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## I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (*Notice*), the Federal Communications Commission (FCC or Commission) seeks comment on rules to govern the National Deaf-Blind Equipment Distribution Program (NDBEDP) on a permanent basis. The NDBEDP is a significant program that provides up to $10 million annually to support programs that distribute communications equipment to low-income individuals who are deaf-blind. The NDBEDP has operated as a pilot program since July 2012, during which time thousands of low-income individuals who are deaf-blind have received communications devices, along with training on how to operate those devices. The Commission seeks to put in place permanent rules, using the lessons learned during the pilot program, that will allow critical, life-changing equipment and training to continue to be provided without interruption to low-income individuals who are deaf-blind.

## II. BACKGROUND

2. The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) directed the Commission to establish rules to provide up to $10 million annually from the Interstate Telecommunications Relay Service Fund (TRS Fund) to support programs that distribute communications equipment to low-income individuals who are deaf-blind.[1] In accordance with this directive, in 2011, the Commission established the NDBEDP as a two-year pilot program, with an option to extend it for an additional year.[2] The Consumer and Governmental Affairs Bureau (CGB or Bureau) launched the pilot program on July 1, 2012.[3] To implement the program, the Bureau certified 53 entities to participate in the NDBEDP – one entity to distribute equipment in each state, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands[4] – and selected a national outreach coordinator to support the outreach and distribution efforts of these state programs.[5] On February 7, 2014, the Bureau extended the pilot program for a third year, until June 30, 2015.[6]

3. Many individuals who received communications devices and training on how to operate those devices have reported that this program has vastly improved their daily lives, significantly enhancing their ability to live independently and expanding their educational and employment

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[1] Pub. L. No. 111-260, 124 Stat. 2751, § 105 (2010); Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA). Section 105 of the CVAA adds section 719 to the Communications Act of 1934, as amended, and is codified at 47 U.S.C. § 620.

[2] *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, CG Docket No. 10-210, Report and Order, 26 FCC Rcd 5640, 5649-50, ¶ 22 (2011) (*NDBEDP Pilot Program Order*). *See also* 47 C.F.R. § 64.610 (NDBEDP pilot program rules).

[3] *Commission Announces Launch of the National Deaf-Blind Equipment Distribution Program*, Public Notice, 27 FCC Rcd 7403 (CGB 2012). *See also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5685, ¶ 105. CGB designated Jacqueline Ellington, Attorney Advisor, Disability Rights Office, as the NDBEDP Administrator.

[4] *See Commission Announces Entities Certified to Participate in the National Deaf-Blind Equipment Distribution Program*, Public Notice, 27 FCC Rcd 7397 (CGB 2012) (*NDBEDP Certification PN*). Reference to "state programs" or "certified programs" in this *Notice* refers collectively to all of the jurisdictions that participate in the NDBEDP.

[5] *See Perkins School for the Blind to Conduct National Outreach for the National Deaf-Blind Equipment Distribution Program*, Public Notice, 27 FCC Rcd 6143 (CGB 2012). In addition, during the pilot program, the Bureau has released guidance to assist state programs on how to comply with the Commission's NDBEDP rules. *See, e.g.*, "NDBEDP Frequently Asked Questions," available at http://www.rolkaloube.com/#!ndbedpfaq/c1nlj (last viewed May 18, 2015) (*NDBEDP FAQ*).

[6] *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, CG Docket No. 10-210, Order, 29 FCC Rcd 1234 (CGB 2014) (*NDBEDP Pilot Program Third Year Order*).

opportunities.[7] For example, one mother wrote:

> As a Deaf-Blind individual who utilizes the NDBEDP, and the parent of a teen who is a recipient of NDBEDP communication equipment, I have seen the benefits, value, and positive impact of the program. Everyday I see my 17 year old daughter communicating on her iPhone with the aid of her Braille note-taker. I watch her communicate with friends, family, teachers, etc. by text message, social media, email, etc. and am very thankful that she has been empowered to communicate independently. This special equipment has truly changed her life in so many ways. I have seen her open up and blossom into a confident young lady. She no longer has to ask for assistance with communication, but can communicate independently.[8]

4. On August 1, 2014, the Bureau released a Public Notice inviting comment on which rules governing the NDBEDP pilot program should be retained and which should be modified to make the permanent NDBEDP more effective and more efficient.[9] Comments filed in response to the Public Notice helped to inform the preparation of this *Notice* proposing rules to establish a permanent NDBEDP after the pilot program ends. We propose to retain the NDBEDP pilot program rules for the permanent program, except as discussed below.

5. On May 21, 2015, we extended the pilot program for one additional year, until June 30, 2016.[10] The Commission commits to continue the pilot NDBEDP as long as necessary to ensure a seamless transition between the pilot and permanent programs to ensure the uninterrupted distribution of equipment to this target population. When the Commission adopts final rules for the permanent program it will consider the extent to which the pilot program needs to be extended further. We invite comment on the need to extend the pilot program beyond June 30, 2016.

6. In establishing a permanent NDBEDP, we also seek comment on performance goals for all elements of the program along with performance measures that are clearly linked to each performance goal.[11] Specifically, we propose the following goals: (1) ensuring that the program effectively increases access to covered services by the target population; (2) ensuring that the program is administered efficiently; and (3) ensuring that the program is cost-effective.[12] We believe that clear performance goals and measures will enable the Commission to determine whether the program is being used for its intended

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[7] *See, e.g.*, "iCanConnect is "Life-Changing" for Georgia Woman," "New Equipment is Key to Success for University of Utah Student," "Georgia Poet Communicates 'Like Never Before' Thanks to iCanConnect," "Illinois Accountant with Combined Hearing & Vision Loss says Smartphone Changed her Life," Communications Technology is Helping Kansans with Hearing and Vision Loss Live Independently," "New Technology Brings Wisconsin Woman Back into the Lives of her 25+ Grandchildren," available at http://www.icanconnect.org/news (last viewed Apr. 28, 2015).

[8] Comments of Tracie Inman (Inman Comments) at 2.

[9] *Consumer and Governmental Affairs Bureau Seeks Comment on the National Deaf-Blind Equipment Distribution Program*, CG Docket No. 10-210, Public Notice, 29 FCC Rcd 9451 (CGB 2014) (*Permanent NDBEDP PN*).

[10] *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, CG Docket No. 10-210, Order, FCC 15-57 (rel. May 27, 2015).

[11] *See* United States Government Accountability Office, *Executive Guide: Effectively Implementing the Government and Performance and Results Act (GPRA)*, available at http://www.gao.gov/special.pubs/gg96118.pdf; *see also* GPRA Modernization Act of 2010 (GPRAMA), Pub. L. No. 111-352, 124 Stat. 3866 (H.R. 2142).

[12] Funds available through the program come from contributions made by telecommunications service providers to the TRS Fund, and the Commission has a responsibility to ensure these funds are spent efficiently and effectively. As the Commission has previously observed, we have a "responsibility to be a prudent guardian of the public's resources." *See High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No 05-337, CC Docket No. 96-45, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4088, ¶ 29. Ensuring that certified programs use available funds in cost-effective ways maximizes the impact of program funds and helps ensure that as many eligible recipients as possible are able to receive the support they need.

purpose and whether the funding for the program is accomplishing the intended results. To the extent that these proposed goals or other goals that commenters may propose may be in tension with each other, commenters should suggest how we should prioritize or balance them. We invite comment on what performance measures we should adopt to support these proposed goals, and whether we should adopt measures based on the information that certified programs are required to report to the Commission.[13] We also seek comment on ways to manage and share data to track our progress in meeting these goals. Finally, we propose to periodically review whether we are making progress in addressing these goals by measuring the specific outcomes.

We support the idea of establishing performance goals and measures, and would welcome the opportunity to network with other states to determine the most appropriate approach to establishing benchmarks for defining concepts such as "effective" "efficient" "cost-effective" Some possibilities for such benchmarks could be:

1) Comparing number of clients served cumulatively by the program with total dual-sensory impaired population in the state and measure the increase in that percentage year-to-year.
2) Incorporation of ongoing monitoring to identify inefficiencies and responding to them in measurable ways.
3) Looking at value of equipment and training distributed as a percentage of total allocation year-to-year

4) Involve trainers in efficiency assessments as part of client evaluation at beginning and end of training.

## III. PROGRAM STRUCTURE

### A. Certified Programs

7. Under the NDBEDP pilot program, the Commission certifies one entity per state as the sole authorized entity to participate in the NDBEDP and receive support from the TRS Fund for the distribution of equipment and provision of related services to low-income individuals who are deaf-blind.[14] Certified programs have primary oversight and responsibility for compliance with program requirements, but may fulfill their responsibilities directly or through collaboration, partnership, or contract with other individuals or entities within or outside of their states or territories.[15] At present, each certified program is responsible for both the distribution of equipment and various administrative functions associated with the NDBEDP. Tasks associated with the distribution of equipment include outreach, assessment, installation, and training.[16] Administrative functions include the submission of reimbursement claims,[17] the fulfillment of reporting obligations,[18] and conducting annual audits.[19] In the

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[13] *See* Section VII.A (Reporting), *infra*.

[14] *See* 47 C.F.R. § 64.610(b); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5646, ¶ 12.

[15] *See* 47 C.F.R. § 64.610(b); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5647, ¶ 13.

[16] *See* 47 C.F.R. § 64.610(e); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5668-69, 5670-71, 5679, ¶¶ 65, 69, 79.

[17] 47 C.F.R. § 64.610 (f). During the pilot program, certified programs have been permitted to submit reimbursement claims every six months, quarterly, or monthly. *See Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Order, 27 FCC Rcd 2812 (CGB 2012) (waiving the requirement to submit reimbursement claims every six months and permitting certified programs to elect, by notifying the TRS Fund Administrator, to submit claims quarterly or monthly). *See* Section VI.C (reimbursement mechanism), *infra.*

[18] 47 C.F.R. § 64.610(g). Commission rules require the submission of reports to the Commission every six months. *See* Section VII.A (reporting requirements), *infra*.

[19] *See* 47 C.F.R. § 64.610(e)(1)(vii). *See also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5680, ¶ 92.

*Permanent NDBEDP PN*, the Bureau sought comment on whether this program structure should be retained and its advantages or disadvantages.[20] The Bureau asked whether it would be more efficient or effective to have a single entity or multistate regional programs operate the NDBEDP, and whether local or centralized oversight would be preferred by consumers who are deaf-blind.[21] The Bureau also sought comment on transferring some of the responsibilities in either or both of these categories (distribution of equipment and/or administrative functions) to a single administrator.[22] The Bureau asked whether it would be preferable to maintain individual certified programs for certain tasks – for example, those related to the distribution of equipment – while centralizing some or all of the administrative functions in a single entity.[23] Noting that some state programs had relinquished their certification during the NDBEDP pilot program, the Bureau asked whether centralizing certain distribution and/or administrative functions would create greater efficiencies and thus increase the likelihood that more programs would retain their certifications.[24] Finally, the Bureau asked about other measures the Commission can take to improve the structure of the NDBEDP and support certified programs in their efforts to distribute equipment to low-income individuals who are deaf-blind.[25]

8. Many commenters describe the advantages of administering the NDBEDP through state programs. For example, commenters explain that these programs present a "local face,"[26] have the ability to integrate with and leverage in-state services,[27] provide easy access for consumers,[28] and possess knowledge of "on-the-ground" circumstances unique to each state.[29] Some commenters also urge the continuation of the state program structure to prevent the Commission from losing the investment in

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[20] *Permanent NDBEDP PN*, 29 FCC Rcd at 9452, ¶ 3.

[21] *Id*.

[22] *Id.* at 9452, ¶ 4.

[23] *Id.*

[24] *Id.* at 9452-53, ¶ 4.

[25] *Id.*

[26] *See, e.g.*, Comments of Perkins School for the Blind (Perkins Comments) at 2 (stating that consumers may more easily meet people running the program if they are local); Comments of Access Technologies, Inc. (ATI Comments) at 1 (stating that local programs understand the cultures of their states); Comments of LightHouse for the Blind and Visually Impaired (LightHouse Comments) at 1-2 (claiming that local programs better understand how to best conduct outreach to deaf-blind persons in their states).

[27] *See, e.g.*, LightHouse Comments at 1-2 (claiming that local programs better understand what resources are available in their states; Comments of Missouri Assistive Technology (**MoAT** Comments) at 1 (stating that programs within a state are "vastly more familiar with state resources and structures for assessment, equipment demonstration, purchasing, and training than a nation entity could ever be"); Comments of Institute on Disabilities at Temple University (IOD Comments) at 1-2 (stating that local entities are more familiar with how to employ a state's resources to help the people of that state); Comments of Association of Assistive Technology Act Programs (ATAP Comments) at 1 (stating that local programs are more connected with state resources).

[28] *See, e.g.*, Comments of Oklahoma Department of Rehabilitation Services (Oklahoma DRS Comments) at 2 (noting that state programs are more efficient and better at one-on-one communication); Comments of Washington Assistive Technology Act Program (WATAP Comments) at 1 (centralizing the administration of the NDBEDP would make it less accessible locally.

[29] *See, e.g.*, Comments of Assistive Technology for Kansans (ATK Comments) at 1 (stating that successful programs understand their own states' resources and unique demographics and thus have the ability to reach people throughout their states); Reply Comments of Perkins School for the Blind (Perkins Reply Comments) at 2 (stating that local programs are more familiar with a state's demographics); Comments of Georgia Council for the Hearing Impaired (GACHI Comments) at 1 (stating that each state has different needs); Comments of Center for Deaf-Blind Persons, Inc. (CDBP Comments) at 1 (stating that local "programs are better able to reach and meet the needs of constituents"); Comments of Connecticut Tech Act Project (CTTAP Comments) at 1 (stating that local programs meet the specific needs of their states' consumers).

expertise and resources acquired by current certified programs.[30] Access Technologies, Inc. (ATI) adds that a centralized program might be viewed by consumers as a "non-personable government entity, rather than an exciting service that is being provided in their home states."[31] Other commenters, however, assert that a single, national entity would improve the program for consumers and result in greater efficiencies and better trained personnel.[32] Some of these commenters suggest that state programs may not be able to provide the "full spectrum" of services needed by people who are deaf-blind,[33] and advocate for a single entity to provide all services nationwide through contracts with providers who can meet the "cultural, linguistic, reading media and learning needs" of their consumers.[34]

9. After reviewing the record, we propose to retain the current structure of the NDBEDP, certifying one entity to be responsible for the administration of the program, distribution of equipment, and provision of related services within each of the states and territories covered by the NDBEDP. Based on the comments received and our own experiences with the pilot program, we believe that the localized approach that has been in place for almost three years has been successful in meeting the needs of eligible low-income individuals who are deaf-blind. Specifically, we believe that state entities are more likely to be familiar with their unique demographics and their available resources, and consequently are in a better position to respond to the localized needs of their residents. Additionally, although we acknowledge the concerns of those who argue for greater efficiencies and expanded capabilities in a nationalized program, as we discuss below, we believe that such results can be achieved through a centralized database for reporting and reimbursement and through greater support for training, without having to restructure the program from a state-based to a national system.[35] We seek comment on this approach.

We agree that that state entities are more likely to be familiar with their unique demographics and their available resources, and consequently are in a better position to respond to the localized needs of their residents, and we see no need to restructure the program from a state-based to a national system.

10. Thus far, 10 of the 53 state programs have relinquished their certifications, requiring the Commission to seek replacements in those states.[36] Some commenters express concern that the current

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[30] *See, e.g.*, Comments of Interagency Program for Assistive Technology (IPAT Comments) at 1 (a centralized system would duplicate resources already developed by the state programs); Perkins Reply Comments at 3 (noting the potential loss of investment by current programs).

[31] ATI Comments at 1.

[32] *See, e.g.*, Comments of American Association of the Deaf-Blind (AADB Comments) at 8-13; Comments of American Council of the Blind (ACB Comments) at 2; Comments of Brooke Evans (Evans Comments) at 1. *But see* Comments of Helen Keller National Center for Deaf-Blind Youth and Adults (HKNC Comments) at 3-4 (suggesting a tiered state-regional-national structure for local entities to deliver services, regional entities to address limited resources, and a national entity to collect data and administer the program); Comments of Iowa Utilities Board (IUB Comments) at 2 (supporting a regional approach).

[33] AADB Comments at 8-9 (reporting that NDBEDP state programs often "do not provide the full spectrum of services in the manner that would give the deaf-blind consumer the best possible service"), 10-13 (advocating for a national non-profit entity staffed by a majority of qualified deaf-blind persons to serve as the single NDBEDP certified program).

[34] ACB Comments at 2 (advocating for a single entity to provide all services nationwide through contracts with providers who can communicate with their consumers through Braille, large print, speech, or American Sign Language); Comments of American Council of the Blind of Texas (ACBT Comments) at 1-2 (supporting ACB Comments).

[35] *See* Sections III.F and V.E, *infra*. *See also infra*, ¶¶ 15-16 (discussing certification criteria related to spectrum of individuals who are deaf-blind), 52-57 (discussing other eligibility criteria), 74 (discussing equipment distribution).

[36] *See Permanent NDBEDP PN*, 29 FCC Rcd at 9452, ¶ 4, n.11 (listing Public Notices released inviting applications for certification to participate in the NDBEDP for the states of Nevada, Mississippi, Vermont, Nebraska, Indiana, Minnesota, and Iowa). During the third year of the pilot program, three state programs have relinquished their certifications. *See FCC Invites Applications for Certification to Participate in the National Deaf-Blind Equipment Distribution Program in the State of Michigan*, Public Notice, 29 FCC Rcd 11148 (CGB 2014); *FCC Invites Applications for Certification to Participate in the National Deaf-Blind Equipment Distribution Program in the*

structure exposes the NDBEDP to the risk of additional entities leaving the program.[37] We recognize that some adjustments have had to be made during the pilot program, a result that was not unexpected given that the NDBEDP is an entirely new program. However, on balance, we believe that the success of NDBEDP, as evidenced by the delivery of equipment and services to thousands of deaf-blind individuals, shows that the system has been working well.[38] Nonetheless, to help reduce the incidence of program departures, as discussed in detail below, this *Notice* proposes the establishment of a centralized database to facilitate the filing of reimbursement claims and semi-annual reports to the Commission, which we expect will ease some of the administrative program burdens for certified programs. In addition, to minimize the risk of a lapse in service to deaf-blind individuals that might result during any future transitions from one certified state program to another, we propose that a certified program seeking to relinquish its certification provide written notice to the Commission at least 90 days in advance of its intent to do so. Further, we propose that such entities be required to transfer NDBEDP-purchased equipment, information, files, and other data to the newly-certified entity in its state within 30 days after the effective date of its certification to ensure a smooth transition and reduce any potential for a lapse in service. Finally, we propose requiring that all entities relinquishing their certifications comply with NDBEDP requirements necessary for the ongoing functioning of the program that they are exiting, including the submission of final reimbursement claims and six-month reports. We seek comment on these proposals, as well as other steps that we should take to reduce the number of entities that relinquish their certifications and measures we should adopt to minimize the impact on consumers when this occurs.

We do not have enough information about the reasons behind states' relinquishment of their respective NDBEDP programs to offer suggestions of ways to reduce the number and impact of relinquishments, but would recommend conducting an analysis of the factors that necessitated such relinquishments to uncover patterns that may be addressable through programmatic modifications.

11. For the pilot program, the Bureau selected entities to participate in the NDBEDP that were located within and outside of the states that they served.[39] 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.[40] For all but three of these 20 programs, the out-of-state entity selected was the sole applicant.[41] Perkins urges the Commission to maintain this flexible approach, which allows the

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*State of Utah*, Public Notice, 29 FCC Rcd 13678 (CGB 2014); *FCC Invites Applications for Certification to Participate in the National Deaf-Blind Equipment Distribution Program in the State of Hawaii*, Public Notice, 30 FCC Rcd 1102 (CGB 2015).

[37] *See, e.g.*, Comments of DeafBlind Citizens in Action (DBCA Comments) at 1 (noting that creating a single, nationwide entity would prevent a situation where multiple state programs might leave the NDBEDP).

[38] *See* Appendix C (Summary of Pilot Program Expenditures). During the second year of the NDBEDP, certified programs spent approximately 11% of their allocations on local outreach, 8% on individualized assessments, 45% on distributed equipment, 4% for demonstration equipment, 22% to install the equipment and train consumers how to use the equipment, and 11% to cover administrative costs. *Id.*

[39] *See NDBEDP Certification PN*, 27 FCC Rcd at 7400-02 (selecting Perkins to serve Massachusetts, where Perkins is located, and 11 other states). The Bureau has selected replacements for the 10 state programs that have relinquished their certifications since the pilot program began. *See* n.36, *supra*. Nine of those 10 replacements are entities located outside the states the serve: Perkins replaced the former state programs in Nevada, Mississippi, Vermont, Minnesota, Indiana, Michigan, and Utah; and HKNC replaced the former state programs in Iowa and Hawaii.

[40] Perkins is the certified entity for 18 states in addition to Massachusetts, and HKNC is the certified entity for two states in addition to New York.

[41] *See Commission Announces Entities Certified to Participate in the National Deaf-Blind Equipment Distribution Program*, Public Notice, 27 FCC Rcd 7397 (CGB 2012) (announcing that the Bureau received two applications for the state of Arizona and selected Perkins)*; Commission Announces Entity Selected for Certification to Participate in the National Deaf-Blind Equipment Distribution Program for Nevada*, Public Notice, 28 FCC Rcd 10223 (CGB 2013) (announcing that the Bureau received two applications for the state of Nevada and selected Perkins), *Commission Announces Entity Selected for Certification to Participate in the National Deaf-Blind Equipment*

Bureau to award certification to entities to operate in one state or multiple states.[42] Perkins explains that it has a collaborative relationship with local partners in the states where it is certified, and that having it provide services to multiple states is a viable solution for those states that do not have their own in-state resources to administer the NDBEDP.[43] Collaborative relationships with in-state partners seem to be key, not only to satisfy criteria for certification,[44] but also to retain the advantages of administering the NDBEDP through state programs.[45] For the reasons offered by Perkins, we propose to continue allowing qualified out-of-state entities, in addition to in-state entities, to apply for certification to administer the NDBEDP, in collaboration with individuals or entities within or outside of their states or territories. We believe that this flexible approach assists those states that may not have sufficient resources on their own to provide the services required by the NDBEDP. We seek comment on this proposal and any alternatives that would ensure that the NDBEDP is able to serve the residents of each state.[46]

12. The *NDBEDP Pilot Program Order* authorized the NDBEDP to operate in each of the 50 states, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, noting that each of these jurisdictions administered an intrastate TRS program.[47] The Commission reached this result because, like the TRS state programs, the NDBEDP certified programs are supported by the TRS Fund. One commenter urges that NDBEDP funding be extended to the U.S. territories of American Samoa, Guam, and the Northern Mariana Islands.[48] Because residents of these three U.S. territories are also eligible to make and receive calls through one or more forms of relay services that are supported by the TRS Fund,[49] we propose to expand the operation of the NDBEDP to these jurisdictions. We seek comment on this proposal, particularly from interested stakeholders who reside in these three territories, including entities that provide services to deaf-blind individuals.

### B. Certification Criteria

13. Pursuant to the Commission's rules, the Bureau reviews applications and determines whether to grant NDBEDP certification based on the ability of a program to meet the following

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*Distribution Program for Utah*, Public Notice, 30 FCC Rcd 318 (CGB 2015) (announcing that the Bureau received two applications for the state of Utah and selected Perkins).

[42] Perkins Comments at 2-3. *See also* Perkins Reply Comments at 2 (reiterating its support for the existing state program structure "while providing for alternatives to maintain the program in states that do not have qualified organizations willing or able to serve as a certified lead").

[43] Perkins Comments at 2.

[44] *See* Section III.B, *infra* (discussing, for example, the need for sufficient staff and facilities to administer the program, distribute equipment, and provide related services throughout the state, including remote areas).

[45] *See* ¶ 8, *supra* (noting advantages of the current state-based program structure, such as presenting a "local face," integrating with and leveraging in-state services, providing easy access for consumers, and possessing knowledge of "on-the-ground" circumstances unique to each state).

[46] Some commenters suggest that the Commission should support the development of in-state resources to help an in-state entity become certified to participate in the NDBEDP. *See* IOD Comments at 2 (urging the Commission to "build capacity of interested entities with a goal to certifying an entity within the state"); LightHouse Comments at 2 (same). It is not clear how the Commission could help to achieve this goal or whether it has the authority or the necessary funding to do so.

[47] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5647, ¶ 13, n.44.

[48] Comments of Helen Keller National Center Southwest Region (HKNC SW Comments) at 1 (noting that deaf-blind individuals in those territories would benefit from the NDBEDP).

[49] TRS is available in all 50 states, the District of Columbia, Puerto Rico and the U.S. territories. *See* "Telecommunications Relay Service (TRS)," FCC Consumer Guide, available at http://www.fcc.gov/guides/telecommunications-relay-service-trs (last viewed Apr. 28, 2015). *See also Notice of Certification of State Telecommunications Relay Services (TRS) Programs*, CG Docket No. 03-123, Public Notice, 28 FCC Rcd 9987 (CGB 2013) (granting certification to state TRS programs in the Northern Mariana Islands).

qualifications, either directly or in coordination with other programs or entities, as evidenced in the application and any supplemental materials, including letters of recommendation:

> (i) Expertise in the field of deaf-blindness, including familiarity with the culture and etiquette of people who are deaf-blind, to ensure that equipment distribution and the provision of related services occurs in a manner that is relevant and useful to consumers who are deaf-blind;
>
> (ii) The ability to communicate effectively with people who are deaf-blind (for training and other purposes), by among other things, using sign language, providing materials in Braille, ensuring that information made available online is accessible, and using other assistive technologies and methods to achieve effective communication;
>
> (iii) Staffing and facilities sufficient to administer the program, including the ability to distribute equipment and provide related services to eligible individuals throughout the state, including those in remote areas;
>
> (iv) Experience with the distribution of specialized [customer premises equipment], especially to people who are deaf-blind;
>
> (v) Experience in how to train users on how to use the equipment and how to set up the equipment for its effective use; and
>
> (vi) Familiarity with the telecommunications, Internet access, and advanced communications services that will be used with the distributed equipment.[50]

In the *Permanent NDBEDP PN*, the Bureau sought comment on whether we should change any of these criteria.[51]

14. We propose to retain the above criteria to evaluate an entity's qualifications for certification as a state program.[52] Commenters generally support the continued use of these criteria,[53] and we believe, based on our experience with the pilot program, that the expertise and experience these criteria require have been effective in informing the Bureau's selection of qualified entities to operate the state programs. We seek comment on this proposal.

15. We note, however, that several commenters express a concern that certain certified programs and their employees lack the qualifications to meet the diverse needs of the full spectrum of people who are deaf-blind.[54] Rules governing the NDBEDP pilot program require that certified programs demonstrate "expertise in the field of deaf-blindness, including familiarity with the culture and etiquette of people who are deaf blind" and "the ability to communicate effectively with people who are deaf-blind

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[50] 47 C.F.R. § 64.610(b)(3).

[51] *Permanent NDBEDP PN*, 29 FCC Rcd at 9453, ¶ 5.

[52] As noted in Appendix F (Proposed Rule Changes), we propose the following non-substantial edit to criteria (v) as follows: "Experience in training consumers on how to use the equipment and how to set up the equipment for its effective use . . . ."

[53] *See, e.g.*, CDBP Comments at 2 ("The current criteria . . . are appropriate."); DBCA Comments at 2 (supporting criteria, but suggesting deaf-blind individuals be hired if the distribution or administrative functions of the program are centralized); WATAP Comments at 2; ATI Comments at 2 ("The criteria . . . should not be changed."); AADB Comments at 13-14 (supporting the criteria, generally, but stating that the criteria for expertise in the field of deaf-blindness may be "too loosely defined"); LightHouse Comments at 4 (noting that "there is no need to change [the criteria] at this time"); GACHI Comments at 3 (advocating that the current criteria "remain in place").

[54] *See, e.g.*, AADB Comments at 13 (reporting that often "the person providing the service only [has] partial knowledge in the field of deafness or blindness, but [is] not familiar with the full deaf-blind (DB) spectrum"); Perkins Comments at 6 (recommending that certified programs have "a proven track record of working effectively with all aspects of the consumer population, as well as with a variety of service providers"); Comments of Joseph B. Naulty (Naulty Comments) at 2 (stating that trainers need to satisfy a consumer's unique communication needs).

. . . using sign language, [and] providing materials in Braille . . . ."[55] AADB explains, however, that "[t]he deaf-blind community is diverse with many deaf-blind individuals with different levels of hearing and vision loss, background, cultures, languages and communication modes."[56] For example, a person who is deaf-blind may have been a blind individual who became hard of hearing, or a deaf individual who became blind, or a senior citizen with age-related hearing and vision loss.[57] Moreover, commenters point out that deaf-blind individuals use multiple forms of communication. For example, ACB notes that while some individuals may rely primarily on visual or tactile American Sign Language (ASL), others might use a combination of ASL with or without speech, Braille, large print, or other communication modes.[58] For these reasons, AADB asserts that "staff need to have at least a good working knowledge and proper training in all aspect[s] in the field of deaf-blindness, including language, communication mode, and their background culturally."[59] Similarly, ACB recommends requiring that entities seeking certification present "credentials of training staff including knowledge of technology, American Sign Language, literacy in Braille, knowledge of learning styles, [and] ability to ascertain consumers combine[d] vision and hearing loss as it relates to various situations."[60]

16. We recognize that the scope of knowledge, skills, and abilities of program staff should reflect the breadth and diversity within the deaf-blind community. As noted above, our program selection criteria already include a requirement for state programs to "have expertise in the field of deaf-blindness, including familiarity with the culture and etiquette of people who are deaf-blind,"[61] and to "have the ability to communicate effectively with people who are deaf-blind for training and other purposes."[62] Nevertheless, in response to the input received, we seek comment on how we can supplement this criteria to better ensure that certified programs serve the full spectrum of individuals who are deaf-blind in the permanent program. Should we establish minimum standards for the personnel providing services in these programs? For example, should individuals providing service have certain levels of linguistic competency?[63] We ask commenters to describe any difficulties they have experienced securing equipment or services from their state's certified program resulting from a lack of expertise in deaf-blindness or communications skills, and to be specific in recommending changes that may be necessary in the Commission's certification criteria to reduce these difficulties.

17. Commenters also propose that applicants for NDBEDP certification demonstrate the ability to administer a statewide program, the capacity to manage the financial requirements of a state program, expertise in assistive technology, and experience with equipment distribution.[64] We seek comment on the addition of certification criteria that address these capabilities. In particular, we propose

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[55] 47 C.F.R. §§ 64.610(b)(3)(i), (ii).

[56] AADB Comments at 13-14.

[57] *Id.*

[58] *Id. See also* ACB Comments at 2-3 (listing the various ways that deaf-blind consumers communicate and the different technologies they use and noting that the program might not be able to meet "the cultural, linguistic and learning media styles of their consumers").

[59] AADB Comments at 14.

[60] ACB Comments at 2.

[61] 47 C.F.R. § 64.610(b)(3)(i).

[62] 47 C.F.R. § 64.610(b)(3)(ii).

[63] By analogy, we note that TRS providers must ensure that all communications assistants (CAs) are "sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities." 47 C.F.R. § 64.604(a)(1)(i). They must also ensure that CAs have "competent skills . . . and familiarity with hearing and speech disability cultures, languages and etiquette." 47 C.F.R. § 64.604(a)(1)(ii).

[64] *See, e.g.*, IOD Comments at 2 (emphasizing that criteria should include a proven ability to administer a statewide program, expertise in assistive technology and equipment distribution); Perkins Comments at 6-7 (noting that certified programs must have the capacity to manage the financial and administrative requirements of the program).

to add administrative and financial management experience to the requirements for certification. We seek comment on this proposal. Should applicants also be required to demonstrate that they are capable of operating a statewide program or that they follow standard financial principles? To what extent would such requirements strengthen the NDBEDP? For example, would these reduce the likelihood of selected entities relinquishing their certification before completion of their terms? Conversely, would requiring such skills exclude too many otherwise qualified applicants? Finally, we seek comment on any other criteria that should be added to ensure the selection of certified entities that will be both responsive to the deaf-blind community's needs and capable of achieving full compliance with the Commission's NDBEDP rules.

