

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Implementation of the Twenty-First Century) CG Docket No. 10-210
Communications and Video Accessibility Act)
of 2010, Section 105, Relay Services for)
Deaf-Blind Individuals)

COMMENTS OF THE AMERICAN ASSOCIATION OF THE DEAF-BLIND

February 4, 2011

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. BACKGROUND	1
III. EQUIPMENT DISTRIBUTION PROGRAMS	2
IV. CONSUMER ELIGIBILITY	3
A. Definition of Individuals who are Deaf-Blind	3
B. Verification of Disability	4
C. Income Eligibility	5
D. Other Eligibility Requirements and Considerations	5
V. COVERED EQUIPMENT AND RELATED SERVICES	6
A. Scope of Specialized CPE	6
B. Research and Development	7
C. Individualized Assessment of Communication Needs	8
D. Installation and Training	8
E. Maintenance, Repairs and Warranties	9
F. Outreach and Education about the NDBEDP	10
VI. FUNDING	10
VII. OVERSIGHT AND REPORTING	10
VIII. LOGISTICS AND DIVISION OF RESPONSIBILITIES	11
IX. OTHER CONSIDERATIONS	11
III. CONCLUSION	11

EXECUTIVE SUMMARY

The American Association of the Deaf-Blind (“AADB”) has regularly advocated for Commission rules and policies that promote equal access to various forms of telecommunications and media for all Americans who are deaf, hard-of-hearing, late-deafened, and deaf-blind so that they may have an equal opportunity to benefit from such technology. Comments submitted today by AADB similarly urge the Commission to develop measures to ensure that people with disabilities have equal access to emerging communications technologies in the 21st Century that ensures deaf, hard-of-hearing, late-deafened, and deaf-blind consumers an equal opportunity to benefit from these technologies.

Due to the wide-ranging communication needs for consumers who are deaf-blind, AADB suggests that any Equipment Distribution Program (“EDP”) certify a broad range of products, so as to not favor one product over another. Improving consumer choice for deaf-blind individuals furthers the public interest by promoting competition among equipment manufacturers, enhancing consumer choice, and assuring wide access to communications services for deaf-blind individuals. AADB further suggests the Commission to use the third prong of the Helen Keller National Center Act definition as the primary definition for classifying individuals who are deaf-blind, and use the other prongs on an advisory basis.

AADB agrees that some verification of a person’s disability is necessary to prevent fraud and abuse. Thus, AADB suggests that the Commission verify a person’s disability as simple as possible, requiring proof of deafness and/or blindness under penalty of perjury from a qualified medical professional, state agency or community based service provider. Proof of deafness may also be obtained from TRS and VRS service providers related to the ten-digit numbering plan.

In determining income eligibility, the Commission must take note that medical and related costs associated with being both deaf and blind can be crippling to many deaf-blind *individuals*. AADB therefore suggests that the income requirement be based on the individual’s earnings, and not based on the earning of the household in which the individual is a member. Moreover, while AADB encourages employment of people who are deaf-blind, AADB opposes making employment a requirement for joining the program.

While AADB agrees that any technology or hardware supported by the program should be used primarily for communication services, it opposes any restriction on features other than communication services. AADB also urges the Commission to ensure that deaf-blind individuals are able to return and exchange equipment, as needed, in response to an individual’s deafness and/or blindness deterioration over time. AADB further believes that R&D is not an efficient use of funds at this time. AADB suggests that more funds be directed towards distribution and training.

AADB concurs with the Commission’s finding that state EDPs or certified National Deaf-Blind Equipment Distribution Program (“NDBEDP”) participants (where there is no state EDP) be given the discretion to determine the need for such assessments on a case-by-case basis, and to select the appropriate personnel within their programs to carry out this responsibility.

In addition to ensuring that funding be made available for the installation of equipment and individualized training on how to use this equipment under the NDBEDP, AADB believes that other approaches merit Commission consideration. Another approach, for example, is to require that states retain ownership of the equipment, even after the equipment has been distributed to a deaf-blind individual.

The Commission should require a warranty on all devices that covers the expected life of the equipment. Because of language or other communication barriers, deaf-blind consumers often have problems obtaining warranty services through the manufacturer's technical support services as repairs typically take up to eight weeks or more. Regarding the level and types of outreach that will be needed to enable the NDBEDP to fulfill Congress's objective of bringing communication technologies to the deaf-blind community, AADB suggests that EDPs and authorized program providers be responsible for localized outreach activities. In addition, AADB supports the proposal that funds be rolled over and reallocated in the following year, based on EDP statistics, projections and deaf-blind population demographics.

