

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

Adopted: August 4, 2016

Released: August 5, 2016

By the Commission: Chairman Wheeler and Commissioners Clyburn, Rosenworcel, and Pai issuing
separate statements; Commissioner O’Rielly approving in part and concurring in part.

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## I. INTRODUCTION

1. In this Report and Order (Order), the Federal Communications Commission (FCC or Commission) adopts rules to convert the pilot National Deaf-Blind Equipment Distribution Program (NDBEDP) into a permanent program. Under the NDBEDP, also known as “iCanConnect,” the Commission may provide up to \$10 million annually to support local programs that distribute equipment to eligible low-income individuals who are deaf-blind, so that these individuals are able to access telecommunications service, Internet access service, and advanced communications services. The rules adopted in this Order reflect the experience and knowledge gained from the Commission during the four years it has operated the NDBEDP as a pilot program. The critical need for this program is evidenced by the life-altering benefits it has brought to thousands of eligible individuals who are deaf-blind.<sup>1</sup> For these individuals, the NDBEDP has enhanced social interaction, ended isolation and dependence, and opened new opportunities for full integration into society. The action we take in this Order is the next step in the

<sup>1</sup> See *infra* Appendix C (Summary of Pilot Program Expenditures) (providing information about the number of individuals served, a summary of program costs by category of expenses, and the per person cost averages during the first three years of the pilot program (2012 to 2015)).

Commission's ongoing efforts to break down accessibility barriers for this population, and will give these individuals the communication tools they need to connect with friends, relatives, and the community; access health-related information and emergency services; acquire information to become self-sufficient; and obtain skills and training to become gainfully employed.

## II. BACKGROUND AND EXECUTIVE SUMMARY

2. The Twenty-First Century Communications and Video Accessibility Act (CVAA) directed the Commission to promulgate rules allowing the disbursement of up to \$10 million annually from the Interstate Telecommunications Relay Service Fund (TRS Fund) to support programs that distribute communications equipment to low-income individuals who are deaf-blind.<sup>2</sup> Since July 2012, the Commission's Consumer and Governmental Affairs Bureau (CGB or Bureau) has implemented the NDBEDP pilot program by certifying and overseeing 53 entities that distribute equipment in each state, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.<sup>3</sup> Also since 2012, a national outreach coordinator, selected by the Bureau, has provided extensive outreach to support the distribution efforts of these state programs.<sup>4</sup>

3. On August 1, 2014, the Bureau released a Public Notice inviting comment on issues related to establishing a permanent NDBEDP, including whether the program should be modified to make it more effective and more efficient.<sup>5</sup> Based on comments received, we adopted a Notice of Proposed Rulemaking seeking comment on specific requirements for the creation of a permanent NDBEDP, including its program structure, eligibility requirements, covered equipment and services, funding

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<sup>2</sup> Pub. L. No. 111-260, § 105, 124 Stat. 2751, 2762 (2010); Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA). Section 105 of the CVAA adds section 719 to the Communications Act of 1934, as amended (the Act), codified at 47 U.S.C. § 620 ("...the Commission shall establish rules that define as eligible for relay service support those programs that are approved by the Commission for the distribution of specialized customer premises equipment designed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low-income individuals who are deaf-blind."). 47 U.S.C. § 620(a).

<sup>3</sup> See *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Report and Order, 26 FCC Rcd 5640, 5649-50, para. 22 (2011) (*NDBEDP Pilot Program Order*); see also 47 CFR § 64.610 (*NDBEDP pilot program rules*); *Commission Announces Entities Certified to Participate in the National Deaf-Blind Equipment Distribution Program*, Public Notice, 27 FCC Rcd 7397 (CGB 2012) (*NDBEDP Pilot Program Certification Public Notice*); *Commission Announces Launch of the National Deaf-Blind Equipment Distribution Program*, Public Notice, 27 FCC Rcd 7403 (CGB 2012). The Commission originally established the NDBEDP as a two-year pilot program, with an option to extend the pilot for an additional year. See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5685, para. 105. On February 7, 2014, the Bureau extended the pilot program for a third year, until June 30, 2015. *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Order, 29 FCC Rcd 1234 (CGB 2014) (*NDBEDP Pilot Program Third Year Order*). The pilot program was subsequently extended two additional times, first until June 30, 2016, and a second time until June 30, 2017. See *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Order, 30 FCC Rcd 5247 (2015); *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Order, 31 FCC Rcd 6149 (2016) (*2016 Extension Order*). Reference to "state programs" or "certified programs" in this Order refers collectively to all of the jurisdictions that participate in the NDBEDP.

<sup>4</sup> See *Perkins School for the Blind to Conduct National Outreach for the National Deaf-Blind Equipment Distribution Program*, Public Notice, 27 FCC Rcd 6143 (CGB 2012). In addition, during the pilot program, the Bureau has released guidance to assist state programs with how to comply with the Commission's NDBEDP rules. See, e.g., CGB, *NDBEDP Frequently Asked Questions*, <http://www.rolkaloube.com/#!ndbedpfaq/c1nlj> (last visited July 18, 2016) (*NDBEDP FAQ*).

<sup>5</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on the National Deaf-Blind Equipment Distribution Program*, Public Notice, 29 FCC Rcd 9451 (CGB 2014) (*Permanent NDBEDP Public Notice*).

allocations, reporting, and other considerations.<sup>6</sup> We also proposed performance goals for the NDBEDP, and sought comment on performance measures to be linked to each goal.<sup>7</sup>

4. The iCanConnect website, administered by the NDBEDP outreach coordinator, chronicles the extraordinary benefits brought to the thousands of consumers who have received equipment under this program.<sup>8</sup> For example, a 10-year-old child in New Jersey reports that his new equipment “makes me feel like everybody else.”<sup>9</sup> A woman in Delaware reports that the NDBEDP has “opened doors” for her, enabling her to pursue her dream to become certified to teach Braille through a nonprofit distance learning school.<sup>10</sup> A man in Indiana boasts that he was able to finally reconnect with his family after decades, helping to eliminate the extreme social isolation he endured prior to getting his NDBEDP equipment.<sup>11</sup>

5. The rules adopted in this order are designed to ensure that, going forward, the NDBEDP can efficiently and effectively achieve its goals of enhancing communications access for low-income individuals who are deaf-blind through the distribution of equipment and the provision of support services that are needed for the successful use of the equipment they receive.<sup>12</sup> Through these rules, we recognize that the needs of each person who is deaf-blind are unique with respect to the severity and type of his or her hearing and vision loss, and that such needs may be further affected by other circumstances in their lives. Accordingly, the rules adopted herein incorporate flexibility for the certified programs implementing them, so that each program can best achieve Congress’s goals of bringing communications access into the lives of low-income individuals who are deaf-blind. At the same time, the rules contain various measures and safeguards to attain the greatest efficiencies and to prevent this program from becoming subject to fraud, waste or abuse. To this end, we adopt rules that:

- Maintain the program structure used in the NDBEDP pilot program to certify one entity per state or territory to receive support from the TRS Fund for the distribution of

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<sup>6</sup> *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, 30 FCC Rcd 5255 (2015) (*NDBEDP 2015 NPRM*).

<sup>7</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5258, para. 6 & n.11 (citing U.S. Government Accountability Office (GAO), *Executive Guide: Effectively Implementing the Government Performance and Results Act* (1996) (*GAO GPRM Guide*), <http://www.gao.gov/special.pubs/gg96118.pdf>; GPRM Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011) (GPRAMA)).

<sup>8</sup> See iCanConnect, *News*, <http://www.icanconnect.org/news> (last visited July 15, 2016). This is a public information website.

<sup>9</sup> iCanConnect, *News* (Mar. 16, 2016), <http://www.icanconnect.org/news/ten-year-old-usher-syndrome-connects-friends-and-family-through-icanconnect>.

<sup>10</sup> iCanConnect, *News* (Jan. 19, 2016), <http://www.icanconnect.org/news/delaware-woman-pursues-her-dream-teach-others-through-icanconnect>.

<sup>11</sup> iCanConnect, *News* (May 27, 2015), <http://www.icanconnect.org/news/thanks-icanconnect-indiana-man-reconnects-loved-ones-after-decades>.

<sup>12</sup> We note that at present, there are no reliable figures for the number of deaf-blind Americans. This is largely because the concept of deaf-blindness stretches across a wide continuum, depending on the severity of the loss of visual acuity and hearing. Estimates range from 45,000 to over 700,000. See, e.g., Gallaudet University Library, *American Deaf-Blind Population*, <http://libguides.gallaudet.edu/content.php?pid=119476&sid=1029203> (last visited July 15, 2016); American Association of the Deaf-Blind (AADB), *Frequently Asked Questions About Deaf-Blindness*, [http://www.aadb.org/FAQ/faq\\_DeafBlindness.html](http://www.aadb.org/FAQ/faq_DeafBlindness.html) (last updated Feb. 11, 2009); see also Georgia Council for the Hearing Impaired (GACHI) Comments at 22 (ascertaining the actual number of individuals who are deaf-blind can be problematic because a “large number” of deaf-blind individuals “do not identify themselves on a national database or level” and “many hard of hearing/low vision consumers . . . do not identify themselves as deaf-blind”).

equipment and provision of related services, while expanding the certified entities to include three additional U.S. territories for a total of 56 certified programs.<sup>13</sup>

- Govern grants of program certification and the obligations of certified entities.
- Define eligibility and verification requirements for NDBEDP equipment recipients.
- Define the equipment and related services (such as assessment and training of equipment recipients) eligible for reimbursement to certified programs.
- Allow limited reimbursement of program expenditures for training personnel to provide training to equipment recipients.
- Permit reimbursement of reasonable expenditures for travel by program personnel or equipment recipients as necessary to fulfill the goals of the program.
- Continue support for national outreach at a reduced level, as a supplement to individual programs' local outreach efforts, to inform potential equipment recipients about the NDBEDP.
- Provide for the allocation and permit the reallocation of NDBEDP funding among certified programs to ensure the most effective use of available funds.
- To ensure effective oversight of the NDBEDP and to prevent fraud, waste, and abuse, require programs to provide detailed documentation of reimbursement claims, submit semiannual reports to the Commission, retain records documenting their compliance with program rules, undergo annual independent audits, and cooperate with Commission audits and investigations.
- Establish reimbursement limits for each certified program's administrative costs.
- Establish performance goals and direct the development of performance measures for the NDBEDP.
- Direct the establishment of a centralized database, to be required for program reporting and permitted for reimbursement claims, to facilitate effective oversight and reduce administrative burdens.

### III. PROGRAM STRUCTURE

#### A. Geographic-Based Program Certification

6. Under the NDBEDP pilot program, the Commission delegated authority to the Bureau to certify one entity for each state, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to receive funding for the administration of the program, distribution of equipment, and provision of related services to eligible residents of that state.<sup>14</sup> The Bureau invited applications from entities interested in being certified and announced the selected applicants when it launched the pilot program in July 2012.<sup>15</sup> These 53 certified programs have been permitted to fulfill their oversight and program compliance obligations directly or through collaboration, partnership, or contract with other individuals or entities in-

<sup>13</sup> A single entity, however, may be certified to serve more than one state or territory. *See infra* para. 11, note 80.

<sup>14</sup> 47 CFR § 64.610(b); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5647, para. 13 & n.44.

<sup>15</sup> *FCC Announces 60-Day Period to Apply for Certification to Participate in the National Deaf-Blind Equipment Distribution Program*, Public Notice, 26 FCC Rcd 13118 (CGB 2011) (*Pilot Program Applications Public Notice*); *NDBEDP Pilot Program Certification Public Notice*, 27 FCC Rcd 7400-7402.

state or out-of-state.<sup>16</sup> Each certified program has been responsible for engaging in local outreach, conducting individualized communication assessments, distributing and installing equipment, and providing training on how to use the equipment.<sup>17</sup> Each certified program also has been responsible for various administrative functions associated with the NDBEDP, including the submission of reimbursement claims,<sup>18</sup> the fulfillment of reporting obligations,<sup>19</sup> and the performance of annual audits.<sup>20</sup>

7. In the *NDBEDP 2015 NPRM*, we sought comment on our proposal to retain the pilot program structure for the permanent NDBEDP, and asked specifically whether we should continue to certify one entity within each of the states and territories, rather than a single entity or multistate regional programs.<sup>21</sup> We stated our belief, based on the comments we received in response to the *Permanent NDBEDP Public Notice* and our experience with the pilot program, that the localized approach has been successful in meeting the needs of eligible low-income individuals who are deaf-blind.<sup>22</sup> Specifically, we suggested that state-based entities were more likely to be familiar with the unique demographics and available resources of their states, and consequently would be in a better position to respond to the localized needs of their residents.<sup>23</sup>

8. After careful consideration of the record, we adopt a rule that retains the current structure of the NDBEDP to certify one entity for the administration of the program, distribution of equipment, and provision of related services within each state and territory covered by the NDBEDP. Nearly all commenters to the *NDBEDP 2015 NPRM* support retaining the state-based structure, noting its ability to meet local needs and knowledge of local resources.<sup>24</sup> We agree that local programs, including both in-state entities and out-of-state entities that work with in-state partners or otherwise have the local expertise to provide services, appear to have won the trust and support of consumers within the communities that they serve,<sup>25</sup> and we note that commenters commend the existing structure for its “personalization of

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<sup>16</sup> See 47 CFR § 64.610(b); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5647, para. 13. Such collaboration may be necessary, for example, to ensure that program personnel have the expertise needed to conduct assessments and provide training. *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5647, para. 13.

<sup>17</sup> See 47 CFR § 64.610(e); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5664-65, 5670-71, 5668, 5675, paras. 55-56, 65, 69, 79.

<sup>18</sup> 47 CFR § 64.610(f); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5679, para. 88.

<sup>19</sup> 47 CFR § 64.610(g); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5683-84, paras. 98-99.

<sup>20</sup> 47 CFR § 64.610(e)(1)(vii); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5684, para. 101.

<sup>21</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5260-61, para. 9.

<sup>22</sup> *Id.* at 5260, para. 9.

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., Association of Assistive Technology Act Programs (ATAP) Comments at 1 (noting efficiencies created by using state and local resources); Center for Deaf Blind Persons, Inc. (CDBP) Comments at 1-2; GACHI Comments at 1 (noting that states often have dissimilar needs); Interagency Program for Assistive Technology (IPAT) Comments at 1 (by “keeping it local, end-users have a cadre of support they can readily access”); LightHouse for the Blind and Visually Impaired (LightHouse) Comments at 1-2 (a centralized program might not reach as many recipients as state-based entities); Perkins School for the Blind (Perkins) Comments at 4 (asserting that “consumers are best served by in-state resources when possible”); Seattle Lighthouse for the Blind, Inc. (Seattle Lighthouse) Comments at 2 (noting that the cost efficiencies of a national program are offset by “significant impacts on quality as well as barriers to participation and employment of DeafBlind people in these entities,” and “costly redundant layers of administrative tasks”). Although the International Deaf Blind Institution (IDBI) states that it “prefers a single entity nationwide program structure,” it also raises concerns about centralizing the NDBEDP, and concludes that the current state-based structure “may be the best route.” IDBI Comments at 4-5; see also AADB Comments at 2.

<sup>25</sup> See GACHI Comments at 1 (asserting that “trust is an integral factor in working with the deaf-blind consumers” and that “consumers have a relationship of trust” with their local programs, and raising the concern that “centralized  
(continued....)

services, immediacy of response,” and accountability.<sup>26</sup> We further agree that state-based programs are able to “integrate with and leverage in-state services, provide easy access for consumers, and possess knowledge of ‘on-the-ground’ circumstances unique to each state.”<sup>27</sup> Finally, we are persuaded that if the Commission adopts a single entity nationwide program structure, this could result in a loss of expertise gained by established certified entities and disruption to consumers.<sup>28</sup>

9. For all of these reasons, and based on our experience with the pilot program, we conclude that a local, state-based structure is most able to provide services specifically designed to address the unique needs of each state’s deaf-blind residents, will be easier for consumers to access, and can facilitate coordination with other local and in-state agencies and resources. Therefore, for the permanent NDBEDP, we direct the Bureau to certify one entity for each state and territory to receive funding for the administration of its program, distribution of equipment, and provision of related services to eligible residents.

10. *Expansion to Additional U.S. Territories.* In the *NDBEDP 2015 NPRM*, we proposed that NDBEDP funding be extended to the U.S. territories of American Samoa, Guam, and the Northern Mariana Islands.<sup>29</sup> We noted that, just like the 53 states and territories covered by the pilot program,<sup>30</sup> the residents of each of these U.S. territories are also eligible to make and receive calls through one or more forms of relay services that are supported by the same TRS Fund that supports the NDBEDP.<sup>31</sup>

11. In light of the demonstrated need and record support for this proposal,<sup>32</sup> we extend the NDBEDP to these territories. While we direct the Bureau to certify one entity for each of these

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programs would be treated more as a business without the compassion needed” to serve deaf-blind consumers); Access Technologies, Inc. (ATI) Comments at 1. *See also* Seattle Lighthouse Comments at 2 (noting that “[c]urrently, there are no national programs serving DeafBlind people that have the unqualified support and trust of DeafBlind leaders, parents, organizations and individuals”).

<sup>26</sup> LightHouse Comments at 1-2.

<sup>27</sup> IDBI Comments at 5 (approving the current state-based structure); *see also* GACHI Comments at 1 (noting that the NDBEDP has “a positive rippling effect” on individuals to achieve “independence through other state supportive services”); IPAT Comments at 1 (stating that the certifying entity and other state partners “share knowledge, and together build a service delivery system within the state”); Perkins Comments at 4 (noting that its ability to partner with in-state resources has encouraged local partnerships and enabled the fulfillment of program requirements that otherwise would be prohibitive); LightHouse Comments at 1 (housing the NDBEDP within the state exposes other branches of local and state governments to deaf-blind issues).

<sup>28</sup> IDBI Comments at 5.

<sup>29</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5262-63, para. 12.

<sup>30</sup> *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5647, n.44.

<sup>31</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5262-63, para. 12 & n.49. The TRS Fund receives contributions from common carriers and voice over Internet protocol (VoIP) service providers to support a variety of relay services designed to facilitate telephone communication by people who are deaf, hard of hearing, deaf-blind, and speech-disabled. *See* 47 CFR § 64.604(c)(5)(iii)(A).

<sup>32</sup> *See, e.g.*, Commonwealth of the Northern Mariana Islands Office of Vocational Rehabilitation (CNMI OVR) Comments at 1 (reporting that residents of the Pacific Islands have “a high rate of diabetes that can impact one’s vision and other sensory organs” and adding that participation in the NDBEDP will “help to improve communication and other activities of daily living to increase meaningful independence” among this population); Helen Keller National Center (HKNC) Comments at 2-3 (referencing the statement of Si Ben S. Servino, Director of the Department of Integrated Services for Individuals with Disabilities (DISID) in Guam, who notes that DISID fully supports the proposal to bring technology to deaf-blind residents of Guam); IDBI Comments at 6; Mellanie Lee Comments at 1 (reporting that she knows families who live in these U.S. Territories who could benefit from the NDBEDP).

territories,<sup>33</sup> a single entity may apply for certification to serve the residents of one, two, or all three of these jurisdictions.<sup>34</sup> We note that given the relatively small funding allocations and uniquely small populations of these remote jurisdictions located in the South Pacific region,<sup>35</sup> certifying the same entity to serve all three jurisdictions may enable the consolidation of administrative functions, as well as coordination and conservation of resources.

#### **B. Permanent Program Certification**

12. In the *NDBEDP 2015 NPRM*, we proposed that each entity certified under the pilot program be required to reapply for certification or notify the Commission of its intent not to participate in the permanent NDBEDP within 30 days after the effective date of the final rules.<sup>36</sup> We also proposed to permit other entities to apply for certification during the 30-day period following the effective date of the final rules.<sup>37</sup>

13. Some parties support extending an invitation to new entities to apply for certification as a means of expanding the number of in-state certified entities.<sup>38</sup> Other commenters support requiring currently certified entities to reapply for certification or notify the Commission of their intent to cease their participation in the NDBEDP.<sup>39</sup> Still other commenters assert that requiring recertification of such entities may cause a disruption of services.<sup>40</sup> A few of these parties recommend that the Commission instead evaluate the extent to which a currently certified entity is meeting the Commission's existing criteria and, if such entity is in full compliance, only direct that it describe how it will meet any new criteria or requirements for the permanent program.<sup>41</sup> GACHI argues that such programs be allowed to continue under the permanent NDBEDP without having to apply for and be recertified.<sup>42</sup> Similarly, HKNC "believes that current state entities have proven their ability to meet the needs of the program," but it does not object to requiring such entities to supply "current financial reports/audit reports to prove continuing criteria compliance."<sup>43</sup>

<sup>33</sup> See *supra* para. 9.

<sup>34</sup> See Perkins Comments at 7 (asking the Commission to consider whether three certified entities would be needed to serve these jurisdictions, given their relatively small populations and funding allocations).

<sup>35</sup> See *infra* para. 149 & note 449.

<sup>36</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5267, para. 23.

<sup>37</sup> *Id.*

<sup>38</sup> See LightHouse Comments at 2; IDBI Comments at 9; Perkins Comments at 11. *But see* HKNC Comments at 4 (suggesting that the Commission wait until the end of the first five-year certification period to open up the certification process to additional entities, because at that point, it believes that "an in-state entity may be a better choice and better able to serve its residents than some of the current programs that are being served by out-of-state entities."). At present, 20 states are served by out-of-state entities. See *infra* para. 25.

<sup>39</sup> See Communication Access Ability Group d/b/a/ StarVRS (CAAG) Comments at 4-5; CDBP Comments at 2; IDBI Comments at 9; Perkins Comments at 11; Seattle Lighthouse Comments at 4.

<sup>40</sup> See ATAP Comments at 2; HKNC Comments at 3; Missouri Assistive Technology (MoAT) Comments at 1-2.

<sup>41</sup> See ATAP Comments at 2; ATI Comments at 2; Assistive Technology for Kansans (ATK) Comments at 2; ATLA Comments at 2; Institute on Disabilities at Temple University (IOD) Comments at 2; IPAT Comments at 2; LightHouse Comments at 3; MoAT Comments at 1-2; Washington Assistive Technology Act Program (WATAP) Comments at 2. IPAT, the certified entity for North Dakota, states further that "North Dakota would find having to reapply burdensome." IPAT Comments at 2.

<sup>42</sup> GACHI Comments at 8. Instead, GACHI suggests that entities that are not satisfying program criteria "should be placed on a probationary period for six months to one year with the warning that they may lose certification if certain guidelines or criteria are not met with consistency." *Id.* at 8.

<sup>43</sup> HKNC Comments at 3.



14. We believe that expanding the pool of applicants for NDBEDP certification will enhance the quality of entities selected and will help address concerns raised by those commenters who wish to give more in-state entities an opportunity to apply for certification. While we acknowledge that the experience gained by entities certified under the pilot program may weigh in favor of their recertification, we are not persuaded that experience is the only factor that should be considered when determining appropriate management for each of the states under the permanent NDBEDP. Rather, given that the next certification period will be for five years, and that we now amend some of the rules that will apply to these programs,<sup>44</sup> we believe it is necessary and appropriate to open up the application process to both new and currently certified entities. We further conclude that our adoption of new rules for the permanent program necessitates receiving new applications from each currently certified entity interested in continuing to operate under the NDBEDP. Accordingly, we will require each currently certified entity seeking to continue providing equipment and services to submit a new application with sufficient detail to demonstrate its continued ability to meet all of our certification criteria, and to affirm its commitment to comply with all Commission rules governing the permanent program.<sup>45</sup> In reviewing each application, we will consider, among other things, the extent to which the entity has effectively implemented the program and achieved compliance with our rules. We believe that considerations of equity and fairness require us to adopt this approach, as it will allow us to compare and contrast the qualifications of multiple applicants based on our current selection criteria and NDBEDP requirements.

15. To ensure sufficient time is provided for the application process, we require both new and incumbent entities seeking certification under the permanent NDBEDP to apply for certification within 60 days after the effective date of the certification rules adopted in this proceeding.<sup>46</sup> Although some commenters support the 30-day proposal contained in the *NDBEDP 2015 NPRM*,<sup>47</sup> we agree with CDBP that “many of the certified entities may be part of state government and have procedural requirements and approvals that demand a longer timeframe.”<sup>48</sup> A 60-day application period also is consistent with the period used for the NDBEDP pilot program.<sup>49</sup> In addition, we require any entity certified under the pilot program that does not wish to participate in the permanent NDBEDP to notify the Commission of such intent within 60 days after the effective date of the certification rules adopted by this Order.<sup>50</sup>

16. We direct the Bureau to announce the timing of this 60-day period by public notice. We also direct the Bureau to announce, by public notice, the identity of all applicants who request certification for each state. This announcement will put existing certified programs on notice of competing applications,<sup>51</sup> as well as identify those jurisdictions, if any, where no entity has applied for

<sup>44</sup> See, e.g., *infra* paras. 22-24, (adding certification criteria related to administrative and financial management experience, as well as requirements related to improper incentives and conflicts of interest).

<sup>45</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5267, para. 23. An entity seeking certification for the first time also must submit an application with sufficient detail to demonstrate its ability to meet all of our certification criteria and a commitment to comply with all Commission requirements governing the NDBEDP. An applicant may demonstrate its ability to meet all criteria for certification either directly or in coordination with other programs or entities. *Id.* at 5267, para. 25.

<sup>46</sup> The certification rules will become effective on the date specified in a notice published in the *Federal Register* announcing approval by the Office of Management and Budget (OMB) of the information collection requirements of such rules under the Paperwork Reduction Act of 1995 (PRA). See Pub. L. No. 104-13, 109 Stat. 163 (1995); 44 U.S.C. §§ 3501-3520.

<sup>47</sup> CAAG Comments at 4-5; IDBI Comments at 9; Perkins Comments at 11.

<sup>48</sup> CDBP Comments at 2-3.

<sup>49</sup> *Pilot Program Applications Public Notice*, 26 FCC Rcd at 13118.

<sup>50</sup> See *infra* Part III.I (Obligations of Outgoing Entities).

<sup>51</sup> See Perkins Comments at 12 (asking the Commission to consider how state programs should be notified if a competing bid for certification is submitted).

certification under the permanent program.<sup>52</sup> We further direct the Bureau to take appropriate steps to minimize any possible disruption of service by providing as much advance notice as possible about its selection of the entities certified under the permanent NDBEDP.

### C. Certification Selection Criteria

17. Under the NDBEDP pilot program, certification has been 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, submitted by the applicant:

- (i) Expertise in the field of deaf-blindness, including familiarity with the culture and etiquette of people who are deaf-blind,<sup>53</sup> 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 customer premises equipment, especially to people who are deaf-blind;
- (v) Experience in 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.<sup>54</sup>

18. In the *NDBEDP 2015 NPRM*, we proposed to retain these criteria for the permanent NDBEDP, while seeking comment on several proposals to improve the process for evaluating certification applications.<sup>55</sup> First, we sought comment on how we could supplement the certification criteria to better ensure that program personnel in the permanent NDBEDP are able to serve the full spectrum of low-income individuals who are deaf-blind, such as by establishing minimum linguistic competency levels for program personnel.<sup>56</sup> Second, we proposed to add administrative and financial

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<sup>52</sup> The Bureau may extend the application period for those jurisdictions where no entity has applied for initial certification under the permanent NDBEDP during the 60-day period.

<sup>53</sup> We agree with commenters about the importance of ensuring that programs and program staff are qualified to meet the diverse needs of the full spectrum of people who are deaf-blind. *See, e.g.*, Seattle Lighthouse Comments at 3-4; *see also NDBEDP 2015 NPRM*, 30 FCC Rcd at 5264, para. 15 & nn.59-60 (citing concerns that certain programs and program staff lack a good working knowledge about the language and communication needs of the deaf-blind community). We define the phrase “expertise in the field of deaf-blindness, including familiarity with the culture and etiquette of people who are deaf-blind” to include expertise regarding the language and communication needs of individuals who are deaf-blind. *See NDBEDP 2015 NPRM*, 30 FCC Rcd at 5264-65, paras. 15-16.

<sup>54</sup> 47 CFR § 64.610(b)(3); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5648-49, paras. 15-20.

<sup>55</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5263-64, para. 14.

<sup>56</sup> *Id.* at 5264-65, para. 16. This inquiry was made to address concerns raised by parties in response to the *Permanent NDBEDP Public Notice* that some certified programs lack personnel sufficiently qualified to meet the diverse needs of the full spectrum of people who are deaf-blind, in that this community is comprised of individuals who use different modes of communication and have different levels of residual hearing, sight, and speech, varying degrees of experience with technology, and different learning styles and abilities. *See id.* at 5264-65, paras. 15-16.

management experience to the requirements for certification, and asked whether this would reduce the likelihood that selected entities would relinquish their certification before completion of their terms.<sup>57</sup> Third, we proposed to require applicants for certification to disclose actual or potential conflicts of interest with equipment manufacturers or providers, and further proposed to reject applicants for certification when such financial arrangements create the risk of impeding their objectivity or compliance with NDBEDP requirements.<sup>58</sup> Finally, we proposed to continue allowing both in-state and out-of-state entities to apply for certification to administer and operate any NDBEDP state program.<sup>59</sup>

19. We will continue to use the certification criteria established for the pilot program in the permanent NDBEDP. Commenters generally support the continued use of these criteria,<sup>60</sup> and, based on our experience with the pilot program, we believe that the expertise and experience these criteria require have been effective.<sup>61</sup> As further detailed below, we decline to establish minimum standards for program personnel, as we believe that our certification criteria and other program standards, including new requirements, will be sufficient to ensure that certified programs are effectively and efficiently managed and able to satisfy the program's goals.

20. *Program Personnel Requirements.* Deaf-blind individuals are diverse with respect to their modes of communication, which can include, but are not limited to, American Sign Language, spoken English, and Braille.<sup>62</sup> This population also uses a wide variety of communication technologies, including, but not limited to, refreshable Braille displays, print magnifiers, and screen readers.<sup>63</sup> Given this diversity, some commenters request that minimum linguistic and other competency and training requirements be added to the Commission's certification criteria, to ensure that certified program personnel are able to meet the needs of the full spectrum of people who are deaf-blind.<sup>64</sup> We conclude, however, that the record does not support establishing such additional requirements for program personnel at this time because the existing criteria sufficiently serves program participants.<sup>65</sup>

21. We agree that so long as entities have “[a]ccess to staff or independent consultants with superior adaptive technology and communication skills, strong interpersonal skills and who embrace self-management . . . [and] who comprise a cross-section (hearing, deaf, blind and deaf-blind) of the cultural and linguistic characteristics of the consumers the program serves,” they should be able to satisfy the

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<sup>57</sup> *Id.* at 5265, para. 17.

<sup>58</sup> *Id.* at 5265, para. 18.

<sup>59</sup> *Id.* at 5261-62, para. 11.

<sup>60</sup> *See, e.g.*, CDBP Comments at 2 (recommending no changes to existing criteria); GACHI Comments at 7 (supporting retention of current criteria); IDBI Comments at 7-8; Perkins Comments at 8; Comments of the State Rehabilitation Council for the New Jersey Commission for the Blind and Visually Impaired (SRC/CBVI Comments) at 2 (stating that it “does not believe there is a need to impose additional requirements”).

<sup>61</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5263-64, para. 14.

<sup>62</sup> Perkins Comments at 8.

<sup>63</sup> *Id.*

<sup>64</sup> *See, e.g.*, IDBI Comments at 7 (supporting retention of the certification criteria used in the pilot program, but urging minimum standards and training for personnel, because “certain levels of linguistic competency would go a long way to ensure effective communication for all deaf-blind clients”). The Seattle Lighthouse also suggests that individuals who are deaf-blind be involved in determining what those standards should be and whether an entity possesses the requisite communication, language, and cultural competencies for certification, and be engaged at all levels of administration and management of the NDBEDP, to ensure that the program is “authentic, relevant and effective.” Seattle Lighthouse Comments at 3-4. We agree that certified programs will benefit from the first-hand knowledge of people who are deaf-blind in all aspects of their NDBEDP operations, and we encourage engaging these individuals as much as possible for these purposes.

<sup>65</sup> Perkins Comments at 8.

certification criteria for language competency and technical proficiency.<sup>66</sup> As the record reflects, there is already a shortage of personnel who are sufficiently trained to work with people who are deaf-blind in certain parts of the country, and establishing additional, more restrictive criteria could exacerbate this issue.<sup>67</sup> To the extent that effective communication for a particular individual cannot be met by in-house program personnel, certified programs may supplement such personnel by acquiring, as needed, qualified interpreter services and other accommodations.<sup>68</sup> Accordingly, rather than adopt new program personnel criteria in the permanent NDBEDP, we will continue permitting applicants for certification to demonstrate “[e]xpertise in the field of deaf-blindness” and “[t]he ability to communicate effectively with people who are deaf-blind” in a variety of ways to serve the full spectrum of individuals who are deaf-blind.<sup>69</sup>

22. *Administrative and Financial Management Experience.* Parties responding to the *NDBEDP 2015 NPRM* support our proposal to add administrative and financial management experience to the requirements for certification, to ensure that entities applying for NDBEDP certification have the ability to administer a statewide program and the capacity to manage the financial requirements of a state program.<sup>70</sup> Perkins reports that it “has worked with several certified entities that did not have the necessary infrastructure to support managing their state’s NDBEDP,” several of which later relinquished their certifications.<sup>71</sup> Others note administrative and accounting skills are a large portion of a certified entity’s responsibilities and are necessary to the proper functioning of the program.<sup>72</sup> Based on this feedback and our experience under the pilot program, we add administrative and financial management experience to the certification criteria because we expect it will help to ensure that applicants have the necessary skills and resources to effectively operate a state’s NDBEDP certified program, which in turn, will reduce the number of programs that relinquish their certifications. For example, applicants should have experience and expertise in managing programmatic funds, recordkeeping, and generally accepted accounting principles.<sup>73</sup>

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<sup>66</sup> HKNC Comments at 3. Moreover, as several commenters note, linguistic or communication competency does not necessarily translate into having the necessary expertise to recommend equipment. See ATK Comments at 2; ATLA Comments at 1; IOD Comments at 2; WATAP Comments at 2.

<sup>67</sup> Perkins Comments at 8. Along these lines, we agree with Seattle Lighthouse that program personnel who have “outstanding communication, linguistic and cultural skills” needed for outreach, assessments, and training, “shouldn’t be eliminated for lack of or minimal data entry skill sets,” but that such data entry functions should be performed by other personnel as much as possible. Seattle Lighthouse Comments at 5.

<sup>68</sup> See SRC/CBVI Comments at 2 (stating that, because state programs are reimbursed for the reasonable costs of providing qualified interpreter services to ensure effective communication, additional requirements for program personnel are not required); see also CGB, *Examples of Reimbursable Expenses* (July 2, 2012), <http://www.rolkaloube.com/#!/ndbedp/cnbw> (*NDBEDP Expenses*) (containing Bureau guidance stating that the reasonable costs to provide auxiliary aids and services, such as sign language interpreter services to ensure effective communication with individuals who are deaf-blind, are reimbursable up to each certified program’s annual funding allocation). For example, these services can be provided when conducting individual assessments and training.

<sup>69</sup> 47 CFR § 64.610(b)(3)(i)-(ii) (pilot program rules).

<sup>70</sup> See, e.g., CDBP Comments at 2; HKNC Comments at 3; IDBI Comments at 8 (stating “applicants should be required to demonstrate that they are capable of operating a statewide program and follow standard financial principles”); Perkins Comments at 9; WATAP Comments at 2.

<sup>71</sup> Perkins Comments at 9.

<sup>72</sup> CDBP Comments at 2 (suggesting also that the administration and financial management components of the program “may overwhelm some otherwise qualified entities”); WATAP Comments at 2.

<sup>73</sup> We agree with HKNC that applicants for certification should be required to demonstrate that they have access to “financial expertise [that] allows for both the necessary cash flow and the administrative coordination to support the equipment purchase/control/inventory processes, the reimbursement process and the annual audit” in addition to

(continued....)

23. *Improper Incentives.* No parties opposed our proposals to continue prohibiting certified programs from accepting any type of financial arrangement from an equipment vendor that could incentivize the purchase of certain equipment, requiring entities applying for NDBEDP certification to disclose during the initial certification application process and thereafter, as necessary, any actual or potential conflicts of interest with manufacturers or providers of equipment that may be distributed under the NDBEDP,<sup>74</sup> or reject an application for certification when its financial arrangements create the risk of impeding objectivity in the distribution of equipment or compliance with NDBEDP requirements.<sup>75</sup> We agree that financial or other incentive arrangements between vendors and certified entities could create a disincentive to provide equipment that best meets the unique needs of each program participant, and therefore adopt these proposals as discussed below.<sup>76</sup>

24. Every aspect of the administration and operation of the NDBEDP must be conducted in a manner that promotes the integrity of the TRS Fund, and instills the highest public trust and confidence in the NDBEDP, the TRS Fund, and the Commission. To that end, each certified program, including its directors, officers, employees, contractors, subcontractors, consultants, agents, and all other representatives are directed to avoid any organizational or personal conflicts of interest or the appearance of a conflict of interest in all aspects of their administration and operation of the NDBEDP. We adopt our proposal to require each entity seeking certification to identify and disclose to the Commission any relationship, arrangement, or agreement that potentially or actually constitutes a conflict of interest, but modify it to require such applicants to identify and report all such potential or actual conflicts stemming from relationships, arrangements, and agreements with providers of related services, such as assessments and training, as well as equipment manufacturers. Such disclosures should be made in an entity's application for certification, including during the pendency of the application.<sup>77</sup> We further clarify that when an applicant for certification reports such an arrangement, it must also indicate the steps it will take to eliminate such an actual or potential conflict or to minimize the associated risks. If necessary, the Bureau or Commission may make its own determination as to whether the conflict requires disqualification of the entity to manage a state program or whether the entity should be required to take certain steps to eliminate the actual or potential conflict or to minimize the associated risks.<sup>78</sup>

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"administrative expertise to establish and retain files, insure compliance, coordinate/schedule/deploy staff, interface with consumers and support the reimbursement process." HKNC Comments at 3.

<sup>74</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5265, para. 18.

<sup>75</sup> For example, such risk could occur when the applicant is partially or wholly owned by an equipment manufacturer or vendor. See, e.g., IDBI Comments at 8-9; Perkins Comments at 9 (agreeing that certified programs should not accept incentives to purchase particular equipment); Seattle Lighthouse Comments at 7 (asserting that "[n]one of the entities should make a profit from equipment that they recommend"); *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5265, para. 18 (seeking comment on these matters); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5685, para. 102.

<sup>76</sup> IDBI Comments at 8-9. Similarly, under the TRS program, the Commission has put into place prohibitions to prevent improper incentives to protect the integrity of the Interstate TRS Fund. See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, 20 FCC Rcd 1466 (CGB 2005) (prohibiting any type of financial incentives to encourage or reward a consumer for placing a TRS call); *FCC Clarifies that Certain TRS Marketing and Call Handling Practices Are Improper and Reminds that VRS May Not Be Used as a Video Remote Interpreting Service*, Public Notice, 20 FCC Rcd 13195 (CGB 2005) (prohibiting certain marketing practices deemed to be improper under the TRS program).

<sup>77</sup> We require applicants learning of a potential or actual conflict while their applications are pending to disclose such conflicts immediately upon learning of such conflict, to prevent delays in the Commission's certification review.

<sup>78</sup> See, e.g., Perkins Comments at 9.

25. *Geographic Eligibility.* During the pilot program, the Bureau has selected entities to participate in the NDBEDP that are located both within and outside of the states that they serve.<sup>79</sup> Currently, of the 53 certified programs, 33 are administered by entities located within the states they serve and 20 are administered by entities located outside those states.<sup>80</sup> In the *NDBEDP 2015 NPRM*, we proposed to continue allowing qualified in-state and out-of-state entities to apply for certification to administer any NDBEDP state program and, if selected, to work in collaboration with individuals or entities within or outside of the states or territories for which they are selected.<sup>81</sup>

26. We will maintain this flexible approach, which the record supports, for the permanent NDBEDP.<sup>82</sup> We agree with commenters that certifying an out-of-state entity, which can then work with in-state partners to provide services, functions well in those states without sufficient resources of their own.<sup>83</sup> At the same time, we recognize the concerns expressed by commenters who urge the Commission to give preference to in-state entities,<sup>84</sup> claiming these to be more likely to have relationships with state networks and have the ability to meet consumers' needs as they arise.<sup>85</sup> While we are not persuaded of the need to give preference or automatic priority to in-state entities at this time, we will consider the benefits that a local entity can bring to its own state's residents in making our certification selections, especially when weighing the merits of equally qualified applicants.

27. *Non-substantive Rule Change.* In the *NDBEDP 2015 NPRM*, we proposed a non-substantial edit that would insert the words "training consumers on" in certification criterion (v).<sup>86</sup> We adopt this change, so that the new clause reads: "Experience in training consumers on how to use Equipment and how to set up Equipment for its effective use."

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<sup>79</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5261, para. 11.

<sup>80</sup> Perkins is the certified entity for 19 states in addition to Massachusetts (where Perkins is located), and HKNC is the certified entity for three states in addition to New York (where it is located). For all but three of these 22 programs (Arizona, Nevada, and Utah), the out-of-state entity selected was the sole applicant. See, e.g., *NDBEDP Pilot Program Certification Public Notice*, 27 FCC Rcd at 7398-99 (announcing that the Bureau received two applications for the state of Arizona and selected Perkins); *Commission Announces Entity Selected for Certification to Participate in the National Deaf-Blind Equipment Distribution Program for Nevada*, Public Notice, 28 FCC Rcd 10223 (CGB 2013) (announcing that the Bureau received two applications for the state of Nevada and selected Perkins); *Commission Announces Entity Selected for Certification to Participate in the National Deaf-Blind Equipment Distribution Program for Utah*, Public Notice, 30 FCC Rcd 318 (CGB 2015) (announcing that the Bureau received two applications for the state of Utah and selected Perkins). Many of the states for which Perkins is certified are states in which the entity originally certified by the Commission relinquished its certification. Specifically, Perkins replaced the former certified entities in Nevada, Mississippi, Vermont, Minnesota, Indiana, Michigan, Utah, and Washington. In addition, HKNC replaced the former certified entities in Iowa, Hawaii, and Florida.

<sup>81</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5261-62, para. 11.

<sup>82</sup> See, e.g., GACHI Comments at 4; HKNC Comments at 2; IDBI Comments at 6; Perkins Comments at 6.

<sup>83</sup> See HKNC Comments at 2 (stating that it works with in-state partners to provide services "on the ground," and noting that "[t]his may be the only option especially for some of the smaller states with limited resources"); IDBI Comments at 6; Perkins Comments at 6 (asserting that "allowing qualified out-of-state certified entities enables the participation of qualified [in-state] entities that could not otherwise assume the full responsibilities of certification to contribute their expertise to the state program").

<sup>84</sup> See ATAP Comments at 1-2; ATI Comments at 1-2; ATK Comments at 1; IPAT Comments at 1; LightHouse Comments at 2 (generally encouraging the Commission to give priority to qualified in-state entities and applications from neighboring states); MoAT Comments at 1; WATAP Comments at 1.

<sup>85</sup> ATK Comments at 1; see also MoAT Comments at 1 (stating that in-state entities can "reduce administrative layers and . . . more effectively serve residents"); LightHouse Comments at 2.

<sup>86</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5263, n.52; 47 CFR § 64.610(b)(3)(v).

#### D. Duration of Certification

28. Under the pilot program, entities that were selected to participate in the NDBEDP have been certified for the duration of the pilot program.<sup>87</sup> By comparison, under the Commission's TRS rules, states are certified by the Commission to operate their TRS programs for five years, after which they must seek renewal of their certifications.<sup>88</sup> In the *NDBEDP 2015 NPRM*, we proposed that NDBEDP programs similarly be certified for a period of five years and sought comment on and alternatives to this proposal.<sup>89</sup>

29. Commenters overwhelmingly support the proposed five-year certification period, finding it appropriate and reasonable.<sup>90</sup> We believe that limiting the duration of an entity's certification provides a natural opportunity to review the entity's performance under the program and to verify that it is still qualified should it seek renewal. We are also persuaded that adopting a shorter certification period would be burdensome and possibly disruptive to program participants.<sup>91</sup> Therefore, we adopt a five-year certification period for each state program, to start upon the effective date of the permanent NDBEDP. Such period will terminate five years after that starting date, and certification reviews and selections will occur every five years thereafter. This process has been effective for the TRS program, and we expect that it will provide similar efficiencies for the NDBEDP.

30. In the event that an entity selected at the start of a five-year term relinquishes its certification or its certification is suspended or revoked before completing its term,<sup>92</sup> we will permit the successor entity to complete, but not exceed, the five-year term initiated by its predecessor.<sup>93</sup> We note that during the NDBEDP pilot program, certifications granted by the Bureau initially and to successor entities have varied in their duration, but they all have had a common end date – the end of the pilot program. We believe that retaining a common end date in the permanent NDBEDP will facilitate our administration and oversight of the program, and help to provide certainty to the states and territories participating in this program.<sup>94</sup>

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<sup>87</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5265, para. 19; *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5647, para. 14.

<sup>88</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5265-66, para. 19; see also 47 CFR § 64.606(c)(1) (setting a state TRS provider certification period of five years); 47 CFR § 64.606(c)(2) (setting an Internet-based TRS provider certification period of five years).

<sup>89</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5266, para. 19.

<sup>90</sup> See, e.g., ATAP Comments at 2; ATI Comments at 2; ATK Comments at 2; ATLA Comments at 2; CAAG Comments at 4; CDBP Comments at 2; GACHI Comments at 8; IDBI Comments at 9; IOD Comments at 2; IPAT Comments at 2; LightHouse Comments at 2; MoAT Comments at 2; Perkins Comments at 10; Seattle Lighthouse Comments at 4 (supporting a five-year certification period unless there are "serious concerns" reported within that time frame, and urging that people who are deaf-blind serve on the certification review teams); SRC/CBVI Comments at 2; WATAP Comments at 2; Disability Rights Maine (DRM) Reply Comments at 12.

<sup>91</sup> ATAP Comments at 2; see also ATI Comments at 2; ATK Comments at 2; ATLA Comments at 2; IOD Comments at 2; IPAT Comments at 2; LightHouse Comments at 2; MoAT Comments at 2; SRC/CBVI Comments at 2; WATAP Comments at 2.