18. Finally, under the NDBEDP pilot program, the Commission prohibited certified programs from accepting financial arrangements from a vendor that could incentivize the purchase of particular equipment.[65] We continue to believe that such incentives could impede a certified program's ability to provide equipment that fully meets the unique needs of the deaf-blind persons it is serving.[66] In addition to this rule, we also requested that applicants for NDBEDP certification disclose in their initial certification application and thereafter, as necessary, any actual or potential conflicts of interest with manufacturers or providers of equipment that may be distributed under the NDBEDP.[67] We propose to require such disclosures in applications for initial and continued certification under the permanent NDBEDP. To the extent that financial arrangements in which the applicant is a part create the risk of impeding the applicant's objectivity in the distribution of equipment or compliance with NDBEDP requirements – such as when the applicant is partially or wholly owned by an equipment manufacturer or vendor – we propose that the Commission reject such applicant for NDBEDP certification. We seek comment on this proposal.

### C. Duration of Certification

19. At present, all NDBEDP programs are certified for the duration of the pilot program.[68] By comparison, under the Commission's TRS rules, states are certified by the Commission to operate their own TRS programs for a period of five years, after which they must seek renewal of their certification.[69] In the *Permanent NDBEDP PN*, the Bureau sought comment on whether this certification period would be appropriate for NDBEDP certified programs and, if not, what would be an appropriate period, and why.[70]

20. The vast majority of parties who commented on this issue support a five-year certification period.[71] Commenters assert that "[r]enewal of certification on a regular basis allows for a review of a certified entity's relationship and progress with the program,"[72] an opportunity "to verify that

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[65] 47 C.F.R. § 64.610(e)(2)(iii).

[66] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5685, ¶ 102.

[67] *Id.*

[68] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5647, ¶ 14.

[69] *See* 47 C.F.R. § 64.606(c)(1) (state TRS provider certification is for five years). *See also* 47 C.F.R. § 64.606(c)(2) (Internet-based TRS provider certification is for five years).

[70] *Permanent NDBEDP PN*, 29 FCC Rcd at 9453, ¶ 6.

[71] *See* ACB Comments at 2; ACBT Comments at 2; DBCA Comments at 2; Perkins Comments at 9; AADB Comments at 15 (stating that the FCC could require renewal every five years); ATI Comments at 3 (supporting certification renewal modeled after the TRS rules); IPAT Comments at 1 (indicating that a five-year period would give programs "the opportunity to implement the program with both short and long term goals in mind"); IOD Comments at 2 (stating that a five-year renewal period "is a reasonable requirement"); WATAP Comments at 2; CDBP Comments at 2; GACHI Comments at 3 (supporting a five-year renewal period, except entities certified for the first time should have a three-year trial period); LightHouse Comments at 5 (suggesting a four- to five-year certification period). *But see* ATK Comments at 1-2 (proposing that there be no limit on the duration of certification).

[72] Perkins Comments at 9.

the entity is still qualified,"[73] and improved program accountability.[74] We see merit in these arguments and are concerned that a shorter certification period of two or three years would result in an unnecessary administrative burden on the state programs.[75] For these reasons, we propose that NDBEDP programs be certified for a period of five years, and seek comment on this proposal. We seek comment on alternative timeframes other than five years including shorter timeframes. We also ask about the pros and cons of opening the window up earlier than every five years.

We support the five-year certification cycle.

21. Finally, in the event that a certified program decides not to seek re-certification at the end of its five-year term, we propose requiring that such entities transfer NDBEDP-purchased equipment, information, files, and other data to the newly-certified entity in its state within 30 days after the effective date of certification of the new entity to ensure a smooth transition and reduce any potential for a lapse in service. This is consistent with our proposal to require the transfer of such materials when a certified program relinquishes its certification during its five-year term.[76]

### D. Certification Renewals

22. In the *Permanent NDBEDP PN*, the Bureau sought comment on whether entities that currently have certification to distribute equipment should be permitted to carry over their certification into the permanent program or be required to reapply for certification.[77] In response, many commenters urge the Commission to allow entities that are certified under the pilot program to carry their certification over to the permanent program.[78]

23. Because the permanent NDBEDP may have some rule modifications, we believe that it is appropriate to require each such entity to demonstrate its ability to meet all of our selection criteria anew, and to affirm its commitment to comply with all Commission rules governing the permanent program.[79] Accordingly, we propose requiring that each entity certified under the pilot program re-apply for certification or notify the Commission of its intent not to participate under the permanent program within 30 days after the effective date of the permanent rules.[80] We seek comment on this proposal. Alternatively, should we require each entity to certify that it continues to satisfy all current certification criteria that we retain under the permanent NDBEDP, to demonstrate its ability to meet any new criteria we may establish, and to affirm its commitment to comply with the permanent NDBEDP rules that we

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[73] WATAP Comments at 2 (asserting that the recertification process should not be "an open competition . . . [because] it may discourage entities from developing resources to administer the program").

[74] *See, e.g.*, CDBP Comments at 2 (stating that a renewal process "reinforces accountability" and gives certified programs the chance to "reassess their desire and ability to run the program"); Oklahoma DRS Comments at 4 (noting the need for "accountability for upkeep of skills, knowledge, and technology").

[75] *See* ATK Comments at 1-2 (stating that periodic recertification would be an unnecessary administrative burden on small programs). *But see* Naulty Comments at 3 (recommending a two-year certification period because of the changes that can occur over two years).

[76] *See* ¶ 10, *supra*.

[77] *Permanent NDBEDP PN*, 29 FCC Rcd at 9453, ¶ 6.

[78] *See, e.g.*, AADB Comments at 15 (stating that a certified nationwide program should not need to seek renewal); ATI Comments at 3; CTTAP Comments at 1; Comments of Florida Deaf-Blind Association (FDBA Comments) at 1; **MoAT** Comments at 1 (stating that programs should not need to reapply unless they have performance or reporting issues); IOD Comments at 2; LightHouse Comments at 5; Comments of Maine Center on Deafness (MCD Comments) at 2-3; Perkins Comments at 9 (advocating that certified entities with a good record should not need to reapply).

[79] *See* Naulty Comments at 2 (stating that current programs should be reevaluated to determine their performance and accountability).

[80] The rules will be effective upon notice in the *Federal Register* announcing Office of Management and Budget (OMB) approval of the information collection requirements subject to the Paperwork Reduction Act.

adopt? In addition, we propose to permit other entities to apply for certification as the sole authorized entity for a state to distribute equipment under the NDBEDP during the 30-day time period following the effective date of the permanent rules. We seek comment on this proposal.

24. Consistent with our requirements for TRS providers, we propose to require each state program, once certified, to report any substantive change to its program within 60 days of when such change occurs.[81] We propose that substantive changes include those that might bear on the qualifications of the entity to meet our criteria for certification, such as changes in its ability to distribute equipment across its state or significant changes in its staff and facilities. We seek comment on this proposal and the types of substantive changes that should trigger such notice to the Commission. We also seek comment on the extent to which this requirement would help to ensure that programs continue to meet our criteria for certification when substantial changes are made.

25. Finally, we propose that one year prior to the expiration of each five-year certification period, a certified program intending to stay in the NDBEDP be required to request renewal of its certification by submitting to the Commission an application with sufficient detail to demonstrate its continued ability to meet all criteria required for certification, either directly or in coordination with other programs or entities. This approach is consistent with the TRS certification rules for state TRS providers.[82] We seek comment on this proposal. In addition, we propose to permit other entities to apply for certification as the sole authorized entity for a state to distribute equipment under the NDBEDP one year prior to the expiration of a certified entity's five-year certification period. We seek comment on this proposal.

### E. Notifying Consumers about State Program Changes

26. 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.[83] We seek comment on whether, in place of an opportunity for an administrative hearing, there are alternatives that would provide programs an opportunity to be heard, such as a reasonable time to present views or objections to the Commission in writing before suspension or decertification. Our interest in finding an alternative stems from our concern that a requirement for a hearing could unintentionally result in eligible residents being denied equipment pending this administrative action. Would providing a program with reasonable time to present its views and objections to the Commission in writing satisfy due process requirements and enable the Commission to take action without undue delay?

27. ACB suggests that the Commission publicly post information regarding the removal of an entity's certification in order to make consumers "aware of such a situation."[84] It further asserts that "all current consumers should be notified" when another entity is selected to replace the decertified entity.[85] The Commission has not initiated any decertification proceedings under the pilot program. When state programs have voluntarily relinquished their certifications, the Bureau has released public notices to invite applications to replace these entities,[86] has selected replacements after careful review of the

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[81] *See* 47 C.F.R. § 64.606(f).

[82] *See* 47 C.F.R. § 64.606(c)(1) (state TRS providers may apply for renewal one year prior to expiration of its certification). For example, if a state receives certification from July 1, 2016 to June 30, 2021, it would be required to submit an application for recertification by July 1, 2020, which is the beginning of the last year that the state holds certification.

[83] 47 C.F.R. § 64.610(j)(1).

[84] ACB Comments at 6.

[85] *Id.*

[86] *See, e.g.*, *FCC Invites Applications for Certification to Participate in the National Deaf-Blind Equipment Distribution Program in the State of Michigan*, Public Notice, 29 FCC Rcd 11148 (CGB 2014); *FCC Invites Applications for Certification to Participate in the National Deaf-Blind Equipment Distribution Program in the State of Iowa*, Public Notice, 29 FCC Rcd 8103 (CGB 2014); *FCC Invites Applications for Certification to*

applications received, and has released a second public notice announcing the newly-certified entities.[87] In addition to releasing such public notices, should the Commission, as ACB suggests, take other measures to notify consumers in the affected states when a certified entity exits the program and a replacement is selected? For example, should we require the formerly certified entity to notify consumers in their states who received equipment or who have applied to receive equipment about the newly-certified entity? We seek comment on how best to ensure that consumers are aware when these changes are made to their state NDBEDP programs.

### F. NDBEDP Centralized Database for Reporting and Reimbursement

28. In the *Permanent NDBEDP PN*, the Bureau sought comment on the advantages of adopting a centralized web-based system for generating reimbursement claims and reports that are required from state programs.[88] Under the NDBEDP pilot program, state programs must submit reimbursement claims that include the 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.[89] Under our current rules, state programs must also report to the Commission information about equipment recipients and the people attesting that those individuals are deaf-blind; the equipment distributed; the cost, time and other resources allocated to various activities (outreach, assessment, installation, training, and maintaining, repairing, and refurbishing equipment); the amount of time between assessment and equipment delivery; the types of state outreach undertaken; the nature of equipment upgrades; a summary of equipment requests denied and complaints received; and the number of qualified applicants on waiting lists to receive equipment.[90] As such, much of the data needed to generate reimbursement claims is also required to generate the required reports.

29. In its comments, Perkins notes that it currently has a database that is used by 32 state programs to generate reimbursement claims and the reports required by the Commission.[91] Perkins has also been able to compile reports from the aggregated data provided by those 32 state programs.[92] By

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*Participate in the National Deaf-Blind Equipment Distribution Program in the States of Vermont and Nebraska*, Public Notice, 29 FCC Rcd 3921 (CGB 2014).

[87] *See, e.g.*, *Commission Announces Entity Selected for Certification to Participate in the National Deaf-Blind Equipment Distribution Program for Michigan*, Public Notice, 29 FCC Rcd 11769 (CGB 2014) (announcing the selection of Perkins as the certified program in the state of Michigan after the Michigan Bureau of Services for Blind Persons relinquished its certification); *Commission Announces Entity Selected for Certification to Participate in the National Deaf-Blind Equipment Distribution Program for Iowa*, Public Notice, 29 FCC Rcd 9436 (CGB 2014) (announcing the selection of HKNC as the certified program in the state of Iowa after IUB relinquished its certification); *Commission Announces Entities Selected for Certification to Participate in the National Deaf-Blind Equipment Distribution Program for Vermont and Nebraska*, Public Notice, 29 FCC Rcd 5883 (CGB 2014) (announcing the selection of Perkins as the certified program in the state of Vermont after the Vermont Center for the Deaf and Hard of Hearing relinquished its certification and the selection of the Nebraska Assistive Technology Partnership as the certified program in the state of Nebraska after the Nebraska Commission for the Deaf and Hard of Hearing relinquished its certification).

[88] *Permanent NDBEDP PN*, 29 FCC Rcd at 9452, ¶ 4. *See also* Sections VI.C (discussing reimbursement mechanism), VII.A (discussing reporting requirements), *infra*.

[89] *See* 47 C.F.R. § 64.610(f)(2).

[90] *See* 47 C.F.R. § 64.610(g).

[91] Perkins Comments at 5. Perkins uses the database to record information related to and to generate reports and reimbursement claims for the certified programs that it administers. Perkins also offers the use of the database to other certified programs for these purposes for a fee. Under the NDBEDP pilot program, the costs associated with the database have been reimbursed to the certified programs that use the database as administrative costs.

[92] *See* iCanConnect "Year One Highlights" (filed Nov. 20, 2013) available at http://apps.fcc.gov/ecfs/document/view?id=7520958851 (last viewed Apr. 28, 2015) (providing a summary of data aggregated from 35 certified programs that used the Perkins database during the first year of the

contrast, we note that reports from state programs that have not used this database have been presented to the Commission with inconsistent formatting, making aggregation of their data by the NDBEDP Administrator difficult and inefficient.

30. We propose that a centralized national database be created to assist state programs in the generation of their reports to the Commission, to enable the submission of those reports electronically to the NDBEDP Administrator, and to allow for the aggregation and analysis of nationwide data on the NDBEDP.[93] Commenters generally support the creation of such a database, with many suggesting that this is likely to lead to the more efficient generation of state reports.[94] To ensure that all of the information collected can be aggregated and analyzed for the effective and efficient operation of the NDBEDP, we further propose that, if we adopt this approach, all certified programs be required to use the centralized database for their reporting obligations. We believe that requiring certified programs to submit data uniformly through a web-based interface provided by a centralized database will allow the Commission to identify program trends that will enable improved oversight and implementation of the NDBEDP. We seek comment on these proposals. Do NDBEDP stakeholders agree that these advantages would accrue from utilizing a centralized database? We also seek comment generally on the costs and any other benefits or disadvantages that would be associated with both the establishment and maintenance of such a database.[95] Further, we seek comment on any lessons learned from other experiences setting up databases and whether a centralized database could be used for other purposes or programs.

31. Because the data needed to generate the required reports and reimbursement claims overlap,[96] we also propose that the centralized database be available to assist state programs in generating their reimbursement claims for submission to the TRS Fund Administrator. We seek comment on this proposal. Many commenters suggest that use of a centralized database to generate reimbursement claims is likely to lead to faster reimbursement.[97] Does this reflect the experience of other entities seeking reimbursement, and would having the centralized database available to generate reimbursement claims benefit state programs in other ways? We note that the TRS Fund Administrator is currently able to aggregate reimbursement claim data, even in the absence of a centralized database.[98] For this reason, we propose to enable and permit, but not require, certified programs to use the centralized database to generate reimbursement claims. Alternatively, would requiring all certified programs to use the centralized database for their claims make the process of aggregating reimbursement claim data more efficient? Could reimbursement claim data be transmitted electronically from the centralized database to the TRS Fund Administrator, along with the necessary supporting documentation? We seek comment on the costs and benefits of utilizing the centralized database to facilitate the creation of reimbursement

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NDBEDP pilot program); iCanConnect "Year 2 in Review" (filed Dec. 23, 2014) available at http://apps.fcc.gov/ecfs/document/view?id=60001010881 (last viewed Apr. 28, 2015) (providing a summary of data aggregated from 33 certified programs that used the Perkins database during the second year of the NDBEDP pilot program with comparisons to some first-year statistics).

[93] *See* ¶¶ 36-37, *infra* (seeking comment on funding and discussing Commission options for creating the database).

[94] *See* ATK Comments at 3 (stating that standardized reporting should reduce reporting time); Oklahoma DRS Comments at 6 (stating that a single format will make the reporting process more efficient); IOD Comments at 3 (stating that a national database would be more efficient for reporting).

[95] *See* ¶ 36, *infra* (discussing cost estimates).

[96] *See* ¶ 28, *supra*.

[97] *See* Perkins Comments at 12 (stating that a database would simplify the mechanisms for state programs seeking reimbursement); Perkins Reply Comments at 5; AADB Comments at 18; ATK Comments at 3 (stating that standardized reporting should reduce reimbursement time); DBCA Comments at 2; Comments of Florida Telecommunications Relay, Inc. (FTRI Comments) at 2 (stating that a central database should expedite reimbursement); WATAP Comments at 203; CDBP Comments at 2; MCD Comments at 5.

[98] *See, e.g.*, Comments of RolkaLoube as the Interstate Telecommunications Relay Services Fund Administrator (RolkaLoube Comments) at 17-19 (NDBEDP reimbursement data for 2012-2013 and 2013-2014); Appendix C (Summary of Pilot Program Expenditures).

claims, as well as the best approach for utilizing this database to ensure the effective and efficient oversight of the permanent NDBEDP.

32. We also seek comment about the type of data that state programs should be required to input into a centralized database. In order for state programs to generate reimbursement claims under the pilot NDBEDP, they must submit the costs of equipment and related expenses; assessments; equipment installation and consumer training; loaner equipment; state outreach efforts; and program administration.[99] Should this same data be entered into the database? Are there other types of data that should be populated into the database for the purpose of generating reimbursement claims? Similarly, what data should be input by state programs to the database to effectively generate reports about state program activities? Under our current rules, state programs must report to the Commission information about equipment recipients and the people attesting that those individuals are deaf-blind; the equipment distributed; the cost, time and other resources allocated to various activities; the amount of time between assessment and equipment delivery; the types of state outreach undertaken; the nature of equipment upgrades; a summary of equipment requests denied and complaints received; and the number of qualified applicants on waiting lists to receive equipment.[100] To the extent that the Commission continues requiring that such data be reported in the permanent NDBEDP, should certified programs be required to input all of this data into the centralized database?

33. Should certain data be excluded from the centralized database, and if so, why? For example, would it be more appropriate for state programs to maintain records of names and addresses of their equipment recipients, along with the identity of the people who attest that those recipients are deaf-blind, rather than put this information into a centralized location, because of privacy concerns?[101] Should individuals who receive equipment instead be given a unique identifying number, which could be entered into the database in lieu of their names and other personally identifiable information?[102] Additionally, we note that, according to Perkins, there are a few certified programs that may be prohibited by state regulation from storing data out of state.[103] We seek comment on whether these prohibitions would prevent the input of the types of data described above – or any other related types of data – into a centralized database, and whether there are any other reasons that any of the currently certified programs would not be able to comply with requirements for the submission of such data into a centralized system. What are the costs and benefits of gathering the categories of information listed above?

34. We propose to permit the NDBEDP Administrator and other appropriate FCC staff to search this database and generate reports to analyze nationwide data on the NDBEDP,[104] and seek comment on this proposal. To what extent should a certified program also be permitted access to the database to execute searches of data that it did not input into the database? For example, if we permit entry of data on deaf-blind individuals receiving equipment,[105] should a certified program be permitted to conduct a search to determine whether the applicant is receiving equipment and services from another state? Similarly, should a certified program be permitted to access the database to determine the types of equipment being distributed by other states or the length of time typically used for assessments and

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[99] *See* 47 C.F.R. § 64.610(f)(2).

[100] *See* 47 C.F.R. § 64.610(g).

[101] The FCC complies with the requirements of the Privacy Act with respect to the protection of personally identifiable information that the FCC receives in connection with the NDBEDP. *See* http://www.fcc.gov/encyclopedia/privacy-act-information; Privacy Act System of Records, 77 Fed. Reg. 2721 (Jan. 19, 2012) (FCC/CGB-3 NDBEDP System of Records Notice) available at http://www.fcc.gov/omd/privacyact/documents/records/FCC-CGB-3.pdf.

[102] For example, such information might be useful to prevent overlap across states in the event such individuals move out of state.

[103] Perkins Comments at 5.

[104] *See id.* at 4. *See also* n.91, *supra*.

[105] As noted above, this could be either personally identifiable information or a unique identifier.

training by other certified programs? We note that in the TRS context, access to a soon-to-be-formed user registration database will be restricted to TRS providers only for the purposes set forth in the *VRS Reform Order*, such as determining whether information in the database on registered users is correct.[106] Similarly, we propose that access to the NDBEDP centralized database be limited to authorized entities, and be permitted only under tightly controlled conditions. We seek comment on who such entities should be and under what conditions they should be permitted such access, to ensure the privacy and confidentiality of financial and other sensitive information about consumers that may be entered into the database. We propose that the database administrator be tasked with establishing procedures, protocols, and other safeguards, such as password protection and encryption, to ensure database access is in fact restricted according to the Commission's guidelines. We seek comment on this approach, and the extent to which the NDBEDP Administrator should be given some discretion to determine when entities other than the Administrator or FCC staff can access the database.

35. Decisions regarding information to be included in a centralized database used for administration of the program and the individuals who may be granted access to the database can raise questions regarding compliance with Government-wide statutory and regulatory guidance with respect to privacy issues and the use of information technology, *e.g.*, the Privacy Act of 1974[107] and Federal Information Security Management Act of 2002.[108] Parties commenting on the centralized database should ensure that their recommendations are consistent with Government-wide privacy and information technology statutory and regulatory guidance.

36. Based on its experience providing database services for 32 certified programs, Perkins estimates that the cost of establishing and maintaining an NDBEDP centralized database will be between 3-4% of the $9.5 million annual allocation available to certified programs under the pilot program, or between $285,000 and $380,000 annually.[109] We seek comment on whether this amount of funding will be sufficient to perform the proposed functions of the database, and whether there will be start-up costs that result in higher costs during the first year of the database's operations. Based on Perkins's estimate, we further propose, if necessary, to authorize the Bureau to set aside funding for the NDBEDP database in an amount not exceed to $380,000 per year from the NDBEDP's annual allocation for the development of the database during the last year of the pilot program, to enable the implementation of the database functions for the permanent NDBEDP in a timely manner. If this approach is adopted, certified programs now paying to use an existing database, the costs of which are currently assessed against their 15% cap on administrative costs, would no longer need to do so.[110] At the same time, we propose that certified programs continue to be permitted to seek reimbursement for the time spent entering data into and generating reports and reimbursement claims from the database as part of their administrative costs, up to the 15% cap. We seek comment on these various proposals.

37. As an alternative to undertaking the development and maintenance of an NDBEDP database using existing staff and resources, the Commission will also consider a variety of approaches to satisfy the program requirements. For example, the Commission could engage another agency with

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[106] *Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8652, ¶ 76 (2013) (*VRS Reform Order*).

[107] 5 U.S.C. § 552a. *See also* Office of Management and Budget (OMB) memoranda providing guidance on privacy issues available at https://www.whitehouse.gov/omb/privacy_general.

[108] 44 U.S.C. §§ 3541, *et. seq*.

[109] Perkins Comments at 14.

[110] *See* FTRI Comments at 2 (stating that certified programs should not be required to pay for the centralized database); AADB Comments at 2 (stating that programs should receive an additional 5% for the database); HKNC Comments at 5; Oklahoma DRS Comments at 6 (stating that the cap would be easier to satisfy if the burden of reporting requirements were removed); MoAT Comments at 2. *See also* Section VI.D, *infra* (discussing administrative costs, which include costs associated with reporting requirements, accounting, regular audits, oversight, and general administration).

information technology experience to provide administrative support for the program including database development and maintenance through an Interagency agreement.[111] The Commission could also procure the database through a competitive procurement, as we recently did in 2011 with the TRS Fund Administrator.[112] In addition, the Commission may evaluate whether to modify a contract with an existing contractor to satisfy the program requirements – either through direct performance by the main contractor or a subcontractor. Or the Commission may wish to invite entities, via a public notice, to submit applications for the development and maintenance of a centralized database, from which the Commission would then select a database administrator.[113] The Commission will consider using a combination of any of these in-house, regulatory, or procurement strategies where efficient and lawful to do so.

38. Regardless of the precise mechanism chosen for obtaining a centralized database for the program, we seek input on the performance goals along with performance measures that should be used for this project. Other issues on which we seek input include the implementation schedule for the work; budget for the first three years of work related to the development and maintenance of the database; and prerequisite experience needed for staff employed in creating and managing a complex database capable of receiving large amounts of data. We also seek input regarding database query and data mining capabilities; and database design best practices to ensure that certified programs can generate reimbursement claims and submit them electronically to the TRS Fund Administrator using the database. We also seek input on the report functionality required for the database; and best practices with respect to data management, security, privacy, confidentiality, backup, and accessibility, including compliance with section 508 of the Rehabilitation Act.[114]

## IV. CONSUMER ELIGIBILITY

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

39. To participate in the NDBEDP, the CVAA requires that individuals must be "deaf-blind," as that term is defined in the Helen Keller National Center Act (HKNC Act).[115] The Commission's

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[111] Interagency Agreements are frequently used by federal agencies to procure goods or services from another Federal agency with expertise in a particular area.

[112] On March 7, 2011, the Commission awarded RolkaLoube (formerly Rolka Loube Saltzer Associates, LLC), a contract to administer the Interstate TRS Fund. By way of example, the solicitation package for the TRS Fund Administrative Services is available at http://transition.fcc.gov/omd/contracts/pre-award/Sol2_12.pdf.

[113] The Commission employed this procedure for its selection of the NDBEDP national outreach coordinator. *See FCC Invites Applicants to Conduct National Outreach for the National Deaf-Blind Equipment Distribution Program*, Public Notice, 26 FCC Rcd 14517 (CGB 2011).

[114] 29 U.S.C. § 794d.

[115] 47 U.S.C. § 620(b). The HKNC Act defines an individual who is "deaf-blind" as any individual:

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

29 U.S.C. § 1905(2).

NDBEDP pilot program rules also direct NDBEDP certified programs to consider an individual's functional abilities with respect to using telecommunications, advanced communications, and Internet access services in various environments when determining whether an individual is "deaf-blind."[116]

40. Commenters almost universally support retention of the HKNC Act definition of "deaf-blind," together with a functional ability requirement, as an effective definition that has worked well for the pilot program.[117] We therefore propose to retain this definition and seek comment on this proposal.

### B. Verification of Disability

41. The NDBEDP pilot program rules require that individuals seeking equipment under the NDBEDP must provide disability 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 and can attest to the individual's disability.[118] Such professionals must attest, either to the best of their knowledge or under penalty of perjury, that the applicant is an individual who is deaf-blind, as that term is defined in the Commission's rules.[119] A disability verification must include the attester's name, title, and contact information, including address, phone number, and e-mail address.[120] As verification of disability, certified programs may also accept documentation already in the applicant's possession, such as individualized education programs and Social Security determination letters.[121] In the *Permanent NDBEDP PN*, the Bureau sought comment on whether to continue to accept as disability verification documentation already in the applicant's possession and the extent to which program disability verification rules have provided certified programs with the flexibility they need. [122]

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[116] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5652, ¶ 27. The NDBEDP pilot program rules at 47 C.F.R. § 64.610 (c)(2) define a deaf-blind person as follows:

(i) Any person:

(A) 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;

(B) 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

(C) For whom the combination of impairments described in clauses (c)(2)(i)(A) and (B) of this section cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.

(ii) The definition in this paragraph also includes any individual who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining vocational objectives. An applicant's functional abilities with respect to using telecommunications, Internet access, and advanced communications services in various environments shall be considered when determining whether the individual is deaf-blind under clauses (c)(2)(i)(B) and (C) of this section.

[117] *See, e.g.*, AADB Comments at 20-21; ACB Comments at 4; ACBT Comments at 3; ATK Comments at 3; DBCA Comments at 3; FDBA Comments at 2; **MoAT** Comments at 2; IOD Comments at 4; CDBP Comments at 2; MCD Comments at 7; Naulty Comments at 5.

[118] 47 C.F.R. §§ 64.610(d)(1)(i), (ii).

[119] 47 C.F.R. § 64.610(d)(1)(ii).

[120] 47 C.F.R. § 64.610(d)(1)(iv).

[121] 47 C.F.R. § 64.610(d)(1)(iii). *See also* 47 C.F.R. § 64.610(e)(1)(ii) (requiring certified programs to obtain verification that applicants meet the definition of an individual who is deaf-blind under the NDBEDP rules).

[122] *Permanent NDBEDP PN*, 29 FCC Rcd at 9456, ¶ 13.

42. Commenters support giving certified programs the flexibility to accept verification of disability from a wide range of professionals, as well as verification through documentation already in the applicant's possession.[123] As the Commission noted previously, "NDBEDP applicants who are deaf-blind are likely to face significant logistical challenges, including the very types of communication barriers the NDBEDP is itself designed to eliminate, in their attempts to obtain verification of their disabilities."[124] As such, we tentatively conclude that the Commission should retain the current requirements for verification of disability from a professional with direct knowledge or through documentation already in the applicant's possession, and seek comment on this tentative conclusion. Nonetheless, we seek comment on whether a professional's attestation that an individual is deaf-blind should include the basis of the attesting professional's knowledge. We also propose that the disability verification must include the professional's full name, title, and contact information, including business address, phone number, and e-mail address. We seek comment on this proposal. Finally, we ask whether certified programs should be required to re-verify an individual's disability eligibility each time the recipient applies for new equipment, or whether there is a period of time after an initial verification that such verification should be deemed sufficient to prove disability in the event that the recipient seeks additional equipment. For this purpose, we propose to require certified programs to re-verify an individual's disability eligibility when the individual applies for new equipment three years or more after the program last verified the individual's disability. We seek comment on this proposal.

Because hearing and visual impairments of the nature and severity that customarily qualify an individual for this program typically progress over time and rarely, if ever, improve, initial verification should be deemed sufficient for the duration of whatever time the client remains interested in obtaining equipment and services, without imposing the need for additional verification efforts on the part of the client.

### C. Income Eligibility

43. To participate in the NDBEDP, individuals must be "low income."[125] The NDBEDP pilot program rules define low-income individuals as having "an income that does not exceed 400% of the Federal Poverty Guidelines (FPG)."[126] Thus for 2015, the income requirement under the pilot program is as follows:

| Number of persons in family/household | States and Territories Other Than Alaska and Hawaii | Alaska | Hawaii |
|---|---|---|---|
| 1 | $47,080 | $58,880 | $54,200 |
| 2 | $63,720 | $79,680 | $73,320 |
| 3 | $80,360 | $100,480 | $92,440 |
| 4 | $97,000 | $121,280 | $111,560 |
| For each additional person | +$16,640 | +$20,800 | +$19,120 |

[123] *See, e.g.*, GACHI Comments at 6; CDBP Comments at 2; Oklahoma DRS Comments at 7; IPAT Comments at 2; FDBA Comments at 2; ACB Comments at 4; ACBT Comments at 3; ATI Comments at 6.

[124] *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5653, ¶ 31.

[125] 47 U.S.C. § 620(a).

[126] 47 C.F.R. § 64.610(d)(2). The poverty guidelines are updated periodically in the *Federal Register* by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2). *See, e.g.*, 2014 Poverty Guidelines, U.S. Department of Health & Human Services, Office of the Assistant Secretary for Planning and Evaluation, available at http://aspe.hhs.gov/poverty/14poverty.cfm (last viewed Apr. 28, 2015).

44. In addition, the Bureau has provided guidance to state programs that defines "income" as all income received by all members of a household,[127] and defines a "household" as any individual or group of individuals who are living together at the same address as one economic unit.[128] In the *Permanent NDBEDP PN*, the Bureau sought comment on whether the NDBEDP should continue to use the 400% of FPG criterion for income eligibility, or what other measure of income would be appropriate for the permanent program.[129] The Bureau also asked how "income" should be calculated, and whether individual or household income should be considered in this calculation.[130]

45. Some commenters support continuation of the pilot program's definition of low income.[131] Others note that the financial eligibility criteria have prevented some deaf-blind individuals from getting communications equipment and training under the NDBEDP, even when their incomes are not high enough to afford such equipment on their own.[132] For example, ACB notes that individuals with disabilities who reside in New York, work, and receive the Medicaid Buy-In would exceed the 400% FPG threshold for receipt of equipment under the NDBEDP.[133]

46. The NDBEDP is, by statute, restricted to individuals who are low income.[134] Absent authority from Congress, the Commission is unable to remove the income limitation from the eligibility requirements, as urged by some commenters,[135] or allow deaf-blind individuals who do not meet the income requirement to receive benefits on a sliding scale basis, as urged by other commenters.[136] Given the statutory command, we seek comment on how to define the "low income" threshold for purposes of

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[127] *See NDBEDP FAQ* 23. This guidance further describes "income" as follows:

> 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.

