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

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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 )  
)

REPORT AND ORDER

Adopted: April 4, 2011

Released: April 6, 2011

By the Commission: Commissioner Copps issuing a statement.

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## I. INTRODUCTION

1. In this order, the Commission establishes a National Deaf-Blind Equipment Distribution Program (“NDBEDP”) to certify and provide funding to entities in each state so that they can distribute specialized customer premises equipment (“CPE”) to low-income individuals who are deaf-blind. These individuals need such specialized CPE to effectively access telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services. Every American should have the ability to use our nation’s communications services. The ability to communicate enables people to be independent, productive, safe and secure. In recent years, technological innovation has dramatically changed the ways that we communicate and acquire information. Most Americans can now choose among a wide selection of digital and Internet-based voice, text, and video communication methods to meet their individual and daily needs. The proliferation of these technologies has provided new ways to secure employment, shop, learn, acquire health care, and participate in civic affairs. Until now, however, accessibility barriers confronting people who are deaf-blind have largely prevented this community from enjoying these benefits. The actions we take today are intended to help change that.

## II. BACKGROUND

2. This order implements a provision of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), signed into law by President Obama on October 8, 2010. The CVAA requires the Commission to take certain steps to ensure that individuals with disabilities have access to emerging communications technologies in the 21<sup>st</sup> century.<sup>1</sup> Section 105 of the CVAA directs the Commission to establish rules within six months of enactment (*i.e.*, by April 8, 2011) that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized CPE to low-income individuals who are deaf-blind.<sup>2</sup> The goal of the NDBEDP established herein is to ensure that individuals who are deaf-blind will receive the specialized CPE needed to effectively access telecommunications services, Internet access services and advanced communications services.

<sup>1</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (S. 3304, 111th Cong.) (as codified in various sections of 47 U.S.C.); *see also* Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-265, 124 Stat. 2795 (2010), also enacted on October 8, 2010 (S. 3828, 111<sup>th</sup> Cong.), making technical corrections to the CVAA.

<sup>2</sup> Section 105 adds Section 719 to the Communications Act of 1934, as amended (“Act”), and is codified at 47 U.S.C. § 620. For purposes of Section 719, the term “individuals who are deaf-blind” has the “same meaning given such term in the Helen Keller National Center Act, as amended by the Rehabilitation Act Amendments of 1992 (29 U.S.C. 1905(2)).” 47 U.S.C. § 620(a). *See also* Section IV.A, *infra*.

3. The Consumer and Governmental Affairs Bureau (“CGB”) issued a Public Notice on November 3, 2010, seeking comment on a range of issues related to the Commission’s implementation of the NDBEDP.<sup>3</sup> The comments filed in response to the *NDBEDP PN* informed the preparation of a Notice of Proposed Rulemaking that the Commission released on January 14, 2011.<sup>4</sup> In the *NDBEDP NPRM*, the Commission proposed ways to support the distribution of specialized CPE to enhance and promote access to telecommunications service, Internet access service, and advanced communications by low-income individuals who are deaf-blind, and sought comment on those proposals. This Report and Order adopts interim rules to govern a pilot program to support the distribution of such specialized CPE and the provision of associated services. We are hopeful that the experience gained during this pilot program will help inform future Commission action to establish a permanent NDBEDP that effectively meets the goals of this CVAA requirement.

4. Most communications-related statutes and regulations have not specifically addressed the communication needs of the deaf-blind population. Although telecommunications relay services (“TRS”) have provided some communications options for people who are deaf-blind,<sup>5</sup> often these individuals have needed expensive supplemental equipment, such as Braille displays, to effectively use these services. In addition, even where individuals had such equipment, the inability to use more than one type of relay service in a single call sometimes further hindered the ability of these individuals to effectively use these services.<sup>6</sup> Similarly, although Section 255 of the Act generally requires telecommunications equipment and services to be accessible by people with disabilities, under that law, companies need only incorporate such access where it is readily achievable to do so.<sup>7</sup> Commission rules define “readily achievable” as “easily accomplishable and able to be carried out without much difficulty or expense”;<sup>8</sup> a standard that does not necessarily assure the provision of services and equipment designed for the unique and highly specialized communication needs of the deaf-blind population. Finally, as we noted in the *NDBEDP NPRM*, although several states do have their own equipment distribution programs (“EDPs”), the high cost of communications equipment needed by many people who are deaf-blind has impeded the efforts to distribute equipment to this community.<sup>9</sup> The urgent need for an effective, nationwide equipment distribution program to enhance communications access for people who are deaf-blind is apparent, as documented both in the legislative hearings on the CVAA<sup>10</sup> and the record in this proceeding.<sup>11</sup> Arthur Gould, a technology trainer for people with multiple disabilities, including visual and hearing loss, states:

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<sup>3</sup> *Consumer and Governmental Affairs Bureau Seeks Comment on Implementation of Requirement to Define Programs for Distribution of Specialized Customer Premises Equipment Used by Individuals who are Deaf-Blind*, CG Docket No. 10-210, Public Notice, 25 FCC Rcd 15288 (CGB 2010) (“*NDBEDP PN*”).

<sup>4</sup> *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, Notice of Proposed Rulemaking, 26 FCC Rcd 688 (2011) (“*NDBEDP NPRM*”).

<sup>5</sup> See, e.g., 47 C.F.R. §§ 64.601-64.613 (Commission rules governing the provision of relay services).

<sup>6</sup> For example, a person who is deaf-blind might need to use video relay services to communicate expressively in American Sign Language and use text relay services to receive communication back in text that is then converted into Braille. A call using TRS, as redefined in the CVAA, may utilize more than one type of relay service. Pub. L. 111-260, Sec. 103(a), to be codified at 47 U.S.C. § 225(a)(3).

<sup>7</sup> 47 U.S.C. § 255.

<sup>8</sup> 47 C.F.R. §§ 6.3(h), 7.3(h).

<sup>9</sup> *NDBEDP NPRM*, 26 FCC Rcd at 689-90, ¶ 3. See also para. 33 and note 112, *infra*.

<sup>10</sup> See, e.g., *Hearing on Draft Legislation Enhancing Access to Broadband Technology and Services for Persons with Disabilities Before the House Subcommittee on Telecommunications and the Internet*, 111th Cong. 7 (2008),

(continued....)

Imagine for a minute that the telephone is a barrier to communication. Then imagine the printed word is another barrier. Now picture a visually and hearing impaired grandmother using assistive technology on a computer to communicate with her grandchildren by e-mail. I have personally experienced amazing transformations on the part of people with multiple disabilities. I have seen through the use of this type of technology and specialized training, people rediscover their lives and even find new purposes to get behind. This technology and training is much more than connecting people to information. It's about improving our collective state by including everybody.<sup>12</sup>

5. The NDBEDP established herein is designed to provide people who are deaf-blind with meaningful access to communications equipment through channels that will also provide them with the support services needed to effectively use this equipment. No two people who are deaf-blind are exactly alike, and very few such individuals have been completely blind and deaf for their entire lives.<sup>13</sup> Rather, this population is characterized by people with a wide range of hearing and vision loss, some of which may have been present at birth, and some of which may have developed or progressively increased in later years. In addition, many individuals who are deaf-blind have other disabilities, further adding to the challenges they face.<sup>14</sup> As we noted in the *NDBEDP NPRM*, the wide range of this population's experiences and disabilities, together with their geographical diversity, presents the Commission with significant and novel challenges in our efforts to craft a nationwide equipment program that will both rapidly and effectively provide members of this community with communications access.<sup>15</sup>

(Continued from previous page)

written statement of Jamaal Anderson on behalf of the Coalition of Organizations for Accessible Technology (COAT), also found at: <http://www.coataccess.org/node/58> (visited Apr. 4, 2011). See also Congressional Testimonies of Bobbie Beth Scoggins (President, Natl. Assn. of the Deaf) at [http://commerce.senate.gov/public/?a=Files.Serve&File\\_id=d1599ce3-4dbe-432f-bfd4-69b2c581d60c](http://commerce.senate.gov/public/?a=Files.Serve&File_id=d1599ce3-4dbe-432f-bfd4-69b2c581d60c) and Lise Hamlin (on behalf of the Hearing Loss Assn. of America and COAT) at <http://energycommerce.house.gov/documents/20100610/Hamlin.Testimony.2010.06.10.pdf>; and Resolution to Support Equal Access to Communications Technologies by People with Disabilities in the 21<sup>st</sup> Century, National Association of Regulatory Utility Commissioners ("NARUC") (Feb. 20, 2008) ("NARUC Resolution") (noting that the tens of thousands of people who are deaf-blind living in the United States "lack even the most basic access to telecommunications services"). NARUC further noted that the problem is particularly "acute in rural communities where people with disabilities are the least employed and can least afford expensive specialized customer premises equipment that can cost upwards of five thousand dollars." Letter from David C. Coen, President, NARUC, to Reps. Henry Waxman, Joe Barton, Rick Boucher and Cliff Stearns (Dec. 10, 2009).

<sup>11</sup> See, e.g., *NDBEDP NPRM*, 26 FCC Rcd at 690, ¶¶ 4-5; AADB Comments at 2 and 12 (stating that "these technologies provide an essential platform for these individuals to communicate with the world"); Lighthouse Comments at 2 (noting a "huge gap in the availability of usable technology" for people who are deaf-blind); National Coalition Comments at 2 (citing a "clear need for a coherent long-term structure that ensures consistency of results nationwide . . . to provide, as soon as possible, people who are deaf-blind with meaningful access to costly communications equipment through familiar, reliable and sustainable channels").

<sup>12</sup> National Coalition Comments at 10.

<sup>13</sup> *Id.* at 7; ACB Reply at 7.

