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**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

**[CG Docket No. 10-210; FCC 16-101]**

**Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) adopts rules to convert the National Deaf-Blind Equipment Distribution Program (NDBEDP) from a pilot program to a permanent program. The NDBEDP supports the distribution of communications devices to low-income individuals who are deaf-blind.

**DATES:** The addition of 47 CFR 64.6201, 64.6203, and 64.6205 of the Commission's rules are effective July 1, 2017. The addition of 47 CFR part 64, subpart GG, consisting of §§ 64.6207, 64.6209, 64.6211, 64.6213, 64.6215, 64.6217, and 64.6219, contains information collection requirements that are not effective until approved by the Office of Management and Budget (OMB). The Commission will publish a document in the Federal Register announcing the effective date for those sections.

**FOR FURTHER INFORMATION CONTACT:** Rosaline Crawford, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418-2075 or e-mail [Rosaline.Crawford@fcc.gov](mailto:Rosaline.Crawford@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, Report and Order, document FCC 16-101, adopted on August 4, 2016, and released on August 5, 2016, in CG Docket No. 10-210. The full text of document FCC 16-101 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-A257, Washington, DC 20554. Document FCC 16-101 can also be downloaded in Word or Portable Document Format (PDF) at

<http://www.fcc.gov/ndbedp>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail 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).

## **FINAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS**

Document FCC 16-101 contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 16-101 as required by the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, 44 U.S.C. 3506(c)(4), 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.” See 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, published at 80 FR 32885, June 10, 2015 (NDBEDP 2015 NPRM).

### **Synopsis**

1. The Twenty-First Century Communications and Video Accessibility Act (CVAA) added section 719 to the Communications Act of 1934, as amended (the Act). Pub. L. 111-260, 105, 124 Stat. 2751, 2762 (2010); technical corrections Pub. L. 111-265, 124 Stat. 2795 (2010); 47 U.S.C. 620. Section 719 of the Act directs the Commission to promulgate rules that define as eligible for up to \$10 million of support annually from the Interstate Telecommunications Relay Service Fund (TRS Fund) those programs approved by the Commission for the distribution of specialized customer premises equipment (SCPE) designed to make telecommunications service, Internet access service, and advanced communications accessible by low-income individuals who are deaf-blind. Since July 2012, the Commission’s Consumer and Governmental Affairs Bureau (CGB or Bureau) has implemented the NDBEDP, also known as “iCanConnect,” as a pilot program by certifying and overseeing 53 entities, collectively referred to as

“certified programs” or “state programs,” that distribute equipment in each state, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. 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, published at 76 FR 26641, May 9, 2011 (NDBEDP Pilot Program Order); 47 CFR 64.610 (NDBEDP pilot program rules). Also since 2012, a national outreach coordinator selected by the Bureau has provided extensive outreach to support the distribution efforts of these state programs. In addition, during the pilot program, the Bureau released guidance to assist state programs with how to comply with the Commission’s NDBEDP rules. See, e.g., CGB, NDBEDP Frequently Asked Questions (NDBEDP FAQ); CGB, Examples of Reimbursable Expenses (July 2, 2012) (NDBEDP Expenses).

2. The Commission released the NDBEDP 2015 NPRM seeking comment on specific requirements for the creation of a permanent NDBEDP, including its program structure, eligibility requirements, covered equipment and services, funding allocations, reporting, and other considerations. The Commission also extended the pilot program through June 2017. Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals, Order, published at 81 FR 36181, June 6, 2016 (2016 Extension Order).

3. The rules adopted in document FCC 16-101 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. Through these rules, the Commission recognizes 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 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.

## **PROGRAM STRUCTURE**

4. Geographic-Based Program Certification. After careful consideration of the record, the Commission adopts 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. The Commission concludes 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, the Commission directs 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.

5. Expansion to Additional U.S. Territories. In the NDBEDP 2015 NPRM, the Commission proposed that NDBEDP funding be extended to the U.S. territories of American Samoa, Guam, and the Northern Mariana Islands. The Commission noted that, just like the 53 states and territories covered by the pilot program, 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. In light of the demonstrated need and record support for this proposal, the Commission extends the NDBEDP to these territories. While the Commission directs the Bureau to certify one entity for each of these territories, a single entity may apply for certification to serve the residents of one, two, or all three of these jurisdictions. The Commission notes that, given the relatively small funding allocations and uniquely small populations of these remote jurisdictions located in the South Pacific region, certifying the same entity to serve all three jurisdictions may enable the consolidation of administrative functions, as well as coordination and conservation of resources.

6. Permanent Program Certification. In the NDBEDP 2015 NPRM, the Commission proposed that, during the 30-day period following the effective date of the final rules, 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, and to permit other entities to apply for certification.

7. The Commission believes 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 the Commission acknowledges that the experience gained by entities certified under the pilot program may weigh in favor of their recertification, it is 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 the Commission now amends some of the rules that will apply to these programs, it believes it is necessary and appropriate to open up the application process to both new and currently certified entities.

8. The Commission further concludes that its 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, the Commission 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 the Commission's certification criteria, and to affirm its commitment to comply with all Commission rules governing the permanent program. An entity seeking certification for the first time also must submit an application with sufficient detail to demonstrate its ability to meet all of the Commission's 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. In reviewing each application, the Commission will consider, among other things, the extent to which a currently certified entity has effectively implemented the program and achieved compliance with the Commission's rules. The Commission believes that considerations of equity and fairness require it to adopt this approach, as it will allow the Commission to compare and contrast the qualifications of multiple applicants based on the Commission's current selection criteria and NDBEDP requirements.

9. To ensure sufficient time is provided for the application process, the Commission requires 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. A 60-day application period also is consistent with the period used for the NDBEDP pilot program. In addition, the Commission requires 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 document FCC 16-101.

10. The Commission directs the Bureau to announce the timing of this 60-day period by public notice. The Commission also directs 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, as well as identify those jurisdictions, if any, where no entity has applied for certification under the permanent program. 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. The Commission further directs 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.

11. Certification Selection Criteria. The Commission will continue to use the certification criteria established for the pilot program in the permanent NDBEDP. Based on the Commission's experience with the pilot program, it believes that the expertise and experience these criteria require have been effective. As further detailed below, the Commission declines to establish minimum standards for program personnel, as the Commission believes that its 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.

12. 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. This population also uses a wide variety of communication technologies, including, but not limited to, refreshable Braille displays, print magnifiers, and screen readers. 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. The Commission concludes, 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. 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. 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. Accordingly, rather than adopt new program personnel criteria in the permanent NDBEDP, the Commission will continue permitting applicants for certification to demonstrate "[e]xpertise in the field of deaf-blindness," 47 CFR 64.610(b)(3)(i), and "[t]he ability to communicate effectively with people who are deaf-blind," 47 CFR 64.610(b)(3)(ii), in a variety of ways to serve the full spectrum of individuals who are deaf-blind.

