

(b) If a cable operator or telecommunications carrier hires a contractor for purposes specified in § 1.1420, it shall choose from among a utility's list of authorized contractors.

(c) A cable operator or telecommunications carrier that hires a contractor for survey or make-ready work shall provide a utility with a reasonable opportunity for a utility representative to accompany and consult with the authorized contractor and the cable operator or telecommunications carrier.

(d) The consulting representative of an electric utility may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

■ 9. Add § 1.1424 to subpart J to read as follows:

**§ 1.1424 Complaints by incumbent local exchange carriers.**

Complaints by an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers alleging that a rate, term, or condition for a pole attachment is not just and reasonable shall follow the same complaint procedures specified for other pole attachment complaints in this part, as relevant. In complaint proceedings where an incumbent local exchange carrier (or an association of incumbent local exchange carriers) claims that it is similarly situated to an attaché that is a telecommunications carrier (as defined in 47 U.S.C. 251(a)(5)) or a cable television system for purposes of obtaining comparable rates, terms or conditions, the incumbent local exchange carrier shall bear the burden of demonstrating that it is similarly situated by reference to any relevant evidence, including pole attachment agreements. If a respondent declines or refuses to provide a complainant with access to agreements or other information upon reasonable request, the complainant may seek to obtain such access through discovery. Confidential information contained in any documents produced may be subject to the terms of an appropriate protective order.

[FR Doc. 2011-11137 Filed 5-6-11; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

[CG Docket No. 10-210; FCC 11-56]

**Relay Services for Deaf-Blind Individuals**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts rules to establish the National Deaf-Blind Equipment Distribution Program (NDBEDP) pilot program in accordance with the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). The CVAA adds a new section to the Communications Act of 1934, as amended (the Act). This new section of the Act requires the Commission to establish rules that define as eligible for support those programs approved by the Commission for the distribution of specialized customer premises equipment (CPE) to low-income individuals who are deaf-blind. For these purposes, this new section of the Act authorizes \$10 million annually from the Interstate Telecommunications Relay Service (TRS) Fund. The equipment distributed under the NDBEDP pilot program will make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible to individuals who are deaf-blind.

**DATES:** Effective June 8, 2011, except for 47 CFR 64.610(b), (e)(1)(ii), (viii), and (ix), (f), and (g), which contain information collection requirements subject to the Paperwork Reduction Act (PRA) that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these requirements. Written comments by the public on the new information collections are due July 8, 2011.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission via e-mail at [PRA@fcc.gov](mailto:PRA@fcc.gov) and [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:**

Rosaline Crawford, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418-2075 or e-mail [Rosaline.Crawford@fcc.gov](mailto:Rosaline.Crawford@fcc.gov).

For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418-2918, or via e-mail [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's National Deaf-Blind Equipment Distribution Program (NDBEDP) Report and Order (*Order*), document FCC 11-56, adopted April 4, 2011, and released April 6, 2011, in CG Docket No. 10-210.

The full text of document FCC 11-56 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, *telephone:* (800) 378-3160, *fax:* (202) 488-5563, or *Internet:* [www.bcpweb.com](http://www.bcpweb.com). Document FCC 11-56 can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/cgb/dro/headlines.html> and at <http://www.fcc.gov/cgb/dro/cvaa.html>.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

**Final Paperwork Reduction Act of 1995 Analysis**

This document contains new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in document FCC 11-56 as required by the PRA of 1995, Public Law 104-13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, the Commission previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with

fewer than 25 employees.” See 44 U.S.C. 3506(c)(4). In this present document, the Commission has assessed the effects of the rules for the NDBEDP pilot program and finds that the collection of information requirements will not have a significant impact on small business concerns with fewer than 25 employees.

### Congressional Review Act

The Commission will send a copy of document FCC 11–56 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A).