[128] *See NDBEDP FAQ* 24. This guidance further describes "household" as follows:

> 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.

[129] *Permanent NDBEDP PN*, 29 FCC Rcd at 9456-57, ¶ 14.

[130] *Id.*

[131] *See, e.g.*, Perkins Comments at 17; ATK Comments at 3; IUB Comments at 7-8; **MoAT** Comments at 2; IPAT Comments at 2.

[132] *See, e.g.*, AADB Comments at 21-22; CDBP Comments at 3; LightHouse Comments at 11-12; WATAP Comments at 3; GACHI Comments at 7; FDBA Comments at 2; IOD Comments at 4. *See also* HKNC Comments at 6-7 (arguing that children should always be eligible); Comments of Stephanie Kilian (suggesting that income eligibility requirements should be waived for veterans).

[133] ACB Comments at 4-5; ACBT Comments at 3-4 (same).

[134] 47 U.S.C. § 620(a).

[135] *See, e.g.*, AADB Comments at 21 (opposing any income criteria); CDBP Comments at 3 (arguing that there should not be an income limitation and, in the alternative, that the Commission permit income eligibility for anyone enrolled in any state or federal subsidy program that has income thresholds higher than 400% of the FPG); LightHouse Comments at 11-12 (urging no threshold at all); Comments of Catherine Miller (Miller Comments) at 1-2; Comments of Rene Pellerin (Pellerin Comments) at 2.

[136] *See, e.g.*, AADB Comments at 22 (urging the Commission to adopt a sliding scale for the provision of equipment for individuals whose income exceeds 400% of the FPG); ATI Comments at 6; WATAP Comments at 3 (stating that the NDBEDP should employ a sliding scale for income requirements when providing more expensive equipment).

eligibility in the permanent program. Should we, for example, continue to use a threshold of 400% of the FPG like we did in the pilot program? We are sensitive to the concerns of commenters who note the high cost of medical and disability-related expenses for this population,[137] as well as the high cost of the equipment that these consumers need.[138] In the *NDBEDP Pilot Program Order*, the Commission concluded "that the unusually high medical and disability-related costs incurred by individuals who are deaf-blind . . . together with the extraordinarily high costs of specialized [customer premises equipment] typically needed by this population, support an income eligibility rule of 400 percent of the FPG for the NDBEDP pilot program. In order to give this program the meaning intended by Congress – 'to ensure that individuals with disabilities are able to utilize fully the essential advanced technologies that have developed since the passage of the ADA and subsequent statutes addressing communications accessibility' – we must adopt an income threshold that takes into account these unusually high medical and disability-related expenses, which significantly lower one's disposable income."[139]

47. We note that in 2013, the median household income in the United States was $52,250.[140] Can we define a household as "low income" if its income exceeds the median? Should we use the median as a cap on eligibility, or just adopt the median as a threshold? Alternatively, how do other federal programs define "low income" households? For example, the FCC's low-income universal service program (known as Lifeline) defines a household as low income only if it's below 135% of the FPG (or the household qualifies for one of several federal low-income programs).[141] Should we adopt that threshold here? What effect would adjusting the income eligibility threshold have on otherwise-eligible deaf-blind individuals? As we approach the maximum funding level each year, what effect would adjusting the income eligibility threshold have on prioritizing scarce resources?

48. Next, we seek comment on whether "taxable income" – rather than total, gross, or net income – be used to determine eligibility, while retaining the limitation that such income not be greater than 400% of the FPG. For these purposes, we seek comment on whether the term "taxable income" be defined as gross income minus allowable deductions, as defined by the U.S. Tax Code.[142] In other words, taxable income for the purposes of the NDBEDP would be the amount that is used to compute the amount of tax due.[143] We seek comment on how to address non-disability related exemptions or exclusions in the

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[137] *See, e.g.*, ATI Comments at 6.

[138] *See, e.g.*, AADB Comments at 22 (advocating that deaf-blind individuals who do not meet income eligibility criteria be permitted to obtain "unaffordable assistive or specialized equipment . . . to make phone calls and access the Internet"); ACB Comments at 4 (urging that individuals be permitted to obtain adaptive devices regardless of income); ACBT Comments at 3-4; DBCA Comments at 3 (stating that the Commission should examine the person's income in relationship to the equipment's high expense); WATAP Comments at 3 ("Some adaptive equipment such as screen reading and screen magnifying software, braille displays and notetakers, and CCTVs are cost prohibitive for many."). A single piece of specialized communications equipment can cost several thousand dollars. *See, e.g.*, HumanWare at http://www.humanware.com/en-usa/home (last viewed Apr. 28, 2015); HIMS at http://hims-inc.com/products/deaf-blind-communicators/ (last viewed Apr. 28, 2015). *See also* iCanConnect "Year 2 in Review" at 10 (filed Dec. 23, 2014) available at http://apps.fcc.gov/ecfs/document/view?id=60001010881 (last viewed Apr. 28, 2015) (reporting that consumers received equipment under the NDBEDP that cost up to $12,817, with an average cost of $2,632 per consumer).

[139] *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5656, ¶ 36 (citations omitted). The Commission went on to provide examples of families in Ohio and New York that had experienced extremely high out-of-pocket medical costs associated with family members who are deaf-blind. *Id. See also id.* at 26 FCC Rcd at 5656, ¶ 37.

[140] *See* Amanda Noss, U.S. Census Bureau, *Household Income: 2013, American Community Survey Briefs* (Sept. 2014), *available at* http://www.census.gov/content/dam/Census/library/publications/2014/acs/acsbr13-02.pdf.

[141] *See* 47 C.F.R. § 54.409(a).

[142] *See* 26 U.S.C. § 63.

[143] The amount of tax due may be offset further by tax credits, but tax credits do not alter the amount of your taxable income.

tax code. For example, should otherwise-non-taxable municipal-bond income be included in a household's taxable income for purposes of eligibility? Should mortgage-interest deductions or state-income-tax deductions be included? We ask whether this modification will address commenters urging consideration of an applicant's disability-related and medical expenses,[144] given that taxable income includes allowable deductions for such expenses for individuals who itemize their deductions.[145] For those individuals who do not itemize deductions, in addition to the basic standard deduction, an additional standard deduction is permitted for individuals who are blind,[146] which may help to ameliorate the burden of additional expenses incurred by such individuals and result in less taxable income. We ask for comment as to whether this would address commenters' concerns, without conflicting with statutory limitations and congressional intent, or if there are other proposals that might achieve this goal. We also ask whether this approach will impose any additional administrative burdens on either the certified programs or consumers, and whether those burdens are justified by the benefits of adopting these financial eligibility criteria. We also seek comment on how other federal programs define income for determining whether a household is "low income"[147] and whether any other federal program uses "taxable income" for that purpose.

49. Commenters also express concern over the Commission's use of household income in lieu of personal income to determine income eligibility for the NDBEDP, because they say the former can result in disqualification of adult applicants who live in multi-person households and other adult applicants who are not dependent financially.[148] We propose, therefore, 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. An "economic unit" consists of all adult individuals contributing to and sharing in the income and expenses of a household.[149] In situations where an adult applicant lives in a multi-person home but does not have access to the financial resources of others, he or she is not "contributing to and sharing in the income and expenses" of the group but instead maintaining financially distinct identities despite a shared living space.[150] In contrast, where an adult applicant is financially dependent on another adult or their finances are intertwined (as with a spouse), the incomes of all members of that household must be considered. We ask for comment on this approach or alternatives to this approach that would be consistent with the congressional mandate requiring the NDBEDP to serve only low-income individuals.

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[144] *See, e.g.*, DBCA Comments at 3 (urging the Commission to look at an individual's disability-related expenses); HKNC Comments at 6-7 (recommending that the program examine an individual's medical and disability expenses when determining if the individual is eligible to receive equipment and training).

[145] *See* 26 U.S.C. § 63(d).

[146] *See* 26 U.S.C. §§ 63(b), (c).

[147] *See, e.g.*, 47 C.F.R. § 54.400(f) (Defining "income" for the FCC's Lifeline program as "all income actually 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.").

[148] *See, e.g.*, FDBA Comments at 2 (arguing that individual income should be the basis); HKNC Comments at 7; IOD Comments at 4 (noting that many deaf-blind individuals live with others only out of necessity and that this situation may push the household income over the current 400%); WATAP Comments at 3 (stating that the NDBEDP should look at an individual's income when he/she is living in a household if the individual is not a dependent); Comments of Janice Toothman (Toothman Comments) at 2 (stating that other state and federal programs, such as state disability and medical assistance programs, look at the individual's income, not the household's income, to determine program eligibility); FTRI Comments at 2 (noting its denial of benefits to individuals because it was required to consider household income).

[149] *See NDBEDP FAQ* 24.

[150] *See, e.g.*, Perkins Comments at 17 (arguing that the household rule should not apply to an adult living in a multi-person household because that adult does not have access to the others' money).

### D. Verification of Income Eligibility

50. The NDBEDP pilot program rules allow automatic income eligibility for individuals enrolled in federal subsidy programs with income thresholds lower than 400% of the FPG.[151] When applicants are not already enrolled in a qualifying low-income program, low-income eligibility must be verified by the certified program using appropriate and reasonable means, for example, by reviewing the individual's most recent income tax return.[152]

51. We tentatively conclude that the Commission should continue permitting individuals enrolled in federal subsidy programs with income thresholds lower than 400% of the FPG to be deemed income eligible for the NDBEDP.[153] We believe that this approach is reasonable and reliable, simplifies the income verification process for applicants and certified programs, and is consistent with the approach adopted for our Universal Service low-income program.[154] Further, we propose to continue to require certified programs to verify low-income eligibility using appropriate and reasonable means, for example, by reviewing the individual's most recent income tax return, when applicants are not already enrolled in a qualifying low-income program. We seek comment on these proposals. We seek comment on whether a third-party should determine income eligibility just as we propose to retain the requirement for a third-party to verify an individual's disability.[155] If we decide to use a third-party to verify income, we seek comment on whether this should be done by a state agency, such as during the time of enrollment in other programs, or through another mechanism. We seek comment on the potential impact on program applicants and the potential costs and benefits of doing so, including the potential administrative savings to the programs of relieving them of this responsibility. We further note that the Commission's Universal Service low-income program lists, as acceptable documentation 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."[156] Would these forms of documentation be appropriate to prove income eligibility for NDBEDP equipment recipients? Additionally, the Universal Service low-income program rules specify that, 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."[157] Should such eligibility criteria be applied across all certified programs nationwide? Finally, we ask whether certified programs should be required to re-verify an equipment recipient's income eligibility when that individual applies for new equipment. Is there is a period of time following an initial verification that such income verification should be deemed sufficient if the recipient seeks additional equipment? For this purpose, we propose 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. We seek comment on this proposal.

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[151] 47 C.F.R. § 64.610(d)(2). These federal subsidy programs include the Federal Public Housing Assistance or Section 8; Supplemental Nutrition Assistance Program, formerly known as Food Stamps; Low Income Home Energy Assistance Program; Medicaid; National School Lunch Program's free lunch program; Supplemental Security Income; or Temporary Assistance for Needy Families. *Id.*

[152] *Id. See also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5658, ¶ 39; 47 C.F.R. § 64.610(e)(1)(ii) (requiring certified programs to obtain verification that applicants meet the NDBEDP income eligibility requirements). The Bureau did not seek comment on these issues in the *Permanent NDBEDP PN*.

[153] 47 C.F.R. § 64.610(d)(2).

[154] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5657, ¶ 39; 47 C.F.R. §§ 54.409(a), (b).

[155] *See* Section IV.B (discussing verification of disability), *supra*.

[156] *See* 47 C.F.R. § 54.410(b)(1)(i)(B).

[157] *Id.*

### E. Other Eligibility Criteria

52. The pilot program rules permit certified programs to require that NDBEDP equipment recipients demonstrate that they have access to the telecommunications, advanced communications, or Internet access services (Internet or phone service) that the equipment is designed to use and make accessible.[158] The pilot program rules also prohibit certified programs from imposing employment-related eligibility requirements for individuals to participate in the program.[159] In the *Permanent NDBEDP PN*, the Bureau sought comment on whether these eligibility criteria should be maintained for the permanent NDBEDP and whether there are other eligibility criteria that should be considered.[160] The Bureau also asked whether certified programs should be permitted to consider factors, such as demographics, funding, or the availability of other resources, to prioritize the distribution of equipment or provision of related services.[161]

53. We propose to continue permitting certified programs to require equipment recipients to have access to the Internet or phone service that the equipment is designed to use and make accessible.[162] Commenters were generally supportive of this requirement, which ensures that the equipment purchased will be usable by the consumer.[163] We seek comment on this approach.

We support the continued permitting of this requirement.

54. Commenters assert that the population sought to be served by the NDBEDP faces critical unemployment and underemployment challenges, and that employment restrictions are not appropriate for this program.[164] We therefore propose to retain the prohibition against employment-related eligibility requirements. We seek comment on this proposal.

We agree with the view that employment restrictions are not appropriate for this program.

55. Some commenters express concern that there is a lack of parity across states with respect to the distribution of equipment and provision of training.[165] In the pilot NDBEDP, the Commission granted states considerable flexibility in deciding how best to distribute equipment and provide related services to as many of their eligible residents as possible, given their jurisdiction's demographics and the inherent constraints of NDBEDP funding allocations, qualified personnel, time, and other limited resources. We propose to continue following this approach because we believe it has been effective in allowing states to address the wide range of variability that exists within and between state populations and resources, as well as the diversity within the population of individuals who are deaf-blind. We seek comment on this proposal. Should the Commission take measures to prioritize the use of funding in the event that demand for funding exceeds the $10 million funding limitation? If so, for what purpose and when should priorities be set? For example, should priorities be designed to maximize the number of

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[158] 47 C.F.R. § 64.610(d)(4). *See also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5658, ¶ 42.

[159] 47 C.F.R. § 64.610(d)(3). *See also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5659, ¶ 44.

[160] *Permanent NDBEDP PN*, 29 FCC Rcd at 9457, ¶ 15.

[161] *Id.*

[162] 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. *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5658, ¶ 42.

[163] *See, e.g.*, Perkins Comments at 18; AADB Comments at 22; ATI Comments at 7 (agreeing that Internet equipment cannot be used if the recipient does not have access to the Internet);

[164] *See, e.g.*, AADB Comments at 22 (stating that programs may not impose an employment requirement); IUB Comments at 8 (arguing that the purpose of the NDBEDP is to help people communicate, and that an employment requirement is not appropriate).

[165] *See, e.g.*, Perkins Comments at 3, 18 (stating that it is critical to ensure parity among states for their consumers) *See also* AADB Comments at 26 (noting "serious concerns with the inequality of the assessment, especially with multi-entities certified programs where some entities are using different set of rules than the others").

equipment recipients per year or the number of new equipment recipients per year or both? Should the Commission consider taking measures to target the lowest-income individuals? For example, should the Commission consider lowering the income eligibility threshold? Should the Commission consider establishing caps on the amount of equipment or related services an individual may receive to achieve that goal? We seek comment on these or other alternatives the Commission should consider to maximize the number of low-income consumers who can receive equipment under the permanent program.

Given the large number of new clients coming into the program per year in Maine (relative to available funding), as well as the number of previous years' clients who seek equipment upgrades and further training, we do not see the need for expanding the accessibility of program equipment and services. However we would support measures that expanded funding for provision of services and equipment.

56. At the same time, we acknowledge the need for greater transparency by state programs with respect to any unique criteria or priorities used for the distribution of their equipment and related services.[166] To address these concerns, we propose that each certified program be required to make public on its website, if one is maintained by the certified program, or as part of its other local outreach efforts,[167] a brief narrative description of any criteria or priorities that it uses to distribute equipment, as well as strategies established to ensure the fair distribution of equipment to eligible applicants within its jurisdiction. We seek comment on whether this proposal would assist consumers to better understand what benefits they may be able to secure from their state programs. We also seek comment on whether the administrative burdens of such an approach would be outweighed by its benefits.

We question whether this proposal would benefit potential consumers, as in our experience, people are generally very reluctant to admit they have a dual-sensory loss, and to give them such "criteria" to consider may have a dampening effect on their interest in the program.

57. We caution, however, that strategies to serve eligible applicants in a state must be consistent with the NDBEDP rules. For example, a certified program whose state education department provides deaf-blind students with all of the communications equipment and related services they need may determine that it should focus its NDBEDP resources to meet the needs of low-income deaf-blind adults. We believe this would be consistent with the principle, adopted in the *NDBEDP Pilot Program Order*, that the NDBEDP is supplementing rather than supplanting other resources.[168] However, a program restriction disallowing the distribution of equipment to any persons under the age of 18 could exclude otherwise eligible deaf-blind individuals in need of this equipment.[169] We tentatively conclude that state programs generally should not be permitted to adopt such sweeping limitations, and seek comment on this tentative conclusion. In addition, we propose to require certified programs to serve eligible applicants of any age whose communications equipment needs are not being met through other available resources and we seek comment on this proposal. Finally, we seek comment on whether we should address in our rules for the permanent NDBEDP any other specific state program restrictions that currently exclude individuals who may otherwise qualify for NDBEDP equipment and related services.

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[166] *See, e.g.*, WATAP Comments at 3 (proposing that programs set forth criteria for how they will meet the needs of their states).

[167] *See* Section V.A.2 (discussing local outreach), *infra*.

[168] The NDBEDP provides funding for the distribution of communications equipment that supplements rather than supplants any existing mandates, funding, or programs that may be available to provide communications equipment to low-income individuals who are deaf-blind. *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5690, ¶ 115.

[169] Perkins Comments at 16 (indicating that one state's program has this restriction).

## V. EQUIPMENT AND RELATED SERVICES

### A. Outreach

#### 1. National Outreach

58. During each year of the pilot program, the Commission has set aside $500,000 of the $10 million available annually for national outreach efforts to promote the NDBEDP.[170] 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.[171] Accordingly, in addition to permitting the state programs to use some of their funding for outreach to their communities,[172] the Commission authorized national outreach efforts to supplement those local efforts.[173] The Bureau selected Perkins, which has partnered with HKNC, FableVision, Inc., and others, to conduct this national outreach.[174] Among other things, this outreach effort has resulted in an NDBEDP ("iCanConnect") website,[175] social media presence,[176] and public service announcements (PSAs),[177] as well as advertisements on billboards and in magazines.[178] In the *Permanent NDBEDP PN*, the Bureau sought comment on the efforts undertaken by the national outreach program, whether the Commission should continue to fund such efforts to promote the NDBEDP and, if so, what the appropriate amount and duration of such funding should be.[179]

59. In response to the *Permanent NDBEDP PN*, Perkins reports additional outreach activities that it has conducted with NDBEDP funding, including provision of a contact form on the iCanConnect website that enables referrals of consumer inquiries to appropriate state programs and "a variety of turnkey materials (e.g. press releases, scripts, etc.)" for state programs to use for marketing in their local areas.[180] Perkins adds that this funding also has been used for the establishment of an 800 number and call center for program inquiries and referrals; marketing materials; monthly conference calls among certified programs, the FCC, and the TRS Fund Administrator; and support to states to gather and promote success stories.[181] Perkins maintains that all such efforts have been critically important to

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[170] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5676, ¶ 80.

[171] *See id.*, 26 FCC Rcd at 5675, ¶ 79

[172] *See* Section V.A.2, *infra*.

[173] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5676, ¶ 80.

[174] *See Perkins School for the Blind to Conduct National Outreach for the National Deaf-Blind Equipment Distribution Program*, Public Notice, 27 FCC Rcd 6143 (CGB 2012).

[175] The iCanConnect website at www.iCanConnect.org promotes the NDBEDP and provides contact and other information for each of the 53 certified programs (called "State Partners"), news about the program nationwide (including coverage by news media and personal stories about how the program has benefitted equipment recipients), an overview of the types of communications equipment the program can provide, and additional resources.

[176] *See* https://www.facebook.com/iCanConnect.org (Facebook); https://twitter.com/iCanConnect1 (Twitter).

[177] *See* http://www.youtube.com/watch?v=wyQ6d9SgQ6s (60-second PSA); http://www.youtube.com/watch?v=DRlm8M7ieck (30-second PSA); http://www.youtube.com/watch?v=eRAJKCINY9o (10-second PSA).

[178] *See* iCanConnect "Year One Highlights," September 26, 2013 (filed Nov. 20, 2013) (providing a synopsis of the first year of the NDBEDP pilot program, including national marketing and outreach efforts), available at http://apps.fcc.gov/ecfs/document/view?id=7520958851.

[179] *Permanent NDBEDP PN*, 29 FCC Rcd at 9460, ¶ 20.

[180] Perkins Comments at 22-23; Perkins Reply Comments at 9-10. *See also* ¶ 58, *supra*.

[181] Perkins Comments at 22; Perkins Reply Comments at 9-10.

informing eligible consumers about the NDBEDP pilot program.[182] Various commenters agree that consumers and state programs have benefited from national outreach during the pilot program,[183] and support continuation of national outreach efforts.[184] Others, however, raise concerns about the effectiveness of national outreach,[185] while still others assert that state and local outreach efforts would be more effective.[186] Only two commenters affirmatively oppose any continued funding for national outreach efforts.[187]

60. Based on both the extensive efforts of the national outreach program to alert and educate consumers about the availability of NDBEDP equipment through state programs, and the generally high praise for these efforts conveyed by the majority of commenters, we propose to continue funding for national outreach efforts as part of the permanent program and for the NDBEDP Administrator to oversee these efforts. The Commission will consider a variety of approaches to satisfy the national outreach requirements for the program including using existing Commission staff and resources, engaging another agency with expertise in this area through an Interagency agreement, acquiring these services through a competitive procurement, evaluating whether to modify a contract with an existing contractor to satisfy the program requirements – either through direct performance by the main contractor or a subcontractor. The Commission may also wish to invite entities, via a public notice, to submit applications for the role of national outreach coordinator. The Commission will consider using a combination of any of these in-house, regulatory, or procurement strategies where efficient and lawful to do so. Regardless of the precise approach used to obtain national outreach services, we seek input on the performance goals along with performance measures that would be helpful in facilitating oversight of national outreach efforts.

61. At the same time, we believe that, because national outreach efforts, combined with state and local outreach efforts conducted by certified programs, have made significant progress in publicizing the NDBEDP, less national outreach may be needed going forward. Several commenters suggested a reduction in the outreach allocation.[188] We therefore propose to reduce the amount of money spent on

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[182] *Id*. at 9.

[183] *See* Perkins Comments at 22; FTRI Comments at 3; HKNC Comments at 9-10 (stating that the iCanConnect website is "an effective tool"). *See also* ATK Comments at 3 (stating that certified programs "have benefitted from information shared on monthly calls, discussions on assessment and trainer issues, and linking states to one another"); CDBP Comments at 4 (noting the importance of the iCanConnect website as a marketing tool).

[184] Perkins Comments at 22-23 (supporting funding for national outreach); ACB Comments at 3; ACBT Comments at 2; DCBA Comments at 4; FTRI Comments at 3; HKNC Comments at 10; CDBP Comments at 4 (supporting maintenance of iCanConnect.org); LightHouse Comments at 17 (noting the necessity of "national coverage" of the program); GACHI Comments at 9 (recommending that national outreach continue).

[185] AADB Comments at 30; ATI Comments at 9; ATK Comments at 3 (stating that national outreach "does not always have the intended impact particularly in a rural, mid-western state"); IPAT Comments at 3 (stating that national outreach efforts are "typically not effective" in "our very rural, Midwestern state"); WATAP Comments at 5.

[186] ATI Comments at 9 (arguing that "it is difficult for a national outreach campaign to appeal to the unique culture of each state and territory" and suggesting that additional money be provided for local marketing); MoAT Comments at 3 (stating that, in its experience, "outreach activities coordinated by individual states have been more effective and efficient than the national activities"). As discussed in Section V.A.2, *infra*, under the pilot program, certified programs are reimbursed for the reasonable cost of state and local outreach efforts, a practice we propose to continue under the permanent program.

[187] AADB Comments at 30 (opposing funding for national outreach, and recommending that national outreach funding be used for other program purposes); IPAT Comments at 3.

[188] *See* CDBP Comments at 4 (suggesting that some national outreach funding should be allocated back to the states); LightHouse Comments at 17-18 (suggesting that the amount of funds allocated for national outreach be reduced). *See also* AADB Comments at 30 (suggesting that money previously used for national outreach could be allocated for other program purposes); MoAT Comments at 2 (stating that some portion of the annual $500,000 for outreach should fund the centralized database). *But see* Perkins Comments at 23 (supporting the allocation of $500,000 per year for national outreach); ACB Comments at 3; ABCT Comments at 2.

national outreach to $250,000 for each of the first three years of the permanent program, and seek comment on this proposal. Do commenters agree that this reduction in the national outreach allocation is appropriate given the limited amount of annual funding available to the NDBEDP and, if so, would $250,000 per year be an appropriate level of funding?

Yes, we support a reduction in the outreach allocation, although it is not clear what would constitute an appropriate level, and we would support the idea of annual adjustments based on measurement of need.

What effect would such a reduction in funds have on the types of national outreach efforts that were made under the pilot program? For example, will this amount of money be sufficient to continue the outreach activities that Perkins identifies as "critical," including maintenance of the iCanConnect website; the 800 number and call center; marketing materials; monthly conference calls; and support to states to gather and promote success stories?[189] How can we ensure that these or other national outreach efforts undertaken under the permanent program are cost effective? Should we conduct an assessment during the third year to determine whether and to what extent to continue such funding support beyond this period? Will two years be sufficient to gather the data necessary to make this determination during the third year? If we take this approach, we seek comment on how we should, in the third year, evaluate the efficacy of national outreach efforts for this purpose.

62. Some commenters propose that national outreach be used to target specific groups, such as ASL users, non-English language users, and medical and elder service professionals.[190] We seek comment on whether the Commission should adopt this approach and if so, why. Would the proposed reduction in funding limit national outreach to these targeted groups? Should other populations be targeted? What specific methods of communication or activities should be used to reach these groups? Some commenters have emphasized the need for national outreach to engage eligible consumers who do not specifically identify as deaf-blind.[191] How can the Commission ensure that outreach reaches these individuals? Other commenters have emphasized the need to coordinate national outreach with the educational efforts conducted by certified programs in each state.[192] For example, some commenters report that consumers who received equipment and services from a state program became confused when they later received direct marketing materials from the national outreach coordinator.[193] We seek input on whether and to what extent national outreach should be coordinated with state program efforts, including the costs and benefits of having to take such measures.

63. Finally, ACB suggests that we assess national outreach efforts after the first two years of the permanent program.[194] We agree that performance goals should be defined for the national outreach program along with performance measures that are clearly linked to each performance goal. Evaluating a program against quantifiable metrics is part of the Commission's normal oversight functions. As such, we seek input on the data the Commission should collect in order to effectively oversee the outreach

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[189] Perkins Reply Comments at 9-10.

[190] *See id*. at 10. *See also* IPAT Comments at 3 (stating that "older adults" are in need of ongoing NDBEDP outreach); WATAP Comments at 6 (stating that outreach to the elderly population needs to be increased); LightHouse Comments at 17 (questioning the amount of outreach to non-English speakers).

[191] *See* ATI Comments at 9 (stating that "the majority of Oregonians who qualify for services through the NDBEDP do not consider themselves deaf-blind, rather they think more in terms as having a combined hearing and vision loss"); Perkins Reply Comments at 9 (stating that it attempts to reach such consumers "by using phrases such as 'combined hearing and vision loss,' rather than deaf-blind, but more work to reach this group remains to be done").

[192] *See* DBCA Comments at 4-5 (suggesting increased collaboration between a national entity conducting outreach and community groups or state and national consumer organizations); LightHouse Comments at 17; MoAT Comments at 3.

[193] *See* LightHouse Comments at 17; MoAT Comments at 3.

[194] ACB Comments at 3 (suggesting an assessment after the first two years of the permanent program).

efforts.[195] For example, Perkins suggests identifying metrics to measure the efficacy of national outreach in advancing the NDBEDP, such as increases in the number of program participants, inquiries through the 800 number/call center, referrals through the iCanConnect website, consumer applications to state programs, the proportion of consumers in specified groups, such as by age or language spoken, website traffic, "[g]rowth in social channels," and media impressions.[196] Should we collect some or all of this data? If so, at what intervals are reports on such data useful? What are the costs and benefits of collecting and evaluating this data? Commenters should explain the connection between performance measures proposed and clearly defined program goals.

### 2. Local Outreach

64. In addition to setting aside $500,000 per year for national outreach during the pilot program, the Commission has required certified programs participating in the pilot program to conduct local outreach to inform state residents about the NDBEDP, and has provided reimbursement for the reasonable costs of this outreach.[197] In the *Permanent NDBEDP PN*, the Bureau sought comment on such state and local outreach efforts, their successes, and whether such efforts should continue to be reimbursable under the permanent NDBEDP.[198]

65. We tentatively conclude that the Commission should continue to require certified programs participating in the permanent NDBEDP to conduct outreach to state residents, and to reimburse these programs for the reasonable costs of such outreach. Commenters universally support the continuation of reimbursement for state and local outreach,[199] with many emphasizing the unique benefits it can provide, such as the ability to appeal to specific populations within the state, by age, location, or other traits.[200] For example, one certified program under the pilot program reports that it "developed [an] NDBEDP page on [its] website, created a program brochure, made [the program] part of our social media presence through blogs and Facebook, [and] advertised it in local newspapers and through public service announcements."[201] Another commenter reports that consumers heard about the pilot program "from the

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[195] *See* AADB Comments at 30 (stating that it is unable to determine the impact or effectiveness of national outreach because of a lack of data); LightHouse Comments at 17 (requesting national statistics "regarding who is benefiting from the program"); Perkins Reply Comments at 9 (recommending "very clear metrics to measure its efficacy to advance the program's success").

[196] *See* Perkins Reply Comments at 10-11.

[197] 47 C.F.R. § 64.610(f)(2)(vi). *See also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5675, ¶ 79; "Examples of Reimbursable Expenses" at 2, available at http://www.rolkaloube.com/#!ndbedp/cnbw (Bureau guidance providing examples of expenses that are and are not reimbursable under the NDBEDP) (last viewed May 18, 2015) (*NDBEDP Expenses*).

[198] *Permanent NDBEDP PN*, 29 FCC Rcd at 9460, ¶ 21.

[199] *See, e.g.*, Perkins Comments at 23 (supporting reimbursement of state programs for targeted outreach activities in their local markets); LightHouse Comments at 17-18 (stating that reimbursement for state and local outreach efforts has been "essential" and supporting increased funding for states to do regional outreach); GACHI Comments at 9 (supporting "special allocated funding" for each state to conduct outreach "based on their ability to promote the program effectively"); AADB Comments at 30; ATI Comments at 9; ATK Comments at 3; IPAT Comments at 3; Oklahoma DRS Comments at 11; IOD Comments at 5; CDBP Comments at 4.

[200] *See, e.g.*, ATK Comments at 3 (stating local outreach "allows a program to address unique demographics," for example, by using different methods to reach senior citizens and deaf-blind adults and youth); Perkins Comments at 23 (stating that outreach allows "staff to attend local conferences and consumer gatherings as well as reach out to local service organizations"); GACHI Comments at 9 (stating that state outreach allows for "more personalized outreach and marketing strategies tailored to the needs of that entity").

[201] IPAT Comments at 3. *See also* WATAP Comments at 5 (stating that consumers heard about the pilot program "from the local deaf-blind service center, by word of mouth, and the state's NDBEDP website"). *But see* IUB Comments at 12 (stating that it put very little emphasis on local outreach and felt that "normal [Iowa Department for the Blind] business contacts with clients and counselors was adequate outreach for Iowa").

local deaf-blind service center, by word of mouth, and the state's NDBEDP website."[202] As noted earlier,[203] some commenters believe state and local outreach are more effective than national outreach efforts,[204] while others urge that additional funding be allocated to this type of outreach.[205] We seek comment on our tentative conclusion that the Commission should continue requiring and reimbursing for local outreach by certified state programs, given the overwhelming endorsement of such efforts in the record.