<sup>14</sup> See, e.g., National Coalition Comments at 5-6 (discussing CHARGE syndrome, an extremely complex syndrome, involving extensive medical and physical conditions that differ from child to child).

<sup>15</sup> *NDBEDP NPRM*, 26 FCC Rcd at 691, ¶ 6.

6. The CVAA authorizes the Commission to allocate \$10 million annually from the Interstate TRS Fund (“TRS Fund”) for this nationwide equipment distribution effort.<sup>16</sup> Because of the many novel issues before us, and in the interest of enabling the NDBEDP to begin operating as quickly as possible, we establish in this Order a two-year pilot program with interim regulations. During this period, the program will rely on both existing state EDPs and other programs that apply for and receive NDBEDP certification to distribute specialized CPE and provide the related services needed to implement this program. We create comprehensive reporting requirements for these certified programs, designed to collect data on the best ways to meet the communications needs of individuals who are deaf-blind. We are hopeful that the experiences of these certified programs during the pilot period will inform our efforts to create a permanent NDBEDP by providing a comprehensive and practical understanding of how to best apply the limited funding available under this program for the intended population. We may extend this pilot for up to an additional one year, for a total of three years, if we determine that additional time is needed to fully assess the results of the pilot before establishing a permanent program.<sup>17</sup> We expect that this 24- to 36-month period will give the Commission sufficient time to conduct and analyze the results of the pilot program and determine its effectiveness.

7. We believe that the approach that we adopt in this Order will enable certified programs participating in the pilot to structure their distribution and service delivery systems to effectively meet the needs of their participants, and will result in a variety of equipment distribution and service delivery models that can better inform the structure of the permanent NDBEDP. We are mindful of inconsistencies that consumers have experienced with equipment distribution efforts across the states in the past,<sup>18</sup> and believe that the criteria and rules that we adopt in this pilot program will go a long way toward achieving uniformity in program quality nationwide.

### III. PILOT PROGRAM

8. In the *NDBEDP NPRM*, we proposed a pilot program that would invite an estimated 45 existing state EDPs to apply for certification to receive support from the TRS Fund for distributing equipment to their deaf-blind residents.<sup>19</sup> Under this proposal, we explained that each EDP that became certified would become the sole entity eligible to receive TRS Fund support for distributing equipment in that state.<sup>20</sup> For states that do not have an EDP or that have an EDP that does not apply for or is not selected to participate in this pilot program, we proposed allowing other public programs (*e.g.*, vocational rehabilitation programs, assistive technology programs, or schools for the deaf, blind or deaf-blind) or private entities (*e.g.*, independent living centers, organizational affiliates, or private schools) to apply for certification to participate in the NDBEDP to receive support for distributing this equipment in those states.<sup>21</sup> We further proposed a number of factors to be considered in determining whether to grant certification to a state EDP or other programs.<sup>22</sup> Acknowledging that not all deaf-blind individuals may

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<sup>16</sup> 47 U.S.C. § 620(c).

<sup>17</sup> In the *NDBEDP NPRM*, the Commission proposed an 18-month pilot program, with an option to extend the pilot for an additional six months, for a total of two years. *NDBEDP NPRM*, 26 FCC Rcd at 691, ¶ 7. *See* para. 22, *infra*, for discussion of the duration of this pilot program.

<sup>18</sup> *See, e.g.*, National Coalition Comments at 1 (reporting the “great inconsistencies” in experiences that consumers who are deaf-blind have had with the current state EDPs).

<sup>19</sup> *NDBEDP NPRM*, 26 FCC Rcd at 692-93, ¶ 10.

<sup>20</sup> *Id.* at 693, ¶ 11.

<sup>21</sup> *Id.* at 692-93, ¶ 10.

<sup>22</sup> *Id.*

live close to a state EDP center, we proposed to support collaborations or partnerships between a state's EDP and other state programs (*e.g.*, vocational rehabilitation, education, and/or assistive technology program) to meet the needs of these individuals.<sup>23</sup> Finally, for states without any EDPs, we asked whether multiple entities should be permitted to oversee the distribution of and receive compensation for equipment to different regions of those states, or whether we should select a single entity to assume this oversight role across the state.<sup>24</sup>

9. Many of the commenters responding to the *NDBEDP NPRM* support our proposal to rely on both state EDPs and other qualified entities to distribute equipment under the NDBEDP. For example, Deaf-Blind Young Adults in Action ("DBYAA") states that the distribution of equipment through state EDPs and local channels "would be more effective than establishing a national distribution program."<sup>25</sup> Similarly, Missouri Assistive Technology ("MoAT") notes that having established EDPs handle this responsibility is beneficial because these entities provide "existing infrastructures for the program rather than expending dollars on developing new distribution systems."<sup>26</sup> MoAT further supports our proposal to allow other entities to step in where a state EDP is unable or willing to participate in the NDBEDP.<sup>27</sup> Finally, the Telecommunications Equipment Distribution Program Association ("TEDPA"), which represents EDPs across the country, claims that its members are "best situated" to distribute specialized CPE to people who are deaf-blind.<sup>28</sup> It notes that some state EDPs already have been providing services to people who are deaf-blind for years and have the proficiency needed to communicate with this population, while others can create partnerships for this purpose and should be given the option to "maintain this proven service delivery system under the NDBEDP."<sup>29</sup>

10. Other commenters were less supportive of relying on state EDPs. For example, the Lighthouse for the Blind, Inc. ("Lighthouse") notes that EDPs have varied in their effectiveness in serving people who are deaf-blind and that many have only limited knowledge and experience with this population.<sup>30</sup> Instead, the Lighthouse recommends that a variety of service models and programs be included in the pilot program.<sup>31</sup> The suggestion to evaluate a range of models with respect to their program structures, equipment distribution mechanisms and approaches to training and support, is echoed by the National Coalition on Deafblindness ("National Coalition")<sup>32</sup> and the American Council of the

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<sup>23</sup> *Id.* at 693, ¶ 11.

<sup>24</sup> *Id.*

<sup>25</sup> DBYAA Comments at 1. Where no state EDP exists, DBYAA suggests that a single entity within a state be designated to assume responsibility for distributing equipment. *Id.*

<sup>26</sup> MoAT Comments at 1.

<sup>27</sup> *Id.*

<sup>28</sup> TEDPA Comments at 1.

<sup>29</sup> *Id.*

<sup>30</sup> Lighthouse Comments at 2. *See also* NAD Comments at 2 (urging more stringent certification factors to ensure equal quality of services in all states).

<sup>31</sup> Lighthouse Comments at 2.

<sup>32</sup> National Coalition Comments at 2 (noting its preference for a regionalized or national system).

Blind (“ACB”).<sup>33</sup> The National Coalition further favors a program of subcontractors to be overseen by a national or regional entity with experience serving the deaf-blind community.<sup>34</sup>

11. Virtually all commenters encourage collaboration, partnerships, and other types of cooperative arrangements between entities, in-state and out-of-state, to provide the needed expertise to meet the needs of this diverse population.<sup>35</sup> For example, the Lighthouse recommends that the Commission give preference for certification to projects that “have a history of working collaboratively with organizational partnerships and connections to the communities of people served.”<sup>36</sup> It further suggests that people who are deaf-blind be given the flexibility to “choose the EDP or model organization with whom they are most comfortable working, regardless of location.”<sup>37</sup> The National Coalition also recommends allowing certified programs to enter into cooperative agreements or coordinated ventures across state lines because the number of individuals in the United States that have expertise on the needs of people who are deaf-blind is so limited, and having this flexibility would best serve this population.<sup>38</sup> Likewise, the Helen Keller National Center for Deaf-Blind Youths and Adults (“HKNC”), which provides adaptive technology training for teaching deaf-blind individuals, notes that because there is a critical shortage of qualified personnel trained to work with individuals who are deaf-blind, consumers should have the right to get services related to equipment distribution – for example, training – from another agency, in or out of state, if their EDP is not meeting their needs.<sup>39</sup>

12. *Discussion.* After reviewing the record, we adopt a modified version of the proposal on which we sought comment in the *NDBEDP NPRM*. Specifically, as we proposed in the *NDBEDP NPRM*, we conclude that we will certify only one entity per state as eligible to receive support for the distribution of equipment to individuals who are deaf-blind.<sup>40</sup> But while we also proposed a multi-stage certification process in the *NDBEDP NPRM* (first accepting applications for certification from state EDPs, and then accepting applications for certification from other entities in states without a certified state EDP),<sup>41</sup> we conclude here that the better course is to permit all qualified entities to apply for certification and to select from among them based on the criteria set out below. As noted by several of the commenters, many existing state EDPs already have both experience in working with the deaf-blind population, as well as the infrastructures in place to distribute this equipment.<sup>42</sup> At the same time, we think that greater flexibility in choosing the certified entity will permit the Commission to certify the best qualified entity to

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<sup>33</sup> ACB Reply at 2. *See also* Parker Comments at 1 (suggesting that multi-year pilot projects be designed around sub-populations like seniors and youth).

<sup>34</sup> National Coalition Comments at 4. *See also* NAD Comments at 2 (favoring a national center with several regional service centers).

<sup>35</sup> *See, e.g.*, NAD Comments at 3; National Coalition Comments at 3; TEDPA Comments at 1. For example, such collaboration could be used to locate qualified personnel to perform individual assessments and provide training, as needed, to equipment recipients.

<sup>36</sup> Lighthouse Comments at 3.

<sup>37</sup> *Id.* at 2.

<sup>38</sup> National Coalition Comments at 4.

<sup>39</sup> HKNC Comments at 2.

<sup>40</sup> *See NDBEDP NPRM*, 26 FCC Rcd at 693-94, ¶ 10.

<sup>41</sup> *Id.*

<sup>42</sup> *See* para. 9, *supra*.

utilize TRS Fund support to effectuate the purposes of the CVAA. In many cases, the certified entity may well be the state EDP,<sup>43</sup> but under this approach we retain the flexibility to approve other entities.