### Synopsis

1. Document FCC 11–56 implements a provision of the CVAA, Public Law 111–260, 124 Stat. 2751 (2010). (See also Pub. L. 111–265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA)). Section 105 of the CVAA adds section 719, 47 U.S.C. 620, to the Communications Act of 1934, as amended (the Act). Section 719 of the Act requires the Commission to establish rules that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized customer premises equipment (CPE) to low-income individuals who are deaf-blind. 47 U.S.C. 620(a). The CVAA authorizes the Commission to allocate \$10 million annually from the Interstate Telecommunications Relay Service (TRS) Fund for this equipment distribution effort. 47 U.S.C. 620(c). In document FCC 11–56, the Commission establishes a National Deaf-Blind Equipment Distribution Program (NDBEDP) pilot program to certify and provide funding to one entity in each state to distribute specialized CPE to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible to low-income individuals who are deaf-blind.

2. Prior to the adoption of document FCC 11–56, 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 section 719 of the Act. See *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*, Public Notice, document DA–10–2112, released November 3, 2010 in CG Docket No. 10–210

(NDBEDP PN). 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. See *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Notice of Proposed Rulemaking, published at 76 FR 4838, January 27, 2011 (NDBEDP NPRM). 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. The NDBEDP pilot program, established by the rules adopted in document FCC 11–56, will support the distribution of such specialized CPE and the provision of associated services, as well as help to inform future Commission action in establishing a more permanent NDBEDP.

### Pilot Program

3. In document FCC 11–56, the Commission adopts a rule permitting all qualified entities to apply for certification to participate in the NDBEDP. The Commission will then select among these program applicants based on the criteria set out in the NDBEDP pilot program rules. Program applicants may 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. The Commission will certify only one entity per state as eligible to receive support for the distribution of equipment to individuals who are deaf-blind. 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).

4. The Commission will require the submission of certification applications within 60 days after the effective date of these rules. 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. The Commission will announce the selected participants, starting date, and funding allocations as soon as possible

thereafter. Certification will be granted for the duration of the pilot program, subject to compliance with program requirements.

5. The Commission will operate the NDBEDP pilot for two years, from the pilot program start date, with an option for to extend the program for an additional year. The Commission delegates 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. The Commission believes that the experiences and information gained during this pilot program will provide it with a comprehensive understanding of how to ensure the most efficient and effective use of the funds available to meet the needs of this population on a more permanent basis.

### Consumer Eligibility

6. *Definition of Individuals who are Deaf-Blind.* 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), 29 U.S.C. 1905(2). That definition contains three prongs. The first prong of the definition requires assessment of the individual’s vision, and provides measurable standards of loss of visual acuity. The second prong asks whether the individual has a hearing loss so severe “that most speech cannot be understood with optimum amplification.” 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.” The Commission directs certified programs to consider an individual’s functional abilities with respect to using telecommunications, Internet access, and advanced communications services in various environments, when they make determinations as to whether an individual is deaf-blind under the second and third prongs of the definition.

7. *Verification of Disability.* 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. 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, the Commission adopts a rule requiring an individual seeking equipment under the NDBEDP

to provide verification of his or her disability from any practicing professional that has direct knowledge of that individual's disability. For the pilot program, such professional must verify the individual's disability to the best of his or her knowledge. Also, for purposes of the pilot program, the Commission will accept existing documentation as verification 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. The Commission also adopts 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.

8. *Income Eligibility.* Section 719 of the Act limits NDBEDP eligibility to "low-income" individuals. The Commission concludes that the unusually high medical and disability-related costs incurred by individuals who are deaf-blind discussed in the comments, together with the extraordinarily high costs of specialized CPE typically needed by this population, support an income eligibility rule of 400 percent of the Federal Poverty Guidelines (FPG) for the NDBEDP pilot program. NDBEDP certified programs will not be permitted to apply income eligibility limits that are lower than the limit the Commission adopts. 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.

9. *Verification of Income Eligibility.* The Commission adopts 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. The Commission also adopts a rule that permits the NDBEDP Administrator to authorize other federal or state programs with income eligibility thresholds that do not exceed 400 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.