13. Administrative and Financial Management Experience. The Commission adds administrative and financial management experience to the certification criteria because it expects 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. The Commission agrees 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 administrative expertise.

14. Improper Incentives. 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. The Commission adopts its 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 modifies 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. Applicants learning of a potential or actual conflict while their applications are pending must disclose such conflicts immediately upon learning of such conflict, to prevent delays in the Commission's certification review. The Commission further clarifies 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.

15. Geographic Eligibility. During the pilot program, the Bureau selected entities to participate in the NDBEDP that are located both within and outside of the states that they serve. 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. The Commission will maintain this flexible approach, which the record supports, for the permanent NDBEDP. The Commission agrees 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. While the Commission is not persuaded of the need to give preference or automatic priority to in-state entities at this time, it will consider the benefits that a local entity can bring to its own state's residents in making its certification

selections, especially when weighing the merits of equally qualified applicants.

16. Non-substantive Rule Change. In the NDBEDP 2015 NPRM, the Commission proposed a non-substantial edit that would insert the words “training consumers on” in certification criterion (v). 47 CFR 64.610(b)(3)(v). The Commission adopts 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.”

17. Duration of Certification. In the NDBEDP 2015 NPRM, the Commission proposed that NDBEDP programs be certified for a period of five years. The Commission believes 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. The Commission is also persuaded that adopting a shorter certification period would be burdensome and possibly disruptive to program participants. Therefore, the Commission adopts 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 the Commission expects that it will provide similar efficiencies for the NDBEDP.

18. 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, the Commission will permit the successor entity to complete, but not exceed, the five-year term initiated by its predecessor. The Commission notes 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. The Commission believes that retaining a common end date in the permanent NDBEDP will facilitate the Commission’s administration and oversight of the program, and help to provide certainty to the states and territories participating in this program. 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.

19. Certification Renewals. In the NDBEDP 2015 NPRM, the Commission 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. As the Commission concluded with respect to applications for initial certification under the permanent NDBEDP, it believes 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. The Commission also believes that a one-year period will provide sufficient time for the renewal process, based on its experience with state renewals under the TRS program. For these reasons, the Commission adopts its proposal. The Commission further directs the Bureau to announce, by public notice, the identity of all applicants who request such certification. As with initial applications, 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. The Bureau may extend the application period for those jurisdictions where no qualified entity has applied for renewal or as a new entrant. The Commission further directs 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.

20. Prohibition on Financial Arrangements or Incentives. The Commission will continue to prohibit certified programs from entering into any financial relationship, arrangement, or agreement that creates improper incentives to purchase particular equipment. 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 received certification under the permanent NDBEDP. The Commission requires 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. 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.

21. Obligation to Report Substantive Changes. In the NDBEDP 2015 NPRM, the Commission proposed to require each state program, once certified, to report to the Commission any substantive change within 60 days of when such change occurs. Substantive changes include those that might bear on the qualifications of the entity to meet the Commission’s 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. In light of commenter support for this proposal and because the Commission believes that this requirement can help to ensure that programs continue to meet its criteria for certification when substantive changes occur, the Commission adopts this requirement, as modified for clarity, for 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.”

22. Relinquishing Program Certification. In the NDBEDP 2015 NPRM, the Commission 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. Given commenters support for this proposal, 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, the Commission adopts this requirement for the permanent NDBEDP. The Commission further requires that any entity seeking to relinquish its certification include in such notice its reason for exiting the program, including its proposed departure date. The Commission believes 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, the Commission requires 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.

23. 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. Although the 15-day deadline was established to expedite replacement and ensure that all interested parties have an adequate opportunity to apply for certification, the Commission directs the Bureau to provide a minimum of 30 days for the receipt of such applications. The Commission believes that a 30-day period is reasonable, especially given its adoption of a 90-day notice requirement for any entity intending to relinquish its certification.

24. Suspension or Revocation of Certification. 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. To ensure that the Commission can act expeditiously and effectively to replace a certified entity should that become necessary, the Commission retains the authority to suspend or revoke an entity's certification when it determines 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.

25. The Commission amends 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.

26. 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. See 47 CFR 1.101 through 1.117. 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, but will not preclude an entity from applying for certification for the next five-year period unless so stated in the revocation decision.

27. These procedures are similar in some respects to those for suspension and debarment of an individual or entity receiving Universal Service Fund (USF) support. See 47 CFR 54.8. Unlike the USF suspension and debarment procedures, however, the procedures the Commission adopts for the NDBEDP do not contemplate that participation in the NDBEDP will automatically be suspended at the beginning of the suspension or revocation process. See 47 CFR 54.8(e)(1). 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. Rather, to minimize disruption, the Commission retains 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. The Commission

believes 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.

28. Obligations of Outgoing Entities – Compliance with NDBEDP Requirements. In the NDBEDP 2015 NPRM, the Commission 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. Because the Commission believes this requirement is necessary to maintain program integrity, it adopts 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. The Commission amends its rules to incorporate this requirement. 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.

29. Obligations of Outgoing Entities – Transfer of Data and Inventory. In the NDBEDP 2015 NPRM, to minimize the impact of transitions on consumers, the Commission 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 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. Because the Commission believes this mandate will help to ensure a smooth transition to the successor entity and reduce any potential for a lapse in service, it adopts 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, 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. 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. In addition, the Commission requires the transfer of all NDBEDP-purchased equipment and materials that remain in the outgoing entity's inventory (e.g., 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, but not equipment that has been distributed to individuals), 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. As discussed further below, the Commission further requires 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.

30. Obligations of Outgoing Entities – 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, and then a second public notice to announce the successor entity. In the NDBEDP 2015 NPRM, the Commission sought comment on how best to ensure that consumers are informed when the entity certified to operate their state's NDBEDP program changes. Given the general

agreement among commenters, the Commission adopts 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. 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. The Commission concludes 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 (e.g., 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). 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.

31. Implementation of the Permanent NDBEDP and Termination of the Pilot Program. Because adoption of the permanent NDBEDP rules involves new information collection requirements that are subject to approval by OMB under the 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.

32. 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. 47 CFR 64.610(k). The Commission clarifies 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 the Commission adopts in document FCC 16-101 will apply to the permanent NDBEDP only and not to the pilot program.

### **CONSUMER ELIGIBILITY**

33. 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) – and low income. 47 U.S.C. 620(a), (b). In this part, the Commission (1) establishes criteria to determine eligibility as an individual who is “deaf-blind” under the HKNC Act; (2) adopts rules for verifying eligibility under the definition of “deaf-blind” based on a professional’s attestation or existing documentation; (3) sets low-income eligibility to not exceed 400% of the Federal Poverty Guidelines (FPG); (4) provides guidance on the calculation of income for determining low-income eligibility; (5) adopts 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) addresses other eligibility criteria as discussed below.