AADB further suggests that the responsibilities for oversight and reporting should be combined between the Commission and a national, non-profit, deaf-blind consumer organization such as AADB. In addition to delegating authority to the Consumer and Governmental Affairs Bureau to designate a NDBEDP Program Administrator, due to the specialized and technical nature of stakeholders, a national deaf-blind consumer organization such as AADB would be able to complement the duties of the NDBEDP Program Administrator, should the Commission require outside assistance. Lastly, the creation of an advisory body to work with the NDBEDP Program Administrator and Fund Administrator to evaluate consumer experiences with the program, assess the program's benefits, explore new technologies, and consider changes to the program's features is warranted.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Twenty-First Century)	CG Docket No. 10-210
Communications and Video Accessibility Act)	
of 2010, Section 105, Relay Services for)	
Deaf-Blind Individuals)	

COMMENTS OF THE AMERICAN ASSOCIATION OF THE DEAF-BLIND

I. INTRODUCTION

Thanks to the support from Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), through TDI’s undersigned counsel, the American Association of the Deaf-Blind (“AADB”);¹ respectfully submit these comments to the *Notice of Proposed Rulemaking* released by the Commission in the above-referenced docket on January 14, 2011.²

II. BACKGROUND

As noted in the *NPRM*, the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), requires the Commission to take various measures to ensure that people with disabilities have access to emerging communications technologies in the 21st Century. Specifically, Section 105 of the CVAA directs the Commission to establish rules that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized customer premises equipment (specialized CPE) to people who are

¹ AADB has experienced difficulty in gathering written comments from their members who are deaf-blind and others with progressive severe vision and hearing loss since many deaf-blind individuals prefer to provide their comments through videos, voice recordings or personal interviews. The Commission’s restriction of accepting submitted comments in written form is a major challenge for AADB and its constituents.

² See *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Notice of Proposed Rulemaking, Docket No. 10-210 (rel. Jan.. 14, 2011) (“*NPRM*”).

deaf-blind. The laudable goal of the National Deaf-Blind Equipment Distribution Program (“NDBEDP”) is to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low income individuals who are deaf-blind.

AADB has regularly advocated for Commission rules and policies that promote equal access to various forms of telecommunications and media for all Americans who are deaf, hard-of-hearing, late-deafened, and deaf-blind so that they may have an equal opportunity to benefit from such technology. Comments submitted today by AADB similarly urge the Commission to develop measures to ensure that people with disabilities have equal access to emerging communications technologies in the 21st Century that ensures deaf, hard-of-hearing, late-deafened, and deaf-blind consumers an equal opportunity to benefit from these technologies.

III. EQUIPMENT DISTRIBUTION PROGRAMS

Due to the wide-ranging communication needs for consumers who are deaf-blind, AADB suggests that any Equipment Distribution Program (“EDP”) certify a broad range of products, so as to not favor one product over another. While AADB urges the Commission to promulgate rules in this proceeding with an eye toward streamlining regulations where possible, the Commission must also be committed to preserving regulations to the extent necessary to safeguard consumer choice. For example, the iPhone 4 connected via a USB cord to a Braille reader is more accessible for some deaf-blind individuals than other products like the Deaf-Blind Communicator. Indeed, facilitating consumer choice for deaf-blind individuals should be what compels the Commission to take action in this proceeding. The state of consumer choice in the markets for deaf-blind communications equipment is drastically different from the state of consumer choice of equipment for non deaf-blind individuals. Moreover, improving consumer choice for deaf-blind individuals furthers the public interest by promoting competition among

equipment manufacturers, enhancing consumer choice, and assuring wide access to communications services for deaf-blind individuals.

In addition to providing notice to the public of which states will participate in the NDBEDP pilot program, AADB also urges the Commission to adopt rules requiring transparency in providing such information to the public. Such information must be available to for public review and should include data on usage of public funds, types of equipment requested and the type of equipment ultimately obtained by the deaf-blind consumer. Such reports need to be available in accessible alternate formats. Information given on types of equipment requested and types of equipment provided may offer insight for future research and development.

Given the Commission's recognition of the geographical diversity of the deaf-blind population, and the Commission's understanding that not all such individuals may be living in close proximity to an EDP center where they can try out equipment or arrange to have equipment brought to them, AADB stands at the ready to work with the Commission in crafting rules, and particularly, to work in states without EDP programs or assist EDP in some states. In addition, AADB can work in collaboration with other community based or faith based organizations that demonstrate knowledge of the deaf-blind community and the equipment they use.