10. *Other Eligibility Requirements and Considerations.* During the NDBEDP pilot program, the Commission 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. States choosing to impose this qualification criterion must allow access to such services to be in the form of wireless, WiFi, or other free services made available by public or private entities, or by the recipient's family, friends, neighbors, or other personal contacts. However, the Commission prohibits certified programs from adopting or imposing any employment-related eligibility requirement as there is no statutory basis for such a requirement under the CVAA. Requiring NDBEDP recipients to be employed or actively seeking employment would limit the scope of the NDBEDP, potentially excluding children, students, retirees, and senior citizens.

#### **Covered Equipment and Related Services**

11. *Scope of Specialized Customer Premises Equipment.* The Commission's rules require covered equipment and technology eligible for distribution under the NDBEDP to 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. 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. Certified programs may 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 covered under section 719 of the Act, as needed by those individuals. The Commission further concludes that certified programs may distribute "off-the-shelf" equipment to serve as specialized CPE, or as needed for use with specialized CPE, as long as it meets the needs of an individual covered under this program. The Commission 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 the Commission conducts the rulemaking proceeding for the permanent program. The Commission also prohibits certified programs from disabling or making more difficult to access capabilities, functions, or features on distributed equipment that are needed to access communications services covered by section 719 of the Act, for example, by having the manufacturer bury access to those functions into deeper menus.

12. Because of the lack of consensus in the record, and because the Commission 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, the Commission will not establish caps on the quantity or cost of equipment distributed to individuals during this pilot program. Certified programs may distribute new equipment or equipment upgrades to keep current with changes in technology and individual needs. Certified programs may also 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. Equipment distribution is subject to 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.

13. *Loan Versus Ownership.* While the Commission strongly recommends that certified programs lend equipment distributed under the NDBEDP to equipment recipients, the Commission does not require that they use this method of distributing equipment. For those programs that choose to lend equipment, the Commission requires that recipients be permitted to keep their devices for as long as needed. Under either a "loan" or "ownership" program, equipment recipients should not be permitted to sell, give away, or otherwise transfer equipment distributed under the NDBEDP. When a recipient relocates to another state, the certified program must transfer the recipient's account and any control of the distributed equipment to the new state's certified program, so that the individual need not reapply.

14. *Research and Development.* The Commission recognizes that there are equipment and technology gaps in the communications technology currently

available to the deaf-blind population. However, the Commission concludes that an allocation of NDBEDP funding for equipment research and development is not appropriate at this time because of insufficient information about those gaps and the kinds of research and funding that are needed to fill them.

15. *Individualized Assessment of Communication Needs.* The Commission concludes that qualified assistive technology specialists who are familiar with both the manner in which deaf-blind people communicate and the range of specialized equipment that is available under this program are necessary to ensure that the equipment provided to deaf-blind individuals effectively meets their needs.

Accordingly, certified programs may be reimbursed for the reasonable costs of making individualized assessments of a deaf-blind consumer's communications needs during the NDBEDP pilot. The reasonable costs of travel to conduct individual assessments of applicants who are located in rural or remote areas may also be covered when necessary to support the distribution of equipment by certified programs.

16. *Installation and Training.* Based on the record in this proceeding, the Commission concludes that equipment installation and individualized consumer training on how to use the distributed equipment are essential to the efficient and effective distribution of equipment for use by people who are deaf-blind and, as such, the reasonable costs associated with these services will be compensable for programs certified under section 719 of the Act. The Commission recognizes that there is a shortage of qualified personnel who can provide individualized training for equipment distributed to persons who are deaf-blind. However, because of the limited funding available in this program, and because the record is not clear on how programs to "train the trainer" should be set up at this time, the Commission will not set aside NDBEDP funds or reimburse certified programs for the costs of such training programs. The Commission does, however, encourage certified programs to maximize the use of limited resources through collaboration and partnerships between and among certified NDBEDP programs on a national or regional basis, as well as partnerships or contracts with other individuals and entities, in-state or out-of-state, in order to locate qualified individuals who can provide appropriate and effective training to people who are deaf-blind.