<sup>92</sup> See *infra* Parts III.G (Relinquishing Program Certification), III.H (Suspension or Revocation of Certification).

<sup>93</sup> We reject Perkins's suggestion that if a successor is selected to replace an outgoing entity, it be certified for a full five years upon receiving certification, which would "create a staggered schedule for program certifications." Perkins Comments at 5.

<sup>94</sup> The Bureau may announce selections for the new certification period on a rolling basis as these are processed, but the full five-year certification period will end at the appointed time every five years.

### E. Certification Renewals

31. In the *NDBEDP 2015 NPRM*, we proposed that one year prior to the expiration of each five-year certification period, each new applicant or each incumbent that has been certified to operate a state program intending to stay in the NDBEDP be required to apply for or request renewal of its certification by submitting to the Commission an application with sufficient detail to demonstrate its ability to meet all criteria required for certification, either directly or in coordination with other programs or entities.<sup>95</sup> We noted that this approach is consistent with the TRS certification rules for state TRS providers.<sup>96</sup>

32. Commenters generally support this approach.<sup>97</sup> As we concluded with respect to applications for initial certification under the permanent NDBEDP, we believe that expanding the pool of applicants during the certification renewal process beyond the incumbent entities will provide a fresh opportunity to enhance the quality of state programs.<sup>98</sup> We also believe that a one-year period will provide sufficient time for the renewal process, based on our experience with state renewals under the TRS program. For these reasons, we adopt our proposal. We further direct the Bureau to announce, by public notice, the identity of all applicants who request such certification.<sup>99</sup> We further direct the Bureau to take appropriate steps to minimize any possible disruption of service by providing as much advance notice as possible about its selection of the entities certified under the permanent NDBEDP.

### F. Obligations of Certified Entities

33. *Prohibition on Financial Arrangements or Incentives.* Under the NDBEDP pilot program, once certified, entities operating state programs have been prohibited from accepting financial arrangements from a vendor that could incentivize the purchase of particular equipment.<sup>100</sup> We will continue to prohibit certified programs from entering into any financial relationship, arrangement, or agreement that creates improper incentives to purchase particular equipment.<sup>101</sup> In addition, the obligation imposed on applicants for certification to disclose any actual or potential conflicts of interest with equipment manufacturers or vendors, as well as the steps the entity will take to eliminate such actual or potential conflict or to minimize the associated risks, will carry forward to entities once they have

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<sup>95</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5267, para. 25.

<sup>96</sup> *Id.*; see 47 CFR § 64.606(c)(1) (stating that a state TRS provider may apply for renewal one year prior to expiration of its certification). For example, if a state receives certification from July 1, 2016 to June 30, 2021, it would be required to submit an application for recertification by July 1, 2020, which is the beginning of the last year that the state holds certification.

<sup>97</sup> See CAAG Comments at 5; HKNC Comments at 4; IDBI Comments at 10; Perkins Comments at 12. No commenter objected to the proposal.

<sup>98</sup> See *supra* para. 14; HKNC Comments at 4 (suggesting that this would provide more opportunities for in-state entities to reconsider managing their own state programs, and that this may better serve their residents than out-of-state entities).

<sup>99</sup> As with initial applications, see *supra* para. 16, this announcement will put existing certified programs on notice of competing applications, as well as identifying those jurisdictions, if any, where no entity has applied for a renewal or as a new entrant. See Perkins Comments at 12 (asking the Commission to consider how state programs should be notified if a competing bid for certification is submitted). The Bureau may extend the application period for those jurisdictions where no qualified entity has applied for renewal or as a new entrant.

<sup>100</sup> 47 CFR § 64.610(e)(2)(iii) (pilot program rule).

<sup>101</sup> The Commission sought comment on retaining this prohibition in the *NDBEDP 2015 NPRM*. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5290, para. 73. To provide a more clear-cut definition of what is prohibited, we replace the term “could incentivize” in the pilot program rule with “creates improper incentives.” See *infra* Appendix D (Final Rules).



received certification under the permanent NDBEDP.<sup>102</sup> We require such disclosure to be made to the Commission within 30 days after the entity learns or should have learned of such actual or potential conflict of interest. The Commission may suspend or revoke an NDBEDP certification or may require a certified entity, as a condition of continued certification, to take additional steps to eliminate, or to minimize the risks associated with, an actual or potential conflict of interest, if relationships, arrangements, or agreements affecting the entity are likely to impede its objectivity in the distribution of equipment or its ability to comply with NDBEDP requirements.<sup>103</sup> This requirement will ensure that the Commission is informed of and can address expeditiously and appropriately any conflicts that come into being or are discovered after certification is granted.

34. *Substantive Changes.* In the *NDBEDP 2015 NPRM*, we proposed to require each state program, once certified, to report to the Commission any substantive change within 60 days of when such change occurs, noting that this would be consistent with our requirements for TRS providers.<sup>104</sup> Substantive changes include those that might bear on the qualifications of the entity to meet our criteria for certification, such as changes in a program's ability to distribute equipment across its state or significant changes in its staff and facilities.<sup>105</sup> Commenters generally support this proposal.<sup>106</sup> In light of such support and because we believe that this requirement can help to ensure that programs continue to meet our criteria for certification when substantive changes occur, we adopt this requirement, as modified for clarity.<sup>107</sup>

#### **G. Relinquishing Program Certification**

35. We discourage certified entities from relinquishing their certification mid-term but understand that this may be necessary if a certified entity determines it is no longer capable of managing its state program. In the almost three years between the start of the NDBEDP pilot program and the release of the *NDBEDP 2015 NPRM*, 10 of the 53 entities selected to administer and operate state programs relinquished their certifications, requiring the Bureau to seek replacements for those states.<sup>108</sup> According to the NDBEDP Administrator, certified entities have provided a number of reasons for

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<sup>102</sup> See *supra* para. 24.

<sup>103</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5685, para. 102 (concluding that such arrangements or incentives may “impede a certified program’s ability to provide equipment that fully meets the unique needs of the deaf-blind persons it is serving”).

<sup>104</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5267, para. 24; 47 CFR § 64.606(f)(1).

<sup>105</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5267, para. 24.

<sup>106</sup> See CAAG Comments at 5 (but proposing a 30-day period for notification, given how rapidly technology and services for people who are deaf-blind advance); CDBP Comments at 3 (stating that this is “an important and appropriate requirement”); IDBI Comments at 10; LightHouse Comments at 3; Perkins Comments at 11 (stating that the 60-day notification requirement seems reasonable).

<sup>107</sup> See *infra* Appendix D (Final Rules) (adding Section 64.6207(f), requiring a certified program to “notify the Commission within 60 days of any substantive change that bears directly on its ability to meet the qualifications necessary for certification under paragraph (c) of this section”).

<sup>108</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5261, para. 10 & nn.36, 39 (identifying Nevada, Mississippi, Vermont, Nebraska, Indiana, Minnesota, Iowa, Michigan, Utah, and Hawaii as the states in which entities relinquished their certifications and for which the Bureau invited applications for and selected replacements). Since May 2015, the entities serving Maine, Virginia, Florida, and Washington relinquished their certifications and were replaced. See *Commission Announces Entity Selected for Certification to Participate in the National Deaf-Blind Equipment Distribution Program for Maine*, Public Notice, 30 FCC Rcd 8296 (CGB 2015); *Commission Announces Entity Selected for Certification to Participate in the National Deaf-Blind Equipment Distribution Program for Virginia*, Public Notice, 31 FCC Rcd 184 (CGB 2016); *Commission Announces Entities Selected for Certification to Participate in the National Deaf-Blind Equipment Distribution Program for Florida and Washington*, Public Notice, DA 16-745 (CGB June 30, 2016).

stepping down from their NDBEDP programs. These include having limited, insufficient, or diminished staffing resources, experiencing financial and program planning challenges, and having difficulty keeping administrative expenses below the 15% cap on such expenses.<sup>109</sup> In the *NDBEDP 2015 NPRM*, we proposed to require outgoing entities to provide written notice to the Commission at least 90 days in advance of their intent to relinquish their certifications.<sup>110</sup>

36. Commenters support the proposed 90-day notice requirement for any entity intending to relinquish its certification.<sup>111</sup> Given this support, and to minimize the risk of a lapse in service to deaf-blind individuals that might result during any future transitions from an outgoing entity to a successor entity, we adopt this requirement for the permanent NDBEDP. We further require that any entity seeking to relinquish its certification include in such notice its reason for exiting the program, including its proposed departure date. We believe that receiving information about the reasons for exiting the program will help inform the Commission on ways to improve the administration of the NDBEDP. Finally, we require that such notice be filed in the docket to this proceeding, so that it becomes public, and that a written copy be provided electronically to the NDBEDP Administrator and the TRS Fund Administrator.

37. Upon receiving notice of an entity's plans to relinquish certification during the NDBEDP pilot program, the Bureau has provided a 15-day period during which it has invited applications from new entities interested in replacing the outgoing entity.<sup>112</sup> Some commenters express the concern that this has provided insufficient time for local organizations to gather the necessary letters of support and other documentation to apply.<sup>113</sup> Further, some commenters note that this timing may provide an advantage to national organizations over new, local applicants.<sup>114</sup> Although the 15-day deadline was established to expedite replacement and ensure that all interested parties have an adequate opportunity to apply for certification, we direct the Bureau to provide a minimum of 30 days for the receipt of such applications. We believe that a 30-day period is reasonable, especially given our adoption of a 90-day notice requirement for any entity intending to relinquish its certification.

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<sup>109</sup> Jackie Ellington, Attorney Advisor, Disability Rights Office, FCC, Submission for the Record, CG Docket No. 10-210 (July 14, 2016).

<sup>110</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5261, para. 10. To ease some of the administrative program burdens and potentially reduce program departures, we also proposed to establish a centralized database for the filing of reimbursement claims and semiannual reports to the Commission, which we discuss below. *Id.*; see also *infra* Part VII.E (NDBEDP Centralized Database for Reporting and Reimbursement). The 15% cap on administrative expenses, which has been suggested as another reason for program departures, is also addressed below. See *infra* Part VI.E (Administrative Costs).

<sup>111</sup> See generally ATI Comments at 1 (citing the “well-being of the consumers” for its support of the proposal); see also ATAP Comments at 1; ATK Comments at 1; ATLA Comments at 1; CAAG Comments at 4; CDBP Comments at 2; IDBI Comments at 6; IOD Comments at 1; IPAT Comments at 1; LightHouse Comments at 2; MoAT Comments at 1; Perkins Comments at 5; WATAP Comments at 1.

<sup>112</sup> See, e.g., *FCC Invites Applications for Certification to Participate in the National Deaf-Blind Equipment Distribution Program in the State of Virginia*, Public Notice, 30 FCC Rcd 13659 (CGB 2015).

<sup>113</sup> See, e.g., ATK Comments at 1; ATLA Comments at 1; IOD Comments at 1-2; see also ATAP Comments at 1; ATI Comments at 1; IPAT Comments at 1; LightHouse Comments at 2; WATAP Comments at 1.

<sup>114</sup> ATLA Comments at 1; see also IOD Comments at 1-2; WATAP Comments at 1. Some commenters also state that national entities appear to have early notice of relinquishments, because “immediately upon the [relinquishment] announcement, it appeared that a national entity had already been making contacts in those states to line up support [for its certification].” ATAP Comments at 1; see also ATK Comments at 1; ATI Comments at 1; IPAT Comments at 1; LightHouse Comments at 2.

## H. Suspension or Revocation of Certification

38. Under the pilot program rules, the Commission may suspend or revoke a certification if it determines that such certification is no longer warranted after notice and opportunity for hearing.<sup>115</sup> In the *NDBEDP 2015 NPRM*, we sought comment on the appropriate process for revocation or suspension and whether providing a program with a reasonable time to present its views and objections to the Commission in writing would satisfy due process requirements and enable the Commission to take action without undue delay.<sup>116</sup>

39. Some commenters oppose an administrative hearing, preferring written pleadings in order to expedite review, which in turn would minimize a disruption in services.<sup>117</sup> One commenter supports an administrative hearing, and argues it should be conducted within 30 days, and that the Commission should decide within 30 days after the hearing whether the certified program can continue to participate in the NDBEDP.<sup>118</sup>

40. To ensure that the Commission can act expeditiously and effectively to replace a certified entity should that become necessary, we retain the authority to suspend or revoke an entity's certification when we determine that an entity is no longer qualified for certification. Reasons for suspension or revocation may include, but are not limited to, failure to comply with the Commission's rules and policies, failure to take such actions as are necessary to fulfill the objectives of the program to provide access to covered services by low-income individuals who are deaf-blind (including necessary assessments, equipment distribution, and training), failure to accurately report program expenses, distribution of equipment to individuals who do not meet the program eligibility requirements, fraudulent or abusive practices, and misrepresentation or lack of candor in statements to the Commission.

41. We amend the rule, however, to provide additional clarification regarding the procedure for making a determination of suspension or revocation. First, in order to initiate the suspension or revocation of an entity's certification, the Commission must provide notice to the certified entity, which shall contain the reasons for the proposed suspension or revocation of certification and the applicable suspension or revocation procedures. The Commission will provide the certified entity 30 days to present written arguments and any relevant documentation to the Commission as to why suspension or revocation of certification is not warranted. The Commission will then review such arguments and documentation and make a determination on the merits as to whether to suspend or revoke the entity's certification, which shall include the dates by which such certification shall be suspended or terminated, as well as any conditions that may accompany a suspension. Failure of the notified entity to respond within the 30 days provided will result in automatic suspension or revocation, whichever is applicable, unless such entity seeks a waiver or extension of this period in a timely fashion, i.e., prior to the expiration of the 30-day period.

42. Action to suspend or revoke an entity's certification may be taken either by the Commission, or the Bureau, on delegated authority. In either case, the action will be subject to the rules normally applicable to reconsideration or review of actions taken by a bureau on delegated authority or by the full Commission.<sup>119</sup> A suspension of certification will remain in effect until the expiration date, if

<sup>115</sup> 47 CFR § 64.610(j)(1) (pilot program rule). To date, the Commission has not initiated any such proceedings.

<sup>116</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5268, para. 26. For example, if revocation proceedings become necessary because a certified entity can no longer operate effectively (e.g., because of persistent personnel shortages), consumers may not be effectively served until revocation becomes effective and another entity is authorized to take over the state program.

<sup>117</sup> Perkins Comments at 12; IDBI Comments at 10.

<sup>118</sup> GACHI Comments at 9.

<sup>119</sup> See 47 CFR §§ 1.101-1.117. For example, in response to a suspension or revocation ordered by the Bureau, the affected program could file an application for review of the Bureau order by the full Commission. 47 CFR § 1.115.

any, or until the fulfillment of conditions stated in a suspension decision. A revocation will be effective for the remaining portion of the current certification period, but will not preclude an entity from applying for certification for the next five-year period unless so stated in the revocation decision.

43. These procedures are similar in some respects to those for suspension and debarment of an individual or entity receiving Universal Service Fund (USF) support.<sup>120</sup> Unlike the USF suspension and debarment procedures, however, the procedures we adopt for the NDBEDP do not contemplate that participation in the NDBEDP will automatically be suspended at the beginning of the suspension or revocation process.<sup>121</sup> Rather, to minimize disruption, we retain the pilot program provision allowing the Commission or the Bureau to take appropriate and necessary steps to ensure continuity of service for equipment applicants and recipients in the affected state.<sup>122</sup> We believe that these suspension and revocation procedures will satisfy due process requirements by providing the affected program with an opportunity to present objections, arguments, and documentation, will maintain some continuity of service for the affected consumers, and will ensure that the Commission can act relatively quickly to resume the effective provision of equipment and related service to consumers.

#### **I. Obligations of Outgoing Entities**

44. *Compliance with NDBEDP Requirements.* In the *NDBEDP 2015 NPRM*, we proposed to require entities that relinquish their certifications to comply with NDBEDP requirements needed for the ongoing functioning of the program that they are exiting, including the submission of final reimbursement claims and six-month reports.<sup>123</sup>

45. This proposal has support in the record.<sup>124</sup> Because we believe this requirement is necessary to maintain program integrity, we adopt this requirement for all outgoing entities, regardless of the reason for such entity's departure. Specifically, this obligation will apply to entities that notify the Commission of their intent not to participate under the permanent NDBEDP, reapply but are not selected for the permanent NDBEDP, do not have their certifications under the permanent NDBEDP renewed, relinquish their certifications in the middle of their term, or have their certifications revoked by the Commission. We amend our rules to incorporate this requirement.<sup>125</sup>

46. *Transfer of Data and Inventory.* In the *NDBEDP 2015 NPRM*, to minimize the impact of transitions on consumers, we proposed that a certified entity that relinquishes its certification prior to completion of its term or does not seek recertification at the end of its five-year term be required to

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<sup>120</sup> See 47 CFR § 54.8.

<sup>121</sup> See 47 CFR § 54.8(e)(1) (providing that suspension of participation in the USF program shall be effective upon the earlier of receipt or *Federal Register* publication of the initial notice of suspension and proposed debarment). Because an immediate suspension of an entity certified for the NDBEDP could unnecessarily interrupt the provision of equipment or related services to applicants who may have no alternative source of assistance, the determination of whether to immediately suspend an entity's participation pending completion of suspension or revocation proceedings will be made on a case-by-case basis, considering the severity of the alleged rule violations and other relevant factors.

<sup>122</sup> For example, these might include establishing greater oversight by the NDBEDP Administrator coupled with new reporting obligations for the affected entity pending the final decision by the Bureau or Commission.

<sup>123</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5261, para. 10.

<sup>124</sup> See, e.g., IDBI Comments at 6.

<sup>125</sup> The NDBEDP Administrator may allocate funds or reallocate unused funds, if necessary and available, to reimburse an outgoing entity's reasonable administrative costs to comply with these NDBEDP requirements, rather than reimbursing those costs from funds allocated or assigned to the successor entity. See *infra* Part VI (Funding).

transfer NDBEDP-purchased equipment, information, files, and other data to its successor within 30 days after the effective date of the successor entity's certification.<sup>126</sup>

47. Commenters generally support this requirement for an entity relinquishing certification to transfer its equipment and data to the successor entity.<sup>127</sup> Because we believe this mandate will help to ensure a smooth transition to the successor entity and reduce any potential for a lapse in service, we adopt this requirement for all outgoing entities, regardless of the reason for such entity's departure. Specifically, an outgoing certified program shall transfer to the newly-certified state program, within 30 days after the effective date of the newly-certified state program's certification,<sup>128</sup> all consumer data, records, and information for the previous five years associated with the distribution of equipment and provision of related services by the outgoing certified program.<sup>129</sup> In addition, we require the transfer of all NDBEDP-purchased equipment and materials that remain in the outgoing entity's inventory,<sup>130</sup> along with an inventory list of all equipment and other data, records, and information pertaining to this inventory. The outgoing entity shall also report to the NDBEDP Administrator that such equipment and records have been transferred to the new entity in accordance with these requirements, after which the NDBEDP Administrator shall inform the TRS Fund Administrator that such transfer has taken place. The TRS Fund Administrator shall not make final payment to the outgoing entity until the outgoing entity has satisfied all of the requirements discussed herein. We further require each certified entity – as a measure of privacy – to provide to consumers who apply for equipment a notification regarding the transfer of such data, records, and information. Specifically, each entity must inform its applicants that their personally identifiable information (PII) will be transferred to a successor in the event that the state's program is transferred to a different certified entity.<sup>131</sup>

48. *Notification to Consumers.* During the pilot program, when a state program has voluntarily relinquished its certification, the Bureau has released a public notice to invite applications for replacements,<sup>132</sup> and then a second public notice to announce the successor entity.<sup>133</sup> In the *NDBEDP 2015 NPRM*, we sought comment on how best to ensure that consumers are informed when the entity

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<sup>126</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5261, 5266, paras. 10, 21.

<sup>127</sup> See, e.g., CAAG Comments at 4; CDBP Comments at 2; IDBI Comments at 6, 9; Perkins Comments at 5, 10.

<sup>128</sup> CDBP recommends that equipment should be transferred to the successor entity within 10 business days. CDBP Comments at 2. We believe 30 days is reasonable.

<sup>129</sup> See *infra* Part VII.F (Audits and Record Retention) (requiring certified programs to retain NDBEDP records for a minimum of five years). In the event of a delay in the selection of a successor state program that may result in the lapse of a state program, the outgoing certified program would be required to effect such transfer after the outgoing certified program's tenure has ended.

<sup>130</sup> Equipment that remains in the outgoing entity's inventory may include equipment purchased for distribution to consumers, for assessment and training, to be loaned to consumers during periods of equipment repair, or for any other NDBEDP purpose. We agree with Perkins that the obligation to transfer equipment does not extend to equipment that has been distributed to individuals. See Perkins Comments at 10.

<sup>131</sup> See Part V.A (Equipment: *Notice to Equipment Applicants*) (requiring certified programs to include an attestation on all consumer application forms for this and other program-related purposes).

<sup>132</sup> See, e.g., *FCC Invites Applications for Certification to Participate in the National Deaf-Blind Equipment Distribution Program in the State of Michigan*, Public Notice, 29 FCC Rcd 11148 (CGB 2014); *FCC Invites Applications for Certification to Participate in the National Deaf-Blind Equipment Distribution Program in the States of Vermont and Nebraska*, Public Notice, 29 FCC Rcd 3921 (CGB 2014).

<sup>133</sup> See, e.g., *Commission Announces Entity Selected for Certification to Participate in the National Deaf-Blind Equipment Distribution Program for Michigan*, Public Notice, 29 FCC Rcd 11769 (CGB 2014); *Commission Announces Entities Selected for Certification to Participate in the National Deaf-Blind Equipment Distribution Program for Vermont and Nebraska*, Public Notice, 29 FCC Rcd 5883 (CGB 2014).

certified to operate their state's NDBEDP program changes.<sup>134</sup> For example, we asked whether, in addition to issuing public notices, we should require the outgoing entity to directly notify affected consumers about the successor entity.<sup>135</sup>

49. Commenters support notifying state residents about a change in the certified entity for their state, noting the need to minimize consumer confusion.<sup>136</sup> Some suggest requiring outgoing entities to directly notify equipment recipients and applicants in their states about the successor entity.<sup>137</sup> The Seattle Lighthouse argues that "multiple methods of notification" are needed because, for example, electronic or written notification may not be effective for deaf-blind consumers who communicate using tactile American Sign Language.<sup>138</sup>

50. Given the general agreement among commenters, we adopt a rule requiring each outgoing certified program, regardless of the reason for the outgoing certified program's departure, to provide notification about the newly-certified state program to state residents who are either in the process of obtaining equipment or related services, or have received equipment during the previous three-year period. Such notice shall be given within 30 days of the effective date of the newly-certified state program's certification.<sup>139</sup> We conclude that this obligation needs to rest with the outgoing entity because it is this entity with whom consumers will have had prior contact. Such notifications must be conveyed to consumers in accessible formats.<sup>140</sup> The outgoing entity shall further report to the NDBEDP Administrator that consumers have been notified in an accessible format. The TRS Fund Administrator shall not make final payment to the outgoing entity until the outgoing entity has satisfied this requirement. In the event that the outgoing entity fails to provide such notice within the 30-day period, the Commission shall require the incoming entity to provide such notification to consumers within 30 days of when the incoming entity receives the consumer records from the outgoing entity.

#### **J. Implementation of the Permanent NDBEDP and Termination of the Pilot Program**

51. Because adoption of the permanent NDBEDP rules involves new information collection requirements that are subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), the rules that are subject to the PRA will become effective on the date specified in a notice published in the *Federal Register* announcing OMB approval. At that time, the Bureau will announce by public notice the timing of the 60-day period for new and incumbent entities to apply for certification to participate in the permanent NDBEDP. Certifications to participate in the permanent NDBEDP will not become effective before July 1, 2017.<sup>141</sup>

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<sup>134</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5268, para. 27.

<sup>135</sup> *Id.*

<sup>136</sup> CAAG Comments at 5; GACHI Comments at 9; IDBI Comments at 6, 10; Perkins Comments at 13; Seattle Lighthouse Comments at 4-5.

<sup>137</sup> CAAG Comments at 5; IDBI Comments at 10; Perkins Comments at 13; *see also* IDBI Comments at 10 (proposing state agencies and organizations that serve deaf-blind individuals provide such information); GACHI Comments at 9 (arguing that public notices are sufficient where certification is relinquished, but that consumers in the affected state should be notified individually when the Commission revokes a program's certification, to protect against disclosing personal information to the decertified entity).

<sup>138</sup> Seattle Lighthouse Comments at 4-5.

<sup>139</sup> In the event of a delay in the selection of a successor state program that may result in the lapse of a state program, the outgoing certified program may be required to provide such notification after the outgoing certified program's tenure has ended.

<sup>140</sup> For example, such notice can be conveyed by e-mail, in large print format mailed to the consumer's last known mailing address, by phone call, text message, or in-person, as necessary to ensure effective communication.

<sup>141</sup> *See 2016 Extension Order*, 31 FCC Rcd at 6149, para. 1.

52. Section 64.610(k) of the Commission's rules provides for expiration of the NDBEDP pilot program rules at the termination of the pilot program. We clarify that the pilot program will not terminate until after all reports have been submitted, all payments and adjustments have been made, all wind-down activities have been completed, and no issues with the regard to the NDBEDP pilot program remain pending. Thus, the rules we adopt today will apply to the permanent NDBEDP only and not to the pilot program.

#### IV. CONSUMER ELIGIBILITY

53. Section 719 of the Act requires the Commission to limit participation in the NDBEDP to individuals who are deaf-blind – as this term is defined by the Helen Keller National Center Act (HKNC Act)<sup>142</sup> – and low income. In this part we (1) establish criteria to determine eligibility as an individual who is “deaf-blind” under the HKNC Act; (2) adopt rules for verifying eligibility under the definition of “deaf-blind” based on a professional's attestation or existing documentation; (3) set low-income eligibility to not exceed 400% of the Federal Poverty Guidelines (FPG); (4) provide guidance on the calculation of income for determining low-income eligibility; (5) adopt rules for verifying low-income eligibility based on participation in other federal programs with income threshold requirements at or below 400% of the FPG or by other means for applicants who are not enrolled in a qualifying program; and (6) address other eligibility criteria as discussed below.

##### A. Definition of Individuals who are Deaf-Blind

54. In the *NDBEDP Pilot Program Order*, the Commission interpreted the HKNC Act definitions of “deaf-blind” to allow consideration of an applicant's functional abilities to use telecommunications, Internet access, and advanced communications services in various environments.<sup>143</sup> As discussed below, we believe that this interpretation can best achieve Congress's overall goal of ensuring the accessibility of communications technologies for the deaf-blind population,<sup>144</sup> and therefore

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<sup>142</sup> 47 U.S.C. § 620(a)-(b). The HKNC Act defines an individual who is “deaf-blind” as any individual:

(A)(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;

(B) 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; or

(C) meets such other requirements as the Secretary [of Education] may prescribe by regulation.

29 U.S.C. § 1905(2).

<sup>143</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5651-52, paras. 26-27; *see also* 47 CFR § 64.610(c)(2).

<sup>144</sup> The Seattle Lighthouse proposes that the Commission change the term “deaf-blind” to “DeafBlind,” which it says is the preferred term of the DeafBlind community because it reflects a single individual with both hearing and vision losses. Seattle Lighthouse Comments at 5. Because “deaf-blind” is the terminology used in Section 719(a) of the CVAA, for consistency, we will continue using this term for purposes of the NDBEDP; however we may revisit the need to revise this terminology as necessary in the future. *See* 47 U.S.C. § 620(a).

retain it for purposes of defining who is eligible to receive equipment and related services under the permanent NDBEDP.<sup>145</sup>

55. The HKNC Act sets forth three independent definitions that can be used to determine whether a person is “deaf-blind.”<sup>146</sup> The first definition contains three prongs that must be satisfied.<sup>147</sup> The first of these requires an assessment of the individual’s vision,<sup>148</sup> and provides clear, measurable standards for loss of visual acuity, to which the Commission is bound to apply.<sup>149</sup> The second prong asks whether the individual has a hearing loss so severe “that most speech cannot be understood with optimum amplification.”<sup>150</sup> Under the NDBEDP pilot program, the Commission has looked to this prong to allow consideration of the extent to which the individual can perceive speech over the telephone.<sup>151</sup> The third prong asks whether the individual’s combined vision and hearing losses “cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.”<sup>152</sup> During the pilot, the Commission has construed this prong as well to permit consideration of communications-related activities, which are necessary for having independence in daily activities.<sup>153</sup>

56. The second definition contained in the HKNC Act applies to individuals for whom measurements of hearing and vision loss may be impeded due to cognitive or behavioral constraints. For these individuals, a determination of deaf-blindness may be achieved through “functional and performance assessment” that shows the individual “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.”<sup>154</sup> The third definition is open-ended, as it permits an individual to be classified as someone who is deaf-blind if such individual meets other requirements prescribed by the Secretary of Education by regulation.<sup>155</sup>

57. We retain for the permanent NDBEDP the definition of “deaf-blind” that has been applied in the NDBEDP pilot program.<sup>156</sup> Commenters support this interpretation.<sup>157</sup> We conclude that

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<sup>145</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5651-52, paras. 26-27. The Commission invited comment on whether it should retain this interpretation for the permanent NDBEDP in the *NDBEDP 2015 NPRM*. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5274, para. 40.

<sup>146</sup> 29 U.S.C. § 1905(2).

<sup>147</sup> *Id.* at § 1905(2)(A).

<sup>148</sup> *Id.* at § 1905(2)(A)(i).

<sup>149</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5651, para. 27. 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 or behavioral constraints, or both. 29 U.S.C. § 1905(2)(B).

<sup>150</sup> 29 U.S.C. § 1905(2)(A)(ii).

<sup>151</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5651-52, para. 27.

<sup>152</sup> 29 U.S.C. § 1905(2)(A)(iii).

<sup>153</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5651-52, paras. 26-27.

<sup>154</sup> 29 U.S.C. § 1905(2)(B).

<sup>155</sup> *Id.* at § 1905(2)(C).

<sup>156</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5651-52, paras. 26-27. We note that this definition incorporates the first two definitional standards into the Commission’s rules, but not the third, which permits the Secretary of Education to prescribe other requirements by regulation (*see* 29 U.S.C. § 1905(2)(C)), because we cannot predict whether such regulations would be appropriate for application to the NDBEDP.

<sup>157</sup> See American Council of the Blind (ACB) Comments at 1; HKNC Comments at 4 (“retaining the HKNC definition makes sense as it is used in other aspects of federal funding and program determination”).



we have the authority to permit eligibility determinations under the NDBEDP to consider an applicant's functional abilities to use telecommunications, Internet access, and advanced communications services in various environments because we continue to believe that consideration of these abilities is in keeping with Congress's overall goal of ensuring access to such technologies by the full range of deaf-blind individuals for whom the program is intended.<sup>158</sup>

#### **B. Verification that an Individual is Deaf-Blind**

58. The NDBEDP pilot program rules require individuals seeking equipment under the NDBEDP to provide verification from a professional (e.g., community-based service provider, vision or hearing related professional, vocational rehabilitation counselor, educator, and medical or health professional) who has direct knowledge of that individual's disability to attest that such applicant is deaf-blind, as this term is defined in the Commission's rules.<sup>159</sup> Professionals must make such attestations either to the best of their knowledge or under penalty of perjury.<sup>160</sup> The NDBEDP pilot program rules also specify that the professional's attestation must include the attester's name, title, and contact information, including address, phone number, and e-mail address.<sup>161</sup> Alternatively, certified programs may verify an applicant's disability by accepting documentation already in the applicant's possession, such as individualized education program documents and Social Security determination letters.<sup>162</sup>

59. We tentatively concluded in the *NDBEDP 2015 NPRM* that we would retain these disability verification requirements for the permanent NDBEDP.<sup>163</sup> We invited comment on whether a professional's attestation that an individual is deaf-blind should include the basis of the attesting professional's knowledge.<sup>164</sup> We also sought comment on proposals to require the disability verification to include the attesting professional's *full* name, title, and contact information (including *business name*, address, phone number, and e-mail address), and to require certified programs to re-verify an individual's disability eligibility when the individual applies for new equipment three years or more after the program last verified the individual's disability.<sup>165</sup>

60. We will continue to require NDBEDP applicants to provide verification of their disability either by obtaining an attestation from a professional with direct knowledge of their deaf-blindness or by submitting supporting documentation already in the applicant's possession. Commenters with extensive experience and expertise in the field of deaf-blindness, including entities that provide direct services to individuals who are deaf-blind, programs participating in the NDBEDP, and organizations comprised of and representing individuals who are deaf-blind, confirm the benefits of retaining this disability verification rule based on their experience with the pilot program.<sup>166</sup> Among other things, these

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<sup>158</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5652, para. 27; *see also* IDBI Comments at 14 (supporting the continued consideration of an individual's functional abilities when determining who is eligible under the NDBEDP).

<sup>159</sup> 47 CFR § 64.610(d)(1)(i)-(ii) (pilot program rules).

<sup>160</sup> *Id.* at § 64.610(d)(1)(ii). 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. *Id.*

<sup>161</sup> *Id.* at § 64.610(d)(1)(iv) (pilot program rule).

<sup>162</sup> *Id.* at § 64.610(d)(1)(iii); *see also* 47 CFR § 64.610(e)(1)(ii) (pilot program rule requiring certified programs to obtain verification that applicants meet the definition of an individual who is deaf-blind under the NDBEDP rules).

<sup>163</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5274, para. 42.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 5274-75, para. 42, Appendix F (Proposed Rule Changes).

<sup>166</sup> *See, e.g.*, AADB Comments at 2; ACB Comments at 1; HKNC Comments at 5; IDBI Comments at 14 (agreeing with the retention of current verification requirements); Perkins Comments at 19; Seattle Lighthouse Comments at 5 (continued....)

commenters confirm that such measures can help maintain the integrity of the program by preventing fraud and abuse by ineligible individuals.<sup>167</sup>

61. We further adopt our proposal for each professional to provide the basis for his or her attestation that an individual is deaf-blind. As shown in the record, the provision of this information will assist programs in substantiating the deaf-blind individual's equipment needs.<sup>168</sup> So that the program may contact the professional if necessary, we also adopt our proposal to require the attestation to include the professional's *full* name, title, and contact information, including *business name*, address, phone number, and e-mail address.<sup>169</sup>

62. We will not require each certified program to re-verify the disability eligibility of an individual who previously has been served by a program each time the recipient applies for new equipment, unless the program has reason to believe that the equipment recipient no longer has a disability sufficient to allow continued eligibility for the NDBEDP.<sup>170</sup> We received no comments from medical experts or other parties suggesting that subsequent disability verifications are necessary to prove a person's ongoing disability after an initial determination of such eligibility. Rather, commenters generally agree that if an individual's disability changes over time, it is far more likely to worsen rather than improve.<sup>171</sup> At the same time, commenters confirm the Commission's conclusion in the *NDBEDP Pilot Program Order* that individuals 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 endeavors to arrange for appointments and travel to acquire verification of their disability.<sup>172</sup> We conclude that the benefits of imposing such a requirement on all deaf-blind individuals do not outweigh the resulting burdens that would be imposed on such persons.<sup>173</sup>

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(supporting the "continuing practice of flexibility in accepting verification of disability from a wide range of professionals as well as from documents in the applicant's possession"); SRC/CBVI Comments at 3; DRM Reply Comments at 20.

<sup>167</sup> See, e.g., GACHI Comments at 15 ("Current verification processes . . . prohibit individuals from providing false documentation."); see also *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5653-54, para. 31 (finding, based on the record developed for the pilot program, that this measure can prevent potential fraud or abuse of this program).

<sup>168</sup> GACHI Comments at 15; see also HKNC Comments at 5; Perkins Comments at 19 ("We agree that professional's attestation that an individual is deaf-blind should include the basis of the attesting professional's knowledge."). We therefore disagree with SRC/CBVI that, because the attesting professional must declare that its evaluation is done under "penalty of perjury," there is no need to require the basis of the evaluation. See SRC/CBVI Comments at 3.

<sup>169</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5274-5, 5336, para. 42, Appendix F (Proposed Rule Changes). Commenters generally support requiring professionals to provide their contact information. See, e.g., ACB Comments at 1; IDBI Comments at 14 (requiring professionals to provide contact information may serve the interest of "reducing possible fraud"); Perkins Comments at 19.

<sup>170</sup> See ACB Comments at 1 ("[U]nless there is reason to believe the consumer has had a change in their vision or hearing status, there is no need to have individuals re-verify their deaf-blind status.").

<sup>171</sup> See, e.g., HKNC Comments at 5 ("Most often, vision and hearing loss either stays the same or worsens."); DRM Reply Comments at 20 ("Because hearing and visual impairments of the nature and severity that customarily qualify an individual for this program typically progress over time and rarely, if ever, improve, initial verification should be deemed sufficient for the duration of whatever time the client remains interested in obtaining equipment . . .").

<sup>172</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5653-54, para. 31; see ACB Comments at 1 ("Re-verification may pose an unnecessary burden on the consumer if there is no change in vision or hearing."); Perkins Comments at 19 (it would be "unduly burdensome" to require new disability attestations for individuals already deemed eligible).

<sup>173</sup> Although SRC/CBVI and IDBI express support for re-verifying eligibility when the individual applies for new equipment at least three years after the individual's initial verification, neither of these entities provides any support  
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63. Our rejection of a blanket re-verification rule for all returning applicants, however, does not preclude a program from assessing, on an individual basis, the extent to which a returning applicant continues to qualify for equipment and related services, where the program has reason to believe that the visual acuity and hearing of such individual has improved sufficiently to disqualify such individual. In such instances, a certified program shall require such individual to provide an updated verification of the individual's disability status to determine the applicant's continued eligibility before providing the applicant with additional equipment or services. In addition, given record evidence that vision and hearing are likely to worsen over time, we will permit any certified program to require updated information about an individual's disabilities when it deems this to be necessary to assess whether to provide the individual with different equipment or related services.<sup>174</sup> This will permit certified programs to effectively respond to changes in the type and severity of an individual's disability.

### C. Income Eligibility

64. To participate in the NDBEDP, the deaf-blind applicant must be "low income."<sup>175</sup> The NDBEDP pilot program rules define low income as income that does not exceed 400% of the FPG.<sup>176</sup> For example, for 2016, applicants whose income exceeds the following amounts in families with up to four members are not eligible to participate in the NDBEDP:<sup>177</sup>

Number of persons in family/household	States and Territories Other than Alaska and Hawaii	Alaska	Hawaii
1	\$47,520	\$59,360	\$54,680
2	\$64,080	\$80,080	\$73,720
3	\$80,640	\$100,800	\$92,760
4	\$97,200	\$121,520	\$111,800

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for the theory that an individual's disability is likely to improve within this period. See IDBI Comments at 14; SRC/CBVI Comments at 3.

<sup>174</sup> See Perkins Comments at 19 (noting because changes in hearing and vision almost always result in greater loss of these abilities, "it is more appropriate to require a re-assessment to justify further equipment and/or training, rather than a new attestation."); HKNC Comments at 4-5 (explaining that an evaluator may sometimes need the consumer to produce a new vision report to justify different or additional equipment, and providing as an example, a consumer who transitions from equipment requiring partial sight to a braille display or screen reader that might be more often used by people who are totally blind).

<sup>175</sup> 47 U.S.C. § 620(a).

<sup>176</sup> 47 CFR § 64.610(d)(2). The poverty guidelines are updated periodically in the *Federal Register* by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2). See, e.g., Department of Health and Human Services, Annual Update of the HHS Poverty Guidelines, 81 Fed. Reg. 4036 (Jan. 25, 2016). The poverty guidelines are not defined for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. When a federal program using the poverty guidelines serves any of those jurisdictions, the federal office that administers the program is responsible for deciding whether to use the contiguous-states-and-DC guidelines for those jurisdictions or to follow some other procedure. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Education, U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs (Jan. 25, 2016), <https://aspe.hhs.gov/poverty-guidelines>. As it did during the pilot program, the Commission will continue to use the contiguous-states-and-D.C. guidelines for the U.S. Territories that participate in the NDBEDP.

<sup>177</sup> FCC, *National Deaf-Blind Equipment Distribution Program Consumer Guide* (Feb. 5, 2016), <https://www.fcc.gov/consumers/guides/national-deaf-blind-equipment-distribution-program>.

65. In the *NDBEDP Pilot Program Order*, the Commission selected this threshold after taking 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 costs of some specialized customer premises equipment (SCPE) used by this population.<sup>178</sup> In the *NDBEDP 2015 NPRM*, we sought comment on whether the NDBEDP should continue to use 400% of the FPG as the criterion for income eligibility, noting that parties responding to the *Permanent NDBEDP Public Notice* had continued to express concerns about the high costs of equipment and services for people who are deaf-blind. In addition, we invited comment on whether there are alternative ways to define low income in the NDBEDP context, and specifically whether the threshold for determining eligibility under the Commission's Lifeline program, which provides discounted telephone service to individuals with incomes at or below 135% of the FPG, is appropriate for the NDBEDP. Finally, the Commission asked whether a household can be deemed low income if its income exceeds the national median household income, measured in 2013, of \$52,250.<sup>179</sup>

66. We conclude that the record supports the continued application of 400% of the FPG as the income ceiling for the permanent NDBEDP,<sup>180</sup> and accordingly we retain this threshold. Most parties commenting on this issue report that this threshold has provided a reasonable approach, in that it has enabled local programs to serve a sizeable portion of individuals who are deaf-blind in their communities.<sup>181</sup> The few commenters who object to this threshold urge an even higher income ceiling, out of concern that some deaf-blind individuals are deemed ineligible to receive communications equipment under the current ceiling.<sup>182</sup> For example, AADB alleges that this threshold may preclude employed participants that still cannot afford thousands of dollars for accessible equipment.<sup>183</sup> Similarly, out of concern that certain deaf-blind individuals may not be able to afford costly equipment (such as Braille displays), the Seattle Lighthouse proposes that the Commission provide equipment on a sliding scale based on the individual's ability to pay.<sup>184</sup>

67. We received little comment in response to our inquiries about the relevance of the Lifeline income threshold and the median U.S. household income to the NDBEDP income eligibility determination.<sup>185</sup> Our own analysis, however, leads us to conclude that the considerations at issue for the

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<sup>178</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5655-56, paras. 33-34 & n.102.

<sup>179</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5276-77, paras. 46-47.

<sup>180</sup> See, e.g., GACHI Comments at 15 (noting that most applicants receive state or government funds, or both, such as SSDA); SRC/CBVI Comments at 3 (supporting continued use of this measure for determining income eligibility, and acknowledging the Commission's sensitivity to the high costs of medical and disability related expenses in establishing this threshold for the pilot program).

<sup>181</sup> See, e.g., ACB Comments at 1 (stating its belief that the current threshold is reasonable); IDBI Comments at 14 (stating that 400% is a "good fit").

<sup>182</sup> See, e.g., Perkins Comments at 19 (noting that although the threshold allowed the provision of equipment to most eligible adults, "[s]ome otherwise eligible children have been disqualified because of their family income").

<sup>183</sup> AADB Comments at 1-2 (stating that "the poverty level should be adjusted or changed," and noting that telephone equipment in hearing households is cheaper than equipment in deaf-blind household and that most hearing people have higher incomes than deaf-blind persons).

<sup>184</sup> Seattle Lighthouse at 5 (raising concerns about not making costly equipment, such as Braille displays, available once a person reaches a certain income level).

<sup>185</sup> Specifically, no commenter addresses the appropriateness of utilizing the Lifeline income ceiling, and while a few commenters respond to the appropriateness of deeming a household as low income if its income exceeds the 2013 national median household income of \$52,250, their comments primarily focus on applying the median itself as the low-income threshold. Specifically, IDBI suggests that the "median threshold may be a better fit for some eligible deaf-blind consumers even though their income may exceed median income." IDBI Comments at 14.

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NDBEDP are very different from those attendant to the income measures for programs such as Lifeline. Unlike individuals in the general population who can purchase off-the-shelf telephone devices at a range of prices, people who are deaf-blind often must purchase equipment that is very expensive, sometimes costing thousands of dollars.<sup>186</sup> For example, during the pilot program, the average cost of NDBEDP equipment distributed to consumers was \$2,632 in 2013-2014 and \$2,285 in 2014-2015, and some consumers received equipment costing over \$12,000 in 2013-2014 and over \$10,000 in 2014-2015.<sup>187</sup> In addition, as explained above and in the *NDBEDP Pilot Program Order*, the unusually high out-of-pocket medical and related costs incurred by people in the deaf-blind community puts them at risk of having to “choose between paying for medical treatment and obtaining the equipment that they need to be able to communicate.”<sup>188</sup> Thus, an analogy to the Lifeline program that largely serves the general population is inapposite to the NDBEDP. For the same reason, we conclude that it is not appropriate to compare the median U.S. household income with the threshold that we are setting for NDBEDP eligibility, given that the generally high expenses incurred by deaf-blind individuals keeps their disposable incomes from being similarly situated to the disposable incomes available to average U.S. households. We reiterate the Commission’s conclusion, made in the *NDBEDP Pilot Program Order*, that “[i]n 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’ – 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.”<sup>189</sup> Further, we note that the hurdles of finding employment are far greater for a person who is deaf-blind than they are for members of the general public.<sup>190</sup> It would defeat the very

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Perkins suggests that eligible children and eligible seniors who reside with their children’s families might be disqualified because of their family income if the Commission adopts the median as a threshold. Perkins Comments at 20.

<sup>186</sup> *NDBEDP Pilot Program Order* 26 FCC Rcd at 5656, para. 36 & n.112 (providing cost estimates as high as \$6,000-\$8,000 for communications equipment for people who are deaf-blind). These costs have not declined in the intervening years since the pilot program began.

<sup>187</sup> Letter from Perkins School for the Blind to CGB, FCC, CG Docket No. 10-210, at 2 (filed June 22, 2016) (Perkins *Ex Parte*) (updating pilot program statistics based on information reported by 30+ certified programs that used the Perkins database); *see also, e.g., NDBEDP 2015 NPRM*, 30 FCC Rcd at 5276, n.138 (reporting that parties responding to the *Permanent NDBEDP Public Notice* described the high cost of equipment that deaf-blind consumers need as “unaffordable” and “cost prohibitive for many”); HumanWare, *Solutions that Empower People with Vision Loss*, <http://www.humanware.com/en-usa/home> (last visited July 18, 2016); HIMS, *Deaf-Blind Solutions*, <http://hims-inc.com/products/deaf-blind-communicators> (last visited July 18, 2016) (highlighting equipment that can cost thousands of dollars).