IV. CONSUMER ELIGIBILITY

A. Definition of Individuals who are Deaf-Blind

Although AADB prefers that, the Commission not use the official Helen Keller National Center Act ("HKNC") to define people who are legally deaf-blind within the diverse population of our community, AADB understands the Commission is bound by statute to use the HKNC Act. One concern is that the definition may be wrongfully applied when deciding the qualification or eligibility of each individual who is deaf-blind. AADB is aware of isolated incidents within school systems where school administrators have problems placing the deaf-

blind in the appropriate educational setting. Given the freedom of EDP or other pilot programs to determine who is qualified, AADB fear that this may lead to unequal services from state to state or even region to region. The HKNC definition will eliminate those who are experiencing severe progressive hearing and vision loss that could lead to deaf-blindness but not yet legally blind as defined in prong 1 and prong 2 where these individuals may be able to hear in some situations and not others.

AADB therefore urges the Commission to use the third prong of the definition as the primary definition and use the other prongs on an advisory basis, and focus on the difficulties that an individual with a combination of vision and hearing losses has in attaining independence in daily life activities. AADB supports the third prong of eligibility as it focuses on the functional equivalency aspects. The first two prongs focus on medical benchmarks, but do not address functional needs. For example, a deaf person going blind may lose driving privileges before he actually becomes legally blind. A blind person losing her hearing may lose her job because she is no longer able to use the phone effectively. Remaining focused on functional equivalency aligns with Congress' overall goal to ensure the availability of existing and emerging communication technologies for the deaf-blind population. Thus, when applied in the manner suggested by AADB, this functional, definitional approach in the third prong would provide maximum flexibility for deaf-blind individuals.

B. Verification of Disability

AADB agrees that some verification of a person's disability is necessary to prevent fraud and abuse. Given the physical limitations of persons covered under this program, AADB understands the need to permit verification of one's disability in a non-burdensome manner. Thus, AADB suggests that the Commission verify a person's disability as simple as possible, requiring proof of deafness and/or blindness under penalty of perjury from a qualified medical

professional, state agency or community based service provider. Proof of deafness may also be obtained from TRS and VRS service providers related to the ten-digit numbering plan.

C. Income Eligibility

The CVAA limits eligibility in the NDBEDP to individuals who have low incomes, but does not contain further guidance on this limitation.³ In determining income eligibility, the Commission must take note that medical and related costs associated with being both deaf and blind can be crippling to many deaf-blind *individuals*. AADB therefore suggests that the income requirement be based on the individual's earnings, and not based on the earning of the household in which the individual is a member. Eligibility should not reflect only the poverty level, but also all medical expenses such as, doctor visits, interpreters, guide dogs, Support Service Providers ("SSPs"), medical-related travel expenses, and other accommodations due to disability. Moreover, AADB urges the Commission to require that all applicants be encouraged to apply for Universal Service Fund programs or other similar programs.

D. Other Eligibility Requirements and Considerations

AADB is dismayed that certain state assistance programs will pay for communications equipment only if the deaf-blind applicant requesting a device has a job or is actively seeking employment.⁴ AADB is encouraged by the Commission's recognition that, because persons who are deaf-blind typically cannot afford the equipment that they need to find and hold jobs, this often disqualifies them from obtaining equipment, creating what HKNC describes as a "Catch-22."⁵ As noted in the *NPRM*, such policies, while possibly appropriate for vocational rehabilitation and other targeted employment programs, would thwart the objectives of the NDBEDP. Many deaf-blind individuals are not working because their other personal needs have

³ Pub. L. 111-260, § 105, as amended by Pub. L. 111-265, § 2, to be codified at 47 U.S.C. § 719(a).

⁴ *NPRM*, ¶ 24.

⁵ *Id.*

not been met, such as securing adequate transportation to and from a job. While AADB encourages employment of people who are deaf-blind, AADB opposes making employment a requirement for joining the program.

V. COVERED EQUIPMENT AND RELATED SERVICES

A. Scope of Specialized CPE

While AADB agrees that any technology or hardware supported by the program should be used primarily for communication services, it opposes any restriction on features other than communication services. Depending on location and ease of use by a deaf-blind individual, these other features are fast becoming viable means of communication and accessing relevant information. For example, if a deaf-blind individual was in a situation where his or her phone may not work, but wireless Internet is available, the deaf-blind individual can access the Internet as their only mean of communication. This also has the added benefit of reducing the isolation many deaf-blind individuals feel due to their multiple disabilities. Limiting the features of supported devices to voice-only is inconsistent with functional equivalency. For example, since many non-disabled individuals depend on their wireless devices for receiving emergency notifications; such notifications should be accessible by deaf-blind individuals. In addition, smart phones currently on the market also include free instant messaging, e-mail and web access that enable deaf-blind people to function more independently in today's world. For example, the iPhone 4 can be set up for face-to-face communication by deaf-blind people to communicate with others via speech at no additional cost. Another example is the DeafBlind Communicator, which can be used for face-to-face communication even though the primary use is for the telephone. By placing restrictions, limitations, or requirements to disable other features on these devices, the Commission would be denying access to the Internet, face-to-face communication, and other functions that people who are not deaf-blind currently enjoy.