17. *Maintenance, Repairs, and Warranties.* The Commission concludes

that, for the NDBEDP pilot program, reasonable costs associated with equipment maintenance and repairs that are not covered under warranties are eligible for reimbursement, except when such repair costs are the result of consumer or program negligence or misuse. The Commission encourages NDBEDP certified programs or manufacturers to provide equipment that can be loaned to the consumer during periods of equipment repair, especially when such equipment is under warranty. Reasonable costs associated with maintaining an inventory of equipment that can be loaned to the consumer during periods of equipment repair will also be covered under the NDBEDP pilot program. The Commission recommends that certified programs establish policies and the means for consumers to return equipment that is no longer needed or used to the certified program for possible refurbishing and redistribution. The reasonable costs of such return and refurbishing will be covered under the NDBEDP. The reasonable costs of warranties covering maintenance, updates, and repairs will also be covered during the pilot program.

18. *Outreach and Education.* The Commission concludes that a wide variety of outreach efforts is needed to reach the diverse population of individuals who are deaf-blind to make the NDBEDP effective. Certified programs participating in the pilot program must conduct outreach to inform residents of their states who are deaf-blind about the NDBEDP. Such outreach may include, but is not limited to, the development and maintenance of a program Web site and the distribution of accessible information and materials. The Commission also directs the NDBEDP Administrator to establish a Web site, accessible to deaf-blind consumers, that contains information about the NDBEDP. To supplement the outreach efforts of NDBEDP certified programs, the Commission will set aside \$500,000 for outreach on a national level during each TRS Fund year of the pilot program. This outreach may be conducted by entities that have significant experience with and expertise in working with the deaf-blind community or by others and the Commission delegates authority to CGB to select appropriate entities to conduct outreach.

#### Funding

19. *Allocation.* The Commission will make the full amount of authorized funding, \$10 million, available to the NDBEDP during each TRS Fund year (July 1 through June 30) of this pilot

program. Insofar as \$500,000 will be set aside for a nationwide outreach effort, a total of \$9.5 million will be available for initial allocations among certified programs during each of the Fund years of this NDBEDP pilot program. Annual funding for the pilot program will be allocated on the basis of the population of each state. To ensure that every certified program in the NDBEDP pilot program receives a level of support that will both provide it with the incentive to participate in the NDBEDP and permit the distribution of equipment to as many eligible residents as possible, the Commission will allocate a minimum base amount of \$50,000 to each state per TRS Fund year during the pilot program, with the balance of available funds allocated in proportion to the population of each of these jurisdictions.

20. *Funding Mechanism.* The Commission concludes that a mechanism that allocates funding for reimbursement of authorized costs of equipment and associated services, up to each state's initial or adjusted allotment, is appropriate for the NDBEDP pilot program. The Commission will permit certified programs to request reimbursement every six months, commencing with the starting date of the pilot program, as determined by CGB. Certified programs may seek reimbursement of costs up to the funding allocation for the state, for the equipment they distribute and related services they provide. In order to be compensated for equipment distributed and services rendered, certified programs must submit documentation and a reasonably detailed explanation of those costs incurred within 30 days after the end of each six-month period of the funding year. Costs submitted must be for those costs actually incurred during the prior six-month period. The TRS Fund Administrator and the NDBEDP Administrator shall review submitted costs and may request supporting documentation to verify the expenses claimed, and may also disallow unreasonable costs.

21. *Rollover and Reallocation.* The Commission will not permit the rollover of unused funds from one Fund year to another, in part because the Commission believes that not having the option of carrying over unused funds to the next year will create greater incentives for NDBEDP certified programs to distribute communications equipment to their residents rapidly and efficiently. The Commission will review NDBEDP funding data as it becomes available, and will consider whether to keep or revise this funding approach for

the permanent NDBEDP. The Commission also delegates authority to the CGB to reduce, raise, or reallocate funding allocations to any certified program as it may deem necessary and appropriate.

