

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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| In the Matter of                                   | ) |                      |
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| PN Comments – Specialized CPE Distribution Program | ) | CG Docket No. 10-210 |
|  | ) |                      |

COMMENTS IN RESPONSE TO PUBLIC NOTICE

Communication Service For The Deaf, Inc.

November 17, 2010

## I. Introduction

Communication Service for the Deaf, Inc. (CSD) submits these comments in response to the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking on the FCC's implementation of the requirement for a National Deaf-Blind Equipment Distribution Program (NDBEDP) per Section 105 of the 21st Century Communications and Video Accessibility Act of 2010 ("Accessibility Act").

CSD is a private, non-profit organization that provides programs and services intended to increase communication, independence, productivity, and self-sufficiency for all individuals who are deaf, hard of hearing, or deaf-blind. CSD often provides, at no charge, tactile and close vision interpreting services for its deaf-blind consumers, and sponsors many events for deaf-blind individuals all over the nation. Because CSD works with and for many deaf-blind consumers, CSD has seen firsthand the difficulties that deaf-blind individuals go through on a regular basis and there are so few resources available that can meet their needs. Therefore, CSD strongly supports the measures that would effectively remove barriers to access that are specific to the deaf-blind population. More specifically, CSD supports those measures that are developed with the input and feedback of the deaf-blind community.

## II. Meeting the Federal Statutory Definitions of Deaf-Blind Should be the Only Threshold Eligibility Criteria to Ensure that the Intent of the NDBEDP is Achieved.

In keeping with the spirit of the Accessibility Act, the purpose of the NDBEDP is to ensure that deaf-blind individuals are able to access telecommunications services, the Internet, and advanced communications through the distribution of customer premise equipment (CPE). CSD supports the definition of deaf-blind that the Accessibility Act has incorporated from Section 206 of the Helen Keller National Center Act (29 U.S.C. 1905)<sup>1</sup>. However, CSD also supports the statutory definition of deaf-blindness set out in the Individuals with Disabilities Education Act (IDEA) and currently found in Title 34 of the Code of Federal Regulations section 300.8(c)(2)<sup>2</sup>. Therefore CSD believes that the only threshold eligibility requirement for deaf-blind adults to be able to participate in the NDBEDP is that they meet the federal statutory definition of being deaf-blind as found in 29 U.S.C 1905; and that the only threshold

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1: The definition of deaf-blind that the Accessibility Act has incorporated from Section 206 of the Helen Keller National Center Act (29 U.S.C. 1905) reads as follows:

**(2)**the term "individual who is deaf-blind" means any individual—

**(A)**

**(i)**who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both these conditions;

**(ii)**who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and

**(iii)**for whom the combination of impairments described in clauses (i) and (ii) cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation;

**(B)**who despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining vocational objectives; or

**(C)**meets such other requirements as the Secretary may prescribe by regulation; and

**(3)**the term "Secretary" means the Secretary of Education

2: The definition of deaf-blindness that established under the Individuals with Disabilities Education Act (1990 IDEA Sec 622) found at 34 C.F.R. 300.8(c)(2) reads as follows:

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

eligibility requirement for deaf-blind children to be able to participate in the NDBEDP is that they meet either the federal statutory definition as found in 29 U.S.C. 1905 or the definition of deaf-blindness found in 34 C.F.R 300.9(c)(2)<sup>3</sup>.

A. A deaf-blind individual's participation in the NDBEDP should not be limited by income.

To impose an income limit as an additional threshold eligibility requirement before a deaf-blind individual can participate in the NDBEDP would defeat the purpose of the program. Participation in the NDBEDP should be without regard to a deaf-blind person's income because an income limit represents yet another barrier to access for deaf-blind individuals, perpetuates the social and economic stigma associated with having a disability, and it does not maximize this opportunity for access to all individuals who are deaf-blind.

Deaf-blind individuals<sup>4</sup> truly walk a different path than most because the construct of the everyday world was not made for them and they constantly encounter sensory barriers as a result. What the Accessibility Act means to them is that they can now, more than ever, access the technology that would allow them to experience to the maximum extent possible the same things that everyone else does. The Accessibility Act, and through it, the NDBEDP, represents the removal of barriers and the paving of the way to accessible technology platforms and communication for deaf-blind individuals. An income limit requirement would be the addition of a barrier and would be the equivalent of forcing deaf-blind individuals to navigate yet another barrier. Further, it is doubtful that the results of lifting an income limit for this type of program would spur demand beyond what this program would be able to handle due to the low incidence rate of deaf-blindness. Any limits on participation, other than the requirement of being deaf-blind within the meaning of the federal statutory definition, should be of a secondary nature, such as how often one may enroll in the program during a given span of time.