66. We also seek comment on the level of funding for state and local outreach that should be considered reasonable for purposes of reimbursement under the permanent NDBEDP.[206] Overall, certified programs spent a combined average of approximately 10% of their total fund allocations on state and local outreach during the second year of the pilot program.[207] Given that outreach activities at the state level have made significant progress in publicizing the NDBEDP,[208] we propose that such outreach expenditures be capped at 10% of each state's funding allocation during the first two years of the permanent program, after which we propose that the NDBEDP Administrator be required to reassess this level of funding authorization. We seek comment on these proposals, as well as the specific metrics and criteria that should be used to evaluate the success of these outreach efforts, such as the percentage of a state program's funding allocation actually used. How can we ensure that local outreach efforts undertaken under the permanent program have met such metrics, and are cost effective? Are there other criteria, including that proposed for our assessment of national outreach activities,[209] that can be applied to evaluating the success of state outreach efforts?

67. Finally, in the *NDBEDP Pilot Program Order*, the Commission explained that state and local outreach "may include, but is not limited to, the development and maintenance of a program website that contains information about the NDBEDP certified program, contact information and information about available equipment, as well as ways to apply for that equipment and related services provided by the program."[210] The Commission also required that the outreach information and materials that a certified program disseminates to potential equipment recipients be provided in accessible formats.[211] We tentatively conclude that our rules should continue to allow reimbursement for the development and maintenance of a program website. We believe such websites have been very helpful in both informing state residents about the existence of the NDBEDP and instructing them on how to apply for equipment and related services from their local programs. We also tentatively conclude that our rules should

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[202] WATAP Comments at 5.

[203] *See* ¶ 59, *supra*.

[204] *See, e.g.*, ATI Comments at 9 (stating that ATI was more successful in reaching eligible consumers through its work "with local advertisement professionals"); MoAT Comments at 3 (stating that, in its experience, "outreach activities coordinated by individual states have been more effective and efficient than the national activities"); WATAP Comments at 5 (stating that "outreach is best handled at the local level").

[205] *See* IPAT Comments at 3 (suggesting that the Commission increase funding for local outreach); CDBP at 4 (urging that money for national outreach be reallocated back to the states); LightHouse Comments at 17-18 (suggesting that the Commission allocate more funding to state outreach and less to national outreach).

[206] AADB suggests that a certified program should be permitted to spend 1% to 2% of its total fund allocation on state and local outreach activities. AADB Comments at 30.

[207] *See* Appendix C (Summary of Pilot Program Expenditures) (indicating that the NDBEDP reimbursed state programs $910,423 for local outreach in 2013-2014, representing 9.58% of the $9.5 million allocated to state programs, or 10.67% of the $8,534,814 actually used by state programs in 2013-2014).

[208] Significant progress in publicizing the NDBEDP is evidenced by the fact that, collectively, state programs used approximately 90% of their available funding in the second year of the pilot program. *See* Appendix C (Summary of Pilot Program Expenditures).

[209] *See* ¶ 63, *supra.*

[210] *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5675, ¶ 79.

[211] *Id.*

continue to require outreach materials to be fully accessible to people with disabilities.[212] We note 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.[213] We seek comment on these proposals and any other matters regarding state and local outreach.

### B. Assessments

68. Under the NDBEDP pilot program, the Commission's rules permit reimbursement for the reasonable costs of individualized assessments of a deaf-blind individual's communications needs by qualified assistive technology specialists.[214] In the *NDBEDP Pilot Program Order*, the Commission concluded that individualized assessments and their reimbursement were "necessary to ensure that the equipment provided to deaf-blind individuals effectively meets their needs" and would "reduce the incidence of equipment being abandoned (because it is a poor match to the user's needs)," thereby ensuring that the pilot program was effective and efficient.[215] Reimbursable assessment costs under the pilot program include the reasonable travel costs of state program staff and contractors who conduct assessments and provide support services, such as qualified interpreters.[216] However, the Commission presently does not allow reimbursement to deaf-blind consumers for the costs of traveling to the assessor's location.[217] In the *Permanent NDBEDP PN*, the Bureau sought comment on possible revisions to the NDBEDP rules governing reimbursement for individualized assessments and whether reimbursement of the reasonable costs of consumer travel for assessments would benefit consumers and make the NDBEDP permanent program more efficient and effective.[218]

69. Commenters unanimously support the continued reimbursement of the reasonable costs of individualized assessments, including the cost of travel by assessors and support services.[219] Based on these comments and our own experience during the pilot program, we agree on the need for individual assessments to ensure, given the wide range of abilities and hearing and vision disabilities across the deaf-blind population, an appropriate match between the particular type of technology distributed and the unique accessibility needs of each consumer. Further, we continue to believe that reimbursement of the reasonable costs of travel by program staff and contractors to conduct assessments of individuals located in rural or remote areas is necessary to ensure that the right equipment is provided to eligible consumers in the most efficient manner, and thus necessary to achieve the goal of accessible communications under section 719 of the Communications Act.[220] Accordingly, we tentatively conclude that the permanent NDBEDP should continue to permit reimbursement for these assessment and related travel costs, and seek comment on this tentative conclusion. We ask commenters who do not believe that such funding support should be continued to explain why it should be discontinued. Further, we ask how we can ensure that conducting assessments under the permanent program is cost effective or how we can improve

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[212] *See* 47 C.F.R. § 64.610(f)(2)(vi) (requiring certified programs to conduct outreach, in accessible formats, to inform their state residents about the NDBEDP).

[213] *See* 42 U.S.C. §§ 12131-12134 (state and local government services), 12181-12189 (public accommodations and services operated by private entities).

[214] 47 C.F.R. § 64.610(f)(2)(ii); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5668, ¶ 65.

[215] *Id.*

[216] *See id. See also NDBEDP Expenses* at 1.

[217] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5668, ¶ 65.

[218] *Permanent NDBEDP PN*, 29 FCC Rcd at 9459, ¶ 17.

[219] *See, e.g.*, AADB Comments at 24 (supporting rules to permit reimbursement for the reasonable costs of individual assessments and reasonable travel costs of assessors and for support services); IUB Comments at 10; IPAT Comments at 3 (stating that "[t]here will always be consumers with deaf-blindness who find traveling difficult"); CDBP Comments at 3 (stating that "[t]he current practice of the assessor traveling to meet the consumer in the home environment should be maintained").

[220] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5668, ¶ 65.

the cost effectiveness of such assessments. We also seek comment on any other matters related to conducting individualized assessments under the NDBEDP.

We believe that the cost effectiveness of installation and training conducted under NDBEDP could be enhanced by the provision of regular training to in-house staff on relevant topics.

70. We further propose to reimburse certified programs for the reasonable costs of in-state travel for consumers (and their support service providers, if needed) because the record shows that, in some instances, it would be preferable for consumers to travel to a location away from their homes to have their needs assessed before receiving equipment.[221] While some commenters note that assessments in consumers' homes are often preferred because they can include consideration of the home environment and communications technology the consumer may already have,[222] most parties that submitted comments in response to the *Permanent NDBEDP PN* support reimbursement for consumer travel for assessments when necessary.[223] These commenters list a number of situations in which it may be more efficient and effective for consumers to travel to a location away from the consumer's home, such as the state NDBEDP program office, for their assessments. First, some commenters claim that transporting all of the equipment options to a consumer's home for assessment or demonstration purposes may not be practical,[224] and that when this occurs, it would be beneficial to allow consumers to try out a variety of equipment at the state NDBEDP program office.[225] Second, commenters point out that sometimes it is easier to obtain interpreters and other support services in a centralized location, especially if the consumer lives in a remote area, where it is difficult or impossible to find such personnel.[226] Finally, some commenters suggest that reimbursement of consumer travel costs could reduce overall assessment costs for a certified program because it would allow several consumers to gather in a centralized location to be assessed by a single assessor, rather than having one or more assessors travel across the state.[227] We seek

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[221] Our proposal is to allow, but not require certified programs to pay for or request reimbursement for these travel costs.

[222] *See* Perkins Comments at 19; ATI Comments at 8; HKNC Comments at 7 (stating that assessments conducted in a consumer's home "are at times optimal"); CDBP Comments at 3; LightHouse Comments at 14.

[223] *See, e.g.,* ACB Comments at 5 (stating that the permanent program must "be flexible as to where the assessment is being done"). ACB goes on to explain that in instances where an assessor cannot travel to the consumer's home, enabling the consumer to travel to an assessment site is preferable to conducting the assessment remotely. *Id.* Specifically, ACB questions the efficacy of assessments when the assessor and consumer have "never met face-to-face to verify specific skillsets by the consumer," such as the ability to read and write Braille, type and use a keyboard, "understand the layout of a flat screen," discriminate speech output audio, or see a signer on different sizes of monitors. *Id.* *See also* Perkins Comments at 19 (supporting reimbursement of consumer travel costs that are pre-approved by certified programs); HKNC Comments at 7; IUB Comments at 10; AADB Comments at 24; ATK Comments at 3; DBCA Comments at 3; FTRI Comments at 3 (stating that it is "open to the idea of allowing reimbursement of client travel"); IUB Comments at 10; MoAT Comments at 2; IPAT Comments at 3; WATAP Comments at 5; LightHouse Comments at 14. *See also* CDBP Comments at 3 (supporting consumer travel for assessment "[o]nly in rare circumstances" because of "the unknown factor of the consumer's ability to travel safely").

[224] *See, e.g.,* ACB Comments at 5 (stating that some equipment may not be portable); ATK Comments at 3 (stating that some equipment is not easily transported); DCBA Comments at 3-4; HKNC Comments at 7-8 (stating that transporting equipment may not be practical for multiple reasons); IPAT Comments at 3; WATAP Comments at 5.

[225] *See, e.g.,* Perkins Comments at 19-20; AADB Comments at 24; DCBA Comments at 3-4; IUB Comments at 10-11 (stating that being able to try out a variety of equipment reduces the risk that equipment will be returned because it does not meet a consumer's needs); MoAT Comments at 2; IPAT Comments at 3; LightHouse Comments at 14.

[226] Perkins Comments at 19-20 (noting that providing services outside of consumers' homes can ease the difficulty of locating interpreters and translators); WATAP Comments at 5 (stating that "qualified resources such as tactile interpreters or other service providers may be more readily available in a centralized location").

[227] FTRI Comments at 3 (supporting reimbursement of consumer travel costs for assessments and recommending scheduling appointments for multiple consumers at a single location to minimize costs); HKNC Comments at 8 (stating that, "[d]epending on the circumstances, travel by assessors to each consumer[']s home can be much more

comment on whether, for these or other reasons, certified programs should be permitted to receive reimbursement for the reasonable costs of in-state travel for consumers (and their support service providers, if needed) when doing so would be more efficient and effective than conducting the assessment in the consumer's home. Would allowing such coverage benefit consumers, for example, by making a wider array of communication devices available for such assessments? To what extent would allowing these costs provide consumers with access to more skilled assessors or support services? Should there be a cap on the amount a state program can spend on assessment-related consumer travel? To what extent should the Commission's rules define the permissible costs that would be considered reasonable for such travel, and what costs should be considered "reasonable"?[228] Are there other federal programs that are instructive with respect to addressing similar travel costs? We assume that most travel could occur from the consumer's location to the NDBEDP center and back to the consumer's location within a single day, given that travel is within a single state, and seek comment on whether this assumption is correct. For example, what is the average distance and duration for consumers to travel to the assessment location? How likely is it that a consumer would need overnight lodging for the purpose of completing such assessment, and if such lodging is necessary, should this be covered by NDBEDP funds? To what extent have consumers traveled to another location for the purpose of obtaining assessments at their own expense during the pilot program, and to what extent are they likely to need such travel in the future? Are certified programs already paying for consumer travel, without seeking reimbursement for those costs? Are state programs able to estimate projected costs for future consumer travel if our proposal to permit these costs is adopted? Are any of these expenses able to be reimbursed by other federal programs?

71. Although we believe that reimbursing programs for the reasonable costs of consumer travel and support service providers, when needed and appropriate, can benefit both consumers and certified programs, given the limited NDBEDP funding available to each certified program, we are hesitant to allow such compensation without the careful review and prior approval of each program pursuant to clearly defined guidelines. We therefore propose that a consumer's travel costs be reimbursed only if those costs are first pre-approved by the certified program, which should occur only after a determination by the program that the reasonable costs of this travel would be more efficient and effective than having the assessor travel to the consumer. Moreover, we seek comment on specific guidelines certified programs should follow or factors they should consider to make such determinations. For example, how should certified programs weigh possible benefits to a consumer that travels to receive an assessment (*e.g.*, to try out a variety of equipment or receive a more timely assessment), against a comparison of program personnel travel versus consumer travel costs? Finally, we propose that pre-approval for such travel costs by the NDBEDP Administrator not be required, but may be requested by state programs, particularly if they have questions as to whether the requested travel would comport with the established guidelines. We suggest this approach because we generally agree with commenters that state programs are in the best position to know when consumer travel is either necessary or will achieve the best efficiencies for its program.[229] We seek comment on these and any other matters related to the reimbursement for the cost of consumers' in-state travel for purposes of obtaining assessments.

We support the idea of reimbursement of consumer travel costs with approval of the certified programs, and believe that guidelines should be created to help determine when such reimbursements would be

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expensive than having consumers travel to the certified program's central location"); ATK Comments at 3 (noting that reimbursement of consumer travel may save money on staff travel).

[228] *See, e.g.*, AADB Comments at 28 (advocating for the provision of support service providers for consumers who travel); ACB Comments at 6 (stating that consumers should be provided with support service providers, if needed, when traveling for assessment or training); GACHI Comments at 8 (supporting reimbursement for consumers in some instances where "supported car or transportation services are warranted"); LightHouse Comments at 15 (supporting reimbursement "for all travel costs" for consumers); WATAP Comments at 5 (stating that "low income consumers should not bear the burden" of travel costs).

[229] *See* Perkins Comments at 20 (suggesting that certified programs "have the discretion to determine if and when consumer travel would be justified and beneficial"); IOD Comments at 4 (stating that "[e]ach program should determine on a case-by-case basis what would be the most cost effective and efficient solution").

appropriate, such as availability or lack thereof of local training/assessment resources, client's ability to travel, amount of equipment involved, if assessment is related to client's vocation, etc. Ideally, trainings and evaluations are best conducted in the environment in which the equipment will be used, however.

72. Commenters did not distinguish between in-state and out-of-state travel when commenting on reimbursement for consumer travel for assessments. We seek comment on the reasons that a consumer may need to travel out-of-state for an assessment, and the number of consumers who already do so or are likely to do so, if reimbursement were allowed. Because the costs of traveling greater distances are likely to be higher than for in-state travel, should certified programs be required to seek pre-approval from the NDBEDP Administrator for out-of-state travel to ensure that the costs are reasonable? We seek comment on these and any other matters related to the need for and appropriateness of having the NDBEDP reimburse state programs for the out-of-state travel expenses of consumers relating to assessments.

### C. Equipment

73. The NDBEDP provides support for the distribution of specialized customer premises equipment[230] needed to make telecommunications services,[231] Internet access service,[232] and advanced communications,[233] including interexchange services[234] and advanced telecommunications and information services[235] accessible to people who are deaf-blind.[236] Under the NDBEDP pilot program, the Commission reimburses certified programs for the reasonable cost of equipment, which may be hardware,

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[230] "Specialized customer premises equipment" is equipment employed on the premises of a person which is commonly used by individuals with disabilities to achieve access. *See* 47 U.S.C. § 153(16) (defining "customer premises equipment"); 47 C.F.R. §§ 6.3(c), (i) (defining "specialized customer premises equipment"). *See also* Appendix F (Proposed Rule Changes) (adding this definition to the Commission's NDBEDP rules). *See also Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6435, ¶¶ 34-36 (1999) (providing further guidance on this definition).

[231] "Telecommunications service" is defined in the Communications Act as the offering of telecommunications for a fee directly to the public, or to such classes of users as to effectively available directly to the public, regardless of the facilities used. 47 U.S.C. § 152(46). "Telecommunications" is further defined as the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 152(50).

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

[233] "Advanced communications" is defined to include "interconnected VoIP service," "non-interconnected VoIP service," "electronic messaging service," and "interoperable video conferencing service." 47 U.S.C. § 153(1). *See also* 47 C.F.R. § 9.3 (defining "interconnected VoIP service"); 47 U.S.C. § 153(36) (defining "non-interconnected VoIP service"); 47 U.S.C. § 153(19) (defining "electronic messaging service"); and 47 U.S.C. § 153(27) (defining "interoperable video conferencing service").

[234] "Interexchange services" are generally services between local exchanges in different geographic areas (local access and transport areas, otherwise known as LATAs). Traditionally, these have been commonly called long-distance services. *See Union Telephone Co. v. Qwest Corp*., 2004 WL 4960741 (D.Wyo). Sep 03, 2004) (NO. 02-CV-209-D)(2004) at 2 ("long distance" (also known as "toll" or "interexchange") service refers to service offered to subscribers that permits them to place (or originate) calls that terminate outside of their local calling area).

[235] "Information service" is defined as the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. 47 U.S.C. § 153(24).

[236] 47 U.S.C. § 620(a).

software, or applications, separate or in combination, mainstream or specialized, as long as it meets the needs of the deaf-blind individual to achieve access to NDBEDP covered services.[237] Certified programs may not 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.[238] Certified programs may lend or transfer ownership of the distributed equipment to eligible recipients,[239] but must prohibit recipients from transferring equipment received under the NDBEDP to another person through sale or otherwise.[240] Certified programs are permitted to distribute multiple pieces of equipment to eligible consumers, as needed.[241] Equipment-related expenses, including maintenance, repairs, warranties, returns, maintaining an inventory of loaner equipment, as well as refurbishing, upgrading, and replacing equipment distributed to consumers are also reimbursable.[242] When a recipient relocates to another state, certified programs must permit the transfer of the recipient's account and any control of the distributed equipment to the new state's certified program.[243] The Commission did not establish equipment or funding caps for individual recipients during the pilot program. Rather, certified programs may distribute more than one device to an individual, within the constraints of the state's annual funding allocation and the desire to make communications accessible for as many individuals who are deaf-blind as possible.[244] In the *Permanent NDBEDP PN*, the Bureau sought comment on whether changes should be made to any of these equipment distribution provisions, and if so, how such changes would be consistent with the CVAA, benefit eligible low-income individuals who are deaf-blind, and result in more efficient or effective use of NDBEDP funds.[245] Commenters were asked, for example, whether programs should be directed to limit the number of devices that each eligible individual may receive in a specified period of time, such as one or two years, and whether such a practice would further or impede the goals of the NDBEDP.[246]

74. We tentatively conclude that we should retain all of the equipment distribution provisions of the NDBEDP pilot program noted above. While some commenters urge limitations on the number of devices that each recipient should be permitted to receive,[247] and the frequency with which they should be allowed to receive these devices,[248] other commenters insist that because the needs of each deaf-blind

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[237] 47 C.F.R. § 64.610(c)(1) (defining "equipment" for purposes of the NDBEDP), (f)(1) (authorizing payment to certified programs for the cost of NDBEDP equipment distributed and related services provided).

[238] 47 C.F.R. § 64.610(e)(2).

[239] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5666, ¶ 58.

[240] 47 C.F.R. § 64.610(e)(1)(v).

[241] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5665, ¶ 55.

[242] 47 C.F.R. §§ 64.610(f)(2)(i), (iv). *See also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5673-74, ¶¶ 75-76; *NDBEDP Expenses* at 1-2.

[243] 47 C.F.R. § 64.610(e)(1)(iii). *See also* 47 C.F.R. § 64.610(e)(1)(iv) (requiring certified programs to permit the transfer of equipment to or from another state's NDBEDP certified program, for example, when a resident moves to another state).

[244] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5664-65, ¶ 55. *See also infra*, ¶ 74 (discussing suggested limitations on equipment).

[245] *Permanent NDBEDP PN*, 29 FCC Rcd at 9457-58, ¶ 16.

[246] *Id.*

[247] *See, e.g.*, Perkins Comments at 19 (stating that guidelines should establish how many pieces of equipment should be provided to each recipient); ATI Comments at 7 (arguing that individuals should be limited to one device per use, such as one mobile device and one home device); *but see* CTTAP Comments at 1-2 (stating that, unlike sighted people who can find information from multiple devices, a deaf-blind person can only use one device and thus should have two devices in case one breaks).

[248] *See, e.g.*, DBCA Comments at 3 (stating that an individual should be limited to only one device for every two fund years).

individual are so unique that limits placed on the number of devices that could be given to such individuals might impede their ability to benefit from the program.[249] We agree that placing such restrictions on equipment distribution through our rules at this time would be inconsistent with the goal of the program to ensure access to communications services to all eligible low-income individuals who are deaf-blind. The better approach, we believe, is to continue allowing the flexibility inherent in the existing provisions, which permit each certified program to determine how many pieces of equipment to provide and with what frequency, to meet the varied needs of the individuals in their communities. We seek comment on this approach. We also seek comment on how we can ensure that the purchase of equipment under the permanent program is cost effective or how we can improve the cost effectiveness of such equipment purchases. We further invite comment on whether certified programs should be required, as proposed by one commenter, to reassess the communications needs of an equipment recipient when new issues, such as developmental, medical, or other changes, result in equipment no longer meeting the recipient's needs.[250] We also seek comment on alternatives that might address commenters' concerns.

We support the idea of continuing to permit each certified program to determine how many pieces of equipment to provide and with what frequency, to meet the varied needs of the individuals in their communities.

75. Some commenters suggest that the centralized database contain a functionality that lists and frequently updates types of compensable equipment, and that allows certified programs, consumers, and industry to post suggestions for new equipment for consideration and evaluation, as well as comments, information, instructions or suggestions regarding existing equipment.[251] We note that the database proposed in this *Notice*, if established, will be populated with information about equipment that has been distributed by certified programs across the country. If we extend our pilot program reporting rules, this information will include the equipment's "name, serial number, brand, function, and cost, the type of communications service with which it is used, and the type of relay service it can access."[252] We seek comment on whether certified programs should be permitted to query the proposed database to generate a list of equipment that has been provided through the NDBEDP.

76. In addition, the iCanConnect website, which is maintained as part of the NDBEDP national outreach effort,[253] provides general information about different kinds of equipment that may be provided under the NDBEDP.[254] The iCanConnect website also provides consumers with examples of specific communication devices commonly used by people who are deaf-blind, and therefore are likely to be reimbursable through the NDBEDP.[255] Given the speed with which technology evolves, we propose that this list be kept reasonably up to date, though it need not be exhaustive. We seek comment on this approach and whether the iCanConnect website should provide other functionalities for state programs

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[249] *See, e.g.*, CDBP Comments at 3 (stating that the outcome of a consumer's "needs based" assessment should determine the equipment to be obtained); IUB Comments at 9 ("Each individual's needs are so unique that limiting the number of devices may not provide a complete package for that individual to be able to access distance communications.").

[250] CDBP Comments at 3 (asserting that another assessment should be conducted when developmental or medical condition changes occur and the equipment no longer functions or meets the individual's needs).

[251] *See, e.g.*, AADB Comments at 11, 24; HKNC Comments at 7; RolkaLoube Comments at 15. Commenters suggest further that the centralized database could serve as a forum about equipment to inspire innovation in the field. *See* Comments of Inclusive Technologies (Inclusive Technologies Comments) at 1-2. *See also* Section III.F, *supra* (discussing a proposal for a centralized database for reporting and reimbursement).

[252] 47 C.F.R. § 64.610(g)(1)(iii).

[253] *See* ¶¶ 58-59, *supra*.

[254] *See* iCanConnect Equipment at http://www.icanconnect.org/equipment (providing general information about and examples of Braille devices, computers, mobile devices, phones, signalers, and software) (last viewed Apr. 28, 2015).

[255] *Id.*

and consumers to aid in their equipment selection, such as the ability to compare and contrast different communication devices used by people who are deaf-blind. Should consumers be able to comment on equipment and, if so, to what extent should the comments be moderated, and by whom? How can the information about specific devices be kept up to date? Should equipment updates be provided by the website administrator, certified programs, consumers, industry, or all of the above? What are the costs and benefits of such functionalities, and would they be achievable with the amount of national outreach funding proposed in this *Notice*?

We support the idea of enhancing the "interactiveness" of the iCanConnect web site to allow consumers to access detailed information about various equipment and software, including commentary by other users about the usefulness and/or limitations of a given piece of software or combination of software and equipment. We expect that such a "forum" would be most useful if a moderator was appointed to monitor submissions and maintain a level of decorum and accuracy in postings. The moderator should be a person with a dual-sensory impairment and a high degree of familiarity and skill with the full breadth of equipment the program offers and the rules that govern its distribution.

77. We caution, however, that the appearance of a specific piece of equipment in the centralized database or on the iCanConnect website will not automatically make it eligible for reimbursement for all applicants. Rather, because equipment distribution determinations must be made based on individual case-by-case assessments,[256] it is difficult, if not impossible, to identify specific types of equipment that will be reimbursable for all eligible applicants. Indeed, the same piece of equipment may be suitable for one individual, yet inappropriate for another. Thus, we propose that equipment reports produced by the centralized database, as well as equipment listings on the iCanConnect website, include 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 consistent with the NDBEDP rules. Consistent with this principle, under the pilot program, when it is not obvious that the equipment can be or is commonly used by individuals who are deaf-blind to access covered services, certified programs have been required to support their reimbursement claims with documentation that describes how the equipment they distribute makes telecommunications, advanced communications, or the Internet accessible to the individual who is deaf-blind.[257] We propose that this requirement be carried into the permanent program. We further propose that certified programs be permitted to continue consulting with the NDBEDP Administrator about whether the NDBEDP will reimburse the cost of a particular piece of equipment for an eligible individual before purchasing the equipment.[258] We seek comment on these proposals.

We have found it extremely helpful to have access to the expertise of our NDBEDP administrator regarding the approval of equipment purchases and support the proposed continuation of this access.

78. Finally, we ask how certified programs can ensure that the individuals they serve do not sell or otherwise transfer the equipment they receive under the NDBEDP to another person. We propose that equipment recipients be required to execute a standard attestation that they will not sell, give, lend, or transfer their interest in any equipment they receive under this program. For this purpose, and to ensure the truthfulness and accuracy of each consumer's application for equipment, we seek comment on the following uniform attestation that we propose be included on all consumer application forms.[259]

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[256] *See* 47 C.F.R. §§ 64-610(c)(1), (e)(1).

[257] *See* 47 C.F.R. § 64.610(f)(2) (a certified program must submit documentation that supports its claim for reimbursement). For example, a certified program may be required to explain that an eligible consumer needs a video magnifier (also called a closed-circuit television (CCTV) system), which uses a video camera to project a magnified image on a monitor or screen, to read a fax or a small screen on a mobile communications device.

[258] In addition, guidance about costs that are currently reimbursable or not reimbursable is available at the RolkaLoube website at http://www.rolkaloube.com/#!ndbedp/cnbw (last viewed May 18, 2015).

[259] The proposed standard attestation is based on the attestations currently used by various certified programs. *See, e.g.*, Maryland application form, available at http://www.icanconnect.org/maryland (last viewed May 18, 2015);

Commenters who believe alternate attestation language is appropriate should explain why such alternatives are appropriate in lieu of this proposal:

> I certify that all information provided on this application, including information about my disability and income eligibility to receive equipment, is true, complete, and accurate to the best of my knowledge. Program officials have my permission to verify the information provided.
>
> If I am eligible for services, I agree to use these services solely for the purposes intended. I further understand that I may not sell, give, lend, or transfer interest in any equipment provided to me. Falsification of any records or failure to comply with these provisions will result in immediate termination of service. In addition, I understand that if I purposely provide false information I may be subject to legal action. I certify that I have read, understand, and accept all conditions associated with iCanConnect, the National Deaf-Blind Equipment Distribution Program.

We already include comparable language on our lending form and do not believe that additional language is warranted or would provide a greater assurance of consumer compliance.

79. Should programs be required to verify on a regular basis that the equipment continues to reside in the recipient's possession? Would a requirement for such verification be burdensome or impractical, given the rapid evolution of technology, which frequently requires equipment to be upgraded or replaced on a regular basis, such as every few years?

Yes, we believe that given the consumers' need for such equipment there is little incentive for them to relinquish or transfer use of the equipment to another party. We agree that the frequent upgrades necessitated by the evolution of technology affords us ample opportunity to monitor and confirm appropriate use of the equipment.

### D. Installation and Training

80. The NDBEDP pilot program permits reimbursement for the reasonable costs of installing NDBEDP distributed equipment, individualized consumer training on how to use such equipment, and the reasonable travel costs of trainers and support services.[260] In the *NDBEDP Pilot Program Order*, the Commission concluded that reimbursement for these costs is necessary because installation and training "are essential to the efficient and effective distribution of equipment for use by people who are deaf-blind,"[261] and some equipment recipients previously may not have used communications services or related devices.[262] The Commission added that each deaf-blind individual may also present unique needs that can be satisfied only by trying out multiple pieces of equipment before finding and tailoring the correct device to meet the individual's particular communication needs.[263] Further, the Commission found that individualized consumer training through remote methods, such as online training modules or video conferencing, generally is not feasible for deaf-blind individuals.[264] Rather, having equipment set-up and providing training in person are essential to ensuring that deaf-blind individuals effectively benefit

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Connecticut application form, available at http://www.icanconnect.org/connecticut (last viewed May 18, 2015); Oregon application form, available at https://www.accesstechnologiesinc.org/solutions/assessments-and-trainings/deaf-blind-telecommunication-access (last viewed May 18, 2015).

[260] 47 C.F.R. § 64.610(f)(2)(iii). *See also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670-71, ¶ 69.

[261] *Id.*

[262] *Id.*

[263] *Id.*

[264] *Id.*

from the NDBEDP and to prevent the underutilization or abandonment of equipment.[265] Given its critical importance to the success of the NDBEDP and the recognition 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, the Commission refrained from establishing caps on such training.[266] For these same reasons, the Commission concluded that reimbursable installation and training costs under the pilot program would include the reasonable travel costs of trainers and individuals providing support services, such as qualified interpreters.[267] However, the Commission stopped short of permitting reimbursement for the costs of having consumers travel to receive training under the pilot program.[268] In the *Permanent NDBEDP PN*, the Bureau sought comment on whether the Commission should continue to reimburse certified programs for costs associated with installation, training, travel by trainers and associated support services, and whether the Commission should further permit reimbursement for the reasonable costs of a consumer's travel for the purpose of obtaining equipment installation and training.[269]

81. We propose to continue to permit reimbursement for the reasonable costs of equipment installation, consumer training, and travel by trainers and support services, such as qualified interpreters. Commenters overwhelming support the continuation of reimbursement for these costs, as needed to ensure that distributed equipment will be used effectively.[270] Many commenters also emphasize that installation and training is often most effective when done in the location where the technology will be used.[271] Based on these assertions, the reimbursement of reasonable costs for equipment installation and individualized training, including reasonable travel costs for trainers and support services, appear to be essential to the efficient and effective distribution of equipment to people who are deaf-blind.[272] We seek comment on our proposal to continue providing compensation for these costs. We also seek comment on how we can ensure that installation and training conducted under the permanent program is cost effective or how we can improve the cost effectiveness of such installation and training.

We strongly support the continuation of the compensation for installation, training and support costs and would be in favor of additional flexibility in the use of NDBEDP funds to provide training to NDBEDP salaried staff, as such personnel can provide training to NDBEDP clients at a lower cost than contract trainers and thus are a resource worth cultivating.

82. The record shows that, in some instances, it is preferable for consumers to travel to a location away from their homes to get their equipment installed or to receive training. For example, there

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[265] *Id.*

[266] *See id.*

[267] *See NDBEDP Expenses* at 2.

[268] *See id.*

[269] *Permanent NDBEDP PN*, 29 FCC Rcd at 9459, ¶ 18.

[270] *See, e.g.*, Perkins Comments at 20; AADB Comments at 27; ACB Comments at 5; ATI Comments at 8 (stating that it is "vital for the Program to continue to install the new technologies, and ensure the consumers receive adequate training in order to successfully use their new technologies"); CDBP Comments at 3; DBCA Comments at 4; HKNC Comments at 9; GACHI Comments at 8 (stating that travel reimbursement "has been effective for trainers and those who work directly with the customers we serve"); IPAT Comments at 3; IUB Comments at 11.