34. Definition of Individuals who are Deaf-Blind. 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). 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. The Commission believes that this interpretation can best achieve Congress’s overall goal of ensuring the accessibility of communications technologies for the deaf-blind population, and therefore retains it for purposes of defining who is eligible to receive equipment and related services under the permanent NDBEDP.

35. The HKNC Act sets forth three independent definitions that can be used to determine whether a person is “deaf-blind.” The first definition contains three prongs that must be satisfied. 29 U.S.C. 1905(2)(A). The first of these requires an assessment of the individual’s vision, and provides clear, measurable standards for loss of visual acuity, to which the Commission is bound to apply. 29 U.S.C. 1905(2)(A)(i). 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). The second prong asks whether the individual has a hearing loss so severe “that most speech cannot be understood with optimum amplification.” 29 U.S.C. 1905(2)(A)(ii). 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. 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.” 29 U.S.C. 1905(2)(A)(iii). 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.

36. 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.” 29 U.S.C. 1905(2)(B). 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. 29 U.S.C. 1905(2)(C).

37. The Commission retains for the permanent NDBEDP the definition of “deaf-blind” that has been applied in the NDBEDP pilot program. The Commission notes 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, because the Commission cannot predict whether such regulations would be appropriate for application to the NDBEDP. The Commission concludes that it has 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 it continues 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.

38. Verification that an Individual is Deaf-Blind. 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. Professionals must make such attestations either to the best of their knowledge or under penalty of perjury. 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. 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. 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.

39. The Commission 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. The Commission further adopts its proposal for each professional to provide the basis for his or her attestation that an individual is deaf-blind, noting that the provision of this information will assist programs in substantiating the deaf-blind individual's equipment needs. So that the program may contact the professional if necessary, the Commission also adopts its 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.

40. The Commission 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. The Commission noted that it 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. 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. The Commission concludes 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.

41. The Commission's 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, the Commission 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. This will permit certified programs to effectively respond to changes in the type and severity of an individual's disability.

42. Income Eligibility. To participate in the NDBEDP, the deaf-blind applicant must be "low income." 47 U.S.C. 620(a). The NDBEDP pilot program rules define low income as income that does not exceed 400% of the FPG. 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 SCPE used by this population.

43. The Commission concludes that the record supports the continued application of 400% of the FPG as the income ceiling for the permanent NDBEDP, and accordingly it retains this threshold. 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.

44. The Commission received little comment in response to its inquiries about the relevance of the income threshold for determining eligibility under the Commission's Lifeline program and the median U.S. household income to the NDBEDP income eligibility determination. The Commission's own

analysis, however, leads it to conclude that the considerations at issue for the 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. 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. In addition, as explained 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.” Thus, an analogy to the Lifeline program that largely serves the general population is inapposite to the NDBEDP. For the same reason, the Commission concludes that it is not appropriate to compare the median U.S. household income with the threshold that it is 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. The Commission reiterates its 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’ – [the Commission] must adopt an income threshold that takes into account these unusually high medical and disability-related expenses, which significantly lower one’s disposable income.” Further, the Commission notes 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. It would defeat the very purposes of the NDBEDP to promote the independence and productivity of this population were the Commission 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.

45. Although the Commission recognizes 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. Nevertheless, based on its 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, the Commission concludes 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," S. Rep. No. 111-386 at 3 (2010), and given the unusually high medical and disability-related expenses generally incurred by the covered population, it concludes that the 400% threshold originally adopted by the Commission for the pilot program is appropriate for the permanent NDBEDP.

46. Calculation of Income. 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. After a careful review of this issue, the Commission declines to base eligibility on an applicant's taxable income in the permanent NDBEDP. The Commission recognizes that there is support from several commenters for this approach because it may allow additional individuals into this program. However, the Commission believes 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, the Commission is 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. By focusing on total income, the income verification process will be simplified, consistent, and less prone to errors. Furthermore, the Commission's research failed to uncover any precedent for using taxable income to determine eligibility to participate in a federal

subsidy program.

47. The Commission, therefore, affirms the guidance initially issued by the Bureau during the pilot program, which mirrors that used by its Lifeline program, and will continue its 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.

NDBEDP FAQ 23; 47 CFR 54.400(f).

48. 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." NDBEDP FAQ 23. 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 parents or guardians are considered to be part of the same household as their parents or guardians.

NDBEDP FAQ 24; 47 CFR 54.400(h).

49. In the NDBEDP 2015 NPRM, the Commission 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, the Commission 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. Commenters generally support this clarification, to ensure that otherwise qualified applicants are not harmed due to household arrangements. The Commission agrees 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, the Commission concludes 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, the Commission clarifies 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, the Commission continues 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.

50. Verification of Income Eligibility. 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. Based on support in the record and its experience with the pilot program, the Commission concludes 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. Thus, the Commission 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.

51. To promote consistency across the NDBEDP and Lifeline programs and increase efficiency, the Commission 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. 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. 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.

52. For applicants who are not enrolled in a qualifying program, the Commission will continue to require certified programs to verify low-income eligibility by using appropriate and reasonable means. 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 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.

47 CFR 54.410(b)(1)(i)(B). 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. The Commission directs the Bureau to assess whether any new forms developed for applicants to establish identity and

eligibility for the Lifeline program would be appropriate for applicants to submit data to establish income eligibility to participate in the NDBEDP, and to update the guidance the Bureau provides to certified programs with respect to income eligibility documentation, as needed.

53. In the NDBEDP 2015 NPRM, the Commission sought comment on requiring a third party to verify an applicant's income. The Commission declines to adopt this requirement at this time. The Commission is 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. Because certified programs under the NDBEDP have been allocated a limited amount of funds, the Commission believes 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, the Commission finds that requiring certified programs to individually verify income eligibility is an appropriate method to accomplish income verification for this program at this time. However, the Commission will continue to monitor certified program operations to evaluate the need for a third party to verify applicant eligibility in the future.

54. Finally, in the NDBEDP 2015 NPRM, the Commission 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. Commenters generally recognize that income does change over time and agree that re-verification of income eligibility after one year is reasonable. The Commission concurs and adopts this requirement for the permanent NDBEDP.

55. 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. 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. 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. The Commission continues 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.

56. Employment. The pilot program rules prohibit certified programs from imposing employment-related eligibility requirements for individuals to participate in the program. 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. For these reasons, the Commission will retain this rule for the permanent NDBEDP. The Commission notes as well that there is no statutory basis for such a requirement under the CVAA.

57. 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. The Commission continues to believe 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. The Commission further agrees with commenters that the permanent NDBEDP should not impose mandatory age thresholds. Rather, the Commission directs 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.

## **EQUIPMENT AND RELATED SERVICES**

58. Equipment. As authorized by section 719 of the Act, 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, Internet access service, and advanced communications services, including interexchange services and advanced telecommunications and information services, collectively referred to as “covered services,” accessible to low-income people who are deaf-blind. See 47 U.S.C. 620(a). In the NDBEDP pilot program rules, the Commission determined that under this provision, reimbursement can be provided to state programs for 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. 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. 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. Certified programs have been allowed to lend or transfer ownership of the distributed equipment to eligible recipients, 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. For the reasons discussed below, the Commission adopts its tentative conclusion to retain these pilot program rules because it believes 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.