<sup>188</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5656-57, para. 37; *see also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5656, para. 34 (noting 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” (quoting National Coalition Comments at 5 in that proceeding)). Commenters in that proceeding explained 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. *Id.* at 5656, para. 34 (quoting National Coalition Comments in that proceeding).

<sup>189</sup> *Id.* at 5656, para. 36 (quoting S. Rep. No. 111-386 at 3 (2010) (S. Rep.)).

<sup>190</sup> For example, as of June 2016, 69.0% of people without disabilities participate in the labor force, compared to only 20.6% of people with disabilities. U.S. Department of Labor, Office of Disability Employment Policy, *Disability Statistics*, <http://www.dol.gov/odep> (last visited July 18, 2016). Although there are no known definitive reports about the employment rates for people who are deaf-blind, a longitudinal study of “young adults with disabilities out of high school up to 8 years” reported in 2011 that only 30.1% of such individuals had paid employment outside the home at the time of their interviews—the lowest employment rate among the various types of disabilities represented in the study. *See Lynn Newman et al.*, U.S. Department of Education, *The Post-High*

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purposes of the NDBEDP to promote the independence and productivity of this population were we to force these individuals to lose their program support as soon as they began using the very communications devices they received under this program to acquire earnings.

68. Although we recognize the interest that some commenters have in raising the income threshold even further, absent authority from Congress, the Commission cannot remove the low-income limitation from the eligibility requirements to allow deaf-blind individuals who do not meet the income requirement to receive the program's benefits.<sup>191</sup> Nevertheless, based on our experience with the pilot program, the record in this proceeding, and the general interest by many state programs to reach as many people with disabilities as possible,<sup>192</sup> we conclude that 400% of the FPG strikes the appropriate balance. Accordingly, given the goal of the CVAA – “to ensure that individuals with disabilities are able to utilize fully . . . essential advanced technologies”<sup>193</sup> – and given the unusually high medical and disability-related expenses generally incurred by the covered population, we conclude that the 400% threshold originally adopted by the Commission for the pilot program is appropriate for the permanent NDBEDP.

#### D. Calculation of Income

69. *Income Determinations.* In the *NDBEDP 2015 NPRM*, the Commission sought comment on how income should be calculated to determine eligibility for NDBEDP applicants and specifically asked whether this should be based on the individual's “taxable income,” i.e., the amount used to compute the taxes owed by the applicant.<sup>194</sup> In this regard, the Commission asked whether other federal programs use taxable income to determine low-income program eligibility, whether taxable income should be defined as gross income minus allowable deductions,<sup>195</sup> and whether to consider various non-medical and non-disability related exemptions and state income tax deductions in calculating an individual's income.<sup>196</sup> At the same time, the Commission asked whether the program burdens that might be associated with determining eligibility based on taxable income would be justified by the benefits of this approach.<sup>197</sup>

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*School Outcomes of Young Adults with Disabilities up to 8 Years After High School, A Report from the National Longitudinal Transition Study-2 (NLTS2)* 55 Table 19 (2011),  
<http://ies.ed.gov/ncser/pubs/20113005/pdf/20113005.pdf> (NCSE 2011-3005).

<sup>191</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5276, para. 46.

<sup>192</sup> In addition to or in combination with the NDBEDP, most states have their own programs to distribute accessible communications equipment to persons with various kinds of disabilities. See Telecommunications Equipment Distribution Program Association (TEDPA), *Do You Know Somebody that Has a Hard Time Communicating on the Phone?*, <http://www.tedpa.org/StateProgram.aspx> (last visited July 18, 2016) (providing contact information and links to state equipment distribution programs). Reflecting an apparent objective to serve as many state residents with disabilities in need of accessible devices as possible, at least 16 states have not imposed any income eligibility restrictions on their applicants for equipment distributed outside the NDBEDP. In addition, at least seven states have income eligibility requirements that exceed 400% of the FPG, at least for small households.

<sup>193</sup> S. Rep. at 3; see also *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5656, para. 36.

<sup>194</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5277-78, para. 48-49.

<sup>195</sup> *Id.* at 5277-78, para. 48; see 26 U.S.C. § 63 (defining taxable income). The Commission noted that taxable income includes allowable deductions for disability-related and medical expenses for individuals who itemize their deductions and, for individuals who do not itemize deductions, an additional standard deduction for individuals who are blind. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5277, para. 48. The Commission also noted that these itemized and standard deductions may help to ameliorate the burden of such expenses incurred by individuals who are deaf-blind and result in less taxable income. *Id.*

<sup>196</sup> *Id.* For example, the Commission asked whether non-taxable municipal bond income and mortgage interest deductions should be considered. *Id.*

<sup>197</sup> *Id.* at 5277-78, para. 48.

70. After a careful review of this issue, we decline to base eligibility on an applicant's taxable income in the permanent NDBEDP. We recognize that there is support from several commenters for this approach because it may allow additional individuals into this program.<sup>198</sup> However, we believe that the threshold of 400% of the FPG will sufficiently take into account the high costs of medical, disability and equipment-related expenses incurred by people with disabilities, effectively addressing Congress's dual interests in limiting this program to individuals who have lower incomes, and serving as many eligible individuals as possible. Additionally, we are concerned that, as a program structured with decentralized administrative responsibilities, use of taxable income to determine eligibility would place a significant administrative burden on individual local certified programs with limited financial resources and small workforces, detracting from the program's mission. We also agree with Perkins that the "more complex the formula the greater the chances are of errors" in calculating income.<sup>199</sup> By focusing on total income, the income verification process will be simplified, consistent, and less prone to errors.<sup>200</sup>

71. We therefore affirm the guidance initially issued by the Bureau during the pilot program, which mirrors that used by our Lifeline program, and will continue our practice of basing calculations of income for determining program eligibility on all income received by all members of a household:

This includes salary before deductions for taxes, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, lottery winnings, and the like. The only exceptions are student financial aid, military housing and cost-of-living allowances, irregular income from occasional small jobs such as baby-sitting or lawn mowing and the like.<sup>201</sup>

72. *Household Income.* During the NDBEDP pilot program, in guidance provided to the certified programs, the Bureau explained that an applicant's "income" includes all income received by all members of an applicant's "household."<sup>202</sup> This Bureau guidance went on to define a "household" as:

... any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An "economic unit" consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their

<sup>198</sup> See CAAG Comments at 10 (supporting the use of taxable income because "Deaf-Blind individuals often have high medical and disability-related costs"); IDBI Comments at 15; Seattle Lighthouse Comments at 5; SRC/CBVI Comments at 4.

<sup>199</sup> Perkins Comments at 21.

<sup>200</sup> According to the U.S. Department of Health and Human Services (DHHS), "[f]ederal, state, and local program offices that use the poverty guidelines for eligibility purposes may define income in different ways," and "some agencies compare before-tax income to the poverty guidelines, while other agencies compare after-tax income." DHHS, Office of the Assistant Secretary for Planning and Evaluation, *Frequently Asked Questions Related to the Poverty Guidelines and Poverty* (Sept. 3, 2015) <https://aspe.hhs.gov/frequently-asked-questions-related-poverty-guidelines-and-poverty>. Nevertheless, our research failed to uncover any precedent for using taxable income to determine eligibility to participate in a federal subsidy program.

<sup>201</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5275, 5278, para. 44, n.147; see also *NDBEDP FAQ* 23; 47 CFR § 54.400(f) (defining "income" for the Commission's Lifeline program).

<sup>202</sup> *NDBEDP FAQ* 23; see also 47 CFR § 54.400(f) (defining "income" for the Commission's Lifeline program).

parents or guardians are considered to be part of the same household as their parents or guardians.<sup>203</sup>

73. In the *NDBEDP 2015 NPRM*, we explained that some parties responding to the *Permanent NDBEDP Public Notice* had expressed concerns about the Commission's use of household income in lieu of personal income to determine income eligibility for the NDBEDP. These parties alleged that attributing a multi-person household's income to an applicant might overstate the applicant's income and inappropriately result in disqualification if the applicant was not financially dependent on others in the household. We proposed to clarify that multiple adults living together as roommates or in a multi-person home are not an "economic unit" and therefore not a "household" for purposes of determining income eligibility pursuant to the Bureau's guidance. Similarly, we proposed to make clear that where an adult applicant lives in a multi-person home but does not have access to the financial resources of other individuals living in that household, the income of such individuals should not be included in the applicant's income determination.<sup>204</sup>

74. Commenters generally support this clarification, to ensure that otherwise qualified applicants are not harmed due to household arrangements.<sup>205</sup> We agree that where an applicant lives in a multi-person home but does not have access to the financial resources of others, such applicant is maintaining a financially distinct identity despite the shared living space. In this instance, we conclude that combining the applicant's income and expenses with those of others in the household for purposes of determining the applicant's income eligibility could unfairly disqualify such applicant from the NDBEDP. Accordingly, we clarify that an applicant's income will not include the income of other adults in a household if such adults do not contribute to and share in the income and expenses of the household. By contrast, when an applicant benefits from the income contributions of other household members, we continue to believe that it is appropriate and necessary to consider such contributions in determining NDBEDP eligibility. For example, when an applicant is financially dependent upon others in a household, or has income that is intertwined with those of another household member (as with a spouse), the applicant benefits from such financial resources, and therefore the individuals contributing to these shared funds will be considered part of the economic unit for purposes of his or her income determination.<sup>206</sup>

#### **E. Verification of Income Eligibility**

75. The NDBEDP pilot program rules provide that applicants who provide evidence of enrollment in federal or state subsidy programs that require income thresholds lower than 400% of the FPG will automatically be deemed to be "low income" under the NDBEDP without submitting further verification.<sup>207</sup> Based on support in the record and our experience with the pilot program, we conclude

<sup>203</sup> *NDBEDP FAQ 24*; see also 47 CFR § 54.400(h) (defining "household" for the Commission's Lifeline program).

<sup>204</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5278, para. 49.

<sup>205</sup> See CAAG Comments at 10 (people living in same multi-person home may not be an "economic unit"); HKNC Comments at 5 (stating that the clarification will "improve the program"); IDBI Comments at 15; Perkins Comments at 21 (agreeing that the clarification is helpful, but noting that "it may unfairly penalize an elderly, otherwise-eligible consumer who receives housing and support from an adult child"); SRC/CBVI Comments at 4.

<sup>206</sup> We believe that this outcome effectively addresses the concerns of commenters who urge income eligibility determinations to turn solely on an individual's personal income, rather than household income, out of a concern that applicants who are not financially dependent may be unfairly disqualified from the program if household income, rather than personal income, is used for the income determination. See ATI Comments 3; ATK Comments at 3; ATLA Comments at 3; IOD Comments at 4; WATAP Comments at 4.

<sup>207</sup> The NDBEDP Administrator may identify qualifying state or federal subsidy programs in addition to the specific qualifying federal subsidy programs discussed below. In addition, as discussed below, certified programs verify low-income eligibility by other means for applicants who are not enrolled in a qualifying program.



that this approach is reasonable and reliable, simplifies the income verification process for applicants and certified programs, imposes little burden and expense, and is consistent with the approach adopted for the Commission's Lifeline program.<sup>208</sup> Thus, we will retain this provision under the permanent NDBEDP. In addition, consistent with the Commission's rules governing the Lifeline program, in order to prove participation in one of these programs, an NDBEDP applicant may submit a current or prior year statement of benefits, a notice or letter of participation, program participation documents, or official documents demonstrating that the applicant receives benefits from a qualifying assistance program.<sup>209</sup>

76. To promote consistency across the NDBEDP and Lifeline programs and increase efficiency, we will also modify the list of examples of federal assistance programs that applicants may use to automatically establish eligibility to participate in the NDBEDP to mirror a recently revised list of federal assistance programs used to establish eligibility for the Lifeline program.<sup>210</sup> Under these revised requirements, applicants who receive benefits from certain federal assistance programs – Federal Public Housing Assistance, Supplemental Nutrition Assistance Program, Medicaid, Supplemental Security Income, or Veterans and Survivors Pension Benefit – are deemed income eligible for enrollment in the Lifeline program.<sup>211</sup> The NDBEDP Administrator also may identify state or other federal programs with income eligibility thresholds that do not exceed 400% of the FPG for determining income eligibility for participation in the NDBEDP.<sup>212</sup>

77. We will continue to require certified programs to verify low-income eligibility for applicants who are not enrolled in a qualifying program by using appropriate and reasonable means.<sup>213</sup> Consistent with the Commission's Lifeline program rules, the following documentation may be used to prove income eligibility:

the prior year's state, federal, or Tribal tax return; current income statement from an employer or paycheck stub; a Social Security statement of benefits; a Veterans Administration statement of benefits; a retirement/pension statement of benefits; an

<sup>208</sup> See ACB Comments at 1 (“[I]ndividuals who are receiving Supplemental Nutrition Assistance or Medicaid should be deemed presumptively eligible upon providing verification of enrollment in either of these programs.”); Perkins Comments at 23 (“[T]he Commission should continue permitting individuals enrolled in federal subsidy programs with income thresholds lower than 400% of the FPG to be deemed income eligible for the NDBEDP.”); see also *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5279, para. 51 (seeking comment on retaining this provision); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5657, para. 39; 47 CFR § 54.409(a)-(b) (Lifeline regulations).

<sup>209</sup> See 47 CFR § 54.410(c)(1)(i)(B).

<sup>210</sup> Under the pilot program rules, federal subsidy programs satisfying the income requirements of the NDBEDP have included 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; and Temporary Assistance for Needy Families. 47 CFR § 64.610(d)(2). The Commission recently streamlined these for the Lifeline program, deleting the Low Income Home Energy Assistance Program, National School Lunch Program, and Temporary Assistance for Needy Families, and adding Veterans Pension benefits. *Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4021, para. 167 (2016) (*2016 Lifeline Modernization Order*).

<sup>211</sup> *2016 Lifeline Modernization Order*, 31 FCC Rcd at 4021, para. 167.

<sup>212</sup> See 47 CFR § 64.610(d)(2) (pilot program rule).

<sup>213</sup> See *id.* at § 64.610(d)(2); see also *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5658, para. 39; 47 CFR § 64.610(e)(1)(ii) (requiring certified programs to obtain verification that applicants meet the NDBEDP income eligibility requirements); *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5279, para. 51. Commenters generally supported continuation of this requirement. See, e.g., IDBI Comments at 15 (suggesting that such appropriate and reasonable means could include a review of the individual's most recent income tax return); Perkins Comments at 23 (suggesting that the certified programs should be reasonable in their documentation requirements).

unemployment/Workers' Compensation statement of benefit; federal or Tribal notice letter of participation in General Assistance; or a divorce decree, child support award, or other official document containing income information.<sup>214</sup>

Also consistent with the Lifeline program rules, if the documentation presented “does not cover a full year, such as current pay stubs, the [applicant] must present the same type of documentation covering three consecutive months within the previous twelve months.”<sup>215</sup>

78. In the *NDBEDP 2015 NPRM*, we sought comment on requiring a third party to verify an applicant's income.<sup>216</sup> We decline to adopt this requirement at this time. We are persuaded by commenters that the burdens that such verification would impose upon certified programs, as well as the likely delay in processing applications, are not outweighed by the benefits of imposing this requirement.<sup>217</sup> Because certified programs under the NDBEDP have been allocated a limited amount of funds, we believe that their incentives largely are to extend their dollars to as many qualifying deaf-blind state residents as possible, rather than to approve ineligible applicants. Nor is there any evidence in the record to suggest that NDBEDP certified programs have not been effective in verifying their applicants' incomes, which might justify using a third-party verifier. As such, we find that requiring certified programs to individually verify income eligibility is an appropriate method to accomplish income verification for this program at this time. However, we will continue to monitor certified program operations to evaluate the need for a third party to verify applicant eligibility in the future.<sup>218</sup>

79. Finally, in the *NDBEDP 2015 NPRM*, we proposed to require certified programs to re-verify an individual's income eligibility when the individual applies for new equipment one year or more after the program last verified the individual's income.<sup>219</sup> Commenters generally recognize that income

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<sup>214</sup> 47 CFR § 54.410(b)(1)(i)(B); *see also* AADB Comments at 2; IDBI Comments at 15-16 (supporting using a variety of documents as evidence of low income); Perkins Comments at 23 (stating that, when an applicant does not have a tax return, “other acceptable documentation to prove income eligibility should be accepted by certified programs”).

<sup>215</sup> 47 CFR § 54.410(b)(1)(i)(B); *see also* IDBI Comments at 15-16. In the *2016 Lifeline Modernization Order*, the Commission delegated to the Wireline Competition Bureau the responsibility to work with USAC to develop new forms, update or revise current forms, and retire forms for applicants to establish identity and eligibility for the Lifeline program. *See 2016 Lifeline Modernization Order*, 31 FCC Rcd at 4017, para. 150. As that effort progresses, we direct the Bureau (1) to assess whether use of any new Lifeline documentation forms would be appropriate for applicants to submit data to establish income eligibility to participate in the NDBEDP and (2) to update the guidance the Bureau provides to certified programs with respect to income eligibility documentation, as needed.

<sup>216</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5279, para. 51.

<sup>217</sup> *See* HKNC Comments at 5 (“Asking a third party to verify income would negatively impact the program and slow down services.”); IDBI Comments at 15 (suggesting that using a third-party service could result in cost savings, but that certified programs should decide whether to use such a third-party); Perkins Comments at 23 (arguing that income verification by certified programs is reasonable and reliable, and asserting that third-party verification would be burdensome and slow down the application process); SRC/CBVI Comments at 4 (asserting that third-party verification would result in additional burdens on certified programs, applicants, and the application process).

<sup>218</sup> For example, we may consider the appropriateness of using the National Lifeline Eligibility Verifier, a third party database that will be used to verify the eligibility of Lifeline applicants. *See 2016 Lifeline Modernization Order*, 31 FCC Rcd at 4006, para. 126; *see also* Equifax Workforce Solutions (Equifax) Comments at 1 (describing its third party income verification processes).

<sup>219</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5279, para. 51.

does change over time and agree that re-verification of income eligibility after one year is reasonable.<sup>220</sup> We concur and adopt this requirement for the permanent NDBEDP.

#### F. Other Eligibility Requirements and Considerations

80. *Access to Covered Services.* In the *NDBEDP Pilot Program Order*, the Commission recognized that giving communications equipment to individuals who are deaf-blind who do not have the service needed to use the equipment would not be an effective use of the program's limited resources.<sup>221</sup> For this reason, the pilot program rules permit certified programs to require that NDBEDP equipment recipients demonstrate that they have access to the telecommunications, Internet access, or advanced communications services that the equipment is designed to use and make accessible.<sup>222</sup> Access to such services may be in the form of free wireless, WiFi, or other services made available by public or private entities, such as libraries, coffee shops, local governments, or by the recipient's family, friends, neighbors, or other personal contacts.<sup>223</sup> In the *NDBEDP 2015 NPRM*, we proposed to retain this rule for the permanent NDBEDP.<sup>224</sup> Commenters agree.<sup>225</sup> We continue to believe that it makes little sense to distribute equipment to people who do not have access to the covered services they need to use it and will, therefore, retain this rule in the permanent NDBEDP.

81. *Employment.* The pilot program rules prohibit certified programs from imposing employment-related eligibility requirements for individuals to participate in the program.<sup>226</sup> In the *NDBEDP Pilot Program Order*, the Commission reasoned that requiring equipment recipients to be employed or seeking employment would be inconsistent with the purpose of the program – to expand access to covered services for individuals who are deaf-blind – and could unnecessarily exclude children, students, retirees, and senior citizens.<sup>227</sup> Commenters support retention of this rule for the permanent NDBEDP.<sup>228</sup> We agree, and note as well that there is no statutory basis for such a requirement under the CVAA.<sup>229</sup> For the reasons stated in *NDBEDP Pilot Program Order*, we will therefore retain this rule for the permanent NDBEDP.<sup>230</sup>

82. *Age.* The NDBEDP pilot program rules have placed no restrictions on the age of equipment recipients. As the Commission noted in the *NDBEDP Pilot Program Order*, advocates believe that the program should serve all eligible consumers, regardless of age, and that even very young children who are deaf-blind should have the same opportunity to learn how to use information and communication technology as their peers who are not deaf-blind.<sup>231</sup> Nonetheless, in the *NDBEDP 2015 NPRM*, we

<sup>220</sup> See CDBP Comments at 4; IDBI Comments at 16 (recognizing that income changes over time); HKNC Comments at 5; Perkins Comments at 23.

<sup>221</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5658, para. 42.

<sup>222</sup> 47 CFR § 64.610(d)(4) (pilot program rule).

<sup>223</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5658-59, para. 42.

<sup>224</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5280, para. 53.

<sup>225</sup> See, e.g., Perkins Comments at 23 (suggesting that consumers without services in their homes be required to explain their plans for obtaining service); IDBI Comments at 16; DRM Reply Comments at 25.

<sup>226</sup> 47 CFR § 64.610(d)(3).

<sup>227</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5659, para. 44.

<sup>228</sup> See HKNC Comments at 6 (stating that to require employment would cut participants by more than half); IDBI Comments at 16; Perkins Comments at 23; Seattle Lighthouse Comments at 5; DRM Reply Comments at 25; see also *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5279, para. 54 (proposing to retain this rule).

<sup>229</sup> See 47 U.S.C. § 620; *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5659, para. 44.

<sup>230</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5659, para. 44.

<sup>231</sup> *Id.* at 5659, para. 43.

proposed that a certified program be permitted to focus its NDBEDP resources to meet the needs of low-income deaf-blind *adults* when other resources, such as a state's education department, are available to provide deaf-blind *children* with the communications equipment and related services they need.<sup>232</sup> This approach would be consistent with the principle that the NDBEDP supplements rather than supplants other resources. When those communications needs are not being met through other available resources, however, we proposed to require certified programs to serve eligible applicants of any age.<sup>233</sup>

83. Commenters generally support our proposal, noting the need to communicate, regardless of age.<sup>234</sup> Yet CDBP states that a child should “be developmentally ready, willing and able to use distance communication to participate” in the NDBEDP.<sup>235</sup> We agree that the permanent NDBEDP should continue to serve as a program that supplements, rather than supplants, state or federal resources otherwise available to assist persons who are deaf-blind, and thus, where communications equipment needs are being met through such other available resources, those should be used as a primary source of assistance before turning to the NDBEDP.<sup>236</sup> We further agree that the permanent NDBEDP should not impose mandatory age thresholds. Rather, we direct certified programs to use their expertise to conduct assessments that can determine the extent to which applicants of very young ages – for example under four years of age – are developmentally capable of using the communications equipment being considered for such persons, as well as the communication services that the equipment is designed to access.

## V. EQUIPMENT AND RELATED SERVICES

### A. Equipment

84. As authorized by Section 719 of the Act,<sup>237</sup> the Commission makes TRS Fund monies available to support programs that are approved by the Commission for the distribution of SCPE designed to make telecommunications service,<sup>238</sup> Internet access service,<sup>239</sup> and advanced communications services,<sup>240</sup> including interexchange services<sup>241</sup> and advanced telecommunications and information

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<sup>232</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5281, para. 57.

<sup>233</sup> *Id.*

<sup>234</sup> See ACB Comments at 1; CDBP Comments at 4-5 (suggesting that age limits would “thwart the program’s objectives”); HKNC Comments at 6 (stating that the NDBEDP “also benefits youths, transition age young adults and seniors”); IDBI Comments at 17; Perkins Comments at 25 (asserting that certified programs should serve eligible applicants of any age and assure that NDBEDP funds do not supplant education, vocational rehabilitation, veteran services, or other available resources).

<sup>235</sup> CDBP Comments at 4 (noting that “[t]he standard applied for minors to participate in iCanConnect Wisconsin is a developmental threshold, not a particular age attainment”).

<sup>236</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5690, para. 115; *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5281, para. 57.

<sup>237</sup> 47 U.S.C. § 620(a).

<sup>238</sup> “Telecommunications service” is defined in the Act as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to effectively available directly to the public, regardless of the facilities used.” 47 U.S.C. § 153(53). “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(50).

<sup>239</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5660, n. 138 (explaining that the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 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” (quoting 47 U.S.C. § 231(e)(4)).

services,<sup>242</sup> collectively referred to as “covered services,” accessible to low-income people who are deaf-blind.<sup>243</sup>

85. In the NDBEDP pilot program rules, the Commission determined that under the above provision, reimbursement can be provided to state programs for “[h]ardware, software, and applications, whether separate or in combination, mainstream or specialized, needed by an individual who is deaf-blind to achieve access to” covered services.<sup>244</sup> Equipment-related expenses, including those attributable to maintenance, repairs, warranties, and maintaining an inventory of loaner equipment, as well as the costs of refurbishing and upgrading previously distributed equipment, also have been reimbursable.<sup>245</sup> Programs have not been permitted to impose restrictions on the types of communications technology that a recipient may receive, disable features or functions needed to access covered services, or accept financial arrangements from a vendor that could incentivize the purchase of particular equipment.<sup>246</sup> Certified programs have been allowed to lend or transfer ownership of the distributed equipment to eligible recipients,<sup>247</sup> and, for consumers re-locating out of the state, programs have been required to transfer the account and any control of the consumer’s distributed equipment to new state’s certified program.<sup>248</sup>

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<sup>240</sup> “Advanced communications services” is defined to include “interconnected VoIP service,” “non-interconnected VoIP service,” “electronic messaging service,” and “interoperable video conferencing service.” 47 U.S.C. § 153(1); *see also* 47 CFR § 9.3 (defining “interconnected VoIP service”); 47 U.S.C. § 153(36) (defining “non-interconnected VoIP service”), § 153(19) (defining “electronic messaging service”), § 153(27) (defining “interoperable video conferencing service”).

<sup>241</sup> “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.*, No. 02-CV-209-D, 2004 WL 4960741 (D.Wyo. Sept. 3, 2004) 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).

<sup>242</sup> “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).

<sup>243</sup> *See* 47 U.S.C. § 620(a). These services 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. *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5660, para. 45.

<sup>244</sup> 47 CFR § 64.610(c)(1) (defining “equipment” for purposes of the NDBEDP), § 64.610(f)(1) (authorizing payment to certified programs for the reasonable cost of NDBEDP equipment distributed and related services provided). In the permanent program rules, we introduce the term “Covered Services” to designate the telecommunications, Internet access, and advanced communications services with which reimbursable “equipment” may be used. *See infra* Appendix D (Final Rules) (adding Section 64.6203(a) and (b) to define “Covered Services” and “Equipment”). In order to provide consistency with the Commission’s terminology used in part 14 of the rules for advanced communications services, we use the term “advanced communications services.” 47 CFR § 14.10(c).

<sup>245</sup> 47 CFR § 64.610(f)(2)(i), (iv); *see also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5673-74, paras. 75-76; *NDBEDP Expenses* at 1-2. These have included the costs of returning the equipment to a distribution center and returning it to the consumer once it is refurbished or upgraded.

<sup>246</sup> 47 CFR § 64.610(e)(2) (pilot program rule).

<sup>247</sup> *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5665-66, paras. 57-59.

<sup>248</sup> 47 CFR § 64.610(e)(1)(iii) (requiring certified programs to permit the transfer of an equipment recipient’s account and equipment to or from another state’s NDBEDP certified program when the recipient moves). However, consumers have not been permitted to transfer equipment received under the NDBEDP to another person through sale or otherwise. 47 CFR § 64.610(e)(1)(v); *see also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5666, para. 59.

86. In the *NDBEDP 2015 NPRM*, we tentatively concluded that each of these provisions governing equipment and equipment-related expenses should be retained in the permanent NDBEDP,<sup>249</sup> and sought comment on questions related to the reimbursement of such expenses.<sup>250</sup> For the reasons discussed below, we adopt our tentative conclusion to retain these pilot program rules because we believe that the approach taken for the NDBEDP pilot program has been reasonable and flexible, has benefitted consumers, is authorized by Section 719 of the Act, and has furthered the purpose of the CVAA. The few commenters that opined on these matters support this approach, and no commenters oppose it.<sup>251</sup>

87. *Allowable Equipment.* Under the NDBEDP pilot program, the Commission has not placed restrictions on the “specific brands, models, or types of technology, including hardware, software, and applications, separately or in combination,” that is reimbursable under the NDBEDP.<sup>252</sup> The Commission has recognized that “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.”<sup>253</sup> Additionally, during the pilot program, the Commission has permitted certified programs to distribute multiple pieces of equipment to eligible consumers, as needed, within the constraints of their annual funding allocation, and the desire to make communications accessible for as many individuals who are deaf-blind as possible.<sup>254</sup> As a result, during the NDBEDP pilot program, certified programs distributed a wide range of equipment, including Braille devices, computers, mobile devices, phones, signalers, and software.<sup>255</sup>

88. We retain the pilot program’s definition of “equipment” for purposes of determining reimbursable expenses under the permanent NDBEDP. In so doing, we affirm our previous determination that mainstream or “off-the-shelf” equipment may be provided, along with specialized or assistive equipment, to eligible consumers under this program if it meets the needs of an eligible applicant. While Section 719 refers specifically to “specialized customer premises equipment,” we adopt a broad interpretation of this term because we find it to be consistent with the plain language of this section and Congress’s underlying intent “to help ensure that individuals with disabilities are able to fully utilize communications services and equipment.”<sup>256</sup> In addition, as the Commission noted in the *NDBEDP Pilot Program Order*, this is consistent with principles of universal design, which seek to ensure that products available to the general public are designed so that they can be used for effective communication by as wide a range of individuals as possible, including people with disabilities, regardless of their functional differences.<sup>257</sup>

89. We find sufficient authority to adopt this approach. First, we note that under the plain language of the statute, we are permitted to give funding to “programs” that distribute SCPE.<sup>258</sup>

<sup>249</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5291, para. 74.

<sup>250</sup> *Id.* at 5291-94, paras. 73-79.

<sup>251</sup> See, e.g., HKNC Comments at 8; IDBI Comments at 20 (each generally supporting retention of the equipment distribution provisions of the NDBEDP pilot program).

<sup>252</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5663, para. 52.

<sup>253</sup> *Id.*

<sup>254</sup> *Id.* at 5664-65, para. 55.

<sup>255</sup> See, e.g., iCanConnect, *Equipment*, <http://www.icanconnect.org/equipment> (last visited July 15, 2016) (providing general information about and examples of equipment provided under the NDBEDP).

<sup>256</sup> S. Rep. at 1; H. Rep. No. 111-563 at 19 (2010) (H. Rep.).

<sup>257</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5664, para. 53.

<sup>258</sup> Section 719 states that “the Commission shall establish rules that define as eligible for relay service *support those programs that are approved by the Commission* for the distribution of specialized customer premises equipment designed to make [communications and information services] accessible by low-income individuals who are deaf-

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Accordingly, as in the *NDBEDP Pilot Program Order*, we conclude it is reasonable to interpret the statute as authorizing the funding of a program’s provision of off-the-shelf equipment and services, where reasonably necessary to enable deaf-blind individuals to “utilize fully the essential advanced technologies that have developed since the passing of the Americans with Disabilities Act and subsequent statutes addressing communications accessibility.”<sup>259</sup> As we explained in the *NDBEDP Pilot Program Order*, some mainstream equipment, alone or packaged in combination with specialized software or hardware, may effectively and cost-efficiently meet the needs of some individuals who are deaf-blind.<sup>260</sup> In addition, such equipment is often easier to procure and to support than CPE that is designed for use solely by people with disabilities. We further conclude that the underlying purpose of Section 719 is well served by permitting the distribution of mainstream equipment and the provision of software that serve the same purpose as equipment designed for use solely by people with disabilities, when such mainstream equipment may be more cost-effective and easier to procure and support.<sup>261</sup>

90. We also note that recent developments have brought many types of mainstream equipment within the Commission’s current definitions of SCPE. Specifically, in Parts 6, 7, and 14 of the Commission’s rules, SCPE is defined, in relevant part, as “equipment employed on the premises of a person,” “which is commonly used by individuals with disabilities to achieve access” to telecommunications service, Internet access service, or advanced communications services.<sup>262</sup> Over the past few years, obligations contained in Sections 255, 716, and 718 of the Act – which have, with certain limitations, directed the inclusion of accessibility features in off-the-shelf products and services used with telecommunications and advanced communications services, respectively<sup>263</sup> – have resulted in a greater number of mainstream communications devices being designed to be accessible to people with disabilities – including people who are deaf-blind. As a consequence, such off-the-shelf devices are now more “commonly used” by people who are deaf-blind to access services under Section 719 – i.e., access features that are now built into these devices have, to some extent, eliminated the need for some deaf-blind individuals to obtain adjunct or “specialized” devices in order to use products that are also used by the general population.<sup>264</sup> Such accessible mainstream devices, then, could be said to be one type of

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blind.” 47 U.S.C. § 620(a) (emphasis added); *see also* S. Rep. at 3 (the FCC has authority to “financially support programs that distribute specialized customer premises equipment to low-income individuals who are deaf-blind”); S. Rep. at 10; H. Rep. at 27 (the latter two stating: “This section authorizes the Commission to support programs that distribute specialized customer premises equipment at subsidized rates to low-income individuals who are deaf-blind.”).

<sup>259</sup> S. Rep. at 3.

<sup>260</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5664, para. 53.

<sup>261</sup> Especially in light of the statutory limitation of funding to \$10 million annually, an interpretation of Section 719 that limits funding to the distribution of a narrow category of CPE and that does not permit reimbursement of the provision of functionally equivalent mainstream equipment and software with equivalent functions would patently frustrate the purpose of this provision by precluding programs from using less expensive approaches to serving their clients. Moreover, a very strict construction of this term might prevent us from supporting the distribution of non-SCPE devices that have built-in SCPE features (e.g., magnification software). We expect that the interpretation we adopt today will instead expand the number of consumers who are able to be served with such limited allocations of funding.

<sup>262</sup> 47 CFR §§ 6.3(i), 7.3(i), 14.10(f), (u). These definitions were cited in the *NDBEDP Pilot Program Order*. *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5660, para. 45. Because SCPE is not defined in Section 719 (or elsewhere in the Act), we find that it is reasonable to define this term consistently with the existing definitions of SCPE in the Commission’s rules.

<sup>263</sup> 47 U.S.C. §§ 255, 617, 619.

<sup>264</sup> *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*, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010, 29 FCC Rcd 11909, 11931-34, paras.

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SCPE that are designed to make covered services accessible by low-income individuals who are deaf-blind under Section 719.

91. We agree with commenters who support maintaining the flexibility given to certified programs to determine the types of qualifying equipment most appropriate for their eligible residents.<sup>265</sup> In the permanent NDBEDP, we will continue to allow programs to seek reimbursement for the reasonable costs of equipment best tailored to the needs of their residents, up to each certified program's annual funding allocation. While some individuals use American Sign Language or tactile methods of communication, others use spoken English or Braille, and still others use a combination of various communications methods. Consequently, one individual may need a large screen together with magnification software to read large print, another might need a videophone or iPad to make video calls, another might need a refreshable Braille display, and others might need a mix of off-the-shelf and assistive devices. Flexibility is key to ensuring that individuals are accommodated effectively under this program.<sup>266</sup>

92. Commenters support, and we agree, that certified programs should continue to have the discretion to distribute one or multiple pieces of equipment, as may be necessary "to achieve access to more than one type of covered communications service or to achieve such access in more than one setting."<sup>267</sup> Allowing programs to determine which technology best fits each applicant, and when, is necessary to achieve Congress's purpose to bring the benefits of communications technologies to the intended population.<sup>268</sup>

93. For these same reasons, we will continue to prohibit certified programs from imposing restrictions on specific brands, models or types of communications technology that recipients may receive to access covered services, and from disabling features or functions needed to access covered services.<sup>269</sup>

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40-42 (2014) (finding an increase in the availability of accessible telecommunications devices, and that industry has undertaken efforts to ensure that equipment used for advanced communications services, including web browsers built into mobile phones, are accessible).

<sup>265</sup> See, e.g., DRM Reply Comments at 37 (advocating for flexibility on equipment type and frequency needed to meet the needs of individuals in their communities); HKNC Comments at 8; IDBI Comments at 20; Perkins Comments at 35. Because of the diverse communication needs within the deaf-blind population, certified programs typically conduct assessments of each applicant to determine the type of devices that best fit that individual's needs. See *infra* Part V.B (Assessments).

<sup>266</sup> See iCanConnect, *Equipment*, <http://www.icanconnect.org/equipment> (last visited July 15, 2016). The many tools available reflect the range of needs, including accessories such as specialized keyboards, mounts, switches, headsets and other support devices; Braille equipment that include a wide variety of refreshable displays and sophisticated multipurpose devices; computers and monitors; mobile devices such as cell phones, smartphones, tablets, and associated accessories; telephones such as amplified speaker phones, cordless phones, and related devices that connect to landline telephone service; audible, visual, and vibrating signalers that alert the user to a phone ringing or an incoming message in text; and software, such as screen readers and screen magnifier programs.

<sup>267</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5665, para. 55; IDBI Comments at 20 (placing limits on the number of devices that can be given to eligible individuals "might impede their ability to benefit from the program" and "would be inconsistent with the goal of the program to ensure access to communications services"); Laura White (White) Comments at 2 ("Because of the pieces of equipment I need for independent living, there is a huge expense that would make it hard for me to purchase necessary equipment on my own without the support of . . . iCanConnect."); DRM Reply Comments at 37; HKNC Comments at 8; Perkins Comments at 35.

<sup>268</sup> The flexibility to meet the applicants' individual needs is necessary to ensure effective access to communication services. See 47 U.S.C. § 620(a) (directing the Commission to allow TRS funds to support programs that make modern communications accessible by eligible individuals who are deaf-blind); 47 CFR § 64.610(e)(2) (banning restrictions on types of communications technology that a recipient may receive under the NDBEDP pilot program).

<sup>269</sup> See 47 CFR § 64.610(e)(2)(i)-(ii) (pilot program rules).



Further, as the Commission noted in the *NDBEDP Pilot Program Order*, “[c]ertified 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.”<sup>270</sup> We believe that this requirement has helped to ensure consumer choice and access to the full spectrum of NDBEDP-covered services during the pilot program.<sup>271</sup> We stress, however, that reimbursable equipment must be needed by the specific applicant who is deaf-blind to achieve access to covered services.<sup>272</sup> As explained in the *NDBEDP 2015 NPRM*, the same piece of equipment may be suitable for one individual, yet inappropriate for another.<sup>273</sup> Further, equipment that does not enable access to covered services cannot be funded by the NDBEDP.<sup>274</sup> We will continue to rely on the expertise of certified program personnel to conduct individual needs assessments to determine the equipment most suited to meet each consumer’s unique communication needs. To aid reimbursement certainty, we will continue to allow certified programs to consult with the NDBEDP Administrator about whether a particular piece of equipment specified for an applicant is reimbursable before purchasing it.<sup>275</sup> We note that various commenters support this consultation policy.<sup>276</sup>

94. *Equipment-Related Expenses.* Under the NDBEDP pilot program, the Commission also has reimbursed certified programs for the reasonable costs of equipment-related expenses, including the costs associated with equipment maintenance, repairs, warranties, equipment refurbishments and upgrades, and the costs of having state programs maintain inventories of loaner equipment.<sup>277</sup> We will continue to reimburse certified programs for the reasonable costs of these equipment-related expenses in the permanent NDBEDP. As the Commission explained in the *NDBEDP Pilot Program Order*, because some specialized devices (e.g., refreshable Braille displays) require frequent maintenance and are expensive to repair, the “reasonable costs associated with equipment maintenance and repairs that are not

<sup>270</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5663, para. 52.

<sup>271</sup> *See id.* at 5661-62, paras. 47-48; *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5291, para. 74 (proposing to retain these prohibitions for the permanent program).

<sup>272</sup> *See infra* Appendix D (Final Rules) (adding Section 64.6203(b)).

<sup>273</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5292-93, para. 77.

<sup>274</sup> The NDBEDP does not cover equipment that facilitate other life functions (e.g., hearing aids, wheelchairs). *See NDBEDP Expenses* at 3. *Cf.* White Comments at 3 (proposing that the NDBEDP provide guidance to consumers who need to obtain or replace expensive hearing aids that are needed to access telecommunications, advanced communications, and the Internet).

<sup>275</sup> *See NDBEDP 2015 NPRM*, 30 FCC Rcd at 5293, para. 77 (seeking comment on whether the Commission should continue this practice). Guidance about costs that are currently reimbursable or not reimbursable is also available. *See NDBEDP Expenses*.

<sup>276</sup> *See* DRM Reply Comments at 38; IDBI Comments at 21; Perkins Comments at 37. Perkins notes that some consumers have offered to contribute to the costs associated with equipment upgrades, and asks that we provide state programs the discretion to allow this. However, as Perkins acknowledges, the administrative burdens associated with enabling consumers to pay the difference in cost for such upgrades may be considerable, and such upgrades may result in additional differences in service maintenance agreements, warranties, and other equipment-related costs. Perkins Comments at 20. Therefore, and because we are mindful of commenters’ desire for parity among certified programs, we decline to allow consumers to pay certified programs the difference in cost to upgrade equipment distributed by the program. We do not address the extent to which an equipment recipient may pay an entity other than the certified program the difference in cost to upgrade equipment distributed by the program, but there may be instances when doing so is permissible. For example, when a certified program transfers ownership of equipment to the recipient, the recipient can purchase and download additional software to the device, add memory, or take similar actions to upgrade the equipment.

<sup>277</sup> *See* 47 CFR § 64.610(f)(2)(i), (iv); *see also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5673-74, paras. 75-76; *NDBEDP Expenses* at 1-2.

covered under warranties are eligible for reimbursement” as “necessary components of an effective NDBEDP.”<sup>278</sup> Further, as we have for the pilot program, we will continue to recommend that certified programs provide consumers with the means to return equipment to their certified program, particularly devices or other hardware that the consumer no longer needs or uses, for possible refurbishing and redistribution.<sup>279</sup> To keep current with changes in technology and individual needs, we continue to see merit in reimbursing certified programs for the reasonable costs of equipment refurbishments and upgrades, to ensure consumers have up-to-date equipment.<sup>280</sup> Finally, to help ensure accessible communications in the event that equipment is in need of repair, we continue to encourage certified programs to maintain an inventory of equipment for loan to consumers.<sup>281</sup> In addition, we recognize that during the pilot program, the Commission has permitted certified programs to use their inventories of loaner equipment for other purposes, including the performance of individual assessments. We agree that consumers benefit and assessment outcomes improve when consumers are able to experience, interact with, and try out different technologies and equipment, and for this reason, we include a provision in the permanent NDBEDP rules to make clear that loaner equipment in inventories may be used for this purpose.<sup>282</sup>

95. *Cost Efficiencies and Reassessments.* In the *NDBEDP 2015 NPRM*, we asked how to achieve cost efficiencies in the NDBEDP, and whether the Commission should require certified programs to reassess the communication needs of an equipment recipient when developmental, medical or other changes causes that person’s equipment to no longer meet his or her needs.<sup>283</sup> Commenters confirm that significant changes in hearing, vision, or medical status may trigger the need for reassessment and new equipment,<sup>284</sup> and generally support a reassessment when such changes might affect an individual’s need for communications devices.<sup>285</sup> We encourage equipment recipients to contact their state program when they experience a significant change in their hearing, vision, or other functions that interferes with their ability to use the equipment provided by the program.<sup>286</sup> We further direct certified programs, upon learning of such changes, to reassess the communications needs of individuals to determine whether the equipment provided continues to meet the recipient’s needs or new or additional equipment is needed. We also direct CGB and the NDBEDP Administrator to monitor equipment costs and provide such additional guidance as may be appropriate to the certified programs to improve the cost efficiencies of their equipment purchases. We expect that the ability to analyze reporting and reimbursement claims

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<sup>278</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5673, para. 75. As the Commission has done in the pilot program, we continue to encourage certified programs to obtain warranties for any equipment costing over \$5,000, but permit warranties for equipment of lesser value. *Id.* at 5673-74, para. 76.

<sup>279</sup> *See id.* at 5673, para. 75.

<sup>280</sup> *See id.* at 5665, para. 56. The Seattle Lighthouse suggests establishing “a recycling program of unused, unwanted, and obsolete equipment with proceeds to benefit DeafBlind equipment and training programs.” Seattle Lighthouse Comments at 7. Rather than automatically resell or recycle unused, unwanted, or obsolete equipment, and consistent with our experience during the pilot program, we believe it would be preferable for certified programs to assess the value of unused or returned equipment to determine whether it should be refurbished, redistributed, transferred to another program, resold, recycled, or if none of the foregoing are feasible, discarded.

<sup>281</sup> *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5673, para. 75.

<sup>282</sup> *See infra* Appendix D (Final Rules) (adding Section 64.6213(c)(4)).

<sup>283</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5292, para. 74.

<sup>284</sup> *See, e.g.*, Perkins Comments at 35.

<sup>285</sup> *See* IDBI Comments at 20; White Comments at 1 (“I was diagnosed with Retinitis Pigmentosa (RP) with Usher Syndrome. With this disease my vision and hearing will deteriorate as time goes by and my needs will change in what equipment I will need to stay independent.”).

