

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Reply Comments Sought in Support of)	GN Docket Nos. 09-47, 09-51, 09-137
National Broadband Plan)	
)	
)	

REPLY COMMENTS OF THE BROADBAND FOR THE DEAF AND HARD OF HEARING CORPORATION – NBP PUBLIC NOTICE #30

Broadband for the Deaf and Hard of Hearing Corporation (“BDHH”), an applicant for a sustainable adoption grant under the Broadband Technology Opportunities Program (“BTOP”), submits these comments in response to NBP Public Notice #30.¹ BDHH welcomes this opportunity to contribute additional information to assist the Federal Communication Commission (“FCC” or “Commission”) in formulating the National Broadband Plan. We applaud the Commission for its demonstrated interest in ensuring that individuals with a disability have access to broadband services.² To assist the Commission in reaching this laudable goal, we provide additional information about

¹ *Reply Comments Sought in Support of National Broadband Plan*, NBP Public Notice #30, GN Docket Nos. 09-47, 09-51, 09-137, DA 10-61 (rel. Jan. 13, 2010).

² *See, e.g., FCC Announces Field Hearing on Broadband Access for People with Disabilities*, News Release (rel. Oct. 9, 2009) (designating a field hearing to consider disabilities access issues relevant to the development of the National Broadband Plan); *Comment Sought on Public Safety Issues Related to Broadband Deployment in Rural and Tribal Areas and Broadband Communications To and From Persons with Disabilities*, NBP Public Notice #14, GN Docket Nos. 09-47, 09-51, 09-137, DA 09-2369 (rel. Nov. 2, 2009) (recognizing that “promoting broadband accessibility for persons with disabilities involves unique considerations” and seeking “targeted comment regarding public safety broadband communications to and from persons with disabilities”).

the broadband needs of individuals who are deaf or hard of hearing and the ways in which the Commission can address these needs in the National Broadband Plan.

I. ACCESS TO BROADBAND IS FUNDAMENTALLY IMPORTANT TO THIS VULNERABLE POPULATION, YET INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING FACE NUMEROUS BARRIERS

Individuals who are deaf or hard of hearing are a vulnerable population that would experience unique benefits from access to broadband services. Yet, these individuals have little access to broadband. High rates of unemployment, low incomes, and limited educational opportunities all contribute to low broadband penetration among the community of persons who are deaf or hard of hearing. As Commissioner Copps recently noted, “As a group, Americans with disabilities are, in some areas, experiencing—suffering is a better word—unemployment at rates in excess of 70 percent! And, during this economic downturn, 17 percent of Americans with disabilities have lost their jobs.”³ As a result, individuals who are disabled are less able to afford broadband access, and largely remain excluded from its benefits.

The unique communications challenges of individuals who are deaf or hard of hearing make their lack of broadband access especially troubling. For example, a user of American Sign Language (“ASL”) must have broadband access before making an emergency call – or even a simple phone call - via the Video Relay Service (“VRS”).⁴

³ *Statement of Commissioner Michael J. Copps, FCC National Broadband Plan Field Hearing, Broadband Access for People with Disabilities*, Gallaudet University, Washington, D.C. (Nov. 6, 2009).

⁴ *See, e.g.*, Comments of the Telecommunications for the Deaf and Hard of Hearing, Inc.; Association of Late-Deafened Adults, Inc.; National Association of the Deaf; Deaf and Hard of Hearing Consumer Advocacy Network; California Coalition of Agencies Serving the Deaf and Hard of Hearing; American Association of the Deaf-Blind; Hearing Loss Association of America, *Comment Sought on Transition from Circuit-Switched Network*

