohibition against requiring employment.* No program certified under the NDBEDP may impose a requirement for eligibility in this program that an applicant be employed or actively seeking employment.

(4) *Access to communications services.* A program certified under the NDBEDP may impose, as a program eligibility criterion, a requirement that telecommunications, Internet access, or advanced communications services are available for use by the applicant.

(e) *Equipment distribution and related services.*

(1) Each program certified under the NDBEDP must:

- (i) distribute specialized CPE and provide related services needed to make telecommunications service, Internet access service, and advanced communications, including interexchange services or advanced telecommunications and information services, accessible to individuals who are deaf-blind;
- (ii) obtain verification that NDBEDP applicants meet the definition of an individual who is deaf-blind contained in 47 CFR 64.610(c)(1) and the income eligibility requirements contained in 47 CFR 64.610(d)(2);
- (iii) when a recipient relocates to another state, permit transfer of the recipient's account and any control of the distributed equipment to the new state's certified program;
- (iv) permit transfer of equipment from a prior state, by that state's NDBEDP certified program;
- (v) prohibit recipients from transferring equipment received under the NDBEDP to another person through sale or otherwise;
- (vi) conduct outreach, in accessible formats, to inform their state residents about the NDBEDP, which may include the development and maintenance of a program website;
- (vii) engage an independent auditor to perform annual audits designed to detect and prevent fraud, waste, and abuse, and submit, as necessary, to audits arranged by the Commission, the Consumer and Governmental Affairs Bureau, the NDBEDP Administrator, or the TRS Fund Administrator for such purpose;
- (viii) retain all records associated with the distribution of equipment and provision of related services under the NDBEDP for two years following the termination of the pilot program; and
- (ix) comply with the reporting requirements contained in 47 CFR 64.610(g).

(2) Each program certified under the NDBEDP may not:

- (i) impose restrictions on specific brands, models or types of communications technology that recipients may receive to access the communications services covered in this section;
- (ii) disable or otherwise intentionally make it difficult for recipients to use certain capabilities, functions, or features on distributed equipment that are needed to access the communications services covered in this section, or direct manufacturers or vendors of specialized CPE to disable or make it difficult for recipients to use certain capabilities, functions, or features on distributed equipment that are needed to access the communications services covered in this section; or
- (iii) accept any type of financial arrangement from equipment vendors that could incentivize the purchase of particular equipment.

(f) *Payments to NDBEDP certified programs.*

(1) Programs certified under the NDBEDP shall be reimbursed for the cost of equipment that has been distributed to eligible individuals and authorized related services, up to the state's funding allotment under this program as determined by the Commission or any entity authorized to act for the Commission on delegated authority.

(2) 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.

(3) With each request for payment, the chief executive officer, chief financial officer, or other senior executive of the certified program, such as a manager or director, with first-hand knowledge of the accuracy and completeness of the claim in the request, must certify as follows:

I swear under penalty of perjury that I am (name and title), an officer of the above-named reporting entity and that I have examined all cost data associated with equipment and related services for the claims submitted herein, and that all such data are true and an accurate statement of the affairs of the above-named certified program.

(g) Reporting requirements.

(1) Each program certified under the NDBEDP must submit the following data electronically to the Commission, as instructed by the NDBEDP Administrator, every six months, commencing with the start of the pilot program:

(i) for each piece of equipment distributed, the identity of and contact information, including street and e-mail addresses, and phone number, for the individual receiving that equipment;

(ii) for each piece of equipment distributed, the identity of and contact information, including street and e-mail addresses, and phone number, for the individual attesting to the disability of the individual who is deaf-blind;

(iii) for each piece of equipment distributed, its name, serial number, brand, function, and cost, the type of communications service with which it is used, and the type of relay service it can access;

(iv) for each piece of equipment distributed, the amount of time, following any assessment conducted, that the requesting individual waited to receive that equipment;

(v) the cost, time and any other resources allocated to assessing an individual's equipment needs;

(vi) the cost, time and any other resources allocated to installing equipment and training deaf-blind individuals on using equipment;

(vii) the cost, time and any other resources allocated to maintain, repair, cover under warranty, and refurbish equipment;

(viii) the cost, time and any other resources allocated to outreach activities related to the NDBEDP, and the type of outreach efforts undertaken;

(ix) the cost, time and any other resources allocated to upgrading the distributed equipment, along with the nature of such upgrades;

(x) to the extent that the program has denied equipment requests made by their deaf-blind residents, a summary of the number and types of equipment requests denied and reasons for such denials;

(xi) to the extent that the program has received complaints related to the program, a summary of the number and types of such complaints and their resolution; and

(xii) the number of qualified applicants on waiting lists to receive equipment.