There is, unfortunately, still a social stigma associated with having a disability. There is also the stigma associated with being a recipient of certain public assistance programs where eligibility is determined by income. An income limit on NDBEDP participation would further reinforce the negative public perception that deaf-blind people are to be pitied and to be "helped" as if they were charity cases. Rather, the opposite is true. The program has the potential to empower deaf-blind individuals by providing them access to the tools they need in order to function, get or maintain a job, or to simply connect with the world.

An income limit on NDBEDP participation would negate the spirit behind this program which was to ensure access for all people who are deaf-blind. As deaf-blindness ignores the individual's socio-economic class, the focus of this program should do the same by recognizing that simply by virtue of being, these individuals deserve any and all opportunities for access, including the ability to participate in the NDBEDP.

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3. CSD does not view the two definitions of deaf-blind established under the Hellen Keller National Center Act and the Individuals with Disabilities Education Act ("IDEA") as being in conflict. Instead CSD views the definition established under IDEA as providing specialized definition for children which may be more readily quantifiable.

4. The exact population of deaf-blind individuals is very hard to determine. In their Resolution to Support Equal Access to Communications Technologies by People with Disabilities in the 21st Century, adopted February 20, 2008 the National Association of Regulatory Utility Commissioners estimated the number of deaf-blind in the United States to be between 70,000 and 100-000. See <http://www.naruc.org/Resolutions/People%20with%20Disabilities%20Resolution1.pdf>. The Alabama Institute for the Deaf-Blind lists an estimate of 40,000 with between 10-11,000 of that population being children.

B. In the alternative, the income limit For NDBEDP participation should be set at 500% of the federal poverty guidelines.

The cost of the CPEs used by deaf-blind individuals can be prohibitively expensive, not only for those in the low-income category, but also for those in the so-called “middle class.” Therefore, if an income limit criterion must be imposed on the program, CSD recommends as an alternative that the income limit for a deaf-blind person’s NDBEDP participation be set at 500% of the federal poverty guidelines which are periodically updated in the Federal Register through the U.S. Department of Health and Human Services, pursuant to 42 U.S.C. 9902(2). This would encourage access for as many deaf-blind individuals as possible, particularly for those deaf-blind individuals who are employed and could derive a great deal of benefit from CPEs that they would otherwise not be able to personally afford, and which would comport with the spirit of the program.

C. A deaf-blind individual should be able to re-apply to the NDBEDP every three years and/or be considered for early repeat enrollment as an exception.

A non-threshold eligibility criterion on NDBEDP participation that CSD suggests is a three (3) year enrollment limit for any one otherwise eligible deaf-blind individual before they can re-apply for the program. Three years is typical of the depreciation period for modern CPEs. Therefore, a time limit of longer than three years runs the risk that a deaf-blind individual may be precluded from being able to access essential communications until the period has expired. Additionally, CSD recommends that exceptions be considered by the “administrator” of the NDBEDP to ensure that no consumer is left behind with outdated or inapplicable technology due to, perhaps, the changed nature of the individual’s disability.

### **III. The FCC Should Consult with Deaf-Blind Organizations to Determine the Types of CPE That Should Be Provided Under the NDBEDP.**

Various types of communication equipment specialized for the deaf-blind are currently available, and as technology improves hopefully many more will become available. These types of equipment are important in the everyday aspects of a deaf-blind person’s life. However, this equipment is absolutely critical for purposes of accessing emergency services. Accordingly, no one piece of equipment will be the proper solution for every deaf-blind individual<sup>5</sup>. Additionally, as the primary mode of communication changes for other groups, hearing or deaf, the ability to connect to those modalities is necessary to support functional equivalence<sup>6</sup>. Additionally, as technology improves, access to services such as SMS messaging and mobile services will be critical to providing functional equivalence for the communications needs of the deaf-blind<sup>7</sup>.

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5. An illustrative example of deaf-blind communications equipment which interoperates with TTY and relay services is the V-Touch available from Krown Manufacturing Inc. 3408 Indale Road, Fort Worth, TX 76116-7348. The V-touch works with a TTY terminal. See <http://www.krownmfq.com/us/products/vtouch.htm> for additional information.