22. *Administrative Costs.* For the NDBEDP pilot program, the Commission will allow certified programs to receive reimbursement from the TRS Fund for administrative costs that do not exceed 15 percent of the total reimbursable costs for the distribution of equipment and related services permitted under this program. The Commission expects such administrative costs incurred through participation in the NDBEDP pilot program to typically cover expenses incurred through reporting requirements, accounting, regular audits, oversight, and general administration.

23. *Funding Caps.* Because there is insufficient information in the record to support specific caps or amounts that should be used for outreach, assessments, equipment, installation, or training out of each state's funding allocation, the Commission will not adopt any such caps for the pilot program at this time. The Commission does, however, require that all costs incurred through participation in the NDBEDP pilot program be reasonable and notes that the Commission will carefully monitor and evaluate the data submitted by certified programs for reimbursement of costs, as well as all other data and information submitted in the semi-annual reports filed by certified programs, to determine whether caps on outreach, assessments, equipment, installation, or training costs are necessary and appropriate in subsequent Fund years of the NDBEDP pilot program or for the permanent program.

#### **Oversight and Reporting**

24. The Commission adopts a six-month reporting requirement as part of our NDBEDP pilot rules. This reporting requirement is necessary to provide timely data for the effective administration of the NDBEDP pilot; to assess the effectiveness of the pilot program in meeting the communications equipment and technology needs of deaf-blind individuals; to ensure that the TRS Fund is being used for the purpose intended by Congress; to detect and prevent potential fraud, waste and abuse of the TRS Fund; to ensure compliance with our rules; and to inform our rulemaking for the permanent NDBEDP. This reporting schedule also coincides with and complements the schedule for program reimbursements. The information the

Commission requires certified programs to report is set out in our rules.

25. The Commission is mindful that qualitative as well as quantitative data may be needed to appropriately assess the efficiency and effectiveness of the certified programs and the pilot program, and to better inform the structure and operation and the development of rules for a permanent NDBEDP. The Commission takes particular note of the need expressed by several commenters for input from deaf-blind consumers, advocacy groups, and leaders. The Commission encourages certified programs to seek and obtain such qualitative data and to share that information with the Commission.

26. In order to receive compensation from the TRS Fund, each certified program must engage an independent auditor to perform an annual audit designed to detect and prevent fraud, waste and abuse. In addition, all such programs must submit, as necessary, to any audits directed by the Commission, CGB, the NDBEDP Administrator, or the TRS Fund Administrator. The Commission also requires all certified programs to retain all records associated with the distribution of equipment and provision of related services under the NDBEDP for two years following the termination of the pilot program. The Commission believes that adopting these policies will promote greater transparency and accountability.

27. To further prevent abuse, the Commission also adopts a rule that prohibits certified programs from accepting any type of financial arrangement from an equipment vendor that could incentivize the purchase of particular equipment. The Commission will request during the initial certification application process and thereafter, as necessary, disclosure of actual or potential conflicts of interest with manufacturers or providers of equipment, software, or applications that may be distributed under the NDBEDP. Finally, the Commission requires that each NDBEDP certified program filing these reports attest to the truth and accuracy of the information provided in these reports under penalty of perjury.

#### **Logistics and Division of Responsibilities**

28. The Commission delegates authority to the CGB to take the administrative actions necessary to implement and administer the NDBEDP. CGB will designate an NDBEDP Administrator to review applications and certify programs for participation in the NDBEDP pilot; allocate funding; review submissions for reimbursement

of costs; establish and maintain an NDBEDP Web site and oversee other outreach efforts undertaken by the Commission; confer with stakeholders and obtain, review, and analyze data to assess the effectiveness of the pilot program; work with Commission staff on the adoption of rules for a permanent program; and serve as the Commission's point of contact for the NDBEDP.