<sup>286</sup> *See* Perkins Comments at 35.

through the newly created NDBEDP central database will enable improved program oversight in this regard.<sup>287</sup>

96. *Reimbursement Claim Documentation.* Under the pilot program, the Commission has required the following of each certified program: (1) to submit documentation to support claims for reimbursement for equipment and related expenses,<sup>288</sup> and (2) when it has not been obvious that the equipment distributed can be or is commonly used by individuals who are deaf-blind to access covered services (and, therefore, it is not obvious that the equipment qualifies for reimbursement), to submit supplementary documentation upon request by the NDBEDP Administrator or the TRS Fund Administrator. Our experience during the pilot program has confirmed that these requirements effectively serve to safeguard the TRS Fund while ensuring recipients receive the equipment they need, and thus, we will retain these for the permanent NDBEDP.<sup>289</sup>

97. *Discretion for Programs to Lend or Transfer Ownership of Equipment.* During the NDBEDP pilot program, certified programs have been allowed to lend or transfer ownership of equipment to eligible NDBEDP recipients.<sup>290</sup> In the *NDBEDP 2015 NPRM*, we proposed to retain this flexibility in the permanent program.<sup>291</sup> We conclude that the term “distribute” used in Section 719 is broad enough to encompass both lending and transfer of ownership. Further, we have found that consumers have been served well both by programs that lend equipment and by those that transfer ownership of the equipment.<sup>292</sup> We continue to believe, as the Commission explained in the *NDBEDP Pilot Program Order*, that, while lending equipment might be preferable, particularly given the high cost of some specialized equipment, not permitting the transfer of equipment ownership to eligible recipients may exclude entities that are bound by state statutes to use this method of distribution from being certified to participate in the NDBEDP.<sup>293</sup> For those programs that choose to lend equipment, we also will continue to require that recipients be permitted to keep their devices for as long as needed.<sup>294</sup>

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<sup>287</sup> See *infra* Part VII.E (NDBEDP Centralized Database for Reporting and Reimbursement). We received few other comments on how to improve cost efficiencies. Perkins claims that “the NDBEDP Administrator’s process for reviewing equipment reimbursement requests identifies equipment purchase anomalies and assures that equipment purchases are cost effective.” Perkins Comments at 35. Other commenters oppose a rule that would require programs to purchase equipment from a single entity to create greater efficiencies. See, e.g., HKNC Comments at 4 (claiming that this would limit choices, result in delays, and fail to consider other factors, such as the need for ongoing troubleshooting support and technical assistance); LightHouse Comments at 6 (advocating for each certified program “to remain autonomous” with respect to the purchase of equipment to be able to act quickly and respond to unanticipated equipment needs). Given the large range of devices needed to meet the unique needs of the individuals served by the NDBEDP, as well as the wide geographic range of this program, we agree that certified programs need the flexibility to purchase equipment from a variety of vendors, including local vendors who may have experience working with consumers who are deaf-blind or offer local service and maintenance options.

<sup>288</sup> 47 CFR § 64.610(f)(2) (pilot program rule).

<sup>289</sup> In the *NDBEDP 2015 NPRM*, the Commission proposed that this requirement be carried into the permanent program. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5293, para. 77. This requirement is supported in the record by those who addressed this issue. See, e.g., IDBI Comments at 21; Perkins Comments at 37.

<sup>290</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5665-66, paras. 57-59. Loaned equipment would be owned by the certified program distributing that equipment.

<sup>291</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5290-91, paras. 73-74.

<sup>292</sup> See, e.g., iCanConnect News, <http://www.icanconnect.org/news> (last visited July 18, 2015) (providing numerous examples of how individuals have benefitted from a variety of certified equipment distribution programs).

<sup>293</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5666, para. 58.

<sup>294</sup> See *id.* at 5666, para. 59.

98. The pilot program rules also have required certified programs to prohibit recipients from transferring equipment received under the NDBEDP to another person through sale or otherwise.<sup>295</sup> In the *NDBEDP 2015 NPRM*, we tentatively concluded that we would retain this prohibition.<sup>296</sup> Given that the NDBEDP is a federal program with limited resources, and there is support for this prohibition in the record,<sup>297</sup> we will retain it for the permanent NDBEDP.

99. *Notice to Equipment Applicants.* In the *NDBEDP 2015 NPRM*, we also sought comment on the need for a uniform attestation that would, among other things, notify each applicant about the prohibition against transferring equipment and request permission to allow certified programs to disclose information about the applicant, as needed, to minimize any interruption in service if that person moves to another state or a new entity takes over certification for that individual's state.<sup>298</sup> Commenters support an attestation for both of these purposes.<sup>299</sup> We conclude that inclusion of such attestation is necessary for the effective general administration, operation, and oversight of the program. Therefore, and to ensure sufficient notice about the disclosure of personally identifiable information for semiannual reporting and other purposes of administration and operation of the NDBEDP,<sup>300</sup> as well as the need to comply with Commission rules and the consequences of failing to do so, we require the following attestation or a substantially similar attestation on all consumer application forms:

I certify that all information provided on this application, including information about my disability and income, is true, complete, and accurate to the best of my knowledge. I authorize program representatives to verify the information provided.

I permit information about me to be shared with my state's current and successor program managers and representatives for the administration of the program and for the delivery of equipment and services to me. I also permit information about me to be reported to the Federal Communications Commission for the administration, operation, and oversight of the program.

If I am accepted into the program, I agree to use program services solely for the purposes intended. I understand that I may not sell, give, or lend to another person any equipment provided to me by the program.

If I provide any false records or fail to comply with these or other requirements or conditions of the program, program officials may end services to me immediately. Also, if I violate these or other requirements or conditions of the program on purpose, program officials may take legal action against me.

I certify that I have read, understand, and accept these conditions to participate in iCanConnect (the National Deaf-Blind Equipment Distribution Program).

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<sup>295</sup> 47 CFR § 64.610(e)(1)(v); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5666, para. 59.

<sup>296</sup> *Permanent NDBEDP Public Notice*, 30 FCC Rcd at 5293-94, paras. 78-79.

<sup>297</sup> CDBP Comments at 5; Perkins Comments at 38; SRC/CBVI Comments at 4. *But see* DRM Reply Comments at 39 (noting that its lending form includes comparable language, and changes are not necessary.)

<sup>298</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5315-16, para. 122.

<sup>299</sup> IDBI Comments at 21-22, 28; Perkins Comments at 38, 56.

<sup>300</sup> SRC/CBVI reports that, consistent with its obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), they require NDBEDP clients to "sign a form acknowledging that some of their information is being submitted to the FCC." *Id.* at 3; *see also infra* Part VII.E.3 (Inclusion and Protection of Personally Identifiable Information in the Centralized Database).

Certified programs that learn that an individual has unlawfully obtained equipment or has unlawfully sold or transferred equipment that was purchased with NDBEDP funds have an obligation to take appropriate steps to reclaim such equipment or its worth.<sup>301</sup>

100. We also asked in the *NDBEDP 2015 NPRM* whether certified programs should be required to verify on a regular basis that equipment continues to reside in the recipient's possession, noting the possible burdens of such a requirement.<sup>302</sup> Commenters oppose such a requirement, asserting that it is not necessary, would cause programs to incur an expensive administrative cost, and is impractical, given the short lifecycle of much equipment.<sup>303</sup> We agree with commenters that, given the frequency with which equipment is upgraded or replaced due to changes in technology, it would be burdensome and impractical for certified programs to otherwise verify on a regular basis that the equipment continues to reside in the recipient's possession. We therefore will not impose this requirement.

101. *Consumer Relocations.* During the NDBEDP pilot program, when an equipment recipient has relocated to another state, the Commission has required the originating certified program to transfer the consumer's account – as well as any title to and control of the distributed equipment held by the originating program – to the new state's certified program.<sup>304</sup> The receiving state's program has had a corresponding requirement to accept this transfer.<sup>305</sup> As proposed in the *NDBEDP 2015 NPRM*, we will retain this provision in the permanent program because it reduces the need for individuals to reapply to the NDBEDP upon relocating.<sup>306</sup>

102. *Equipment Listings.* We sought comment in the *NDBEDP 2015 NPRM* on how certified programs may be kept apprised of the various types of equipment eligible for distribution under the NDBEDP.<sup>307</sup> We observed that the iCanConnect website, which is maintained as part of the NDBEDP national outreach effort, provides general information about different kinds of equipment that may be provided, along with examples of specific communication devices commonly used by people who are

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<sup>301</sup> Perkins also suggests that “certified programs include language in the consumer application that specifies consumers’ responsibilities to safeguard equipment.” Perkins Comments at 38. We will permit, though do not require, certified programs to instruct equipment recipients about how to care for and safeguard the equipment they receive. Similarly, certified programs may inform equipment recipients about available warranties and service agreements accompanying the equipment, and remind recipients that because program resources are limited, the program may not be able to promptly replace equipment that has been damaged, lost, or stolen.

<sup>302</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5293-94, para. 79.

<sup>303</sup> Perkins Comments at 38 (expected life of equipment given to applicants “may be as little as three years”); SRC/CBVI Comments at 4-5; DRM Reply Comments at 39 (frequent upgrades resulting from the “evolution of technology affords ample opportunity to monitor and confirm appropriate use of the equipment”); CDBP Comments at 5 (suggesting that such verification should be done automatically when the consumer requests additional services).

<sup>304</sup> See 47 CFR § 64.610(e)(1)(iii). We note that a program that transfers ownership of the distributed equipment to the recipient does not retain any title to or control over the equipment. Only when a program lends the equipment to the recipient does it retain any title to or control. In such instances, the former state program would transfer any such remaining title and control to the new state program. If the new state program lends equipment, the recipient might be required (e.g., considering factors such as the age and condition of the equipment) to return the loaned equipment to the new state program. Alternatively, the new state program could choose to transfer ownership of the distributed equipment to the recipient when that consumer relocates to its state.

<sup>305</sup> *Id.* at § 64.610(e)(1)(iv) (pilot program rule).

<sup>306</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5666, para. 59; *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5290, para. 74 (proposing to retain these requirements for the permanent NDBEDP).

<sup>307</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5291-92, paras. 74-76.

deaf-blind.<sup>308</sup> We also sought comment on whether the equipment listed on the iCanConnect website should provide other functionalities, such as the ability to select and compare devices, or to comment on the equipment listed.<sup>309</sup>

103. Commenters generally support the continued availability of an equipment list on the iCanConnect website that would be available to the general public.<sup>310</sup> Commenters also support providing the additional functionalities proposed, but note that this interactivity would necessitate monitoring, in order to ensure accuracy, objectivity and decorum, which would create an added expense.<sup>311</sup> Perkins notes that other forums exist for reviews and personal commentary.<sup>312</sup>

104. Based on the record before us and our experience during the pilot program, we conclude that general information about and examples of equipment provided as part of the iCanConnect website serves an important purpose and should be kept up to date as part of the NDBEDP national outreach efforts.<sup>313</sup> Since the release of the *NDBEDP 2015 NPRM*, the equipment list on the iCanConnect website has been updated quarterly, which we believe is reasonable.<sup>314</sup> We do not at this time require the iCanConnect website to provide other functionalities, such as the ability to compare and contrast different communication devices or to comment on the equipment listed. We believe that the cost to develop and maintain such features (such as moderating input from multiple sources) outweighs the potential benefits.

105. In the *2015 NDBEDP NPRM*, we cautioned that equipment featured on the iCanConnect website may not be appropriate for all program participants, which can only be determined by an individualized needs assessment.<sup>315</sup> Commenters agree, noting that the equipment list on the iCanConnect website should not be treated as a shopping list.<sup>316</sup> We adopt our proposal that the iCanConnect website contain a clear and conspicuous notice that the selection of and reimbursement for any piece of equipment distributed under the NDBEDP must be based on an individual case-by-case

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<sup>308</sup> *Id.* at 5292, para. 76; *see also infra* Part V.F (Outreach); iCanConnect, *Equipment*, <http://www.icanconnect.org/equipment> (last visited July 15, 2016).

<sup>309</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5292, para. 76.

<sup>310</sup> *See, e.g.*, CDBP Comments at 5; IDBI Comments at 21 (supporting keeping the equipment list on the iCanConnect website “reasonably up to date, though it need not be exhaustive”); LightHouse Comments at 5; Perkins Comments at 36 (stating that “[e]quipment listings on the iCanConnect website can provide helpful information for consumers and others involved in the program”).

<sup>311</sup> DRM Reply Comments at 38; IDBI Comments at 21; Perkins Comments at 37.

<sup>312</sup> Perkins Comments at 37 (noting manufacturer websites and other public forums); *see also* CDBP Comments at 5 (“There is an online deaf-blind techie group, <http://groups.google.com/group/dbtechies?hl=en>, whereby individuals can discuss various technologies available to one who is deaf-blind.”).

<sup>313</sup> *See NDBEDP 2015 NPRM*, 30 FCC Rcd at 5292, para. 76 (seeking comment on this aspect of the iCanConnect website, and acknowledging that it may difficult to ensure that this list is exhaustive, given the speed with which technology evolves).

<sup>314</sup> *See* iCanConnect, *Equipment*, <http://www.icanconnect.org/equipment> (last visited July 15, 2016) (“This list will be updated on a quarterly basis.”).

<sup>315</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5292-93, para. 77.

<sup>316</sup> LightHouse Comments at 5; Perkins Comments at 36-37 (noting that individualized assessments should be a “collaborative process” and recommending that “the person who is deaf-blind and a qualified assessor . . . define the individual’s distance communication goals and select the best equipment to meet those goals”); *see also* CDBP Comments at 5.

assessment and be consistent with the NDBEDP rules.<sup>317</sup> The following notice, which currently appears on the iCanConnect website,<sup>318</sup> will satisfy this requirement:

This page provides an overview of the types of distance communication tools the program can provide to help people with significant combined hearing and vision loss stay connected to friends and family. The appearance of a specific piece of equipment on the iCanConnect website does not mean that it is appropriate for every program participant. iCanConnect professionals in each state and local community will work with individual consumers to identify the equipment that addresses that person's specific need, and to be sure that the equipment selected is consistent with the FCC's rules.<sup>319</sup>

#### **B. Assessments**

106. Under the NDBEDP pilot program, the Commission's rules have permitted reimbursement for the reasonable costs of individualized assessments of a deaf-blind individual's communications needs by qualified assistive technology specialists.<sup>320</sup> These costs have included the reasonable travel costs of state program staff and contractors who conduct assessments of applicants to support the distribution of equipment by certified programs, as well as the reasonable costs of support services, such as qualified interpreters.<sup>321</sup> In the *NDBEDP 2015 NPRM*, we tentatively concluded that individual assessments are a continued necessity, and that assessment-related travel should continue to be reimbursed.<sup>322</sup>

107. Given our experience under the pilot program and support in the record, we affirm these tentative conclusions.<sup>323</sup> We conclude, as the Commission concluded in the *NDBEDP Pilot Program*

<sup>317</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5293, para. 77.

<sup>318</sup> iCanConnect, *Equipment*, <http://www.icanconnect.org/equipment> (last visited July 15, 2016) (providing general information about and examples of Braille devices, computers, mobile devices, phones, signalers, and software).

<sup>319</sup> We note as well that the centralized database for the permanent NDBEDP, when established, could also be populated with information about equipment distributed by certified programs across the country. See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5292, para. 75. Along these lines, to the extent technologically feasible, we believe that enabling certified programs to query this database to generate a list of equipment that has been provided through the NDBEDP would be helpful to their operations. See Perkins Comments at 36 (asserting that a list generated in this fashion can advance "valuable knowledge sharing" among programs nationwide); SRC/CBVI Comments at 4 (noting that "it will be helpful to individual programs to see the types of equipment other programs are purchasing for their clients.") Accordingly, we direct the Bureau and the NDBEDP Administrator to consider including this query function in the centralized database. See *infra* Part VII.E (NDBEDP Centralized Database for Reporting and Reimbursement). To the extent that such database contains information about distributed equipment, we further direct inclusion of the notice specified above, pertaining to the need for individualized assessments and compliance with the Commission's rules.

<sup>320</sup> 47 CFR § 64.610(f)(2)(ii); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5668, para. 65.

<sup>321</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5668, para. 65; see also *NDBEDP Expenses* at 1. Travel costs in connection with assessments, including hourly fees earned by assessors while traveling to appointments, totaled \$163,637, or 1.85% of total NDBEDP program and administrative costs in 2013-2014 (Year 2), and \$141,611, or 1.70% of total NDBEDP program and administrative costs in 2014-2015 (Year 3). See *infra* Appendix C (Summary of Pilot Program Expenditures).

<sup>322</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5287, para. 69.

<sup>323</sup> See, e.g., AADB Comments at 2; CAAG Comments at 5; CDBP Comments at 5; HKNC Comments at 7-8; LightHouse Comments at 5; Perkins Comments at 32; DRM Reply Comments at 34-35. See also ACB Comments at 2. ACB identifies a number of skills that it believes program personnel conducting assessments should possess, including the ability to understand linguistic and cultural differences; to assess the consumer's ability to understand various forms of speech output, use Braille, and type on a keyboard; and to determine which technology will work  
(continued....)

*Order*, that given the wide range of hearing and vision disabilities across the deaf-blind population, individualized assessments are “necessary to ensure that the equipment provided to deaf-blind individuals effectively meets their needs,” will “reduce[] the incidence of equipment being abandoned (because it is a poor match to the user’s needs),” and thereby will achieve efficiencies in the NDBEDP.<sup>324</sup> Comments confirm the *NDBEDP Pilot Program Order* finding that reimbursement of such assessments is authorized by the statute when necessary to support the distribution of equipment by certified programs and achieve the goal of providing accessible communications to people who are deaf-blind.<sup>325</sup> We agree that Section 719 is reasonably construed to encompass the costs of assessing what equipment is needed in order to make covered services accessible to a particular individual. Such application of the statute, we conclude, is necessary to ensure that the equipment provided enables deaf-blind individuals to “utilize fully . . . essential advanced technologies.”<sup>326</sup> We further conclude that allowing reimbursement for travel by assessors and support services to consumers’ homes will permit assessors to consider the home environment and communications technology the consumer may already have, when assessing need.<sup>327</sup>

108. We direct the NDBEDP Administrator to continue conducting qualitative reviews of all assessment and associated travel and support service costs to assess their reasonableness in light of the mandate of Section 719. Perkins notes that the varying characteristics that are unique to each consumer – i.e., the nature and extent of the individual’s hearing and vision loss, experience with technology, and communication needs – as well as the assessors’ rates, travel requirements, and support services needed – may all impact the resources needed to conduct a proper assessment.<sup>328</sup> We instruct the NDBEDP Administrator to take these and other relevant factors into consideration in making individual determinations as to the reasonableness of assessment-related costs.

### C. Installation and Training

109. Under the NDBEDP pilot program, the Commission has permitted reimbursement for the reasonable costs of installing NDBEDP distributed equipment and conducting individualized consumer training on how to use such equipment.<sup>329</sup> In the *NDBEDP Pilot Program Order*, the Commission found that having equipment set-up and providing training are essential to ensuring that deaf-blind individuals effectively benefit from the NDBEDP and are needed to prevent the underutilization or abandonment of equipment.<sup>330</sup> In the *NDBEDP 2015 NPRM*, we proposed to continue reimbursing for the reasonable

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best for the consumer. *Id.* ACB’s list of proposed skills may serve as helpful guidance to certified programs when hiring or contracting personnel to conduct assessments.

<sup>324</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5668, para. 65.

<sup>325</sup> *Id.*; see, e.g., Perkins Comments at 32 (noting that the varying characteristics that are unique to each consumer – i.e., the nature and extent of the individual’s hearing and vision loss, experience with technology, and communication needs – as well as the assessors’ rates, travel requirements, and support services needed – may all impact the resources needed to conduct a proper assessment). We note that in addition to comments received on the *NDBEDP 2015 NPRM*, parties responding to the *Permanent NDBEDP Public Notice* unanimously supported the continued reimbursement of the reasonable costs of individualized assessments, including the cost of travel by assessors and support services. See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5287, para. 69.

<sup>326</sup> S. Rep. at 3.

<sup>327</sup> See HKNC Comments at 7-8 (there is value in visiting the applicant’s home to see their current technology, set-up, lighting, work space, etc.); see also CDBP Comments at 5 (“[c]onducting assessments in the home environment is critical in most circumstances and justifies the continued reimbursement of reasonable travel costs for in-home assessments and training”); DRM Reply Comments at 35; *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5287, para. 69.

<sup>328</sup> Perkins Comments at 32.

<sup>329</sup> See 47 CFR § 64.610(f)(2)(iii); see also *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670-71, para. 69.

<sup>330</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670-71, para. 69.



costs of equipment installation and consumer training, and invited comment on how to improve their cost effectiveness.<sup>331</sup>

110. The record supports continuing to allow the reasonable costs of equipment installation and consumer training, including related travel (by trainers) and support services, such as qualified interpreters.<sup>332</sup> We conclude, consistent with the *NDBEDP Pilot Program Order*, that these program features are essential to the efficient and effective distribution of equipment to people who are deaf-blind.<sup>333</sup> We also continue to recognize that the amount of time it takes to train individuals who are deaf-blind on new communications equipment depends on a variety of factors, including a wide range of capabilities and experiences with communications technologies.<sup>334</sup> Finally, we find no basis, at this time, for revisiting the finding in, the *NDBEDP Pilot Program Order* that individualized consumer training through remote methods, such as online training modules or video conferencing, generally is not feasible for deaf-blind individuals.<sup>335</sup>

111. We therefore direct the NDBEDP Administrator to continue to conduct qualitative reviews of each individual claim for reimbursement of installation, training, and associated travel and support service costs to assess their reasonableness. We also instruct the NDBEDP Administrator to take relevant factors into consideration in making determinations as to the reasonableness of training-related costs, including, but not limited to, the individual's capabilities and experience with communications technologies, the forms of communication being used, the need for interpreters or other support services, and whether the consumer is being trained to use multiple devices.

#### D. Center-Based Assessments and Training

112. Under the pilot program, the Commission has not reimbursed certified programs for travel costs that are incurred by a deaf-blind consumer who goes to an NDBEDP center to receive a communications assessment or training.<sup>336</sup> We proposed in the *NDBEDP 2015 NPRM* to permit, but not require, such consumer travel, and to reimburse certified programs for the reasonable costs associated with such travel.<sup>337</sup> We further asked how such compensation should be evaluated, how to determine when such costs are permissible, and whether we should cap the allowable amount for this cost category.<sup>338</sup> Given the limited NDBEDP funding available to each certified program, we also proposed

<sup>331</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5294-95, para. 81.

<sup>332</sup> GACHI Comments at 20; IDBI Comments at 22; LightHouse Comments at 5; Perkins Comments at 39; DRM Reply Comments at 40. Parties responding to the earlier *Permanent NDBEDP Public Notice* also overwhelmingly supported having the Commission continue to allow these costs to ensure that distributed equipment is used effectively. See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5294, para. 81.

<sup>333</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670-71, para. 69; see also Perkins Comments at 39 (concurring).

<sup>334</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670-71, para. 69; see also ACB Comments at 3 (explaining that greater amounts of training may be needed when the individual is using a new form of communication (e.g., ASL or Braille), when an interpreter is needed, or when the consumer is being trained to use multiple devices; Larry Johnson (Johnson) Comments at 1 (describing, based on personal experience, the need for more training when learning to use multiple devices, such as a new phone and a Braille display).

<sup>335</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670-71, para. 69; see also CDBP Comments at 5 (asserting that participants should not be required to have training services delivered remotely).

<sup>336</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5668, para. 65; *NDBEDP Expenses* at 3. An "NDBEDP center" is one or more locations designated by the certified program that are equipped and staffed for the purpose of conducting assessments or training, or both. For example, the NDBEDP center location could be the main office or a satellite office of the certified entity or one of its partners or resources.

<sup>337</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5287, 5296, paras. 70, 83.

<sup>338</sup> *Id.*

that a consumer's travel costs be reimbursed only if these are first pre-approved by the certified program after a determination that the reasonable costs of this travel would be more efficient and effective than having the assessor or trainer travel to the consumer.<sup>339</sup> Finally, we asked why a consumer might need to travel out-of-state for an assessment or training and whether pre-approval from the NDBEDP Administrator should be required for such travel to ensure that the costs are reasonable.<sup>340</sup>

113. Citing benefits to consumers and improved cost efficiencies, commenters support covering the reasonable costs for consumers and their support service providers, when needed, to travel to and from an NDBEDP center for assessments and training.<sup>341</sup> Benefits include the ability to try out a variety of equipment that may not be easily transported, improving consumer choice, and the ability to interact with peers during training.<sup>342</sup>

114. Commenters note the cost benefits of allowing program recipients to travel to a centralized location, explaining that this can allow for the assistance of multiple consumers at one time, and thereby reduce the costs and time for travel, especially to remote areas.<sup>343</sup> Commenters also state that bringing consumers to a location where there are greater resources, such as interpreters and other support services, may be more cost effective than having an assessor and support staff travel to each consumer.<sup>344</sup>

115. Given the record support, as well as the benefits and potential cost savings that can result from allowing reimbursement for consumer travel to NDBEDP centers for assessments or training, we believe it is in the best interest of the permanent NDBEDP to allow reimbursement for such costs, when

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<sup>339</sup> *Id.* at 5289, 5296, paras. 71, 83. The Commission further asked for comment on specific guidelines certified programs should follow to make such determinations. *Id.* at 5289, para. 71.

<sup>340</sup> *Id.* at 5289, 5297, paras. 71, 84.

<sup>341</sup> The following commenters support allowing NDBEDP funding consumer travel for both center-based assessment and training, unless otherwise noted: ACB Comments at 1-2; ATAP Comments at 3; ATK Comments at 4; ATLA Comments at 4; CAAG Comments at 5 (noting support for consumer travel for assessments); CDBP Comments at 5 (noting support for consumer travel for training); GACHI Comments at 20 (noting support for consumer travel for training); HKNC Comments at 7-8; IDBI Comments at 19, 22; IOD Comments at 4; IPAT Comments at 3-4 (noting support for consumer travel for assessments); Johnson Comments at 1 (advocating for flexibility and consumer choice about where the assessment or training is conducted); LightHouse Comments at 5; MoAT Comments at 2; Perkins Comments at 33, 41; WATAP Comments at 4; White Comments at 2 (noting support for assessments conducted at an NDBEDP center to better match consumer needs by enabling them to view and test equipment); DRM Reply Comments at 34-35. In addition to comments received in response to the *NDBEDP 2015 NPRM*, most parties responding to the *Permanent NDBEDP Public Notice* supported reimbursement for consumer travel to an NDBEDP center for assessments when doing so would be more effective for the consumer and more efficient for the program. *See NDBEDP 2015 NPRM*, 30 FCC Rcd at 5287-88, para. 70.

<sup>342</sup> ACB Comments at 1-2 (a variety of equipment "enables both the consumer and evaluator to find the proper fit"); ATAP Comments at 3; IDBI Comments at 19 (noting the need for consumers "to see and test the full spectrum of available equipment" to make informed choices, and considering the cost of consumer travel to be a "wise investment" because it will reduce the risk of equipment returns or exchanges); Johnson Comments at 1; LightHouse Comments at 5 (noting the benefit of forming informal user networks for additional support); MoAT Comments at 2 (noting that, on occasion, "the option for consumers to travel would have been conducive to better meeting their needs"); Perkins Comments at 33, 40 (noting that covering consumer travel costs for center-based training enables more consumer choices and "learning strategies and tips from peers").

<sup>343</sup> *See* HKNC Comments at 7-8 (noting that its HKNC headquarters can provide "sufficient qualified staff to support multiple consumers"); *see also* ATK Comments at 4 (opining that "in some cases it could be more cost-effective to allow for reasonable travel costs of individuals (along with one support service provider, if needed) to obtain an assessment"); ATLA Comments at 4; IOD Comments at 4; Perkins Comments at 33 ("Bringing several consumers to a specified location with a skilled assessor can also be an effective way of providing services."); WATAP Comments at 4.

<sup>344</sup> Perkins Comments at 33; *see also* IDBI Comments at 19.

reasonable. As we noted in the *NDBEDP 2015 NPRM*, a consumer may benefit from an opportunity to try out a variety of equipment at the NDBEDP center that cannot be transported to a consumer's home.<sup>345</sup> In addition to this and other points made in the record, when a consumer travels to an NDBEDP center – rather than having staff or a contractor travel from the center to the consumer – the program can save costs that would have been incurred for the travel time and related expenses of NDBEDP program staff or contractors.<sup>346</sup>

116. However, we will only permit reimbursement of the costs of having a consumer travel to an NDBEDP center when these costs are first pre-approved by the certified program upon a determination that the reasonable costs of this travel would be more efficient and effective than having the assessor travel to the consumer.<sup>347</sup> We agree with commenters that the factors that should go into this determination should include, among other things, the availability of local training and assessment resources, the need to try out equipment that would be too difficult to transport to the consumer's home, and the cost savings for the program.<sup>348</sup> In order to permit such travel costs, state programs must have guidelines in place that are consistent with state or federal travel guidance setting reasonable limits on travel costs.<sup>349</sup> Each certified program will have the further option to request pre-approval by the NDBEDP Administrator before agreeing to reimburse such costs, and will be required to obtain pre-approval from the NDBEDP Administrator for any out-of-state consumer travel costs.<sup>350</sup>

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<sup>345</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5287-88, para. 70.

<sup>346</sup> We expect that most travel by consumers will be in-state travel. However, we understand that in some cases, it may be more cost effective for a consumer to cross state lines to reach the closest center. Perkins Comments at 34, 41. For example, the distance from the NDBEDP center in Watertown, Massachusetts for a consumer who lives in Springfield, Massachusetts is 80 miles, but only 30 miles from the NDBEDP center in Hartford, Connecticut. Likewise, the distance from the NDBEDP center in Parsons, Kansas for a consumer who lives in Topeka, Kansas is 150 miles, but only 80 miles from the NDBEDP center in Blue Springs, Missouri. As such, we agree with commenters that in certain circumstances, it may be more cost efficient to allow reimbursement to certified programs for the reasonable costs of consumer travel to another state, particularly to an adjoining state, for assessment and training. See ATAP Comments at 3; ATK Comments at 4; IDBI Comments at 20, 22; IOD Comments at 4; IPAT Comments at 4 (stipulating that out-of-state travel by consumers for assessments should be rare and only by agreement with certified entities in neighboring states); LightHouse Comments at 5; MoAT Comments at 2; WATAP Comments at 4. The NDBEDP Administrator should determine the extent to which such out-of-state travel would be more cost efficient and effective than in-state travel.

<sup>347</sup> Parties to this proceeding support having certified programs pre-approve these expenses. ATK Comments at 4; ATLA Comments at 4; IDBI Comments at 19-20, 22; IOD Comments at 4; IPAT Comments at 4 (suggesting also that such approval be granted on a case-by-case basis); LightHouse Comments at 5.

<sup>348</sup> See, e.g., DRM Reply Comments at 35. We also agree with Perkins, that consumers should not be forced to travel to an NDBEDP center, even if it is more cost efficient to have them travel than it is for an assessor or trainer to come to their home. See Perkins Comments at 33, 40. Instead, consumers should have the choice of traveling or not, as long as the costs of such travel are reasonable, recognizing that there may be benefits, limitations, or logistical consequences for either option, such as a longer wait time to arrange for an assessment or training. See *id.* at 33-34, 40-41. HKNC also notes that, in some cases, consumers are unable to travel. HKNC Comments at 8.

<sup>349</sup> See, e.g., USA.gov, *Travel for Federal Employees*, <https://www.usa.gov/travel-for-federal-employees> (last visited Aug. 1, 2016).

<sup>350</sup> See IDBI Comments at 19-20 (supporting this approach); see also ATLA Comments at 4 (opposing a cap on consumer travel costs and requesting that the Commission consider “rural states that do not have the luxury of a road system” such as Alaska where “the majority of travel within the state is done by either large or small aircraft”); IPAT Comments at 4 (opposing a cap on in-state consumer travel costs due to “the breadth of services required to serve the unique needs of people with deaf-blindness”). All claims for reimbursement of costs related to consumer travel to a location outside of the consumer's state, as well as costs related to services provided to the consumer (e.g., assessments or training) at a location outside of the consumer's state, should be submitted by the consumer's home state program.

117. The NDBEDP Administrator will review each claim for travel reimbursement, in addition to conducting overall monitoring of travel expenses generally. We believe that having the NDBEDP Administrator monitor these costs will ensure that the costs remain reasonable. We further direct CGB and the NDBEDP Administrator to determine, during the fifth year of the permanent program, whether and to what extent certified programs should continue being reimbursed for the costs associated with consumer travel to an NDBEDP center beyond the fifth year of the permanent program. This assessment should consider all relevant factors, including a comparison of the costs for program personnel travel to the consumer's home versus the costs of consumer travel to an NDBEDP center, cost efficiencies, benefits, or advantages that inure to the program or to the consumer as a result of such compensation, and the availability of program funds.<sup>351</sup>

#### E. Training Trainers

118. For the reasons discussed below, we will allow certified programs to use up to 2.5% of their NDBEDP funding allocations, or approximately \$250,000 annually for all certified programs, for the costs of train-the-trainer activities for the first five years of the permanent NDBEDP. Funding for this purpose will be reallocated from funding previously used for national NDBEDP outreach. We direct the Bureau to determine whether and to what extent such funding should be continued beyond this point during the fifth year of the permanent program.

119. Many individuals who are deaf-blind have had little or no prior experience with distance communications devices or the services that they access, and without training, they are not likely to be able to use the equipment they receive to effectively access communications services. At the same time, organizations representing people who are deaf-blind have often expressed concerns about the shortage of qualified trainers, especially for recipients who use Braille or American Sign Language.<sup>352</sup> While acknowledging such shortage, in the *NDBEDP Pilot Program Order*, the Commission declined to set aside funds during the pilot program to cover the cost of teaching NDBEDP personnel how to train individuals who are deaf-blind on the use of their equipment – i.e., a “train-the-trainer” program – because of the limited funding available to the NDBEDP. Instead, the Commission encouraged certified programs to “maximize the use of limited resources through collaboration and partnerships between and among certified programs on a national or regional basis, as well as partnerships or contracts with other individuals and entities, . . . in order to locate [such] qualified individuals.”<sup>353</sup> However, the Commission added that it might reconsider this decision not to fund train-the-trainer programs in the future, based on information obtained through the pilot program.<sup>354</sup> In the *Permanent NDBEDP Public Notice* and again in the *NDBEDP 2015 NPRM*, we sought comment on how to mitigate the persistent shortage of qualified training personnel through the allocation of NDBEDP funding for train-the-trainer activities.<sup>355</sup>

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<sup>351</sup> During the NDBEDP pilot program, programs did not use all \$10 million available for this program, eliminating the need for programs to choose between reimbursing the costs of equipment and other services and features of the program, such as the costs of travel. If, in the future, a greater number of individuals participate in this program, funding may be tighter, as more consumers seek to obtain equipment. The five year review will take into consideration such competing demands on the available funding. If competing demands for program funds raise concerns about the feasibility of reimbursing these travel costs prior to the five year review, the Bureau may take steps to prioritize the use of such funding to reduce or eliminate such reimbursement, as necessary. In the absence of action by the Commission or the Bureau prior to or during the fifth year of the permanent NDBEDP to modify or terminate reimbursement for travel expenses, we will continue to reimburse certified programs for the reasonable costs associated with program personnel travel and consumer travel to an NDBEDP center.

<sup>352</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5671, para. 70.

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

<sup>355</sup> *Permanent NDBEDP Public Notice*, 29 FCC Rcd at 9459, para. 19; *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5299-5303, paras. 87-95.

120. A substantial majority of commenters support allocating NDBEDP funding for train-the-trainer activities or programs.<sup>356</sup> Commenters report that a continuing shortage of qualified trainers has limited the timeliness, amount, and quality of training that equipment recipients have received during the NDBEDP pilot program.<sup>357</sup> Further, the Commission’s original expectation that the shortage of qualified trainers could be resolved through collaboration and partnerships among certified programs and other entities has not happened.<sup>358</sup> Rather, the continuing shortage shows that other funding sources have not adequately addressed the problem during the pilot program. We thus agree with the majority of commenters that it is both appropriate and necessary at this time to allocate NDBEDP funding for train-the-trainer activities.

121. *Commission Authority.* A primary purpose of the CVAA is “to help ensure that individuals with disabilities are able to fully utilize communications services and equipment.”<sup>359</sup> The record shows an insufficient supply of trainers to meet the existing demand. As the Commission recognized in the *NDBEDP Pilot Program Order*, without training on the use of the equipment they receive, recipients will not be able to effectively benefit from the NDBEDP, and the equipment will be underutilized or abandoned.<sup>360</sup> We thus conclude that the mandate in Section 719 of the Act – for the Commission to support programs approved for the distribution of SCPE designed to make covered services accessible to low-income individuals who are deaf-blind – provides the authority for the Commission to support train-the-trainer activities.<sup>361</sup> We believe that this approach is consistent with the Commission’s prior decision to allow funding support during the NDBEDP pilot program for assessments, equipment installation, and consumer training.<sup>362</sup> Although these services are not part of the act of distributing equipment *per se*, in the *NDBEDP Pilot Program Order*, the Commission found their financial support necessary because they “are essential to the efficient and effective distribution of

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<sup>356</sup> See SRC/CBVI Comments at 5 (“Qualified trainers are essential to the success of this program, as there is little point in purchasing a device for a client if they can’t receive adequate training in its use.”); HKNC Comments at 9 (“Without qualified adaptive technology trainers the national impact of the CVAA is severely impeded.”); ATAP Comments at 3; ATI Comments at 4; ATK Comments at 4; ATLA Comments at 4; CAAG Comments at 6; GACHI Comments at 21; IDBI Comments at 23; IOD Comments at 5; LightHouse Comments at 6; MoAT Comments at 3; Northeast Deaf and Hard of Hearing Services, Inc. (NDHHS) Comments at 1; Perkins Comments at 44; WATAP Comments at 4; CAAG Reply Comments at 3-4.

<sup>357</sup> See, e.g., Perkins Comments at 8 (affirming that “there is a critical shortage of trainers in certain parts of the country”); HKNC Comments at 9 (advocating funding to give trainers necessary skills, experience and coaching); DRM Reply Comments at 46; *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5298, para. 86.

<sup>358</sup> Contrary to GACHI’s suggestion that state vocational rehabilitation agencies may provide an alternate source of train-the-trainer funding (GACHI Comments at 21), there is no evidence in the record that funding by such agencies is available for this purpose in any state, let alone in all states and territories covered by the NDBEDP. In addition, while HKNC did establish a train-the-trainer program with a grant from a private foundation, it appears that most state programs have not been able to afford participation in this program. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5300, para. 88; see also CDBP Comments at 6 (suggesting that funding for such training should come from “other sources rather than NDBEDP,” but failing to identify such other sources); IPAT Comments at 4 (suggesting that funding for such training should be maximized via collaboration among certified programs).

<sup>359</sup> S. Rep. at 1; H. Rep. at 19; *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5299, para. 87.

<sup>360</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670, para. 69.

<sup>361</sup> 47 U.S.C. § 620; *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5299, para. 87 (suggesting the Commission has authority to allocate a portion of the NDBEDP funding to mitigate the shortage of qualified training personnel, given their importance to the success of the program).

<sup>362</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5299, para. 87.

equipment for use by people who are deaf-blind.”<sup>363</sup> Thus, we conclude that funding for train-the-trainer activities is likewise a reasonable use of the Commission’s authority under the CVAA and necessary to achieve its effective implementation.<sup>364</sup>

122. *Amount of Funding.* In the *NDBEDP 2015 NPRM*, we asked whether \$250,000 per year, which equates to 2.5% of the total available funding for the NDBEDP, would be reasonable and sufficient for train-the-trainer activities or programs.<sup>365</sup> To address concerns that train-the-trainer activities not be funded to the detriment of funding for the distribution of equipment and the provision of related services, we proposed to obtain these funds by reallocating a portion of funding previously used for national outreach.<sup>366</sup> We also asked about the extent to which increasing the number of qualified trainers nationwide might result in a reduction in overall program costs by reducing the need for trainers to travel to multiple states to provide training.<sup>367</sup>

123. Most commenters in favor of using NDBEDP funding for train-the-trainer activities support an annual allocation of \$250,000 for this purpose,<sup>368</sup> while a few contend that more than \$250,000 may be needed initially.<sup>369</sup> We conclude that an initial allocation of \$250,000, to be reallocated from funding previously used for national NDBEDP outreach, strikes an effective balance between supporting training activities and preserving funding for the actual distribution of equipment. Accordingly, we direct such allocation for the first five years of the permanent program, with a review of this amount to take place during the fifth year.

124. *Training Program Structure.* In the *NDBEDP 2015 NPRM*, we noted that some parties responding to the *Permanent NDBEDP Public Notice* proposed that the Commission select one or more national entities to operate train-the-trainer activities for all certified programs, in addition or in the alternative to permitting states to use 2.5% of their funding allocations for individual training programs.<sup>370</sup> We sought comment on whether to establish a train-the-trainer program at the national level and, if so, how such funding should be used.<sup>371</sup> In response to the *NDBEDP 2015 NPRM*, although one commenter supports funding a national program,<sup>372</sup> most commenters express a preference for allowing certified

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<sup>363</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670-71, para. 69 (finding that in-person equipment set-up assistance and training are essential to ensure that deaf-blind individuals effectively benefit from the NDBEDP and to prevent the underutilization or abandonment of equipment).

<sup>364</sup> See Perkins Comments at 42; see also IDBI Comments at 23.

<sup>365</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5300, para. 89.

<sup>366</sup> *Id.* at 5300-01, para. 89.

<sup>367</sup> *Id.*

<sup>368</sup> See CAAG Comments at 6; HKNC Comments at 9; IDBI Comments at 23; Perkins Comments at 44; SRC/CBVI Comments at 5; DRM Reply Comments at 46.

<sup>369</sup> LightHouse Comments at 6; Seattle Lighthouse Comments at 6 (arguing that trainer training should be “fully funded” now, and anticipating that the costs will decrease over time as more people become skilled trainers).

<sup>370</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5302, para. 92. A 2.5% allocation would permit, for example, a certified program with a \$100,000 annual allocation to seek reimbursement for up to \$2,500 of train-the-trainer related expenses, or permit a program with an allocation of \$500,000 to seek reimbursement for up to \$12,500 of train-the-trainer related expenses.

<sup>371</sup> *Id.* at 5302, para. 93. The Commission noted as well that it could consider a variety of approaches to construct a national program, including use of existing Commission resources, coordination with another federal agency, and acquisition of services through a competitive procurement. *Id.*

<sup>372</sup> HKNC Comments at 9-11. During the pilot phase, HKNC developed and operated a national train-the-trainer program, used by some of the certified programs, which was funded by a private grant of \$380,000 that expired in March 2015. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5300, para. 88 & n.302. HKNC explains that this support enabled it to work with the deaf-blind community, certified programs, vocational rehabilitation counselors, and other  
(continued....)

programs to develop training capacities within their own states or through agreements with neighboring states.<sup>373</sup> As a number of commenters suggest, a national-level train-the-trainer program may not always permit the face-to-face interaction often needed for effective training and may not be easily tailored to address specific needs that differ from state to state.<sup>374</sup> Given the benefits of allowing individual programs to determine the types of train-the-trainer activities they require, we will permit each certified program to use up to 2.5% of their NDBEDP funding allocations, or approximately \$250,000 annually for all certified programs, for train-the-trainer activities or programs as each deems appropriate. State programs may use these funds for individually state-run, regional or national programs that may be set up for such training purposes.<sup>375</sup>

125. In the *NDBEDP 2015 NPRM*, we asked whether to treat train-the-trainer state program expenditures as an administrative cost or to require separate accounting for train-the-trainer expenses.<sup>376</sup> In the event that such expenditures are treated as an administrative cost, we asked whether the cap on administrative costs should be raised by 2.5%, to 17.5%. Most commenters oppose treating these expenditures as an administrative cost, contending that training trainers is an activity that benefits state residents who are deaf-blind.<sup>377</sup> We agree. Further, we are concerned that increasing the cap on administrative costs to 17.5% might create an incentive for certified programs to forgo train-the-trainer activities in order to apply some of the unused train-the-trainer funds toward other administrative expenses. Such action might, in turn, exacerbate the persistent shortage of qualified trainers that the funding allocation for train-the-trainer activities is intended to abate. Separate accounting of train-the-trainer activities also will facilitate program oversight and evaluation of the use of this funding.<sup>378</sup> For

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stakeholders through three training models: (1) a “seminar” model; (2) an “on-the-road” model to support trainers working with consumers; and (3) a “camp” model wherein deaf-blind instructors worked one-on-one with future deaf-blind trainers. HKNC Comments at 11. HKNC urges the Commission to make a national training program a permanent component of the NDBEDP because this would allow trainer skills and expertise to advance along with emerging technologies and “guarantee quality services for NDBEDP.” *Id.* at 10.

<sup>373</sup> See, e.g., ATAP Comments at 3; ATI Comments at 4; ATK Comments at 4; ATLA Comments at 4; CAAG Comments at 7; CDBP Comments at 6; IOD Comments at 4-5; LightHouse Comments at 6; MoAT Comments at 3; Perkins Comments at 44-46; Seattle Lighthouse Comments at 6; WATAP Comments at 4.

<sup>374</sup> See, e.g., WATAP Comments at 4 (explaining, for example, that “many current and potential trainers in Washington state are themselves deaf-blind and in-person capacity building and training efforts would likely be the only means for meeting their needs due to the communication challenges faced”); Perkins Comments at 44-45 (contending that “certified programs are in the best position to plan for and secure the training needed for their states”); CAAG Comments at 7; LightHouse Comments at 6.

<sup>375</sup> In the *NDBEDP 2015 NPRM*, the Commission asked about the criteria it should consider in the selection of an entity to establish, coordinate, and conduct a train-the-trainer program at the national level. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5303, para. 94. IDBI was the only commenter to respond, suggesting that the “essential criteria” included “experience with the target population; familiarity with Braille and Braille devices; familiarity with emerging communications technologies and end user equipment; staff who are skilled in [American Sign Language] as well as other communication methodologies; and a track record of multi-modal training and ability to maintain pace with the technology.” IDBI Comments at 25. While, as noted above, we decide not to establish a national training program at this time, the guidelines recommended by IDBI may prove useful to states wishing to establish their own training programs and activities.

<sup>376</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5301-02, para. 91.

<sup>377</sup> See ATAP Comments at 3; ATI Comments at 4; ATK Comments at 4; ATLA Comments at 4; IOD Comments at 5; LightHouse Comments at 6; MoAT Comments at 3; Perkins Comments at 45; WATAP Comments at 4; see also IPAT Comments at 4 (opposing 2.5% allocations to train trainers, but, if allowed, the costs should not be treated as administrative costs).

<sup>378</sup> To the extent that a state does not use up its full 2.5% allocation for train-the-trainer activities, it may re-allocate the unused funding to support the distribution of equipment and provision of related services to eligible consumers.

these reasons, we require certified programs to submit requests for reimbursement for the reasonable costs of train-the-trainer activities, which may be reimbursed up to 2.5% of a program's annual allocation.