(2) With each report, the chief executive officer, chief financial officer, or other senior executive of the certified program, such as a director or manager, with first-hand knowledge of the accuracy and completeness of the information provided in the report, must certify as follows:

I swear under penalty of perjury that I am (name and title), an officer of the above-named reporting entity and that I have examined the foregoing reports and that all requested information has been provided and all statements of fact are true and an accurate statement of the affairs of the above-named certified program.

(h) *Administration of the program.* The Consumer and Governmental Affairs Bureau shall designate a Commission official as the NDBEDP Administrator.

(1) The NDBEDP Administrator will work in collaboration with the TRS Fund Administrator, and be responsible for:

(i) reviewing program applications received from state EDPs and alternate entities and certifying those that qualify to participate in the program;

(ii) allocating NDBEDP funding as appropriate and in consultation with the TRS Fund Administrator;

(iii) reviewing certified program submissions for reimbursement of costs under the NDBEDP, in consultation with the TRS Fund Administrator;

(iv) working with Commission staff to establish and maintain an NDBEDP website, accessible to individuals with disabilities, that includes contact information for certified programs by state and links to their respective websites, if any, and overseeing other outreach efforts that may be undertaken by the Commission;

(v) obtaining, reviewing, and evaluating reported data for the purpose of assessing the pilot program and determining best practices;

(vi) conferring with stakeholders, jointly or separately, during the course of the pilot program to obtain input and feedback on, among other things, the effectiveness of the pilot program, new technologies, equipment and services that are needed, and suggestions for the permanent program;

(vii) working with Commission staff to adopt permanent rules for the NDBEDP; and

(viii) serving as the Commission point of contact for the NDBEDP, including responding to inquiries from certified programs and consumer complaints filed directly with the Commission.

(2) The TRS Fund Administrator, as directed by the NDBEDP Administrator, shall have responsibility for:

(i) reviewing cost submissions and releasing funds for equipment that has been distributed and authorized related services, including outreach efforts;

(ii) releasing funds for other authorized purposes, as requested by the Commission or the Consumer and Governmental Affairs Bureau; and

(iii) collecting data as needed for delivery to the Commission and the NDBEDP Administrator.

(i) *Whistleblower protections.*

(1) NDBEDP certified programs shall permit, without reprisal in the form of an adverse personnel action, purchase or contract cancellation or discontinuance, eligibility disqualification, or otherwise, any current or former employee, agent, contractor, manufacturer, vendor, applicant, or recipient, to disclose to a designated official of the certified program, the NDBEDP Administrator, the TRS Fund Administrator, the Commission's Office of Inspector General, or to any federal or state law enforcement entity, any known or suspected violations of the Act or Commission rules, or any other activity that the reporting person reasonably believes to be unlawful, wasteful, fraudulent, or abusive, or that otherwise could result in the improper distribution of equipment, provision of services, or billing to the TRS Fund.

(2) NDBEDP certified programs shall include these whistleblower protections with the information they provide about the program in any employee handbooks or manuals, on their websites, and in other appropriate publications.

(j) *Suspension or revocation of certification.*

(1) The Commission may suspend or revoke NDBEDP certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

(2) In the event of suspension or revocation, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of the NDBEDP for the state whose program has been suspended or revoked.

(3) The Commission may, at its discretion and on its own motion, require a certified program to submit documentation demonstrating ongoing compliance with the Commission's rules if, for example, the Commission receives evidence that a state program may not be in compliance with those rules.

(k) *Expiration of rules.* These rules will expire at the termination of the NDBEDP pilot program.

APPENDIX B

List of Commenters

Comments

American Association of the Deaf-Blind (“AADB”)
Deaf-Blind Young Adults in Action (“DBYAA”)
Helen Keller National Center for Deaf-Blind Youths and Adults (“HKNC”)
Jee, Ginger (advocate for people with disabilities) (“Jee”)
The Lighthouse for the Blind, Inc. (“Lighthouse”)
Martin, Tom (Interfaith-Good Samaritan, Wyoming) (“Martin”)
Missouri Assistive Technology (“MoAT”)
National Association of the Deaf (“NAD”)
National Coalition on Deafblindness (“National Coalition”)
Parker, Amy T. (expert in the field of deaf-blindness) (“Parker”)
Telecommunications Equipment Distribution Program Association (“TEDPA”)
Wheeler, Jamie (Texas teacher of visually impaired and deaf-blind students) (“Wheeler”)