59. Equipment – Allowable Equipment. The Commission retains the pilot program’s definition of “equipment” for purposes of determining reimbursable expenses under the permanent NDBEDP. In so doing, the Commission affirms its 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 of the Act refers specifically to “specialized customer premises equipment,” the Commission adopts a broad interpretation of this term because it finds 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.” S. Rep. at 1; H. Rep. No. 111-563 at 19 (2010) (H. Rep.). 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.

60. The Commission finds sufficient authority to adopt this approach. First, the Commission notes that, under the plain language of the statute, the Commission is permitted to give funding to “programs” that distribute SCPE. Accordingly, as in the NDBEDP Pilot Program Order, the Commission concludes that 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.” S. Rep. at 3. As the Commission 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. In addition, such equipment is often easier to procure and to support than CPE that is designed for use solely by people with disabilities. The Commission further concludes that the underlying purpose of section 719 of the Act 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. Especially in light of the statutory limitation of funding to \$10 million annually, an interpretation of section 719 of the Act 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 the Commission from supporting the distribution of non-SCPE devices that have built-in SCPE features (e.g., magnification software). The Commission expects that the interpretation it adopts will instead expand the number of consumers who are able to be served with such limited allocations of funding.

61. The Commission also notes that recent developments have brought many types of mainstream equipment within the Commission’s current definitions of SCPE. Because SCPE is not defined in section 719 (or elsewhere in the Act), the Commission finds that it is reasonable to define this term consistently with the existing definitions of SCPE in the Commission’s rules. 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. 47 CFR 6.3(i), 7.3(i), 14.10(f), (u). 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 – 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. 47 U.S.C. 255, 617, 619. 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 of the Act – 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. Such accessible mainstream devices, then, could be said to be one type of SCPE that are designed to make covered services accessible by low-income individuals who are deaf-blind under section 719 of the Act.

62. The Commission agrees with commenters who support maintaining the flexibility given to

certified programs to determine the types of qualifying equipment most appropriate for their eligible residents. In the permanent NDBEDP, the Commission 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.

63. Commenters support, and the Commission agrees, 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. 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.

64. For these same reasons, the Commission 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. 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 of the Act, as needed by those individuals." The Commission believes that this requirement has helped to ensure consumer choice and access to the full spectrum of NDBEDP-covered services during the pilot program. The Commission stresses, however, that reimbursable equipment must be needed by the

specific applicant who is deaf-blind to achieve access to covered services. As explained in the NDBEDP 2015 NPRM, the same piece of equipment may be suitable for one individual, yet inappropriate for another. Further, equipment that does not enable access to covered services cannot be funded by the NDBEDP. The Commission 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. Because of the associated administrative burdens and commenters' desire for parity among certified programs, the Commission declines to permit certified programs the discretion to allow consumers to pay certified programs the difference in cost to upgrade equipment distributed by the program. To aid reimbursement certainty, the Commission 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.

65. Equipment – 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. The Commission 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 covered under warranties are eligible for reimbursement” as “necessary components of an effective NDBEDP.” Further, the Commission 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. To keep current with changes in technology and individual needs, the Commission continues to see merit in reimbursing certified programs for the reasonable costs of equipment refurbishments and upgrades, to ensure consumers have up-to-date equipment. Finally, to help ensure

accessible communications in the event that equipment is in need of repair, the Commission continues to encourage certified programs to maintain an inventory of equipment for loan to consumers. In addition, 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. The Commission agrees 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, the Commission includes a provision in the permanent NDBEDP rules to make clear that loaner equipment in inventories may be used for this purpose.

66. Equipment – Cost Efficiencies and Reassessments. Commenters confirm that significant changes in hearing, vision, or medical status may trigger the need for reassessment and new equipment, and generally support a reassessment when such changes might affect an individual’s need for communications devices. The Commission encourages 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. The Commission further directs 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. The Commission also directs 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. 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, the Commission agrees 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.

67. Equipment – 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, 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. The Commission's 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, the Commission will retain these for the permanent NDBEDP.

68. Equipment – 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. The Commission concludes that the term “distribute” used in section 719 of the Act is broad enough to encompass both lending and transfer of ownership. Further, the Commission has found that consumers have been served well both by programs that lend equipment and by those that transfer ownership of the equipment. The Commission continues 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. For those programs that choose to lend equipment, the Commission also will continue to require that recipients be permitted to keep their devices for as long as needed.

69. 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. Given that the NDBEDP is a federal program with limited resources, and there is support for this prohibition in the record, the Commission will retain it for the permanent NDBEDP.

70. Equipment – Notice to Equipment Applicants. In the NDBEDP 2015 NPRM, the Commission 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. The Commission concludes 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 PII for semiannual reporting and other purposes of administration and operation of the NDBEDP, as well as the need to comply with Commission rules and the consequences of failing to do so, the Commission requires 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).

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. The Commission will permit, though does 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.

71. The Commission agrees 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. The Commission, therefore, will not impose this requirement.

72. Equipment – 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. The receiving state's program has had a corresponding requirement to accept this transfer. The Commission will retain this provision in the permanent program because it reduces the need for individuals to reapply to the NDBEDP upon relocating.

73. Equipment – Equipment Listings. In the NDBEDP 2015 NPRM, the Commission 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 deaf-blind. Based on the record and the Commission's experience during the pilot program, the Commission concludes 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. Since the release of the NDBEDP 2015 NPRM, the equipment list on the iCanConnect website has been updated quarterly, which the Commission believes is reasonable. The Commission does 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. The Commission believes that the cost to develop and maintain such features (such as moderating input from multiple sources) outweighs the potential benefits.

74. The Commission adopts its 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 assessment and be consistent with the NDBEDP rules. The following notice, which currently appears on the iCanConnect website, 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.

The Commission notes 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. Along these lines, to the extent technologically feasible, the Commission believes 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. Accordingly, the Commission directs the Bureau and the NDBEDP Administrator to consider including this query function in the centralized database. To the extent that such database contains information about distributed equipment, the Commission further directs inclusion of the notice specified above, pertaining to the need for individualized assessments and compliance with the Commission's rules.

75. Assessments. 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. 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. In the NDBEDP 2015 NPRM, the Commission tentatively concluded that individual assessments are a continued necessity, and that assessment-related travel should continue to be reimbursed.

76. Given the Commission's experience under the pilot program and support in the record, it affirms these tentative conclusions. The Commission concludes, as it concluded in the NDBEDP Pilot Program 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. The Commission agrees with commenters that section 719 of the Act 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, the Commission concludes, is necessary to ensure that the equipment provided enables deaf-blind individuals to "utilize fully . . . essential advanced technologies." S. Rep. at 3. The Commission further concludes 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.