[271] *See, e.g.*, ATI Comments at 8 (stating that training may not be as successful if the consumer must travel to receiving training and they are unable to transport their equipment); AADB Comments at 28 (stating that consumers will need assistance from a qualified trainer who comes to their home to install and configure equipment and ensure the consumer is capable of using it; that sometimes consumers do not receive the correct equipment and that as a result of "poor follow-up" equipment sometimes remains unused); CDBP Comments at 3 (emphasizing the importance of in-home training based on some consumers' limited ability to transfer knowledge gained at a training facility to their home environment and the frequent need for home visits to "troubleshoot[] problems unique to the consumers' environments").

[272] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670-71, ¶ 69.

are situations in which having a state program's personnel travel to the consumer's home may not be possible due to the scarcity of skilled trainers or other support service personnel in the consumer's home town.[273] Most commenters support reimbursement for consumer travel for installation and training.[274] A few of these parties explain that enabling consumers to travel to another location will allow them to train with peers[275] and receive training more promptly.[276] Additionally, many commenters note that consumer travel for training can be cost effective because it can save staff time, avoid staff lodging expenses, and permit group training of several individuals at the same time.[277]

83. For these reasons, it appears that reimbursing the reasonable costs of consumer travel and their support service providers, when needed and appropriate, can benefit both consumers and certified programs. At the same time, because of the limited funding available under the NDBEDP – as holds true for allowing consumer travel needed for assessments[278] – we are hesitant to allow such compensation without the careful review and prior approval of a certified program. We therefore propose that a consumer's travel costs be reimbursed only if those costs are first pre-approved by the consumer's certified program, which should occur only after a determination by the program that the reasonable costs of this travel would be more efficient and effective than in-home installation and training.[279] We seek comment on this approach, as well as a proposal that pre-approval not be required – but may be requested

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[273] *See* Perkins Comments at 20 (noting that consumers may benefit if they are reimbursed for travel to obtain training because "[i]t may be easier to locate interpreters and translators"); DBCA Comments at 4 (supporting reimbursement of consumer travel to training centers, "given the shortage of qualified trainers"); IUB Comments at 11 (noting a shortage of qualified trainers and stating that, as the certified provider in Iowa during the pilot program, it had only three trainers); LightHouse Comments at 15 (supporting reimbursement of consumer travel to distribution centers to obtain training because of the "ease of getting interpreter support from known entities").

[274] *See, e.g.*, Perkins Comments at 20; ACB Comments at 5-6; ACBT Comments at 4; ATK Comments at 3 (supporting consumer travel for training "if deemed appropriate"); DBCA Comments at 4; FTRI Comments at 3 (stating that it is stating that it is "open to the idea of allowing reimbursement of client travel"); IUB Comments at 11; MoAT Comments at 11; IPAT Comments at 3; IOD Comments at 4; WATAP Comments at 5; LightHouse Comments at 15; GACHI Comments at 8 (supporting reimbursement for consumers in some instances, such as for "centralized group trainings"). *But see* ATI Comments at 8 (stating that training "will not be as successful" if the consumer is unable to transport the equipment to another location).

[275] MoAT Comments at 2; ATK Comments at 3.

[276] *See* IPAT Comments at 3 ("The ability to provide travel costs for consumers to receive training also allows for this to take place in a timely and efficient manner."); LightHouse Comments at 15 (stating that distribution and training "could happen sooner" if consumers are reimbursed for their travel costs).

[277] *See, e.g.*, Perkins Comments at 19, 20 (stating that "[i]t can be more cost-effective to conduct training outside of consumers' home[s]"); ATK Comments at 3 (supporting reimbursement of consumer travel for training and noting the possibility of "significant savings in staff travel"); FTRI Comments at 3 (encouraging the scheduling of one appointment for multiple consumers at the same location to decrease costs); IOD Comments at 4 (stating that "in some cases it could be more cost-effective to allow for reasonable travel costs of individuals to obtain training"); HKNC Comments at 8 (stating that cost savings may result from consumer travel for training because trainers and their support personnel will not incur expenses for lodging and small group trainings may be possible in some circumstances to "reduce the amount of time spent working with the individual consumers"); LightHouse Comments at 14 (stating that "[i]t is more cost effective to bring one, or a group of consumers[,] together for training with one or several trainers than having a trainer waste time (and money) in traffic!"); WATAP Comments at 5 (stating that "in those cases where it is more . . . cost effective to provide training in a centralized location, the low income consumers should not bear the burden" of travel costs). *But see* AADB Comments at 27 (noting additional expenses that may be incurred by consumer travel, such as the cost of support service providers to facilitate consumers' travel to and from the facility and to navigate the facility and nearby area).

[278] *See* ¶ 71, *supra*.

[279] When this is not as effective, for example, because the consumer cannot transport the equipment to the training site, we propose that these costs not be reimbursable.

– by the NDBEDP Administrator.[280] We also seek comment on specific guidelines certified programs should follow or factors they should consider to make such determinations. For example, how should certified programs weigh possible benefits to a consumer that travels to receive training, against a comparison of program personnel travel versus consumer travel costs? Would allowing reimbursement for consumer travel benefit consumers, for example, by increasing training opportunities for consumers? To what extent would allowing these costs provide consumers with access to more skilled trainers or support services? Should there be a cap on the amount a state program can spend on training-related consumer travel? To what extent should the Commission's rules define the permissible costs that would be considered reasonable for such travel, and what costs should be considered "reasonable"?[281] Are there other federal programs that are instructive with respect to addressing similar travel costs? Would consumers need to travel on more than one day for training and, if so, why? What is the average distance and duration for consumers to travel to the training location? To the extent that training needs to occur over a series of days, or the travel distance is considerable (even within the same state), should the costs of lodging and or meals be covered, or just the costs of transportation? We request certified programs to share any information they may have on the extent to which consumers have traveled to another location at their own expense, the extent to which state programs presently reimburse consumers for these costs, and to what extent they expect consumers are likely to need such travel in the future. Are state programs able to estimate projected costs for future consumer travel if our proposal to permit these costs is adopted? Are any of these expenses able to be reimbursed by other federal programs? We seek comment on these and any other matters related to the need for and appropriateness of reimbursing state programs for consumers' travel expenses relating to installation and training.[282]

84. Most commenters did not distinguish between in-state and out-of-state travel when commenting on reimbursement for consumer travel for training.[283] We seek comment on the reasons that a consumer may need to travel out-of-state for training, and the number of consumers who already do so or would do so, if reimbursement were allowed. Because the costs of traveling greater distances are likely to be higher than for in-state travel, should certified programs be required to seek pre-approval from the NDBEDP Administrator for out-of-state travel for training to ensure that the costs are reasonable? We seek comment on these and any other matters related to the need for and appropriateness of having the NDBEDP reimburse state programs for the out-of-state travel expenses of consumers relating to training.

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[280] *See* Perkins Comments at 20 (suggesting that certified programs "have the discretion to determine if and when consumer travel would be justified and beneficial"); IOD Comments at 4 (stating that "[e]ach program should determine on a case-by-case basis what would be the most cost effective and efficient solution").

[281] *See, e.g.*, AADB Comments at 28 (advocating for the reimbursement of the costs for support service providers for consumers who travel); ACB Comments at 6 (stating that consumers should be provided with support service providers, if needed, when traveling for assessment or training); GACHI Comments at 8 (supporting reimbursement for consumers in some instances where "supported car or transportation services are warranted"); LightHouse Comments at 15 (supporting reimbursement "for all travel costs" for consumers); WATAP Comments at 5 (stating that "low income consumers should not bear the burden" of travel costs).

[282] Our proposal to allow reimbursement for a consumer's travel does not imply approval of a state practice that would *require* all consumers in a state to travel to a single location for the purpose of receiving training. *See* WATAP Comments at 5 ("No state should be permitted to require all consumers to receive training in a centralized location merely for the convenience of the certified entity."). We believe that such a practice would conflict with our proposal for state programs to conduct evaluations and make individual determinations of the need for such consumer travel before approving it, as well as what various commenters perceive to be the generally accepted best practice of providing in-home installation and training. *See* n.271, *supra.* In addition to such travel not being practical or effective for some consumers, such a requirement would be in conflict with certification criteria requiring state programs to be capable of distributing equipment and providing related services to individuals throughout the state, including those in remote areas. *See* 47 C.F.R. § 64.610(b)(3)(iii). *See also* ¶¶ 13-14, *supra*.

[283] However, ATI notes that out-of-state training may be particularly ineffective if the consumer is unable to transport their equipment to the training site. *See* ATI Comments at 8. We agree, but note that this would be the case whether the training occurs in-state or out-of-state.

### E. Training Trainers

85. In the *NDBEDP Pilot Program Order*, the Commission declined to set aside NDBEDP pilot program funds to cover the cost of teaching NDBEDP personnel how to train NDBEDP equipment recipients on the use of their equipment – *i.e.*, a "train-the-trainer" program.[284] Although the Commission understood that there was a shortage of qualified individuals who could carry out this training function, particularly with respect to training NDBEDP equipment recipients who communicate receptively and/or expressively in Braille or ASL, the Commission rejected setting aside NDBEDP funds for this purpose because of the limited funding available.[285] Instead, the Commission encouraged certified programs to maximize the use of limited resources through collaboration, partnerships, or contracts between and among certified programs and other individuals and entities so that they could locate qualified individuals who could appropriately and effectively train people who are deaf-blind to use distributed equipment.[286] However, the Commission noted that it might reconsider its decision not to fund train-the-trainer programs in the future, based on information obtained through the pilot program.[287] In the *Permanent NDBEDP PN*, the Bureau sought comment on this matter and, specifically, (1) whether a shortage of trainers still exists; (2) whether certified programs are using train-the-trainer programs; (3) whether resources for trainers are already available; (4) whether a national entity should coordinate such training, and (5) whether online modules would be effective.[288] Finally, the Bureau sought comment on mechanisms for funding such programs, including the Commission's authority to allocate NDBEDP funds, whether and what amount of such funds should be set aside for the training of trainers, and the length of time such funding should be permitted.[289]

86. Based on comments received on the record thus far, we propose to authorize up to 2.5% of the $10 million annual funding allocation ($250,000) for each of the first three years of the permanent program to support train-the-trainer programs, including the reasonable costs of travel for such training, and we seek comment on this proposal. In the *NDBEDP Pilot Program Order*, the Commission concluded that without training on the use of the equipment they receive, recipients will not be able to effectively benefit from this program, and the equipment will be underutilized or abandoned.[290] We continue to believe that training individuals who are deaf-blind how to use the equipment they receive under the NDBEDP promotes access to communication and furthers the purposes of the CVAA. Several commenters responding to the *Permanent NDBEDP PN* confirm the critical importance of having sufficient numbers of qualified trainers, but note that the current number of qualified trainers is inadequate.[291] For example, Perkins states that trainers have had to be imported from one state to another

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[284] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5671, ¶ 70.

[285] *Id.*

[286] *Id.*

[287] *Id.*

[288] *Permanent NDBEDP PN*, 29 FCC Rcd at 9459, ¶ 19.

[289] *Id.*

[290] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670, ¶ 69. *See also* Naulty Comments at 6 (stating that "[i]neffective training on the equipment will harm the individual's success in using the equipment and waste program funding"); DBCA Comments at 4.

[291] *See, e.g.*, Perkins Comments at 21; DCBA Comments at 4; IUB Comments at 11 (stating that there are only three trainers for Iowa's eligible applicants); WATAP Comments at 5 (noting a "critical shortage" of qualified trainers); MCD Comments at 10; Inman Comments at 1 (noting a shortage of trainers in Florida); Miller Comments at 2 (noting a "severe shortage" of trainers); Evans Comments at 3; Comments of Adrienne Haugen at 1 (expressing concerns about the availability of training). Citing lengthy delays in receiving the training on how to use devices "because qualified NDBEDP trainers are in extremely short supply due to the specialized knowledge they must have of assistive telecommunications technology, as well as knowledge of Tactile American Sign Language and other communications methods used by deaf-blind individuals . . ." the National Federation of the Blind adopted a resolution in 2014 urging the Commission to "adopt measures to ensure the availability of an adequate pool of qualified trainers who can evaluate the needs of deaf-blind individuals and train them in the use of appropriate

"to cope with the critical shortage."[292] Both organizational and individual commenters assert that the lack of qualified trainers harms equipment recipients because it results in having to limit the amount, timeliness, and quality of training that these consumers can receive.[293] AADB further reports that consumers commonly complain that trainers and interpreters lack adequate communication skills and that many trainers "have the skill and experience for one type of equipment but not for the others," preventing consumers from reaping the full benefits of the program.[294] For these and related reasons, nearly all commenters urge that some funding be provided for train-the-trainer services as part of the permanent NDBEDP,[295] and two commenters note successes in the train-the-trainer activities in which they have been engaged.[296] Our proposal to fund efforts to train trainers seeks to respond to the concerns raised and to build upon these successes achieved to date.

87. As noted above, the *Permanent NDBEDP PN* sought comment on our authority to use NDBEDP funding support for train-the-trainer programs. Only one commenter, DBCA, offered a view on this matter, concluding that the Commission has such authority to fund such programs to "promote equal access to communication" and meet the purposes of the CVAA.[297] We note that one of the purposes of the CVAA, as stated in its legislative reports, is "to help ensure that individuals with disabilities are

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equipment." *See* National Federation of the Blind, National Convention Resolutions at https://nfb.org/resolutions (last viewed Apr. 28, 2015).

[292] Perkins Comments at 21.

[293] *See, e.g.,* DBCA Comments at 4 (stating that the shortage of qualified trainers "often significantly delay[s] the provision of individualized training"); MCD Comments at 10 (stating that wait times for training for clients in "more remote locations" is significant); AADB Comments at 28; ACB Comments at 6 (stating that consumers were often "told by trainers that they only knew the basics and not what the consumer was asking for," which could limit consumers' understanding of equipment and prevent the trainer from effectively and accurately stating the equipment's actual capabilities). *See also* Comments of Darlene Laibl-Crowe (Laibl-Crowe Comments) at 1; Comments of Mark Gasaway (Gasaway Comments) at 2 (stating that he requested training and was told it was not available); Comments of Janie Neal (Neal Comments) at 1 (stating that "[t]raining was too short because of the budget limitations"); Toothman Comments at 4-5 (describing a delay of over a year in receiving training); Comments of Marcus Simmons (Simmons Comments) at 8 (stating that the amount of training he received, three and a half hours of training he received, was inadequate and that he required another seven hours of instruction). *See also* Comments of Brian Coppola (Coppola Comments) at 1 (suggesting that at least 10 hours of training be provided). *But see* ATI Comments at 9 (stating that trainers need experience working with individuals with multiple disabilities and that these skills are developed over a few years and are not necessarily gained by online training or taught in a classroom setting).

[294] AADB Comments at 28.

[295] *See, e.g.,* Perkins Comments at 21 (stating that the program would "benefit greatly from investing in targeted train-the-trainer activities"); AADB Comments at 29 (strongly urging the Commission to set aside funds for train-the-trainer services); ACB (stating that train-the-trainer programs must be available for the program to continue); FTRI Comments at 3 (recommending that "certified entities be allowed to host workshops or conferences that are reimbursable by the NDBEDP"); DBCA Comments at 4 (recommending a national entity be established to address the chronic shortage of trainers); HKNC Comments at 4, 10 (stating that the need to invest in trainers "is a critical piece of the program" and supporting FCC funding for a train-the-trainer program); MCD Comments at 12 (stating that train-the-trainer expenses should be reimbursed); MoAT Comments at 2 (stating that train-the-trainer activities should be reimbursable); Oklahoma DRS Comments at 11 (stating that there is "an enormous need to allocate" funds for training trainers); IOD Comments at 5 (stating that "it would be very beneficial to be able to offer training to build additional capacity"); Pellerin Comments at 3; Naulty Comments at 7; Miller Comments at 2; Comments of Laura Engler (Engler Comments) at 1. *But see* CDBP Comments at 3 (stating that program funds should not be used for train-the-trainer services).

[296] *See* HKNC Comments at 10 (stating that HKNC has trained 48 trainers over the last two-and-a-half years through its train-the-trainer program); LightHouse Comments at 16 (stating that it paid HKNC to train some trainers in the first and second year of the program and has worked with the state department of rehabilitation to provide training for a fee).

[297] DBCA Comments at 4.

able to fully utilize communications services and equipment."[298] To give full effect and meaning to this purpose, and in particular to the mandate contained in section 105 of the CVAA (that added section 719 to the Act),[299] directing the Commission to address the unmet communications access needs of persons who are deaf-blind through a national equipment distribution program, the Commission has allowed some of the funding support provided for this program to be used for assessments, equipment installation, and consumer training. Though 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."[300] Similarly, because equipment training cannot be achieved in the absence of qualified personnel to conduct such training, it would appear that the Commission can use its "authority to financially support programs that distribute specialized customer premises equipment to low-income individuals who are deaf-blind" by mitigating the current shortage of qualified training personnel through the allocation of funding for this purpose.[301] We seek comment on the Commission's use of its authority under section 719 of the Act for such purpose. Is such financial support necessary to give full effect and meaning to the CVAA's objectives and to achieve the purpose of section 719?

88. During the pilot program, HKNC established a train-the-trainer program using a grant from a private foundation.[302] Some commenters report that certified programs are already using HKNC's train-the-trainer programs, but that not every entity can afford it.[303] Are additional funds available from public or private sources other than the NDBEDP for this purpose? Besides HKNC, are any other entities offering train-the-trainer programs to more than one certified program? Do such entities provide individual training, group training, and distance training through online resources, or other forms of training?[304] Approximately how often do these programs provide training seminars or sessions?[305] What is the cost to certified programs to attend training sessions or access training materials?

89. We believe $250,000 to be reasonable and sufficient for train-the-trainer programs, and

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[298] S. Rep. No. 111-386 at 1 (Senate Report); H.R. Rep. No. 111-563 at 19 (House Report) (2010).

[299] CVAA, § 105, codified at 47 U.S.C. § 620.

[300] *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670-71, ¶ 69 (in-person equipment set-up assistance and training are essential to ensuring that deaf-blind individuals effectively benefit from the NDBEDP and to prevent the underutilization or abandonment of equipment). *See also* ¶ 80, *supra*.

[301] Senate Report at 3 ("grant[ing] the FCC the authority to financially support programs that distribute specialized customer premises equipment to low-income individuals who are deaf-blind"), 10 ("authoriz[ing] the Commission to support programs that distribute specialized customer premises equipment at subsidized rates to low-income individuals who are deaf-blind"); House Report at 27.

[302] *See* HKNC Comments at 4, 10 (stating that HKNC has operated a train-the-trainer program with a private foundation grant for the past two and a half years, and that the grant will expire in March 2015). *See also* Lavelle Fund for the Blind, Inc., 2012 Archives, *available at* http://www.lavellefund.org/grant_year/2012/ (last viewed Apr. 28, 2015) (stating that Lavelle Fund for the Blind awarded HKNC a grant of $380,000 to "support a national program to train 30 people as adaptive technology trainers for people who are deaf-blind").

[303] Perkins Comments at 21 ("Some programs utilize graduates of [HKNC's] separately funded train-the-trainer program, although the cost for attendance is still prohibitive to some potentially eligible participants."); AADB Comments at 29 (stating that HKNC is the only professional resource providing train-the-trainer sessions for some certified programs); LightHouse Comments at 16 (stating that it paid HKNC to train some trainers in the first and second year of the program and has worked with the state department of rehabilitation to provide training for a fee).

[304] *See* HKNC Comments at 10 (stating that HKNC has offered train-the-trainer seminars, "one to one mentoring on location using a coaching model," and "a deaf-blind camp whereby skilled deaf-blind trainers are matched with prospective deaf-blind trainers for intensive one-to-one instruction").

[305] *See* HKNC Comments at 10 (stating that HKNC has hosted eight train-the-trainer seminars and scheduled three more seminars for 2014-15). *See also* DBCA Comments at 4 (recommending that "up to two training seminars be provided per Fund year").

seek comment on whether this amount is appropriate as an initial step.[306] Some commenters urge that train-the-trainer activities not be funded to the detriment of funding for the distribution of equipment and the provision of related services, such as assessment, installation, and training of consumers.[307] We propose addressing these concerns by re-allocating a portion of funding previously used for national outreach, which we explain above is less needed now than it was at the start of the pilot program.[308] Moreover, we note that one commenter suggests that increasing the total number of qualified trainers nationwide may result in a reduction in overall program costs because the small number of currently available trainers would no longer have to travel to multiple states to provide training.[309] We seek comment on whether this assumption is correct. In other words, to what extent can savings achieved in program travel costs offset some of the additional costs resulting from train-the-trainer programs? We also seek comment on whether capping the annual funding at 2.5% of NDBEDP funding is advisable to preserve remaining funds for other program activities related directly to the distribution of consumer equipment. We seek comment on any other matters related to the amount of funding that should be set aside to train trainers under the permanent program.

We strongly support the allocation of additional funds for train-the-trainer activities and feel that the proposed amount of 2.5%, is a good starting point towards meeting the need for training resource enhancement, and that sourcing this funding from that previously used for national outreach is a sensible approach to providing for this longstanding need. We are also in agreement about the potential for the provision of train-the-trainer funding to reduce overall program expenses in the long term as it would enable existing program staff to handle more of the program's training needs at a cost much lower than that of contract trainers. We would continue to use our contract trainers for specialized consumer situations where advanced topics need to be covered in as short a time as possible. We also encounter situations where our in-house staff work together with our contract trainers which allows to reduce the delays involved in waiting for funding to be available. With skills enhancement provided by the coverage of train-the-trainer activities, we anticipate being able to further reduce delays.

90. Commenters vary in the amount of time that they believe is necessary for training trainers, with some commenters favoring ongoing training and others recommending that funding be restricted to a set period of time.[310] We seek comment on whether providing funding support for the first

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[306] *See, e.g.*, Perkins Comments at 22 (recommending that $237,500 be set aside for two years for train-the-trainer activities); ACB Comments at 6 (recommending that 5% of the NDBEDP budget ($500,000) be allocated for train-the-trainer programs); HKNC Comments at 4 (recommending "an increase in the allocation of 10% to support training-the-trainers"); Naulty Comments at 7 (stating that "[a]n annual set aside of $250,000" to train trainers "is a reasonable start"). *See also* AADB Comments at 29 (stating that it lacks sufficient data to estimate the amount of funding that should be set aside for training trainers); IUB (stating that a cap on train-the-trainer programs "may be appropriate," although IUB "do[es] not know what that cap should be"); LightHouse Comments at 16 (suggesting "an allocated percentage of the state's fund each year" be set aside for training trainers, but not suggesting a specific percentage).

[307] *See, e.g.*, DCBA Comments at 4 (stating that train-the-trainer seminars should be provided "[t]o the extent that it doesn't negatively impact the distribution of equipment and provision of related services"); IUB Comments at 11 (opposing "allowing too much of the allocation to be spent on costs other than consumer-related equipment and training"); IOD Comments at 5 (noting their concern that funding train-the-trainer programs "would take funds away from providing services to eligible individuals").

[308] *See* Section V.A.1, *supra* (proposing to decrease the amount of money for national outreach from $500,000 to $250,000).

[309] *See* Perkins Comments at 21 (noting that importing trainers from one state to another can be very expensive).

[310] *See, e.g.*, ACB Comments at 6 (stating that funding for training should be "a recurring amount"); HKNC Comments at 4 (stating that funding for training trainers should be "ongoing" because of "the changing nature of technology with ongoing advancements"); LightHouse Comments at 15 (stating that "training will always be a need" due to changes in technology and the need to keep trainers up to date on equipment and the attrition of trainers who must then be replaced with new trainers). *Compare* Perkins Comments at 22 (recommending funding for two years); Naulty Comments at 7 (stating that "two years should get the job done").

three years of the permanent program will be sufficient to accomplish the desired objectives. If we move forward with this approach, should we conduct an assessment during the third year to determine whether and to what extent to continue such funding support beyond this period? Will two years be sufficient to gather the data necessary to make this determination during the third year? If we take this approach, we seek comment on how we should, in the third year, evaluate the efficacy of train-the-trainer programs for this purpose.[311]

We do not believe that a time limit should be set on the provision of train-the-trainer funding, given the rate at which technology evolves. We anticipate an ongoing need for training to keep pace with technological trends and the evolution of client needs and preferences. As one commenter has observed, one shortcoming in resources is the need for trainers familiar with the entire breadth of equipment offered. We feel that such broad familiarity can only be maintained with regular training and reinforcement of skills.

If a three-year assessment period approach is adopted, data should be gathered and analyzed regarding how overall training expense and wait times have been reduced, and how client satisfaction around training provision has improved. Some of this data is already collected, in terms of wait time from application to equipment delivery, but fields would need to be added to the database to include things like wait time to training start, duration of training, proficiency measures before and after training, and so on. We support the development of survey materials that would be designed to elicit this data from clients, separate from our customary consumer satisfaction survey.

91. *State Allocations for Train-the-Trainer Programs*. Next, we seek comment on how NDBEDP support can be used to teach individuals how to train NDBEDP equipment recipients on the use of their equipment. In this regard, we propose to allow certified programs to use a portion of their NDBEDP funding allocations for train-the-trainer activities as they deem appropriate.[312] For example, under this approach, each certified program could use approximately 2.5% of its annual allocation, or a maximum of $250,000 annually for all certified programs, for train-the-trainer activities.[313] We seek comment on this proposal. Should these train-the-trainer expenditures be treated as an administrative cost and, if so, should we raise the cap on administrative costs from 15% by 2.5% to 17.5% for that purpose,[314] rather than require separate accounting for train-the-trainer activities? Should we permit such reimbursement for enrolling personnel in a train-the-trainer activity conducted by HKNC or another entity, as well as for train-the-trainer activities that the certified program may develop and conduct? If the $250,000 is allocated solely to and used by certified programs for training purposes, would that influx of money to existing training programs, such as the one operated by HKNC, be sufficient to motivate the development of new training activities? Should we prohibit reimbursement for training that is provided by equipment manufacturers or vendors because of the risk of having certified programs favor these manufacturers or vendors in their selection of equipment?[315]

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[311] *See* HKNC Comments at 4 (stating that "[a] system for evaluating the outcomes of the training should be built into the service delivery"); Perkins Comments at 22 (recommending that continued funding "be evaluated based upon a defined, measurable increase in capacity").

[312] *See, e.g.*, Perkins Reply Comments at 4-5, 8 (recommending that certified programs be allowed to spend up to 20% of their allocation to support train-the-trainer activities "that best meet their needs and fit best within their budgets"); FTRI Comments at 3 (recommending that certified programs "be allowed to host workshops or conferences that are reimbursable by NDBEDP"). *But see* WATAP Comments at 5 (stating that states can be reimbursed for train-the-trainer activities as an administrative expense).

[313] A 2.5% allocation would permit, for example, a certified program with a $100,000 annual allocation to seek reimbursement for up to $2,500 of train-the-trainer related expenses, or permit a program with an allocation of $500,000 to seek reimbursement for up to $12,500 of train-the-trainer related expenses.

[314] *See* Section VI.D, *infra* (discussing administrative costs).

[315] *See* Perkins Comments at 21. *But see* IUB Comments at 11 (stating that "manufacturers and distributors of specialized equipment" could play a role in training trainers by funding such training); LightHouse Comments at 16

If train-the-trainer costs are approved for reimbursement as an administrative cost, the cap should be increased to 17.5 %. We see no need for any distinction between expenses incurred in attending an existing training program and those of developing a new training activity. Activities conducted by vendors should also be reimbursable; we do not see any risk of favoring a vendor; rather, a given vendor's training would likely be sought because their equipment was already being widely distributed, based on its own merit.

92. *Nationally Coordinated Train-the-Trainer Program*. Alternatively, a number of commenters urge the Commission to select one or more entities to develop and offer train-the-trainer activities to certified programs nationwide.[316] For example, HKNC recommends having the Commission select one or more entities to develop and disseminate training materials; provide training seminars, including online modules, webinars, and other distance learning options; provide updates on changes in technology; create processes for screening and evaluating trainers; and coordinate the sharing of resources.[317] We seek comment on whether to establish or coordinate a train-the-trainer program at the national level, including the costs and benefits of having one or more entities provide train-the-trainer activities similar to those offered by HKNC. If we adopt this approach, we seek comment generally on how to use such funding. For example, should the $250,000 be allocated to one or more entities to cover the costs a training program nationwide? Should the amount of training provided to each certified program be equal across every state? Or should it depend on population size, the current number of trainers in a state or region, or some other criteria? Alternatively, should states be able to obtain training for their personnel in an amount that is proportional to their program's NDBEDP annual funding allocation? Should the funding provided cover the cost of individual participation in the train-the-trainer programs, including the reasonable costs of travel?[318] Approximately how many hours of training can be delivered to how many personnel with a set-aside of $250,000?

93. If the Commission establishes or coordinates a train-the-trainer program at the national level, the Commission will consider a variety of approaches to satisfy the requirements for the program including using existing Commission staff and resources, engaging another agency with expertise in this area through an Interagency agreement, acquiring these services through a competitive procurement, evaluating whether to modify a contract with an existing contractor to satisfy the program requirements – either through direct performance by the main contractor or a subcontractor. The Commission may also wish to invite entities, via a public notice, to submit applications to establish or coordinate a train-the-trainer program. The Commission will consider using a combination of any of these in-house, regulatory, or procurement strategies where efficient and lawful to do so.

94. If the Commission establishes or coordinates a train-the-trainer program, what are the essential criteria for the staff and/or entity selected to perform the role? HKNC recommends that the following criteria are essential: experience with the target population; familiarity with Braille and Braille devices; familiarity with emerging communications technologies and end user equipment; staff who are skilled in ASL as well as other communication methodologies; and a track record of multi-modal training

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("Vendors "are not skilled enough to provide training for all equipment, especially in training persons who are deaf-blind.").

[316] *See, e.g.*, AADB Comments at 29 (stating its "full agreement that a national entity coordinate the train the trainers sessions"); DBCA Comments at 4 (recommending that a national entity be set up to address the shortage of trainers, with its expenses reimbursed by the NDBEDP); HKNC Comments at 10 (stating that HKNC is interested in facilitating a train-the-trainer program funded by the FCC); IUB Comments at 11 (stating that "[p]erhaps training the trainer should be coordinated at the national level to provide consistency in training"); LightHouse Comments at 16 (supporting a national conference to train trainers); Pellerin Comments at 3 (supporting additional funding for the HKNC train-the-trainer program).

[317] *See* HKNC Comments at 11 (suggesting these five activities as the responsibilities of a national training entity).

[318] *See, e.g.*, Perkins Comments at 21 (reporting that the cost for the HKNC train-the-trainer program is "prohibitive to some potentially eligible participants").

and ability to maintain pace with the technology.[319] Are these criteria appropriate and sufficient to make such selection? If not, what other criteria should the Commission use?

95. Regardless of whether we support a nationally coordinated train-the-trainer program or allocate funds to certified programs for train-the-trainer activities, or some combination of both, should we require or permit training in a variety of formats, such as individual training, group training, and distance training through online resources?[320] Should NDBEDP funding be used for that purpose? Should national or state entities providing training be required to establish a system for evaluating the outcomes of the training? The LightHouse reports that California has eight trainers who are blind, deaf, or deaf-blind,[321] and IUB suggests that NDBEDP equipment recipients could become trainers for other equipment recipients.[322] Based on these assertions, it appears that train-the-trainer activities could ultimately lead to the increased employment of individuals with disabilities. Are there actions that the Commission could take to promote such efforts? Should we encourage either national or state entities to train individuals who are deaf-blind, including NDBEDP equipment recipients, as trainers? We invite commenters to share other thoughts they may have on how best to establish and support train-the-trainer activities for the permanent NDBEDP.

## VI. FUNDING

### A. Allocation of Funding

96. In the *NDBEDP Pilot Program Order*, the Commission set aside $500,000 of the $10 million available annually for the NDBEDP for national outreach efforts during each year of the pilot program.[323] The remaining $9.5 million of the $10 million was divided among each of the NDBEDP certified programs by allocating a minimum base amount of $50,000 for each jurisdiction plus an amount in proportion to each state's population.[324] In the *Permanent NDBEDP PN*, the Bureau invited comment on whether the current funding allocation system is reasonable and fair, and, if not, what changes should be made and what purpose these changes would serve.[325]

97. We generally propose to maintain the current mechanism for allocating NDBEDP funds –

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[319] *See* Perkins Comments at 8.