13. Accordingly, we delegate authority to CGB to certify a single entity per state to receive funding for the distribution of equipment under the NDBEDP for that state.<sup>44</sup> Each certified entity will have primary oversight and responsibility for compliance with program requirements, but certified entities may fulfill their responsibilities either directly or through collaboration, partnership, or contract with other individuals or entities in-state or out-of-state (including other state EDPs).<sup>45</sup> We note, for example, that collaboration with other entities that have specific expertise in working with people who are deaf-blind may be necessary and appropriate to provide both individual assessments needed to ascertain which devices are appropriate for distribution, as well as the training that is needed for the recipient to effectively use that equipment.<sup>46</sup> In addition, some entities may not have distribution networks that reach all parts of their states and may wish to collaborate with partners who do. We believe that this program structure will establish accountability in each of the states by giving programmatic responsibility to one certified program that will be authorized to oversee that state's distribution efforts, while permitting such designated entity to draw upon the expertise of other in- and out-of-state resources.

14. We will require the submission of certification applications within 60 days after the effective date of these interim rules,<sup>47</sup> and will announce the selected participants, starting date, and funding allocations as soon as possible thereafter.<sup>48</sup> We believe that this single-stage application process for purposes of the pilot program will achieve greater efficiency, conserve staff resources, and achieve implementation of the equipment distribution efforts more promptly than a multi-stage application process.<sup>49</sup> Certification will be granted for the duration of the pilot program, subject to compliance with program requirements.<sup>50</sup>

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<sup>43</sup> See, e.g., MoAT Comments at 1 (noting state EDPs have existing infrastructures for equipment distribution); TEDPA Comments at 1 (asserting that state EDPs are "best suited" to distribute specialized CPE to deaf-blind individuals). *But see* Lighthouse Comments at 2 (claiming state EDPs have varied in their effectiveness in serving deaf-blind individuals).

<sup>44</sup> A maximum of 53 entities may be selected to participate in the NDBEDP pilot – the 50 states plus the District of Columbia, Puerto Rico, and the Virgin Islands, each of which currently administers an intrastate TRS program. Future references to "states" in this Order shall apply to all of these jurisdictions.

<sup>45</sup> As noted below in Section V, *infra*, the NDBEDP entails not only the distribution of equipment, but also the provision of related services, including individual assessments and training, that may be needed to effectively provide a person who is deaf-blind with the equipment that he or she needs to access the communications services covered by the CVAA.

<sup>46</sup> See, e.g., National Coalition Comments at 4 (urging flexibility to best utilize limited number of individuals with expertise on the needs of individuals who are deaf-blind); HKNC Comments at 2 (noting shortage of qualified personnel trained to work with individuals who are deaf-blind).

<sup>47</sup> These rules will be effective upon notice in the Federal Register announcing OMB approval of the information collection requirements subject to the Paperwork Reduction Act.

<sup>48</sup> *But see* National Coalition Comments at 3 (recommending a three-month process).

<sup>49</sup> The Commission may, however, accept certification applications at any time during the pilot program, as may be needed to fill program gaps, with the goal of ensuring that one certified program is operating in every state.

<sup>50</sup> See TEDPA Comments at 1 (recommending certification for the duration of the pilot program). *But see* DBYAA Comments at 1 (recommending annual recertification).

15. We adopt, with the following minor modifications, the proposed criteria for certification to participate in the NDBEDP pilot, and require applicants for certification to provide information in their applications demonstrating that they meet each of these criteria.<sup>51</sup> First, we require expertise in the field of deaf-blindness 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. We clarify that “expertise in the field of deaf-blindness” should include familiarity with the culture and etiquette of people who are deaf-blind as necessary to serve this population effectively. Many commenters emphasize the importance of ensuring that employees or agents of programs certified under the NDBEDP demonstrate a high level of knowledge about and familiarity with the communication needs of people who are deaf-blind. In this regard, TEDPA notes its support for the certification criteria proposed in the *NDBEDP NPRM*,<sup>52</sup> in particular the requirement for proficiency in communicating with deaf-blind individuals.<sup>53</sup> Likewise, the Lighthouse asserts that it is “essential that [an equipment distribution] program has a high level of expertise in deaf-blindness” including communication fluency in multiple languages, techniques, and modalities; cultural competency; input from deaf-blind consumers; and leadership by members of the deaf-blind community.<sup>54</sup>

16. Second, we require the ability to communicate effectively with people who are deaf-blind by, among other things, using sign language and providing materials in Braille. Effective communication with members of this community requires a wide range of unique capabilities – including various forms of tactile communication, as well as the patience to impart information in a manner that ensures that participants fully understand the information and instructions they are given.<sup>55</sup> Without adequate communication between certified program staff and these individuals, such individuals will not be able to effectively benefit from the communication equipment they receive. To this end, we also require that programs have the ability to ensure that their program information made available online is accessible to the intended population, and that they know how to use other assistive technologies and methods to achieve effective communication.

17. Third, we require staffing and resources that are sufficient to administer the program.<sup>56</sup> This includes the ability to distribute equipment and provide related services to eligible individuals throughout the state, including to remote areas.<sup>57</sup> The appropriate number of employees and facilities will depend on the size and location of the program, but the program should be capable of meeting the demand for equipment and services supported by the NDBEDP. For example, if a state is given sufficient funds to distribute 20 devices to 20 individuals, staffing should be sufficient to meet the demands of those individuals.

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<sup>51</sup> *NDBEDP NPRM*, 26 FCC Rcd at 692, ¶ 10.

<sup>52</sup> *Id.*

<sup>53</sup> TEDPA Comments at 1. *See also* NAD Comments at 3.

<sup>54</sup> Lighthouse Comments at 1. *See also* HKNC Comments at 2 (urging the Commission to allow for meaningful input from deaf-blind consumers and appropriate experts when assessing whether a program is qualified to serve as a distribution center).

<sup>55</sup> HKNC Comments at 3 (explaining that presenting information on the appropriate language level and in accessible formats for individuals who are deaf-blind is a significant challenge). *See also* Section V.G, *infra*.

<sup>56</sup> *See NDBEDP NPRM*, 26 FCC Rcd at 692, ¶ 10.

<sup>57</sup> *Id.*

18. Fourth, we require experience with the distribution of specialized CPE, especially to people who are deaf-blind.<sup>58</sup> Various programs across the country already have this or similar experience, whether part of a state EDP, a vocational rehabilitation program, or a technical assistance center.<sup>59</sup> Having such experience at the start of the NDBEDP will help expedite delivery of these devices to this underserved population.

19. Fifth, we require experience in training deaf-blind individuals on how to use the equipment, knowledge of how to set up this equipment, and experience in ensuring that deaf-blind individuals can effectively use the equipment.<sup>60</sup> The equipment distributed under the NDBEDP will often need to be configured to meet the unique needs of such individuals. A qualifying program will be familiar with these unique needs so that it can effectively instruct program recipients on how to get the most out of their new communication devices.

20. Finally, we require familiarity with the telecommunications, Internet access, and advanced communications services that will be used with the distributed equipment, so that the recipient is able to benefit from the full range of communications technologies available to the general public.<sup>61</sup> For example, if a device has the capability to use instant messaging and e-mail along with TTY communications,<sup>62</sup> the program must be able to teach its recipients how to use each of these communication features.

21. In order to facilitate collaboration among interested parties, we will require that an applicant provide information in its application indicating whether it is able to meet the requirements for certification alone, or in conjunction with other programs or entities. We believe that granting certification to the strongest application in each state will encourage applicants to collaborate to provide the most effective and efficient services, thus benefitting the ultimate program recipients, the deaf-blind community. Program applicants may also include recommendations with their certification applications from members of the deaf-blind community in their state, appropriate experts, or others with direct knowledge of their capabilities and qualifications.

22. Given the time needed to evaluate the pilot program and engage in a rulemaking process for the permanent program, we will operate the NDBEDP pilot for two years, from the pilot program start date, with an option to extend the program for an additional year. We delegate authority to CGB to establish the pilot program start date, as soon as possible, but not later than July 1, 2012, the start of the 2012-2013 TRS Fund year. Commenters generally agreed that a multi-year program is appropriate and necessary “to accumulate data on [the] effectiveness of services as well as to account for needed start up time, public outreach to the Deaf-Blind community, and collection of input from program participants in a

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<sup>58</sup> *Id.*

<sup>59</sup> See MoAT Comments at 1 (noting that state EDPs have existing infrastructures for equipment distribution).

<sup>60</sup> See *NDBEDP NPRM*, 26 FCC Rcd at 692, ¶ 10. See also Section V.E, *infra*.

<sup>61</sup> In the *NDBEDP NPRM*, we proposed to require “a strong familiarity with the communications needs of this population” which one commenter interpreted as meaning familiarity with the languages and communication modes used by individuals who are deaf-blind. See *NDBEDP NPRM*, 26 FCC Rcd at 692, ¶ 10; Lighthouse Comments at 3.

<sup>62</sup> A TTY, also called a “text telephone,” is a text device that employs graphic communication in the transmission of coded signals through a wire or radio communication system. See *Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657, ¶ 1 n.1 (1991).

relevant manner.”<sup>63</sup> We believe that the experiences gained during this pilot program, as reported in the data required by this Order,<sup>64</sup> will provide us with a comprehensive understanding of how to ensure the most efficient and effective use of the funds available under this program to meet the needs of this population on a more permanent basis.