29. The Commission also concludes that the TRS Fund Administrator, as directed by the NDBEDP Administrator, shall have responsibility for (A) reviewing cost submissions and releasing funds for equipment that has been distributed and authorized related services, including outreach efforts; (B) releasing funds for other authorized purposes, as requested by the Commission or CGB; and (C) collecting data as needed for delivery to the Commission and the NDBEDP Administrator.

#### **Other Considerations**

30. *Advisory Body.* The Commission believes that the participation of deaf-blind consumers is critical in all aspects of the NDBEDP to ensure that the program effectively meets the needs of this constituency. The Commission is exploring the best means by which to engage and confer with these and other stakeholders. While the Commission will not create a separate advisory body at this time, the NDBEDP Administrator will nevertheless meet with stakeholders, including consumers who are deaf-blind, consumer groups, experts on deaf-blindness, technical experts, manufacturers, vendors, and certified programs, jointly or separately, during the course of the pilot program to obtain ongoing input and feedback.

31. *Central Repository.* The Commission believes that the best means of ensuring that the public has up-to-date information about the equipment made available by NDBEDP certified programs is to include such information in the clearinghouse on accessible products and services that the Commission will be establishing over the next year under the CVAA. The Commission hopes to gather extensive information about the equipment provided under the NDBEDP for inclusion within this clearinghouse from the reports submitted during this pilot program.

32. *NDBEDP as a Supplemental Funding Source.* When it is established, the NDBEDP will be one of several federal laws or programs that either mandate or authorize the provision of specialized CPE to individuals who are deaf-blind. The Commission concludes that the NDBEDP provides a new

funding resource for the distribution of equipment that supplements, rather than supplants any existing legal mandates or programs for equipment available to consumers today. Individuals who are deaf-blind should not be disqualified from participating in the NDBEDP pilot program because they may also be eligible for or receive equipment under other programs for other purposes (e.g., education or employment related equipment). Instead, individual assessments must be conducted to determine each deaf-blind person's needs for different settings. The Commission encourages NDBEDP certified programs to collaborate with other programs to achieve the goal of addressing the communication technology needs of this underserved population while avoiding duplicative services.

33. *Program Compliance.* In addition to the certification, the Commission requires that each NDBEDP certified program requesting reimbursement for equipment and related services under this program attest to the truth and accuracy of the claims for reimbursement submitted, under penalty of perjury. To ensure that individuals with knowledge of program abuses are encouraged to come forward, the Commission also adopts a whistleblower protection rule for the NDBEDP pilot program. The Commission also reserves the right to suspend or revoke NDBEDP certification if, after notice and opportunity for hearing, it determines that such certification is no longer warranted. In cases where a program's certification has been suspended or revoked, the Commission delegates authority to CGB to take such steps as may be necessary, to ensure continuity of the NDBEDP for that state. The Commission may also, on its own motion, require a certified program to submit documentation demonstrating ongoing compliance with the Commission's rules, if it has reason to suspect that a state program may not be in compliance with its program rules or requirements.

#### **Final Regulatory Flexibility Certification**

37. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." See 5 U.S.C. 603. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and

"small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

38. In document FCC 11-56, the Commission proceeds with rules for implementing a NDBEDP pilot program to provide support to programs approved by the Commission for the distribution of specialized CPE to low-income individuals who are deaf-blind. In the Notice of Proposed Rulemaking in this proceeding, document FCC 11-3, the Commission concluded that no Initial Regulatory Flexibility Analysis was required because, even if a substantial number of small entities might be affected by the proposed rules, including those deemed to be small entities under the SBA's standard, all of the providers potentially affected by the proposed rules would be entitled to receive reimbursement for their reasonable costs of participation and compliance. Therefore, the Commission concluded that the rules proposed in document FCC 11-3, if adopted, would not have a significant impact on a substantial number of small entities. Accordingly, and as described below, the Commission provides this certification.