[320] *See, e.g.*, Perkins Comments at 21-22 (stating that "the funded entity should incorporate distance technologies whenever possible" and that "[a] full array of multi-modal training options that reflect current and emerging best practices should be available"); AADB Comments at 29 (suggesting that online equipment training may not be an effective tool for train-the-trainer sessions and noting challenges in learning how to use online training modules and their accessibility); DBCA Comments at 4 (recommending use of online learning modules as part of a train-the-trainer program in order to lower costs); IOD Comments at 5 (stating that online remote training would be cost effective "but might not be the best solution for everyone"); WATAP Comments at 5 (stating that online training "may be less effective" because many trainers have sensory disabilities, but that "a repository of online training resources could be beneficial"); LightHouse Comments at 16 (supporting online training modules that are accessible to deaf-blind trainers); Miller Comments at 3 (stating that web-based training should not be used unless it is completely accessible by people who are deaf-blind); Naulty Comments at 6 (stating that online training of trainers may be inadequate and that "hands on training is best").

[321] LightHouse Comments at 15. *See also* HKNC Comments at 10 (stating that 50% of the individuals whom HKNC has trained as trainers have vision loss, hearing loss, or combined vision and hearing loss and are users of the equipment themselves and that a "principle tenant of the training was to offer accessible training seminars inclusive of individuals who are deaf-blind").

[322] IUB Comments at 11. *See also* Miller Comments at 2-3 (stating that "[a]ll train the trainer programs must be totally accessible and open to [deaf-blind] persons").

[323] *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5676-76, ¶ 80.

[324] *Id.* at 5677, ¶¶ 84-85.

[325] *Permanent NDBEDP PN*, 29 FCC Rcd at 9454, ¶ 8.

setting aside funds first for certain national efforts,[326] allocating a minimum of $50,000 for each certified program, and allocating the remaining funds to the certified programs in proportion to each state's population.[327] Most commenters support this allocation system.[328] Some commenters question the current population-based allocation of funds on the grounds that some states might have higher proportions of deaf-blind consumers than others.[329] To the best of our knowledge, however, there is currently no reliable data on the number of people who are deaf-blind in each state. Further, our experience with the program has shown that most states have had sufficient funds allocated to them annually to meet their residents' needs and, where they have not, they have had an opportunity to obtain additional funding through reallocation. More specifically, as discussed below, under the pilot program, the Bureau has had the authority to reduce, raise, or reallocate funding allocations to any certified program as it may deem necessary and appropriate.[330] We invite comment on our proposal to maintain the current allocation mechanism.

98. In addition, we take this opportunity to remind program participants and commenters that TRS funds are permanent indefinite appropriations and,[331] like other appropriated funds, come with certain restrictions. While some of these restrictions are longstanding and codified in the United States Code,[332] other restrictions on use of appropriated funds (including permanent indefinite appropriations) may be included in annual appropriation acts.[333] Parties commenting on the proposals in this *Notice* should ensure that their recommendations are consistent with Government-wide statutory and regulatory restrictions on the use of appropriated funds.

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[326] *See* Section III.F, *supra* (proposing to set aside up to $380,000 for a centralized database), Section V.A.1 *supra* (proposing to set aside $250,000 for national outreach), Section V.E, *supra* (proposing to set aside $250,000 for training trainers).

[327] *See* Appendix D (Summary of Proposed Funding Allocations).

[328] *See, e.g.*, FTRI Comments at 2; IUB Comments at 4; WATP Comments at 2; CDP Comments at 2. *But see* ATK Comments at 2 (stating that the allocation formula should also be based on past needs). Some commenters also suggest that the Commission should raise the $10 million annual funding cap for the NDBEDP. *See, e.g.*, Perkins Comments at 10; ACB Comments at 3; ACBT Comments at 3. We remind these commenters that the CVAA limits funding to this amount and the Commission does not have the authority to raise this cap. CVAA, § 105(c), codified at 47 U.S.C. § 620(c).

[329] *See* IOD Comments at 3; Naulty Comments at 3.

[330] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5679, ¶ 90.

[331] *See* B-228777, 1988 WL 227937 (Comp. Gen) ("We have long held that statutes which authorize the collection of fees and their deposit into a particular fund and which make the fund available for expenditure for a specified purpose, constitute a continuing or permanent appropriation…."); B-212484, 1984 WL 43508 (Comp. Gen) ("Statutes which authorize the collection of fees and their deposit into a particular fund, and which make the fund available for expenditure for a specified purpose, have long been viewed as constituting continuing or permanent appropriations. Therefore, they are subject to the statutory controls and restrictions applicable to appropriated funds."); B-230110, 1988 WL 227660 (Comp. Gen) ("We have taken the position that user fees, offsetting collections and other funds which an agency may be authorized to collect, retain and apply to authorized purposes also constitute 'appropriated funds' subject to any restrictions in appropriations acts."); and United States Government Accountability Office, Office of the General Counsel, *Principles of Federal Appropriations Law*, Third Edition, Part B - Some Basic Concepts, Section 1 "What Constitutes an Appropriation," 2004 WL 5661338 (current through March 2015 update).

[332] *See, e.g.*, 31 U.S.C. § 1352 (imposing limited government wide restrictions with respect to lobbying by recipient of Federal funds); United States Government Accountability Office, Office of the General Counsel, *Principles of Federal Appropriations Law*, Third Edition, Chapter 4, Part C – Specific Purpose Authorities and Limitations, 2004 WL 5661375 (current through March 2014 update) (explaining that the restrictions on the purposes for which appropriated funds may be spent come from a variety of sources including, but not limited to, the Constitution itself, permanent legislation, and in appropriation acts).

[333] See, *e.g.*, Consolidated and Further Continuing Appropriation Act of 2015, Pub. L. No. 113-235, § 744, 128 Stat. 2130, 2391 (2014) (prohibition relating to tax status of recipient of appropriated funds).

### B. Reallocation of Funding

99. During the first year of the pilot program, almost 70% of the $10 million available to support the NDBEDP was used by certified programs and for national outreach.[334] Data obtained since the release of the *Permanent NDBEDP PN* reveal that approximately 90% of the $10 million annual allocation was used during the second year of the pilot program.[335] During each of the first two years of the pilot program, the NDBEDP Administrator reviewed funding data as it became available and worked with certified programs and the Bureau to reallocate funding between state programs when necessary to maximize the use of available funding.[336] In the *Permanent NDBEDP PN*, the Bureau sought comment on the extent to which these reallocations met the needs of certified programs, or whether this practice in any way hindered the distribution of equipment by programs that had their allocations adjusted downward.[337] The Bureau asked whether the permanent NDBEDP rules should continue to authorize the reallocation of funds from one state program to another, as deemed necessary and appropriate by the NDBEDP Administrator.[338]

100. During the first year of the pilot program, few entities reached or exceeded their annual allocation of funds.[339] Only three entities requested and received additional funds.[340] In the first half of the second year of the pilot program, the NDBEDP Administrator approved several requests for reallocations of funds from one certified entity to another ("voluntary" reallocations).[341] During the third quarter of the second year, after notice, the NDBEDP Administrator reduced the allocations of certified programs that had not used at least half of their annual allocation and reallocated those funds to satisfy requests from certified programs that reached or exceeded their annual allocations ("involuntary" reallocations).[342] Specifically, the formula currently used by the NDBEDP Administrator reduces by 50% the allocations of programs that have spent less than 25% during the first half of the year, and reduces by 25% the allocations of programs that have spent more than 25% but less than 50% during the first half of the year. Certified programs have an opportunity to request that the NDBEDP Administrator consider increasing or reducing the proposed change in allocation. We seek comment on this method and formula, or any alternative methods or formulas for making involuntary reallocations in the permanent NDBEDP. Commenters that suggest alternatives should explain how these would lead to effective results for the intended community and how such standards would add to the efficiency of the program. Most commenters agree that we should continue to authorize the reallocation of funds between programs, as deemed necessary and appropriate by the NDBEDP Administrator to maximize the use of available funding.[343] Based on these comments and the Commission's experience during the pilot program, we tentatively conclude that these reallocations have helped requesting programs meet their needs and have

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[334] *See NDBEDP Third Year Order*, 29 FCC Rcd at 1236, ¶ 5

[335] *See* Appendix C (Summary of Pilot Program Expenditures).

[336] *Permanent NDBEDP PN*, 29 FCC Rcd at 9454, ¶ 9.

[337] *Id.*

[338] *Id.*

[339] RolkaLoube Comments at 7, 17-18 (Exhibit No. 1).

[340] *See Commission Announces Entities Certified to Participate in the National Deaf-Blind Equipment Distribution Program*, Public Notice, 27 FCC Rcd 7397 (CGB 2012) (listing allocations as of the beginning of the first); RolkaLoube Comments at 17-18 (Exhibit No. 1) (listing allocations as of the end of the first-year). The Bureau approved a request to reallocate funds from Texas ($65,000) to Massachusetts ($15,000) and Maine ($50,000). The Bureau also reallocated unused funds from Nevada ($64,000) to Georgia ($64,000). At the time, the entity certified for Nevada had relinquished its certification and the Bureau had not yet selected its successor.

[341] RolkaLoube Comments at 7-8.

[342] *Id.* at 7-8, 10.

[343] *See, e.g.*, AADB Comments at 16; DCBA Comments at 2; FTRI Comments at 2; HKNC Comments at 5; IOD Comments at 3; WATAP Comments at 2; CDBP Comments at 2; RolkaLoube Comments at 7-8, 10.

not prevented programs with decreased funding from satisfying the needs of their constituents.[344] IPAT states, for example, that the reduction in its allocation did not hinder its distribution of equipment and it supports such reallocations in the future, as long as they are "based on current funding data, and used for the purpose of maximizing the use of available funding."[345]

101. Some commenters request that reallocations be made earlier during the program's Fund year to minimize gaps in service.[346] We recognize this concern, but we note that it is not until approximately one month after the second quarter of the Fund year ends that the Bureau has the requisite data from all certified programs to determine whether and to what extent involuntary funding reallocations may be appropriate.[347] Accordingly, we propose to allow voluntary reallocations between certified programs at any time during the Fund year with the approval of the NDBEDP Administrator, in consultation with the TRS Fund Administrator, as needed. We also propose to continue making involuntary reallocations as necessary when individual program performance indicates that NDBEDP funds could be more fully utilized by other certified programs. Further, we propose to continue our current practice of notifying and coordinating with the potentially impacted certified programs prior to making involuntary reallocations of funding. We seek comment on these reallocation proposals.

### C. Reimbursement Mechanism

102. When it established the NDBEDP pilot program, the Commission considered two funding mechanisms: (1) distributing funds to certified programs at the start of each Fund year and letting the programs use the funds as they saw fit; or (2) reimbursing programs up to each state's allocation for the equipment they distribute.[348] The Commission concluded that the reimbursement approach was more appropriate both because it would provide incentives for certified programs to actively locate eligible participants and would achieve greater accountability and protection against fraud, waste, and abuse.[349] Under the NDBEDP pilot program, the Commission reimburses programs for the costs incurred for authorized equipment and related services, up to each certified program's initial or adjusted allocation.[350] Certified programs may elect to seek reimbursement monthly, quarterly, or semi-annually.[351] In the *Permanent NDBEDP PN*, the Bureau sought comment on how well this reimbursement system has worked, whether the current approach should be maintained and if so, how it could be made more efficient.[352] The Bureau also invited comment on whether the Commission should consider other funding mechanisms that could provide program incentives to locate eligible participants,

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[344] *See, e.g.*, MoAT Comments at 2 (stating that reallocation is necessary to meet program demands); ATI Comments at 4 (noting that it is better to give the money to programs that can use it); IPAT Comments at 1.

[345] IPAT Comments at 1.

[346] ATK Comments at 2 (stating that the certified program in Kansas ceased providing services because it spent its money early); MoAT Comments at 2 (stating that reallocation earlier in the year would be useful); IOD Comments at 3 (urging that reallocation occur at the beginning of the third quarter instead of the fourth quarter); Perkins Comments at 10.

[347] This is because, as noted below, state programs have the option of filing their reimbursement claims on a semi-annual basis. *See* ¶ 102, *infra*. Without full information on the amounts requested by every program, it is impossible to determine the amount of remaining funds available for such reallocations.

[348] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5678, ¶ 86.

[349] *See id.* at 5679, ¶ 88. Each reimbursement claim must be accompanied by a declaration made under penalty of perjury attesting to the truth and accuracy of the submission. 47 C.F.R. § 64.610(f)(3).

[350] 47 C.F.R. § 64.610(f).

[351] 47 C.F.R. § 64.610(f)(2); *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Order, 27 FCC Rcd 2812 (CGB 2012) (waiving the requirement to submit reimbursement claims every six months and permitting certified programs to elect, by notifying the TRS Fund Administrator, to submit claims quarterly or monthly).

[352] *Permanent NDBEDP PN*, 29 FCC Rcd at 9455, ¶ 10.

achieve accountability, and protect against fraud, waste, and abuse.[353] Finally, the Bureau asked whether a centralized web-based reimbursement system would facilitate the more rapid payment of claims, and whether a certain timeframe would be appropriate for the payment of claims.[354]

103. Various commenters assert that reimbursing programs for their expenses, rather than providing payment in advance, is more likely to keep certified programs accountable and to deter fraud, waste, and abuse.[355] IUB recommends against advancing funds because, in addition to the challenges of returning unspent funds, it believes such a system would result in more complicated recordkeeping and increased opportunities for fraud, waste, and abuse.[356] Both IUB and ATI also note that a system that advances funds would make reallocating funds during the year difficult.[357] For all of these reasons, we propose to continue using the present reimbursement mechanism to fund equipment distribution and related services under the permanent NDBEDP. We further propose that the current requirement for certified programs to support their reimbursement claims with documentation, a reasonably detailed explanation of incurred costs, and a declaration be carried into the permanent program.[358] We seek comment on these proposals, and other guidelines that may be needed with respect to the submission and processing of reimbursement claims to ensure that certified programs operate in a cost-efficient manner and maintain the financial integrity of the program. As discussed above, we propose to permit each certified program to populate a centralized database with claim-related data, from which it may generate its reimbursement claims.[359] Most commenters agree that, if a program submits its requests for reimbursement in such a uniform manner, timely reimbursement is more likely.[360]

104. We received little comment on whether to continue to allow programs to submit claims monthly, quarterly, or semi-annually, as currently permitted under the NDBEDP pilot program. At

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[353] *Id.*

[354] *Id.*

[355] *See, e.g.*, AADB Comments at 10; ATI Comments at 4-5 (stating that advancing funds risks lack of accountability and encourages fraud and abuse); DBCA Comments at 2 (noting that "[t]he current reimbursement mechanism should be retained for the permanent program"); IUB Comments at 5 (stating that so long as reimbursements are paid in a timely manner, IUB supports the reimbursement mechanism); LightHouse Comments at 7-8. *But see* GACHI Comments a 5 (requesting advances for start-up purposes).

[356] IUB Comments at 5.

[357] IUB Comments at 5; ATI Comments at 4. *See also* Section VI.B, *supra* (discussing reallocation of funding).

[358] *See* 47 C.F.R. §§ 64.610(f)(2) (certified programs must submit documentation that supports its claim for reimbursement), (f)(3) (requiring reimbursement claims to include a declaration); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5679, ¶ 88.

[359] *See* Section III.F, *supra* (discussing a centralized database for reporting and reimbursement claims).

[360] *See* n.97, *supra*. We note that, although the record reflects that there was some frustration with delays in the processing of reimbursement claims at the start of the pilot program, commenters generally agree that the timeliness of payments has since improved. *See, e.g.*, ATK Comments at 2 (stating that, initially, the reimbursement process "was not timely and negatively impacted" state programs, but improved in the second year of the pilot program); HKNC Comments at 6 ("The turn around on submission to payment has gone from two months or longer to 4-6 weeks."); IPAT Comments at 2 (noting that the reimbursement mechanism was problematic at the beginning, but now it works fine); IUB Comments at 4 (reporting that "delays in processing reimbursement claims caused great hardship in cash flows for Iowa . . . [but] the second program year has seen many improvements and the reimbursement process has been much more efficient and timely."). *But see* FTRI Comments at 2 (reporting that "the current turn-around time for reimbursement is not timely"). Given this general opinion, and the need for flexibility in processing each unique claim for equipment and related services, we do not, at this time, propose a specific period by which reimbursement claims must be paid. However, we note that where a claim is submitted with sufficient documentation, and does not require further clarification, we expect the Bureau and the TRS Fund Administrator to be able to process that claim within 30 days. We expect that claims requiring additional documentation or clarification generally will be processed within 60 days. *See* HKNC Comments at 5 (recommending reimbursement within 30 to 60 days).

present, 10 certified programs submit claims monthly, 36 programs submit claims quarterly, and seven programs submit claims semi-annually.[361] To continue meeting the individualized needs of these programs, we propose to continue allowing certified entities to elect, upon certification and at the beginning of each Fund year, whether to submit claims on a monthly, quarterly, or semi-annual basis and to require submission within 30 days after each elected period. The TRS Fund Administrator recommends that certified programs be required to submit monthly claims and to request a waiver to submit claims less frequently.[362] While a monthly schedule may "benefit active certified entities and result in better cash flow to the certified entities,"[363] only 10 programs have elected to submit claims monthly, with the other 43 programs opting for quarterly or semi-annual schedules. We seek comment on the reasons that these 43 programs have not elected to submit claims on a monthly basis and whether all programs should be required to begin filing monthly, for example, for the sake of program consistency. Alternatively, is each certified program best suited to determine the frequency with which it needs to be reimbursed? We seek comment on the advantages and disadvantages of maintaining the current practice or whether we should revise our rules to require all programs to adhere to a single schedule for filing reimbursement claims. In particular we ask parties to comment on the extent to which a requirement to follow a single filing schedule would be more efficient or impose difficulties on programs with limited resources.

### D. Administrative Costs

105. Under the Commission's rules for the NDBEDP pilot program, certified 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.[364] We have defined administrative costs to include reporting requirements, accounting, regular audits, oversight, and general administration.[365] In the *Permanent NDBEDP PN*, the Bureau sought comment on whether the 15% cap on administrative costs should be retained and how it should be computed.[366] The Bureau asked whether a cap on administrative costs based on the program's full annual funding allocation, rather than reimbursed costs for equipment and related services, would act as a disincentive to locate or provide equipment and related services to eligible participants, since a certified program would be entitled to such reimbursement even if it did not deliver any equipment or related services.[367] Finally, the Bureau asked whether a certified program's cost to participate in a centralized web-based system for accounting and reporting, if adopted, should be considered program or administrative costs.[368]

106. To track and ensure that appropriate administrative costs are reimbursed, the TRS Fund Administrator has procedures to "bank" reimbursement claims for administrative costs that exceed 15% of reimbursable costs and to pay those claims later if the amount of reimbursable costs increases with later submissions.[369] Generally, commenters oppose tying the cap on allowable administrative expenses to a certified program's reimbursed costs for equipment and related services.[370] These parties urge a

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[361] *See* RolkaLoube Comments at 20-21 (Exhibit No. 3).

[362] Id. at 12.

[363] *Id.*

[364] 47 C.F.R. §64.610(f)(vi). The 15% cap does not apply to, and there is no cap for, costs associated with outreach, assessments, equipment, installation, or training. *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5680, ¶ 92.

[365] *See id.*

[366] *Permanent NDBEDP PN*, 29 FCC Rcd at 9455, ¶ 11.

[367] *Id.*

[368] *Id.*, ¶ 12.

[369] *See* RolkaLoube Comments at 14.

[370] *See, e.g.*, IPAT Comments at 2 (stating that the cap "should not be tied to consumer related services"); LightHouse Comments at 9 (stating that the 15% cap should be based on the total allocated amount rather than the reimbursed amount); WATAP Comments at 3 (urging that the cap be based on the program's funding allocation).

change in the Commission's rules to base the cap on annual allocations, claiming that such approach would not act as a disincentive to distributing equipment.[371] For example, Perkins suggests that the cap on administrative costs be based on annual allocations and distributed quarterly, and recommends that the FCC withhold payments in the third or fourth quarters to an underperforming program or de-certify a program that fails to spend its allocation.[372] Similarly, ACB urges the Commission to allow all administrative costs to be reimbursed, unless a program fails to provide equipment or services.[373] Given the general accomplishments of the 53 certified programs in distributing communications equipment to their deaf-blind residents, we are no longer concerned that basing the cap of administrative costs on the full funding allocation for each certified program will eliminate the necessary incentives to carry out the NDBEDP's objectives.[374] Accordingly, we propose to reimburse administrative costs as they are incurred and claimed, based on the annual allocation rather than the amount of reimbursable costs, thereby eliminating the need for the TRS Fund Administrator to "bank" unearned administrative costs. We seek comment on that proposal.

107. We further acknowledge that some programs have reported operating at a loss as a result of the 15% cap on administrative expenses, and recognize that this could potentially act as a disincentive to participate in the NDBEDP.[375] During the second year of the pilot program, certified programs that exceeded the 15% cap had about 3% more administrative costs than were allowed by the cap.[376] To respond to these concerns, rather than raise the cap by the 3% needed to cover those overages, we believe that our proposal to create a centralized database for certified programs to generate reports and reimbursement claims,[377] may alleviate the administrative burdens for certified programs operating in the permanent NDBEDP. If adopted, certified programs that have been incurring costs associated with the use of a database, such as the Perkins database, would no longer need to do so, nor have those costs assessed against their 15% cap on administrative costs.[378] Other programs that have expended funds to develop databases on their own to generate reports and reimbursement claims may also similarly experience a reduction in the costs associated with these tasks. We seek comment on this proposal and, in particular, ask whether it will help to meet the financial needs of certified programs, particularly programs that have found the 15% cap on administrative costs to be a barrier to their effective participation in the NDBEDP. We also seek comment on whether our proposal regarding administrative costs, including the types of costs included in this category of expenses,[379] is consistent with other similar programs.

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[371] *See, e.g.,* ATI Comments at 5 (also noting that basing the cap on annual allocations would help programs avoid incurring administrative costs that will not be reimbursed); Perkins Comments at 14.

[372] Perkins Comments at 14

[373] ACB Comments at 4.

[374] During the second year of the pilot program, certified programs collectively used approximately 90% of their available funding. *See* Appendix C (Summary of Pilot Program Expenditures). Further, only five certified programs requested reimbursement for less than 50% of their annual allocations. *See* RolkaLoube Comments at 19 (Exhibit No. 2).

[375] *See, e.g.,* CTTAP Comments at 1 (arguing that the cap forces it to operate at a loss and for administrative costs to be 100% reimbursable); HKNC Comments at 5 (advocating that the cost for the centralized database should be a program cost not charged against the 15% cap); MoAT Comments at 2 (same); LightHouse Comments at 9 (noting that California had administrative costs over 20%); Perkins Comments at 5, 13 (arguing that operating under this cap is a challenge); IOD Comments at 3 (stating that the 15% cap is insufficient); GACHI Comments at 2 (supporting removal of the 15% cap); Oklahoma DRS (advocating that the cost of annual audits not be charged against the 15% cap); RolkaLoube Comments at 10 (reporting that only 19 state programs did not claim administrative expenses in excess of their annual allocation, and each of those had unspent allocations at the end of the year).

[376] *See* Appendix C (Summary of Pilot Program Expenditures).

[377] *See* Section III.F, *supra* (discussing a centralized database for reporting and reimbursement claims).

[378] *Id.*

[379] *See* ¶ 105, *supra* (defining administrative costs to include reporting requirements, accounting, regular audits, oversight, and general administration).

Similarly, we seek comment on whether there are any best practices that should be employed in this area.

## VII. OVERSIGHT AND REPORTING

### A. Reporting

108. The NDBEDP pilot program rules require all certified programs to report certain information to the Commission in an electronic format every six months.[380] The report must include, among other things, information about NDBEDP equipment recipients; distributed equipment; the cost, time and other resources allocated to outreach activities, assessment, equipment installation and training, and for equipment maintenance, repair, refurbishment, and upgrades; equipment requests that have been rejected; complaints; and waiting lists.[381] In the *NDBEDP Pilot Program Order*, the Commission concluded that such reporting is necessary for the effective administration of the NDBEDP pilot program, to assess the effectiveness of the program, to ensure the integrity of the TRS Fund, to ensure compliance with the NDBEDP pilot program rules, and to inform the Commission's rulemaking for the permanent NDBEDP.[382] In the *Permanent NDBEDP PN*, the Bureau sought comment on the extent to which such reporting obligations remain necessary, as well as ways to simplify the Commission's reporting requirements for the permanent NDBEDP.[383] The Bureau asked commenters suggesting that these obligations be modified to offer specific changes, and explain what impact modifying these obligations would have on certified programs, consumers, and the Commission's ability to oversee the NDBEDP.[384] As an example, the Bureau asked whether submission of the required information through a centralized web-based system would be more efficient than the individualized reporting that now occurs, and whether such a system would enable more standardized reporting and more effective data analysis.[385] The Bureau also inquired about other changes that should be made to the reporting requirements.[386]

109. We propose to retain the six-month reporting requirement,[387] which commenters generally support.[388] During the pilot program, it has been useful for the Commission to gather the required information to effectively evaluate NDBEDP operations. We believe that continuing to receive this data will be useful to the permanent program as well, because, as noted by several commenters, this will allow the Commission to ensure that NDBEDP certified programs continue to operate efficiently and that they effectively meet consumer needs.[389] As discussed above, we propose to require certified programs to submit report-related data to and generate reports from a centralized database, which will enable the Commission to examine the data from all certified programs in the aggregate.[390] With all program data bundled together in a uniform report generated by the database, we believe that the

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[380] 47 C.F.R. § 64.610(g)(1). *See also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5683-84, ¶ 99. Each report must be accompanied by a declaration made under penalty of perjury attesting to the truth and accuracy of the submission. 47 C.F.R. § 64.610(g)(2).

[381] *See* 47 C.F.R. § 64.610(g)(1).

[382] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5683, ¶ 98.

[383] *Permanent NDBEDP PN*, 29 FCC Rcd at 9461, ¶ 22.

[384] *Id.*

[385] *Id.*

[386] *Id.* at 9460-61, ¶ 22.

[387] 47 C.F.R. §§ 64.610(g)(1) (reporting requirements), (2) (requiring reports to be accompanied by a declaration).

[388] *See, e.g.*, AADB Comments at 31 (stating that reports are needed); ATI Comments at 10 (finding the current reporting obligations easy to satisfy); DBCA Comments at 5 (supporting continuation of the pilot program reporting obligations); LightHouse Comments at 18 (supporting reporting requirements); Perkins Comments at 23 (asserting that reporting is necessary to demonstrate program effectiveness).

[389] *See* Perkins Comments at 23; IOD Comments at 5.

[390] *See* Section III.F, *supra* (discussing a centralized database for reporting and reimbursement claims).

Commission will be better able to assess and manage the NDBEDP.[391] Commenters also note benefits that may be realized for state programs if we adopt a requirement for a centralized database. For example, ATI suggests that a centralized database should ensure reporting and reimbursement systems are linked together,[392] which could streamline the information required for reimbursement claims and reporting obligations by removing duplicate or redundant data sets.[393]

110. We invite comment on our proposal to retain the reporting requirement. We note that not all commenters agree on the extent to which the substance of the reporting requirements should be retained,[394] and thus seek comment on whether we should modify the information these reports should include. In particular, are there differences in the pilot and permanent programs that should cause us to change the nature of the data required by these reporting obligations? We also seek comment on ways that the provision of data required for reimbursement claims and reporting requirements can be streamlined through the design of a centralized database or by other means. For example, one commenter suggests that state programs be permitted to submit reports at the same frequency as reimbursement claims to streamline these requirements further.[395] We seek comment on this proposal, as well as the advantages or disadvantages of allowing certified programs to submit reimbursement claims and reports on a monthly, quarterly, or biannual basis. Should the reporting period be the same for all certified programs to ensure consistency of data? If so, what should that period be? Alternatively, now that we are transitioning the NDBEDP to a permanent program, would it serve the program just as well if submission of the reports were required annually instead of every six months?

111. 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," as follows:

> I swear under penalty of perjury that I am (name and title), an officer of the above-named reporting entity, and that I have examined the foregoing reports and that all requested information has been provided and all statements of fact are true and an accurate statement of the affairs of the above-named certified program.[396]

112. Consistent with the Commission's Universal Service low-income program rules,[397] and to

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[391] *See* Perkin Comments at 4 (stating that consistent nationwide metrics would help the FCC assess the NDBEDP); Perkins Comments at 24 (asserting that, if adopted, a centralized database will enable more standardized reporting and more effective data analysis); IOD Comments at 5 (stating that a central database will enable the Commission to generate national NDBEDP reports).

[392] ATI Comments at 10.

[393] *See* GACHI Comments at 9 (finding the six-month report to be tedious and repetitive); Oklahoma DRS (suggesting that a single report that would satisfy reimbursement requests and reports would be more efficient); IOD Comments at 5 (stating that the current reporting system is cumbersome); LightHouse Comments at 18 (urging standardized data collection for reimbursement claims and reports to reduce duplication of data). *See also* AADB Comments at 31 (stating that a centralized database should facilitate reports); ATK Comments at 3 (asserting that a standardized reporting system could benefit programs by providing national data and reducing reimbursement and reporting time); CDBP Comments at 4 (stating that a centralized database should streamline reports); IUB Comments at 12-13 (supporting simplifying reporting with a centralized database); IPAT Comments at 3 (opining that a centralized database for reporting would have increased efficiency).

[394] *See* IUB Comments at 12-13 (recommending reducing the amount of information required to be reported, such as details about the function of equipment distributed, type of communication s service with which it is used, and type of relay service it can access). *But see* Perkins Comments at 23 (recommending that the reporting requirement remain substantially the same).

[395] CTTAP Comments at 2. *But see* AADB Comments at 31 (stating that reports should not be required more frequently than every six months); ACB Comments at 6 (urging reporting on a quarterly basis).

[396] 47 C.F.R. § 64.610(g)(2).

[397] *See* 47 C.F.R. § 54.416 (certification requirements for eligible telecommunications carriers).

clarify what "affairs" means in this context,[398] we propose to amend the certification 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.

We invite feedback on this and any other matters pertaining to the reporting obligations not discussed above, including the costs and benefits of retaining these requirements.

### B. Audits

113. 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.[399] Certified programs must also make their NDBEDP-related records available for review or audit by appropriate officials of the Commission.[400] In the *Permanent NDBEDP PN*, the Bureau sought comment on whether this audit requirement has been effective and whether the Commission should impose additional safeguards to protect the integrity of the TRS Fund and the NDBEDP.[401]

114. Several commenters argue that certified programs should continue to perform annual audits for the purposes set forth above.[402] The TRS Fund Administrator, who is responsible for administering funding support for the TRS program, notes "the importance of conducting regular audits to ensure the integrity of the TRS Fund."[403] We agree and propose to continue to require certified programs to engage an independent auditor to perform annual audits. As recommended by the TRS Fund Administrator, we also propose that each certified program submit a copy of its annual audit to the TRS Fund Administrator and the NDBEDP Administrator.[404] We seek comment on these proposals.

115. Further, we propose to clarify that NDBEDP certified programs are not required to conduct their annual audits using a more rigorous audit standard, such as a forensic standard, specifically designed to prevent and detect fraud, waste, and abuse.[405] We seek comment on our proposal to affirm the following guidance provided by the Bureau in November 2012 to certified programs regarding their annual audit requirement:[406]

> For purposes of complying with the NDBEDP audit rule, an independent auditor must conduct a program audit that includes a traditional financial statement audit, as well as an audit of compliance with the NDBEDP rules that have a direct and material impact on

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[398] Similarly, we propose to amend the certification required with reimbursement claims to clarify that the "affairs" of the certified program means the "business activities conducted pursuant to the NDBEDP" by the certified program. *See* Appendix F (Proposed Rule Changes), section 64.610(f)(3).

[399] 47 C.F.R. § 64.610(e)(1)(vii); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5684, ¶ 101; *NDBEDP FAQ* 25.

[400] 47 C.F.R. § 64.610(e)(1)(vii); *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5684, ¶ 101.

[401] *Permanent NDBEDP PN*, 29 FCC Rcd at 9461, ¶ 23.

[402] *See, e.g.*, AADB Comments at 32; ACB Comments at 6; ATI Comments at 10; FTRI Comments at 3; CDBP Comments 4; Perkins Comments at 15.

[403] RolkaLoube Comments at 16.

[404] *See* RolkaLoube Comments at 15 (recommending that copies of audits be distributed to the Commission and the NDBEDP Administrator).