77. The Commission directs 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 of the Act. The Commission instructs the NDBEDP Administrator to take the varying characteristics that are unique to each consumer, as well as the assessors' rates, travel requirements, and support services needed, and other relevant factors into consideration in making individual determinations as to the reasonableness of assessment-related costs.

78. Installation and Training. 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. 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. The Commission concludes, 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. The Commission also continues to recognize that 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. Finally, the Commission finds 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.

79. The Commission, therefore, directs 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. The Commission also instructs 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.

80. Center-Based Assessments and Training. 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. 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. 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, the Commission believes it is in the best interest of the permanent NDBEDP to allow reimbursement for such costs, when reasonable. As the Commission 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. 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.

81. The Commission will only permit reimbursement of the costs of having a consumer travel to an NDBEDP center, however, 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. 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. 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. Each certified program will have the further option to request pre-approval by the NDBEDP Administrator before agreeing to reimburse such costs.

82. While the Commission expects that most travel by consumers will be in-state travel, in some cases it may be more cost effective for a consumer to cross state lines to reach the closest center. As such, 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. Each certified program will be required to obtain pre-approval from the NDBEDP Administrator for any out-of-state consumer travel costs. 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. 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.

83. In addition, 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. 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.

84. The NDBEDP Administrator will review each claim for travel reimbursement, in addition to conducting overall monitoring of travel expenses generally. The Commission believes that having the NDBEDP Administrator monitor these costs will ensure that the costs remain reasonable. The Commission further directs 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. 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, the Commission will continue to reimburse certified programs for the reasonable costs associated with program personnel travel and consumer travel to an NDBEDP center.

85. Training Trainers. For the reasons discussed below, the Commission 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. The Commission directs 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.

86. 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. 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.” 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.

87. 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. 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. Rather, the continuing shortage shows that other funding sources have not adequately addressed the problem during the pilot program. Thus, the Commission agrees with the majority of commenters that it is both appropriate and necessary at this time to allocate NDBEDP funding for train-the-trainer activities.

88. Training Trainers – 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.” S. Rep. at 1; H. Rep. at 19. 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. The Commission thus concludes 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. 47 U.S.C. 620. The Commission believes 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. 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 equipment for use by people who are deaf-blind.” Thus, the Commission concludes 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.

89. Training Trainers – Amount of Funding. The Commission concludes 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, the Commission directs such allocation for the first five years of the permanent program, with a review of this amount to take place during the fifth year.

90. Training Trainers – Training Program Structure. Given the benefits of allowing individual programs to determine the types of train-the-trainer activities they require, the Commission 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.

91. The Commission agrees with commenters who oppose treating these expenditures as an administrative cost, contending that training trainers is an activity that benefits state residents who are deaf-blind. Further, the Commission is concerned that increasing the cap on administrative costs from 15% 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. 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. For these reasons, the Commission requires 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.

92. Training Trainers – Training Formats. The Commission agrees with commenters 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, the Commission 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. The Commission further agrees 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, the Commission understands 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 the Commission declines to provide reimbursement for a company's training fees, it 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).

93. In response to comments filed in this proceeding, the Commission also encourages 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.

94. Training Trainers – Fifth Year Assessment. The Commission will provide NDBEDP support for train-the-trainer efforts during the first five years of the permanent program, and directs 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. 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. In making its 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.” S. Rep. at 1; H. Rep. at 19. To facilitate such assessment, the Commission directs 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. The Commission believes 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.

95. National Outreach. 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. 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. 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 who are deaf-blind to get the equipment they need to have access to covered services.

96. In 2012, the Bureau selected the Perkins School for the Blind (Perkins), which has partnered with HKNC, FableVision, Inc., and others, to be the national outreach coordinator for the NDBEDP pilot program. Their efforts resulted in, among other things, an NDBEDP website ([www.iCanConnect.org](http://www.iCanConnect.org)), an active social media presence, public service announcements (PSAs), and advertisements on billboards and in magazines. Additional activities included 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.

97. The Commission concludes that it continues 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. Based on the comments submitted, the Commission finds that some national outreach, overseen by the NDBEDP Administrator, continues to be needed to raise awareness about the program, educate potential applicants on the ways that broadband and other communication services can enhance their lives, and instruct them on how to

apply.

98. Given support in the record and the significant progress made in raising awareness of the NDBEDP during the pilot program, the Commission concludes 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. During the fifth year of the permanent program, the Commission directs the Bureau and the NDBEDP Administrator to determine the extent to which the allocation for national outreach efforts should be continued or adjusted, to ensure that funding allocated for the NDBEDP is used efficiently. 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.

99. To avoid any disruption and loss of expertise developed by the current national outreach arm of the NDBEDP, the Commission authorizes Perkins to continue conducting national outreach activities for the first five years of the permanent program. The Commission directs 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.

100. National Outreach – Targeted Marketing Efforts. Based on the comments received, the Commission concludes 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, individuals who are congenitally blind or deaf and who experience a second sensory loss later in life, ASL users, and individuals with limited English proficiency. 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.

101. National Outreach – Performance and Oversight. To evaluate the efficacy of national outreach efforts during the fifth year of the program, the Commission establishes the following three performance goals: (1) to build awareness of the iCanConnect program generally; (2) to build awareness 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. The Commission further adopts the following performance metrics to assess the effectiveness of its 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. The Commission encourages 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. Any applications provided on this site must be provided in formats that are accessible to applicants. The Commission also encourages certified programs to keep their contact information on the [www.iCanConnect.org](http://www.iCanConnect.org) state pages up to date to enable referrals. 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. Third, to determine the extent to which its national outreach efforts increase utilization of the NDBEDP by the intended population, the Commission will measure the number of individual applicants to the program, as well as the number of individuals who successfully receive NDBEDP equipment annually. While the Commission establishes this as a performance goal at this time, it notes 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, the Commission notes that in order to effectively measure its success, the Commission will need to gather reliable data through uniform reporting into a centralized database. While other metrics suggested by commenters may be potentially useful, the Commission wishes 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.

However, the Commission directs the Bureau and the NDBEDP Administrator to adjust or modify these performance goals and metrics as may be needed going forward.

102. 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. Because the Commission found this information to be both timely and informative, the Commission requires 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.

103. Local Outreach. In addition to allocating funding for national outreach, the Commission has required and reimbursed local outreach during each year of the pilot program. The Commission concludes that local outreach is needed along with national outreach due to the unique needs of each state program. 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. The Commission, therefore, affirms its 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, and to reimburse programs for the reasonable costs of such outreach. In addition, the Commission encourages certified programs to conduct local outreach activities in languages other than English, such as Spanish, that may be prevalent in their states.

104. The Commission continues to require local outreach materials to be fully accessible to people with disabilities, 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 Disabilities Act. See 42 U.S.C. 12131 through 12134, 12181 through 12189. Finally, the Commission recommends that the national outreach coordinator provide information about its outreach initiatives on

the iCanConnect website and on monthly calls with local programs. The Commission believes this coordination will avoid duplicative efforts and consumer confusion.