#### IV. CONSUMER ELIGIBILITY

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

23. Under the CVAA, persons eligible to receive equipment under the NDBEDP must be “deaf-blind,” as this term is defined by the Helen Keller National Center Act (“HKNC Act”), as amended by the Rehabilitation Act Amendments of 1992.<sup>65</sup> As noted in the *NDBEDP NPRM*, the HKNC Act defines an “individual who is deaf-blind” as any individual:

(i) who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both these conditions; (ii) who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and (iii) for whom the combination of impairments described in clauses (i) and (ii) cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.<sup>66</sup>

Although the HKNC Act prescribes a specific standard against which one’s disability must be measured, it also allows a person to be considered deaf-blind if, in those instances in which the individual cannot be measured accurately for hearing and vision loss because of cognitive and/or behavioral constraints, through functional and performance assessment, he or she is determined to have “severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities.”<sup>67</sup> In the *NDBEDP NPRM*, we noted that most commenters urged a flexible interpretation of this definition, to allow determinations of eligibility to be based on an individual’s functional abilities.<sup>68</sup> The majority of such commenters felt that a narrow interpretation would exclude many individuals who are unable to access traditional communications equipment because of their disabilities.<sup>69</sup>

24. In response to these concerns, in the *NDBEDP NPRM*, we asked whether certified programs should consider the settings in which a deaf-blind applicant is likely to establish telephone-type communication with others when determining eligibility based on disability. We gave as an example a

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<sup>63</sup> Lighthouse Comments at 3 (suggesting three years as a reasonable time frame). *See also* Parker Comments at 1 (urging multi-year funding); National Coalition Comments at 3 (recommending three years); RERCs Reply at 3 (suggesting two years might be better with an option to extend for six or 12 months); ACB Reply at 2.

<sup>64</sup> *See* Section VII, *infra*.

<sup>65</sup> 47 U.S.C. § 620(b), *citing* 29 U.S.C. § 1905(2).

<sup>66</sup> 29 U.S.C. § 1905(2)(A); *NDBEDP NPRM*, 26 FCC Rcd at 693, ¶ 12.

<sup>67</sup> 29 U.S.C. § 1905(2)(B); *NDBEDP NPRM*, 26 FCC Rcd at 693-94, ¶ 13.

<sup>68</sup> *NDBEDP NPRM*, 26 FCC Rcd at 694, ¶ 14

<sup>69</sup> *Id.*

blind person with a moderate hearing loss who might have no trouble hearing a conversation in a quiet room, but who under the second prong of the HKNC definition, might not be able to hear telephone speech even “with optimum amplification,” in a noisy public setting.<sup>70</sup> Similarly, we proposed that the ability of an individual to use the communications services covered under Section 719 of the Act (telecommunications, Internet access, and advanced communications services) should be considered when determining the degree of difficulty caused by the combination of the individual’s hearing and vision loss in “attaining independence in daily life activities” under the third prong of the definition.<sup>71</sup>

25. The commenters to this proceeding support a functional approach when determining whether an individual is “deaf-blind” under the HKNC Act definition.<sup>72</sup> For example, MoAT urges “consideration of settings in which the deaf-blind individual is likely to establish telecommunications with others” in determinations as to whether an individual is deaf-blind.<sup>73</sup> The National Coalition notes that an individual’s ability to function is impacted by environmental and other factors, such as being able to read large print with optimal light, but requiring Braille in other settings.<sup>74</sup> Similarly, the RERCs support the use of evaluations of deaf-blindness “in real environments and not in a quiet evaluation room.”<sup>75</sup> Finally, AADB claims that “[r]emaining focused on functional equivalency aligns with Congress’s overall goal to ensure the availability of existing and emerging communication technologies for the deaf-blind population.”<sup>76</sup>

26. *Discussion.* We are required to incorporate into this program the HKNC Act definition of “individuals who are deaf-blind.” That definition contains three prongs. In considering the latter two of these prongs, we agree with commenters that the intent of the CVAA will best be fulfilled if we also consider an individual’s ability to engage independently in the communications-related activities covered under Section 719, *i.e.*, the ability to use telecommunications, Internet access, and advanced communications services.

27. The first prong of the definition requires assessment of the individual’s vision. The statute provides clear, measurable standards of loss of visual acuity, and we are bound by the statute to apply these standards.<sup>77</sup> The second and third prongs of the definition are more flexible in that they permit the consideration of other factors. The second prong asks whether the individual has a hearing loss so severe “that most speech cannot be understood with optimum amplification.”<sup>78</sup> We believe this prong

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<sup>70</sup> *Id.* at 694-95, ¶ 15; 29 U.S.C. § 1905(2)(A)(ii).

<sup>71</sup> *NDBEDP NPRM*, 26 FCC Rcd at 694-95, ¶ 15; 29 U.S.C. § 1905(2)(A)(iii).

<sup>72</sup> *See, e.g.*, AADB Comments at 4; DBYAA Comments at 2 (urging a “flexible interpretation that allows eligibility to be based on an individual’s functional abilities”); Lighthouse Comments at 3; MoAT Comments at 1; NAD Comments at 4; National Coalition Comments at 4; RERCs Reply at 3. *See also* TEDPA Comments at 2 (HKNC Act definition is sufficiently flexible).

<sup>73</sup> MoAT Comments at 1.

<sup>74</sup> National Coalition Comments at 4. *See also* ACB Reply at 4.

<sup>75</sup> RERCs Comments at 3.

<sup>76</sup> AADB Comments at 4.

<sup>77</sup> The first prong also includes a provision for a progressive visual loss having a prognosis leading to one or both of the vision standards described. 29 U.S.C. § 1905(2)(A)(i). As noted above, the HKNC Act provides a different standard for individuals whose hearing or vision cannot be measured accurately due to cognitive and/or behavioral constraints. *See* para. 23, *supra*.

<sup>78</sup> 29 U.S.C. § 1905(2)(A)(ii).

permits us to take into account such considerations as whether the speech is being perceived over the telephone.<sup>79</sup> Similarly, the third prong asks whether the individual's combined visual and hearing losses "cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation."<sup>80</sup> We read this prong as broad enough to take into account communications-related activities, which are commonly associated with attaining "independence in daily life activities, achieving psychosocial adjustment, and obtaining a vocation."<sup>81</sup> We believe that we have the authority to direct consideration of this criterion as necessary in order to give full effect and meaning to the statute, and to identify the full range of individuals for whom the program is intended. Further, we conclude that consideration of these functional capabilities is in keeping with Congress's overall goal to ensure the accessibility of existing and emerging communications technologies for the deaf-blind population. When applied in this manner, this functional approach will provide the flexibility requested by many of the commenters in this proceeding. Accordingly, we direct NDBEDP certified programs to consider an applicant's functional abilities with respect to using telecommunications, Internet access, and advanced communications services in various environments, when determining whether the individual is deaf-blind under prongs two and three of the definition.

## B. Verification of Disability

28. In both the *NDBEDP PN* and the *NDBEDP NPRM*, we asked how best to verify a person's disability for purposes of participating in this program.<sup>82</sup> To ensure that verification is not overly burdensome, we tentatively concluded in the *NDBEDP NPRM* that individuals claiming eligibility under the NDBEDP should be permitted to obtain verification from any practicing professional who has direct knowledge of the individual's disability, such as a vocational rehabilitation counselor, audiologist, speech pathologist, educator, hearing instrument specialist, or physician.<sup>83</sup> We sought comment on the content of the attestations of such professionals and proposed that the professional provide his or her name, title, and contact information, including address, phone number and e-mail address in the certification.<sup>84</sup> We also asked whether such professionals should be required to certify to the best of their knowledge or under penalty of perjury that the individual's disability satisfies our eligibility requirements.<sup>85</sup>

29. Commenters support our efforts "to make the verification process less burdensome."<sup>86</sup> Like the majority of commenters responding to the *NDBEDP PN*, the Lighthouse reiterates the need for a simplified verification process, noting the logistical challenges that an individual who is deaf-blind faces to obtain written documentation (*i.e.*, "scheduling appointments without the benefit of telecommunications, requesting/finding qualified interpreters, and coordinating transportation to the appointment").<sup>87</sup> Other commenters approve of permitting individuals to obtain verification of disability

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<sup>79</sup> See MoAT Comments at 1; RERCs Reply at 3.

<sup>80</sup> 29 U.S.C. § 1905(2)(A)(iii).

<sup>81</sup> See National Coalition Comments at 4; AADB Comments at 4.

<sup>82</sup> *NDBEDP PN*, 25 FCC Rcd at 15289; *NDBEDP NPRM*, 26 FCC Rcd at 695, ¶ 16.

<sup>83</sup> *NDBEDP NPRM*, 26 FCC Rcd at 695, ¶ 17.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> National Coalition Comments at 5; ACB Reply at 5.

<sup>87</sup> Lighthouse Comments at 4.

from a wide range of practicing professionals.<sup>88</sup> AADB urges us to keep verification of disability “as simple as possible,” and to allow this to be obtained from a qualified medical professional, state agency, or community based service provider.<sup>89</sup> Jeff Rosen, a disability attorney and advocate, strongly endorses permitting verification from a “community based service provider,” such as disability oriented organizations with direct knowledge of the individual to attest to his/her disability, as well as “other independent, knowledgeable and objective sources who are not . . . professionals or service providers.”<sup>90</sup> MoAT similarly proposes that individuals be able to obtain certification of a disability from “any practicing professional who has direct knowledge of the individual’s disability,” whether that is an allied health professional or an agency professional, such as someone who works in the field of vocational rehabilitation services.<sup>91</sup>

30. Comments were mixed with respect to the form that such attestations must take. MoAT urges the Commission not to require professionals to have to attest under penalty of perjury because this “would mean that already existing certifications of disability [that are not made under penalty of perjury] could not be used,”<sup>92</sup> and applicants would have to go through the burden of obtaining a second verification. MoAT further notes that its experience as a state EDP suggests that “certifying professionals are truthful within their scope of practice in attesting to disability and a ‘penalty of perjury’ certification is not necessary.”<sup>93</sup> Similarly, the National Coalition recommends that professionals be permitted to sign a form that certifies “to the best of their knowledge [that] the individual’s disability satisfies the eligibility requirements for the NDBEDP.”<sup>94</sup>

31. *Discussion.* We agree with commenters that 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. Arranging for appointments and traveling for the purpose of obtaining certification from a professional can be exceedingly difficult for individuals who are deaf-blind.<sup>95</sup> In order to facilitate access to the NDBEDP by the intended population, while at the same time implementing measures to prevent potential fraud or abuse of this program, we adopt a rule requiring individuals seeking equipment under the NDBEDP to provide verification from any practicing professional that has direct knowledge of the

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<sup>88</sup> See, e.g., National Coalition Comments at 5 (vocational rehabilitation counselors, audiologists, speech pathologists, educators, hearing instrument specialists or physicians); ACB Reply at 5.