Reply Comments

American Council of the Blind (“ACB”)
Chase, Lynn (resident of Washington) (“Chase”)
National Coalition on Deafblindness (“National Coalition”)
Rehabilitation Engineering Research Centers on Universal Interface & Information Technology Access (“RERC-IT”) and Telecommunications Access (“RERC-TA”) (collectively, “RERCs”)
Rodriguez-Gil, Gloria (education specialist for students who are deaf-blind) (“Rodriguez-Gil”)
Rosen, Jeff (disability attorney and advocate) (“Rosen”)
Wiley, David (resident of Texas) (“Wiley”)

Ex Parte Filings and Presentations to FCC

Letter from Joseph McNulty, Executive Director, HKNC (Dec. 24, 2010) (“HKNC <i>Ex Parte</i> ”)
Deaf Blind Communicator Introduction PowerPoint Presentation by Dominic Gagliano, Vice President Blindness Sales, and Greg Stilson, Product Specialist, HumanWare (presented Feb. 15, 2011) (“HumanWare Feb. 15 <i>Ex Parte</i> ”)
Letter from Dominic Gagliano, Vice President Blindness Sales, HumanWare (Feb. 22, 2011) (“HumanWare Feb. 22 <i>Ex Parte</i> ”)
Letter from Dominic Gagliano, VP Blindness Sales US, HumanWare (March 17, 2011) (“HumanWare March 17 <i>Ex Parte</i> ”)
Letter from Mark Richert, Director, Public Policy, American Foundation for the Blind (April 1, 2011) (“National Coalition on Deafblindness <i>Ex Parte</i> ”)

APPENDIX C

Final Regulatory Flexibility Certification

1. The Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴ A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (“SBA”).⁵

2. In this Report and Order, we proceed with rules for implementing a National Deaf Blind Equipment Distribution Program (“NDBEDP”) pilot program to provide support to programs approved by the Commission for the distribution of specialized customer premises equipment (“CPE”) to low-income individuals who are deaf-blind. In the Notice of Proposed Rulemaking (“Notice”) in this proceeding,⁶ the Commission concluded that no Initial Regulatory Flexibility Analysis was required because, even if a substantial number of small entities might be affected by the proposed rules, including those deemed to be small entities under the SBA’s standard, all of the providers potentially affected by the proposed rules would be entitled to receive reimbursement for their reasonable costs of participation and compliance. Therefore, the Commission concluded that the rules proposed in the Notice, if adopted, would not have a significant impact on a substantial number of small entities. Accordingly, and as described below, we provide this certification.

3. In this Report and Order, the Commission adopts rules to implement Section 105 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), signed into law by President Obama on October 8, 2010.⁷ The CVAA requires the Commission to take various measures to ensure that people with disabilities have access to emerging communications technologies in the 21st

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 605(b).

³ 5 U.S.C. § 601(6).

⁴ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁵ 15 U.S.C. § 632.

⁶ *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 (2011).

⁷ Pub. L. No. 111-260, 124 Stat. 2751 (2010) (S. 3304, 111th Cong.) (as codified in various sections of 47 U.S.C.); see also Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-265, 124 Stat. 2795 (2010), also enacted on October 8, 2010 (S. 3828, 111th Cong.), making technical corrections to the CVAA.

century.⁸ Section 105 of the CVAA adds Section 719 to the Communications Act (the “Act”), as amended.⁹ Section 719 directs the Commission to establish rules, within six months of enactment, that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized CPE to low-income individuals who are deaf-blind.¹⁰ The equipment to be distributed is needed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by individuals who are deaf-blind.¹¹ For these purposes, Section 719 adopts the definition of “individuals who are deaf-blind” in the Helen Keller National Center (“HKNC”) Act and authorizes \$10 million annually from the Interstate Telecommunications Relay Service (“TRS”) Fund.¹²

4. Specifically, in this Report and Order, the Commission concludes that a two-year pilot program, with an option to extend for one more year, will enable the Commission to appropriately assess the most efficient and effective method of administering the NDBEDP, and lay the groundwork for a more permanent program. We adopt rules to establish the NDBEDP pilot program which will rely on existing state equipment distribution programs (“EDPs”) and other entities to distribute equipment to deaf-blind individuals. The rules provide selection criteria for NDBEDP pilot program application and certification, and for the Commission to certify one program per state as eligible for support. We also adopt eligibility and verification of requirements for individuals to qualify as “low-income” and “deaf-blind” for receipt of equipment and services from NDBEDP certified programs.