105. Local Outreach – Level of Funding. The Commission is 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. The Commission further notes 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, the Commission notes 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 the Commission continues to believe that local outreach should constitute no more than 10% of a certified program’s annual funding allocation, it will not mandate a hard cap at this time, but will require programs to seek permission from the NDBEDP Administrator to exceed this benchmark. The Commission directs 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. Recognizing that certified programs will necessarily focus on different outreach activities to reflect the unique challenges and demographic makeup of their jurisdictions, the Commission concludes 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.

106. To maximize the availability of funds for operations of direct benefit to equipment recipients, the Commission encourages certified programs to gradually reduce the amount used for outreach as demand for the NDBEDP accelerates. The Commission further directs 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, 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.

## **FUNDING**

107. Allocation of Funding. In the NDBEDP Pilot Program Order, the Commission committed to making the full amount of authorized funding, \$10 million annually, 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. Of this amount, the Commission set aside \$500,000 for national outreach efforts during each year of the pilot program. 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. The Commission explained in the NDBEDP Pilot Program Order that it 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 NDBEDP and permit the distribution of equipment to as many eligible residents as possible." Under the pilot program rules, the Bureau was permitted to adjust or reallocate funding allocations to any certified program within a given Fund year, and to revise allocations for subsequent TRS Fund years, as the Bureau deemed necessary and appropriate.

108. Initial Allocations. Based on the Commission's experience during the pilot program and the record in this proceeding, the Commission will continue to use this funding mechanism for the permanent NDBEDP with the following exceptions: (1) the Commission 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) the Commission 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. 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. Based on the current populations of American Samoa, Guam, and the Northern Mariana Islands, which will be served under the permanent NDBEDP, 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. The Commission concludes that allocating this amount will not have a significant impact on the funding allocations of the other 53 certified programs, and so finds it appropriate to apply the current allocation mechanism to all jurisdictions under the permanent program.

109. The Commission's experience with the program has 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 next. Further, the Commission believes 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, approximately 94% was used during the second year, and approximately 88% was used during the third year. This funding enabled equipment and related services to bring communications access to approximately 3,000 low-income deaf-blind individuals.

110. Reallocations. The Commission further concludes 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. 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. 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). 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). Involuntary reallocations were processed by mid-May of the second and third years of the pilot program.

111. Given the success of this approach in maximizing available funds under the NDBEDP, the Commission 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. The Commission believes 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. See 47 U.S.C. 620(a). All such requests for reallocations must be submitted to the NDBEDP Administrator for approval by the Bureau, in consultation with the Office of the Managing Director (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, the Commission further directs that involuntary reallocations be made by March or April, of each Fund year, to the extent possible.

112. The Commission 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. 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. The Commission believes 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, retains this formula for the permanent program. At the same time, as the Commission previously noted, it expects 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. The Commission will allow the NDBEDP Administrator to adjust the formula, if necessary, to account for a reduction in funds that may be available for reallocations.

113. Under the permanent program, allowable spending for administrative costs is capped at 15% of each state's initial funding allocation, and the Commission has determined that reasonable levels of spending for train-the-trainer activities and local outreach efforts are 2.5% and 10%, respectively. 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.

114. Prioritizing Use of Funding. In the NDBEDP 2015 NPRM, the Commission asked whether it should take measures to prioritize the use of funding in the event that demand exceeds the \$10 million funding limitation and, if so, how. Although the record to date indicates annual NDBEDP expenditures as high as 94% of the \$10 million annual allocation, there is no evidence of major inefficiencies or inequities in how available funding has been used. Therefore, and consistent with its conclusion that certified programs should continue to have flexibility in deciding how to spend their limited allocations of NDBEDP resources, the Commission concludes that it is premature at this time to adopt measures to prioritize the use of NDBEDP funding. Nonetheless, the Commission recognizes that the program has evolved and will continue to evolve over time. Accordingly, the Commission directs 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, the Commission sees this as a natural opportunity for the Bureau to also re-assess how to use program funds in light of overall program performance. The Commission further directs 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, the Commission directs 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.

115. Reimbursement Mechanism. 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. 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 certified programs to actively locate and serve eligible participants, and would achieve greater accountability and protection against fraud, waste, and abuse.

116. The Commission 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. The Commission believes that this will ensure that certified programs operate in a cost-efficient manner and will maintain the financial integrity of the program. The Commission understands the difficulties that some certified programs, particularly smaller ones, initially incurred when starting up their pilot programs without funding support. However, the Commission continues 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. The Commission also believes 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. To ensure that entities seeking certification have the capacity to operate successfully in a system that reimburses them for their program

costs, the Commission has added administrative and financial management experience as one of the criteria for certification under the permanent program.

117. Claim Frequency and Payment Processing. Under the NDBEDP pilot program, certified programs have been permitted to elect reimbursement monthly, quarterly, or semiannually. In the NDBEDP 2015 NPRM, the Commission proposed to continue allowing certified entities to elect one of these options upon certification and at the beginning of each Fund year. The Commission adopts this proposal for the permanent program. Continuing to permit certified programs to elect their reimbursement period will avoid imposing unnecessary administrative burdens on small programs, while allowing those programs that need more immediate reimbursement to file more often. Such elections shall be made upon receiving certification and at the beginning of each Fund year.

118. The Commission also adopts its proposal to continue requiring reimbursement claims to be submitted within 30 days after each elected period. This timeframe is supported by the record and will prevent delays when reallocations are deemed necessary. 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). 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.

119. Finally, as explained in the NDBEDP 2015 NPRM, the Commission expects 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. While noting such expectation, the Commission recognizes that the NDBEDP and TRS Fund Administrators may need flexibility to alter these time frames in order to address unique issues that arise. The Commission further notes 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.

120. Documentation of Reimbursement Claims. 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. During the pilot program, the TRS Fund Administrator has provided certified programs with instructions, guidance, and examples of documentation needed to support reimbursement claims. The Commission 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. This mechanism holds programs accountable.

121. In addition to documentation routinely required, the Commission will continue to permit the NDBEDP Administrator or the TRS Fund Administrator to require programs to provide supplemental information needed to verify particular claims. The Commission concludes 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. This process has resulted in the temporary suspension or withholding of a payments pending resolution of disputed matters, and denied reimbursement claims when necessary. Under current rules, any certified program is permitted to appeal the denial of a reimbursement claim to the Commission. 47 CFR 1.101 through 1.117.

122. The Commission 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. 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.

123. Administrative Costs. 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. In the NDBEDP pilot program, the Commission defined administrative costs to include reporting requirements, accounting, regular audits, oversight, and general administration.