<sup>89</sup> AADB Comments at 4. See also National Coalition Comments at 6 (encouraging the Commission “to ensure that the process for determining eligibility is easy for the consumer”).

<sup>90</sup> Rosen Reply at 1. See also Jee Comments at 2 (urging the Commission to allow advocates or counselors from disability organizations such as independent living centers, state commissions for the deaf and hard of hearing, and other deaf institutions to provide verification of disability).

<sup>91</sup> MoAT Comments at 1.

<sup>92</sup> *Id.* See also DBYAA Comments at 2 (proposing that certification of disability by a practicing professional be “to the best of the professional’s knowledge”). But see, e.g., AADB Comments at 4 (supporting verification under penalty of perjury); TEDPA Comments at 2 (supporting attestations under penalty of perjury).

<sup>93</sup> MoAT Comments at 2.

<sup>94</sup> National Coalition Comments at 5. Both the National Coalition and TEDPA further recommend that the NDBEDP develop a standard application form so that state EDPs and individual applicants are clear as to what qualifications are required. *Id.*; TEDPA Comments at 2. We are taking this recommendation under advisement, and may, depending on the data collected during this pilot program, seek input on a standardized form for the permanent program.

<sup>95</sup> See *NDBEDP NPRM*, 26 FCC Rcd at 695, ¶ 16.

individual's disability.<sup>96</sup> Any such professionals must be able to attest to the individual's disability, as defined above, and may include information about the individual's functional abilities with respect to using telecommunications, Internet access, and advanced communications services in various settings. We expand our proposed, non-exhaustive list of acceptable sources of disability verification to include community-based service providers, vision or hearing related professionals, vocational rehabilitation counselors, educators, audiologists, speech pathologists, hearing instrument specialists, and medical or health professionals.

32. We will not at this time require professionals who attest to an individual's disability to do so under penalty of perjury. We are concerned that imposition of this requirement would render existing certifications of disability that were not made under penalty of perjury invalid for purposes of the NDBEDP, and impose upon the population intended to benefit from this section of the CVAA the added and unnecessary burdens associated with finding, communicating with, and traveling to a professional's office to obtain such verification, tasks that are particularly difficult for this group of individuals.<sup>97</sup> We therefore adopt, for the pilot program, a rule that permits professionals to verify disability to the best of their knowledge. Also, for purposes of the pilot program, we will accept as verification existing documentation that a person is deaf-blind, such as an individualized education program ("IEP") that indicates that the person receiving equipment is deaf-blind, or a statement from a public or private agency, such as a Social Security determination letter that a person is deaf-blind.<sup>98</sup> We also adopt a requirement that such verification of disability include the attesting name, title, and contact information, including address, phone number, and e-mail address of the professional.

### C. Income Eligibility

33. Section 719 of the Act limits NDBEDP eligibility to "low-income" individuals, but leaves to the Commission the task of determining how to define this limitation.<sup>99</sup> In the *NDBEDP NPRM*,

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<sup>96</sup> For purposes of this verification, we consider a professional to be a person who has expertise or specialized knowledge in a field in which that person is practicing. Such professionals may include either paid or volunteer individuals who have sufficient knowledge and experience to verify that a person is deaf-blind, and are not limited to medical professionals. See Rosen Reply at 1.

<sup>97</sup> MoAT Comments at 1.

<sup>98</sup> In order to obtain disability-related accommodations under other disability civil rights laws, such as the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, a verification of disability signed under penalty of perjury is not required. Rather, while an employer or other entity covered under the ADA may require *reasonable* documentation of disability, in many if not most cases, the disability and the accommodation needed are so obvious that no documentation is required (*e.g.*, a person who is deaf needing a sign language interpreter to obtain training on the job). See, *e.g.*, EEOC, *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act* (2002) ("When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional limitations."), *citing* 29 C.F.R. pt. 1630 app. § 1630.9. In other cases, some documentation, such as a student's individualized education program ("IEP"), is used to serve as verification of the disability, to describe the impact of the disability on the task to be undertaken (*i.e.*, education, testing), and to make requests for specific accommodations. See, *e.g.*, 28 C.F.R. §§ 36.309(b)(1)(iv) and (v) (requests for documentation, by testing services, must be reasonable and limited to the need for the requested accommodation, and considerable weight must be given to documentation of past accommodations provided in similar situations and in response to an IEP or Section 504 Plan). See also ADA Title III Technical Assistance Manual, III-4.6100 Examinations ("Appropriate documentation might include a letter from a physician or other professional, or evidence of a prior diagnosis or accommodation, such as eligibility for a special education program."), <http://www.ada.gov/taman3.html> (visited March 10, 2011).

<sup>99</sup> 47 U.S.C. § 620(a).

we noted that several parties responding to the *NDBEDP PN* had urged an income threshold of 400 percent to 500 percent of the Federal Poverty Guidelines (“FPG”).<sup>100</sup> Commenters explained that this high threshold would take into consideration both the unusually high medical and related costs commonly associated with being deaf-blind (*e.g.*, personal assistants, medical care, and independent living costs), and the very high cost of some specialized CPE (between \$5,000 and \$10,000) used by this population.<sup>101</sup> In response to these concerns, and to reduce the burdens associated with conducting individual evaluations of such personal expenses, we proposed an income threshold of 400 percent of the FPG as the income eligibility criteria for the *NDBEDP*.<sup>102</sup> We further asked whether state EDPs that apply for certification under the *NDBEDP* should be permitted to use income thresholds that are different than this threshold.<sup>103</sup>

34. Commenters responding to the *NDBEDP NPRM* continue to support an income eligibility threshold of 400 percent to 500 percent of FPG, to account for the considerably higher medical and disability-related expenses often incurred by individuals who are deaf-blind.<sup>104</sup> The National Coalition states that, “[e]ven this level will unfortunately exclude certain individuals who are deaf-blind because of their family situation and the high costs of their transportation, medical, home support and other needs,” even before considering the costs to meet their extensive adaptive technology needs.<sup>105</sup> The National Coalition goes on to explain that individuals who are deaf-blind often have multiple disabilities and complex medical challenges that can result in “extraordinary expenses due to their unique needs.”<sup>106</sup> They note that the leading syndrome causing deaf-blindness in the student population is the CHARGE syndrome, a medical condition that typically requires extensive medical care (*e.g.*, g-tube, tracheotomy, liquid nutrition, and braces for scoliosis) with “deductibles and co-payments that add up to thousands of dollars annually” that often leaves families and individuals with very little disposable income. MoAT adds that too low of an income threshold, for example 100 percent of the FPG (\$10,830 annually in 2010), “would make it impossible for all but the most impoverished individuals who are deaf-blind from being able to access the program.”<sup>107</sup>

35. Commenters differ as to the extent to which the Commission’s income threshold should replace or supplement the thresholds set by existing state EDPs. MoAT recommends that state EDPs be authorized to apply their own income eligibility limits only when those limits are higher than 400 percent of the FPG.<sup>108</sup> In contrast, TEDPA suggests that state EDPs always should be permitted to use their own income eligibility criteria and that those without income thresholds should not be required to implement

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<sup>100</sup> *NDBEDP NPRM*, 26 FCC Rcd at 696, ¶ 19.

<sup>101</sup> *Id.* at 696-97, ¶¶ 19-20.

<sup>102</sup> *Id.* at 697, ¶ 20. The 2010 federal poverty level is \$10,830 for an individual; 400 percent of this level would be \$43,320. See <http://aspe.hhs.gov/poverty/10poverty.shtml> (retrieved December 10, 2010). These guidelines are regularly updated by the U.S. Department of Health and Human Services at 42 U.S.C. § 9902(2). *NDBEDP NPRM*, 26 FCC Rcd at 697, ¶ 20 n.47.

<sup>103</sup> *NDBEDP NPRM*, 26 FCC Rcd at 697, ¶ 20.

<sup>104</sup> See, *e.g.*, DBYAA Comments at 2 (400 percent); Lighthouse Comments at 5 (500 percent); MoAT Comments at 2 (400 percent); NAD Comments at 5 (400 percent as a base); National Coalition Comments at 5 (400 percent to 500 percent); ACB Reply at 5 (400 percent to 500 percent).

<sup>105</sup> National Coalition Comments at 5.

<sup>106</sup> *Id.*

<sup>107</sup> MoAT Comments at 2.