5. The Report and Order makes the full amount of authorized funding, \$10 million, available to the NDBEDP pilot program during each TRS Fund year, of which up to \$500,000 per year may be used to support certified programs through national outreach efforts. Initial funding allocations will provide a base amount of \$50,000 for each state, with the balance of available funds allocated in proportion to the population of each state. The Report and Order gives NDBEDP certified programs the discretion to determine the equipment to be provided, whether specialized or off-the-shelf, separately or in combination, provided that the equipment meets the needs of the individual and makes the communications services covered under Section 719 accessible. The rules require certified programs to submit requests for and to be reimbursed every six months, up to each state’s allotment, for the equipment distributed and the reasonable costs of warranties, maintenance, repairs, temporary equipment loans, and refurbishing; and for the reasonable costs of conducting state and local outreach and individualized needs assessments, installing equipment, and providing individualized training on how to use the equipment. The rules adopt a funding cap for administrative costs at 15 percent of the total reimbursable costs for the distribution of equipment and provision of authorized related services. Funds that are not used in one TRS Fund year will not be carried over to the next TRS Fund year.

6. The Report and Order adopts a six-month reporting requirement for certified programs, specifying the information to be reported and certification under penalty of perjury by a senior executive of the certified program. In addition, the Report and Order requires certified programs to conduct annual independent audits, retain records, and disclose potential conflicts of interest. The Report and Order also adopts rules for the designation of and actions to be taken by an NDBEDP Administrator, and the actions to be taken by the TRS Fund Administrator related to the administration and operation of the NDBEDP.

⁸ Pub. L. No. 111-260, 124 Stat. 2751.

⁹ Section 719 is codified at 47 U.S.C. § 620.

¹⁰ 47 U.S.C. § 620(a).

¹¹ *Id.*

¹² 47 U.S.C. § 620(b), *citing* 29 U.S.C. § 1905(2); 47 U.S.C. § 620(c).

7. With regard to whether the rules adopted by this Report and Order will have a *significant economic impact* on a substantial number of small entities, NDBEDP certified programs affected by these rules are entitled to receive reimbursement, as described above,¹³ up to each state's allotment, for the equipment distributed, related services provided, and administrative costs of participation in the NDBEDP. As such, the economic impact on such entities will be *de minimis*. Therefore, the Commission concludes that the rules adopted by this Report and Order will not have a significant economic impact on these entities.

8. With regard to whether a *substantial number* of small entities may be economically impacted by the rules adopted by this Report and Order, we note that existing state EDPs and other entities certified by the Commission to participate in the NDBEDP pilot program to distribute equipment to low-income individuals who are deaf-blind are likely to meet the definition of a small entity as a "small business," "small organization," or a "small governmental jurisdiction." We describe here, at the outset, three comprehensive, statutory small entity size standards.¹⁴ First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.¹⁵ In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹⁶ Nationwide, as of 2002, there were approximately 1.6 million small organizations.¹⁷ Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."¹⁸ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹⁹ We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."²⁰ Thus, we estimate that most governmental jurisdictions are small.

9. While the Congressional mandate has led us to list the above entities as the ones that in all reasonable likelihood will function as NDBEDP certified programs, there exists the possibility that our list may not be complete and/or may subsequently include entities not listed above. This includes entities which may not fit into traditional categories currently under the Commission's jurisdiction. However, as noted above, we will rely on existing state EDPs and other entities to distribute equipment to low-income individuals who are deaf-blind. The rules provide selection criteria for NDBEDP pilot program application and certification, and for the Commission to certify one program per state as eligible for support. Therefore, *a maximum of 53 entities* may be selected to participate in the NDBEDP pilot program – the 50 states plus the District of Columbia, Puerto Rico, and the Virgin Islands.²¹ The

¹³ See Appendix C, para. 5, *supra*.

¹⁴ See 5 U.S.C. §§ 601(3)-(6).

¹⁵ See SBA, Office of Advocacy, "Frequently Asked Questions," <http://web.sba.gov/faqs> (last visited Apr. 4, 2011).

¹⁶ 5 U.S.C. § 601(4).

¹⁷ INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2002).

¹⁸ 5 U.S.C. § 601(5).

¹⁹ U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2006, Section 8, page 272, tbl. 415.

²⁰ We assume that the villages, school districts, and special districts are small and total 48,558. See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2006, section 8, page 273, tbl. 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

²¹ Each of these jurisdictions currently administers an intrastate TRS program.

Commission concludes, therefore, that a substantial number of small entities will not be affected by the rules adopted by this Report and Order.