126. *Training Formats.* In the *NDBEDP 2015 NPRM*, we asked whether we should require or permit training to be conducted in a variety of formats, such as individual training, group training, and distance training through online resources.<sup>379</sup> In addition, we asked whether we should permit reimbursement for train-the-trainer activities conducted by HKNC, certified programs, equipment manufacturers or vendors, or other entities.<sup>380</sup> We also sought comment on whether and how we should encourage the employment of individuals who are deaf-blind, including NDBEDP equipment recipients, as trainers.<sup>381</sup>

127. Commenters generally support granting certified programs considerable flexibility in spending their train-the-trainer funding allocation, and are in agreement that the Commission should allow use of these funds for individual, group, distance or online training activities by a wide range of entities.<sup>382</sup> Several commenters also find value in permitting vendor-supported training.<sup>383</sup> However, in order to minimize the risk of having certified programs favor certain manufacturers or vendors, IDBI suggests having “a clear policy, such as a code of professional [conduct]” to cover such training, and further recommends a prohibition against reimbursement of equipment manufacturers and vendors for training trainers.<sup>384</sup>

128. We agree that the needs of certified programs and the population they serve, along with differences in the skills and learning styles of their individual trainers, cannot be appropriately addressed without flexibility to choose from among various available training options. Therefore, we will permit reimbursement for a range of train-the-trainer activities, including one-on-one on-the-job training, as well as individual, group, distance or online training activities and programs conducted by HKNC, certified programs, and other entities. We further agree that it is not appropriate for the NDBEDP to compensate equipment manufacturers or vendors for training trainers on how to use the equipment they manufacture or sell because these costs should be subsumed within the manufacturer's or vendor's costs of doing business. At the same time, we understand that equipment manufacturers and vendors may be particularly well-suited to provide such training and having these entities provide training may be a cost-effective option, or in fact the only option available, given the persistent shortage of qualified trainers. For these reasons, though we decline to provide reimbursement for a company's training fees, we will reimburse certified programs for their reasonable costs to obtain such training (e.g., to cover the cost of their trainee's time and travel).

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<sup>379</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5303, para. 95.

<sup>380</sup> *Id.* at 5302, para. 91 (noting, for example, the possible risk of having certified programs favor the selection of equipment from manufacturers or vendors that conduct train-the-trainer activities).

<sup>381</sup> *Id.* at 5303, para. 95.

<sup>382</sup> *See, e.g.*, DRM Reply Comments at 48; IDBI Comments at 25; LightHouse Comments at 6; Perkins Comments at 44, 46 (seeking “flexibility to provide training in the format [states] deem to be the most appropriate,” including the enrollment of staff in activities conducted by HKNC and other entities, training activities by certified programs, and on-the-job training). The Seattle Lighthouse offers the following guidance to ensure training is accessible to deaf-blind trainees: training over several days, rather than short intensive sessions; training in a physically and visually accessible space; adequate breaks; providing information and materials in alternative formats with enough time to absorb them; providing audio amplification and assistive listening systems; and providing on-site support services. Seattle Lighthouse Comments at 6.

<sup>383</sup> DRM Reply Comments at 48 (suggesting that a program might seek out training by a vendor whose equipment is already slated for distribution by that program).

<sup>384</sup> IDBI Comments at 24.



129. In response to comments filed in this proceeding, we also encourage certified programs and other entities to train individuals who are deaf-blind to become qualified trainers, so that NDBEDP equipment recipients in turn can be trained by those with experience and knowledge of the equipment.<sup>385</sup>

130. *Fifth Year Assessment.* We will provide NDBEDP support for train-the-trainer efforts during the first five years of the permanent program, and direct the Bureau to monitor such efforts during this period, for the purpose of making a recommendation to the Commission during the fifth year of the NDBEDP on whether and to what extent funding should be continued beyond that time.<sup>386</sup> In making this determination, the Bureau should consider whether train-the-trainer activities and programs, as implemented, have advanced the purpose of the statute “to help ensure that individuals with disabilities are able to fully utilize communications services and equipment.”<sup>387</sup> To facilitate such assessment, we direct the Bureau and the NDBEDP Administrator to consult with certified programs and other stakeholders, via public notice or by other means, to ascertain the extent to which train-the-trainer funding has mitigated the shortage of qualified trainers and improved the timeliness, amount, and quality of instruction provided to equipment recipients.<sup>388</sup> We believe that certified programs and other stakeholders, through these and other measures, will be in the best position, given their first-hand knowledge, to inform the Commission’s assessment and determination about whether and to what extent funding for train-the-trainer activities and programs should be continued.

## F. Outreach

### 1. National Outreach

131. Each year since the commencement of the pilot program, the Commission has set aside \$500,000 of the \$10 million annual NDBEDP allocation to conduct national outreach.<sup>389</sup> As the Commission explained in the *NDBEDP Pilot Program Order*, significant initial funding for outreach was necessary to launch the pilot program, because eligible individuals needed to become informed about the availability of the program before distribution of equipment could take place.<sup>390</sup> The Commission determined that use of this funding to support certified programs through national outreach efforts was an essential step to achieving the overall purpose of Section 719 of the Act, i.e., to enable low-income people

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<sup>385</sup> See, e.g., CAAG Comments at 7; IDBI Comments at 25; Perkins Comments at 46. In addition, training of individuals who are deaf-blind to be trainers may ultimately lead to increased employment opportunities for such individuals. CAAG Comments at 7; IDBI Comments at 25; Perkins Comments at 46.

<sup>386</sup> Some commenters recommend against limiting approval for funding for train-the-trainer activities to a number of years because they claim ongoing training is needed to address trainer attrition, ensure that trainers are available to meet consumers’ individual needs, and keep pace with changes in technology. Perkins Comments at 43-44; SRC/CBVI Comments at 5; DRM Reply Comments at 47. As the perpetual need for such funding has not been established, we conclude that the better alternative is to have a review of training support at a specified period of time. In light of concerns about the need for ongoing training to keep pace with changes in technology, however, funding for train-the-trainer activities will be continued at this level in the absence of action by the Commission or the Bureau to modify or terminate such support beyond the fifth year of the permanent NDBEDP.

<sup>387</sup> S. Rep. at 1; H. Rep. at 19.

<sup>388</sup> See generally Perkins Comments at 46. Among other things, Perkins recommends measuring increases in the number of trainers in states that have reported a shortage, and measuring certified programs’ satisfaction with training that is targeted to increase expertise on certain kinds of equipment. *Id.* at 43. Such factors as reductions in the time consumers wait for training, how much consumer training is provided, consumer proficiency before and after training, and improvements in consumer satisfaction with training may be relevant to this analysis. DRM Reply Comments at 47; see also SRC/CBVI Comments at 5 (recommending targeted surveys to consumers to assess the extent to which train-the-trainer activities have increased a program’s ability to address the instructional needs of these individuals).

<sup>389</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5281, para. 58.

<sup>390</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5676, para. 80.

who are deaf-blind to get the equipment they need to have access to covered services.<sup>391</sup> National outreach activities under the NDBEDP have supplemented the local outreach efforts conducted by state programs.<sup>392</sup>

132. In 2012, the Bureau selected Perkins, which has partnered with HKNC, FableVision, Inc., and others, to be the national outreach coordinator for the NDBEDP pilot program.<sup>393</sup> Their efforts resulted in, among other things, an NDBEDP website ([www.iCanConnect.org](http://www.iCanConnect.org)),<sup>394</sup> an active social media presence,<sup>395</sup> public service announcements (PSAs),<sup>396</sup> and advertisements on billboards and in magazines.<sup>397</sup> In the *NDBEDP 2015 NPRM*, we proposed to continue funding national outreach efforts for each of the permanent program's first three years but at a reduced level of \$250,000, given the success of national and local outreach efforts in publicizing the NDBEDP.<sup>398</sup> We sought comment on how such a reduction in funding would affect national outreach efforts and how to ensure that national outreach efforts are cost effective.<sup>399</sup>

133. Virtually all commenters addressing this issue support continuing some national outreach activities.<sup>400</sup> While some commenters assert that local outreach efforts have been more effective than, or

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<sup>391</sup> See *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5675, para. 79; see also *Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act*, Report and Order and Request for Comments, 6 FCC Rcd 4657, 4663, para. 28 (1991) (*TRS I*) (adopting the TRS outreach requirement); *Structure and Practice of the Video Relay Service Program et al.*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8632, para. 27 (2013) (*VRS Reform Order*) (noting the importance of outreach in the TRS program, especially in the period when "TRS was a relatively novel service," to achieve Congress's goal of making TRS widely available in the most efficient manner).

<sup>392</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5281, para. 58.

<sup>393</sup> *Id.*; *Perkins School for the Blind to Conduct National Outreach for the National Deaf-Blind Equipment Distribution Program*, Public Notice, 27 FCC Rcd 6143 (CGB 2012).

<sup>394</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5281-82, para. 58. For example, the iCanConnect website promotes the NDBEDP and provides contact and other information for each of the 53 certified programs, covers news media and personal stories about how the program has benefitted equipment recipients, and provides an overview of the types of communications equipment the program can provide. *Id.* at 5282, n.175.

<sup>395</sup> *Id.* at 5282, n.176; <https://www.facebook.com/iCanConnect.org>; <https://twitter.com/iCanConnect1>.

<sup>396</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5282, n.177; iCanConnect, :60 PSA Captioned, YouTube (May 7, 2014), <http://www.youtube.com/watch?v=wvO6d9SgQ6s> (60-second PSA); iCanConnect, :30 PSA Captioned, YouTube (May 7, 2014), <http://www.youtube.com/watch?v=DRlm8M7ieck> (30-second PSA); iCanConnect, :10 PSA Captioned, YouTube (May 7, 2014), <http://www.youtube.com/watch?v=eRAJKCINY9o> (10-second PSA).

<sup>397</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5282, n.178; iCanConnect, Year One Highlights, National Call, September 26, 2013, <http://apps.fcc.gov/ecfs/document/view?id=7520958851> (filed at the FCC on Nov. 20, 2013) (providing a synopsis of the first year of the NDBEDP pilot program, including national marketing and outreach efforts) (*Year One Highlights*). In the *NDBEDP 2015 NPRM*, we described additional activities that Perkins conducted as part of its NDBEDP national outreach efforts, including establishing an 800 number and call center for program inquiries and referrals; producing marketing materials for use by state programs; conducting monthly conference calls among certified programs, the FCC, and the TRS Fund Administrator; and supporting state program efforts to collect and share program success stories. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5282, para. 59.

<sup>398</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5283, paras. 60-61.

<sup>399</sup> *Id.* at 5283, para. 61.

<sup>400</sup> See ACB Comments at 2; ATAP Comments at 3; ATI Comments at 3; ATK Comments at 4; ATLA Comments at 3; CAAG Comments at 11; CDBP Comments at 5; GACHI Comments at 19; HKNC Comments at 6; IDBI Comments at 17-18; IOD Comments at 4; IPAT Comments at 3; LightHouse Comments at 4; MoAT Comments at 2; Perkins Comments at 26; Seattle Lighthouse Comments at 5-6; WATAP Comments at 4; CAAG Reply Comments at 6.

are duplicative of, national outreach efforts,<sup>401</sup> most of these commenters see value in maintaining some funding to support national outreach activities, including a national website, an 800 number and call center, the provision of digital marketing materials that can be customized by state programs or drive traffic to the iCanConnect webpages and social media, and monthly conference calls to provide support to states.<sup>402</sup> Other commenters contend that national outreach efforts are necessary to support certified programs because the latter may be more focused on distributing equipment and providing related services to consumers rather than local outreach and marketing.<sup>403</sup>

134. We conclude that we continue to have sufficient authority to support outreach activities because informing individuals who are deaf-blind about the availability of equipment is an essential step needed to support program efforts to distribute such equipment.<sup>404</sup> Based on the comments submitted, we find that some national outreach, overseen by the NDBEDP Administrator, continues to be needed to raise awareness about the program,<sup>405</sup> educate potential applicants on the ways that broadband and other communication services can enhance their lives, and instruct them on how to apply.

135. Although there is some concern about the amount of the proposed reduction,<sup>406</sup> several commenters express support for this Commission's proposal.<sup>407</sup> Given this and the significant progress made in raising awareness of the NDBEDP during the pilot program, we conclude that an annual allocation of \$250,000 is likely to be sufficient at this time to ensure continuation of the critical components of the national outreach efforts.<sup>408</sup> During the fifth year of the permanent program, we direct the Bureau and the NDBEDP Administrator to determine the extent to which the allocation for national

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<sup>401</sup> See ATK Comments at 4 (stating that “[p]opulations of large, rural states appeared to be untouched” by national outreach efforts); ATAP Comments at 3; ATI Comments at 3; ATLA Comments at 3; GACHI Comments at 18 (reporting that most of its applicants were informed about the program through local outreach efforts); IOD Comments at 4; IPAT Comments 3 (asserting that national outreach efforts “did not reach the market of consumers served by the certified entity in North Dakota”); LightHouse Comments at 4; MoAT Comments at 2; WATAP Comments at 4 (stating that “Washington has benefited little from the national outreach effort”). Some of these commenters support giving certified programs additional funds for local outreach. See, e.g., ATK Comments at 4; GACHI Comments at 18; IPAT Comments at 3.

<sup>402</sup> See ATAP Comments at 3; ATI Comments at 3; ATK Comments at 4; ATLA Comments at 3; CDBP Comments at 5; IOD Comments at 4; LightHouse Comments at 4; MoAT Comments at 2; WATAP Comments at 4. GACHI and IDBI add that national outreach funding also should continue to be used to gather state program success stories. GACHI Comments at 19; IDBI Comments at 18.

<sup>403</sup> See Perkins Comments at 28 (stating that “[m]any certified programs are run by small to medium sized non-profit agencies that do not have marketing staff or experience”); HKNC Comments at 6; CAAG Comments at 11 (noting that the national iCanConnect website “has proven to be an invaluable tool for state programs and service providers”); CAAG Reply Comments at 6 (suggesting that the Commission “encourage state programs to use the resources developed by [Perkins] in their individual state programs to reduce state costs”).

<sup>404</sup> See 47 U.S.C. §620(a); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5675, para. 79; see also *TRS I*, 6 FCC Rcd at 4663 para. 28 (adopting the TRS outreach requirement); *VRS Reform Order*, 28 FCC Rcd at 8632, para. 27 (noting the importance of outreach in the TRS program, especially in the period when “TRS was a relatively novel service,” to achieve Congress’s goal of making TRS widely available in the most efficient manner).

<sup>405</sup> See Perkins Comments at 26-27.

<sup>406</sup> *Id.* at 27.

<sup>407</sup> See IDBI Comments at 18 (concurring that \$250,000 “will be sufficient to continue the outreach activities, including maintenance of the iCanConnect website, marketing materials, support to states to gather and promote success stories, and others”); IPAT Comments at 3; DRM Reply Comments at 29 (also supporting annual adjustments to the level of funding based on a “measurement of need”).

<sup>408</sup> We therefore decline to adopt CAAG’s proposal to gradually reduce funding to \$400,000 the first program year, \$300,000 the second year, and \$250,000 the fifth year. See CAAG Comments at 11.

outreach efforts should be continued or adjusted, to ensure that funding allocated for the NDBEDP is used efficiently.<sup>409</sup>

136. To avoid any disruption and loss of expertise developed by the current national outreach arm of the NDBEDP, we authorize Perkins to continue conducting national outreach activities for the first five years of the permanent program. We direct the Bureau, as part of its evaluation of the NDBEDP national outreach efforts during the fifth year of the permanent program, to determine whether to extend Perkins's national outreach services for another five-year period or to invite new entities, via a public notice, to submit applications to conduct these efforts.<sup>410</sup>

137. *Targeted Marketing Efforts.* In the *NDBEDP 2015 NPRM*, we sought comment on whether national outreach activities should target specific groups that may be unserved or underserved and on specific methods of communication or activities that should be used to reach such groups.<sup>411</sup> Based on the comments received, we conclude that national outreach efforts will be most effective at this point if they are targeted – at least in part – to reach eligible segments of the population that may be less aware of the NDBEDP, including senior citizens who may not identify as having a disability,<sup>412</sup> individuals who are congenitally blind or deaf and who experience a second sensory loss later in life,<sup>413</sup> ASL users,<sup>414</sup> and individuals with limited English proficiency.<sup>415</sup> To the extent feasible given the reduction in national outreach efforts, methods of reaching such groups could include dissemination of videos in ASL and material in languages other than English, and development of outreach channels in organizations that provide services to the aging population.<sup>416</sup>

138. *Performance and Oversight.* In the *NDBEDP 2015 NPRM*, we sought input on performance goals and measures to facilitate oversight of the NDBEDP's national outreach efforts, including the costs and benefits of collecting various categories of data.<sup>417</sup> To evaluate the efficacy of national outreach efforts during the fifth year of the program, we establish the following three performance goals: (1) to build awareness of the iCanConnect program generally; (2) to build awareness

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<sup>409</sup> To avoid a lapse in the provision of critical national outreach components – website, call center, digital marketing materials, social media, and support to state programs – funding for national outreach will continue to be available at this level beyond the fifth year of the permanent NDBEDP in the absence of action by the Commission or the Bureau to modify or terminate such support.

<sup>410</sup> In the *NDBEDP 2015 NPRM*, we stated that we would consider a variety of in-house, regulatory, and procurement strategies to provide national outreach for the NDBEDP. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5283, para. 60. These approaches, alone or in combination, include using existing Commission staff and resources, engaging another agency with expertise through an Interagency agreement, acquiring these services through a competitive procurement, evaluating whether to modify an existing contract to satisfy the program requirements, or inviting entities, via a public notice, to submit applications for the role of national outreach coordinator. *Id.*

<sup>411</sup> *Id.* at 5284, para. 62.

<sup>412</sup> See IDBI Comments at 18; IPAT Comments at 3 (reporting that “North Dakota leads the nation in older adults” and that “estimates of the incidence of dual sensory loss for this population range from 7.3% to 21%”); Perkins Comments at 28 (noting that the fastest growing population of potential NDBEDP beneficiaries consists of elderly individuals with age-related hearing and vision loss).

<sup>413</sup> ACB Comments at 2; Perkins Comments at 28.

<sup>414</sup> CAAG Comments at 11; IDBI Comments at 18; Perkins Comments at 28.

<sup>415</sup> IDBI Comments at 18; Perkins Comments at 28 (recommending development of outreach content in Spanish).

<sup>416</sup> See, e.g., IDBI Comments at 18 (recommending that there be a way to enable the iCanConnect website to be translated automatically to languages other than English); Perkins Comments at 28 (providing, as examples, government agencies, membership organizations, family caregiving groups, minority aging organizations, and nutrition providers).

<sup>417</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5284, para. 63.

of the iCanConnect program among certain target populations; and (3) to increase application to and utilization of the program by the intended population of low-income people who are deaf-blind. We further adopt the following performance metrics to assess the effectiveness of our national outreach efforts to meet each of these goals. First, the effectiveness of efforts to increase general awareness will be measured by traffic to NDBEDP call centers, iCanConnect website traffic, NDBEDP application downloads, and impressions on social media.<sup>418</sup> Second, the effectiveness of efforts to increase awareness by target populations will be measured by views of ASL videos prepared by the program, views or downloads of information in languages other than English, and responses to digital marketing efforts directed to resources related to target populations.<sup>419</sup> Third, to determine the extent to which our national outreach efforts increase utilization of the NDBEDP by the intended population, we will measure the number of individual applicants to the program, as well as the number of individuals who successfully receive NDBEDP equipment annually.<sup>420</sup> While other metrics suggested by commenters may be potentially useful,<sup>421</sup> we wish to limit the number of measures employed in order to ensure that performance measurement for this relatively small program does not become a burdensome and unwieldy process.<sup>422</sup> However, we direct the Bureau and the NDBEDP Administrator to adjust or modify these performance goals and metrics as may be needed going forward.

139. During the pilot program, Perkins submitted national outreach cost data every three months for reimbursement purposes, as well as periodic reports on its national outreach efforts.<sup>423</sup> Because we found this information to be both timely and informative, we require that, going forward, Perkins, and any subsequent entity that may be selected by the Commission to conduct national outreach, submit cost data for reimbursement purposes every three months, and, at a minimum, a summary and analysis of national outreach activities on an annual basis, in a format that will enable the NDBEDP Administrator to monitor the costs and efficacy of its outreach activities. This data will assist the NDBEDP Administrator to determine appropriate budgets for national outreach to the extent this is warranted in the future.

## 2. Local Outreach

140. In addition to allocating funding for national outreach, the Commission has required and reimbursed local outreach during each year of the pilot program.<sup>424</sup> In the *NDBEDP 2015 NPRM*, we tentatively concluded that we should continue these features in the permanent NDBEDP, while seeking

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<sup>418</sup> See Perkins Comments at 26, 29 (supporting these and other measures). We encourage certified programs to make their consumer applications available through the [www.iCanConnect.org](http://www.iCanConnect.org) state pages to enable tracking the number of application downloads as a performance metric. See *id.* at 31. Any applications provided on this site must be provided in formats that are accessible to applicants. We also encourage certified programs to keep their contact information on the [www.iCanConnect.org](http://www.iCanConnect.org) state pages up to date to enable referrals. See *id.*

<sup>419</sup> See *id.* at 26, 29 (supporting these and other measures).

<sup>420</sup> While we establish this as a performance goal at this time, we note that changes in the number of applicants and equipment recipients may be due to a wide range of factors, one of which may be national outreach. Further, we note that in order to effectively measure its success, we will need to gather reliable data through uniform reporting into a centralized database. See *infra* Part VII.E (NDBEDP Centralized Database for Reporting and Reimbursement).

<sup>421</sup> For example, Perkins suggests that we also measure performance of outreach efforts by tracking growth in social media channels and media impressions. Perkins Comments at 26.

<sup>422</sup> See *GAO GPR Report* at 25 (“The number of measures for each goal at a given organizational level should be limited to the vital few.”).

<sup>423</sup> See, e.g., *Year One Highlights*.

<sup>424</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5284-85, para. 64; see 47 CFR § 64.610(f)(2)(v); see also *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5675, para. 79.

input on the scope of local outreach, the level of funding needed, and performance metrics and criteria to evaluate local outreach efforts.<sup>425</sup>

141. Commenters responding to the *NDBEDP 2015 NPRM* generally support – and no party opposes – the continuation of local outreach activities.<sup>426</sup> We conclude that local outreach is needed along with national outreach due to the unique needs of each state program.<sup>427</sup> In addition, local outreach can raise awareness of the NDBEDP in ways that are not always possible and among populations that are not necessarily reached using national media.<sup>428</sup> We therefore affirm our tentative conclusion to require certified programs to conduct local outreach activities reasonably calculated to inform their state residents about the NDBEDP, including the development and maintenance of their NDBEDP webpages,<sup>429</sup> and to reimburse programs for the reasonable costs of such outreach.<sup>430</sup> In addition we encourage certified programs to conduct local outreach activities in languages other than English, such as Spanish, that may be prevalent in their states.

142. We continue to require local outreach materials to be fully accessible to people with disabilities,<sup>431</sup> noting that certified programs, whether they are entities operated by state or local governments or privately operated, already are required to ensure accessibility under the Americans with

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<sup>425</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5285-86, paras. 65-67.

<sup>426</sup> See ATLA Comments at 3-4; CAAG Comments at 11; GACHI Comments at 18-19; IDBI Comments at 18-19; IPAT Comments at 3; HKNC Comments at 6-7; LightHouse Comments at 4; NDHHS Comments at 1; Perkins Comments at 29-30; Seattle Lighthouse Comments at 4; SRC/CBVI Comments at 4. In addition, parties responding to the *Permanent NDBEDP Public Notice* universally supported continued reimbursement for local outreach, with commenters emphasizing the ability of such outreach to reach specific populations within the state by age, location, and other traits. See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5285, para. 65. They reported that funding for local outreach has been used for a variety of activities, including developing the certified program's NDBEDP webpage, creating program brochures, promoting the NDBEDP through social media, and local advertising. *Id.*

<sup>427</sup> Perkins Comments at 29 (noting that what works well in one state may not be as successful in another; for example, in some markets a church bulletin may outperform newspaper advertising). Perkins also reports that “the benefits of local campaigns can also accrue to the national program.” For example, Perkins ran Facebook ads in states that “had a great impact on the overall increase in popularity of the iCanConnect Facebook page.” Perkins at 29.

<sup>428</sup> HKNC states that the benefits of local outreach “extend beyond identifying new applicants;” for example, in one state, local presentations enabled HKNC to “identify possible trainers, meet existing program applicants, educate members about the program and receive referrals for new applicants.” HKNC Comments at 6.

<sup>429</sup> The record indicates that state programs' websites have been effective in informing state residents about the existence of the NDBEDP and how to apply for equipment and related services. See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5286, para. 67 (seeking comment on whether to continue reimbursement for this purpose); IDBI Comments at 19 (in support of such funding).

<sup>430</sup> There are a variety of local outreach activities that may be reasonably calculated to inform their state residents about the NDBEDP. For example, ATLA reports that, in Alaska, “onsite awareness activities” conducted by program staff “with local health care personnel, telephone providers, conferences, health fairs, etc.” is the most effective form of local outreach. ATLA Comments at 4. HKNC reports that it makes presentations to a variety of educational, medical, disability-related, and senior-related agencies and organizations that serve individuals with hearing and vision losses. HKNC Comments at 7. IPAT states that it has an NDBEDP webpage and program brochure, and advertises through social media outlets, local newspapers, and public service announcements. IPAT Comments at 3.

<sup>431</sup> See 47 CFR § 64.610(f)(2)(v) (requiring certified programs, under the pilot program, to conduct outreach to inform their state residents about the NDBEDP).

Disabilities Act.<sup>432</sup> Finally, we recommend that the national outreach coordinator provide information about its outreach initiatives on the iCanConnect website and on monthly calls with local programs. We believe this coordination will avoid duplicative efforts and consumer confusion.<sup>433</sup>

143. *Level of Funding.* In the *NDBEDP 2015 NPRM*, we sought comment on the level of funding for local outreach that should be deemed reasonable for purposes of reimbursement under the permanent NDBEDP. We noted that certified programs spent a combined average of approximately 10% of their program expenditures on local outreach during the second year of the pilot program and that it appeared that those efforts had been effective. As a result, we proposed to cap outreach expenditures at 10% of each state's funding allocation during the first two years of the permanent program, after which the NDBEDP Administrator would reassess this level of funding.<sup>434</sup>

144. Some commenters support a 10% cap on funding for local outreach efforts<sup>435</sup> while others oppose it.<sup>436</sup> Supporting a 10% guideline for local outreach funding, Perkins urges providing flexibility to increase this percentage for particular state programs upon request to the Commission, when justified by data.<sup>437</sup>

145. We are cognizant of the geographic and demographic challenges faced by different states and recognize that it may not be advisable to treat funding for local outreach efforts with a one-size-fits-all standard. We further note that the reduction in funding for national outreach activities by 50% may affect the level of funding needed to conduct outreach activities at the local level. Alternatively, we note that because the NDBEDP has been in operation for four years, some states may not need the same levels of funding for outreach as they did when they first initiated their programs. On balance, while we continue to believe that local outreach should constitute no more than 10% of a certified program's annual funding allocation, we will not mandate a hard cap at this time, but will require programs to seek permission from the NDBEDP Administrator to exceed this benchmark. We direct the Bureau and the NDBEDP Administrator, in making a determination as to the reasonableness of a state's outreach expenditures, to examine the unique needs, demographics and regional conditions of each state, taking into consideration the certified program's outreach goals, metrics, and activities. Increased outreach expenditures could be considered reasonable where, for example, extra outreach is shown to be needed to reach targeted populations who have not been served in particular communities or to overcome shortcomings by prior program administrators

146. In the *NDBEDP 2015 NPRM*, we sought input on specific metrics and criteria for evaluating the success of local outreach efforts and asked how to best ensure that local outreach efforts

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<sup>432</sup> See 42 U.S.C. §§ 12131-12134 (state and local government services), §§ 12181-12189 (public accommodations and services operated by private entities); Perkins Comments at 31 (Materials should be available in Spanish or another prominent second language, to the extent it is known to be needed and is economically feasible).

<sup>433</sup> Such confusion has taken place, for example, when consumers have received direct mail as part of the national outreach efforts. See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5284, para. 62 (seeking comment on the need for such coordination); see also IDBI Comments at 18; Perkins at 28.

<sup>434</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5286, para. 66.

<sup>435</sup> CAAG Comments at 11; HKNC Comments at 7; IDBI Comments at 18.

<sup>436</sup> ATLA Comments at 3-4 (explaining that Alaska is faced with unique outreach challenges, given that over 75% of the state is comprised of rural areas); GACHI Comments at 18-19; IPAT Comments at 3; LightHouse Comments at 4 (recommending a cap in the 15-20% range to account for additional outreach costs by states with "high geographic coverage" and "multiple language needs"); NDHHS Comments at 1 (requesting sufficient funding to employ someone on a part-time basis for outreach); SRC/CBVI Comments at 4 (contending that "each individual program is in the best position to determine what their outreach expense needs are").

<sup>437</sup> Perkins Comments at 30.

are cost effective.<sup>438</sup> Commenters generally emphasize the need for local outreach metrics to be tailored to the needs and circumstances of each program.<sup>439</sup> Recognizing that certified programs will necessarily focus on different outreach activities to reflect the unique challenges and demographic makeup of their jurisdictions, we conclude that each certified program should retain the flexibility to identify the appropriate goals and metrics for determining the effectiveness of its own local outreach efforts.

147. To maximize the availability of funds for operations of direct benefit to equipment recipients, we encourage certified programs to gradually reduce the amount used for outreach as demand for the NDBEDP accelerates. We further direct the Bureau and the NDBEDP Administrator to assess the level of expenditures for local outreach during the fifth year of the permanent program and periodically thereafter as part of its ongoing and regular oversight and evaluation of the NDBEDP, to determine whether this guidance should be modified to increase the efficacy and efficiencies of the NDBEDP. In conducting this assessment, the Bureau and the NDBEDP Administrator may consider, among other things, the performance goals and measures established for the NDBEDP overall,<sup>440</sup> the status of national outreach efforts, actual expenditures by certified programs for local outreach, the extent to which requests to exceed funding guidelines for local outreach by certified programs have been justified, and input provided by certified programs.

## VI. FUNDING

### A. Allocation of Funding

148. In the *NDBEDP Pilot Program Order*, the Commission committed to making the full amount of authorized funding, \$10 million annually,<sup>441</sup> available to the NDBEDP during each TRS Fund year, which begins on July 1 of each year and terminates on June 30 of the following year.<sup>442</sup> Of this amount, the Commission set aside \$500,000 for national outreach efforts during each year of the pilot program.<sup>443</sup> The Commission divided the remaining \$9.5 million among each of the 53 NDBEDP certified programs by allocating a minimum base amount of \$50,000 for each state, plus an amount in proportion to each state's population.<sup>444</sup> The Commission elected this funding allocation strategy for certified programs "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

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<sup>438</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5286, para. 66.

<sup>439</sup> HKNC Comments at 7 (noting that for its New York program, it assesses outreach by analyzing the existence of "collaborative partnerships" with agencies and organizations in the state's various counties, while for Hawaii and Iowa, it measures growth in the number of qualified applicants); Perkins Comments at 30 (suggesting that metrics for outreach be based on each program's specific needs, including increases in inquiries and both general and targeted enrollments).

<sup>440</sup> See *infra* Part VII.C (Performance Goals and Measures).

<sup>441</sup> We remind program participants that the TRS Fund is a permanent indefinite appropriation. Thus, like other appropriated funds, it is subject to certain restrictions. While some of these restrictions are longstanding and codified in the United States Code, other restrictions on use of appropriated funds (including permanent indefinite appropriations) may be included in annual appropriation acts. Appropriated funds are also subject to a variety of statutory controls and restrictions that, among other things, limit the purposes for which they may be used and provide a scheme of funds control. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5304-5305, para. 98 & nn.331-333.

<sup>442</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5677, para. 85; see also 47 U.S.C. § 620(c).

<sup>443</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5675-76, para. 80.

<sup>444</sup> *Id.* at 5677, paras. 84-85. The term "state" refers to each of the 50 states, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The Bureau announced each of these allocations at the start of each Fund year. See, e.g., *NDBEDP Pilot Program Certification Public Notice*, 27 FCC Rcd at 7400-7402 (announcing initial funding allocation for 2012-2013); *Consumer and Governmental Affairs Bureau Announces 2015-2016 Allocations for the National Deaf-Blind Equipment Distribution Program*, Public Notice, 30 FCC Rcd 6369 (CGB 2015).



NDBEDP and permit the distribution of equipment to as many eligible residents as possible.”<sup>445</sup> Under the pilot program rules, the Bureau was permitted to adjust or reallocate funding allocations to any certified program within a given Fund year,<sup>446</sup> and to revise allocations for subsequent TRS Fund years, as the Bureau deemed necessary and appropriate.<sup>447</sup>

149. *Initial Allocations.* Based on our experience during the pilot program and the record in this proceeding, we will continue to use this funding mechanism for the permanent NDBEDP with the following exceptions, as are explained more fully in other parts of this Order: (1) we will set aside \$250,000 annually (rather than the \$500,000 allocated for the pilot program) for national outreach efforts during the first five years of the permanent program and reassess the need for continuing such funding beyond this period; and (2) we will set aside an amount as may be necessary annually for the creation and maintenance of a centralized database to be used for reporting purposes and generating reimbursement claims.<sup>448</sup> The remaining amount will be divided up through allocations of a minimum of \$50,000 for each certified program, to which will be added individual allocations in proportion to each state’s or territory’s population.<sup>449</sup>

150. Commenters generally support maintaining the mechanism used to allocate NDBEDP funds during the pilot program for the permanent NDBEDP.<sup>450</sup> Our experience with the program has

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<sup>445</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5677, para. 84. The Commission also noted that NDBEDP funding is available on an annual and ongoing basis, rather than in a single lump sum. *Id.* at 5677, n.299.

<sup>446</sup> *Id.* at 5679, para. 90.

<sup>447</sup> *Id.* at 5677, para. 85.

<sup>448</sup> As discussed above, we will also permit certified programs to use up to 2.5% of their annual funding allocations, or approximately \$250,000 annually for all certified programs, for the costs of train-the-trainer activities and programs during the first five years of the permanent program and reassess the need for continuing such funding beyond this period. All of the commenters responding to the issue concur with our tentative conclusion in the *NDBEDP 2015 NPRM* that funding should not be allocated for research and development (R&D). *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5319, para. 131; ACB Comments at 4; IDBI Comments at 29; Perkins Comments at 59. We agree that there are “simply not enough fund[s] or resources available for the NDBEDP to undertake this effort” at this time. IDBI Comments at 29. We note, however, that through a variety of efforts, including activities undertaken by the Commission’s Disability Advisory Committee, the Commission promotes collaborative problem-solving among stakeholders to ensure that people with disabilities, including individuals who are deaf-blind, reap the full benefits of communications technology. More information about the Disability Advisory Committee is available at <https://www.fcc.gov/general/disability-advisory-committee>.

<sup>449</sup> As noted above, we are adding American Samoa, Guam, and the Northern Mariana Islands to the original 53 jurisdictions that received funding under the NDBEDP pilot program. Perkins asks us to weigh the financial implications of applying the current allocation mechanism to these three new jurisdictions, out of its concern that doing so could reduce the allocation for the other 53 certified programs. Perkins Comments at 7, 47. Based on the current populations of these added jurisdictions, applying this funding mechanism would result in allocating slightly more than \$50,000 for each added territory, for a total of slightly more than \$150,000 for all three jurisdictions. We conclude that allocating this amount will not have a significant impact on the funding allocations of the other 53 certified programs, and so we find it appropriate to apply the current allocation mechanism to all jurisdictions under the permanent program.

<sup>450</sup> See IDBI Comments at 25; CDBP Comments at 6; HKNC Comments at 12; Perkins Comments at 47. Although some parties responding to the *Permanent NDBEDP Public Notice* questioned the population-based allocation of funds – suggesting that some states might have higher proportions of deaf-blind consumers than others – to the best of our knowledge, there is no reliable data on the number of people who are deaf-blind in each state, and the allocations previously made generally have met the needs of NDBEDP applicants. See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5304, para. 97 (seeking comment on whether to retain the funding mechanism used in the pilot program). We also reject GACHI’s proposal for the Commission to adjust initial annual allocations under the permanent NDBEDP based on the amount of funding used by each certified program during the pilot program. GACHI Comments at 22. Given that the NDBEDP is still a nascent program, and that underutilization of a state

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shown that this mechanism has allocated sufficient funds to most states annually to meet their residents' needs and, when such allocations have not been sufficient, states have had an opportunity to obtain additional funding through the reallocation process, discussed in more detail below.<sup>451</sup> Further, we believe that this funding allocation mechanism has provided each certified program with the incentive and opportunity to distribute communications equipment to as many eligible residents as possible. During the first year of the pilot program, certified programs, together with national outreach activities, collectively used approximately 68% of the \$10 million allocated for the NDBEDP,<sup>452</sup> approximately 94% was used during the second year,<sup>453</sup> and approximately 88% was used during the third year.<sup>454</sup> This funding enabled equipment and related services to bring communications access to approximately 3,000 low-income deaf-blind individuals.

151. *Reallocations.* We further conclude that the ability to reallocate funds between certified programs mid-Fund year has helped requesting programs meet their needs and has not prevented programs with decreased funding from satisfying the needs of their constituents.<sup>455</sup> During the pilot program, the NDBEDP Administrator reviewed funding data as it became available and worked with certified programs, the TRS Fund Administrator and the Bureau to reallocate funding between certified programs to maximize the use of available funding, when necessary.<sup>456</sup> On some occasions, such reallocations were made at the request of state programs that realized they would be unable to spend their initial annual allocation ("voluntary" reallocations).<sup>457</sup> On others, after providing notice, the NDBEDP Administrator reallocated funds from programs that were underutilizing their annual allocations, to satisfy requests from certified programs where demand for equipment and related services had exceeded their allocations ("involuntary" reallocations).<sup>458</sup> Involuntary reallocations were processed by mid-May of the second and third years of the pilot program.

152. Commenters generally support the continued reallocation of funds between certified programs in the permanent NDBEDP, as deemed necessary and appropriate by the NDBEDP Administrator to maximize the use of available funding.<sup>459</sup> Several commenters urge that such

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program in one year does not mean this will occur in subsequent years, we believe that the better approach is to divide initial allocations among the states according to their overall populations and make reallocations in the NDBEDP funding as necessary.

<sup>451</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5304, para. 97.

<sup>452</sup> *See infra* Appendix C (Summary of Pilot Program Expenditures) (showing 67.58% of \$10 million was used).

<sup>453</sup> *See id.* (showing 93.60% of \$10 million was used).

<sup>454</sup> *See id.* (showing 88.38% of \$10 million was used). Certified programs must submit reimbursement claims for the fourth year of the NDBEDP pilot program – which ends on June 30, 2016 – by August 1, 2016. *See* 47 CFR § 64.610(f)(2). The Commission will have information about the percentage of the \$10 million allocation used during this period after all reimbursement claims have been processed and paid.

<sup>455</sup> *See NDBEDP 2015 NPRM*, 30 FCC Rcd at 5305-5306, para. 100.

<sup>456</sup> *Id.* at 5305, para. 99.

<sup>457</sup> For example, during the first half of the second year of the pilot program, the NDBEDP Administrator approved several requests for reallocations of funds from one program to another. *Id.* at 5305, para. 100.

<sup>458</sup> *Id.* For example, during the third quarter of the second year, the NDBEDP Administrator reduced the annual allocation of certified programs that had not used at least half of their annual allocations, to provide extra funds to states that were in need of extra revenues. During the third year the NDBEDP Administrator again approved requests for voluntary reallocations and authorized involuntary reallocations. *See National Deaf-Blind Equipment Distribution Program (NDBEDP)*, <http://www.rolkaloube.com/#!ndbedp/cnbw> (follow "2014-2015 Reimbursement Requests per state" hyperlink).

<sup>459</sup> *See, e.g.*, CDBP Comments at 6; GACHI Comments at 23-24 (approving the formula for involuntary reallocations); HKNC Comments at 12 (supporting voluntary and involuntary reallocations); IDBI Comments at 25-

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reallocations should continue to occur in a timely fashion.<sup>460</sup> Finally, several commenters specifically support the practice of notifying the potentially impacted certified programs prior to making involuntary reallocations of funding.<sup>461</sup>

153. Given the success of this approach in maximizing available funds under the NDBEDP, we will continue to authorize the Bureau, as necessary, to make (1) voluntary reallocations between certified programs at any time during the Fund year and (2) involuntary reallocations when individual program performance indicates that NDBEDP funds could be more fully utilized by other certified programs.<sup>462</sup> We believe that this approach will continue to fulfill Congress's goal of bringing communications access to as many low-income individuals who are deaf-blind as possible.<sup>463</sup> All such requests for reallocations must be submitted to the NDBEDP Administrator for approval by the Bureau, in consultation with OMD and the TRS Fund Administrator. Requests must be in writing, with an explanation supporting the request. To reduce the risk of interrupted or delayed services, we further direct that involuntary reallocations be made by March or April, of each Fund year, to the extent possible.<sup>464</sup>

154. We will also continue the current practice of notifying and coordinating with the potentially impacted certified programs prior to making involuntary reallocations of funding, to allow programs to raise concerns or objections, and to permit time for any needed adjustments to the affected programs.<sup>465</sup> As part of this process, certified programs will continue to have an opportunity to request that the NDBEDP Administrator consider increasing or decreasing the proposed change in allocation.<sup>466</sup> We believe that the formula used by the NDBEDP Administrator for involuntary reallocations during the pilot program – which reduced by 50% the remaining allocations of certified programs that spent less than 25% of their annual allocations during the first half of the year, and reduced by 25% the remaining allocations of programs that spent more than 25% but less than 50% of their annual allocations during the first half of the year – has worked well to meet the needs of the certified programs, and for this reason, retain this formula for the permanent program. At the same time, as the Commission previously noted,

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26 (supporting voluntary reallocations at any time and involuntary reallocations “as necessary when individual program performance indicates that NDBEDP funds could be more fully utilized by other certified programs”); LightHouse Comments at 6 (expressing gratitude for the reallocated funds given to its program); Perkins Comments at 48 (supporting voluntary and involuntary reallocations).

<sup>460</sup> HKNC Comments at 12 (suggesting that being able to request additional funds “at the end of the third quarter/start of the fourth quarter provides the correct timing to support end of year efforts,” such as “outreach/assessment in preparation for the following year; completion of consumer training; [and] minor equipment tweaks”); LightHouse Comments at 6 (requesting that funds be reallocated before June, the last month in the Fund year); GACHI Comments at 24 (noting that, by the third year of the pilot program, “reallocations were approved in a timely manner that did not interrupt services”).

<sup>461</sup> IDBI Comments at 26; Perkins Comments at 48; SRC/CBVI Comments at 5.

<sup>462</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5306, para. 101 (seeking comment on these approaches).

<sup>463</sup> See 47 U.S.C. § 620(a).

<sup>464</sup> Although some parties responding to the *Permanent NDBEDP Public Notice* requested that involuntary reallocations be made even earlier during the program's Fund year to minimize gaps in service, as the Commission explained in the *NDBEDP 2015 NPRM*, certified programs have the option of filing their reimbursement claims on a semiannual basis, and the Bureau does not have the requisite data from all certified programs to determine to what extent involuntary reallocations may be appropriate – or to what extent remaining funds will be available for reallocations – until reimbursement claims have been received from all certified programs for the second quarter of each Fund year. See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5306, para. 101.

<sup>465</sup> See *id.*

<sup>466</sup> See *id.* at 5305, para. 100.

we expect that over time, a greater number of certified programs will exhaust their initial annual funding allocation, which will consequently reduce funds available for voluntary and involuntary reallocations.<sup>467</sup> We will allow the NDBEDP Administrator to adjust the formula, if necessary, to account for a reduction in funds that may be available for reallocations.<sup>468</sup>

155. *Prioritizing Use of Funding.* In the *NDBEDP 2015 NPRM*, we asked whether we should take measures to prioritize the use of funding in the event that demand exceeds the \$10 million funding limitation and, if so, how.<sup>469</sup> Several commenters argue that prioritizing measures such as a lower income eligibility threshold or a cap on per-recipient expenditures may compromise programs' ability to meet consumers' needs effectively.<sup>470</sup> Although the record to date indicates annual NDBEDP expenditures as high as 94% of the \$10 million annual allocation,<sup>471</sup> there is no evidence of major inefficiencies or inequities in how available funding has been used. Therefore, and consistent with our conclusion that certified programs should continue to have flexibility in deciding how to spend their limited allocations of NDBEDP resources,<sup>472</sup> we conclude that it is premature at this time to adopt measures to prioritize the use of NDBEDP funding. Nonetheless, we recognize that the program has evolved and will continue to evolve over time. Accordingly, we direct the Bureau, during the fifth year of the permanent program, to assess whether and to what extent the Commission should take additional steps to prioritize the use of funding. Because the Bureau also will be conducting assessments to determine the extent to which funding should be continued for travel, train-the-trainer activities, and outreach in the fifth year,<sup>473</sup> we see this as a natural opportunity for the Bureau to also re-assess how to use program funds in light of overall program performance. We further direct the Bureau to make such recommendations to the Commission as may be necessary and appropriate to maximize the efficiency and effectiveness of the program going forward, based on this review. Finally, to the extent necessary to ensure that the NDBEDP is running efficiently and effectively, we direct the Bureau to conduct an overall assessment of the permanent program's performance, including its use and prioritization of funding, in the program's tenth year, and to make any recommendations to the Commission as needed to improve the program's efficiency and effectiveness.

#### **B. Reimbursement Mechanism**

156. Under the NDBEDP pilot program, the Commission has reimbursed programs for the costs incurred for authorized equipment and related services, up to each certified program's initial or adjusted allocation.<sup>474</sup> The Commission chose this approach – over blanket distributions to certified programs at the start of each Fund year – because it concluded that this would provide incentives for

<sup>467</sup> See, e.g., *id.* at 5305, paras. 99-100.

<sup>468</sup> Under the permanent program, allowable spending for administrative costs is capped at 15% of each state's initial funding allocation, and we have determined that reasonable levels of spending for train-the-trainer activities and local outreach efforts are 2.5% and 10%, respectively. See *supra* Parts V.E (Training Trainers), V.F (Outreach). To provide certainty, if a certified program's funding allocation is adjusted downwards during a Fund year, and the program already incurred these expenses prior to such reallocations, the Commission will not seek to recover reimbursed expenses that exceed allowable percentages with respect to the revised funding allocation. See *generally* Perkins Comments at 51 (raising concerns about these calculations).

<sup>469</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5280, para. 55.

