

**STATEMENT OF
COMMISSIONER MICHAEL P. O'RIELLY**

Re: *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Notice of Proposed Rulemaking, CG Docket No. 10-210.

The item before us represents an important effort to improve the communications resources of deaf-blind individuals who face unique challenges in their daily lives. I strive to treat everyone as I would like to be treated. To me, that includes attempts to make communications with those deaf-blind individuals a bit easier through the reasonable allocation and use of technology. Without speaking for my colleagues, I believe there is universal agreement to make our best effort, via implementing the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), to do just that.

I generally support this Notice of Proposed Rulemaking (NPRM) to seek comment on rules for the National Deaf-Blind Equipment Distribution Program that is required by the CVAA. The current Pilot Program appears to have helped a number of deaf-blind individuals live more independently and take advantage of education and employment opportunities. Structured correctly, the so-called “permanent program” could extend these benefits to an even greater number of consumers. Therefore, I appreciate the willingness of the Chairman’s office, my colleagues, and Commission staff to accommodate my requests on ways to improve the program to achieve this objective.

First, it is critical that any funding program, whether it be part of TRS or USF, have clearly defined and demonstrable goals from the outset, so that consumers who pay to support the programs – everyday Americans, rich and poor alike – can be assured that their money will be well utilized. The NPRM now proposes three goals for the program: (1) ensuring that the program effectively increases access to covered services by the target population; (2) ensuring that the program is administered efficiently; and (3) ensuring that the program is cost-effective.

Equally important, the NPRM seeks comment on performance measures and tailored reporting requirements to help us ascertain whether the program is actually meeting those goals. That way, we will have the information necessary to make adjustments should we find that performance is lacking in some respect. These are necessary ingredients for any final rules package, as highlighted in the recent U.S. Government Accountability Office (GAO) report to Congress.

Second, with demand for the program likely to outstrip available funding in the near future, the NPRM now seeks comment on how to prioritize funding within the cap, with an eye towards maximizing equipment to low-income individuals. Relatedly, the NPRM also seeks comment on the standard to be applied when funding is shifted among state programs, which will become increasingly important as multiple state programs vie for any reallocated funding. The Commission must make these decisions proactively to provide certainty about how support will be targeted. That will enable state programs to plan and budget accordingly.

Regarding prioritization, I recognize that many commenters supported funding other services, including expanded travel and “train the trainer” programs, which cause me deep concern. And it’s because we need to face the simple fact that the program is already at 90 percent of capacity and will soon exceed our allocated resources. However popular those add-ons are, they are not identified in the statute and could drain funding away from the core purpose of providing equipment to low-income consumers, potentially leaving some qualifying individuals completely unserved. To the extent those additional features or services are necessary to the successful operation of the program, the FCC should make sure that Congress is aware of the issue and our elected leaders can decide whether adjustments to the law are needed. But it is not our role, and we have no authority, to expand the program to include items not included in the law. In the meantime, we should move forward with the clear focus of expanding equipment to those truly low-income individuals rather than use 15 percent, 20 percent, 30 percent or more on indirect purposes.

Third, the NPRM now proposes several measures to help prevent waste, fraud, and abuse. These include re-verifying income eligibility when consumers apply for additional equipment to ensure that funding continues to be targeted to low-income individuals, and a uniform consumer certification that attests to the individual's eligibility and understanding that equipment funded by the program cannot be given to other individuals. In addition, the NPRM proposes that entities applying to be certified as a state program must demonstrate their administrative and financial management experience.

On the other hand, one change that I had sought, and will continue to press for when we go to order, is that we establish a sunset date for this iteration of the program. It is true that the Commission may re-examine the program at any time by issuing another NPRM. But more often than not, once rules are adopted, they continue on autopilot for quite a while, especially if the Commission shifts its focus to other issues. A sunset provision would provide a mechanism to ensure that the Commission actually reviews the program and determines whether to extend it as is or make modifications. It would be common sense for such a review to occur after two cycles under the new rules. This is a simple question of good government and something we should incorporate into more FCC rulemaking proceedings as a matter of course. Mark this down as another idea for the Process Review Task Force to examine.

On balance, I approve this NPRM and I look forward to reading the comments it generates. I also approve the Order extending the Pilot Program for another year while the Commission finalizes the proposed rules for the permanent program.