10. Therefore, we certify that the requirements of this Report and Order will not have a significant economic impact on a substantial number of small entities.

11. The Commission will send a copy of the Report and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.²² In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.²³

²² See 5 U.S.C. § 801(a)(1)(A)

²³ 5 U.S.C. § 605(b).

APPENDIX D

Estimated Initial Allocations by State

State	Population*	Percent of Population	\$50,000 Plus Share of \$6.85M
Alabama	4,729,656	1.511	\$ 153,525
Alaska	708,862	0.227	\$ 65,516
Arizona	6,676,627	2.133	\$ 196,141
Arkansas	2,910,236	0.930	\$ 113,700
California	37,266,600	11.908	\$ 865,706
Colorado	5,095,309	1.628	\$ 161,528
Connecticut	3,526,937	1.127	\$ 127,199
Delaware	891,464	0.285	\$ 69,513
District of Columbia	610,589	0.195	\$ 63,365
Florida	18,678,049	5.968	\$ 458,832
Georgia	9,908,357	3.166	\$ 266,878
Hawaii	1,300,086	0.415	\$ 78,457
Idaho	1,559,796	0.498	\$ 84,141
Illinois	12,944,410	4.136	\$ 333,332
Indiana	6,445,295	2.060	\$ 191,077
Iowa	3,023,081	0.966	\$ 116,170
Kansas	2,841,121	0.908	\$ 112,188
Kentucky	4,339,435	1.387	\$ 144,983
Louisiana	4,529,426	1.447	\$ 149,142
Maine	1,312,939	0.420	\$ 78,738
Maryland	5,737,274	1.833	\$ 175,580
Massachusetts	6,631,280	2.119	\$ 195,148
Michigan	9,931,235	3.173	\$ 267,379
Minnesota	5,290,447	1.691	\$ 165,799
Mississippi	2,960,467	0.946	\$ 114,800
Missouri	6,011,741	1.921	\$ 181,587
Montana	980,152	0.313	\$ 71,454
Nebraska	1,811,072	0.579	\$ 89,641
Nevada	2,654,751	0.848	\$ 108,108
New Hampshire	1,323,531	0.423	\$ 78,970
New Jersey	8,732,811	2.790	\$ 241,147
New Mexico	2,033,875	0.650	\$ 94,518
New York	19,577,730	6.256	\$ 478,525
North Carolina	9,458,888	3.022	\$ 257,040
North Dakota	653,778	0.209	\$ 64,310
Ohio	11,532,111	3.685	\$ 302,419
Oklahoma	3,724,447	1.190	\$ 131,522
Oregon	3,855,536	1.232	\$ 134,391
Pennsylvania	12,632,780	4.037	\$ 326,511
Rhode Island	1,056,870	0.338	\$ 73,133
South Carolina	4,596,958	1.469	\$ 150,620
South Dakota	820,077	0.262	\$ 67,950
Tennessee	6,338,112	2.025	\$ 188,731

Texas	25,213,445	8.057	\$	601,882
Utah	2,830,753	0.905	\$	111,961
Vermont	622,433	0.199	\$	63,624
Virginia	7,952,119	2.541	\$	224,059
Washington	6,746,199	2.156	\$	197,663
West Virginia	1,825,513	0.583	\$	89,958
Wisconsin	5,668,519	1.811	\$	174,075
Wyoming	547,637	0.175	\$	61,987
Puerto Rico	3,791,913	1.212	\$	132,999
U.S. Virgin Islands**	108,612	0.035	\$	52,377
Totals	312,951,341	100.000	\$	9,500,000

* U.S. population by state as of July 2010. Source: Preliminary Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2000 to July 1, 2010 (NST-PEST2010-01), <http://www.census.gov/popest/eval-estimates/eval-est2010.html>, viewed March 3, 2011.

** U.S. Virgin Islands population as of Apr. 1, 2000. Source: Census 2000 Data for the U.S. Virgin Islands, <http://www.census.gov/census2000/usvi.html>, viewed March 7, 2011.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *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.

Today the Commission moves forward with another critical piece to implement the Twenty-First Century Communications and Video Accessibility Act. I am delighted that we continue to make such quick progress on fulfilling this mandate from Congress and ensuring that the tools of the digital age are accessible to Americans from all our disabilities communities. Today's item is particularly exciting because it creates new opportunities for the deaf-blind population – setting up a new program to distribute equipment that makes communications technologies and services accessible. Our action today is another affirmative step towards inclusion for persons with disabilities who want to be, need to be and indeed deserve to be, fully participating, mainstream citizens in our society.