II. THE STATUTORY REQUIREMENT OF FUNCTIONAL EQUIVALENCE IS AN EVOLVING STANDARD THAT NOW INCLUDES ACCESS TO BROADBAND

Section 225 of the Communications Act of 1934, as amended, requires the Commission to ensure that individuals who are deaf or hard of hearing have access to communications services that are functionally equivalent to individuals who are not impaired.⁵ By its nature, “functional equivalence” is an evolving standard. Today, VRS is the most functionally equivalent service available. VRS is the only service that enables individuals who are deaf or hard of hearing to communicate accurately, in near real-time, in their native and preferred language. Yet a deaf or hard of hearing mother who wants to call her child’s teacher cannot make a VRS call -- unless she has a broadband connection. Another service, Internet-based captioned telephone service (“IP CTS”), enables an individual who is hard-of-hearing with residual hearing to use his own voice to make calls – but IP CTS requires a broadband connection.⁶

to *All IP-Network*, NBP Public Notice #25, GN Docket Nos. 09-47, 09-51, 09-137 (filed Dec. 22, 2009).

⁵ 47 U.S.C. § 225(a)(3).

⁶ See, e.g., *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order on Reconsideration, 21 FCC Rcd 8050, ¶3 (rel. July 12, 2006) (noting that “VRS calls...reflect a degree of ‘functional equivalency’ unimaginable in a solely text-based TRS world”); *FCC Consumer Advocacy Committee Recommendation Regarding Captioned Telephony* at 3 (adopted Dec. 4, 2009), available at: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295070A1.pdf> (noting that CTS has “proven itself to be technologically feasible, cost efficient, and most importantly, the most appropriate and functionally equivalent form of communications access for its intended user population”); *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities Internet-Based Captioned Telephone Service*, Declaratory Ruling, 22 FCC Rcd 379, 389 (Jan. 11, 2007) (citing the additional benefits of IP CTS relative to standard CTS services, including “portability, cost and easier availability”).

Almost 50 years passed between the introduction of broadcast television and the time when individuals who are deaf or hard of hearing obtained closed captioning.⁷ The Commission must ensure this sorry history is not repeated. The Commission must make the needs of the community of persons who are deaf or hard of hearing a high priority in the National Broadband Plan to ensure that these citizens have functionally equivalent communications.

III. ENSURING THAT INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING HAVE ACCESS TO BROADBAND IS CONSISTENT WITH THE BROAD GOALS OF CONGRESS

Accounting for the needs of individuals who are deaf or hard of hearing in the National Broadband Plan serves the broader goals of Congress. Congress has enacted a long series of non-discrimination laws designed to ensure that the community of persons with disabilities is included in all realms of American life.⁸ These laws are premised on the precepts of universal service and universal design. Consistent with these laws, the Commission must ensure that the National Broadband Plan addresses the circumstances

⁷ See, e.g., Comments of the Rehabilitation Engineering Research Center on Telecommunications Access and Communication Service for the Deaf, *In the Matter of Transition from Circuit-Switched Network to All-IP Network*, NBP #25, GN Docket Nos. 09-47, 09-51, 09-137, 2-3 (filed Dec. 21, 2009).

⁸ See, e.g., the Telecommunications for the Disabled Act of 1982, P.L. 97-410, codified at 47 U.S.C. §610; the Hearing Aid Compatibility Act of 1988, P.L. 100-394, codified at 47 U.S.C. §610; the Telecommunications Accessibility Enhancement Act of 1988, P.L. 100-542, codified at 40 U.S.C. §762(a)-(d); the Americans with Disabilities Act, P.L. 101-336, codified at 42 U.S.C. §§12101 *et seq.*; Section 255 of the Telecommunications Act of 1996, P.L. 104-104, codified at 47 U.S.C. §255; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§791, 794; the Television Decoder Circuitry Act of 1990, P.L. 101-431, codified at 47 U.S.C. §§303(b), 303(u); Section 713 of the Communications Act, 47 U.S.C. § 713, implemented at 47 C.F.R. §79.1. See also Comments of the Carl and Ruth Shapiro Family National Center for Accessible Media at WGBH (NCAM) and Inclusive Technologies, *In the Matter of the American Recovery and Reinvestment Act of 2009*, NTIA Docket No. 090309298-9299-01 (filed April 13, 2009).