39. In document FCC 11-56, the Commission adopts rules to implement section 105 of the CVAA, signed into law by President Obama on October 8, 2010. The CVAA requires the Commission to take various measures to ensure that people with disabilities have access to emerging communications technologies in the 21st century. Section 105 of the CVAA adds section 719 to the Communications Act (the Act), as amended. Section 719 of the Act directs the Commission to establish rules, within six months of enactment, 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. The equipment to be distributed is needed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by individuals who are deaf-blind. For these purposes, section 719 of the Act adopts the definition of "individuals who are deaf-blind" in the Helen Keller National

Center (HKNC) Act and authorizes \$10 million annually from the Interstate Telecommunications Relay Service (TRS) Fund.

40. Specifically, in document FCC 11-56, the Commission concludes that a two-year pilot program, with an option to extend for one more year, will enable the Commission to appropriately assess the most efficient and effective method of administering the NDBEDP, and lay the groundwork for a more permanent program. The Commission adopts rules to establish the NDBEDP pilot program which will rely on existing state equipment distribution programs (EDPs) and other entities to distribute equipment to deaf-blind individuals. The rules provide selection criteria for NDBEDP pilot program application and certification, and for the Commission to certify one program per state as eligible for support. The Commission also adopts eligibility and verification of requirements for individuals to qualify as "low-income" and "deaf-blind" for receipt of equipment and services from NDBEDP certified programs.

41. Document FCC 11-56 makes the full amount of authorized funding, \$10 million, available to the NDBEDP pilot program during each TRS Fund year, of which up to \$500,000 per year may be used to support certified programs through national outreach efforts. Initial funding allocations will provide a base amount of \$50,000 for each state, with the balance of available funds allocated in proportion to the population of each state. Document FCC 11-56 gives NDBEDP certified programs the discretion to determine the equipment to be provided, whether specialized or off-the-shelf, separately or in combination, provided that the equipment meets the needs of the individual and makes the communications services covered under section 719 of the Act accessible. The rules require certified programs to submit requests for and to be reimbursed every six months, up to each state's allotment, for the equipment distributed and the reasonable costs of warranties, maintenance, repairs, temporary equipment loans, and refurbishing; and for the reasonable costs of conducting state and local outreach and individualized needs assessments, installing equipment, and providing individualized training on how to use the equipment. The rules adopt a funding cap for administrative costs at 15 percent of the total reimbursable costs for the distribution of equipment and provision of authorized related services. Funds that are not used in one TRS Fund year will

not be carried over to the next TRS Fund year.

42. Document FCC 11–56 adopts a six-month reporting requirement for certified programs, specifying the information to be reported and certification under penalty of perjury by a senior executive of the certified program. In addition, document FCC 11–56 requires certified programs to conduct annual independent audits, retain records, and disclose potential conflicts of interest. Document FCC 11–56 also adopts rules for the designation of and actions to be taken by an NDBEDP Administrator, and the actions to be taken by the TRS Fund Administrator related to the administration and operation of the NDBEDP.

43. With regard to whether the rules adopted by document FCC 11–56 will have a *significant economic impact* on a substantial number of small entities, NDBEDP certified programs affected by these rules are entitled to receive reimbursement, as described above, up to each state's allotment, for the equipment distributed, related services provided, and administrative costs of participation in the NDBEDP. As such, the economic impact on such entities will be *de minimis*. Therefore, the Commission concludes that the rules adopted by document FCC 11–56 will not have a significant economic impact on these entities.

44. With regard to whether a *substantial number* of small entities may be economically impacted by the rules adopted by document FCC 11–56, the Commission notes that existing state EDPs and other entities certified by the Commission to participate in the NDBEDP pilot program to distribute equipment to low-income individuals who are deaf-blind are likely to meet the definition of a small entity as a “small business,” “small organization,” or a “small governmental jurisdiction.” The Commission describes here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.2 million small businesses, according to the SBA. In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2002, there were approximately 1.6 million small organizations. Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2002 indicate

that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were “small governmental jurisdictions.” Thus, the Commission estimates that most governmental jurisdictions are small.