<sup>108</sup> *Id.*

any income eligibility requirements.<sup>109</sup> The National Coalition urges uniform application of the NDBEDP income threshold because “providing equal access to NDBEDP is paramount” and using different income criteria would limit the rights of individuals who are deaf-blind in certain states.<sup>110</sup>

36. *Discussion.* We conclude that the unusually high medical and disability-related costs incurred by individuals who are deaf-blind discussed in the comments above,<sup>111</sup> together with the extraordinarily high costs of specialized CPE typically needed by this population,<sup>112</sup> 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”<sup>113</sup> – 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. In addition to considering the views and expertise of advocacy organizations and state EDPs who have had first-hand experience with this population, which we find persuasive, we note that individual testimony was also submitted in this proceeding. For example, a family from Ohio reports having paid more than \$14,000 for medical coinsurance and deductibles last year, and predicts such costs in 2011 to be as high as \$20,000, due to changes in insurance.<sup>114</sup> Similarly, a family in New York reports that because their daughter’s CHARGE syndrome results in extremely high out-of-pocket health insurance costs, co-pays, and payments to doctors that do not accept insurance, they must “think twice before [they] can purchase a very expensive piece of equipment, such as a CCTV for home or a hand held CCTV device for shopping and independence purposes.”<sup>115</sup>

37. We believe that an income eligibility requirement of 400 percent of the FPG furthers the goal of the CVAA to provide communications equipment to low-income people who are deaf-blind because it takes into account the additional challenges, such as the high cost of medical treatment and personal assistance expenses, typically experienced by people who are deaf-blind. We do not believe that people who are deaf-blind should have to choose between paying for medical treatment and obtaining the equipment that they need to be able to communicate. Having to make such choices would defeat the very purpose of the CVAA, a law that is designed to give people with disabilities the communication tools they need to be independent and productive members of society. Specifically, we find that expenses of upwards of \$10,000-\$20,000 for medical care on an income under \$43,320 (400 percent of the FPG) would make it exceedingly difficult, if not impossible for an individual to acquire specialized CPE, some of which can cost \$5,000-\$10,000, without assistance. For this reason, we disagree with commenters who propose that NDBEDP certified programs should be permitted to apply income eligibility limits that are

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<sup>109</sup> TEDPA Comments at 2.

<sup>110</sup> National Coalition Comments at 5.

<sup>111</sup> See para. 33, *supra*.

<sup>112</sup> HumanWare, a manufacturer of specialized CPE for people who are deaf-blind, has submitted documentation showing that the cost of an 18 cell Deaf Blind Communicator (“DBC”), which enables TTY, e-mail, texting and face-to-face communication, is \$6,379 and that the cost of a 32 cell DBC is \$8,239. HumanWare Feb. 15 *Ex Parte* at 28. Persons who already have a BrailleNote device can add on DBC capabilities for the lesser, but still very high price of \$2,569. *Id.* HumanWare developed the DBC through a 2006 grant provided by the State of Washington Office of Deaf and Hard of Hearing to develop a modern technology tool to help facilitate communication between sighted and deaf-blind individuals. *Id.* at 4.

<sup>113</sup> S. Rep. No. 111-386 at 3 (2010) (“Senate Report”).

<sup>114</sup> See National Coalition Comments at 6.

<sup>115</sup> See *id.* at 5-6.

lower than the limit we adopt herein.<sup>116</sup> We note that state EDPs or alternate entities with income eligibility criteria for other programs they administer that are different from the NDBEDP criteria may still be certified under the NDBEDP, but they must use NDBEDP-compliant income eligibility criteria to assess individuals who will participate in the federal NDBEDP pilot.

#### D. Verification of Income Eligibility

38. To simplify the income verification process for certified programs, we proposed in the *NDBEDP NPRM* to permit determination of income eligibility under the NDBEDP pilot program by an applicant's enrollment in federal programs with low income eligibility requirements, such as Supplemental Security Income ("SSI"); 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; and Temporary Assistance for Needy Families.<sup>117</sup> We also asked about enrollment in other programs that should determine automatic income eligibility under the NDBEDP and the manner in which income should be verified for an individual who is not enrolled in another low income program.<sup>118</sup>

39. In response to the *NDBEDP NPRM*, commenters agree that individuals enrolled in certain federal programs should be automatically income-eligible for participation in the NDBEDP.<sup>119</sup> Commenters also agree that individuals enrolled in state or other programs that have income eligibility criteria that do not exceed the NDBEDP threshold should be deemed eligible under the NDBEDP.<sup>120</sup> TEDPA asserts that state EDPs are "experienced with performing comprehensive assessment[s] to ensure that applicants meet the eligibility requirements," and suggests that where the individual has no connection with other low income programs, reviewing a copy of the individual's most recent income tax return should be sufficient.<sup>121</sup>

40. *Discussion.* We adopt a rule to allow individuals enrolled in federal subsidy programs with income thresholds lower than 400 percent of the FPG threshold to automatically be deemed income eligible for the NDBEDP pilot program.<sup>122</sup> We believe that this approach is reasonable, reliable (since the only way to qualify for one of these programs is by meeting the same or a more stringent income threshold), and will simplify the income verification process for both applicants and the certified programs to which they apply. In addition, this rule is consistent with the approach adopted for our Universal Service low income program.<sup>123</sup> We also adopt a rule that permits the NDBEDP Administrator to authorize other federal or state programs with income eligibility thresholds that do not exceed 400

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<sup>116</sup> Also, we decline to adopt TEDPA's suggestion that state EDPs with no income eligibility requirement not be required to implement the threshold we establish for this pilot program. TEDPA Comments at 2. Such an approach is inconsistent with the statutory language that limits program participation to low-income individuals.

<sup>117</sup> *NDBEDP NPRM*, 26 FCC Rcd at 697, ¶ 21.

<sup>118</sup> *Id.* at 697-98, ¶¶ 21-22.

<sup>119</sup> *See, e.g.*, MoAT Comments at 2; National Coalition Comments at 6; TEDPA Comments at 2.

<sup>120</sup> *See, e.g.*, DBYAA Comments at 2; MoAT Comments at 2.

<sup>121</sup> TEDPA Comments at 2.

<sup>122</sup> Some individuals, such as minors, may be enrolled in certain federal programs as a member of a family or household.

<sup>123</sup> *See NDBEDP NPRM*, 26 FCC Rcd at 697, ¶ 20 n.48, *citing* 47 C.F.R. § 54.409(a), (b); <http://www.lifelinesupport.org/li/low-income/eligibility/federal-criteria.aspx>.

percent of the FPG to be the basis for determining income eligibility under the NDBEDP. Where 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.

#### E. Other Eligibility Requirements and Considerations

##### 1. Access to telephone or Internet service.

41. We sought comment in the *NDBEDP NPRM* on other eligibility requirements that might be appropriate for the NDBEDP, including a requirement that deaf-blind individuals have access to telephone or Internet service.<sup>124</sup> We also noted that the MoAT program requires recipients of its equipment to have access to telephone or Internet service before being able to receive the equipment that is used with those services.<sup>125</sup> In response to the *NDBEDP NPRM*, MoAT states that it imposes this requirement because it “would be useless if such service is needed in order to use the equipment/software,” and recommends that the availability of these services be verified prior to having the EDP expend equipment funds.<sup>126</sup> However, MoAT also asks for clarification on the definition of CPE, specifically whether the term “premises” refers to the location of the consumer at the time of use.<sup>127</sup> The National Coalition also supports a service prerequisite, but urges the Commission to stipulate that access to telephone or Internet service may include free services available through a public library, public Wi-Fi, a friend, family, local non-profit, or other source.<sup>128</sup> Similarly, the Lighthouse notes that some individuals may be able to use available WiFi at remote locations, and uses this as a basis for opposing criteria that would require equipment recipients to have their own phone lines or Internet access.<sup>129</sup> TEDPA reports that state EDPs currently vary in the extent to which they require access to telephone or Internet services.<sup>130</sup>

42. *Discussion.* We agree that NDBEDP recipients should have available for their use the services that distributed equipment are intended to access because, as noted above, giving equipment to an individual who does not use the communication services for which such equipment is intended would unnecessarily drain the program's limited funds, taking the program's resources away from other deaf-blind participants who could benefit from the program. Accordingly, during the NDBEDP pilot program, we will permit certified programs to require that NDBEDP equipment recipients demonstrate that they have access to the “telecommunications service, Internet access service, and advanced communications” that the equipment is designed to use and make accessible.<sup>131</sup> We note, however, that states choosing to impose this qualification criterion must allow access to such services to be in the form of wireless, WiFi,

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<sup>124</sup> *NDBEDP NPRM*, 26 FCC Rcd at 698, ¶ 23.

<sup>125</sup> *Id.*

<sup>126</sup> MoAT Comments at 2. *See also* DBYAA Comments at 2 (applicants “must have existing services, or have the intention of setting up such services, for which the distributed equipment will be used”).

<sup>127</sup> MoAT Comments at 2.

<sup>128</sup> National Coalition Comments at 6. *See also* ACB Reply at 6.

<sup>129</sup> Lighthouse Comments at 4.

<sup>130</sup> TEDPA Comments at 2.

<sup>131</sup> 47 U.S.C. § 620(a). We note that although we permit states to establish this as a prerequisite to obtaining equipment, we do not require states to make this a qualification for the receipt of equipment at this time.

or other free services made available by public or private entities (*e.g.*, public libraries or coffee shops), or by the recipient's family, friends, neighbors, or other personal contacts.