124. The Commission continues to believe that a 15% cap on administrative costs is reasonable for the permanent program. For clarity, the Commission defines 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, the Commission adopts its 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, the Commission notes that certified programs may petition for a waiver of the administrative cost cap rule, which the Bureau may consider consistent with the Commission's 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. Grant of such a waiver would not, however, permit the program's total reimbursement to exceed its overall funding allocation. Finally, the Commission notes its 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. As a number of commenters suggest, a centralized 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. The Commission believes that all of these measures, taken together, will help to alleviate burdens that the 15% administrative cap may have imposed during

the pilot program.

## **PROGRAM OVERSIGHT AND REPORTING**

125. Overview. Under the pilot program, the NDBEDP has been overseen by an NDBEDP Administrator, a Commission official designated by CGB. 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.

126. As discussed below, the Commission affirms the current responsibilities of the NDBEDP Administrator. In addition, the Commission sets 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. The Commission further directs 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, the Commission streamlines 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.

127. The Commission directs 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. The Commission directs 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 maintenance of the centralized database. The Bureau and the NDBEDP Administrator shall also coordinate with the appropriate Commission offices to ensure compliance with applicable privacy and security requirements. For example, the Commission currently complies with the requirements of the Privacy Act with respect to the protection of PII that the Commission receives in

connection with the NDBEDP pilot program. 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. See Privacy Act System of Records, published at 77 FR 2721, January 19, 2012 (FCC/CGB-3 NDBEDP System of Records Notice).

128. Program Oversight Responsibilities. 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 the Commission's rules, maintaining the NDBEDP website, resolving stakeholder issues, and serving as the Commission's point of contact for the NDBEDP. 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.

129. The Commission directs that the responsibilities listed above should continue to reside with the Bureau. In addition, the Commission requires the NDBEDP Administrator to coordinate with OMD regarding funding decisions. 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. In addition, the Commission directs 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. The Commission believes that this process will continue to fulfill its 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.

130. In addition to delegating policy oversight of the permanent NDBEDP to the Bureau, the Commission delegates financial oversight of this program to the Managing Director and directs the

Managing Director to work in coordination with the Bureau to ensure that all financial aspects of the program have adequate internal controls. These duties reasonably fall within OMD's current delegated authority to ensure that the Commission operates in accordance with federal financial statutes and guidance. Such financial oversight must be consistent with TRS Orders, rules, and Commission 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.

131. Performance Goals and Measures. The NDBEDP 2015 NPRM noted that the Commission has a responsibility to ensure these funds are spent efficiently and effectively. The Commission 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. Because the Commission finds the proposed goals accurately reflect the statutory purpose and the goals and objectives stated in the Commission's strategic plan, it adopts the proposed performance goals, but revises 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. The Commission believes 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.

132. In establishing performance measures to assess progress relative to these goals, the Commission is mindful of the U.S. Government Accountability Office's (GAO) advice that performance measures for each goal "should be limited to the vital few." GAO, Executive Guide: Effectively Implementing the Government Performance and Results Act at 25 (1996). 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.

133. The Commission concludes 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; (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. 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. The Commission recognizes 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. However, the Commission concludes 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. Thus, while the Commission will continue to undertake efforts to determine effective outcomes that result from successful participation in the NDBEDP through outreach and other efforts, it concludes that imposing requirements for certified programs to gather this information on a regular basis would unduly burden their limited resources under this program.

134. The Bureau and the NDBEDP Administrator are directed to implement metric parameters based on the above guidance. 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. 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. The Commission therefore authorizes CGB to determine the most effective method for gathering the necessary information and weighing these metrics to evaluate program performance. The Commission expects 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 the Commission's program policy decisions. The data collected for these performance measures should also enhance the Commission's ability to develop baseline information and benchmarks for future assessments.

135. Reporting Requirements. 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. After considering the comments received, the Commission amends its rules to set forth more generally the categories of information that must be reported, and it directs 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.

136. The Commission is mindful of the need to ensure that information collection requirements do not unnecessarily burden NDBEDP programs whose resources for program administration are quite limited. The Commission further believes that its 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.

137. Where data must already be reported for claim reimbursement, unnecessary duplication of effort should not be required. For this purpose, below, the Commission directs 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, the Commission expects 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.

138. To provide the flexibility needed to effectively assess the permanent program's performance, the Commission adopts rules for the permanent program that set forth the categories of required information. The Commission directs the Bureau to delineate the specific data points required in the instructions on data reporting and database use issued by the NDBEDP Administrator. 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 the Commission believes 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. 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. This flexible approach will also enable adjustment of reporting requirements to harmonize with future refinement of performance metrics. For this purpose, the Commission requires reporting of information in each of the following categories, and allows 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; (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. 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.

139. The Commission retains the requirement to report the identity of each individual who receives equipment because it believes 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). 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 the Commission adopts 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 PII, the Commission cautions CGB and the NDBEDP Administrator to limit the level of detail of the PII collected to that needed for effective program oversight.

140. Frequency of Reporting. The Commission believes that 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. The Commission will, therefore, retain the requirement for certified programs to submit reports every six months.

141. 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.” In the NDBEDP 2015 NPRM, the Commission 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.

The Commission adopts the continued requirement for this report certification, as amended. Likewise, the Commission makes this language change to its reimbursement claim certification, as proposed.

142. NDBEDP Centralized Database for Reporting and Reimbursement. The Commission concludes that the benefits of a centralized database would be significant and outweigh any disadvantages. 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. 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. 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. A centralized database will also permit cost savings for individual states that currently incur their own expenses to organize and submit required reports. Finally, the Commission finds 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.

143. For all of these reasons, the Commission directs 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, 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. The centralized database also must have subscriber notification procedures in the event of a breach that are compliant with Department of Homeland Security (DHS) and OMB guidance.

144. 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. The Commission also recognize that some certified programs have invested in the development of their own databases for tracking and reporting NDBEDP-related activities. To be clear, nothing in document FCC 16-101 prevents individual programs from continuing to use state-specific data bases for their own tracking purposes. The Commission only requires 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. Therefore, to reduce any costs that may be associated with entering data in both a state-specific and a national database, the Commission directs 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.

145. NDBEDP Centralized Database for Reporting and Reimbursement – Use of the Centralized Database for Reimbursement Claims. The Commission is persuaded that using the centralized database to generate reimbursement claims should be permissive. The Commission believes 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, it also recognizes 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, the Commission directs 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 the information needed to enable reports to be generated and submitted electronically, and to generate reimbursement claims.

146. The Commission concludes 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. The Commission does not envision that the database will be a repository for all records that a certified program must retain 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.

147. NDBEDP Centralized Database for Reporting and Reimbursement – Inclusion and Protection of PII in the Centralized Database. The Commission concludes 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. Further, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) does not pose any major impediment to

the inclusion of PII in the centralized database. Pub. L. No. 104-191, 100 Stat. 2548 (1996). 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.” 45 CFR 164.501. 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.” 45 CFR 164.512(d)(1). 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. 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.

