

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
DTV Consumer Education Initiative) MB Docket No. 07-148

**COMMENTS OF QWEST
COMMUNICATIONS INTERNATIONAL INC.**

Qwest Communications International Inc. (“Qwest”) submits these comments in response to the *Public Notice* that the Media Bureau released in the above-captioned proceeding.¹ Qwest comments here primarily because of its position as a provider of Lifeline and Link-Up services in fourteen western states and specifically to address one issue raised by the Federal Communications Commission (“Commission”) in the *NPRM*. One of the proposals included in the *NPRM* is that the Commission requires telecommunications carriers to notify each of their low-income telephone customers of the digital television transition and to include such a notice in their Lifeline and Link-Up outreach efforts. These proposed requirements reach well beyond what any prudent policy or legal authority would support.

First, certainly educating consumers regarding the digital television transition is a laudable, worthwhile, and necessary endeavor. But, the best way to reach consumers now who will be impacted by the transition is through the medium that will be affected, namely broadcast television. Advertisements, public service announcements, and television news pieces on broadcast television are the most likely to reach those consumers who will be impacted by the

¹ *Public Notice*, MB Docket No. 07-148, Comment Sought on Digital Television Consumer Education Initiative, DA 07-3612 (rel. Aug. 16, 2007); *In the Matter of DTV Consumer Education Initiative*, Notice of Proposed Rule Making (“*NPRM*”), FCC 07-128 (rel. July 30, 2007), 72 Fed. Reg. 46014 (Aug. 16, 2007).

transition in the least confusing manner. Requiring telecommunications carriers to provide notices to their low-income telephone customers regarding the digital television transition may simply result in customer confusion. Some customers may think that receiving a notice from their telephone company means the digital television transition will impact their telephone service. Or, consumers may ignore the notices thinking that the information only applies if they receive television services from their telephone provider. In this situation, the very audience that most needs to be reached -- those receiving broadcast television directly without subscribing to a pay-television service -- would ignore the message. Requiring telephone companies to notify some of their subscribers about changes to services that the companies do not provide to those customers, could actually result in undermining efforts to educate consumers on the digital television transition. Further, requiring telephone companies to include notice of the digital television transition in their advertising for Lifeline and Link-Up telephone services may cause similar confusion for potential subscribers. Such confusion could also undermine efforts to increase subscribership in the Lifeline program. Significant efforts are already underway to improve the effectiveness of Lifeline and Link-Up outreach to better achieve the goals of the low-income universal service program.² Those efforts should not be hindered by imposing unrelated and potentially confusing notice requirements regarding the digital television transition in Lifeline and Link-Up outreach materials.

² The joint Federal Communications Commission (“Commission”), National Association of Regulatory Utility Commissioners (“NARUC”), National Association of State Utility Consumer Advocates (“NASUCA”) “Lifeline Across America” Working Group earlier this year released a report and identified specific next-step strategies for improving Lifeline and Link-Up outreach. Report of the Commission/NARUC/NASUCA Working Group on Lifeline and Link-Up: “Lifeline Across America” (rel. Feb. 2007), <http://www.lifeline.gov/>. Additionally, the Commission has recently requested to refresh the record in a proceeding that includes inquiry into Lifeline and Link-Up advertising by Lifeline telecommunications providers. *See* Public Notice, 22 FCC Rcd 4872 (2007).

Second, the Commission's efforts to regulate in this area also may be legally unsustainable. Statutory language addressing the digital television transition is very limited. The primary statutory language regarding the transition addresses television broadcast licenses and states simply that "[a] full-power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond February 17, 2009."³ There is no statutory language addressing the consumer impacts of these license terminations or authorizing the Commission to regulate outreach to consumers regarding the potential effects of this legislation. Consequently, it seems that any Commission requirements regarding these issues must fall within the scope of the Commission's ancillary jurisdiction.⁴

For a Commission regulation to properly fall within its ancillary jurisdiction the regulation must satisfy two requirements: (1) the regulation must cover interstate or foreign communications by wire or radio, and (2) the regulation must be reasonably ancillary to the Commission's effective performance of its statutorily-mandated responsibilities.⁵ It seems that the proposed notice requirements for Lifeline telephone service providers fail to meet the first part of this test. The proposed regulations do not pertain to the transmission of interstate or foreign communications by wire or radio. Instead, the proposed regulations address notices by telecommunications providers to a subset of their telephone customers about an impending change in how television broadcast signals are transmitted. This link to the transmission of

³ See 47 U.S.C. § 309(j)(14)(A).

⁴ See *FCC v. Midwest Video Corp.*, 440 U.S. 689, 696-97 (1979) (analyzing whether certain Commission regulations regarding cable television were within the Commission's ancillary jurisdiction in the absence of express statutory authorization to regulate cable television) ("*Midwest Video II*").

⁵ *American Library Ass'n v. FCC*, 406 F.3d 689, 700-01 (D.C. Cir. 2005).

television broadcast signals is too attenuated to constitute regulating interstate wire transmission. It is not the transmission itself that the Commission would regulate here. Nothing about the proposed requirements impacts -- directly or indirectly -- the transmission of television broadcast signals. As such, these proposed regulations are beyond the scope of the Commission's ancillary authority.⁶

Moreover, the proposed requirements fail the second part of the ancillary jurisdiction test. Telecommunications carriers' provision of Lifeline and Link-Up telephone service has nothing to do with the digital television transition. Thus, there is no reasonable nexus to the Commission's effective performance of its statutorily-mandated responsibilities for broadcast television. Thus, again, the Commission is without sufficient statutory authorization to impose the proposed notice requirements on Lifeline telephone service providers.⁷

In light of these policy and legal concerns, Qwest urges the Commission not to require that Lifeline telephone service providers give their customers notice of the digital television

⁶ *See id.*, 406 F.3d at 703 (holding that FCC regulations that did not regulate the actual broadcast transmission exceeded the scope of the Commission's ancillary jurisdiction under Title I of the Communications Act).

⁷ Further, the proposed requirements also trigger scrutiny as to whether they would constitute forced speech in violation of the telecommunications providers' constitutional rights. *See, e.g., Pacific Gas & Electric Co. v. Public Utilities Comm'n of California*, 475 U.S. 1 (1986), *reh'g denied*, 475 U.S. 1133 (Apr. 21, 1986) (holding that the California Public Utilities Commission's order requiring the utility to insert the newsletter of a third party in its billing envelope violated the utility's First Amendment right not to speak).

transmission or include such notices in their advertising of their Lifeline and Link-Up telephone services.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Eileen Kraus, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the Office of the Secretary of the FCC via ECFS in MB Docket No. 07-148; and 2) served via e-mail on the FCC's copy contractor, Best Copy and Printing, Inc., at fcc@bcpiweb.com.

/s/Eileen Kraus
Eileen Kraus

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