[405] *See NDBEDP FAQ* 25.

[406] *Id.*

NDBEDP expenditures and a review of internal controls established to ensure compliance with the NDBEDP rules.

Compliance areas to be audited include, but are not limited to, allowable costs, participant eligibility, and reporting. The audit report must describe any exceptions found, such as unallowable costs, lack of participant eligibility documentation, and missing reports. The report also 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 FCC and report the auditor's observations as required under professional auditing standards.

This program audit standard is comparable to that required for Office of Management and Budget (OMB) Circular A-133 audits.[407] We believe that such audits of NDBEDP certified programs, conducted annually by an independent auditor, will detect and prevent fraud, waste, and abuse, which will satisfy the NDBEDP audit rule.

116. Commenters note that the Commission should provide guidance with respect to whether certified programs must comply with OMB Circular A-133 audit requirements.[408] Because the program audit criteria described above are similar to that of an OMB Circular A-133 audit, we propose to require that audits under the permanent NDBEDP be performed in accordance with OMB Circular A-133. We invite comment on this proposal. Commenters that disagree with this proposal are asked to explain why.

117. In addition, we propose to continue to require each program to submit to an audit at any time deemed necessary by the Commission or its delegated authorities. This proposal is consistent with the Commission's TRS rules, which require "TRS providers [to] submit to audits annually or at times deemed appropriate by the Commission, the fund administrator, or by an entity approved by the Commission for such purpose."[409] This approach could also be implemented by performing audits either as needed or on a regular basis at intervals longer that one year. A full audit of an NDBEDP certified entity, as directed by the Commission or a delegated authority may be appropriate, for example, to obtain financial information needed for the FCC's consolidated annual financial audit, which also includes the financial results for the TRS Fund. As another example, a full audit may also be appropriate when the TRS Fund Administrator and the NDBEDP Administrator agree that reimbursement claims submitted by a certified program contain a pattern of errors or indicia reflecting a lack of accountability, fraud, waste, or abuse. We further propose that any program that fails to fully cooperate in such audits, for example, by failing to provide documentation necessary for verification upon reasonable request, be subject to an automatic suspension of NDBEDP payments until sufficient documentation is provided. We believe that this automatic suspension policy, which is currently applied to the TRS program, would promote

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[407] All non-federal entities that expend $750,000 or more of Federal awards in a year are required to obtain an annual audit in accordance with the Single Audit Act Amendments of 1996, OMB Circular A-133, and the OMB Circular Compliance Supplement and Government Auditing Standards. *See* Office of Management and Budget, Office of Federal Financial Management Single Audit, at http://www.whitehouse.gov/omb/financial_fin_single_audit (last viewed Apr. 28, 2015); Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule, 78 Fed. Reg. 78589, 78621 (Dec. 13, 2013) (increasing the amount from $500,000 to $750,000 for audits of fiscal years beginning on or after December 26, 2014).

[408] Perkins Comments at 26. If certified programs must comply, Perkins recommends that any audit activity beyond an OMB Circular A-133 audit that the Commission mandates should be conducted at its expense. *Id*.

[409] 47 C.F.R. § 64.604(c)(5)(iii)(D)(*6*); RolkaLoube Comments at 16. *See also* 47 C.F.R. § 64.610(e)(vii) (certified entities must, in addition to conducting annual audits, "submit, as necessary, to audits arranged by the Commission, the Consumer and Governmental Affairs Bureau, the NDBEDP Administrator, or the TRS Fund Administrator [to detect and prevent fraud, waste, and abuse]").

transparency and accountability in the compensation process.[410] We seek comment on the costs and benefits of adopting this approach.

118. To further prevent and detect fraud, waste, and abuse, and ensure compliance with the NDBEDP rules, we propose to retain the provision in the pilot program rules requiring certified programs to submit documentation demonstrating ongoing compliance with the Commission's rules.[411] Because the Commission may choose to initiate an investigation at its discretion and on its own motion,[412] we propose to eliminate the example that appears in the pilot program rules from the permanent NDBEDP rules that suggests that "evidence that a state program may not be in compliance with those rules" is a prerequisite to such an investigation. We seek comment on these proposals.

119. Finally, to further prevent and detect fraud, waste, and abuse, we propose to retain the whistleblower protections in our rules.[413] Those protections require certified programs to permit individuals to disclose to appropriate officials, without reprisal, known or suspected violations of the Commission's rules 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.[414] 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.[415] We seek comment on this proposal.

### C. Record Retention

120. As part of the pilot program, the Commission adopted a rule requiring all certified programs to retain all records associated with the distribution of equipment and provision of related services under the pilot program for two years following the termination of the pilot program, without specifying the format in which they must be retained, but with the goal of promoting greater transparency and accountability.[416] FTRI recommends that "hard copies" of "information" be retained for "no more than two years" while "[p]ertinent financial records" be retained for "as long as necessary per individual state requirements."[417]

121. Consistent with the Commission's TRS rules, we propose to require certified programs to retain all records associated with the distribution of equipment and provision of related services under the permanent program for a minimum of five years.[418] We seek comment on this proposal and whether such records should be retained for a longer or shorter period of time. Certified programs need such records to support their reimbursement claims, to generate reports required to be filed with the Commission, and to comply with audit requirements. During the pilot program, we also have found that such records are needed for responding to inquiries and complaints. As such, we also propose that certified programs document compliance with all Commission requirements governing the NDBEDP and provide this documentation to the Commission upon request.[419] Record retention is also necessary in the event that

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[410] *See* RolkaLoube Comments at 16. *See also* 47 C.F.R. § 64.604(c)(5)(iii)(D)(*6*) (establishing audit requirements for TRS providers). Delegated authorities may include the TRS Fund Administrator, the Commission's Office of Inspector General or the Enforcement Bureau.

[411] *See* 47 C.F.R. § 64.610(j)(3).

[412] *Id.*

[413] *See* 47 C.F.R. § 64.610(i). The Bureau did not seek comment on these issues in the *Permanent NDBEDP PN*.

[414] *See* 47 C.F.R. § 64.610(i)(1).

[415] *See* 47 C.F.R. § 64.610(i)(2).

[416] *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5684-85, ¶ 101; 47 C.F.R. § 64.610(e)(1)(viii).

[417] FTRI Comments at 3.

[418] *See, e.g.*, 47 C.F.R. §§ 64.604(c)(5)(iii)(D)(*7*), (c)(9)(x), (c)(11)(iv), 64.631(a)(2).

[419] Such a requirement is consistent with our Universal Service low-income program rules. *See* 47 C.F.R. § 54.417. It is also consistent with our current pilot program rules. *See* 47 C.F.R. § 64.610(j)(3).

questions arise about a program's compliance with NDBEDP rules or the propriety of requests for payment. We seek comment on this proposal.

122. We believe that records also are needed to transfer information to another certified program when an eligible consumer moves to another state or to transfer information to a newly-certified program when a certified entity either relinquishes its certification or decides not to seek re-certification.[420] Should our rules require NDBEDP applications to include a release that would permit disclosure of information about the applicant by the certified program, as needed, to minimize any interruption in service if such individual moves to another state or a new entity takes over certification for that individual's state?[421] Alternatively, if we adopt a centralized database for processing reimbursement claims or reporting purposes,[422] we seek comment on whether it will continue to be necessary for certified programs to retain a copy of these records. If so, which records should be retained by certified programs and for what period of time? Should we specify that records must be retained in paper or electronic format, or should we allow each certified program to decide the format in which to retain its records? We seek comment on these and any other matters related to the retention of records under the permanent program.

## VIII. LOGISTICS AND RESPONSIBILITIES

123. The Bureau designated an NDBEDP Administrator, who has been responsible for, among other things, reviewing applications from entities for certification to receive NDBEDP funding, allocating NDBEDP funding, reviewing reimbursement claims, maintaining the NDBEDP website, resolving stakeholder issues, and serving as the Commission point of contact for the NDBEDP.[423] The NDBEDP Administrator has worked with the current TRS Fund Administrator, who has been responsible for, among other things, reviewing cost submissions and releasing funds under the NDBEDP for distributed equipment and related services, including outreach efforts.[424] In the *Permanent NDBEDP PN*, the Bureau sought comment on the extent to which any of these administrative responsibilities should be modified, and if so, how and for what purposes.[425]

124. Commenters report that they have had good experiences with the current administrators and generally oppose any modifications at this time.[426] We seek comment on whether CGB should continue to implement and administer the permanent NDBEDP, and to retain authority over NDBEDP policy matters and the functions of the NDBEDP Administrator.[427] For example, the Bureau may task the

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[420] *See* ¶ 10, *supra*; 47 C.F.R. §§ 64.610(e)(1)(iii)-(iv).

[421] *See, e.g.*, ¶¶ 73-74, *supra* (proposing to retain the requirement that, when a recipient relocates to another state, certified programs must permit the transfer of the recipient's account and any control of the distributed equipment to the new state's certified program); ¶¶ 10, 21, *supra* (proposing that entities that relinquish their certification or do not seek re-certification be required to transfer NDBEDP-purchased equipment, information, files, and other data to the newly-certified entity in its state within 30 days after the effective date of its certification to ensure a smooth transition and reduce any potential for a lapse in service); Sections VII.A (reporting) and VII.B (audits), *supra*.

[422] *See* Section III.F, *supra*.

[423] 47 C.F.R. § 64.610(h)(1). *See also* n.3, *supra*.

[424] 47 C.F.R. § 64.610(h)(2).

[425] *Permanent NDBEDP PN*, 29 FCC Rcd at 9453, ¶ 7.

[426] *See, e.g.*, ATI Comments at 3 (stating that it "believes this process is working); AADB Comments at 15-16 (supporting designation of the NDBEDP Administrator); GACHI Comments at 3 (noting that "services of the Administrator set forth by the Bureau got off to a rocky start but improvements have been made"); IUB Comments at 4 (arguing against any change to the responsibilities of the NDBEDP Administrator, stating that it has been helpful and efficient to have a designated NDBEDP Administrator who "is empowered to make judgment calls and arrive at decisions quickly," and noting improvements in the reimbursement process during the second year of the pilot program); LightHouse Comments at 6 (noting "nothing but good experiences with the current TRS Fund Administrator").

[427] *See* 47 C.F.R. §§ 0.141(f), 0.361.

NDBEDP Administrator with oversight of the development and maintenance of a centralized database, as well as the support for train-the-trainer programs that may be authorized under our final rules in this proceeding.[428] We also seek comment on whether the administration of the NDBEDP should be consolidated with the administration of the other TRS programs in order to achieve greater efficiencies and cost savings. We recognize that after adoption of the *NDBEDP Pilot Program Order* in 2011, in 2013, the Commission delegated financial oversight of the TRS Fund to the Office of Managing Director (OMD).[429] Thus, we also seek comment on ensuring that administration of the permanent NDBEDP be conducted in a manner that ensures CGB's continued oversight over policy matters relating to the program while at the same time ensuring that the Commission satisfies its financial management responsibilities for the TRS program as a whole, complies with all Government-wide financial requirements, and achieves efficiencies and savings in the administrative costs of the NDBEDP.

125. For the permanent NDBEDP, like other TRS programs, "financial oversight must be consistent with the TRS Orders, rules, and policies, and OMD should consult with CGB on issues that potentially could impact the availability, provision, and continuity of services to consumers."[430] Consistent with such direction, we propose that financial oversight of the NDBEDP be required to be consistent with NDBEDP orders, rules, and policies, and that OMD and CGB closely coordinate on any issues that could potentially impact the distribution of equipment or provision of related services to consumers under the NDBEDP.[431] Finally, consistent with the current practice under the NDBEDP pilot program, we propose that the Bureau remain responsible for advising the TRS Fund Administrator on funding allocations and reallocations; payments; and any payment withholdings under the permanent NDBEDP,[432] to the extent that such actions can be made consistently with Government-wide financial requirements and existing contractual obligations and requirements.[433] We seek comment on these proposals.

126. We also seek comment on whether we should establish a process for certified programs to appeal payment withholdings, denials, or suspensions by the NDBEDP Administrator. If so, what

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[428] *See* Section III.F (centralized database) and Section V.E (training trainers), *supra*.

[429] *See Structure and Practices of the Video Relay Services Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8666, ¶ 123 (2013) (*VRS Reform Order*) ("These duties reasonably fall within OMD's current delegated authority to "[a]ssist the Chairman in carrying out the administrative and executive responsibilities..."; and "[a]dvise the Chairman and Commission on management, administrative, and related matters; review and evaluate the programs and procedures of the Commission; initiate action or make recommendations as may be necessary to administer the Communications Act most effectively in the public interest." In addition, this duty is consistent with OMD's current responsibility to, "[p]lan and manage the administrative affairs of the Commission with respect to the functions of... budget and financial management.") (citations omitted), *vacated in part on other grounds sub nom. Sorenson Communications, Inc. v. FCC*, 765 F.3d 37 (D.C. Cir. 2014) (*Sorenson v. FCC (VRS Order)*).

[430] *VRS Reform Order*, 28 FCC Rcd at 8666, ¶ 123.

[431] *Id.* The TRS Fund Program Coordinator, an FCC employee designated by OMD, coordinates with CGB, OMD, and all other relevant Bureaus and Offices, as needed, to appropriately oversee the TRS Fund. *Id.* at 8666, ¶ 126.

[432] Currently, the TRS Fund Administrator conducts a quantitative review to determine if the requested dollar amount is accurate and recommends payment, and the NDBEDP Administrator conducts a qualitative review to ensure that the claimed costs are consistent with the NDBEDP rules and approves payment. *But see* RolkaLoube Comments at 15 (expressing an expectation that the responsibility for reimbursement determinations will be consolidated under the permanent NDBEDP).

[433] Normally the Managing Director, through the agency's Senior Procurement Executive, is responsible for the conduct of any contracting actions and makes all procurement determinations reserved to contracting officers, including any threshold procurement determinations about the appropriateness of using existing procurement vehicles for these purposes. On any new procurement action, the Administrator or bureau functions as program office and technical representative. On any modification to an existing contract or order, the Administrator or bureau works through the technical representative serving that contract or order.

should that process be? For example, should a certified program be permitted to appeal such decisions to the Chief of the Consumer and Governmental Affairs Bureau? We note that the Commission presently maintains a process for the handling of appeals in response to the suspension or withholding of TRS payments,[434] and ask commenters whether a similar or alternative appeals process should be applied to compensation withheld, suspended, or denied under the NDBEDP.

## IX. OTHER CONSIDERATIONS

127. In the *Permanent NDBEDP PN*, the Bureau sought comment on any other issues, concerns, or questions that the Commission should consider during the process of developing rules for the permanent NDBEDP.[435]

### A. Complaints

128. Under the NDBEDP pilot program, the NDBEDP Administrator is responsible for "responding to . . . consumer complaints filed directly with the Commission."[436] In the *NDBEDP Pilot Program Order*, the Commission stated that informal complaints alleging a violation of the Commission's NDBEDP rules may be transmitted to the Commission via any reasonable means, such as by letter, fax, telephone, TTY, or e-mail.[437] Complaints might be filed for various reasons. For example, AADB reports that consumers sometimes complain that trainers and interpreters lack adequate communication skills and that many trainers lack the skills needed for consumers to reap the full benefits of the program.[438] In addition, an applicant may want to appeal a certified program's determination that he or she is not eligible for the program or a program's denial of equipment, training, or other related services. We propose to adopt rules for the permanent NDBEDP to facilitate the receipt and processing of such consumer complaints and appeals.[439]

129. For this purpose, we propose to adopt informal and formal complaint procedures, modeled after the Commission's processes for the handling of complaints against telecommunications and TRS providers, as follows. First, we propose that an informal complaint filed with the Commission must include the name and contact information of the complainant; the name of the NDBEDP certified program; a statement describing how the NDBEDP certified program violated the Commission's rules; what the complainant wants the NDBEDP certified program to do to resolve the complaint; and the complainant's preferred format or method of response, such as by letter, fax, telephone, TTY, or e-mail. The Commission will forward complete complaints to the NDBEDP certified program for a response. When it appears that an informal complaint has been resolved, the Commission may consider the matter closed. In all other cases, the Commission will inform the complainant and the NDBEDP certified program about its review and disposition of the complaint. If a complainant is not satisfied with the NDBEDP certified program's response and the Commission's disposition of the informal complaint, the complainant may file a formal complaint with the Commission in accordance with the Commission's rules for filing formal complaints.[440] The Commission may also conduct inquiries and hold proceedings that it deems necessary to enforce the NDBEDP requirements. We seek comment on these proposed informal and formal complaint procedures.[441]

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[434] *See* 47 C.F.R. § 64.604(c)((iii)(L).

[435] *Permanent NDBEDP PN*, 29 FCC Rcd at 9461, ¶ 24.

[436] 47 C.F.R. § 64.610(h)(l)(viii).

[437] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5686, n.358.

[438] *See, e.g.*, AADB Comments at 28.

[439] *See, e.g.*, 47 C.F.R. §§ 6.15-6.23 (rules previously adopted to enforce section 255 of the Communications Act), 64.604(c)(6)(v) (procedures for informal and formal complaints against TRS providers).

[440] *See* 47 C.F.R. §§ 1.720-1.736.

[441] Appendix F (Proposed Rule Changes) contains the specific rules proposed for such complaint processes.

### B. Research and Development

130. In the *NDBEDP Pilot Program Order*, the Commission declined to allocate funds for research and development (R&D) efforts.[442] Although the Commission recognized the need to stimulate innovation to fill existing equipment and technology gaps to meet the communications technology access needs of individuals who are deaf-blind, it concluded that R&D funding was not appropriate because of insufficient information about those gaps and the kinds of research and funding needed to fill them.[443] The Commission stated that it would collect data during the pilot program and consider allocations for R&D or other measures in the future, as needed.[444]

131. In response to the *Permanent NDBEDP PN*, Inclusive Technologies submitted comments on the need for R&D on advanced technologies that will benefit people who are deaf-blind.[445] It urges the Commission to "support a certain amount of research intended to identify as early as possible technological trends and potential breakthroughs that could have an effect on the program's capabilities."[446] To this end, Inclusive Technologies suggests that the Commission monitor trends in: (1) mobile devices, services, and apps; (2) emerging technologies; and (3) mainstream technologies to determine how changes to these technologies may affect consumers who are deaf-blind and make these technologies more suitable for use in the program.[447] However, because the amount of NDBEDP funding available each year is very limited, and because the potential gaps between existing technology and technology needed to meet the communications needs of individuals who are deaf-blind are not apparent on the record at this time, we tentatively conclude that funding is more appropriately allocated to the distribution of equipment to consumers and related services than to R&D and seek comment on this tentative conclusion.

### C. Advisory Group

132. In response to the *Permanent NDBEDP PN*, the North Carolina Department of Health and Human Services Division of Services for the Deaf and Hard of Hearing (NCDSDHH) suggests that the Commission establish a "workgroup of established administrators of state NDBEDP programs . . . to advise the FCC" on changes to its rules and "applicable timelines" for the program.[448] NCDSDHH suggests that the workgroup be used to pull together individuals with a wealth of experience to "pool ideas, thoughts and suggestions" for the continued operation of the NDBEDP.[449]

133. The Commission recently announced the formation of a Disability Advisory Committee, which will provide advice and recommendations to the Commission on a wide array of disability matters, including the NDBEDP.[450] In addition, the Commission's rulemaking proceedings are open to the public for comment, and feedback from administrators of certified programs is always welcome. For example, during the NDBEDP pilot program, the sharing of expertise and ideas for the NDBEDP has been accomplished through informal monthly conference calls among certified programs that we propose to

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[442] *NDBEDP Pilot Program Order*, 26 FCC Rcd at 5667, ¶ 62.

[443] *Id.*

[444] *Id.*

[445] Inclusive Technologies Comments at 2-3.

[446] *Id.* at 2.

[447] *Id.* at 3.

[448] Comments of North Carolina Department of Health and Human Services Division of Services for the Deaf and Hard of Hearing (NCDSDHH Comments) at 1.

[449] *Id.*

[450] *FCC Announces the Establishment of the Disability Advisory Committee and Solicits Nominations for Membership*, Public Notice, DA 14-1737, 29 FCC Rcd 14484 (2014). *See also FCC Announces First Meeting Date of the Disability Advisory Committee and Appointment of Membership*, Public Notice, DA 15-194 (rel. Feb. 10, 2015).

continue under the permanent program.[451] For these reasons, we do not see the need to establish a separate workgroup of state NDBEDP programs to advise the Commission at this time. We seek comment on this approach.

## X. PROCEDURAL MATTERS

### A. Regulatory Flexibility Act

134. Pursuant to the Regulatory Flexibility Act of 1980, as amended,[452] the Commission's Initial Regulatory Flexibility Certification (IRFC) in this *Notice* is attached as Appendix G. The Commission will send a copy of this *Notice*, including this IRFC, to the Chief Counsel for Advocacy of the Small Business Administration.[453]

### B. Paperwork Reduction Act

135. The *Notice* seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any such proposals, the Commission will publish a separate notice in the *Federal Register* inviting the public to comment on the requirements, as mandated by the Paperwork Reduction Act of 1995.[454] In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[455] we seek comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[456]

### C. *Ex Parte* Presentations

136. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[457] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).[458] In proceedings governed by rule 1.49(f)[459] or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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[451] *See* Section V.A.1, *supra.*

[452] 5 U.S.C. §§ 601, *et seq.*

[453] *See id*. § 605(b).

[454] Pub. L. No. 104-13, 109 Stat. 163. *See* 44 U.S.C. §§ 3501-3520.

[455] Pub. L. No. 107-198, 116 Stat. 729.

[456] 44 U.S.C. § 3506(c)(4).

[457] 47 C.F.R. §§ 1.1200 *et seq*.

[458] *Id*. § 1.1206(b).

[459] *Id*. § 1.49(f).

### D. Comment Filing Procedures

137. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[460] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[461]

138. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

139. *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

140. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

### E. Materials in Accessible Formats

141. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice) or 202-418-0432 (TTY). This Notice of Proposed Rulemaking can also be downloaded in Word and Portable Document Formats (PDF) at http://www.fcc.gov/ndbedp.

## XI. ORDERING CLAUSES

142. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), and 719 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 620, that this Notice of Proposed Rulemaking IS ADOPTED.

143. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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[460] *Id*. §§ 1.415, 1.419.

[461] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

## APPENDIX A

### List of Commenters

| ORGANIZATIONAL COMMENTERS | NDBEDP Certified Program | DATE |
|---|---|---|
| Access Technologies, Inc. (ATI) | Oregon 2012- | August 18, 2014 |
| American Association of the Deaf-Blind (AADB) | | September 5, 2014 |
| American Council of the Blind (ACB) | | August 20, 2014 |
| American Council of the Blind of Texas (ACBT) | | September 2, 2014 |
| Assistive Technology for Kansans (ATK) | Kansas 2012- | August 29, 2014 |
| Association of Assistive Technology Act Programs (ATAP) | | September 4, 2014 |
| Center for Deaf-Blind Persons, Inc. (CDBP) | | September 5, 2014 |
| Connecticut Tech Act Project (CTTAP) | Connecticut 2012- | August 14, 2014 |
| DeafBlind Citizens in Action (DBCA) | | September 5, 2014 |
| Florida Deaf-Blind Association (FDBA) | | August 4, 2014 |
| Florida Telecommunications Relay, Inc. (FTRI) | Florida 2012- | September 2, 2014 |
| Georgia Council for the Hearing Impaired (GACHI) | Georgia 2012- | September 9, 2014 |
| Helen Keller National Center for Deaf-Blind Youth and Adults (HKNC) | New York 2012-<br>Iowa 2014- | September 5, 2014 |
| Helen Keller National Center Southwest Region (HKNC SW) | | August 15, 2014 |
| Inclusive Technologies | | August 19, 2014 |
| Institute on Disabilities at Temple University (IOD) | Pennsylvania 2012- | September 4, 2014 |
| Interagency Program for Assistive Technology (IPAT) | North Dakota 2012- | September 4, 2014 |
| Iowa Utilities Board (IUB) | Iowa 2012-2014 | August 19, 2014 |
| LightHouse for the Blind and Visually Impaired (LightHouse) | California 2012- | September 9, 2014 |
| Maine Center on Deafness (MCD) | Maine 2012- | September 8, 2014 |
| Missouri Assistive Technology (MoAT) | Missouri 2012- | September 5, 2014 |
| North Carolina Department of Health and Human Services Division of Services for the Deaf and Hard of Hearing (NCDSDHH) | North Carolina 2012- | September 19, 2014 |
| Oklahoma Department of Rehabilitation Services (Oklahoma DRS) | Oklahoma 2012- | August 25, 2014 |
| Perkins School for the Blind (Perkins) | Various 2012- | September 4, 2014 |
| RolkaLoube (also known as Rolka Loube Saltzer Associates or RLSA) as the Interstate Telecommunications Relay Services Fund Administrator | | September 5, 2014 |
| Washington Assistive Technology Act Program (WATAP) | | September 5, 2014 |

| | | |
|---|---|---|
| **INDIVIDUAL COMMENTERS** | | |
| Brian Coppola (Coppola) | | August 20, 2014 |
| Laura Engler (Engler) | | September 17, 2014 |
| Brooke Evans (Evans) | | September 2, 2014 |
| Mark Gasaway (Gasaway) | | September 5, 2014 |
| Adrienne Haugen (Haugen) | | September 9, 2014 |
| Tracie Inman (Inman) | | September 9, 2014 |
| Stephanie Kilian (Kilian) | | August 4, 2014 |
| Darlene Laibl-Crowe (Laibl-Crowe) | | September 5, 2014 |
| Catherine Miller (Miller) | | September 5, 2014 |
| Joseph B. Naulty (Naulty) | | September 4, 2014 |
| Janie Neal (Neal) | | September 8, 2014 |
| Rene Pellerin (Pellerin) | | September 4, 2014 |
| Marcus Simmons (Simmons) | | August 19, 2014 |
| Janice Toothman (Toothman) | | September 5, 2014 |
| | | |
| **REPLY COMMENTERS** | | |
| Perkins School for the Blind (Perkins) | | September 19, 2014 |

## APPENDIX B

## Certified Programs

| State | NDBEDP Certified Programs July 2012 | NDBEDP Certified Program Changes July 2012 – May 2015 |
|---|---|---|
| Alabama | Alabama Institute for the Deaf and Blind | |
| Alaska | Assistive Technology of Alaska | |
| Arizona | Perkins School for the Blind | |
| Arkansas | Perkins School for the Blind | |
| California | Lighthouse for the Blind and Visually Impaired | |
| Colorado | Colorado Commission for the Deaf and Hard of Hearing | |
| Connecticut | Connecticut Tech Act Project | |
| Delaware | University of Delaware – Center For Disabilities Studies | |
| Florida | Florida Telecommunications Relay, Inc. | |
| Georgia | Georgia Council for the Hearing Impaired | |
| Hawaii | Island Skill Gathering | Helen Keller National Center for Deaf-Blind Youth and Adults |
| Idaho | University of Idaho – Idaho Assistive Technology Project | |
| Illinois | The Chicago Lighthouse for People Who Are Blind or Visually Impaired | |
| Indiana | Indiana State University | Perkins School for the Blind |
| Iowa | Iowa Utilities Board | Helen Keller National Center for Deaf-Blind Youth and Adults |
| Kansas | Assistive Technology for Kansans | |
| Kentucky | Eastern Kentucky University Center on Deafness and Hearing Loss | |
| Louisiana | Affiliated Blind of Louisiana Training Center | |
| Maine | Maine Center on Deafness | |
| Maryland | Perkins School for the Blind | |
| Massachusetts | Perkins School for the Blind | |
| Michigan | Michigan Commission for the Blind | Perkins School for the Blind |
| Minnesota | Minnesota Department of Human Services Deaf and Hard of Hearing Service Division | Perkins School for the Blind |
| Mississippi | The Arc of Mississippi | Perkins School for the Blind |
| Missouri | Missouri Assistive Technology | |
| Montana | Perkins School for the Blind | |
| Nebraska | Nebraska Commission for the Deaf | Nebraska Assistive Technology |

| | | |
|---|---|---|
| | and Hard of Hearing | Partnership |
| Nevada | Deaf and Hard of Hearing Advocacy Resource Center | Perkins School for the Blind |
| New Hampshire | Northeast Deaf and Hard of Hearing Services, Inc. | |
| **State** | **NDBEDP Certified Programs July 2012** | **NDBEDP Certified Program Changes July 2012 – May 2015** |
| New Jersey | New Jersey Commission for the Blind and Visually Impaired | |
| New Mexico | Perkins School for the Blind | |
| New York | Helen Keller National Center for Deaf-Blind Youth and Adults | |
| North Carolina | North Carolina Division of Services for the Deaf and the Hard of Hearing | |
| North Dakota | Interagency Program for Assistive Technology | |
| Ohio | Ohio Deaf-Blind Outreach Program | |
| Oklahoma | Oklahoma Department of Rehabilitation Services | |
| Oregon | Access Technologies, Inc. | |
| Pennsylvania | Institute on Disabilities – Temple University | |
| Rhode Island | Perkins School for the Blind | |
| South Carolina | Perkins School for the Blind | |
| South Dakota | South Dakota Department of Human Services | |
| Tennessee | Tennessee Regulatory Authority | |
| Texas | Perkins School for the Blind | |
| Utah | Utah Public Service Commission | Perkins School for the Blind |
| Vermont | Vermont Center for the Deaf and Hard of Hearing | Perkins School for the Blind |
| Virginia | Virginia Department for the Deaf and Hard of Hearing | |
| Washington | Department of Social and Health Services – Office of the Deaf and Hard of Hearing | |
| West Virginia | Perkins School for the Blind | |
| Wisconsin | Public Service Commission of Wisconsin | |
| Wyoming | Wyoming Institute for Disabilities – University of Wyoming | |
| | | |
| Washington, DC | Columbia Lighthouse for the Blind | |
| Puerto Rico | Perkins School for the Blind | |
| U.S. Virgin Islands | Perkins School for the Blind | |

## APPENDIX C

### Summary of Pilot Program Expenditures for 2012-2013 and 2013-2014

| | Available Funding | 2012-2013 | | 2013-2014 | |
|---|---|---|---|---|---|
| | | Amount Used | % Used | Amount Used | % Used |
| **Program and Administrative Costs** | $9,500,000 | $6,257,608 | 65.87% | $8,534,814 | 89.84% |
| **National Outreach** | $500,000 | $500,000 | 100.00% | $500,000 | 100.00% |
| **TOTAL** | **$10,000,000** | **$6,757,608** | **67.58%** | **$9,034,814** | **90.35%** |

### Summary of Pilot Program Expenditures for 2013-2014 by Category of Expense

Of the total expenditures of $9,034,814 in 2013-2014, $500,000 was allocated and used for national outreach. As shown in this chart, the remaining **$8,534,814 was used by the 53 certified programs as follows: 75% serving individuals** (8% on communication assessments, 45% to purchase and distribute equipment, and 22% to install the equipment and train recipients how to use the equipment); and **25% establishing, promoting, and administering the programs** (4% for demonstration equipment, 11% on local outreach, and 11% to cover administrative costs).

| 2013-2014 | Amount Used | % | |
|---|---|---|---|
| | | | |
| **Program and Administrative Costs** | **$8,534,814** | | **100.00%** |
| | | | |
| **Program Costs** | **$7,594,836** | | **88.99%** |
| | | | |
| **State and Local Outreach** | **$910,423** | **10.67%** | |
| Outreach Events | $332,170 | | |
| Program Information | $219,616 | | |
| Advertisement | $255,567 | | |
| In State Travel | $57,406 | | |
| Aids and Services | $12,744 | | |
| Other | $32,912 | | |
| | | | |
| **Assessments** | **$665,436** | **7.80%** | |
| Eligibility Verification | $153,659 | | |
| Communications | $305,844 | | |

| | | | |
|---|---|---|---|
| Travel | $159,922 | | |
| Aids and Services | $28,576 | | |
| Other | $17,436 | | |
| **2013-2014** | **Amount Used** | **%** | |
| | | | |
| **Equipment Distributed** | **$3,860,208** | **45.23%** | |
| Specialized Equipment | $1,526,961 | | |
| Off the Shelf Hardware | $1,497,159 | | |
| Software Applications | $323,707 | | |
| Upgrades | $22,868 | | |
| Travel | $4,729 | | |
| Maintenance, Repairs, and Warranties | $187,253 | | |
| Accessories | $170,379 | | |
| Alert Devices | $54,865 | | |
| Shipping | $49,185 | | |
| Partial Payment | $ - | | |
| Miscellaneous Equipment | $2,736 | | |
| Other | $26,368 | | |
| | | | |
| **Demonstration Equipment** | **$303,799** | **3.56%** | |
| | | | |
| **Installation and Training** | **$1,854,969** | **21.73%** | |
| Installation | $343,327 | | |
| Training | $843,844 | | |
| Travel | $520,321 | | |
| Instructional Materials | $1,287 | | |
| Aids and Services | $113,729 | | |
| Other | $32,460 | | |
| | | | |
| **Administrative Costs Paid** | **$939,978** | | **11.01%** |
| Administrative Costs Claimed | $1,188,307 | | 13.92% |
| Administrative Costs not Paid | $248,329 | | 2.91% |

**Summary Pilot Program Expenditures Per Person for 2012-2013 and 2013-2014**

Pilot Program Expenditures 2012-2013 = $6,757,608
Pilot Program Expenditures 2013-2014 = $9,034,814
Total Pilot Program Expenditures = $15,792,422

Number of individuals served in 2012-2013 and 2013-2014[462] = 1,893
Total Expenditures Per Person = $8,343

[462] Based on reports of NDBEDP activities filed by all 53 certified programs with the Commission, 1,893 unique individuals were served during pilot program years 2012-2013 and 2013-2014.