6. Many of the deaf and hard of hearing population have stopped using TTY’s for communication and instead have move to video (VRS and point-to-point) because of the speed and more natural conversational flow. As this migration continues, direct communication between deaf-blind and deaf individuals becomes less feasible, increasing the demand for relay type services.

7. An illustrative example of deaf-blind communications equipment which supports SMS messaging, has an integrated modem (no TTY required) and can (with an optional SIM card) be used in mobile settings is the Humanware Deaf-Blind Communicator. See <http://www.humanware.com/dbc> for additional information.

CSD recommends that the FCC consult with, among others, the Deaf-blind Service Center of Seattle, Deaf-blind Service Center of Austin, American Association of Deaf Blind, and the National and Regional Helen Keller Centers for the Deaf-blind in order to determine which of the currently available CPEs would best meet the needs of the deaf-blind community. Further, due to the ever-changing nature of technology, CSD recommends that the FCC consult with these organizations on a periodic basis to ensure that the list of CPEs provided under the NDBEDP are updated so that deaf-blind individuals are afforded the opportunity whenever appropriate to take advantage of the potentially greater levels of access that newer CPEs may provide.

**IV. A National Distribution Program Would be the Most Cost-Effective Way to Distribute CPEs.**

The cost of communications equipment to meet the needs of the deaf-blind is appreciable. Retail pricing can easily run over \$6,000 per unit<sup>8</sup>. The resources currently available to the deaf-blind community are scarce. Many states do not have equipment distribution programs. Other states, although they do have equipment distribution programs, due to limited budgets may not pay for or even subsidize deaf-blind communications equipment utilizing newer technologies. Further, the resources needed to train individuals who are deaf-blind on how to use the CPEs are considerable because of the amount of time needed and the specialized communication skills necessary to communicate with the consumer. Most state programs do not have the expertise, workforce, or financial resources available to support the type of intensive training required for the successful placement of the CPE.

For these reasons, CSD recommends that a national distribution program model be used rather than a state model. A national model with one centralized location would be the best way to efficiently spread out the resources used in order to ensure that individuals who are deaf-blind receive the training on their CPE by persons who are able to communicate with them.

**V. The Voucher System is the Superior System that Should be Used Under the NDBEDP.**

Because of the limited funds available, the number of deaf-blind individuals who lack even the most basic access to telecommunications services<sup>9</sup>, and the cost of CPE, every effort to use the available funds judiciously must be made. Therefore, CSD believes that the logistics of administering the NDBEDP would be best handled under the voucher system. Under the voucher system, an applicant would be evaluated for program eligibility and, if approved, be provided the training for the CPE, and then be ultimately given the equipment. CSD believes the voucher system is the superior method over other conventional systems where, for example, the administrator “loans” the equipment to the consumer. Such a loaning system leads to inefficient use of resources expended in attempts to get the equipment back, which then leads to other issues, such as storage and disposal of old, outdated equipment. Further, the cost of negotiating purchase agreements outside of a voucher relationship would be difficult to justify when considering the small demand incurred by the relatively low incidence of deaf-blindness. Under a voucher system, distributors would be able to continue doing business through regular market channels. This approach eliminates the additional costs of the administrator

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8. Illustrative examples of listed retail pricing for deaf-blind communications equipment (Published pricing as of 15NOV10):

- a) 32 Cell Deaf-Blind Communicator: \$8239,
- b) 18 Cell Deaf Blind Communicator: \$6379,
- c) Vtouch: \$6295.

9. See Resolution to Support Equal Access to Communications Technologies by People with Disabilities in the 21st Century, adopted February 20, 2008, by the National Association of Regulatory Utility Commissioners.

having to carry inventory, providing warranty services, and directly providing end-user installation and training.

The administrative duties under the voucher system could include marketing the program, processing applications, verifying eligibility, issuing vouchers, reporting, outreach and administration of funds related to the NDBEDP. As part of these duties the administrator would be specifically responsible for developing and maintaining the lists of approved equipment, vendors and distributors.

#### **VI. The Only Criterion for Funding Support Should Be Based on the Frequency of Program Enrollment.**

Given the relatively small population of users who are deaf-blind<sup>10</sup> within the meaning of the federal statutory definition and the large impact CPEs have on these individuals' telecommunication access, CSD does not believe that funding support should be contingent on any other factor but the frequency of how often an eligible individual may apply for equipment. As noted earlier, CSD recommends that an eligible individual be able to re-apply every three years with allowable exceptions for changes in technology or nature of the disability.