The *NPRM* rightly recognizes that software and other applications will be needed to achieve access to the communication services covered under Section 105.⁶ The Commission must also note that oftentimes software updates are provided automatically, as needed, free of charge provided that the device is connected to the Internet. Thus, the Commission must ensure that software updates are included in program. Moreover, automatic software and firmware updates would minimize the need to return devices to EDP due to declining functionality.

AADB also urges the Commission to ensure that deaf-blind individuals are able to return and exchange equipment, as needed, in response to an individual's deafness and/or blindness deterioration over time. In addition, funding should be linked to tiers based on needs assessment and product availability and differentiate between off-the-shelf equipment and specialized equipment.

B. Research and Development

AADB believes that R&D is not an efficient use of funds at this time. AADB suggests that more funds be directed towards distribution and training. Other private and government resources are available to support R&D of new technologies. AADB suggests that the Commission budget approximately ten percent of the NDBEDP funds in a matching fund R&D program as an incentive for manufacturers to explore other programs. History has shown that telecommunication equipment design accessibility and usability is spurred by regulations, and not innovation. As an example, CapTel, a provider of captioned telephones, has been offering viable web-based alternatives, there are no real solutions for deaf-blind individuals who use PSTN equipment. The possibility for a product that could rival the current TeleBraille and Deaf Blind Communicator is similarly bleak – both products were a result of an infusion of government funds, not business innovation. Most businesses spend their own capital on R&D to

⁶ *NPRM*, ¶ 28

upgrade their existing products while new technologies originate in government programs such as NASA or the military. Also, universities tend to focus on new products based on a ideas generated in the classroom. For example, the National Federation of the Blind (“NFB”) and Virginia Tech University are jointly developing a new technology that would enable a blind person to drive a car independently and without assistance from a sighted person.⁷

AADB further urges the Commission to consider allowing national deaf-blind consumer organizations to assist with outreach to the states. AADB, through their members and other consumer organizations, would be in the best position to gather information from state EDP program and local community based groups.

C. Individualized Assessment of Communication Needs

AADB concurs with the Commission’s finding that state EDPs or certified NDBEDP participants (where there is no state EDP) be given the discretion to determine the need for such assessments on a case-by-case basis, and to select the appropriate personnel within their programs to carry out this responsibility. Also, the costs for such assessments need to be reimbursable as necessary to facilitate the efficient and effective distribution of equipment for use by people who are deaf-blind. AADB strongly urges the Commission to establish guidelines and rules to ensure that the deaf-blind people receive the proper telecommunication equipment according to their capabilities and preferences.

D. Installation and Training

In addition to ensuring that funding be made available for the installation of equipment and individualized training on how to use this equipment under the NDBEDP, AADB believes that other approaches merit Commission consideration. Another approach, for example, is to

⁷ See “The NFB Blind Driver Challenge™: A Success,” Vision Aware (Feb. 2, 2011) at <http://visionaware.blogspot.com/2011/02/nfb-blind-driver-challenge-success.html>.

require that states retain ownership of the equipment, even after the equipment has been distributed to a deaf-blind individual. Thus, if the equipment were to malfunction, the state can simply swap the malfunctioning equipment for a similar device that is new or reconditioned. This would be more cost effective and reduce gaps in telecommunication access. A deaf-blind individual can bring a malfunctioning device to an EDP, have the contact information and other settings transferred from the malfunctioning device to a new or refurbished device. This approach also reduces training expenses, which help allocate the already limited funds and availability of installers more efficiently, ensuring that more deaf-blind consumers' need for assistance would be met in a timely manner and reduces isolation caused by gaps in access to technology.

E. Maintenance, Repairs and Warranties

The Commission should require a warranty on all devices that covers the expected life of the equipment. Because of language or other communication barriers, deaf-blind consumers often have problems obtaining warranty services through the manufacturer's technical support services as repairs typically take up to eight weeks or more. Products should be designed so that minor maintenance such as battery replacement can be done by the consumer without waiting many weeks for simple repairs. For example, on a BlackBerry, it is impossible to put a new battery incorrectly due to its design. Thus, AADB strongly recommends that the state distribution program allow the deaf-blind people to swap their equipment instead of using loaner equipment when their device malfunctions. This will ensure that the deaf-blind individuals are able to continue their activities with needed equipment with minimal disruption and without the burden of dealing with warranty services, not to mention the unanticipated time and expenses incurred with additional training, traveling and other expenses.