<sup>470</sup> IDBI Comments at 16-17; Perkins Comments at 24; see also DRM Reply Comments at 26 (noting the need to serve both new and returning participants to the program and supporting expanded funding for the provision of services and equipment)..

<sup>471</sup> See *infra* Appendix C (Summary of Pilot Program Expenditures).

<sup>472</sup> See *supra* Part V.A (Equipment).

<sup>473</sup> See *supra* Part V.D (Center-Based Assessments and Training), Part V.E (Training Trainers), Part V.F (Outreach).

<sup>474</sup> See 47 CFR § 64.610(f) (pilot program rule).

certified programs to actively locate and serve eligible participants, and would achieve greater accountability and protection against fraud, waste, and abuse.<sup>475</sup> In the *NDBEDP 2015 NPRM*, we proposed to continue using this funding mechanism for the permanent NDBEDP.<sup>476</sup>

157. We will continue to use a funding mechanism that reimburses certified programs for their allowable costs associated with equipment distribution and related services up to each certified program's initial or adjusted funding allocation under the permanent NDBEDP. We believe that this will ensure that certified programs operate in a cost-efficient manner and will maintain the financial integrity of the program.<sup>477</sup> We understand the difficulties that some certified programs, particularly smaller ones, initially incurred when starting up their pilot programs without funding support.<sup>478</sup> However, we continue to believe that holding back funding until costs are incurred will incent programs to serve as many eligible participants as possible, and will ensure accountability and protection against fraud, waste, and abuse. We also believe that the reimbursement approach will facilitate the reallocation of unspent funds between state programs and that reallocation could be difficult if another funding mechanism were used.<sup>479</sup> To ensure that entities seeking certification have the capacity to operate successfully in a system that reimburses them for their program costs, we have added administrative and financial management experience as one of the criteria for certification under the permanent program.<sup>480</sup>

### C. Claim Frequency and Payment Processing

158. Under the NDBEDP pilot program, certified programs have been permitted to elect reimbursement monthly, quarterly, or semiannually.<sup>481</sup> To meet the individualized needs of these programs, in the *NDBEDP 2015 NPRM*, we proposed to continue allowing certified entities to elect one of these options upon certification and at the beginning of each Fund year.<sup>482</sup> Alternatively, we asked whether requiring all programs to follow a single filing schedule would create greater program consistency and efficiencies, or whether this would impose difficulties on programs with limited resources.<sup>483</sup> Commenters addressing the issue support continuing to permit certified programs to elect their reimbursement period to best meet their programmatic and administrative needs.<sup>484</sup> We agree that

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<sup>475</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5679, para. 88.

<sup>476</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5307, para. 103.

<sup>477</sup> *Id.*

<sup>478</sup> See ACB Comments at 2 (noting that “smaller programs may not have the ability to front money for administrative costs”); GACHI Comments at 28 (explaining the challenges in initiating a program without reimbursement for startup and administrative expenses for the first few months of operation); NDHHS Comments at 1 (noting that the “relatively small” annual allocation for New Hampshire made its ability to “front funds” a lot more difficult than for other states).

<sup>479</sup> See GACHI Comments at 25-26.

<sup>480</sup> See *supra* Part III.C (Certification Selection Criteria).

<sup>481</sup> *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Order, 27 FCC Rcd 2812 (CGB 2012) (waiving the pilot program requirement to submit reimbursement claims every six months and permitting certified programs to elect, by notifying the TRS Fund Administrator, to submit claims quarterly or monthly). During the pilot program, 10 certified programs submitted claims monthly, 36 programs submitted claims quarterly, and seven programs submitted claims semiannually. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5308, para. 104.

<sup>482</sup> *Id.*

<sup>483</sup> *Id.*

<sup>484</sup> See, e.g., GACHI Comments at 26 (submitting claims monthly “allows for better management of the program and day-to-day operations”); Perkins Comments at 50 (monthly claims “might provide hardships for some entities

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this approach will avoid imposing unnecessary administrative burdens on small programs, while allowing those programs that need more immediate reimbursement to file more often, and therefore adopt it for the permanent program. . Such elections shall be made upon receiving certification and at the beginning of each Fund year.

159. We also adopt our proposal to continue requiring reimbursement claims to be submitted within 30 days after each elected period.<sup>485</sup> This timeframe is supported by the record and will prevent delays when reallocations are deemed necessary.<sup>486</sup> Finally, as explained in the *NDBEDP 2015 NPRM*, we expect that, when a claim is submitted with sufficient documentation and does not require further clarification, the claim will be processed within 30 days, and that claims requiring additional documentation or clarification will be processed generally within 60 days.<sup>487</sup>

#### D. Documentation of Reimbursement Claims

160. During the NDBEDP pilot program, certified programs have been required to submit documentation to support their claims for reimbursement of the reasonable costs of equipment and related expenses (including maintenance, repairs, warranties, refurbishing, upgrading, and replacing equipment distributed to consumers), assessments, equipment installation and consumer training, loaner equipment, state outreach efforts, and program administration.<sup>488</sup> We will continue to require certified programs to support their reimbursement claims with documentation, a reasonably detailed explanation of incurred costs, and a declaration as to the accuracy and truthfulness of the claims they submit. We note that while some commenters express concerns about the level of detail required to support reimbursement claims,<sup>489</sup>

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due to the very detailed reimbursement claims process”); SRC/CBVI Comments at 5 (requiring monthly claims would place an “undue administrative and paperwork burden” on New Jersey’s program); ATAP Comments at 3; ATK Comments at 4; IDBI Comments at 26; IOD Comments at 5; MoAT Comments at 3; WATAP Comments at 5.

<sup>485</sup> The NDBEDP Administrator may grant a reasonable extension of time to submit a reimbursement claim upon a finding of good cause when notified by a certified program about the delay, the reason(s) for the delay, the expected submission date, and the measures the certified program will take to prevent recurrent delays. When a certified program submits its reimbursement claim more than 30 days after the claim period ends, payment of that claim may be delayed. In addition, if a program has a pattern of failing to submit claims in a timely manner, the Commission may take other action (e.g., suspension or revocation of the program’s certification).

<sup>486</sup> IDBI and Perkins, the only two entities to comment on this issue, each support this proposal. IDBI Comments at 26; Perkins Comments at 50. Increasing the time for filing reimbursement claims (e.g., from 30 to 60 days after the claim period ends) could delay the involuntary reallocation process, resulting in less timely reallocations.

<sup>487</sup> While noting such expectation, we recognize that the NDBEDP and TRS Fund Administrators may need flexibility to alter these time frames in order to address unique issues that arise. In the *NDBEDP 2015 NPRM*, to retain such flexibility, we declined to propose a reimbursement deadline. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5307-5308, n.360. *Contra* GACHI Comments at 25 (advocating for reimbursement claims to be paid within a set time frame). We further note that early payment of reimbursement claims generally is not possible because payments from the TRS Fund involve schedules that are guided by principles of fiscal management and internal controls.

<sup>488</sup> 47 CFR § 64.610(f)(2) (documentation required to support claims for reimbursement), (f)(3) (declaration requirement); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5679, para. 88. During the pilot program, the TRS Fund Administrator has provided certified programs with instructions, guidance, and examples of documentation needed to support reimbursement claims. See *National Deaf-Blind Equipment Distribution Program (NDBEDP)*, <http://www.rolkaloube.com/#!ndbedp/cnbw> (last visited July 21, 2016) (follow “Filing Instructions” hyperlink under “Forms” or follow any the various hyperlinks under “Samples Requests and Documentation”).

<sup>489</sup> See ATLA Comments at 4-5; Lighthouse Comments at 7; NDHHS Comments at 1 (stating that the reimbursement mechanism “puts a lot of pressure on small organization like ours” and “is a lot more difficult for us than other states”); WATAP Comments at 5 (expressing a preference for the annual audit, rather than administratively burdensome documentation, to provide the means of providing oversight); see also *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5307, para. 103 (seeking comment on this matter).

various commenters support this approach as necessary to achieve accountability and reduce fraud, waste, and abuse.<sup>490</sup> We agree that this mechanism holds programs accountable “for every dollar spent.”<sup>491</sup> Contrary to the opinion of some parties, we are not convinced that an annual audit can replace the protections provided by the existing documentation mechanism.

161. However, we will allow modification to the reimbursement requirements somewhat to provide greater flexibility for the NDBEDP Administrator and the TRS Fund Administrator and to allow some easing of the documentation burden on state programs, where appropriate. The Bureau and the NDBEDP Administrator, in consultation with OMD, and the TRS Fund Administrator, may modify the claim filing instructions issued by the TRS Fund Administrator, as necessary to achieve these goals.<sup>492</sup> In addition to documentation routinely required, we will continue to permit the NDBEDP Administrator or the TRS Fund Administrator to require programs to provide supplemental information needed to verify particular claims.

#### E. Administrative Costs

162. Under the Commission’s rules for the NDBEDP pilot program, certified programs have been compensated for administrative costs up to 15% of their total reimbursable costs for equipment and related services.<sup>493</sup> In the NDBEDP pilot program, the Commission defined administrative costs to include reporting requirements, accounting, regular audits, oversight, and general administration.<sup>494</sup> To ensure that appropriate administrative costs are reimbursed, the TRS Fund Administrator has instituted procedures to “bank” reimbursement claims for administrative costs that exceed 15% of reimbursable costs and to pay those claims later if the amount of reimbursable costs increases with later claim submissions.<sup>495</sup>

163. In the *NDBEDP 2015 NPRM*, we proposed to revise the policy on compensation for administrative costs, by allowing reimbursement up to a percentage of each certified program’s annual funding allocation, thereby eliminating the need for the TRS Fund Administrator to “bank” unearned administrative costs. We explained that, given the record of generally successful distribution of equipment by the 53 certified programs to their deaf-blind residents over the course of the pilot program, we were less concerned that basing the cap of administrative costs on the full funding allocation for each certified entity would create a disincentive to distribute equipment.<sup>496</sup> We also acknowledged that the 15% cap on administrative expenses reportedly caused some programs to operate at a loss and that it could act as a disincentive to participate in the NDBEDP. We sought comment on whether the creation of a centralized database, with an ability to generate reports and reimbursement claims would help alleviate administrative cost burdens and financial issues related to the cap.<sup>497</sup>

<sup>490</sup> See, e.g., IDBI Comments at 26; Perkins Comments at 49.

<sup>491</sup> GACHI Comments at 25.

<sup>492</sup> To further address commenters’ concerns about the level of detail and documentation required for reimbursement and to streamline reimbursement claim and reporting requirements, this determination will take place in conjunction with the development of the centralized database, discussed further below. See *infra* Part VII.E (NDBEDP Centralized Database for Reporting and Reimbursement).

<sup>493</sup> 47 CFR § 64.610(f)(vi). The 15% cap does not apply to costs associated with outreach, assessments, equipment, installation, or training. *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5680, para. 92.

<sup>494</sup> *Id.*; see also *NDBEDP Expenses* at 2.

<sup>495</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5309, para. 106.

<sup>496</sup> *Id.* As noted above, during the second and third years of the pilot program, the vast majority of the funds allocated for state programs and national outreach was actually used (approximately 94% in Year 2 and 88% in Year 3). See *supra* para. 150.

<sup>497</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5309-10, para. 107.

164. While many commenters express continuing concern about the limitations imposed on their programs by the 15% cap on administrative costs,<sup>498</sup> most commenters responding to the issue of how to apply the cap support our proposal to assess it against the certified program's annual funding allocation.<sup>499</sup> Others, however, contend that even if the 15% administrative cost cap were to be based on the annual funding allocation rather than reimbursable costs, it might not cover their actual costs to administer the program.<sup>500</sup>

165. We continue to believe that a 15% cap on administrative costs is reasonable for the permanent program.<sup>501</sup> For clarity, we define these costs to be indirect and direct costs that do not fit into specifically designated categories, such as outreach or equipment and related services, but that are necessary for the operation of a program. For example, this could include costs for management and administrative support personnel, facilities, utilities, supplies, as well as the administration of oversight requirements, including reports, accounting and audits. Given support in the record, we adopt our proposal to assess the 15% administrative cost cap against each certified program's annual funding allocation, rather than the total of its reimbursable costs for equipment and related services. In addition, we note that certified programs may petition for a waiver of the administrative cost cap rule, which the Bureau may consider consistent with our general waiver standard of a showing of good cause and a finding that particular facts make compliance with the rule inconsistent with the public interest.<sup>502</sup> Finally, we note our expectation that the establishment of a centralized database will facilitate compliance with reporting and reimbursement claim requirements, addressing concerns about the sufficiency of the 15% cap to cover necessary administrative costs.<sup>503</sup> As a number of commenters suggest, a centralized

<sup>498</sup> See, e.g., GACHI Comments at 27-28 (the cap "does not support [the] administrative needs required to maintain a successful program"); HKNC Comments at 12 (a 15% cap "is inadequate" to administer this program); IPAT Comments at 4; MoAT Comments at 3 (applying this cap as a percentage of the reimbursable costs has "caused hardships for a number of programs"); NDHHS Comments at 1 (contending that the cap is "detrimental to smaller states" and advocating either a reduction in the reporting requirements or exclusion of the cost of recordkeeping for reporting purposes from the 15% cap).

<sup>499</sup> See ATAP Comments at 4; ATI Comments at 4; ATK Comments at 5; ATLA Comments at 5; IDBI Comments at 26; IOD Comments at 5; IPAT Comments at 4; LightHouse Comments at 7; MoAT Comments at 3; NDHHS Comments at 1; WATAP Comments at 5.

<sup>500</sup> ATI Comments at 4; ATLA Comments at 5; WATAP Comments at 5 (each noting that – even if applied to the overall state allocation – the 15% cap might still require "states to expend their own non-reimbursable funds to implement the program").

<sup>501</sup> The Commission originally determined that 15% was an appropriate cap for administrative costs for the pilot program in response to a suggestion made by the Telecommunications Equipment Distribution Program Association (TEDPA). TEDPA's members are state equipment distribution programs located throughout the United States that have more than 30 years of experience with the distribution of CPE to people with disabilities. Specifically, TEDPA had proposed a "reasonable capped administrative fee of 15-20% of the total cost associated with distribution of CPE and related services." *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5680, para. 91 (quoting TEDPA Comments at 4 in that proceeding). Experience with the NDBEDP pilot program shows that TEDPA's recommendation was accurate with respect to what state programs would need for these expenses. Although total administrative costs claimed by the 53 certified programs during the pilot program amounted to 16% of program costs paid in 2013-2014 and 19% in 2014-2015, less than 14% of program costs were actually paid. See *infra* Appendix C (Summary of Pilot Program Expenditures). In 2014-2015, 19 certified programs were able to operate within the 15% cap on administrative costs, claims from 17 programs exceeded the 15% cap by less than \$100, and claims submitted by 17 programs exceeded the 15% cap by more than \$100. See *National Deaf-Blind Equipment Distribution Program (NDBEDP)*, <http://www.rolkaloube.com/#!ndbedp/cnbw> (follow "2014-2015 Reimbursement Requests per state" hyperlink).

<sup>502</sup> See 47 CFR § 1.3; *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)). Grant of such a waiver would not, however, permit the program's total reimbursement to exceed its overall funding allocation.

<sup>503</sup> See *infra* Part VII.E (NDBEDP Centralized Database for Reporting and Reimbursement).



database is likely to produce administrative cost savings for programs that currently have to maintain their own, or pay for alternative databases to perform these functions.<sup>504</sup> We believe that all of these measures, taken together, will help to alleviate burdens that the 15% administrative cap may have imposed during the pilot program.

## VII. PROGRAM OVERSIGHT AND REPORTING

### A. Overview

166. Under the pilot program, the NDBEDP has been overseen by an NDBEDP Administrator, a Commission official designated by CGB.<sup>505</sup> Every six months, certified programs are required to report to the Commission detailed information about program activities, which is subject to review by the NDBEDP Administrator and other Commission staff in order to assess the effectiveness of the program, ensure the integrity of the TRS Fund, and inform the Commission's policymaking.<sup>506</sup>

167. In order to further ensure the effective and efficient implementation of the permanent NDBEDP, in the *NDBEDP 2015 NPRM*, we sought comment on the role of the NDBEDP Administrator, proposed performance goals and related performance measures, and their relationship to the information that certified programs are required to report to the Commission.<sup>507</sup> We asked about ways to improve the efficiency of the reporting process and reduce duplication of data required for both reporting and reimbursement claims.<sup>508</sup> We also sought comment on whether to modify some of the pilot program reporting obligations and proposed to create a centralized database to assist certified programs in the generation and submission of reports, facilitating the aggregation and analysis of nationwide data.<sup>509</sup>

168. As discussed below, we affirm the current responsibilities of the NDBEDP Administrator. In addition, we set overarching performance goals and initial performance measures for the permanent NDBEDP to provide for the efficient assessment of the program's progress in meeting the performance goals. We further direct the Bureau and the NDBEDP Administrator to, as necessary, develop more detailed elaboration of these performance measures, which shall be informed by information contained in the reports submitted by the certified programs. In addition, we streamline the NDBEDP's reporting requirements so they are consistent with the new performance measures, as well as to improve program oversight and eliminate unnecessary reporting burdens.

169. We direct the establishment of a centralized NDBEDP reporting database, to be used for reporting purposes and for the generation of reimbursement claims by programs that choose to use it for that purpose. We direct the Bureau and the NDBEDP Administrator to accomplish this task in coordination with OMD and its Chief Information Officer (CIO) and, as appropriate, with certified NDBEDP programs that will use or access the database. From the \$10 million available annually from the TRS Fund for the NDBEDP, the Bureau may allocate an amount necessary for the development and

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<sup>504</sup> See CDBP Comments at 6; Perkins Comments at 51; see also IDBI Comments at 26. *But see* LightHouse Comments at 7 (advocating for certified programs to be able to choose whether to use a centralized database, and if they are required to use a centralized database, "there should not be an administrative charge").

<sup>505</sup> See 47 CFR § 64.610(h)(1) (pilot program rule). CGB designated Jacqueline Ellington, Attorney Advisor, Disability Rights Office, as the NDBEDP Administrator.

<sup>506</sup> 47 CFR § 64.610(g), (h)(1)(v) (pilot program rule).

<sup>507</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5258, para. 6.

<sup>508</sup> *Id.* at 5269, para. 28 (noting that much of the data needed to generate the required reports is also required to generate reimbursement claims); *id.* at 5312, para. 110 (seeking comment on ways to streamline the reporting requirements).

<sup>509</sup> *Id.* at 5269, para. 30.

maintenance of the centralized database.<sup>510</sup> The Bureau and the NDBEDP Administrator shall also coordinate with the appropriate Commission offices to ensure compliance with applicable privacy and security requirements.<sup>511</sup>

### B. Program Oversight Responsibilities

170. Designated by the Bureau, the NDBEDP Administrator has been responsible for, among other things, reviewing certification applications, allocating NDBEDP funding, reviewing reimbursement claims to determine consistency with our rules, maintaining the NDBEDP website, resolving stakeholder issues, and serving as the Commission's point of contact for the NDBEDP.<sup>512</sup> The TRS Fund Administrator has reviewed reimbursement claims for accuracy and released funds from NDBEDP fund allocations for distributed equipment and related services, including outreach efforts.<sup>513</sup>

171. Commenters and NDBEDP certified programs commend the responsiveness and support provided by the NDBEDP Administrator and the TRS Fund Administrator.<sup>514</sup> We direct that the responsibilities listed above should continue to reside with the Bureau.<sup>515</sup> In addition, we require the NDBEDP Administrator to coordinate with OMD regarding funding decisions.<sup>516</sup> We also agree that the Bureau and the NDBEDP Administrator should continue to determine annual funding allocations, including reallocations that may need to be made during a Fund year, for each of the NDBEDP-certified programs.<sup>517</sup> In addition, we direct that the NDBEDP Administrator should continue the practice of conducting qualitative reviews to ensure that claims for reimbursement for equipment and services are consistent with NDBEDP rules, and the TRS Fund Administrator should continue to conduct quantitative reviews to determine that the requested dollar amounts are accurate, prior to making payments to certified entities.<sup>518</sup> We believe that this process will continue to fulfill our objectives to meet the needs of deaf-blind consumers in accordance with its policies, comply with Government-wide financial requirements, and achieve efficiencies in the NDBEDP.<sup>519</sup>

<sup>510</sup> We expect that the costs of establishing a centralized database will be greater than the costs for maintaining its operations.

<sup>511</sup> For example, the Commission currently complies with the requirements of the Privacy Act with respect to the protection of personally identifiable information that the Commission receives in connection with the NDBEDP pilot program. *See Privacy Act Information*, <http://www.fcc.gov/encyclopedia/privacy-act-information> (last visited July 20, 2016); Privacy Act System of Records, 77 Fed. Reg. 2721 (Jan. 19, 2012) (FCC/CGB-3 NDBEDP System of Records Notice) <http://www.fcc.gov/omd/privacyact/documents/records/FCC-CGB-3.pdf>. The Commission will modify the System of Records Notice for the NDBEDP and take other measures, as necessary and appropriate, with respect to the adoption of final rules for the permanent NDBEDP and the development of the centralized database.

<sup>512</sup> 47 CFR § 64.610(h)(1) (pilot program rule).

<sup>513</sup> *See id.* § 64.610(h)(2) (pilot program rule).

<sup>514</sup> *See, e.g.*, CDBP Comments at 6 (Bureau oversight has been “open, fair, reasonable”); IDBI Comments at 4 (NDBEDP Administrator’s quick response with solutions enables certified programs to operate smoothly); LightHouse Comments at 7 (“excellent responsiveness and support”); Perkins Comments at 57 (“exemplary, fair and reasonable oversight”); SRC/CBVI Comments at 6 (“exemplary job of overseeing this program”).

<sup>515</sup> *See NDBEDP 2015 NPRM*, 30 FCC Rcd at 5316-17, paras. 124-125 (seeking comment on this issue); *see also* 47 CFR §§ 0.141(f), 0.361.

<sup>516</sup> 47 CFR § 0.5(e) (requiring Bureau/Office coordination with the Office of the Managing Director (OMD) on recommendations “that may affect agency compliance with Federal financial management requirements”).

<sup>517</sup> *See generally* IDBI Comments at 29; Perkins Comments at 58.

<sup>518</sup> *See NDBEDP 2015 NPRM*, 30 FCC Rcd at 5317, para. 125 & n. 432 (seeking comment on this approach); *see also VRS Reform Order*, 28 FCC Rcd at 8666, para. 123 (delegating financial oversight of the TRS Fund to OMD).

<sup>519</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5316-17, para. 124. In the *NDBEDP 2015 NPRM*, we asked about the need to establish a process for certified programs to appeal payment withholdings, denials, or suspensions by the

(continued....)

172. In addition to delegating policy oversight of the permanent NDBEDP to the Bureau, we delegate financial oversight of this program to the Managing Director and direct the Managing Director to work in coordination with the Bureau to ensure that all financial aspects of the program have adequate internal controls.<sup>520</sup> These duties reasonably fall within OMD's current delegated authority to ensure that the Commission operates in accordance with federal financial statutes and guidance.<sup>521</sup> Such financial oversight must be consistent with TRS Orders, rules, and our policies to the extent these are applicable to the NDBEDP, and OMD is required to consult with CGB on any issue that potentially could impact the availability, provision, and continuity of services under the program.

### C. Performance Goals and Measures

173. The *NDBEDP 2015 NPRM* noted that we have a responsibility to ensure these funds are spent efficiently and effectively.<sup>522</sup> We therefore proposed the following performance goals for the NDBEDP: (1) ensuring that the program effectively increases access to covered services for the target population; (2) ensuring that the program is administered efficiently; and (3) ensuring that the program is cost-effective.<sup>523</sup> We stated our belief that clear performance goals and measures will enable the

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NDBEDP Administrator. *Id.* at 5317, para. 126. We conclude that the process now in place, where the TRS Fund Administrator and the NDBEDP Administrator alert certified programs about the need for additional documentation or any inconsistencies or errors, successfully has reduced the amount of reimbursement claims denied to an almost negligible amount per year. *See, e.g., National Deaf-Blind Equipment Distribution Program (NDBEDP)*, <http://www.rolkaloube.com/#!/ndbedp/cnbw> (follow “2012-2013 Reimbursement Requests per state” hyperlink) (showing \$27,778.13 as the total amount of claims requested, but denied during the 2014-2015 Fund year); *National Deaf-Blind Equipment Distribution Program (NDBEDP)*, <http://www.rolkaloube.com/#!/ndbedp/cnbw> (follow “2014-2015 Reimbursement Requests per state” hyperlink) (showing \$877.41 as the total amount of claims requested, but denied during the 2014-2015 Fund year). This process has resulted in the temporary suspension or withholding of a payments pending resolution of disputed matters, and denied reimbursement claims when necessary. *See, e.g., National Deaf-Blind Equipment Distribution Program (NDBEDP)*, <http://www.rolkaloube.com/#!/ndbedp/cnbw> (follow “2014-2015 Reimbursement Requests per state” hyperlink) (including the amounts of reimbursement claims requested, but denied or “rejected”). Under current rules, any certified program is permitted to appeal the denial of a reimbursement claim to the Commission. 47 CFR §§ 1.101-1.117.

<sup>520</sup> 47 CFR § 0.11(a)(3)-(4) (stating that OMD will “[a]ssist the Chairman in carrying out the administrative and executive responsibilities” and “[a]dvise the Chairman and Commission on management, administrative, and related matters; review and evaluate the programs and procedures of the Commission; initiate action or make recommendations as may be necessary to administer the Communications Act most effectively in the public interest”); 47 CFR § 0.11(a)(8) (stating that OMD’s current responsibility is to “[p]lan and manage the administrative affairs of the Commission with respect to the functions of . . . budget and financial management”); 47 CFR § 0.5(e) (requiring Bureau/Office coordination with OMD on recommendations “that may affect agency compliance with Federal financial management requirements”); *see also TRS Fund Financial and Accounting Internal Controls*, Letter Order, 26 FCC Rcd. 5099 (OMD 2011) (directing the TRS Fund Administrator to integrate specific measures into its internal controls structure over its finance and accounting operations, to ensure transparency of operations, and to provide efficient and effective operations).

<sup>521</sup> 47 CFR § 0.5(e) (requiring Bureau/Office coordination with OMD on recommendations “that may affect agency compliance with Federal financial management requirements”).

<sup>522</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5258, para. 6. NDBEDP funds come from contributions by telecommunications service providers to the TRS Fund.

<sup>523</sup> *Id.* (citing the *GAO GPRM Guide* and GPRAMA). As the Commission has previously observed, it has a “responsibility to be a prudent guardian of the public’s resources.” *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service et al.*, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4088, para. 29 (2010). Ensuring that certified programs use available funds in cost-effective ways maximizes the impact of program funds and helps ensure that as many eligible recipients as possible are able to receive the support they need.

Commission to determine whether the program is being used for its intended purpose and whether the funding for the program is accomplishing the intended results.<sup>524</sup>

174. None of the commenters took issue with the Commission's proposed statement of performance goals.<sup>525</sup> Because we find the proposed goals accurately reflect the statutory purpose<sup>526</sup> and the goals and objectives stated in the Commission's strategic plan,<sup>527</sup> we adopt the proposed performance goals, but revise these to combine the closely-related proposed goals 2 and 3. The revised goals are now: (1) ensuring that the program effectively increases access to covered services by the target population; and (2) ensuring that the program is administered and implemented efficiently and cost-effectively. We believe that these two goals are in harmony with each other. Specifically, to the extent that the \$10 million authorized annually for the NDBEDP is spent in a manner that is maximally efficient and cost-effective, such expenditure should also maximize access to covered services for the target population.

175. In establishing performance measures to assess progress relative to these goals, we are mindful of GAO's advice that performance measures for each goal "should be limited to the vital few."<sup>528</sup> This guidance seems especially appropriate here, given the limited funding available to the NDBEDP programs and their need to focus expenditures on program operations to the maximum extent practicable.<sup>529</sup>

176. The few parties commenting on performance metrics, recommend that efficiency or cost-effectiveness measures take into account factors such as the ages, locations, and primary modes of communication used by equipment recipients.<sup>530</sup> Some suggest that we assess the effects of the program on consumers, by comparing "connectivity and quality of life" at initial assessment and completion of

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<sup>524</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5258, para. 6.

<sup>525</sup> Perkins states that in order to establish meaningful performance goals and measures, the currently collected data elements need to change, but it does not disagree with our proposed goals. Perkins Comments at 2.

<sup>526</sup> See 47 U.S.C. 620(a) (stating that funds are to be used "for the distribution of specialized customer premises equipment designed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low-income individuals who are deaf-blind").

<sup>527</sup> See, e.g., FCC, Strategic Plan 2015-18, Strategic Objectives 3.1 ("Maximize broadband availability and adoption by promoting affordability and removing other barriers to adoption by all Americans, including those with low incomes, older individuals, those in rural areas and tribal lands, and individuals with disabilities."), 3.2 ("Ensure that universal service programs keep up with changing technologies and are well managed, efficient and fiscally responsible."), 3.4 ("Ensure that the benefits of networks are harnessed to address the needs of Americans with disabilities."), Performance Goals 3.1.2 ("Work in partnership with state, local, and tribal governments, and consumer and industry groups, to promote broadband availability to all Americans, including consumers in rural and high cost areas, older Americans, and people with disabilities."), 3.4.1 ("Engage persons with disabilities through outreach and education initiatives to facilitate informed choice in the telecommunications and media marketplace."), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-331866A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-331866A1.pdf) (last visited July 20, 2016).

<sup>528</sup> *GAO GPRA Guide* at 25. GAO explains that "[t]hose vital few measures should cover the key performance dimensions that will enable an organization to assess accomplishments, make decisions, realign processes, and assign accountability. Organizations that seek to manage an excessive number of performance measures may risk creating a confusing excess of data that will obscure rather than clarify performance issues. Limiting the number of performance measures to the vital few at each organizational level will not only keep the focus where it belongs, it will help ensure that the costs involved in collecting and analyzing the data do not become prohibitive." *Id.*

<sup>529</sup> See also *supra* Part VI.E (Administrative Costs).

<sup>530</sup> Perkins Comments at 2-4.

training,<sup>531</sup> and that we consider increases in the percentage of the state's deaf-blind population served by a program.<sup>532</sup>

177. We conclude that program performance in providing effective, cost-effective, and efficient service to the target population should be measured based on a few vital metrics that may be reflected in the following data: (1) number of clients served, broken down by new versus existing program participants, and client characteristics that are relevant to the national program's performance and costs;<sup>533</sup> (2) information about the equipment distributed, including costs; (3) costs and hours consumed for assessments, training, and follow-up visits (e.g., in connection with repair or upgrade of equipment); and (4) promptness of service response.<sup>534</sup> Much of the data required to support each of these measures is either relatively easy to obtain or is already being collected for reporting and reimbursement purposes. We recognize that there could be benefits as well in assessing improvements in clients' access to communications services through metrics that analyze improvements in their ability to participate in life activities, such as employment and education.<sup>535</sup> However, we conclude that collecting and effectively analyzing such data would prove burdensome. Observed changes in consumer behavior at completion of training may be ephemeral or subjective, and afterwards, consumers who receive equipment are under no obligation to maintain contact with the programs in which they participated.<sup>536</sup> Thus, while we will continue to undertake efforts to determine effective outcomes that result from successful participation in the NDBEDP through outreach and other efforts,<sup>537</sup> we conclude that imposing requirements for certified programs to gather this information on a regular basis would unduly burden their limited resources under this program.<sup>538</sup>

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<sup>531</sup> Keystone Systems, Inc. (Keystone) Comments at 7.

<sup>532</sup> DRM Reply Comments at 4.

<sup>533</sup> The Bureau might determine that a client's age, urban or rural residence, language, and primary means of communication (e.g., Braille, ASL, etc.) are relevant for this purpose. See Perkins Comments at 2-3; see also Keystone Comments at 6 (noting that measuring consumer characteristics will help, e.g., "to identify needs related to trainers and services such as translators"). Keystone reports that it "has worked with Perkins over the past three years to provide the database used to track activities in 34 states for the NDBEDP." Keystone Comments at 1. Having developed "a database application that is used by agencies providing K-12 textbooks for children that need them in alternate formats (braille, electronic files, or large type)," Keystone says it added customized capabilities to that application to enable Perkins and other certified programs to track NDBEDP activities and to produce reports and reimbursement claims. *Id.* at 2.

<sup>534</sup> The Bureau may find it important to measure elapsed time between initial contact and completion of installation and training. See, e.g., Keystone Comments at 7 (recommending using multiple milestone dates to measure the length of time for service (e.g., first contact, application accepted, eligibility verified, assessment completed, equipment ordered, equipment delivered, training started, training completed)).

<sup>535</sup> See, e.g., *id.* (recommending measuring the change in connectivity and quality of life between the initial assessment and completion of training).

<sup>536</sup> Similarly, while we recognize the potential value in measuring the increase in the percentage of each state's deaf-blind population served by a program, as suggested by DRM (DRM Reply Comments at 4), we have not found a reliable source of estimates of such populations. See *supra* note 12 (describing the unusually wide range of available estimates of the number of deaf-blind individuals in the United States).

<sup>537</sup> During the pilot program, as part of its outreach responsibilities and oversight of several certified entities, Perkins has reported regularly on the many successes achieved as a result of participation in this program, including enhanced educational and job opportunities, and improved contact with family, friends, colleagues, businesses and governmental agencies. See iCanConnect, *News*, <http://www.icanconnect.org/news> (last visited July 18, 2016).

<sup>538</sup> See GAO GPR A Guide at 25. For the NDBEDP, with annual funding capped at \$10 million, average annual funding is less than \$200,000 per jurisdiction. Further, with the 15 percent cap on administrative costs, average administrative cost reimbursement is less than \$30,000 per jurisdiction.

178. The Bureau and the NDBEDP Administrator are directed to implement metric parameters based on the above guidance.<sup>539</sup> Given the size of the program, and the diversity of its recipients, program data may skew based on circumstances of particular regions or particular clients, and may require further inquiry, which prescribes against adopting formulaic metrics. We therefore authorize CGB to determine the most effective method for gathering the necessary information and weighing these metrics to evaluate program performance. We expect that, at a minimum, the performance measures will serve as tools to develop recommendations for programs on how to increase cost-effectiveness, and will inform our program policy decisions.<sup>540</sup> The data collected for these performance measures should also enhance our ability to develop baseline information and benchmarks for future assessments.

#### D. Reporting Requirements

179. Under the NDBEDP pilot program reporting rules, programs have been required to report information, every six months, about the following: equipment recipients and the individuals who attest that the recipients are deaf-blind; equipment distributed; the cost, time, and other resources allocated to related services and support (outreach, assessment, installation, training, maintenance, repair, and refurbishment of equipment); the amount of time between assessments and equipment delivery; the types of state outreach undertaken; the nature of equipment upgrades; denied equipment requests and complaints received; and the number of qualified applicants on waiting lists to receive equipment.<sup>541</sup> In the *NDBEDP 2015 NPRM*, we proposed to retain the reporting requirements and asked whether the substance of such reporting requirements should be retained or modified.<sup>542</sup> After considering the comments received, we amend our rules to set forth more generally the categories of information that must be reported, and we direct the Bureau, in consultation with the NDBEDP Administrator, OMD, the TRS Fund Administrator, and the certified programs, as appropriate, to prepare reporting instructions setting forth the specific data and items of information that are needed to assess program performance, to be provided in guidance delivered to the certified programs upon establishment of the NDBEDP database.

180. Many commenters advocate reducing the data submission requirements,<sup>543</sup> or eliminating redundancy in the data submission required for reimbursement and reporting purposes.<sup>544</sup> In contrast, however, IDBI supports continuing the data requirements for reports and reimbursement claims in the

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<sup>539</sup> In this way, measures can be “tweaked” as necessary to reflect insights gained from additional oversight experience, including insights gained in implementing the centralized reporting database. See *infra* Part VII.E (NDBEDP Centralized Database for Reporting and Reimbursement). For example, there are a variety of possible measures of the promptness of service response. See, e.g., Keystone at 7 (recommending efficiency measurement based on dates of first contact, application accepted, eligibility verified, assessment completed, equipment ordered, equipment delivered, training started, training completed). The particular metric selected for this purpose, and how it is collected and reported into the database, may need to be refined based on further experience.

<sup>540</sup> See, e.g., Perkins Comment at 3 (recommending consideration of a national database to “collect the data required to do trend analysis and meaningful performance measurement per certified entity, and for the program as a whole”).

<sup>541</sup> See 47 CFR § 64.610(g)(1).

<sup>542</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5311, para. 109.

<sup>543</sup> See, e.g., ATAP Comments at 2; ATK Comments at 3; ATLA Comments at 2; IOD Comments at 3; IPAT Comments at 2-3; MoAT Comments at 2; NDHHS Comments at 1 (stating that reporting requirements are excessive and time-consuming, particularly data on the time spent on various NDBEDP activities); SRC/CBVI Comments at 2 (recommending elimination of the requirements to report certain contact information for the verifier of an applicant’s disability and the serial numbers for equipment, and suggesting that the costs for installation and training and related travel costs be combined into one cost category); WATAP Comments at 3.

<sup>544</sup> GACHI Comments at 11-12; NDHHS Comments at 1; SRC/CBVI Comments at 2-3.

permanent NDBEDP,<sup>545</sup> and some commenters suggest additional categories of data they believe are necessary to measure performance.<sup>546</sup>

181. We are mindful of the need to ensure that information collection requirements do not unnecessarily burden NDBEDP programs whose resources for program administration are quite limited. We further believe that our original objectives for requiring programs to report certain information under the pilot program – such as detailed information about each item of equipment distributed – have now been met. For example, detailed reporting on the particular items of equipment distributed was needed to inform the Commission about the communication equipment needs of the deaf-blind community for the permanent program. While this is important information to collect and maintain in program records – and may also be necessary for the submission of reimbursement claims – the same level of detail about every piece of equipment distributed under the pilot program may not be necessary for the permanent program, and in fact such detailed reporting could unnecessarily burden program operations without significantly aiding performance measurement or the prevention of fraud, waste, and abuse. On the other hand, certain items of information not currently reported may be needed to measure program performance.<sup>547</sup>

182. We also agree with commenters that, where data must already be reported for claim reimbursement, unnecessary duplication of effort should not be required. For this purpose, below, we direct the establishment of a centralized database for the submission of program data to the Commission. For example, effective upon activation of the centralized NDBEDP database, we expect that a program choosing to use the database for claims reimbursement as well as semiannual reporting will not be required to enter client-specific information twice.<sup>548</sup>

183. To provide the flexibility needed to effectively assess the permanent program's performance, we adopt rules for the permanent program that set forth the categories of required information. We direct the Bureau to delineate the specific data points required in the instructions on data reporting and database use issued by the NDBEDP Administrator.<sup>549</sup> This approach will allow the precise information fields required in each category to be adjusted and streamlined over time, based on experience with program oversight and creation of the centralized NDBEDP database.<sup>550</sup> For this

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<sup>545</sup> IDBI Comments at 26-27.

<sup>546</sup> Keystone Comments at 6-8; Perkins Comments at 2-4.

<sup>547</sup> See Perkins Comments at 2 (advocating collection of age information because “the age of a consumer may impact training times”).

<sup>548</sup> This will be the case to the extent that the database is capable of processing both sets of data. See Keystone Comments at 2-5 (describing numerous “lesson[s] learned” regarding data management in the course of three years’ experience operating the Perkins database, including the development of “well defined and unambiguous” data reporting categories).

<sup>549</sup> For example, to eliminate unnecessary information collection burdens, it may not be necessary to report detailed information about each professional attesting to an individual’s eligibility. While we believe that such details should be retained in program records, it may be sufficient to obtain this information upon request, as needed, through the NDBEDP Administrator or TRS Fund Administrator. Where we have required TRS providers to obtain third party certification of a TRS user’s eligibility to use TRS – specifically for Internet Protocol Captioned Telephone Service (IP CTS) – we have required providers to maintain such certification documents in their records but have not required the submission of such documents to the Commission or TRS Fund Administrator as part of routine reporting. See 47 CFR § 64.604(c)(9)(v), (x).

<sup>550</sup> See *VRS Reform Order*, 28 FCC Red at 8653, para. 77 (“Our experience . . . has taught us that it may become necessary, over time, to modify the data that is to be stored in the [TRS User Registration database.]”); see also Keystone Comments at 2-5 (describing numerous “lesson learned” regarding data management in the course of three years’ experience operating the Perkins database, including the development of “well defined and unambiguous” data reporting categories). This flexible approach will also enable adjustment of reporting requirements to harmonize with future refinement of performance metrics. See *supra* Part VII.C (Performance Goals and Measures). Reporting requirements can be related more closely to the information required for claims reimbursement ensuring

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purpose, we require reporting of information in each of the following categories, and allow the Bureau to supplement these categories as necessary to achieve the performance objectives of the program, and to prevent fraud, waste and abuse: (1) each client's identity and other relevant characteristics;<sup>551</sup> (2) information about the equipment provided, including costs; (3) the cost and time for client assessments, installation and training, and maintenance and repair; (4) information about local outreach undertaken, including costs; and (5) promptness of service.<sup>552</sup> Certified programs will be required to report the specific information set forth in instructions and guidelines issued by the Bureau in each category listed above or other categories deemed necessary by the Bureau, until superseded by new reporting instructions and guidance.

184. *Frequency of Reporting.* In the *NDBEDP 2015 NPRM*, we asked about the advantages or disadvantages of allowing a certified program to submit reports with the same frequency as the certified program elects to submit its reimbursement claims (e.g., monthly, quarterly, or every six months). We also asked whether the reporting period should be the same for all certified programs to ensure consistency of data and, if so, what that period should be. Alternatively, we asked whether it would serve the permanent program just as well if submission of the reports were required annually instead of every six months.<sup>553</sup>

185. Several commenters support our proposal to retain the six-months reporting requirement.<sup>554</sup> Some of these commenters also note that an annual reporting requirement would be acceptable, but that shorter periods should not be considered.<sup>555</sup> We believe that regular reporting is necessary to ensure that certified programs maintain and keep current NDBEDP-related data and to

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that much of the information needed for semiannual reports can be automatically and efficiently generated from the data entered for reimbursement purposes, should programs choose to use it. *See* Keystone Comments at 3-4.

<sup>551</sup> We retain the requirement to report the identity of each individual who receives equipment because we believe this is necessary to enable correct analysis of program costs and efficacy. In addition, reporting of identity information may assist in analyzing and tracking changes that occur when one certified program is replaced by another or when a client moves to another state. In this regard, reporting of identity information may help prevent fraud, abuse, and waste (e.g., where equipment is improperly provided to the same individual by more than one state program). *See, e.g.,* Perkins Comments at 16 (recommending that the database be configured to automatically flag the entry of a person with the same name and date of birth as a person entered by a different state); IDBI Comments at 12-13 (supporting access by certified programs to other states' data to determine whether an applicant is receiving services from another state, which "lessen the chance of duplication of service" and reduce waste and fraud). Given the small size of the population served, however, it may not be necessary to collect fine-grained identity data such as date of birth. The rule we adopt today allows CGB and the NDBEDP administrator to exercise flexibility in determining the level of identification detail that should be collected. Given the sensitivity involved and the heightened need for security necessitated by the collection of personally identifiable information (PII), we caution CGB and the NDBEDP administrator to limit the level of detail of the PII collected to that needed for effective program oversight. *See infra* Part VII.E.3 (Inclusion and Protection of Personally Identifiable Information in the Centralized Database).

<sup>552</sup> Keystone Comments at 3 (recommending that the Commission require certified programs to submit actual data, rather than summarized data, to enable the best use and analysis of the information collected); Perkins Comments at 3.

<sup>553</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5312, para. 110.

<sup>554</sup> ATAP Comments at 3; ATI Comments at 4; ATK Comments at 5; ATLA Comments at 5; IDBI Comments at 27; IOD Comments at 5; IPAT Comments at 5; LightHouse Comments at 7 (suggesting also an ongoing evaluation to ensure that the data required provides "productive feedback to the program"); MoAT Comments at 3; Perkins Comments at 52; SRC/CBVI Comments at 5; WATAP Comments at 5.

<sup>555</sup> ATAP Comments at 3; IPAT Comments at 5; MoAT Comments at 3; IPAT Comments at 5 (suggesting that it is not necessary to require reporting to be done at the same time by all certified entities to ensure consistency of data, and that only the collection of the same information is necessary for such purpose).



provide accurate snapshots of that data consistently across all certified programs for oversight and evaluation purposes. We will, therefore, retain the requirement for certified programs to submit reports every six months.

186. *Report Certification.* Under the NDBEDP pilot program, the Commission requires certified programs to submit a certification with each report executed by “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.”<sup>556</sup> In the *NDBEDP 2015 NPRM*, we proposed to amend the certification as follows to clarify that the “affairs” of the certified program means the “business activities conducted pursuant to the NDBEDP”:

I swear under penalty of perjury that I am (name and title), an officer of the above-named reporting entity, and that the entity has policies and procedures in place to ensure that recipients satisfy the NDBEDP eligibility requirements, that the entity is in compliance with the Commission’s NDBEDP rules, 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 business activities conducted pursuant to the NDBEDP by the above-named certified program.<sup>557</sup>

We adopt the continued requirement for this report certification, as amended, which commenters support.<sup>558</sup>

## E. NDBEDP Centralized Database for Reporting and Reimbursement

### 1. Need for Centralized Database

187. Many commenters support our proposal to create a centralized database, recognizing it will improve accuracy, analysis and aggregation of data.<sup>559</sup> A few commenters offer more conditional support, asserting that the Commission should develop and require the use of a centralized database only if it reduces duplicate data entry and streamlines the reporting and reimbursement process.<sup>560</sup> Still other commenters oppose any mandatory use of a centralized database.<sup>561</sup>

<sup>556</sup> 47 CFR § 64.610(g)(2); *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5312, para. 111.

<sup>557</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5312, para. 112.

<sup>558</sup> GACHI Comments at 30; IDBI Comments at 27; Perkins Comments at 53. Likewise, we make this language change to our reimbursement claim certification, as proposed. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5312, n.398.

<sup>559</sup> HKNC Comments at 4 (contending that a centralized database would ensure that program personnel are entering data correctly and that required reports are generated in an acceptable format); Keystone Comments at 3, 6 (agreeing that “a national database will allow for much more consistent collection of data, and far easier and more standardized reporting,” and that the ability to reconcile data in a single system can reduce errors and omissions in the reporting process); ACB Comments at 2; CAAG Comments at 7-8; CDBP Comments at 3; IDBI Comments at 10-11; Perkins Comments at 13; *see also NDBEDP 2015 NPRM*, 30 FCC Rcd at 5269-70, paras. 30-31 (seeking comment on this issue).