Expenditures per person for assessments, equipment, installation, and training = $5,252

Expenditures per person for national outreach, local outreach, demonstration equipment, and administrative costs = $3,091

**Pilot Program Statistics**
**Reported by Perkins School for the Blind**

| 2012-2013[463] | 2013-2014[464] |
|---|---|
| 909 active consumers | 1,598 active consumers |
| 524 received assessments | 768 received assessments |
| Average 2.4 hours / $411 | Average 1.91 hours / $400 |
| [no corresponding entry for 2012-2014] | 795 received equipment |
| 2,458 pieces of equipment, including 138 Braille devices that account for 33% of costs | 4,854 pieces of equipment, that account for 22% of cost, and including 1,805 accessories (such as specialized keyboards, mounts, switches, and headsets) that account for 5% of cost |
| [no corresponding entry for 2013-2014] | Average equipment cost per consumer $2,632 (max $12,817) |
| 168 received some training | 715 received some training |
| Average 6.3 hours / $1,003 | Average 7.54 hours / $1,211 |

[463] Perkins reported data that it compiled based on 35 of 53 certified programs that used its database during the first year of the pilot program. *See* iCanConnect "Year One Highlights" (filed Nov. 20, 2013) available at http://apps.fcc.gov/ecfs/document/view?id=7520958851 (last viewed Apr. 28, 2015).

[464] Perkins reported data that it compiled based on 33 of 53 certified programs that used its database during the second year of the pilot program. *See* iCanConnect "Year 2 in Review" (filed Dec. 23, 2014) available at http://apps.fcc.gov/ecfs/document/view?id=60001010881 (last viewed Apr. 28, 2015).

## APPENDIX D

### Summary of Proposed Funding Allocations

| | **NDBEDP Pilot Program** | **Proposal for Permanent NDBEDP** |
|---|---|---|
| National Outreach | $500,000 | $250,000 |
| Centralized Database for Reporting and Reimbursement | | Up to $380,000 |
| Training Trainers | | Up to $250,000 |
| Certified Programs | $9,500,000<br><br>allocated to 53 entities certified to participate in the NDBEDP – one entity in each state, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands – $50,000 each plus an amount in proportion to each jurisdiction's population | $9,120,000<br><br>to be allocated to 56 entities certified to participate in the NDBEDP – one entity in each state, plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands – $50,000 each plus an amount in proportion to each jurisdiction's population |
| **Total** | **$10,000,000** | **$10,000,000** |

# APPENDIX E

## Pilot Program Rules

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) *Equipment.* Hardware, software, and applications, whether separate or in combination, mainstream or specialized, needed by an individual who is deaf-blind to achieve access to telecommunications service,

Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, as these services have been defined by the Communications Act.

(2) *Individual who is deaf-blind.*

(i) Any person:

(A) 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;

(B) 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

(C) For whom the combination of impairments described in clauses (c)(2)(i)(A) and (B) of this section cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.

(ii) The definition in this paragraph also includes any individual who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining vocational objectives. An applicant's functional abilities with respect to using telecommunications, Internet access, and advanced communications services in various environments shall be considered when determining whether the individual is deaf-blind under clauses (c)(2)(i)(B) and (C) of this section.

(d) *Eligibility criteria*

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

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

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

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

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

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

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

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

(e) *Equipment distribution and related services.*

(1) Each program certified under the NDBEDP must:

(i) Distribute specialized CPE and provide related services needed to make telecommunications service, Internet access service, and advanced communications, including interexchange services or advanced telecommunications and information services, accessible to individuals who are deaf-blind;

(ii) Obtain verification that NDBEDP applicants meet the definition of an individual who is deaf-blind contained in 47 CFR 64.610(c)(1) and the income eligibility requirements contained in 47 CFR 64.610(d)(2);

(iii) When a recipient relocates to another state, permit transfer of the recipient's account and any control of the distributed equipment to the new state's certified program; (iv) Permit transfer of equipment from a prior state, by that state's NDBEDP certified program;

[Reserved]

(v) Prohibit recipients from transferring equipment received under the NDBEDP to another person through sale or otherwise;

(vi) Conduct outreach, in accessible formats, to inform their state residents about the NDBEDP, which may include the development and maintenance of a program Web site;

(vii) Engage an independent auditor to perform annual audits designed to detect and prevent fraud, waste, and abuse, and submit, as necessary, to audits arranged by the Commission, the Consumer and Governmental Affairs Bureau, the NDBEDP Administrator, or the TRS Fund Administrator for such purpose;

(viii) Retain all records associated with the distribution of equipment and provision of related services under the NDBEDP for two years following the termination of the pilot program; and

(ix) Comply with the reporting requirements contained in 47 CFR 64.610(g).

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

(i) Impose restrictions on specific brands, models or types of communications technology that recipients may receive to access the communications services covered in this section;

(ii) Disable or otherwise intentionally make it difficult for recipients to use certain capabilities, functions, or features on distributed equipment that are needed to access the communications services covered in this section, or direct manufacturers or vendors of specialized CPE to disable or make it difficult for recipients to use certain capabilities, functions, or features on distributed equipment that are needed to access the communications services covered in this section; or

(iii) Accept any type of financial arrangement from equipment vendors that could incentivize the purchase of particular equipment.

(f) *Payments to NDBEDP certified programs.*

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

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

reasonable costs of the following:

(i) Equipment and related expenses, including maintenance, repairs, warranties, returns, refurbishing, upgrading, and replacing equipment distributed to consumers;

(ii) Individual needs assessments;

(iii) Installation of equipment and individualized consumer training;

(iv) Maintenance of an inventory of equipment that can be loaned to the consumer during periods of equipment repair;

(v) Outreach efforts to inform state residents about the NDBEDP; and

(vi) Administration of the program, but not to exceed 15 percent of the total reimbursable costs for the distribution of equipment and related services permitted under the NDBEDP.

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

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

(g) *Reporting requirements.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) *Whistleblower protections.*

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

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

(j) *Suspension or revocation of certification.*

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

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

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

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

**APPENDIX F**

**Proposed Rule Changes**

For the reasons stated in the preamble, the Federal Communications Commission proposes to amend Title 47 of the Code of Federal Regulations as follows:

## Part 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

**Authority:** 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, unless otherwise noted.

2. Amend § 64.610 to read as follows:

### § 64.610 National Deaf-Blind Equipment Distribution Program.

(a) The National Deaf-Blind Equipment Distribution Program (NDBEDP) is established to distribute specialized customer premises equipment (CPE) used for telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, to low-income individuals who are deaf-blind.

(b) *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 authorized entity to participate in the NDBEDP and receive reimbursement for its program's activities from the Interstate Telecommunications Relay Service Fund (TRS Fund). Such entity will have full oversight and responsibility for distributing equipment and providing related services, 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.

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

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

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

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

(iii) Administrative and financial management experience;

(iv) 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;

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

(vi) Experience in training consumers on how to use the equipment and how to set up the equipment for its effective use; and

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

(3) Certification granted under this section shall remain in effect for five years. One year prior to the expiration of the certification, a program may apply for renewal of its certification as prescribed by paragraph (3) of this section.

(4) A certified program must notify the Commission within 60 days of any substantive change that bears on its ability to meet the qualifications necessary for certification under paragraph (3) of this section.

(5) A program may relinquish its certification by providing written notice to the Commission at least 90 days in advance of its intent to do so. This program must transfer NDBEDP-related data and equipment to the newly-certified state program within 30 days of its certification and comply with the reimbursement and reporting requirements prescribed by subsections (f) and (g) of this section.

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

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

(2) *Individual who is deaf-blind.*

(i) Any person:

(A) 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;

(B) 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

(C) For whom the combination of impairments described in clauses (c)(2)(i)(A) and (B) of this section cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.

(ii) The definition in this paragraph also includes any individual who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining vocational objectives. An applicant's functional abilities with respect to using telecommunications, Internet access, and advanced communications services in various environments shall be considered when determining whether the individual is deaf-blind under clauses (c)(2)(i)(B) and (C) of this section.

(3) *Specialized customer premises equipment (CPE).* For purposes of this section, specialized CPE means 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.

(d) *Eligibility criteria.*

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

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

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

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

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

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

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

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

(5) *Age.* A program certified under the NDBEDP may not establish criteria that exclude low-income individuals who are deaf-blind of a certain age from applying for or receiving equipment when the needs of such individuals are not being met through other available resources.

(e) *Equipment distribution and related services.*

(1) Each program certified under the NDBEDP must:

(i) Distribute specialized CPE and provide related services needed to make telecommunications service, Internet access service, and advanced communications, including interexchange services or advanced telecommunications and information services, accessible to individuals who are deaf-blind;

(ii) Obtain verification that NDBEDP applicants meet the definition of an individual who is deaf-blind contained in 47 CFR 64.610(c)(1) at least once every three years and the income eligibility requirements contained in 47 CFR 64.610(d)(2) at least once each year;

(iii) Permit the transfer of a recipient's account and any control of the distributed equipment to another state's certified program when a recipient relocates to that state;

(iv) Permit the transfer of a recipient's account and any control of the distributed equipment from another state's NDBEDP certified program when a recipient relocates to its state;

(v) Prohibit recipients from transferring equipment received under the NDBEDP to another person through sale or otherwise, and include the following attestation on all consumer application forms:

I certify that all information provided on this application, including information about my disability and income eligibility to receive equipment, is true, complete, and accurate to the best of my knowledge. Program officials have my permission to verify the information provided.

If I am eligible for services, I agree to use these services solely for the purposes intended. I further understand that I may not sell, give, lend, or transfer interest in any equipment provided to me. Falsification of any records or failure to comply with these provisions will result in immediate termination of service. In addition, I understand that if I purposely provide false information I may be subject to legal action. I certify that I have read, understand, and accept all conditions associated with iCanConnect, the National Deaf-Blind Equipment Distribution Program;

(vi) Conduct outreach, in accessible formats, to inform their state residents about the NDBEDP, which may include the development and maintenance of a program website;

(vii) Include a brief narrative description on its website of any criteria, priorities, or strategies to ensure the fair distribution of equipment to low-income residents who are deaf-blind;

(viii) Engage an independent auditor to conduct an annual audit, submit a copy of the annual audit to the TRS Fund Administrator and the NDBEDP Administrator, and submit to audits as deemed appropriate by the Commission or its delegated authorities;

(ix) 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 as required under 47 CFR 64.610(f) and that are needed to generate the reports required under 47 CFR 64.610(g), for a minimum of five years, and provide such documentation to the Commission upon request; and

(ix) Comply with the reporting requirements contained in 47 CFR 64.610(g).

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

(i) Impose restrictions on specific brands, models or types of communications technology that recipients may receive to access the communications services covered in this section;

(ii) Disable or otherwise intentionally make it difficult for recipients to use certain capabilities, functions, or features on distributed equipment that are needed to access the communications services covered in this section, or direct manufacturers or vendors of specialized CPE to disable or make it difficult for recipients to use certain capabilities, functions, or features on distributed equipment that are needed to access the communications services covered in this section; or

(iii) Accept any type of financial arrangement from equipment vendors that could incentivize the purchase of particular equipment.

(f) *Payments to NDBEDP certified programs.*

(1) Programs certified under the NDBEDP shall be reimbursed for the cost of equipment that has been distributed to 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.

(2) Upon certification and at the beginning of each Fund year, state programs may elect to submit reimbursement claims on a monthly, quarterly, or semi-annual basis;

(3) Within 30 days after the end of each reimbursement period during the Fund year, each certified program must submit documentation that supports its claim for reimbursement of the reasonable costs of the following:

(i) Equipment and related expenses, including maintenance, repairs, warranties, returns, refurbishing, upgrading, and replacing equipment distributed to consumers;

(ii) Individual needs assessments;

(iii) Installation of equipment and individualized consumer training;

(iv) Maintenance of an inventory of equipment that can be loaned to the consumer during periods of equipment repair;

(v) Outreach efforts to inform state residents about the NDBEDP;

(vi) Train-the-trainer activities, but not to exceed 2.5 percent of the certified program's funding allocation;

(vii) Travel expenses; and

(viii) Administration of the program, but not to exceed 15 percent of the certified program's funding allocation.

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

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

(g) *Reporting requirements.*

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

(i) For each piece of equipment distributed, the full name of the equipment recipient and contact information, including the recipient's residential street and e-mail addresses, and personal phone number;

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

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

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

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

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

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

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

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

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

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

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

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

I swear under penalty of perjury that I am (name and title), an officer of the above-named reporting entity, and that 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.

(h) *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, and shall advise the TRS Fund Administrator on funding allocations and reallocations, payments, and any payment withholdings under the NDBEDP.

(i) *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, or e-mail.

(*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 Act and/or the Commission's rules; 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 without response to the complainant or NDBEDP certified program. 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 subsection.

(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 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 in the 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.

(j) *Whistleblower protections.*

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

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

(k) *Suspension or revocation of certification.*

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

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

(3) The Commission may, at its discretion and on its own motion, require a certified program to submit documentation demonstrating ongoing compliance with the Commission's rules.

## APPENDIX G

### Initial Regulatory Flexibility Certification

144. The Regulatory Flexibility Act (RFA)[465] 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."[466] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[467] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[468] 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).[469]

145. In the *Notice*, the Commission seeks comment on its proposal to further implement section 105 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) that requires the Commission to take various measures to ensure that people with disabilities have access to emerging communications technologies in the 21st Century.[470] Pursuant to section 105, in 2011, the Commission established the National Deaf-Blind Equipment Distribution Program (NDBEDP) as a pilot program to provide up to $10 million annually from the Interstate Telecommunications Relay Service Fund (TRS Fund) for the distribution of communications devices to low-income individuals who are deaf-blind.[471] The Commission authorized up to 53 certified programs to participate in the pilot program – one entity to distribute equipment in each state, plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands – and selected Perkins School for the Blind as the national outreach coordinator to support the outreach and distribution efforts of these state programs. Through the pilot program, thousands of low-income individuals who are deaf-blind have received equipment used for distance communications or the Internet and training on how to operate this equipment. The pilot program will expire on June 30, 2015.

146. On August 1, 2014, the Commission released a Public Notice inviting comment on which rules governing the NDBEDP pilot program should be retained and which should be modified to make

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[465] *See* 5 U.S.C. §§ 601, *et seq*. The RFA has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[466] *See* 5 U.S.C. § 605(b).

[467] 5 U.S.C. § 601(6).

[468] 5 U.S.C § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[469] 15 U.S.C. § 632.

[470] Pub. L. No. 111-260, 124 Stat. 2751 (2010) ); Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA). Section 105 of the CVAA adds section 719 to the Communications Act of 1934, as amended, and is codified at 47 U.S.C. § 620.

[471] *See Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, CG Docket No. 10-210, Report and Order, 26 FCC Rcd 5640, 5649-50, ¶ 22 (2011) (*NDBEDP Pilot Program Order*); *see also* 47 C.F.R. § 64.610 (NDBEDP pilot program rules). 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); *see also* 29 U.S.C. § 1905(2).

the permanent NDBEDP more effective and more efficient.[472] On May 21, 2015, the Commission extended the pilot program for one additional year, until June 30, 2016.[473]

147. Currently, programs are certified to distribute equipment in all the states and the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The *Notice* proposes to expand NDBEDP programs and funding to the U.S. territories of American Samoa, Guam, and the Northern Mariana Islands because residents of these territories are also eligible for services supported by the TRS Fund.

148. The *Notice* proposes that current programs and other entities that want to apply for certification seek certification for a five-year period and every five years after that. The *Notice* proposes that, if a current program seeks to renew its certification or another entity wants to apply for certification, it must, one year prior to the expiration of a certification, submit an application explaining why it is still eligible to participate in the NDBEDP.

149. The *Notice* proposes that the Commission create, by itself or by engaging a third party, a centralized database that would assist the programs in performing two functions. First, all programs would be able to submit information into the database and use the database to generate the reports that must be submitted to the Commission every six months. Second, all programs would be able to submit data regarding their expenses into the database and generate reimbursement claims that must be submitted to the TRS Fund Administrator. Submission of data into a central database in a uniform manner would diminish administrative costs for the programs. Collecting data in a uniform manner from the programs would enable the Commission to analyze aggregate data. The *Notice* invites comment on the development and functions of the database, and estimates that the database will cost between $285,000 and $380,000 annually.

150. The *Notice* proposes that each certified program be required to make public on its website, if one is maintained by the certified program, or as part of its other local outreach efforts a brief narrative description of any criteria, priorities, or strategies it uses to ensure the fair distribution of equipment to low-income residents who are deaf-blind. The *Notice* invites comment on whether any burdens placed on the program by such a requirement would be outweighed by the benefits.

151. In the *NDBEDP Pilot Program Order*, the Commission concluded that without training recipients on how to use the communications equipment they receive, such as braille readers, recipients will not be able to use the equipment, and the equipment will be underutilized or abandoned.[474] The NDBEDP pilot program permits reimbursement for the reasonable costs of installing NDBEDP-distributed equipment and individualized consumer training on how to use such equipment.[475] To help address a shortage of qualified trainers, the *Notice* proposes to set aside 2.5% of the $10 million annual funding allocation ($250,000) for each of the first three years of the permanent program to support train-the-trainer activities, including the reasonable costs of travel for such training, and seeks comment on this proposal. The *Notice* invites comment on whether to support train-the-trainer programs provided by one or more entities, or to reimburse state programs for train-the-trainer activities they select.

152. 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. Within this annual allocation amount, the Commission did not establish any caps for costs

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[472] *Consumer and Governmental Affairs Bureau Seeks Comment on the National Deaf-Blind Equipment Distribution Program*, CG Docket No. 10-210, Public Notice, 29 FCC Rcd 9451 (CGB 2014) (*Permanent NDBEDP PN*).

[473] *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, CG Docket No. 10-210, Order, FCC 15-57 (rel. May 27, 2015). The Commission commits to continue the pilot NDBEDP as long as necessary to ensure a seamless transition between the pilot and permanent programs to ensure the uninterrupted distribution of equipment to this target population. When the Commission adopts final rules for the permanent program it will consider the extent to which the pilot program needs to be extended further.

[474] *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670, ¶ 69.

[475] 47 C.F.R. § 64.610(f)(2)(iii). *See also NDBEDP Pilot Program Order*, 26 FCC Rcd at 5670-71, ¶ 69.

associated with outreach, assessments, equipment, installation, or training, but did establish a cap for administrative costs. The *Notice* proposes to limit local outreach conducted by certified programs to 10% of their annual allocations. The Commission, in a previous NDBEDP order, defined administrative costs to include reporting requirements, accounting, regular audits, oversight, and general administration.[476] 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.[477] The *Notice* proposes to reimburse certified programs for administrative costs up to 15% of their annual allocation, regardless of the amount of equipment and related services they actually provide. The *Notice* recognizes that during the first two years of the NDBEDP pilot, some programs' administrative costs exceeded the allowable 15% reimbursable amount. To respond to these concerns, the *Notice* proposes the creation of a centralized database to be used by certified programs for generating reports and reimbursement claims, which may alleviate the administrative burdens for certified programs operating in the permanent NDBEDP by making it easier to operate without a loss within the 15% administrative cap. If adopted, certified programs would no longer have these costs and therefore would have more money under their 15% cap on administrative costs.

153. During each year of the pilot program, the Commission has set aside $500,000 of the $10 million available annually for Perkins School for the Blind, as the outreach coordinator selected by the Consumer and Governmental Affairs Bureau (CGB or Bureau), to perform national outreach to promote the NDBEDP.[478] As the Commission explained in the *NDBEDP Pilot Program Order*, significant initial funding for outreach was necessary to inform eligible individuals about the availability of the program so that distribution of equipment could take place.[479] Based on the successful efforts of the national outreach program, the *Notice* proposes to continue funding for national outreach efforts at a reduced level. The *Notice* therefore proposes to reduce the amount of money spent on national outreach to $250,000 for each of the first three years of the permanent program, and seeks comment on this proposal.

154. The NDBEDP pilot program rules require all certified programs to report their status every six months. The *Notice* finds that continuing to receive this data will be useful to the permanent program as well because this will allow the Commission to ensure that NDBEDP certified programs continue to operate efficiently and that they effectively meet consumer needs. The *Notice* finds that any current reporting burden on the certified programs will be diminished by the creation of a centralized database.

155. 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. The *Notice* proposes to continue to require certified programs to engage an independent auditor to perform annual audits. It also proposes that each certified program submit a copy of its annual audit to the TRS Fund Administrator and the NDBEDP Administrator and to continue to require each program to submit to an audit at any time deemed necessary by the Commission or its delegated authorities. The *Notice* invites comments on this proposal and any alternative proposals.

156. Under the current NDBEDP, 53 certified programs provide communications equipment to low-income individuals who are deaf-blind. Under the *Notice*, this number may be expanded to 56 certified programs. One entity performs national outreach to promote the NDBEDP and serve as a resource to the certified programs. The *Notice* proposes to create a centralized database and the Commission may engage a third-party for that purpose. The *Notice* also proposes that the Commission may select an entity to train the certified programs' trainers. The Commission will pay all of these entities for their costs to perform these duties from the TRS Fund so that all their NDBEDP costs are

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[476] *See id.* at 5680, ¶ 92.

[477] 47 C.F.R. §64.610(f)(vi). The 15% cap does not apply to, and there is no cap for, costs associated with outreach, assessments, equipment, installation, or training. *See NDBEDP Pilot Program Order*, 26 FCC Rcd at 5680, ¶ 92.

[478] *See id.* at 5676, ¶ 80.

[479] *See id.* at 5675, ¶ 79

reimbursed up to the annual funding allocations established for these purposes.

157. The Commission finds that the rules proposed in this *Notice* will not have a significant economic impact on these entities because the Commission will reimburse them for all of their NDBEDP expenses from the TRS Fund, up to their annual funding allocations. The proposals in the *Notice* are intended to reduce the administrative burden on certified programs. The changes we propose are of an administrative nature, and will not have a significant economic impact on small entities. If there is an economic impact on small entities as a result of these proposals, however, we expect the impact to be a positive one.

158. The Commission therefore certifies, pursuant to the RFA, that the proposals in this *Notice*, if adopted, will not have a significant economic impact on a substantial number of small entities.

159. The Commission will send a copy of the *Notice*, including a copy of this initial certification, to the Chief Counsel for Advocacy of the SBA.[480] In addition, a copy of the *Notice* and this initial certification will be published in the *Federal Register*.

[480] *See* 5 U.S.C. § 605(b).

**STATEMENT OF**
**CHAIRMAN THOMAS E. WHEELER**

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

Communications technology has the power to transform people's lives. Few initiatives more vividly illustrate that power than the National Deaf-Blind Equipment Distribution Program, what we call iCanConnect.

For thousands of Americans who have both limited sight and hearing, iCanConnect has helped ease their sense of isolation and open up the world in immeasurable ways. iCanConnect reminds us of this agency's power to make a difference. Today, we move to make this life-changing program permanent.

Established by the FCC in July 2012, the National Deaf-Blind Equipment Distribution Program empowers low-income individuals who are deaf-blind to access 21st Century communications services.

The program provides up to $10 million annually for free communications equipment designed for individuals who have both limited sight and hearing. In addition, it supports outreach to those communities to ensure that improved access is coupled with increased usage.

Programs are in place in all 50 states, plus the District of Columbia, Puerto Rico, and the Virgin Islands, and they are having powerful impact. Thousands of individuals have been served, thousands of pieces of equipment have been distributed, and many hours of training have been delivered.

The response from the program's beneficiaries has been profound.

Lori Siedman of Boston says, "I feel more equal, more independent. It changed my life."

Rosetta Brown of Conyers, Georgia reports, "I just don't have the words to explain how exciting this is for me and how very significant this is to me."

Riverdale, Utah's Ramona Rice adds, "I've been given a chance to be a productive member of society."

Although iCanConnect is transforming lives across America, it's currently is set to expire on June 30, 2015. Our companion order extends the pilot program for one year and includes a commitment to seamlessly transition to a permanent program. The Commission launched the National Deaf-Blind Equipment Distribution Program, which is authorized by the Twenty-First Century Communications and Video Accessibility Act (CVAA), as a pilot program.

Today's Order and Notice of Proposed Rulemaking would extend the pilot program past June 30 and simultaneously move forward with rules to establish the permanent program and improve upon the pilot program. To start along this road, the Commission had already issued a public notice asking for comments on how to improve the program. The proposed rules reflect ideas for improvements gathered from the public notice and lessons learned from the pilot program.

Communications technology can tear down barriers for people who are deaf-blind, opening up new opportunities for more active daily lives, community involvement, and even

employment.  No deaf-blind American should be denied access to this life-altering technology because they can't afford it.  Today, we move to make sure none will be denied.  By extending and improving the National Deaf-Blind Equipment Distribution Program, we empower thousands to lead more independent lives and ensure that the fundamental American promise of opportunity for all includes low-income Americans with disabilities.

**STATEMENT OF**
**COMMISSIONER MIGNON L. CLYBURN**

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

"Once I knew only darkness and stillness … my life was without past or future," Helen Keller said "… but a little word from the fingers of another fell into my hand that clutched at emptiness, and my heart leaped to the rapture of living."

For Americans who are deaf-blind, connecting with family, friends, and fully participating in society can be a struggle. Tasks that are seemingly simple for many of us, such as sending emails or chatting on the phone, can be difficult or even impossible for deaf-blind individuals if they do not have access to adaptive equipment. Thankfully, that is changing, through enlightenment and technological advances, we are slowly but surely breaking down long standing barriers to enable more seamless means to communicate and engage.

I venture to say that there is no way that visionary champion Helen Keller could have imagined how truly transformative technology would be for this and the next generation of deaf-blind individuals. Technology is enabling all voices to be heard and we can now envision a wide array of hope and opportunities.

Unfortunately, the cost of these enabling devices puts many of these empowering technologies out of reach for too many. And while the percentage of Americans who are deaf-blind is small, our commitment to close any divide that prevents them from having access to life-changing technologies is not. Congress recognized this, in the Twenty-First Century Communications and Video Accessibility Act of 2010 (the CVAA), and directed the FCC to provide up to $10 million annually to support programs that distribute communications equipment to low-income individuals who are deaf-blind.

I was pleased to support the Order establishing the pilot program in 2011 and, in the short time the pilot has been operating, the benefits have been many.

Program participant Ramona Rice explained that "[w]e live in a society where we have to connect," but she added that for deaf-blind individuals, without access to technology, "it's a very lonely world." Ms. Rice indicated that she planned to use these new communications tools to help her return to school, and possibly, get back into the workforce. "I've been given a chance to be a productive member of society, and I thank you all genuinely, from my heart."

A young college student named Burgon Jensen, shared her perspective: "I'm able to communicate with people anytime I need to. … I don't have to ask somebody else. I'm a lot more independent." Her mother calls the equipment "miraculous" and a "game-changer!"

These stories are not unique and affirm that technology is one of the great equalizers of our time. It is empowering, it is inclusive, and it promotes independence. I am pleased to support today's Notice of Proposed Rulemaking, which seeks comment on how best to create a permanent path to increased independence. Closing the affordability gap and providing life-changing equipment that better enables deaf-blind individuals to communicate is something we should all be proud to support.

I would be remiss if I did not highlight the fact that while consumers need access to affordable equipment -- and I am wholeheartedly supportive of this -- these devices are mere

gadgets that could gather dust without access to broadband. This is why I remain vocal about the need to completely revamp the Lifeline and transform it into an inclusive, dignified, administratively sound program that will truly address the needs of qualified consumers with more robust service offerings. I look forward to working with my colleagues to achieve this goal.

Mr. Eddie Martinez Jr., thank you for your presence and participation this morning. I also wish to thank the Consumer and Government Affairs Bureau and in particular the Disability Rights Office for their unwavering dedication to break down barriers for persons with disabilities.

**STATEMENT OF**
**COMMISSIONER JESSICA ROSENWORCEL**

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

It was nearly five years ago that the Twenty-First Century Communications and Video Accessibility Act was signed into law. I know because I had the honor of being there. Now seeing civil rights legislation signed into law is a powerful thing. But the Twenty-First Century Communications and Video Accessibility Act itself is also powerful—because it built on the blueprint of the Americans with Disabilities Act and pried open the doors of opportunity and access for the Internet era.

Of course, five years is a virtual eternity when it comes to the equipment we now use to communicate. That is why I am glad we are taking a fresh look at the National Deaf-Blind Equipment Distribution Program in order to take this program from pilot to permanent. This is not only the right thing to do—it's the law. That's because in the Twenty-First Century Communications and Video Accessibility Act, Congress charged the Commission with developing this program to make telephone and Internet services accessible to individuals who are deaf-blind all across the country. Already, our efforts have helped nearly two thousand people lead lives that are more productive, more connected, and more independent. I am convinced there is more good to do, more doors to pry open, and more opportunity to offer through this program. I am pleased we are on course to do so.

**STATEMENT OF**
**COMMISSIONER AJIT PAI**

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

Helen Keller said, "blindness separates people from things; deafness separates people from people." It follows that the combination of these two conditions can have a devastating effect on one's capacity to interact and engage with the world.

But technology can help make a difference. Over the last few decades, we have witnessed incredible advances in accessible technologies for deaf-blind individuals. Whether it's an automated Braille keyboard and display or an amplified speakerphone, whether it's a screen reader or a vibrating signaler, these technologies give deaf-blind individuals the opportunity to communicate and improve their quality of life beyond measure.

But this new technology doesn't come cheap. The cost of buying specialized equipment, installing it, and learning how to use it can exceed $5,000 per person.[481] So Congress directed the FCC to allocate up to $10 million each year to support programs that distribute specialized equipment to low-income individuals who are deaf-blind.[482]

After three years, it's clear that our pilot, the National Deaf-Blind Equipment Distribution Program, has been a resounding success. For example, Willie Bivins, a 64-year-old poet and freelance writer from Georgia, reports that the equipment "saved [his] life tremendously." He says it has encouraged him to write about "how hard it is sometimes to be deaf and blind, to communicate and to live." He also "want[s] people to know that the equipment made a difference"—as he puts it, "Finally, the miracle happened. Finally, the dream came true."[483] And he's just one of 1,893 individuals who have realized this dream so far.

It's now time to transition to a permanent program, and I want to emphasize the importance of a smooth and timely transition—with no lapse in the equipment distribution process. I commend the staff of the Consumer and Governmental Affairs Bureau for their diligent work running the pilot, and I want to extend my gratitude to Bob Aldrich, Darryl Cooper, Rosaline Crawford, Jackie Ellington, Elaine Gardner, Karen Peltz Strauss, and Caitlin Vogus for fostering this program. Your efforts have improved the lives of so many deaf-blind individuals already. I look forward to working with you and my colleagues to improve the lives of thousands more.

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[481] *Notice of Proposed Rulemaking*, Appendix C ("Expenditures per person for assessments, equipment, installation, and training = $5,252.").

[482] Communications Act § 719.

[483] Georgia Poet Communicates "Like Never Before" Thanks to iCanConnect, http://bit.ly/1eggr6E (Sept. 15, 2014).

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

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

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

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

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

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

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

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

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

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

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