45. While the Congressional mandate has led us to list the above entities as the ones that in all reasonable likelihood will function as NDBEDP certified programs, there exists the possibility that our list may not be complete and/or may subsequently include entities not listed above. This includes entities which may not fit into traditional categories currently under the Commission's jurisdiction. However, as noted above, the Commission will rely on existing state EDPs and other entities to distribute equipment to low-income individuals who are deaf-blind. The rules provide selection criteria for NDBEDP pilot program application and certification, and for the Commission to certify one program per state as eligible for support. Therefore, *a maximum of 53 entities* may be selected to participate in the NDBEDP pilot program—the 50 states plus the District of Columbia, Puerto Rico, and the Virgin Islands. Each of these jurisdictions currently administers an intrastate TRS program. The Commission concludes, therefore, that a substantial number of small entities will not be affected by the rules adopted document FCC 11–56.

46. Therefore, the Commission certifies that the requirements of document FCC 11–56 will not have a significant economic impact on a substantial number of small entities.

47. The Commission will send a copy of document FCC 11–56, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, document FCC 11–56 and this final certification will be sent to the Chief Counsel for Advocacy of the SBA.

#### Ordering Clauses

48. Pursuant to the authority contained in sections 1, 4(i), 4(j), and 719 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 620, document FCC 11–56 is *adopted*.

Document FCC 11–56 shall become effective June 8, 2011 except that rules that contain information collection requirements, which are subject to the PRA and require approval by OMB, shall become effective after the Commission publishes a notice in the

**Federal Register** announcing such approval and the relevant effective date.

49. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 11–56, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR 64

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Bulah P. Wheeler,**  
*Deputy Manager.*

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

#### PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, 254(k), and 620, unless otherwise noted.

#### Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

■ 2. The authority citation for Subpart F is revised to read as follows:

**Authority:** 47 U.S.C. 151–154; 225, 255, 303(r), and 620.

■ 3. Section 64.610 is added to read as follows:

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

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

(b) *Certification to receive funding.* For each state, the Commission will certify a single program as the sole authorized entity to participate in the NDBEDP and receive reimbursement for

its program's activities from the Interstate Telecommunications Relay Service Fund (TRS Fund). Such entity will have full oversight and responsibility for distributing equipment and providing related services in that state, either directly or through collaboration, partnership, or contract with other individuals or entities in-state or out-of-state, including other NDBEDP certified programs.

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

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

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

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

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

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

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

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

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

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

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

(2) *Individual who is deaf-blind.* (i) Any person:

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

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

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

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

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

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

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

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

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

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

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

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

(e) *Equipment distribution and related services.* (1) Each program certified under the NDBEDP must:

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

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

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

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

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

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

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

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

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

(i) Impose restrictions on specific brands, models or types of

communications technology that recipients may receive to access the communications services covered in this section;

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

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

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

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

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

(ii) Individual needs assessments;

(iii) Installation of equipment and individualized consumer training;

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

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

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

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

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

named reporting entity and that I have examined all cost data associated with equipment and related services for the claims submitted herein, and that all such data are true and an accurate statement of the affairs of the above-named certified program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) Obtaining, reviewing, and evaluating reported data for the purpose

of assessing the pilot program and determining best practices;

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

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

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

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

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

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

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

(i) *Whistleblower protections.*

(1) NDBEDP certified programs shall permit, without reprisal in the form of an adverse personnel action, purchase or contract cancellation or discontinuance, eligibility disqualification, or otherwise, any current or former employee, agent, contractor, manufacturer, vendor, applicant, or recipient, to disclose to a designated official of the certified program, the NDBEDP Administrator, the TRS Fund Administrator, the Commission's Office of Inspector General, or to any federal or state law

enforcement entity, any known or suspected violations of the Act or Commission rules, or any other activity that the reporting person reasonably believes to be unlawful, wasteful, fraudulent, or abusive, or that otherwise could result in the improper distribution of equipment, provision of services, or billing to the TRS Fund.

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

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

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

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

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

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