<sup>560</sup> ATAP Comments at 2; ATI Comments at 2-3; IPAT Comments at 3; MoAT Comments at 2. Some commenters also suggest that the database will “allow multiple user input, different levels of administrative access, ease of querying and report generation.” ATK Comments at 3; *see also ATLA* Comments at 3; IOD Comments at 3; WATAP Comments at 3.

<sup>561</sup> GACHI Comments at 2; LightHouse Comments at 7. As they have already developed their own database systems, these commenters argue that requiring use of a centralized federal database would waste those investments or require duplication of effort. GACHI also claims that using a state-based database system is more cost-effective

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188. We conclude that the benefits of a centralized database would be significant and outweigh any disadvantages. As a number of commenters recognize, a centralized database will allow the efficient retrieval of data in a uniform format from a single system. This, in turn, will enable the Bureau, OMD, the NDBEDP Administrator and the TRS Fund Administrator to oversee the program more effectively and efficiently; analyze the performance of certified programs; detect patterns indicating potential fraud, waste, or abuse; and provide aggregate national program statistics to inform the Commission's future policy deliberations for the NDBEDP.<sup>562</sup> In addition, a centralized database will improve the accuracy of reported data and prevent abuse of the program by, e.g., a single consumer applying for assistance in multiple states.<sup>563</sup> State-operated databases, by their nature, cannot address these important national oversight functions. A centralized database will enable programs to avoid duplicative submission of identical data for both reimbursement and reporting purposes and may allow for more effective service to clients migrating to other states and clients that are transferred to newly certified entities.<sup>564</sup> A centralized database will also permit cost savings for individual states that currently incur their own expenses to organize and submit required reports.<sup>565</sup> Finally, we find no convincing evidence in the record showing that the cost incurred by programs to enter data in a centralized database would be significantly greater than the cost of reporting data in the manner currently required for the pilot program.

189. For all of these reasons, we direct the Bureau, in coordination with the NDBEDP Administrator, OMD and its CIO, to establish a centralized database for the submission of program data to the Commission. The Bureau, OMD, and its CIO are required to ensure that the database will incorporate robust privacy and data security best practices in its creation and operation. Further, the database must comply with all applicable laws and Federal government guidance on privacy and security and other applicable technology requirements such as those mandated by the Federal Information Security Management Act (FISMA) and the Privacy Act. As with other databases the Commission has created to manage its programs,<sup>566</sup> this database must be developed in accordance with the National Institute of Standards and Technology (NIST) guidance for secure, encrypted methods for obtaining, transmitting, storing, and disposal of program beneficiary information and certified program information.<sup>567</sup> The

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and that delays resulting from unforeseen problems with a centralized database could be handled in a more timely manner by a state program. GACHI Comments at 13-14.

<sup>562</sup> See, e.g., CAAG Comments at 7-8; HKNC Comments at 4; Keystone Comments at 3, 9. Currently, as noted in the *NDBEDP 2015 NPRM*, more than 30 certified programs use Perkins' database to generate reports and reimbursement claims required by the Commission. *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5269, para. 29. These include state programs for which Perkins is the certified entity and programs that have elected to use the database for a fee that is reimbursable to them as an administrative cost. *Id.* at para. 29 & n.91. Perkins has compiled reports with the aggregated data from those programs. See, e.g., *Year One Highlights*; iCanConnect, Year 2 in Review, NDBEDP Monthly National Call (Dec. 14, 2014), <http://apps.fcc.gov/ecfs/document/view?id=60001010881>. Although some commenters argue that data reported by programs not using Perkins' system could be added to the Perkins data to allow an effective Commission review of all information without undue difficulty (see, e.g., WATAP Comments at 2), the record suggests that aggregate data analysis will be facilitated by automation of the reporting process and the use of standardized data formats and fields.

<sup>563</sup> HKNC Comments at 4; see also Keystone Comments at 9.

<sup>564</sup> HKNC Comments at 4; see also Keystone Comments at 9.

<sup>565</sup> See *supra* para. 165.

<sup>566</sup> See *2016 Lifeline Modernization Order*, 31 FCC Rcd at 4017-19, paras. 154-55.

<sup>567</sup> See, e.g., National Institute of Standards and Technology, NIST Special Publications, <http://csrc.nist.gov/publications/PubsSPs.html> (last visited July 20, 2016). NIST guidance covers such topics, including but not limited to firewalls, boundary protections, protective naming conventions, adoption of secure user authentication requirements, usage restrictions, continuous monitoring, plans of actions and milestones, and proper continuity and disaster recovery plans.

centralized database also must have subscriber notification procedures in the event of a breach that are compliant with Department of Homeland Security (DHS)<sup>568</sup> and OMB guidance.

190. Upon its completion, all certified programs will be required to use the centralized database to file their semiannual program reports. As further discussed below, programs will be allowed, but not required, to also use the centralized database for generating reimbursement requests, which is expected to eliminate the duplication of effort involved in filing identical data for both reimbursement and reporting purposes. We also recognize that some certified programs have invested in the development of their own databases for tracking and reporting NDBEDP-related activities.<sup>569</sup> Therefore, to reduce any costs that may be associated with entering data in both a state-specific and a national database, we direct that the Bureau, OMD and its CIO, and the NDBEDP Administrator consider the use of tools that will allow certified programs to submit data in an aggregate manner.

## 2. Use of the Centralized Database for Reimbursement Claims

191. Because of the overlap between the semiannual reports and reimbursement claims, the *NDBEDP 2015 NPRM* proposed to enable and permit, but not require, certified programs to use the centralized reporting database to also generate reimbursement claims.<sup>570</sup> We asked whether such use should be voluntary or mandatory, would make the process of aggregating reimbursement claim data more efficient, and whether the data could be transmitted electronically from the centralized database to the TRS Fund Administrator, along with the necessary supporting documentation.<sup>571</sup>

192. The majority of commenters support the Commission's proposal to allow, but not require, use of the centralized database for claims reimbursement, giving as reasons the existence of databases or processes that already fulfill their needs for filing claims, and concerns with new burdens that would be associated with transmitting claim documentation.<sup>572</sup> We are persuaded that using the centralized database to generate reimbursement claims should be permissive. We believe that both efficiency and accuracy can be enhanced when the data required for reporting and reimbursement are submitted and managed within the same system; however, we also recognize that some programs reasonably prefer to develop reimbursement requests within an internal system that is used by the certified entity for other purposes. In order to facilitate the ability of programs to use the centralized database for both reimbursement and reporting, we direct the Bureau and the NDBEDP Administrator to coordinate with OMD and its CIO, and to consult with certified programs so that the centralized database can track all of

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<sup>568</sup> The United States Computer Emergency Readiness Team within DHS issues regulations around breach.

<sup>569</sup> To be clear, nothing in this Report and Order prevents individual programs from continuing to use state-specific data bases for their own tracking purposes. We only require that the required report data be entered in a national database so that it can be effectively aggregated nationally for the essential purposes described above.

<sup>570</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5269, 5270, 5307, paras. 28, 31, 103.

<sup>571</sup> *Id.* at 5270, para. 31.

<sup>572</sup> *See, e.g.*, HKNC Comments at 4 (reporting that the Perkins database, which it currently uses for the NDBEDP programs it operates in three states, "supports our reimbursement request process in an effective and cost efficient manner"); LightHouse Comments at 4 (claiming it is satisfied with the current reimbursement process and turn-around time for submitting reimbursement claims); Perkins Comments at 14, 49 (opposing mandatory use of a centralized database for reimbursement because some programs must integrate their reimbursement information with larger internal accounting systems and transmitting claim documentation would be difficult to achieve and may be more labor intensive for certified programs than the current system); IDBI Comments at 11, 26 (expressing satisfaction with the current reimbursement process); ATAP Comments at 2; ATI Comments at 2-3; ATK Comments at 3; ATLA Comments at 2; IOD Comments at 3; IPAT Comments at 3; MoAT Comments at 2; WATAP Comments at 3.

the information needed to enable reports to be generated and submitted electronically, and to generate reimbursement claims.<sup>573</sup>

193. In the *NDBEDP 2015 NPRM*, we asked whether certified programs would need to retain a copy of their records if we establish a centralized database for processing reimbursement claims and reporting purposes and, if so, which records should be retained by the certified programs.<sup>574</sup> We conclude that the establishment of the centralized database does not by itself relieve certified programs of the requirements to retain records and document compliance with Commission rules.<sup>575</sup> We do not envision that the database will be a repository for all records that a certified program must retain<sup>576</sup> or chooses to retain to demonstrate compliance with the Commission's requirements governing the NDBEDP. Certified programs will be held responsible for complying with documentation and record retention requirements but will be otherwise be free to maintain records outside the database in whatever format they deem appropriate, as long as such records are reproducible upon request from the Bureau, the NDBEDP Administrator, OMD, TRS Fund Administrator, Commission, or law enforcement.<sup>577</sup>

### 3. Inclusion and Protection of Personally Identifiable Information in the Centralized Database

194. In the *NDBEDP 2015 NPRM*, we proposed to permit the NDBEDP Administrator and other appropriate FCC staff to search the centralized database and generate reports to analyze nationwide data on the NDBEDP.<sup>578</sup> We asked whether certain data should be excluded from the centralized database – for example, whether clients should be given a unique identifying (ID) number, which could be entered into the database in lieu of their names and other personally identifiable information (PII).<sup>579</sup> We sought comment on how to ensure the privacy and confidentiality of PII and proposed that access to the centralized database be limited to authorized entities under tightly controlled conditions subject to procedures, protocols, and other safeguards established by the database administrator.<sup>580</sup>

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<sup>573</sup> See Keystone Comments at 5-6. In Keystone's experience, generating reports and claims "was quite simple and straight forward when the data was all managed within the same system." *Id.* at 6. On the other hand, inconsistencies arose when certified programs managed their reimbursement data separately, suggesting that the ability to reconcile data in a single system can reduce errors and omissions in the reporting process. *Id.*

<sup>574</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5315-16, para. 122.

<sup>575</sup> See IDBI Comments at 28 (recommending that certified programs retain a copy of their records in paper and electronic format as a backup to any centralized database).

<sup>576</sup> See *infra* Part VII.F (Audits and Record Retention).

<sup>577</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5316, para. 122 (seeking comment on the appropriate format for program records); Perkins Comments at 56 (contending that electronic recordkeeping should satisfy record retention requirements); GACHI Comments at 34 (suggesting that each certified program should maintain a database into which supporting documentation can be scanned, in order to comply with documentation requirements, reduce paper files, and facilitate record transfer to another certified program).

<sup>578</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5271, para. 34.

<sup>579</sup> *Id.* at 5271, para. 33. Additionally, we asked whether certified programs may be prohibited by state regulation from storing data out of state and whether these prohibitions or other factors would prevent the input of the types of data described above – or any other related types of data – into a centralized database. *Id.* No commenter reports the existence of any such state regulations or other factors that would prevent input of data into a centralized database. Although IDBI states that it is not clear which type of information or data might be impacted, it believes "there are ways to work this issue out with the state regulations" to enable the submission of the data. IDBI Comments at 12.

<sup>580</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5271, para. 34. The database administrator will be the entity selected by the Commission to develop and maintain the NDBEDP centralized database. See *infra* Part VII.E.5 (Database Administration).

195. Some commenters express concerns about maintaining the privacy and confidentiality of information about consumers and program personnel that will be submitted to the database.<sup>581</sup> In addition, a few commenters express concerns about ensuring that the centralized database meets Health Insurance Portability and Accountability Act of 1996 (HIPAA) standards.<sup>582</sup> Several commenters suggest that it would be more secure for names and addresses of equipment recipients to be maintained only at the program level.<sup>583</sup> In contrast, Keystone Systems, Inc. (Keystone) supports including the identity of equipment recipients in the centralized database to achieve greater security than e-mail attachments, and to verify whether consumers have applied for equipment and services in multiple states.<sup>584</sup>

196. We conclude that the inclusion of certain PII is necessary because it will assist in analyzing and tracking changes that occur when one certified program is replaced by another or when a client moves to another state, may facilitate the transfer of client information when a client moves to another state, and may help detect possible fraud, waste, and abuse.<sup>585</sup> Further, HIPAA does not pose any major impediment to the inclusion of PII in the centralized database. The Commission is not a “covered entity” for purposes of HIPAA and therefore is not subject to the same HIPAA standards applicable to such entities. Rather, the Commission is a “health oversight agency,” i.e., “an agency or authority of the United States . . . that is authorized by law to oversee . . . government programs in which health information is necessary to determine eligibility or compliance.”<sup>586</sup> To the extent that any certified program is a “covered entity” subject to HIPAA requirements, HIPAA permits the program to “disclose protected health information to a health oversight agency for oversight activities authorized by law.”<sup>587</sup>

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<sup>581</sup> See, e.g., ATAP Comments at 3; GACHI Comments at 2; IDBI Comments at 12; IPAT Comments at 3; MoAT Comments at 2; Perkins Comments at 16. Seattle Lighthouse stresses that confidentiality is an important value within the DeafBlind community, which “should be reflected in the types of information collected and shared.” Seattle Lighthouse Comments at 5. GACHI also notes that sensitive information is also reported to the Commission about program personnel, such as salary data. GACHI Comments at 10, 11, 26 (stating that it is “unsure about the centralized database and what information may be disclosed to other states such as salaries, etc.”).

<sup>582</sup> ATI Comments at 3; ATK Comments at 3; ATLA Comments at 3; IOD Comments at 3; WATAP Comments at 3; see also *Health Insurance Portability and Accountability Act of 1996*, Pub. L. No. 104-191, 100 Stat. 2548 (1996) (HIPAA). The U.S. Department of Health and Human Services adopted *Standards for Privacy of Individually Identifiable Health Information* (Privacy Rule) to implement HIPAA. The Privacy Rule standards address the use and disclosure of individuals’ protected health information by organizations subject to the Privacy Rule (covered entities), as well as standards for individuals’ privacy rights to understand and control how their health information is used. See U.S. Department of Health and Human Services, Office for Civil Rights, *Summary of the HIPAA Privacy Rule* (last revised May 2003), <http://www.hhs.gov/sites/default/files/privacysummary.pdf>.

<sup>583</sup> For example, IDBI and IPAT claim that using unique ID numbers or codes in lieu of names, and entering these into a local database would make such data more resistant to hackers. IDBI Comments at 12; IPAT Comments at 3; see also ATLA Comments at 3; IOD Comments at 3. WATAP notes it is unaware of other federal programs that require PII to be submitted to the national sponsor, opting instead to keep client data at the local level. WATAP Comments at 3 (citing programs administered by the Rehabilitation Services Administration and the Administration on Community Living); see also LightHouse Comments at 3-4 (reporting that quarterly reports required by state participants in certain federal programs under the Department of Education exclude consumer names).

<sup>584</sup> Keystone Comments at 9.

<sup>585</sup> See *id.* (noting that if ID numbers are used in lieu of names and other PII for submission to the centralized database, it may not be possible to track data effectively for consumers who participate in more than one state program).

<sup>586</sup> 45 CFR § 164.501.

<sup>587</sup> *Id.* at § 164.512(d)(1). Such activities include “audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of: (i) The health care system; (ii) Government benefit programs for which health information is relevant to beneficiary eligibility; (iii) Entities subject to government regulatory

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Therefore to the extent that certified programs are subject to HIPAA, disclosure of protected health information to the Commission for purposes of administering the NDBEDP does not conflict with HIPAA.<sup>588</sup>

197. While we will not exclude PII from the centralized database, we agree with commenters that privacy and security are key considerations that we must consider in the collection and maintenance of this information. Accordingly, we direct the Bureau and the NDBEDP Administrator to limit the amount of PII collected to that needed for effective program oversight. We also agree with commenters that the database administrator should be tasked with establishing procedures, protocols, and other safeguards to ensure database access is in fact restricted according to the Commission's guidelines to protect any PII in the centralized database.<sup>589</sup> Additionally, consistent with the Commission's determinations in the *VRS Reform Order* regarding the TRS User Registration Database, we require that access to the centralized NDBEDP database be limited to authorized entities for purposes that further the effective and efficient operation and administration of the NDBEDP and compliance with the Commission's rules.<sup>590</sup> The database administrator shall allow certified programs to access and use the database only for the reasons specified in this Part VII.E, and to determine whether information previously entered in the database is correct and complete. Moreover, we specifically prohibit a certified program from accessing PII about clients of another certified program, except as expressly authorized by the NDBEDP Administrator, pursuant to appropriate safeguards, where necessary to ensure continuity of service to such clients or for the efficient administration of the program.

198. We conclude that all access to the centralized database should be restricted to secure means of communication and be subject to a strict password policy to help protect the security of the database.<sup>591</sup> To the extent possible and appropriate, certified programs should be informed specifically about how data will be secured.<sup>592</sup> As in the pilot program, the Bureau and the NDBEDP Administrator will coordinate with OMD and the CIO to ensure compliance with Government-wide statutory and regulatory guidance as to the Privacy Act of 1974, Federal Information Security Management Act of 2002 (FISMA), and any other applicable privacy and security requirements.

#### 4. Access to Other Programs' Data and Aggregate Data

199. In the *NDBEDP 2015 NPRM*, we also asked to what extent a certified program should be permitted access to other programs' data or aggregate data and the extent to which the NDBEDP Administrator should be able to allow other entities to access the database.<sup>593</sup> Commenters generally support providing different levels of access to the information in the database, giving the highest level of access to the NDBEDP Administrator and other appropriate Commission staff, and permitting certified

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programs for which health information is necessary for determining compliance with program standards; or (iv) Entities subject to civil rights laws for which health information is necessary for determining compliance." *Id.*

<sup>588</sup> Despite this categorization, it remains ultimately the responsibility of any HIPAA covered entity to ensure that it has the proper authorization to transmit health information to another individual or entity and is in full compliance with any applicable provisions of HIPAA and other privacy laws. A certified program that is or may be a covered entity for purposes of HIPAA may seek guidance about its obligations under HIPAA from the U.S. Department of Health and Human Services, Office for Civil Rights.

<sup>589</sup> See, e.g., IDBI Comments at 12-13; CDBP Comments at 3 (concurring).

<sup>590</sup> See *VRS Reform Order*, 28 FCC Rcd at 8652-53, para. 76 (adopting safeguards similar to those set forth in this paragraph).

<sup>591</sup> Keystone Comments at 11.

<sup>592</sup> See, e.g., ATAP Comments at 3; ATI Comments at 3; ATLA Comments at 3; IOD Comments at 3; IPAT Comments at 2-3; WATAP Comments at 3.

<sup>593</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5271, para. 34.

programs to have access to their own information but not the information of other programs.<sup>594</sup> One commenter suggests that trainers and assessors should be able to access PII associated with consumers assigned to them and that certified programs should be able to access PII to determine whether a consumer has been entered into the database by another certified program.<sup>595</sup> Other commenters caution that access to the database by “any trainers, assessors or other subcontractors” should not be permitted without tight controls.<sup>596</sup>

200. We conclude that, in general, PII and other data entered by a program should be available only to Commission staff and contractors that are charged with NDBEDP oversight responsibilities, such as the TRS Fund Administrator. In addition, such information can be obtained by personnel authorized by the specific certified program that provided the data (or its successor), pursuant to authorization procedures established by the Bureau, the NDBEDP Administrator, OMD and its CIO. In addition, the Bureau, the NDBEDP Administrator, and OMD and its CIO will determine under what circumstances and procedures certified programs may obtain access to aggregated, non-personally identifiable information about other state programs or about the NDBEDP as a whole.<sup>597</sup>

### 5. Database Administration

201. In the *NDBEDP 2015 NPRM*, we stated that we would consider a variety of approaches to establishing a centralized database. These included using existing staff and resources, using another agency’s information technology experience to provide administrative support through an interagency agreement, pursuing a competitive procurement, modifying a contract with an existing contractor, inviting entities to apply to perform this function, and using a combination of these approaches.<sup>598</sup>

202. Although several commenters recommend that the Commission invite entities via a public notice to submit applications to develop and maintain the database,<sup>599</sup> we conclude that the complexity of the task and the sensitivity of the issues to be addressed, including matters of privacy and security, demand a more structured process for making this selection. We further conclude that the centralized database should be built and operated under the direct supervision of the Commission by an entity that has demonstrated skills in the development and management of an existing system of similar scope and complexity. We direct the Bureau, in coordination with the Commission’s Managing Director and its CIO, the NDBEDP Administrator, and others within the Commission, as may be appropriate, to determine whether the database should be built using internal Commission resources, or via an

<sup>594</sup> ATK Comments at 3; ATLA Comments at 3; CAAG Comments at 9; CDBP Comments at 3; GACHI Comments at 11; IOD Comments at 3; Keystone Comments at 10-11; LightHouse Comments at 4; WATAP Comments at 3.

<sup>595</sup> Keystone Comments at 10, 11 (noting that some assessors and trainers work in multiple states); *see also, e.g.*, CAAG Comments at 9; IDBI Comments at 12-13 (supporting access by certified programs to other states’ data to determine whether an applicant is receiving services from another state, which “lessen the chance of duplication of service” and reduce waste and fraud).

<sup>596</sup> ATK Comments at 3; *see also* ATLA Comments at 3; IOD Comments at 3; WATAP Comments at 3; SRC/CBVI Comments at 3 (asserting that PII about its clients should not be available to anyone except Commission staff and the TRS Fund Administrator); Perkins Comments at 16 (urging that “specific consumer-related information should only be available to people who work directly with the consumer and/or manage the state program”). SRC/CBVI also reports that, consistent with its obligations under HIPAA, it “cannot allow other state programs to be able to access the names of [its] clients.” SRC/CBVI Comments at 3; *see also* GACHI Comments at 2, 11 (noting concerns about the need to comply with HIPAA requirements).

<sup>597</sup> Perkins Comments at 16 (suggesting that programs should have access to aggregated information about “types of equipment, and rolled-up, aggregate information about time/costs for assessments and trainings, number distributed for types of equipment (e.g. braille displays, etc.)”); *see also* ACB Comments at 2-3; IDBI Comments at 12.

<sup>598</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5272-73, para. 37.

<sup>599</sup> *See* ATAP Comments at 2; ATI Comments at 2-3; ATK Comments at 3; ATLA Comments at 3; IOD Comments at 3; MoAT Comments at 2; WATAP Comments at 3.

interagency agreement, a competitive procurement, or a modification of an existing agency contract.<sup>600</sup> As part of this process, the Bureau, in consultation with the NDBEDP Administrator and such Commission offices, will identify the data elements, structure of the database, and other implementation details. To ensure efficient management and effective use of NDBEDP data in response to changes that occur over time, we further direct the Bureau and the NDBEDP Administrator, in conjunction with the Managing Director and CIO, to initiate or direct such modifications as needed.<sup>601</sup>

#### F. Audits and Record Retention

203. During the pilot program, certified programs have been required to engage an independent auditor to perform annual audits designed to detect and prevent fraud, waste, and abuse, to make their NDBEDP-related records available for Commission-directed review or audit, and to submit documentation, upon request, demonstrating ongoing compliance with the Commission's rules.<sup>602</sup> For purposes of promoting greater transparency and accountability, the NDBEDP pilot program rules also have required certified programs to retain all records associated with the distribution of equipment and provision of related services for two years following the termination of the pilot program.<sup>603</sup>

204. In the *NDBEDP 2015 NPRM*, we proposed to retain these requirements and also to require that each certified program submit a copy of its annual audit to the TRS Fund Administrator and the NDBEDP Administrator.<sup>604</sup> We also proposed to affirm guidance previously provided by the Bureau regarding the standard governing annual audits.<sup>605</sup> We further proposed to require certified programs to document compliance with all Commission requirements governing the NDBEDP,<sup>606</sup> and that any program that fails to fully cooperate in audits directed by the Commission should be subject to automatic suspension of NDBEDP payments until sufficient documentation is provided.<sup>607</sup> Finally, we proposed to set the minimum record retention period for the permanent program at five years,<sup>608</sup> the same period required by the Commission's TRS rules.<sup>609</sup>

205. Some commenters support the continuation of the annual audit requirement,<sup>610</sup> while others contend that it is not necessary given the current reimbursement and reporting requirements, where

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<sup>600</sup> The comments provide useful suggestions to be considered in the selection of a database administrator. *See, e.g.*, Keystone Comments at 14 (recommends that the criteria for selection of an administrator include experience in the "development and management of an existing system of similar scope and complexity," as well as "proven experience in developing accessible solutions, and supporting users of assistive technology"); Perkins Comments at 18 (suggesting that the administrator have experience in database development and meeting the accessibility requirements of users with a wide range of capabilities).

<sup>601</sup> *See VRS Reform Order*, 28 FCC Rcd at 8653, para. 77 ("Our experience . . . has taught us that it may become necessary, over time, to . . . make changes to the way the database is administered, structured, or interacted with so as to ensure the efficient administration of the program.").

<sup>602</sup> 47 CFR § 64.610(e)(1)(vii), (j)(3); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5684, para. 101.

<sup>603</sup> 47 CFR § 64.610(e)(1)(viii); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5684-85, para. 101. The Commission did not specify the format in which those records must be retained. *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5684-85, para. 101.

<sup>604</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5313, para. 114.

<sup>605</sup> *Id.* at 5313, para. 115; *NDBEDP FAQ 25-27*.

<sup>606</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5315, para. 121.

<sup>607</sup> *Id.* at 5314, para. 117.

<sup>608</sup> *Id.* at 5315, para. 121.

<sup>609</sup> *See, e.g.*, 47 CFR §§ 64.604(c)(5)(iii)(D)(7), (c)(9)(x), (c)(11)(iv), 64.631(a)(2).

<sup>610</sup> GACHI Comments at 33; IDBI Comments at 27-28; Perkins Comments at 55.



each invoice and line item cost is examined.<sup>611</sup> We will retain the requirement for certified programs to conduct annual audits in the permanent NDBEDP because we conclude that annual audits are needed “to ensure the fiscal integrity of the program.”<sup>612</sup> As we proposed in the *NDBEDP 2015 NPRM*, and as supported in the record, we clarify that the program audit standard is comparable to that required for OMB Circular A-133 audits and not a more rigorous audit standard, such as a forensic standard.<sup>613</sup> Specifically, as stated in the Bureau’s 2012 guidance, the annual independent audit must include a traditional financial statement audit, as well as an audit of compliance with the NDBEDP rules that have a direct and material impact on NDBEDP expenditures and a review of internal controls established to ensure compliance with the NDBEDP rules.<sup>614</sup> Compliance areas to be audited must include, but are not limited to, allowable costs, participant eligibility, equipment distribution, and reporting. The audit report must describe any exceptions found, such as unallowable costs, lack of participant eligibility documentation, and missing reports, and must include the certified program’s view as to whether each compliance exception is material and whether any internal control deficiencies are material. If the auditor finds evidence of fraud, waste, or abuse, the auditor must take appropriate steps to discuss it with the certified program management and the Commission and report the auditor’s observations as required under professional auditing standards.<sup>615</sup>

206. The record also supports our proposals to continue to require certified programs to submit to an audit arranged by the Commission or its delegated authorities,<sup>616</sup> and for any certified program that fails to fully cooperate in a Commission-arranged audit to be subject to an automatic suspension of NDBEDP payments until it agrees to the requested audit.<sup>617</sup> While the Commission has not undertaken any audits of certified programs during the pilot program, to date, we conclude that it is fiscally prudent to continue to require certified programs to submit to such audits. In addition, we find that this automatic suspension policy will promote transparency, accountability, and assure the integrity of the TRS Fund.

207. Further, we will retain the provisions in the pilot program rules requiring certified programs to document compliance with all Commission requirements governing the NDBEDP, retain all records associated with the distribution of equipment and provision of related services under the NDBEDP, including records that support reimbursement claims and reports, and, upon Commission request, to submit documentation demonstrating ongoing compliance with the Commission’s rules.<sup>618</sup> As proposed, we clarify that “evidence that a state program may not be in compliance with those rules” is not a prerequisite to such a documentation request.<sup>619</sup> As we noted in the *NDBEDP 2015 NPRM*, record retention is necessary to resolve inquiries and complaints, as well as questions about reimbursement claims or compliance with NDBEDP rules.<sup>620</sup> We affirm that this requirement will help to prevent and detect fraud, waste, and abuse and to ensure compliance with the NDBEDP rules. Certified programs may maintain records in whatever format they deem appropriate, as long as such records are reproducible

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<sup>611</sup> ATK Comments at 5; ATLA Comments at 5; IOD Comments at 5; IPAT Comments at 5; WATAP Comments at 6. *See supra* Parts VI.D (Documentation of Reimbursement Claims), VII.D (Reporting Requirements).

<sup>612</sup> Perkins Comments at 55.

<sup>613</sup> GACHI Comments at 33; IDBI Comments at 27-28.

<sup>614</sup> *See NDBEDP FAQ 25.*

<sup>615</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5313, para. 115; *NDBEDP FAQ 26.*

<sup>616</sup> GACHI Comments at 33; IDBI Comments at 27-28.

<sup>617</sup> GACHI Comments at 33; IDBI Comments at 27-28.

<sup>618</sup> 47 CFR § 64.610(j)(3) (pilot program rule).

<sup>619</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5314, para. 118.

<sup>620</sup> *Id.* at 5315, para. 121.

upon request from the Bureau, the NDBEDP Administrator, OMD, the TRS Fund Administrator, Commission, or law enforcement.<sup>621</sup>

208. Finally, we adopt the proposal to require record retention for five years, a period that is supported by a number of commenters<sup>622</sup> and is consistent with the Commission's TRS and Lifeline rules.<sup>623</sup> Extending the requirement to five years will help to ensure compliance with program requirements and enable the Commission to exercise appropriate oversight and administration of the permanent NDBEDP on an ongoing basis.

### G. Whistleblower Protections

209. In the *NDBEDP 2015 NPRM*, we proposed to retain the whistleblower protections in the Commission's rules for the permanent NDBEDP.<sup>624</sup> Those protections require certified programs to permit individuals to disclose to appropriate officials, known or suspected rule violations or any other activity the individual believes to be unlawful, wasteful, fraudulent, or abusive, or that could result in the improper distribution of equipment, provision of services, or billing to the TRS Fund.<sup>625</sup> Certified programs must 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.<sup>626</sup>

210. Commenters discussing the whistleblower provisions, support their retention.<sup>627</sup> Because we continue to believe that these whistleblower protections help to prevent and detect fraud, waste, and abuse, we will retain these requirements for the permanent NDBEDP.

### H. Complaints

211. In the *NDBEDP 2015 NPRM*, we proposed to adopt rules, modeled after the Commission's complaint processes for telecommunications and TRS providers, to facilitate the receipt and processing of informal consumer complaints filed with the Commission regarding NDBEDP.<sup>628</sup> Specifically, we proposed that: (1) informal complaints containing specified information will be forwarded to the certified program for a response; (2) if the program's response does not resolve the complaint, the Commission will make its own disposition of the complaint and inform both parties; (3) if unsatisfied with the result, the complainant may file a formal complaint with the Commission; and (4) the Commission may also conduct such inquiries and proceedings as it deems necessary to enforce the NDBEDP requirements.<sup>629</sup>

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<sup>621</sup> See *id.* at 5316, para. 122 (seeking comment on the appropriate format for program records); Perkins Comments at 56 (contending that electronic recordkeeping should satisfy record retention requirements); GACHI Comments at 34 (suggesting that each certified program should maintain a database into which supporting documentation can be scanned, in order to comply with documentation requirements, reduce paper files, and facilitate record transfer to another certified program).

<sup>622</sup> CDBP Comments at 6; IDBI Comments at 28.

<sup>623</sup> See, e.g., 47 CFR §§ 54.417, 64.604(c)(5)(iii)(D)(7), (c)(9)(x), (c)(11)(iv), 64.631(a)(2).

<sup>624</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5314, para. 119; see also 47 CFR § 64.610(i).

<sup>625</sup> 47 CFR § 64.610(i)(1) (pilot program rule).

<sup>626</sup> *Id.* at § 64.610(i)(2) (pilot program rule).

<sup>627</sup> GACHI Comments at 33; IDBI Comments at 28; Perkins Comments at 55.

<sup>628</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5318, paras. 128-129; see also, e.g., 47 CFR § 6.15-6.23 (rules previously adopted to enforce Section 255 of the Act); 47 CFR § 64.604(c)(6)(v) (procedures for informal and formal complaints against TRS providers).

<sup>629</sup> *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5318, para. 129.

212. We hereby adopt the proposed complaint procedures, which are generally supported by the commenters.<sup>630</sup> Under these procedures, informal complaints related to the NDBEDP will be processed by the Bureau's Disability Rights Office (DRO) complaints division and the NDBEDP Administrator.<sup>631</sup> This informal complaint process is intended to facilitate resolution of complaints between the parties whenever possible.<sup>632</sup> As noted, if the consumer is not satisfied with the certified program's response and the DRO's disposition of an informal complaint, the consumer may file a formal complaint.<sup>633</sup>

## VIII. PROCEDURAL MATTERS

### A. Regulatory Flexibility Act

213. *Final Regulatory Flexibility Certification.* Pursuant to the Regulatory Flexibility Act of 1980,<sup>634</sup> the Commission's Final Regulatory Flexibility Certification (FRFC) is contained in Appendix E. The Commission will send a copy of this Report and Order, including the FRFC, to the Chief Counsel for Advocacy of the Small Business Administration.

### B. Paperwork Reduction Act

214. *Paperwork Reduction Act of 1995 Analysis.* The Report and Order adopts new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).<sup>635</sup> The new information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA.<sup>636</sup> OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,<sup>637</sup> the Commission previously sought comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."<sup>638</sup>

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<sup>630</sup> See, e.g., HKNC Comments at 12; IDBI Comments at 29; Perkins Comments at 59. No commenter objected to the proposed complaint procedures.

<sup>631</sup> Informal complaints may be transmitted to the Commission via any reasonable means, such as by letter, fax, telephone, TTY, or e-mail. When the Commission's Consumer Help Center is updated, informal complaints may also be transmitted online. Consumers who need assistance filing an informal complaint may also contact the FCC Disability Rights Office at [dro@fcc.gov](mailto:dro@fcc.gov), or call 202-418-2517 (voice), 202-418-2922 (TTY), or 1-844-432-2275 (videophone).

<sup>632</sup> We modify slightly our rule governing the handling of informal complaints to reflect that there will often be follow-up communications with consumers, even when complaints may appear to have been satisfied. Specifically, we delete the final phrase from the proposed provision that read: "Where it appears from the NDBEDP certified program's answer, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the matter closed *without further response to the complainant or the NDBEDP certified program.*" See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5341, Appendix F (Proposed Rule Changes).

<sup>633</sup> See 47 CFR §§ 1.720 – 1.736.

<sup>634</sup> 5 U.S.C. § 601 *et seq.*

<sup>635</sup> Pub. L. No. 104-13, 109 Stat. 163 (1995); 44 U.S.C. §§ 3501-3520.

<sup>636</sup> 44 U.S.C. § 3507(d).

<sup>637</sup> *Id.* at § 3506(c)(4).

<sup>638</sup> See *NDBEDP 2015 NPRM*, 30 FCC Rcd at 5320, para. 135.

**C. Congressional Review Act**

215. 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.<sup>639</sup>

**D. Materials in Accessible Formats**

216. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, or audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov), or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (844) 432-2275 (videophone), or (202) 418-0432 (TTY).

**IX. ORDERING CLAUSES**

217. Accordingly, IT IS ORDERED that, pursuant to 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, this Report and Order IS ADOPTED and the Commission's rules ARE HEREBY AMENDED as set forth in Appendix D.

218. IT IS FURTHER ORDERED that this Report and Order SHALL BE EFFECTIVE 30 days after publication of a summary in the *Federal Register*, except as otherwise specified in these Ordering Clauses.

219. IT IS FURTHER ORDERED that the following rules adopted herein, 47 CFR §§ 64.6207, 64.6209, 64.6211, 64.6213, 64.6215, 64.6217, and 64.6219, SHALL BE EFFECTIVE on the date specified in a notice published in the *Federal Register* announcing the approval by OMB of the information collection requirements of such rules under the PRA.

220. IT IS FURTHER ORDERED that the following rules adopted herein, 47 CFR §§ 64.6201, 64.6203, and 64.6205, SHALL BE EFFECTIVE July 1, 2017.

221. IT IS FURTHER ORDERED that Section 64.610 of the Commission's rules will remain in effect until after all reports have been submitted, all payments and adjustments have been made, all wind-down activities have been completed, and no issues with the regard to the NDBEDP pilot program remain pending.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>639</sup> 5 U.S.C. § 801(a)(1)(A).

## APPENDIX A

## List of Commenters

<b>ORGANIZATIONAL COMMENTERS</b>	<b>NDBEDP Certified Program</b>	<b>DATE Received</b>
Access Technologies, Inc. (ATI)	Oregon / since 2012	July 27, 2015
American Association of the Deaf-Blind (AADB)		July 28, 2015
American Council of the Blind (ACB)		July 22, 2015
Assistive Technology for Kansans (ATK)	Kansas / since 2012	July 27, 2015
Assistive Technology of Alaska (ATLA)	Alaska / since 2012	July 27, 2015
Association of Assistive Technology Act Programs (ATAP)		July 27, 2015
Center for Deaf-Blind Persons, Inc. (CDBP)		July 27, 2015
Communication Access Ability Group d/b/a StarVRS (CAAG) <sup>1</sup>		July 27, 2015
Commonwealth of the Northern Mariana Islands Office of Vocational Rehabilitation (CNMI OVR)		July 30, 2015
Equifax Workforce Solutions (Equifax)		July 21, 2015
Georgia Council for the Hearing Impaired (GACHI)	Georgia / since 2012	July 27, 2015
Helen Keller National Center for Deaf-Blind Youth and Adults (HKNC)	New York / since 2012 Iowa / since 2014	July 27, 2015
International DeafBlind Institution (IDBI)		July 27, 2015
Institute on Disabilities at Temple University (IOD)	Pennsylvania / since 2012	July 24, 2015
Interagency Program for Assistive Technology (IPAT)	North Dakota / since 2012	July 27, 2015
Keystone Systems, Inc. (Keystone)		July 27, 2015
LightHouse for the Blind and Visually Impaired (LightHouse)	California / since 2012	July 28, 2015
Lighthouse for the Blind, Inc. (Seattle Lighthouse)		July 30, 2015
Missouri Assistive Technology (MoAT)	Missouri / since 2012	July 27, 2015
Northeast Deaf and Hard of Hearing Services, Inc. (NDHHS)	New Hampshire / since 2012	July 29, 2015
Perkins School for the Blind (Perkins)	Various / since 2012	July 24, 2015
State Rehabilitation Council for the New Jersey Commission for the Blind and Visually Impaired (SRC/CBVI)	New Jersey (CBVI) / since 2012	June 10, 2015 and July 27, 2015
Washington Assistive Technology Act Program (WATAP)		July 27, 2015

<sup>1</sup> As of March 31, 2016, CAAG ceased providing video relay services (VRS) and VRSdb (a service that allows deaf-blind individuals to communicate expressively in American Sign Language and receptively in text or Braille).

<b>INDIVIDUAL COMMENTERS</b>		
Larry P. Johnson (Johnson)		July 2, 2015
Mellanie Lee (Lee)		July 22, 2015
Laura White (White)		July 27, 2015
<b>REPLY COMMENTERS</b>		
Communication Access Ability Group d/b/a StarVRS (CAAG)		August 10, 2015
Disability Rights Maine (DRM) <sup>2</sup>	Maine / since 2015	August 6, 2015
<b>Ex Parte</b>		
Bryen M. Yunashko		June 6, 2016
Perkins School for the Blind		June 22, 2016

<sup>2</sup> The Maine Center on Deafness (MCD) served as the NDBEDP certified program from 2012 until MCD closed in 2015. Disability Rights Maine (DRM) hired former MCD staff to continue the programs and services previously provided by MCD. The Commission selected DRM to replace MCD. *See Commission Announces Entity Selected for Certification to Participate in the National Deaf-Blind Equipment Distribution Program for Maine*, Public Notice, 30 FCC Red 8296 (CGB 2015).

## APPENDIX B

## NDBEDP Pilot Program Certified Entities

State	July 2012	Changes Since July 2012
Alabama	Alabama Institute for the Deaf and Blind	
Alaska	Assistive Technology of Alaska	
Arizona	Perkins School for the Blind	
Arkansas	Perkins School for the Blind	
California	Lighthouse for the Blind and Visually Impaired	
Colorado	Colorado Commission for the Deaf and Hard of Hearing	
Connecticut	Connecticut Tech Act Project	
Delaware	University of Delaware – Center For Disabilities Studies	
Florida	Florida Telecommunications Relay, Inc.	Helen Keller National Center for Deaf-Blind Youth and Adults
Georgia	Georgia Council for the Hearing Impaired	
Hawaii	Island Skill Gathering	Helen Keller National Center for Deaf-Blind Youth and Adults
Idaho	University of Idaho – Idaho Assistive Technology Project	
Illinois	The Chicago Lighthouse for People Who Are Blind or Visually Impaired	
Indiana	Indiana State University	Perkins School for the Blind
Iowa	Iowa Utilities Board	Helen Keller National Center for Deaf-Blind Youth and Adults
Kansas	Assistive Technology for Kansans	
Kentucky	Eastern Kentucky University Center on Deafness and Hearing Loss	
Louisiana	Affiliated Blind of Louisiana Training Center	
Maine	Maine Center on Deafness	Disability Rights Maine
Maryland	Perkins School for the Blind	
Massachusetts	Perkins School for the Blind	
Michigan	Michigan Commission for the Blind	Perkins School for the Blind
Minnesota	Minnesota Department of Human Services Deaf and Hard of Hearing Service Division	Perkins School for the Blind

<b>State</b>	<b>July 2012</b>	<b>Changes Since July 2012</b>
Mississippi	The Arc of Mississippi	Perkins School for the Blind
Missouri	Missouri Assistive Technology	
Montana	Perkins School for the Blind	
Nebraska	Nebraska Commission for the Deaf and Hard of Hearing	Nebraska Assistive Technology Partnership
Nevada	Deaf and Hard of Hearing Advocacy Resource Center	Perkins School for the Blind
New Hampshire	Northeast Deaf and Hard of Hearing Services, Inc.	
New Jersey	New Jersey Commission for the Blind and Visually Impaired	
New Mexico	Perkins School for the Blind	
New York	Helen Keller National Center for Deaf-Blind Youth and Adults	
North Carolina	North Carolina Division of Services for the Deaf and the Hard of Hearing	
North Dakota	Interagency Program for Assistive Technology	
Ohio	Ohio Deaf-Blind Outreach Program	
Oklahoma	Oklahoma Department of Rehabilitation Services	
Oregon	Access Technologies, Inc.	
Pennsylvania	Institute on Disabilities – Temple University	
Rhode Island	Perkins School for the Blind	
South Carolina	Perkins School for the Blind	
South Dakota	South Dakota Department of Human Services	
Tennessee	Tennessee Regulatory Authority	
Texas	Perkins School for the Blind	
Utah	Utah Public Service Commission	Perkins School for the Blind
Vermont	Vermont Center for the Deaf and Hard of Hearing	Perkins School for the Blind
Virginia	Virginia Department for the Deaf and Hard of Hearing	Virginia Department for the Blind and Vision Impaired
Washington	Department of Social and Health Services – Office of the Deaf and Hard of Hearing	Perkins School for the Blind
West Virginia	Perkins School for the Blind	



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<b>State</b>	<b>July 2012</b>	<b>Changes Since July 2012</b>
Wisconsin	Public Service Commission of Wisconsin	
Wyoming	Wyoming Institute for Disabilities – University of Wyoming	
Washington, DC	Columbia Lighthouse for the Blind	
Puerto Rico	Perkins School for the Blind	
U.S. Virgin Islands	Perkins School for the Blind	

## APPENDIX C

Summary of Pilot Program Expenditures  
2012-2013, 2013-2014, and 2014-2015<sup>1</sup>

	Available Funding	2012-2013		2013-2014		2014-2015	
		Amount Used	% Used	Amount Used	% Used	Amount Used	% Used
<b>Program and Administrative Costs</b>	\$9,500,000	\$6,257,608	65.87%	\$8,860,194	93.27%	\$8,338,334	87.77%
<b>National Outreach</b>	\$500,000	\$500,000	100.00%	\$500,000	100.00%	\$500,000	100.00%
<b>TOTAL</b>	<b>\$10,000,000</b>	<b>\$6,757,608</b>	<b>67.58%</b>	<b>\$9,360,194</b>	<b>93.60%</b>	<b>\$8,838,334</b>	<b>88.38%</b>

## Average Expenditures per Person 2012-2015

Pilot Program Expenditures 2012-2013 = \$6,757,608

Pilot Program Expenditures 2013-2014 = \$9,360,194

Pilot Program Expenditures 2014-2015 = \$8,838,334

Total Pilot Program Expenditures 2012-2015<sup>2</sup> = \$24,956,136Number of Unique Individuals Served 2012-2015<sup>3</sup> = 3,323

Average Expenditures per Person = \$7,510

Summary of Pilot Program Expenditures for 2013-2014 and 2014-2015<sup>4</sup>

**2013-2014:** Of the total expenditures of \$9,360,194 in 2013-2014, \$500,000 was allocated and used for national outreach. The remaining **\$8,860,194 was used by the 53 certified programs as follows:**

- **75.07% serving individuals** (7.70% on assessments, 46.13% to purchase and distribute equipment, and 21.24% to install the equipment and train recipients how to use the equipment); and
- **24.93% establishing, promoting, and administering the programs** (3.43% for demonstration equipment, 10.30% on local outreach, and 11.20% to cover administrative costs).

**2014-2015:** Of the total expenditures of \$8,838,334 in 2014-2015, \$500,000 was allocated and used for national outreach. The remaining **\$8,338,334 was used by the 53 certified programs as follows:**

- **71.35% serving individuals** (6.30% on assessments, 40.60% to purchase and distribute equipment, and 24.45% to install the equipment and train recipients how to use the equipment); and
- **28.66% establishing, promoting, and administering the programs** (3.90% for demonstration equipment, 12.81% on local outreach, and 11.95% to cover administrative costs).