of individuals who are deaf or hard of hearing. Failing to do so will deny access to what is becoming core telecommunications technology as our society becomes increasingly reliant on broadband as a means to communicate and receive information.⁹

IV. ADDRESSING THE SPECIFIC NEEDS OF INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING ENCOMPASSES FUNDING

Vulnerable communities of persons, including individuals who are deaf or hard of hearing, should be specifically included in the National Broadband Plan. We urge the Commission to define the term “broadband” in a way that contemplates the broadband speeds and capabilities needed to support VRS and other video applications needed by the community of persons with disabilities. As advocacy groups have noted, this definition must provide for “appropriate speed, latency and performance parameters, so as to enable access to all types of point-to-point communications and TRS.”¹⁰ In addition, the Commission has the opportunity to build accessibility directly into the nation’s broadband infrastructure by adopting a national public inclusive infrastructure

⁹ See, e.g., *Past and Present: Making the Case for a Regulatory Approach to Addressing Disability Discrimination in the Provision of Emerging Broadband and Cable Technologies*, Broadband and Cable Television Law 2010: Developments in Cable Technology, Practising Law Institute, New York, 14 (Jan. 26, 2010).

¹⁰ Comments of the Telecommunications for the Deaf and Hard of Hearing, Inc.; Association of Late-Deafened Adults, Inc.; National Association of the Deaf; Deaf and Hard of Hearing Consumer Advocacy Network; California Coalition of Agencies Serving the Deaf and Hard of Hearing; American Association of the Deaf-Blind; Hearing Loss Association of America, *In the Matter of A National Broadband Plan for Our Future*, GN Docket Nos. 09-47, 09-51, 09-137, 2 (filed Aug. 31, 2009). See also Reply Comments of CSD and CSDVRS, *In the Matter of a National Broadband Plan for Our Future*, NBP Public Notice #1, GN Docket Nos. 09-47, 09-51, 09-137 (filed Sept. 8, 2009).

(“NPII”) that will help to ensure basic access by people with disabilities of all socioeconomic levels.¹¹

The Commission also must ensure that funding is dedicated to providing the vulnerable communities of persons who are deaf and hard of hearing with access to broadband. As the Commission has explored, the Universal Service Fund (“USF”) could be updated to account for important emerging technologies. The Commission could extend the Lifeline and Link-Up programs to provide for broadband access,¹² support broadband access via the interstate TRS Fund, or establish a new mechanism devoted wholly to providing broadband access. Any such program must be designed with the interests of individuals who are deaf or hard of hearing.

The National Broadband Plan will be an important contribution to the Nation’s progress. Yet it will only do so by ensuring through tangible and specific measures that

¹¹ Ex Parte Comments of the Rehabilitation Engineering Research Center on Telecommunications Access, *In the Matter of a National Broadband Plan for Our Future*, GN Docket Nos. 09-47, 09-51 (filed Nov. 18, 2009).

¹² *See Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan*, NBP Notice #19, GN Docket Nos. 09-47, 09-51, 09-137 (rel. Nov. 13, 2009) (seeking comment on ways in which to potentially transition the current universal service high-cost support mechanism to support advanced broadband deployment and to extend low-income support to establish a Broadband Lifeline/Link Up program). *See also* Comments of the Broadband for the Deaf and Hard of Hearing Corporation, *In the Matter of the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan*, NBP Notice #19, GN Docket Nos. 09-47, 09-51, 09-137 (filed Dec. 7, 2009).

the most vulnerable, including and particularly individuals who are deaf or hard of hearing, are part of this progress. We urge the Commission to embrace its historic fidelity to the principle that the advances of modern technology be shared by all citizens.

Thank you for your consideration.

Respectfully submitted,

Signature Authorized By: _____

Dr. Robert Davila

Chairman

Broadband for the Deaf and Hard of Hearing Corporation

1050 Connecticut Avenue, NW

Tenth Floor- Number 1053

Washington, D.C. 20036

January 26, 2010