148. While the Commission will not exclude PII from the centralized database, privacy and security are key considerations that it must consider in the collection and maintenance of this information. Accordingly, the Commission directs the Bureau and the NDBEDP Administrator to limit the amount of PII collected to that needed for effective program oversight. 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. Additionally, the Commission requires 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. The database administrator shall allow certified programs to access and use the database only for the reasons specified in this part of document FCC 16-101, and to determine whether information previously entered in the database is correct and complete. Moreover, the

Commission specifically prohibits 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.

149. The Commission concludes 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. To the extent possible and appropriate, certified programs should be informed specifically about how data will be secured. 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, FISMA, and any other applicable privacy and security requirements.

150. NDBEDP Centralized Database for Reporting and Reimbursement – Access to Other Programs’ Data and Aggregate Data. The Commission concludes 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-PII about other state programs or about the NDBEDP as a whole.

151. NDBEDP Centralized Database for Reporting and Reimbursement – Database Administration. Although several commenters recommend that the Commission invite entities via a public notice to submit applications to develop and maintain the database, the Commission concludes 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. The Commission further concludes 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. The Commission directs 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 interagency agreement, a competitive procurement, or a modification of an existing agency contract. 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, the Commission further directs the Bureau and the NDBEDP Administrator, in conjunction with the Managing Director and CIO, to initiate or direct such modifications as needed.

152. Audits and Record Retention. 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. 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.

153. The Commission will retain the requirement for certified programs to conduct annual audits in the permanent NDBEDP because the Commission concludes that annual audits are needed to ensure the fiscal integrity of the program. As the Commission proposed in the NDBEDP 2015 NPRM, and as supported in the record, the Commission clarifies 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. 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. See NDBEDP FAQ 25. 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. See NDBEDP FAQ 26.

154. The record also supports the Commission's proposals to continue to require certified programs to submit to an audit arranged by the Commission or its delegated authorities, 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. While the Commission has not undertaken any audits of certified programs during the pilot program, to date, it concludes that it is fiscally prudent to continue to require certified programs to submit to such audits. In addition, the Commission finds that this automatic suspension policy will promote transparency, accountability, and assure the integrity of the TRS Fund.

155. Further, the Commission 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. As proposed, the Commission clarifies that evidence that a state program may not be in compliance with those rules is not a prerequisite to such a documentation request. As the Commission 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. The Commission affirms 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 upon request from the Bureau, the NDBEDP Administrator, OMD, the TRS Fund Administrator, Commission, or law enforcement.

156. Finally, the Commission adopts the proposal to require record retention for five years, a period that is supported by a number of commenters and is consistent with the Commission's TRS and Lifeline rules. 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.

157. Whistleblower Protections. In the NDBEDP 2015 NPRM, the Commission proposed to retain the whistleblower protections in the Commission's rules for the permanent NDBEDP. 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. 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. Because the Commission continues to believe that these whistleblower protections help to prevent and detect fraud, waste, and abuse, the Commission will retain these requirements for the permanent NDBEDP.

158. Complaints. In the NDBEDP 2015 NPRM, the Commission 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.

159. The Commission hereby adopts the proposed complaint procedures, which are generally supported by the commenters. 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. 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. This informal complaint process is intended to facilitate resolution of complaints between the parties whenever possible. 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.

### **FINAL REGULATORY FLEXIBILITY CERTIFICATION**

160. The Regulatory Flexibility Act (RFA) 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." See 5 U.S.C. 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." See 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. See 5 U.S.C. 601(3). 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). 15 U.S.C. 632.

161. In 2011, pursuant to section 105 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), which adds section 719 of the Act, as amended, 47 U.S.C. 620, the Commission established the National Deaf-Blind Equipment Distribution Program (NDBEDP) as a pilot program. 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. 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). 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.” 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. In document FCC 16-101, the Commission adopts rules to continue the NDBEDP as an ongoing, permanent program.

162. In the NDBEDP 2015 NPRM, the Commission concluded that the proposed rules 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. 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. 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. The Commission therefore certified, pursuant to the RFA, that the proposals in the NDBEDP 2015 NPRM, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were filed in response to that Initial Regulatory Flexibility Certification.

163. Document FCC 16-101 extends the NDBEDP to include the U.S. territories of American Samoa, Guam, and the Northern Mariana Islands. As a result, up to 56 entities may be certified to participate in the permanent NDBEDP.

164. Document FCC 16-101 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.

165. To help address a persistent shortage of qualified trainers to provide individualized training to consumers on how to use NDBEDP-distributed equipment, document FCC 16-101 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.

166. The NDBEDP pilot program rules require all certified programs to submit reports about their NDBEDP activities to the Commission every six months. Document FCC 16-101 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, document FCC 16-101 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.

167. In document FCC 16-101, 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. 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.

168. 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. 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. The Commission defined administrative costs to include reporting requirements, accounting, regular audits, oversight, and general administration. 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. Document FCC 16-101 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. Document FCC 16-101 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, document FCC 16-101 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.

169. 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. Given the significant progress in publicizing the NDBEDP during the pilot program, document FCC 16-101 continues to fund 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 and 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.

170. 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. Document FCC 16-101 continues those audit requirements and also requires each certified program to submit a copy of its annual audit to the NDBEDP Administrator.

171. The Commission finds that the rules adopted in document FCC 16-101 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 document FCC 16-101 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 economic impact on small entities as a result of the rules adopted in document FCC 16-101, the Commission believes the impact to be a positive one.

172. The Commission therefore certifies, pursuant to the RFA, that the rules adopted in document FCC 16-101 will not have a significant economic impact on a substantial number of small entities.

173. The Commission sent a copy of document FCC 16-101 in a report to Congress and the Governmental Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

#### **ORDERING CLAUSES**

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, document FCC 16-101 is ADOPTED and the Commission's rules are hereby AMENDED.

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.

The Commission will send a copy of document FCC 16-101, including a copy of this final certification, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 64**

Individuals with disabilities, Telecommunications.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,  
Secretary.

For the reasons stated in the preamble, the Federal Communications Commission amends 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 to read as follows:

**Subpart GG – National Deaf-Blind Equipment Distribution Program**

Sec.

64.6201 [Reserved]

64.6203 [Reserved]

64.6205 [Reserved]

64.6207 Certification to receive funding.

64.6209 Eligibility criteria.

64.6211 Equipment distribution and related services.

64.6213 Payments to NDBEDP certified programs.

64.6215 Reporting requirements.

64.6217 Complaints.

64.6219 Whistleblower protections.

**Subpart GG – National Deaf-Blind Equipment Distribution Program**

**§ 64.6201 [Reserved]**

**§ 64.6203 [Reserved]**

**§ 64.6205 [Reserved]**

**§ 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 paragraph (a)(1) or (2) of this section.

(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 § 64.6203(c) 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;

(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 §§ 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) of this section.

(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.

3. Effective July 1, 2017, add §§ 64.6201, 64.6203, and 64.6205 to subpart GG to read as follows:

\* \* \* \* \*

Sec.

64.6201 Purpose.

64.6203 Definitions.

64.6205 Administration of the 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.

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