<sup>1</sup> Data provided by the TRS Fund Administrator, as of July 26, 2016.

<sup>2</sup> Based on data provided by the TRS Fund Administrator, as of July 26, 2016.

<sup>3</sup> Based on reports of NDBEDP activities filed by all 53 certified programs with the Commission as of July 11, 2016, 1,128 unique individuals were served during pilot program year 2012-2013, 1,025 new individuals were served during 2013-2014, and 1,170 new individuals were served during 2014-2015, for a total of 3,323 unique individuals served during the first three years of the pilot program.

<sup>4</sup> Based on data provided by the TRS Fund Administrator, as of July 26, 2016.

Pilot Program Expenditures for 2013-2014 and 2014-2015 by Category of Expense<sup>5</sup>

	2013-2014		2014-2015	
	Amount Used	%	Amount Used	%
<b>Program and Administrative Costs</b>	<b>\$8,860,194</b>	<b>100.00%</b>	<b>\$8,338,334</b>	<b>100.00%</b>
<b>Program Costs</b>	<b>\$7,867,542</b>	<b>88.80%</b>	<b>\$7,342,231</b>	<b>88.05%</b>
<b>State and Local Outreach</b>	<b>\$912,312</b>	<b>10.30%</b>	<b>\$1,068,355</b>	<b>12.81%</b>
Outreach Events	\$333,830		\$155,016	
Program Information	\$219,616		\$202,649	
Advertisement	\$255,567		\$607,794	
In State Travel	\$57,596		\$64,917	
Aids and Services	\$12,791		\$12,821	
Other	\$32,912		\$25,158	
<b>Assessments</b>	<b>\$682,333</b>	<b>7.70%</b>	<b>\$525,151</b>	<b>6.30%</b>
Eligibility Verification	\$153,659		\$98,051	
Communications	\$317,508		\$217,048	
Travel	\$163,637		\$141,611	
Aids and Services	\$29,793		\$28,410	
Other	\$17,736		\$40,032	
<b>Equipment Distributed</b>	<b>\$4,087,511</b>	<b>46.13%</b>	<b>\$3,385,109</b>	<b>40.60%</b>
Specialized Equipment	\$1,631,428		\$1,291,903	
Off the Shelf Hardware	\$1,579,870		\$1,267,215	
Software Applications	\$346,486		\$310,217	
Upgrades	\$24,266		\$41,192	
Travel	\$6,101		\$9,947	
Maintenance, Repairs, and Warranties	\$192,323		\$220,919	
Accessories	\$177,067		\$152,483	
Alert Devices	\$55,829		\$32,783	
Shipping	\$51,039		\$42,100	
Partial Payment	\$ -		\$(23)	
Miscellaneous	\$2,736		\$192	

<sup>5</sup> Data provided by the TRS Fund Administrator, as of July 26, 2016.

Equipment				
Other	\$20,368		\$16,181	
	<b>2013-2014</b>		<b>2014-2015</b>	
	<b>Amount Used</b>	<b>%</b>	<b>Amount Used</b>	<b>%</b>
<b>Demonstration Equipment</b>	<b>\$303,799</b>	<b>3.43%</b>	<b>\$324,902</b>	<b>3.90%</b>
<b>Installation and Training</b>	<b>\$1,881,587</b>	<b>21.24%</b>	<b>\$2,038,714</b>	<b>24.45%</b>
Installation	\$350,497		\$223,701	
Training	\$854,131		\$956,794	
Travel	\$526,452		\$627,592	
Instructional Materials	\$1,287		\$4,540	
Aids and Services	\$116,759		\$191,677	
Other	\$32,460		\$34,410	
<b>Administrative Costs Paid</b>	<b>\$992,652</b>	<b>11.20%</b>	<b>\$996,103</b>	<b>11.95%</b>
Administrative Costs Claimed	\$1,225,535	13.83%	\$1,408,751	16.89%
Administrative Costs not Paid	\$232,883	2.63%	\$412,648	4.95%

**APPENDIX D****Final Rules**

For the reasons stated in the preamble, the Federal Communications Commission proposes to amend Title 47 of the Code of Federal Regulations as follows:

**Part 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

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

**Authority:** 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, unless otherwise noted.

2. Add subpart GG, sections 64.6201 through 64.6219, to read as follows:

**Part 64, Subpart GG – National Deaf-Blind Equipment Distribution Program****§ 64.6201 Purpose.**

The National Deaf-Blind Equipment Distribution Program (NDBEDP) is established to support programs that distribute Equipment to low-income individuals who are deaf-blind.

**§ 64.6203 Definitions.**

For purposes of this subpart, the following definitions shall apply:

- (a) *Covered Services.* Telecommunications service, Internet access service, and advanced communications services, including interexchange services and advanced telecommunications and information services.
- (b) *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 Covered Services.
- (c) *Individual who is deaf-blind.*
  - (1) 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 paragraphs (c)(1)(i) and (ii) of this section cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.

(2) An individual's functional abilities with respect to using Covered Services in various environments shall be considered when determining whether the individual is deaf-blind under paragraphs (c)(1)(ii) and (iii) of this section.

(3) The definition in this paragraph (c) 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.

(d) *Specialized customer premises equipment* means equipment employed on the premises of a person, which is commonly used by individuals with disabilities to achieve access to Covered Services.

(e) *TRS Fund Administrator*. The entity selected by the Commission to administer the Interstate Telecommunications Relay Service Fund (TRS Fund) established pursuant to subpart F.

#### **§ 64.6205 Administration of the program.**

The Consumer and Governmental Affairs Bureau shall designate a Commission official as the NDBEDP Administrator to ensure the effective, efficient, and consistent administration of the program, determine annual funding allocations and reallocations, and review reimbursement claims to ensure that the claimed costs are consistent with the NDBEDP rules.

#### **§ 64.6207 Certification to receive funding.**

For each state, including the District of Columbia and U.S. territories, the Commission will certify a single program as the sole entity authorized to receive reimbursement for NDBEDP activities from the TRS Fund. Such entity will have full responsibility for distributing equipment and providing related services, such as outreach, assessments, installation, and training, 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.

(a) *Eligibility for certification*. Public or private entities, including, but not limited to, equipment distribution programs, vocational rehabilitation programs, assistive technology programs, schools for the deaf, blind, or deaf-blind, organizational affiliates, independent living centers, or private educational facilities, may apply to the Commission for certification.

(b) *When to apply*. Applications for certification shall be filed:

- (1) Within 60 days after the effective date of this section;
- (2) At least one year prior to the expiration of a program's certification;
- (3) Within 30 days after public notice of a program's relinquishment of certification; and
- (4) If an application deadline is extended or a vacancy exists for other reasons than relinquishment or expiration of a certification, within the time period specified by public notice.

(c) *Qualifications*. Applications shall contain sufficient detail to demonstrate the entity's ability to meet all criteria required for certification and a commitment to comply with all Commission requirements governing the NDBEDP. The Commission shall review applications and determine whether to grant

certification based on the ability of an entity 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:

- (1) Expertise in the field of deaf-blindness, including familiarity with the culture and etiquette of individuals who are deaf-blind;
- (2) The ability to communicate effectively with individuals 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;
- (3) Administrative and financial management experience;
- (4) Staffing and facilities sufficient to administer the program, including the ability to distribute equipment and provide related services to low-income individuals who are deaf-blind throughout the state, including those in remote areas;
- (5) Experience with the distribution of specialized customer premises equipment, especially to individuals who are deaf-blind;
- (6) Experience in training consumers on how to use Equipment and how to set up Equipment for its effective use;
- (7) Familiarity with Covered Services; and,
- (8) If the applicant is seeking renewal of certification, ability to provide Equipment and related services in compliance with this subpart.

(d) *Conflicts of interest.*

- (1) An applicant for certification shall disclose in its application any relationship, arrangement, or agreement with a manufacturer or provider of Equipment or related services that poses an actual or potential conflict of interest, as well as the steps the applicant will take to eliminate such actual or potential conflict or to minimize the associated risks. If an applicant learns of a potential or actual conflict while its application is pending, it must immediately disclose such conflict to the Commission. The Commission may reject an application for NDBEDP certification, or may require an applicant, as a condition of certification, to take additional steps to eliminate, or to minimize the risks associated with, an actual or potential conflict of interest, if relationships, arrangements, or agreements affecting the applicant are likely to impede its objectivity in the distribution of Equipment or its ability to comply with NDBEDP requirements.
- (2) A certified entity shall disclose to the Commission any relationship, arrangement, or agreement with a manufacturer or provider of Equipment or related services that comes into being or is discovered after certification is granted and that poses an actual or potential conflict of interest, as well as the steps the entity will take to eliminate such actual or potential conflict or to minimize the associated risks, within 30 days after the entity learns or should have learned of such actual or potential conflict of interest. The Commission may suspend or revoke an NDBEDP certification or may require a certified entity, as a condition of continued certification, to take additional steps to eliminate, or to minimize the risks associated with, an actual or potential conflict of interest, if relationships, arrangements, or agreements

affecting the entity are likely to impede its objectivity in the distribution of Equipment or its ability to comply with NDBEDP requirements.

(e) *Certification period.* Certification granted under this section shall be for a period of five years. A program may apply for renewal of its certification by filing a new application at least one year prior to the expiration of the certification period. If a certified entity is replaced prior to the expiration of the certification period, the successor entity's certification will expire on the date that the replaced entity's certification would have expired.

(f) *Notification of substantive change.* A certified program shall notify the Commission within 60 days of any substantive change that bears directly on its ability to meet the qualifications necessary for certification under paragraph (c) of this section.

(g) *Relinquishment of certification.* A program wishing to relinquish its certification before its certification expires shall electronically provide written notice of its intent to do so to the NDBEDP Administrator and the TRS Fund Administrator at least 90 days in advance, explaining the reason for such relinquishment and providing its proposed departure date. After receiving such notice, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity and effective oversight of the NDBEDP for the affected state.

(h) *Suspension or revocation of certification.* The Commission may suspend or revoke NDBEDP certification if, after notice and an opportunity to object, the Commission determines that an entity is no longer qualified for certification. Within 30 days after being notified of a proposed suspension or revocation of certification, the reason therefor, and the applicable suspension or revocation procedures, a certified entity may present written arguments and any relevant documentation as to why suspension or revocation of certification is not warranted. Failure to respond to a notice of suspension or revocation within 30 days may result in automatic suspension or revocation of certification. A suspension of certification will remain in effect until the expiration date, if any, or until the fulfillment of conditions stated in a suspension decision. A revocation will be effective for the remaining portion of the current certification period. In the event of suspension or revocation, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity and effective oversight of the NDBEDP for the affected state.

(i) [Reserved]

(j) *Certification transitions.* When a new entity is certified as a state's program, the previously certified entity shall:

(1) Within 30 days after the new entity is certified, and as a condition precedent to receiving payment for any reimbursement claims pending as of or after the date of certification of the successor entity,

(i) Transfer to the new entity all NDBEDP data, records, and information for the previous five years, and any Equipment remaining in inventory;

(ii) Provide notification in accessible formats about the newly-certified state program to state residents who are in the process of obtaining Equipment or related services, or who received Equipment during the previous three-year period; and

(iii) Inform the NDBEDP Administrator that such transfer and notification have been completed;



- (2) Submit all reimbursement claims, reports, audits, and other required information relating to the previously certified entity's provision of Equipment and related services; and
- (3) Take all other steps reasonably necessary to ensure an orderly transfer of responsibilities and uninterrupted functioning of the state program.

**§ 64.6209 Eligibility criteria.**

Before providing Equipment or related services to an individual, a certified program shall verify the individual's eligibility in accordance with this section.

(a) *Verification of disability.* A certified program shall require an individual applying for Equipment and related services to provide verification of disability in accordance with paragraphs (1) or (2).

(1) The individual may provide an attestation from a professional with direct knowledge of the individual's disability, either to the best of the professional's knowledge or under penalty of perjury, that the applicant is deaf-blind (as defined in paragraph (c) of section 64.6203 of this part). Such attestation shall include the attesting professional's full name, title, and contact information, including business name, address, phone number, and e-mail address. Such attestation shall also include the basis of the attesting professional's knowledge that the individual is deaf-blind and may also include information about the individual's functional abilities to use Covered Services in various settings.

(2) The individual may provide existing documentation that the individual is deaf-blind, such as an individualized education program (IEP) or a Social Security determination letter.

(b) *Verification of income eligibility.* A certified program shall require an individual applying for Equipment and related services to provide verification that his or her income does not exceed 400 percent of the Federal Poverty Guidelines, as defined in 42 U.S.C. 9902(2), or that he or she is enrolled in a federal program with an income eligibility requirement that does not exceed 400 percent of the Federal Poverty Guidelines, such as Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income, Federal Public Housing Assistance, or Veterans and Survivors Pension Benefit. 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. When an applicant is not already enrolled in a qualifying low-income program, income eligibility may be verified by the certified program using appropriate and reasonable means.

(c) *Prohibition against requiring employment.* No certified program may require, for eligibility, that an applicant be employed or actively seeking employment.

(d) *Availability of Covered Services.* A certified program may require an equipment recipient to demonstrate, for eligibility, that a Covered Service that the Equipment is designed to use is available for use by the individual.

(e) *Age.* A certified program may not establish eligibility criteria that exclude low-income individuals who are deaf-blind of a certain age from applying for or receiving Equipment if the needs of such individuals are not being met through other available resources.

(f) *Reverification.* If an individual who has previously received equipment from a certified program applies to a certified program for additional Equipment or related services one year or more after the individual's income was last verified, the certified program shall re-verify an individual's income

eligibility in accordance with paragraph (b) before providing new Equipment or related services. If a certified program has reason to believe that an individual's vision or hearing has improved sufficiently that the individual is no longer eligible for Equipment or related services, the certified program shall require reverification of the individual's disability in accordance with paragraph (a) before providing new Equipment or related services.

**§ 64.6211 Equipment distribution and related services.**

(a) A certified program shall:

- (1) Distribute Equipment and provide related services;
- (2) Permit the transfer of a recipient's account, records, and any title to and control of the distributed Equipment to another state's certified program when a recipient relocates to another state;
- (3) Permit the transfer of a recipient's account, records, and any title to and control of the distributed Equipment from another state's NDBEDP certified program when a recipient relocates to the program's state;
- (4) Prohibit recipients from transferring Equipment received under the NDBEDP to another person through sale or otherwise, and if it learns that an individual has unlawfully obtained, sold, or transferred Equipment, take appropriate steps to reclaim the Equipment or its worth;
- (5) Include the following or a substantially similar attestation on all consumer application forms:

I certify that all information provided on this application, including information about my disability and income, is true, complete, and accurate to the best of my knowledge. I authorize program representatives to verify the information provided.

I permit information about me to be shared with my state's current and successor program managers and representatives for the administration of the program and for the delivery of equipment and services to me. I also permit information about me to be reported to the Federal Communications Commission for the administration, operation, and oversight of the program.

If I am accepted into the program, I agree to use program services solely for the purposes intended. I understand that I may not sell, give, or lend to another person any equipment provided to me by the program.

If I provide any false records or fail to comply with these or other requirements or conditions of the program, program officials may end services to me immediately. Also, if I violate these or other requirements or conditions of the program on purpose, program officials may take legal action against me.

I certify that I have read, understand, and accept these conditions to participate in iCanConnect (the National Deaf-Blind Equipment Distribution Program);

- (6) Conduct outreach, in accessible formats, to inform state residents about the NDBEDP, which may include the development and maintenance of a program website;

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- (7) Engage an independent auditor to conduct an annual audit, submit a copy of the annual audit to the NDBEDP Administrator, and submit to audits as deemed appropriate by the Commission or its delegated authorities;
- (8) Document compliance with all Commission requirements governing the NDBEDP and provide such documentation to the Commission upon request;
- (9) Retain all records associated with the distribution of Equipment and provision of related services under the NDBEDP, including records that support reimbursement claims and reports required by sections 64.6213 and 64.6215 of this part, for a minimum of five years; and
- (10) Comply with other applicable provisions of this section.
- (b) A certified program shall not:
- (1) Impose restrictions on specific brands, models or types of communications technology that recipients may receive to access Covered Services; or
- (2) Disable or hinder the use of, or direct manufacturers or vendors of Equipment to disable or hinder the use of, any capabilities, functions, or features on distributed Equipment that are needed to access Covered Services;
- (3) Accept any type of financial arrangement from Equipment vendors that creates improper incentives to purchase particular Equipment.

**§ 64.6213 Payments to NDBEDP certified programs.**

- (a) Programs certified under the NDBEDP shall be reimbursed for the cost of Equipment that has been distributed to low-income individuals who are deaf blind and authorized related services, up to the state's funding allocation under this program as determined by the Commission or any entity authorized to act for the Commission on delegated authority.
- (b) Upon certification and at the beginning of each TRS Fund year, state programs may elect to submit reimbursement claims on a monthly, quarterly, or semiannual basis;
- (c) Within 30 days after the end of each reimbursement period during the TRS Fund year, each certified program must submit documentation that supports its claim for reimbursement of the reasonable costs of the following:
- (1) Equipment and related expenses, including maintenance, repairs, warranties, returns, refurbishing, upgrading, and replacing Equipment distributed to consumers;
- (2) Individual needs assessments;
- (3) Installation of Equipment and individualized consumer training;
- (4) Maintenance of an inventory of Equipment that can be loaned to consumers during periods of Equipment repair or used for other NDBEDP purposes, such as conducting individual needs assessments;
- (5) Outreach efforts to inform state residents about the NDBEDP;

- (6) Train-the-trainer activities and programs;
  - (7) Travel expenses; and
  - (8) Administrative costs, defined as indirect and direct costs that are not included in other cost categories of this paragraph (c) and that are necessary for the operation of a program, but not to exceed 15 percent of the certified program's funding allocation.
- (d) Documentation will be provided in accordance with claim filing instructions issued by the TRS Fund Administrator. The NDBEDP Administrator and the TRS Fund Administrator may require a certified program to submit supplemental information and documentation when necessary to verify particular claims.
- (e) 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 business activities conducted pursuant to the NDBEDP by the above-named certified program.

**§ 64.6215 Reporting requirements.**

- (a) Every six months, for the periods January through June and July through December, a certified program shall submit data to the Commission in the following categories:
- (1) Each Equipment recipient's identity and other relevant characteristics;
  - (2) Information about the Equipment provided, including costs;
  - (3) Information about assessments, installation, and training, including costs;
  - (4) Information about local outreach undertaken, including costs; and
  - (5) Promptness of service.
- (b) The categories of information to be reported may be supplemented by the Chief, Consumer and Governmental Affairs Bureau, as necessary to further the purposes of the program and prevent fraud, waste, and abuse. Reports are due 60 days after the end of a reporting period. The specific items of information to be reported in each category and the manner in which they are to be reported shall be set forth in instructions issued by the NDBEDP Administrator.
- (c) 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 the entity has policies and procedures in place to ensure that recipients satisfy the NDBEDP eligibility requirements, that the entity is in compliance with the Commission's NDBEDP rules, 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 business activities conducted pursuant to the NDBEDP by the above-named certified program.

#### **§ 64.6217 Complaints.**

Complaints against NDBEDP certified programs for alleged violations of this subpart may be either informal or formal.

##### **(a) Informal complaints.**

(1) An informal complaint may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as letter, fax, telephone, TTY, e-mail, or the Commission's online complaint filing system.

(2) *Content.* An informal complaint shall include the name and address of the complainant; the name of the NDBEDP certified program against whom the complaint is made; a statement of facts supporting the complainant's allegation that the NDBEDP certified program has violated or is violating section 719 of the Communications Act or the Commission's rules, or both; the specific relief or satisfaction sought by the complainant; and the complainant's preferred format or method of response to the complaint by the Commission and the NDBEDP certified program, such as by letter, fax, telephone, TTY, or e-mail.

(3) *Service.* The Commission shall promptly forward any complaint meeting the requirements of this subsection to the NDBEDP certified program named in the complaint and call upon the program to satisfy or answer the complaint within the time specified by the Commission.

##### **(b) Review and disposition of informal complaints.**

(1) Where it appears from the NDBEDP certified program's answer, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the matter closed. In all other cases, the Commission shall inform the parties of its review and disposition of a complaint filed under this subpart. Where practicable, this information shall be transmitted to the complainant and NDBEDP certified program in the manner requested by the complainant.

(2) A complainant unsatisfied with the NDBEDP certified program's response to the informal complaint and the Commission's disposition of the informal complaint may file a formal complaint with the Commission pursuant to paragraph (c).

(c) *Formal complaints.* Formal complaints against an NDBEDP certified program may be filed in the form and in the manner prescribed under §§ 1.720 through 1.736 of this chapter. Commission staff may grant waivers of, or exceptions to, particular requirements under §§ 1.720 through 1.736 of this chapter for good cause shown; provided, however, that such waiver authority may not be exercised in a manner that relieves, or has the effect of relieving, a complainant of the obligation under §§ 1.720 and 1.728 of this chapter to allege facts which, if true, are sufficient to constitute a violation or violations of section 719 of the Communications Act or this subpart.

(d) *Actions by the Commission on its own motion.* The Commission may on its own motion conduct such inquiries and hold such proceedings as it may deem necessary to enforce the requirements of this subpart and section 719 of the Communications Act. The procedures to be followed by the Commission shall, unless specifically prescribed by the Communications Act and the Commission's rules, be such as in the opinion of the Commission will best serve the purposes of such inquiries and proceedings.

**§ 64.6219 Whistleblower protections.**

(a) 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, or to any federal or state law enforcement entity, any known or suspected violations of the Communications 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.

(b) 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.

## APPENDIX E

## Final Regulatory Flexibility Certification

1. The Regulatory Flexibility Act (RFA)<sup>1</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment 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.”<sup>2</sup> The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>3</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>4</sup> A “small business concern” is one which: (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).<sup>5</sup>

2. In this Report and Order, the Commission adopts rules to further implement the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), which requires the Commission to take various measures to increase the access of people with disabilities to modern communications.<sup>6</sup> Pursuant to Section 105 of the CVAA, in 2011, the Commission established the National Deaf-Blind Equipment Distribution Program (NDBEDP) as a pilot program.<sup>7</sup> Under the NDBEDP, the Commission provides up to \$10 million annually from the Interstate Telecommunications Relay Service Fund (TRS Fund) to support programs approved by the Commission for the distribution of equipment designed to make telecommunications service, Internet access service, and advanced communications services (covered services) accessible to low-income individuals who are deaf-blind.<sup>8</sup> The Commission authorized up to 53 entities to be certified to participate in the pilot program – one entity for each state, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands – collectively referred to as “certified programs” or “state programs.”<sup>9</sup> The Commission also selected the Perkins School for the Blind as the national outreach coordinator to support the outreach and distribution efforts

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<sup>1</sup> 5 U.S.C. § 601 *et seq.* The RFA has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> *See* 5 U.S.C. § 605(b).

<sup>3</sup> *Id.* at § 601(6).

<sup>4</sup> *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 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.”

<sup>5</sup> 15 U.S.C. § 632.

<sup>6</sup> Pub. L. No. 111-260, 124 Stat. 2751 (2010); Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA). Section 105 of the CVAA adds Section 719 to the Communications Act of 1934, as amended, and is codified at 47 U.S.C. § 620.

<sup>7</sup> *See Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Report and Order, 26 FCC Rcd 5640 (2011) (*NDBEDP Pilot Program Order*); *see also* 47 CFR § 64.610 (NDBEDP pilot program rules).

<sup>8</sup> *See* 47 U.S.C. § 620(a), (c). A person who is “deaf-blind” has combined vision and hearing loss, as defined in the Helen Keller National Center Act. 47 U.S.C. § 620(b); 29 U.S.C. § 1905(2).

<sup>9</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5647, para. 13 & n.44.

of these state programs.<sup>10</sup> Through the pilot program, thousands of low-income individuals who are deaf-blind have received equipment and training on how to use that equipment to access covered services. The Commission extended the pilot program to June 30, 2017.<sup>11</sup> In this Report and Order, the Commission adopts rules to continue the NDBEDP as an ongoing, permanent program.

3. In the Notice of Proposed Rulemaking (NPRM) in this proceeding, the Commission concluded that the rules proposed in the NPRM would not have a significant economic impact on the entities that might be affected by the proposed rules because the Commission would reimburse all of those entities for all of their NDBEDP expenses from the TRS Fund, up to their annual funding allocations.<sup>12</sup> The Commission added that the changes it was proposing were of an administrative nature, intended to reduce the administrative burden on those entities, and would not have a significant economic impact on small entities.<sup>13</sup> If there were to be an economic impact on small entities as a result of the proposals, however, the Commission expected the impact to be a positive one.<sup>14</sup> The Commission therefore certified, pursuant to the RFA, that the proposals in the NPRM, if adopted, would not have a significant economic impact on a substantial number of small entities.<sup>15</sup>

4. Currently, 53 entities are certified to distribute equipment under the pilot program – one entity for each state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The Report and Order extends the NDBEDP to include the U.S. territories of American Samoa, Guam, and the Northern Mariana Islands because residents of these territories are also eligible for services supported by the TRS Fund. As a result, up to 56 entities may be certified to participate in the permanent NDBEDP.

5. The Report and Order provides that current state programs and other entities that want to participate in the permanent NDBEDP must seek certification for a five-year period and every five years thereafter. If a current program wants to renew its certification or another entity wants to apply for certification, it must, one year prior to the expiration of the five-year certification period, submit an application explaining why it is eligible to participate in the NDBEDP.

6. State programs are reimbursed for the costs of the equipment they distribute under the NDBEDP and for the reasonable costs of providing related services, including providing individualized consumer training on how to use NDBEDP-distributed equipment.<sup>16</sup> In the *NDBEDP Pilot Program Order*, the Commission concluded that, without such training, equipment recipients would not be able to use the equipment, such as refreshable Braille displays, and the equipment will be underutilized or abandoned.<sup>17</sup> To help address a persistent shortage of qualified trainers, the Report and Order permits certified programs to use up to 2.5% of their annual funding allocations, or approximately \$250,000 annually for all certified programs, for the costs of train-the-trainer activities and programs during the first five years of the permanent program and directs the Consumer and Governmental Affairs Bureau (the Bureau) to assess the need for continuing such funding beyond this period.

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<sup>10</sup> *Perkins School for the Blind to Conduct National Outreach for the National Deaf-Blind Equipment Distribution Program*, Public Notice, 27 FCC Rcd 6143 (CGB 2012).

<sup>11</sup> *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Order, 31 FCC Rcd 6149 (2016).

<sup>12</sup> *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, 30 FCC Rcd 5255, 5346, Appendix G at para. 14 (2015).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> 47 CFR § 64.610(f)(2)(iii); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670-71, para. 69.

<sup>17</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670, para. 69.



7. The Report and Order requires that each certified program make public on its website, if one is maintained by the certified program, or as part of its other local outreach efforts a brief summary or narrative description of any criteria or priorities that apply to its distribution of equipment and provision of related services, and any strategies it uses to ensure the fair distribution of equipment to low-income residents who are deaf-blind. The Report and Order finds that this requirement would increase program transparency and benefit program applicants and equipment recipients.

8. The NDBEDP pilot program rules require all certified programs to submit reports about their NDBEDP activities to the Commission every six months.<sup>18</sup> The Report and Order finds that continuing to receive this data will be useful to the permanent program as well, because regular reporting is necessary to ensure that certified programs maintain and keep current NDBEDP-related data and to provide accurate snapshots of that data consistently across all certified programs for oversight and evaluation purposes. At the same time, the Report and Order sets forth generally the categories of required information and directs the Bureau, to determine the specific items of information to be reported, which the Bureau may adjust and streamline over time and in conjunction with the planning and implementation of the centralized database, which is discussed next. Streamlining reporting requirements will reduce the administrative burden of the certified programs participating in the permanent NDBEDP.

9. In the Report and Order, the Commission directs the Bureau, in coordination with the appropriate Commission offices and other stakeholders, to establish a centralized database that would assist state programs to comply with the reporting and reimbursement claim requirements under the permanent NDBEDP.<sup>19</sup> First, upon completion of the database, all state programs would be required to submit information about their NDBEDP-related activities into the database and use the database to generate reports for submission to the Commission every six months. Second, all state programs would be able to submit data regarding their NDBEDP-related expenses into the database and generate reimbursement claims for submission to the TRS Fund Administrator. State programs currently maintain their own databases or pay for alternative databases to perform these functions. Submission of data into a centralized database that is established and maintained by the Commission to perform these functions would likely reduce the administrative costs for these state programs. Collecting data in a uniform manner from the certified programs would also improve oversight and administration of the NDBEDP by enabling the Commission to aggregate and analyze that data.

10. Under the Commission's rules for the NDBEDP pilot program, certified programs are compensated for 100% of their expenses, up to each program's annual allocation set by the NDBEDP Administrator, a Commission official designated by the Bureau.<sup>20</sup> Within this annual allocation amount, the Commission did not establish any caps for costs associated with state and local outreach, assessments, equipment, installation, or training, but did establish a cap for administrative costs.<sup>21</sup> The Commission defined administrative costs to include reporting requirements, accounting, regular audits, oversight, and

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<sup>18</sup> 47 CFR § 64.610(g) (pilot program rule).

<sup>19</sup> The Report and Order also directs the Bureau, in coordination with the appropriate Commission offices, to determine whether the database should be built using internal Commission resources, or via an interagency agreement, a competitive procurement, or a modification of an existing agency contract, and authorizes the Bureau to allocate an amount necessary for the development and maintenance of the centralized database from the \$10 million available annually from the TRS Fund for the NDBEDP.

<sup>20</sup> 47 CFR § 64.610(h); *see also, e.g., Consumer and Governmental Affairs Bureau Announces 2015-2016 Allocations for the National Deaf-Blind Equipment Distribution Program*, Public Notice, 30 FCC Rcd 6369 (CGB 2015). In the Report and Order, the Commission continues to permit the Bureau to reallocate funds between certified programs during the Fund year when individual program performance indicates that NDBEDP funds could be more fully utilized by other certified programs. To date, this reallocation process has served to satisfy requests from certified programs for additional funding when demand for equipment and related services has exceeded their initial annual funding allocations.

<sup>21</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5680, para. 92.

general administration.<sup>22</sup> Programs may be compensated for administrative costs up to 15% of their total reimbursable costs (i.e., not their total allocation) for equipment and related services actually provided.<sup>23</sup> The Report and Order amends the rules to reimburse certified programs for administrative costs up to 15% of their annual allocation, regardless of the amount of equipment and related services they actually provide. The Report and Order also recognizes that during the first three years of the NDBEDP pilot program, some programs' administrative costs exceeded the allowable 15% reimbursable amount. As discussed further above, the Report and Order calls for the creation of a centralized database to be used by certified programs for generating reports and reimbursement claims, which is likely to produce administrative cost savings for programs that maintain their own databases or pay for alternative databases to perform these functions. Certified programs may also petition for and the Bureau may grant a waiver of the administrative cost cap rule upon a showing of good cause and a finding that particular facts make compliance with the rule inconsistent with the public interest. These measures, taken together, may alleviate the administrative burdens for certified programs operating in the permanent NDBEDP by making it easier to operate within the 15% administrative cost cap.

11. During each year of the pilot program, the Commission has set aside \$500,000 of the \$10 million available annually to perform national outreach to promote the NDBEDP.<sup>24</sup> The Bureau selected the Perkins School for the Blind to be the national outreach coordinator.<sup>25</sup> As the Commission explained in the *NDBEDP Pilot Program Order*, significant initial funding for outreach was necessary to inform eligible individuals about the availability of the program so that distribution of equipment could take place.<sup>26</sup> Given the significant progress in publicizing the NDBEDP during the pilot program, the Report and Order continues to fund the national outreach efforts, but at a reduced level of \$250,000 for each of the first five years of the permanent program, and directs the Bureau to determine the extent to which national outreach efforts and funding should be continued thereafter.<sup>27</sup>

12. During the pilot program, certified programs have been required to engage an independent auditor to perform annual audits designed to detect and prevent fraud, waste, and abuse, as well as to submit to audits arranged by the Commission or its delegated authorities.<sup>28</sup> The Report and Order continues those audit requirements and also requires each certified program to submit a copy of its annual audit to the NDBEDP Administrator.

13. The Commission finds that the rules adopted in the Report and Order will not have a significant economic impact on the entities that are part of the NDBEDP because the Commission will reimburse these entities for all of their NDBEDP expenses from the TRS Fund, up to their annual funding allocations. The rules adopted in the Report and Order are administrative in nature, intended to reduce the administrative burden on certified programs, increase program transparency, benefit equipment recipients, improve the Commission's administration and oversight of the NDBEDP, and will not have a significant economic impact on a substantial number of small entities. To the extent that there is an

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<sup>22</sup> *Id.*

<sup>23</sup> 47 CFR § 64.610(f)(vi).

<sup>24</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5676, para. 80.

<sup>25</sup> *Perkins School for the Blind to Conduct National Outreach for the National Deaf-Blind Equipment Distribution Program*, Public Notice, 27 FCC Rcd 6143 (CGB 2012).

<sup>26</sup> *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5675, para. 79.

<sup>27</sup> The Report and Order allows the Perkins School for the Blind to continue conducting national outreach activities for the first five years of the permanent NDBEDP and directs the Bureau, as part of its assessment, to determine whether to extend Perkins's national outreach services for another five-year period or to invite entities, via a public notice, to submit applications to conduct these efforts.

<sup>28</sup> 47 CFR § 64.610(e)(1)(vii).

economic impact on small entities as a result of the rules adopted in the Report and Order, we believe the impact to be a positive one.

14. The Commission therefore certifies, pursuant to the RFA, that the rules adopted in the Report and Order will not have a significant economic impact on a substantial number of small entities.

15. The Commission will send a copy of the Report and Order, including a copy of this final certification, to the Chief Counsel for Advocacy of the SBA.<sup>29</sup> In addition, a summary of the Report and Order and this final certification will be published in the *Federal Register*.

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<sup>29</sup> See 5 U.S.C. § 605(b).

**STATEMENT OF  
CHAIRMAN THOMAS E. WHEELER**

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.

For individuals who are deaf-blind, our changing communications environment poses both new challenges and new opportunities. As more and more information is delivered visually and aurally by our computers, phones, and electronic devices, making communications accessible to those who are deaf-blind requires innovative solutions. For individuals who are deaf-blind, the technology needed to make this happen can be very expensive.

To address this challenge – and carry out a mandate of the Twenty-First Century Communications and Video Accessibility Act (CVAA) – the Commission established the National Deaf-Blind Equipment Distribution Program.

Launched on a pilot basis in July 2012, this program – also known as “iCanConnect” – has empowered more than 3,000 low-income individuals who have both limited sight and hearing, helping to ease their sense of isolation and open up the world in new ways.

People like Roger Cicchese who, through iCanConnect, obtained a portable device called a Braille Sense U2 that allows access to a computer via a braille display. The equipment enabled Roger to take a job in New Hampshire where he narrates from scripts that he reads in braille. With this device, Roger also is able to exchange e-mails with his loved ones and has been empowered to pursue his dream of becoming a writer.

People like Ava Bullis, a 10-year-old who is profoundly deaf and has a progressive vision loss, who can now communicate with her teachers and classmates and socialize with family and friends. As to the value of iCanConnect, Ava says: "It provides you with things you need. It makes me feel like everybody else."

People like Burgon Jensen, who became deaf-blind at birth, but now has the independence she needs to attend college. Now a full-time college student at the University of Utah, Burgon said, “There’s no way I could be successful in college the way I am now without [this] equipment.”

No deaf-blind American should be denied access to this life-altering technology because they can’t afford it. That’s why it’s so important that we make this highly successful initiative a permanent program.

The new iCanConnect will continue to provide up to \$10 million a year, but adds three new territories, so that now 56 state- and territory-based programs can distribute a wide range of equipment enabling low-income individuals who are deaf-blind to access telecommunications, advanced communications, and the Internet.

In addition, the iCanConnect programs in each state will verify applicant eligibility; conduct communications technology assessments to determine which equipment will meet the individual’s needs; install the equipment where necessary; and provide individualized training on how to use the equipment. Some funds under this program also will be made available to address a persistent shortage of qualified trainers who can teach people who are deaf-blind how to use the equipment they receive.

To enhance accountability, efficiency, and effectiveness, the permanent program incorporates performance goals and measures and directs the creation of a centralized database, which must be used by certified programs to submit reports to the Commission. The database can also be used by programs to generate reimbursement claims. In addition, entities seeking certification to participate in this program will be required to have administrative and financial management experience. Finally, the permanent iCanConnect program will have informal complaint procedures for consumers.

Adopting iCanConnect as a permanent program will ensure that, for years to come, we at the Commission will be doing our part to help individuals who are deaf-blind break down communications barriers and lead more independent lives through access to 21<sup>st</sup> century communications.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

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.

In 2007, actor and producer James Paul co-directed a documentary called *Through Your Eyes*, the story of Sophie, Emma, and Zoe Dunn, the nation's only known deaf-blind triplets who lived in Silver, Texas. If you have never heard of Silver, it is an unincorporated community 255 miles west of Austin. After spending time with the then-six-year-old girls, he found the three to be intelligent but isolated. "They just need a way to communicate with the world," Paul said back then.

While I am pleased to say that technologies exist to help the Dunn triplets, they can be, and most often are, cost prohibitive. For example, a deaf-blind individual who is not able to fully use a computer, tablet, or smartphone, without a refreshable braille display, will encounter costs that can run as high as \$5,000 per unit. Imagine trying to afford one of those devices on even a middle-class budget. Imagine being the Dunn family and having to multiply that by three. Then, imagine trying to learn how to use these devices without being able to hear and see.

Though estimates range from 45,000 to 700,000 of the number of Americans who are deaf-blind – a relatively small number in a nation of some 320 million people – Congress wisely chartered, and the FCC brought to life, the National Deaf-Blind Equipment Distribution Program, more colloquially known as iCanConnect. This program brings life-changing communications technologies to those who struggle the most when it comes to interacting with rest of the world.

For a number of years, we have judiciously piloted this program and it has paid multiple dividends. The lives of many low-income deaf-blind individuals have been greatly improved, and now it is time to make this extremely successful program permanent.

On my #ConnectingCommunities tour, I had the privilege of visiting one of the participants in the iCanConnect pilot, the Perkins School for the Blind. There I visited a class taught by Kate Crohan, who on that day was helping students learn how to use this technology. Logan, a student in the class, told me how he used his braille notetaker not only for school, but to email friends—basic tasks most of us take completely for granted. Tasks that are opening doors for him, and will do the same for thousands more.

iCanConnect is a shining example of how good legislation and sound regulatory policies are bridging gaps, connecting communities and improving lives. The program and this Order have my full support.

This Order is a reflection of the things we have learned over the years as well as the hard work by FCC staff and others across the country, who are helping ensure that deaf-blind individuals have the means and ability to connect and communicate just like everyone else. We adopt a permanent framework that carefully balances the need for flexibility and accountability, which ensures that those precious dollars are not only well-spent but that unnecessary administrative burdens are minimized. As with the pilot, the permanent program supports evaluations, training, and equipment for deaf-blind individuals. And, in order to increase program efficiency as more people participate in iCanConnect, we initiate a process to create a database that will serve as a clearinghouse for reporting and reimbursement claims.

I would like to once again thank the dedicated staff of the Consumer and Governmental Affairs Bureau for their tireless work. You continue to make the lives of individuals with disabilities less isolating and you continue to ensure that their world is a more connected one. Your dedication is reflected in this item, and for that and more, we are all grateful.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

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.

Last week we celebrated the twenty-sixth anniversary of the Americans with Disabilities Act. This landmark civil rights legislation pried open the doors of opportunity for more than 56 million Americans, making it more possible for them to participate in civic and commercial life free from discrimination. Nearly six years ago, the Twenty-First Century Communications and Video Accessibility Act was signed into law—bringing these same values into the digital age.

Pursuant to this law, four years ago, we launched the National Deaf-Blind Equipment Distribution pilot program to assist individuals who are deaf-blind with access to telephone and Internet services. Today, we make adjustments to this program to improve it—and we make it permanent.

This bodes well for the future of accessibility. Already in the short time that this program has been in place over three thousand people have been able to benefit from its support and lead lives that are more productive, more connected, and more independent. The stories from those who have used this program are downright inspiring. We have heard how a grandmother in Alabama has used this program to stay in touch with her nine grandchildren. We have heard how a 10-year-old girl in New Jersey has used this program to communicate with her teacher and classmates in ways that were never possible before. We have heard how a father in Arizona has trained for a new career as a rehabilitation counselor after decades of working as a tour boat pilot and repairman—a job he had to give up due to his hearing and vision loss.

This is powerful stuff. But there is more good to do, more doors to pry open, and more opportunity we can offer through this program. Thank you to the Consumer and Governmental Affairs Bureau and Disability Rights Office for putting in the work to make this possible.

**STATEMENT OF  
COMMISSIONER AJIT PAI**

Re: *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, CG Docket 10-210.

Like many ten-year-olds, Ava enjoys dancing, playing basketball, and chatting with friends. But unlike most kids her age, Ava has profound deafness and limited vision as a result of Usher Syndrome. Through iCanConnect (formally, the National Deaf-Blind Equipment Distribution Program), Ava can now hear her iPad thanks to an audio cable that plugs into her cochlear implants. She now knows when someone calls thanks to a signaler that vibrates when the home phone rings. As Ava put it, this equipment “makes me feel like everybody else.”<sup>1</sup>

Ava isn’t alone. Two years ago, 13-year-old Nolan received an iPad and an iPhone with specialized communication software. As a result of being born with CHARGE, a genetic condition that causes complex birth defects, Nolan has colobomas—basically, gaps in the structure of his eyes—and his speech can be difficult to understand. Nolan’s mother described the technology he now uses as a “game changer.” He regularly talks with family and friends online.<sup>2</sup>

Or consider Jose. When he was 46, Jose lost his sight and suffered debilitating hearing loss after a drunk driver crashed into him. Six years later, he relies on specialized equipment and software from iCanConnect to communicate with others and care for himself. He has said that “[m]y life has been brought back to almost like it was before. [iCanConnect] gave me the will to go out and do things,” including returning to school to complete his GED.<sup>3</sup>

As these stories illustrate, iCanConnect is an important program that can change lives. Indeed, the pilot program has already helped 3,731 deaf-blind individuals. That’s why I am glad we’re making it permanent. We are largely keeping the pilot program intact to build off its past successes, a decision I support. And we are making a few refinements to smooth future administration.

I want to thank the Disability Rights Office and the Consumer and Governmental Affairs Bureau for working tirelessly to implement this essential program. And I look forward to working with you to reform our other programs so that the promise of functionally equivalent communications for all Americans can be soon realized.

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<sup>1</sup> iCanConnect, Ten-year-old with Usher Syndrome Connects with Friends and Family Through iCanConnect, <http://bit.ly/1RnFi5g> (Mar. 16, 2016).

<sup>2</sup> iCanConnect, Michigan Teen Stays in Touch with Friends Around the Country Through iCanConnect, <http://bit.ly/1PoXtLC> (Nov. 30, 2015).

<sup>3</sup> iCanConnect, Georgia Man Regains Communication, Pursues Dreams with iCanConnect, <http://bit.ly/2aQhwmh> (June 25, 2015).



**STATEMENT OF  
COMMISSIONER MICHAEL P. O'RIELLY  
APPROVING IN PART AND CONCURRING IN PART**

*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.*

The item before us helps fulfill our statutory obligation under the CVAA. Equally important is that the resulting new permanent program will continue our efforts to bring communications technology to those Americans who are deaf-blind.

It is nearly impossible to read the text of the Report and Order and not think of the daily challenges these individuals can face in our supersonic-paced society. Our everyday errands and normal routines, in some instances, can become monumental tasks for deaf-blind individuals. Thankfully, we have the unique opportunity to dramatically improve their ability to communicate with and learn from the amazing world outside, opening the door to new possibilities. A glorious feature of modern technology is that it expands the universe of contributions that all people can make to society.

That is not to suggest that I don't have difficulties with certain directions and decisions contained within the item. While it is refreshing to see the Commission move away from the pilot project approach, which was statutorily defunct, and to a permanent program as required by law, we had the chance to install necessary safeguards and improvements to the program's functionality and reach but, in some cases, chose not to make them.

I am pleased that some of the suggestions I had made at the Notice stage on oversight and accountability have made it in to the final rules. These include establishing performance goals and measures, requiring that the state programs have administrative and financial management experience, and adding consumer attestations for compliance with Commission rules. They stem from the Commission's experience with the federal universal service programs, as well as recommendations from the U.S. Government Accountability Office.

However, the biggest disappointment with the current text has to be the diversion of funds to non-equipment functions. These are things that aren't contemplated by the statute, despite the weak arguments made to the contrary, and such activities take valuable funds away from the core purpose of the program. These would fund things such as training the trainers, out of state travel expenses, and high administrative costs. We are also going to pay for program outreach and awareness, admittedly less than before, but the program is already at 90 percent of overall budget. When you add up all of these other costs, somewhere between 20 and 25 percent of the total program funding will not be going to deaf-blind equipment, our central statutory purpose.

At the same time, management of the program, especially given the heavy delegation contained within, means that a combination of state program administrators and staff in the Consumer and Governmental Affairs Bureau will be making all of the future programmatic decisions. We are effectively putting the program in their hands and hoping for the best, as the Commissioners will have little role except if or when problems develop. This approach hasn't worked for other Commission subsidy programs, like E-Rate and Lifeline, and applying it here despite our experiences with those programs is more than troubling. I certainly have to hope this will be the rare exception to the stumbling that has occurred elsewhere.

In addition, I asked that the program install a mechanism to deal with the issue of oversubscription, to the extent it occurs in the future. Since the program is already at 90 percent of budget, this isn't some impossible or far flung possibility. Moreover, the Commission was able to do it for the Rural Health Care Program. Let's face it, if we wait until the budget is exhausted, we are likely to make worse decisions scrambling around than if we install a default process now. Sadly, this approach did not make the cut.

The Commission also rejected my simple request to install a natural sunset to the program in order to force the Commission to reevaluate the program – not necessarily end it – in ten years. Such a simple mechanism could have gone a long way towards forcing the proper examination, by the full Commission, of any existing problems.

Despite the areas where my thoughts of bringing greater accountability and focus were rejected, the overall effort is generally reasonable. My hope is that the new program helps fulfill the communications needs of those deaf-blind individuals, who clearly have more spirit, more perseverance, more focus, more grace and more determination than I can ever hope to attain in life. I approve in part and concur in part.