## 2. Employment.

43. In the *NDBEDP NPRM*, we reported that certain state assistance programs pay for communications equipment only if the deaf-blind applicant requesting a device has a job or is actively seeking employment.<sup>132</sup> We proposed prohibiting NDBEDP certified programs from adopting this and other employment-related eligibility criteria.<sup>133</sup> In response, commenters uniformly support a prohibition on employment-related eligibility criteria.<sup>134</sup> A parent from Ohio writes:

Equipment should go to all persons who are deaf-blind, regardless of age (beyond a minimum age, say five years old). By the time a child is five years old, he or she is learning to access the Internet and communicate on the phone, whether to call Grandma or learn the skills to dial 911. Every child who is deaf-blind has the right to develop the same skill set as every child who is not deaf-blind. To not provide equipment to every person, including children, is to subvert the intent of the Act and continue to isolate a population that is unnecessarily closed off in an age when technology is available to break down communication barriers.<sup>135</sup>

44. *Discussion.* We agree that access to telecommunications should not be dependent on employment status. Moreover, there is no statutory basis for such a requirement under the CVAA. We are also concerned that requiring NDBEDP recipients to be employed or actively seeking employment would limit the scope of the NDBEDP in a manner that would be inconsistent with the underlying purpose of this program to expand communication access in the deaf-blind population. Such a requirement potentially could exclude children, students, retirees, and senior citizens. Moreover, as noted by the Lighthouse, "access to telecommunications is not restricted to people who are hearing and sighted based on their employment status."<sup>136</sup> Thus, we prohibit certified programs from adopting or imposing employment-related eligibility requirements for individuals to participate in the NDBEDP pilot program.

## V. COVERED EQUIPMENT AND RELATED SERVICES

### A. Scope of Specialized Customer Premises Equipment

45. Section 719 authorizes support for programs for the distribution of specialized CPE needed to make telecommunications service,<sup>137</sup> Internet access service,<sup>138</sup> and advanced

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<sup>132</sup> *NDBEDP NPRM*, 26 FCC Rcd at 698, ¶ 24.

<sup>133</sup> *Id.*

<sup>134</sup> *See, e.g.*, AADB Comments at 6; DBYAA Comments at 2; Lighthouse Comments at 4; National Coalition Comments at 6; ACB Reply at 6.

<sup>135</sup> National Coalition Comments at 12.

<sup>136</sup> Lighthouse Comments at 4. While possibly appropriate for vocational rehabilitation and other targeted employment programs, a limitation based on employment status would thwart the objectives of the NDBEDP.

<sup>137</sup> "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 be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(52). "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. § 153(49).

communications,<sup>139</sup> including interexchange services<sup>140</sup> or advanced telecommunications and information services,<sup>141</sup> accessible to low-income individuals who are deaf-blind.<sup>142</sup> We noted in the *NDBEDP NPRM* that these include, *inter alia*, voice, data and video services provided over the Internet, along with equipment needed to access more traditional telephone-based wireline and wireless services.<sup>143</sup> We also set out, in both the *NDBEDP PN*<sup>144</sup> and in the *NDBEDP NPRM*<sup>145</sup> the definition of “customer premises equipment” contained in the Act as “equipment employed on the premises of a person (other than a carrier) to originate, route or terminate telecommunications,”<sup>146</sup> as well as the definition of “specialized CPE” contained in the Commission’s rules as “customer premise equipment which is commonly used by individuals with disabilities to achieve access.”<sup>147</sup> As we noted above, there is considerable variation in the degree to which people who are deaf-blind have hearing or vision loss. As a consequence, a wide range of such equipment is needed to enable access to the various communications services covered under the CVAA by this unique and diverse population.<sup>148</sup>

(Continued from previous page)

<sup>138</sup> 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).

<sup>139</sup> The CVAA defines “advanced communications service” as “(A) interconnected [voice over Internet protocol (VoIP)] service; (B) non-interconnected VoIP service; (C) electronic messaging service; and (D) interoperable video conferencing service.” Pub. L. 111-260, Sec. 101, to be codified at 47 U.S.C. § 153(1).

<sup>140</sup> 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. Sept. 3, 2004) (NO. 02-CV-209-D) 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).

<sup>141</sup> See note 137, *supra* (defining “telecommunications service”). “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).

<sup>142</sup> 47 U.S.C. § 620(a).

<sup>143</sup> *NDBEDP NPRM*, 26 FCC Rcd at 698, ¶ 26, citing *NDBEDP PN*, 25 FCC Rcd at 15290 nn.6-8.

<sup>144</sup> *NDBEDP PN*, 25 FCC Rcd at 15288.

<sup>145</sup> *NDBEDP NPRM*, 26 FCC Rcd at 698-99, ¶ 26.

<sup>146</sup> 47 U.S.C. § 153(16).

<sup>147</sup> 47 C.F.R. § 7.3(i). See also 47 C.F.R. § 64.607(a) (offering examples of specialized CPE); *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).

<sup>148</sup> *NDBEDP NPRM*, 26 FCC Rcd at 699, ¶ 27. We noted in the *NDBEDP NPRM* that examples of such equipment and technologies include the following: TTYs with Braille or large visual displays; amplified phones; captioned telephones; phones with extra-large buttons; high volume speakerphones; accessories that permit voice dialing; talking Caller ID; number announcers; software to enable instant messaging; devices used for video communications; Braille reader applications on touch screen cell phones and mobile devices for text messaging; optical character recognition software; screen magnification programs; and tactile signal alerting systems. *Id.*

46. In addition to having the NDBEDP cover specialized CPE, the *NDBEDP NPRM* sought comment on the extent to which equipment that is available to the general public (“off-the-shelf” or “mainstream” equipment), such as computers or smart phones, may be adaptable to provide the access needed – either as stand-alone products or for use with specialized CPE – and therefore made available for distribution under the NDBEDP.<sup>149</sup> We also sought comment on whether funding caps should be established to limit the amount of equipment that an NDBEDP certified program can provide to an eligible individual over a specified period of time, and, if so, what that amount and time period should be.<sup>150</sup> Finally, seeking to balance the limited NDBEDP funding with advances in technology, we sought comment on whether eligible individuals should be permitted to obtain new equipment every five years and new software on an as needed basis, and whether such software upgrades should be limited by a monetary cap.<sup>151</sup>

47. In response to the *NDBEDP NPRM*, commenters uniformly support a broad definition of covered equipment and technology eligible for distribution under the NDBEDP,<sup>152</sup> without restrictions on specific brands, models, or types of technology.<sup>153</sup> The National Coalition emphasizes that “[e]ach person with combined vision and hearing loss is unique, and their communication and technology needs are just as unique and individual to them. No two people can be expected to need or want exactly the same device.”<sup>154</sup> According to Gayle Yarnall, founder of Adaptive Technology Consulting:

There are very few people who are totally blind and totally deaf. . . . Most people are some combination of hearing impaired and visually impaired. This means that the range of products, and needs, and learning styles vary greatly. Products will include anything from screen enlargement software to braille displays. Where one person will want to work with a screen reader using head phones to increase and concentrate the volume another will want the combination of speech and braille. . . . Adding a TTY to a phone system may be all someone needs, while someone else will need a Deaf-Blind Communicator.<sup>155</sup>

48. Several commenters urge that certified programs not be permitted to restrict the way that equipment distributed under the NDBEDP is used by consumers, or be permitted to disable certain capabilities on the equipment they distribute.<sup>156</sup> As an example, AADB notes that a deaf-blind person might be in a situation where she is unable to use the telephone functions on a device, but may be able to access the Internet to achieve communication; in this situation, the individual would remain isolated if unable to use the Internet functions.<sup>157</sup> AADB further explains that being able to use multiple forms of communication can reduce isolation and better achieve functional equivalency, and that even face-to-face communication may be needed by a person who is deaf-blind, depending on the location and the

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<sup>149</sup> *Id.* at 700, ¶ 30.

<sup>150</sup> *Id.* at 700, ¶ 31.

<sup>151</sup> *Id.*

<sup>152</sup> *See, e.g.*, AADB Comments at 1-2 (to safeguard and enhance consumer choice, promote competition, and assure access to communications services) and 6-7; DBYAA Comments at 2; Lighthouse Comments at 4; National Coalition Comments at 7; RERCs Reply at 3; Wheeler Comments at 2.

<sup>153</sup> *See, e.g.*, Lighthouse Comments at 4; National Coalition Comments at 7.

<sup>154</sup> National Coalition Comments at 7; *see also* ACB Reply at 7.

<sup>155</sup> National Coalition Comments at 7.

<sup>156</sup> *See, e.g.*, AADB Comments at 6; National Coalition Comments at 7; ACB Reply at 7.

<sup>157</sup> AADB Comments at 6.

communication method used by that individual.<sup>158</sup> Others similarly raise concerns about the practice by some state EDPs of restricting the availability of features on multi-function devices.<sup>159</sup> For example, TEDPA notes that some state EDPs, per state statute, only allow telecommunications devices to be distributed.<sup>160</sup>

49. Most commenters specifically support the distribution of off-the-shelf equipment under this program if it effectively meets the needs of the deaf-blind individual.<sup>161</sup> The Lighthouse urges the Commission to cover mainstream equipment when it is part of a package of necessary equipment or when it is the most effective option that fits the individual's need.<sup>162</sup> Similarly, the RERCs recommend allowing mainstream product-based solutions because this may sometimes be less expensive than specialized CPE.<sup>163</sup> AADB notes that automatic software and firmware updates, which are sometimes free from the Internet, may minimize the need to return devices to the EDP as a result of "declining functionality."<sup>164</sup> The RERCs also support coverage of software, noting that low cost mainstream products can often be made accessible with proper software, but that the software itself can be expensive, often exceeding the price of the hardware.<sup>165</sup>

50. Commenters believe it would be helpful for the Commission to provide a non-exclusive list of examples of equipment that can and cannot be provided through NDBEDP.<sup>166</sup> Some also urge not allowing the states to decide which equipment to make available because of the unequal treatment that people who are deaf-blind have experienced in the current EDP system, noting that "access to equipment has been dictated by the EDP rather than based on the individual's needs."<sup>167</sup>

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<sup>158</sup> *Id.* See also HumanWare Feb. 15 *Ex Parte* at 15 and 17.

<sup>159</sup> See National Coalition Comments at 7; ACB Reply at 7.

<sup>160</sup> TEDPA Comments at 3.