However, when considering the criteria to be applied to the potential administrator(s) of the NDBEDP, CSD believes that the administrator should have a demonstrated number of years of experience in the effective distribution of telecommunications equipment for people who are deaf, hard of hearing, and deaf-blind. This will help to ensure that the administrator has the appropriate understanding of the different nuances in the communication needs of the deaf-blind community as individuals and as a whole since each person will have very unique communication requirements that must be accommodated in order to achieve true functional equivalence. An administrator with the demonstrated experience will be able to support a variety of tailored solutions to meet these varying needs because there is no one solution that is standardized across all deaf-blind individuals. The solutions that the administrator develops must be sensitive to and flexible enough to meet the progressive loss and associated demands of both hearing and visual changes related to a variety of causes.

#### **VII. Distribution of Specialized CPE Should be Paid Through the Voucher System.**

The voucher system is, again, the superior method through which the distribution of specialized CPEs should be paid for and handled. Eligible deaf-blind individuals should be allowed the choice of deciding which specialized CPE would fit their needs best. Upon reaching a decision, they should be issued a voucher that reimburses each respective entity responsible for the appropriate evaluation, fitting, training, and follow up for that CPE. Particularly when it comes to specialized CPEs, the investment in training will yield great results in terms of true access to telecommunications.

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10. The exact population of deaf-blind individuals is very hard to determine. In their Resolution to Support Equal Access to Communications Technologies by People with Disabilities in the 21st Century, adopted February 20, 2008 the National Association of Regulatory Utility Commissioners estimated the number of deaf-blind in the United States to be between 70,000 and 100-000. See <http://www.naruc.org/Resolutions/People%20with%20Disabilities%20Resolution1.pdf>. The Alabama Institute for the Deaf-Blind lists an estimate of 40,000 with between 10-11,000 of that population being children.

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**VIII. The TRS Fund Administrator's Role Should be Limited to Compensating Qualifying Programs.**

It is CSD's position that the FCC should retain the responsibility of reviewing monitoring reports, as well as assessing and proposing compensation for the TRS fund administrator and its vendors. Information should be gathered from the administrator for the FCC to accomplish these purposes, but the administrator should remain as a neutral third party to the process of assessing and proposing compensation. Therefore, the administrator should be limited to compensating qualifying programs under the NDBEDP. Additionally, CSD believes that the FCC, together with consumer-driven comments, should determine the qualifications of the program(s) that are selected for compensation with the TRS fund administrator carrying out the FCC's directives with regards to the qualifications of successful contractors and vendors under the program(s). The determination of who is and who is not qualified in terms of meeting specific criteria should not be an administrative-driven function of the TRS fund administrator. Rather, it should be a consumer-driven function through the FCC because it is the consumers who would know best what would work for them.

**IX. The Comments Period for this Public Notice Should be Extended to Include Comments From the Deaf-Blind Consumers.**

The FCC should consider extending the comment period for this public notice in order to solicit feedback from the deaf-blind communities. Most deaf-blind consumers are not aware of this process and thus miss out on an opportunity to voice their concerns and opinions. Since these are the consumers that directly benefit from any rules or regulations that result from this process, they cannot and should not be left out. CSD recognizes that it is difficult to reach out to individuals and especially on a national level. However, CSD believes that special attempts now and in the future to send notice to interested parties, such as national deaf-blind organizations, with encouragement that these parties forward the notice to individuals, would be a start in ensuring that the feedback from the deaf-blind communities are taken into consideration.

**X. Conclusion**

As a consumer-driven organization, CSD is a strong proponent of empowering consumers who will directly benefit from a service by giving them a voice in determining the fate of the eventual programs that will serve them. CSD encourages the FCC and the TRS fund administrator to call upon the resources of the deaf-blind community, such as the American Association of the Deaf-blind, the Helen Keller National Center and its regional offices, and local consumer based organizations, such as the Deaf-blind Service Center of Austin, Texas and the Deaf-blind Service Center of Seattle. Additional engagement with vocational rehabilitation programs that specifically addresses the needs of deaf-blind individuals (such as the programs in Alabama, Texas, or Washington) would offer synergies and valuable input to ensure that the rules and regulations are developed to evolve with the ongoing needs of the consumers rather than attempting to meet only the needs of today.

Respectfully submitted,

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