If, however, deaf-blind individuals are unable to use the equipment provided to them, AADB concurs with the Commission's suggestion that the equipment be returned to the EDP for refurbishing and/or upgrading as needed for other deaf-blind consumers to use.

F. Outreach and Education about the NDBEDP

Regarding the level and types of outreach that will be needed to enable the NDBEDP to fulfill Congress's objective of bringing communication technologies to the deaf-blind community, AADB suggests that EDPs and authorized program providers be responsible for localized outreach activities. Collaboration between Commission and non-profit, national deaf-blind consumer organizations could facilitate the outreach with the EDPs and other authorized program providers.

VI. FUNDING

AADB supports the proposal that funds be rolled over and reallocated in the following year, based on EDP statistics, projections and deaf-blind population demographics. As noted in the *NPRM*, this approach would ensure that the failure of any program to fulfill its commitment to distribute devices would not penalize people who are deaf-blind because unused funds would continue to be available in future years for their communication needs.⁸

VII. OVERSIGHT AND REPORTING

The need for thorough reporting and oversight requirements are necessary components of the NDBEDP to assess the effectiveness of the Commission's pilot program, to ensure that the Fund is being used for the purpose intended by Congress, and to provide the Commission with the ability to detect and prevent potential fraud, waste and abuse of the Fund. Therefore, AADB suggests that the responsibilities for oversight and reporting should be combined between the Commission and a national, non-profit, deaf-blind consumer organization such as AADB. The

⁸ *NPRM*, ¶ 46.

Commission has the authority to administer the program and the consumer organization has the network with other consumer groups and the connections with members to make this succeed.

VIII. LOGISTICS AND DIVISION OF RESPONSIBILITIES

In addition to delegating authority to the Consumer and Governmental Affairs Bureau to designate a NDBEDP Program Administrator, due to the specialized and technical nature of stakeholders, a national deaf-blind consumer organization such as AADB would be able to complement the duties of the NDBEDP Program Administrator, should the Commission require outside assistance.

IX. OTHER CONSIDERATIONS

The creation of an advisory body to work with the NDBEDP Program Administrator and Fund Administrator to evaluate consumer experiences with the program, assess the program's benefits, explore new technologies, and consider changes to the program's features is warranted. Other stakeholders in advisory groups may also include consumers that participate in the program, other consumer groups, equipment manufacturers and equipment distribution programs. AADB can advise the body on issues such as the logistics of meetings with communication facilitators ("CFs") and/or support service providers ("SSPs"). The Seattle DeafBlind Service Center operates a Communication Facilitator (CF) and Video Communication Program.⁹ In addition, AADB has a white paper on the role of SSPs.¹⁰

III. CONCLUSION

AADB respectfully encourages the Commission to consider the points discussed herein when developing the NDBEDP to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications

⁹ See Communication Facilitator (CF) and Video Communication Program, Seattle DeafBlind Service Center at <http://www.seattledbcs.org/visualweb/services/cfvis.html>.

¹⁰ See "Support Service Provider for People who are Deaf-Blind," American Association of the Deaf-Blind (Nov. 2006) at <http://aadb.org/pdf/SSP%20White%20Paper%20FINAL%20NOV%2006.pdf>.

and information services, accessible by low income individuals who are deaf-blind. The needs of people with disabilities, including deaf, hard-of-hearing, late-deafened, and deaf-blind, must be a factor in developing the NDBEDP because these technologies provide an essential platform for these individuals to communicate with the world. It also ensures they will have access to the massive amounts of information available on the Internet, be able to access services and apply for or order merchandise and materials, search and apply for jobs, and much more.

Respectfully submitted,

Randall Pope
Interim Executive Director
American Association of Deaf-Blind
8630 Fenton Street, Suite 121
Silver Spring, MD 20910

/s/ _____
Tamar E. Finn
Nguyen T. Vu
BINGHAM MCCUTCHEN LLP
2020 K Street, NW
Washington, DC 20006
(202) 373-6000

*Counsel to Telecommunications for the Deaf
and Hard of Hearing, Inc.*

Claude L. Stout
Executive Director
Telecommunications for the
Deaf and Hard of Hearing, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910

Dated: February 4, 2011