<sup>161</sup> See, e.g., National Coalition Comments at 8; AADB Comments at 1-2 (noting that the iPhone4 connected via a USB cord to a Braille reader may be more accessible for some deaf-blind people than other specialized products specifically designed for the deaf-blind community); DBYAA Comments at 2-3 (also noting that an iPhone or Blackberry can be combined with another product to enable access to a communications technology, and requesting that the end result be classified as specialized CPE).

<sup>162</sup> Lighthouse Comments at 4.

<sup>163</sup> RERCs Reply at 3-4.

<sup>164</sup> AADB Comments at 7. See also NAD Comments at 5-6 (supporting automatic software updates).

<sup>165</sup> RERCs Reply at 4.

<sup>166</sup> See, e.g., MoAT Comments at 2; TEDPA Comments at 3 (recommending that this list be included in the application packet when the permanent program is established).

<sup>167</sup> ACB Reply at 6-7.

51. With respect to limits or caps on the amount of equipment that can be distributed to a single individual, responses were mixed.<sup>168</sup> The National Coalition supports allowing distribution of multiple pieces of equipment to the same person if the equipment is needed for different functions.<sup>169</sup> It reports the story of one mother from California:

Telephone access for my daughter, who is 29 years old and deaf-blind, is a vitally important lifeline. . . . She started out as a child with large print TTY, and the day is coming rapidly when she will need Braille telecommunications equipment. It is also important to have portable Braille communication options away from home. . . . All Braille equipment is very expensive . . . . It's been through the large screen TTY my daughter is able to have in depth conversations with her father and grandmother who are not fluent in ASL. It's how she makes appointments for herself, arranges her social and business life, calls for help if she needs it, and all the many things we all do via the phone.<sup>170</sup>

52. *Discussion.* We agree with commenters that covered equipment and technology eligible for distribution under the NDBEDP should be defined broadly, without restrictions on specific brands, models, or types of technology, including hardware, software, and applications, separately or in combination, needed to achieve access. As noted by the comments in the record, the communication and technology needs of individuals who are deaf-blind are as unique as the individuals themselves and the combinations of vision and hearing loss found in this population.<sup>171</sup> We also conclude that, during the NDBEDP pilot program, certified programs will have the discretion to determine the specific equipment needed and to be provided, as long as that equipment can make telecommunications service, Internet access service, and advanced communications accessible by the consumer who is deaf-blind.<sup>172</sup> As discussed further below, individual assessments will need to be conducted to determine which equipment is needed.<sup>173</sup> Certified programs must not be limited by state statute or otherwise to distribute equipment to make only some communications accessible; certified programs must be permitted to distribute equipment to enable deaf-blind individuals to access the full spectrum of communication options covered under Section 719, as needed by those individuals.<sup>174</sup>

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<sup>168</sup> See, e.g., DBYAA Comments at 3 (suggesting an annual cap of \$10,000 to \$12,000 per person, with an allowance granted to individuals needing additional equipment components to be able to utilize the phone, Internet, and advanced communications systems); Lighthouse Comments at 4-5 (monetary cap is reasonable, with software replacements every two years and hardware every five years, with reasonable exceptions, for example, when a person's hearing or vision loss necessitates different equipment); NAD Comments at 6 (not opposed to per person funding cap); National Coalition Comments at 5 (consider caps for the permanent, not pilot program, such as hardware every five years and software, with exceptions for new technology); TEDPA Comments at 3 (suggesting monetary cap on equipment and related services, such as up to \$40,000 over five years).

<sup>169</sup> National Coalition Comments at 8.

<sup>170</sup> *Id.* at 8-9.

<sup>171</sup> See para. 47, *supra*.

<sup>172</sup> 47 U.S.C. § 620(a). Certified programs under the NDBEDP pilot program must have the ability to distribute the full range of equipment covered under Section 719, and not be restricted by state statute or otherwise from doing so.

<sup>173</sup> See Section V.D, *infra*.

<sup>174</sup> See para. 48, *supra*.

53. We further conclude that certified programs may distribute “off-the-shelf” equipment to serve as specialized CPE,<sup>175</sup> or as needed for use with specialized CPE, as long as it meets the needs of an individual covered under this program. As noted in the record, some mainstream equipment, alone or packaged in combination with specialized software or hardware, can effectively and cost efficiently meet the needs of some individuals who are deaf-blind.<sup>176</sup> Mainstream technologies can have other advantages as well. Commenters point out that in addition to being easier to locate such products and technical support than is the case for specialized CPE,<sup>177</sup> such devices are often more socially acceptable, especially for students.<sup>178</sup> This is consistent with principles of universal design, which seek to ensure that products available to the general public are available to as many individuals as possible, regardless of their functional differences. We will examine the kinds of equipment that are requested and distributed during the NDBEDP pilot program to assess both the demand for varied technologies and to make any necessary adjustments in the scope of covered equipment when we conduct the rulemaking proceeding for the permanent program. We also will use the data gathered during our reporting process<sup>179</sup> to consider the need to develop a non-exclusive list of specific devices eligible for compensation in a subsequent proceeding.

54. In response to concerns raised by commenters about the practice of some state EDPs to restrict the availability of or disabling certain features or functions on multi-function devices,<sup>180</sup> we further adopt a rule prohibiting certified programs from disabling or otherwise making more difficult to access, capabilities, functions or features on distributed equipment that are needed to access communications services covered by Section 719. Among other things, this rule will prohibit NDBEDP certified programs from intentionally requiring manufacturers and vendors to make access to certain communication functions more difficult than other functions by having the manufacturer bury access to those functions into deeper menus.<sup>181</sup> Further, we note that for the deaf-blind population, face-to-face communications may be essential to achieving access to some of the communication functions covered under Section 719.

55. As noted above, there was no consensus among commenters on the need for caps on the quantity or cost of equipment distributed to individuals, the time period that should be covered by such caps, or exceptions that should be made for certain circumstances.<sup>182</sup> Because of the lack of guidance in

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<sup>175</sup> Specialized CPE is CPE “commonly used by individuals with disabilities to achieve access.” 47 C.F.R. § 7.3(i). See also note 147, *supra*.

<sup>176</sup> See para. 49, *supra*.

<sup>177</sup> See National Coalition Comments at 8 (the more that off-the-shelf equipment can be made accessible to people who are deaf-blind, the greater access this group will have to advanced communications technology).

<sup>178</sup> See Wheeler Comments at 2.

<sup>179</sup> See Section VII, *infra*.

<sup>180</sup> See para. 48, *supra*.

<sup>181</sup> For example, we note that the Deaf Blind Communicator has a first level, easy-to-access menu for the following basic functions: TTY, SMS, face-to-face communications, and address list. HumanWare Feb. 15 *Ex Parte* at 15. However, more advanced communication functions, such as e-mail, Internet access, and chat, are only available via a deeper menu option. *Id.* at 17. While the arrangement and design of a device’s menu options should generally be left up to manufacturers, we wish to avoid situations where NDBEDP certified programs intentionally direct such manufacturers to design those menus or features so as to make them more difficult to access for people who are deaf-blind.

<sup>182</sup> See para. 51, *supra*.

the record, and because we would like to first gather experience under the NDBEDP on the costs associated with the various devices and services that will be funded under the certified programs, we will not establish equipment or funding caps for individual recipients of equipment during this pilot program. We will, however, analyze the information that we receive in the program reports required by our rules<sup>183</sup> to determine whether any such caps should be adopted as part of the permanent NDBEDP. We note that certified programs may distribute more than one device to an individual who is deaf-blind to achieve access to more than one type of covered communications service or to achieve such access in more than one setting, 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.

56. Commenters further noted the need to permit and cover the cost of new equipment or equipment upgrades to keep current with changes in technology and individual needs.<sup>184</sup> We note that replacements may be appropriate, for example, if the recipient experiences a change in vision or hearing or if new technologies diminish the functionality of equipment already distributed.<sup>185</sup> Therefore, the NDBEDP will also cover the reasonable costs of upgrades and replacements, as determined by certified programs.

### B. Loans Versus Ownership

57. In the *NDBEDP NPRM*, we noted that some state EDPs loan equipment while other state EDPs confer ownership to their residents and sought comment on which approach should be adopted for the NDBEDP.<sup>186</sup> Comments were divided on the benefits of each of these approaches.<sup>187</sup> TEDPA reports that some state statutes dictate a particular distribution method and recommends that state EDPs be allowed to comply with their respective statutes, lest they be forced to seek a legislative change to participate in the NDBEDP.<sup>188</sup> TEDPA also asserts that, whether loaned or owned, NDBEDP recipients should not be permitted to sell or give away the equipment and that violations of this policy should result in consequences to the offending party, such as termination from the program.<sup>189</sup> Finally, TEDPA recommends that NDBEDP recipients who "move to another state be allowed to keep their existing CPE and transfer their account to the new certified state EDP or entity without having to reapply."<sup>190</sup>

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<sup>183</sup> See Section VII, *infra*.

<sup>184</sup> See para. 49, *supra*.

<sup>185</sup> For example, if new digital technologies that allow real-time text eventually replace the functions now provided by TTYs and those new technologies are not backward compatible with TTYs, individuals owning these devices might benefit from replacing them with more modern technologies.

<sup>186</sup> *NDBEDP NPRM*, 26 FCC Rcd at 704, ¶ 42.

<sup>187</sup> See, e.g., AADB Comments at 9 (favoring loan program, permitting states to swap malfunctioning equipment rather than provide loaner equipment); DBYAA Comments at 4 (favoring ownership program); Lighthouse Comments at 5 (favoring loan program); MoAT Comments at 3 (favoring permitting both loan and ownership programs, as long as the loan is for as long as the equipment is needed, and permitting loan-only program for very expensive equipment); and RERCs Reply at 7 (noting the pros and cons of both approaches).

<sup>188</sup> TEDPA Comments at 4.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*