

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

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

To: The Commission

COMMENTS OF RURAL CELLULAR ASSOCIATION

David L. Nace
Todd B. Lantor
Lukas, Nace, Gutierrez & Sachs,
Chartered
1650 Tysons Boulevard
Suite 1500
McLean, Virginia 22102
Phone: (703) 584-8678
Fax: (703) 584-8696

Counsel to Rural Cellular Association

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Rural Cellular Association (“RCA”),¹ by its attorneys, hereby provides comments on the Further Notice of Proposed Rulemaking adopted by the Commission in the above-captioned proceeding.² In the *DTV FNPRM*, the Commission seeks comment on whether to expand the DTV notification requirement that requires Eligible Telecommunications Carriers (“ETCs”) to provide to Lifeline and Link-Up consumers a prescribed message monthly about the digital television (“DTV”) transition. Specifically, the Commission seeks comment on expanding the ETC DTV notification requirement so that ETCs would have to provide monthly notices about the DTV transition to all of their subscribers. According to the Commission, “[s]uch a revision would ensure a wider reach for DTV transition notices as the February 17, 2009, deadline approaches, but could increase expenses for ETCs.”³ The Commission also asks what “the appropriate balance [is] for the Commission’s Rules in this area?”⁴

¹ RCA is an association representing the interests of more than 80 small and rural wireless licensees providing commercial services to subscribers throughout the nation. RCA’s wireless carriers operate in rural markets and in a few small metropolitan areas. No member has as many as one million customers, and all but two of RCA’s members serve fewer than 500,000 customers.

² *In the Matter of DTV Consumer Education Initiative*, MB Docket No. 07-148, FCC 08-119, Order on Reconsideration and Further Notice of Proposed Rulemaking (rel. Apr. 23, 2008) (“*DTV FRPRM*”).

³ *DTV FNPRM*, ¶ 18.

For the following reasons, RCA believes strongly that the Commission should not expand the pool of recipients receiving monthly notices about the DTV transition beyond an ETC's Lifeline and Link-Up customers: (1) the Commission has failed to adequately justify the need to expand the recipient pool of the ETC DTV transition notification; (2) the costs to ETCs in providing monthly notices about the DTV transition would far outweigh the benefits; and (3) as predicted, prescribed monthly notices about the DTV transition have already proven to cause significant customer confusion.

I. THE COMMISSION HAS FAILED TO ADEQUATELY JUSTIFY THE NEED TO EXPAND THE RECIPIENT POOL OF THE ETC DTV TRANSITION NOTIFICATION

The Commission's initial ETC DTV transition requirement was, in large part, based on a suggestion from Representatives John D. Dingell, Chairman of the Committee on Energy and Commerce, and Edward J. Markey, Chairman of the Subcommittee on Telecommunications and the Internet, that the Commission "require, as an interim measure, that telecommunications carriers that receive funds under the Low Income Federal universal service program... notify each of their low income customers of the digital transition and include such a notice in their required Lifeline and Link-Up publicity efforts."⁵

As a result of their suggestion, in the *DTV Report and Order*, the Commission attempted to explain – on both legal and public policy grounds – the need to require ETCs to notify low-income households about the DTV transition.⁶ The Commission

⁴ *Id.*

⁵ See *In the Matter of DTV Consumer Education Initiative*, Report and Order, MB Docket No. 07-148, FCC 08-56 (rel. Mar. 3, 2008), ¶ 54 ("*DTV Report and Order*").

⁶ See *Id.*, ¶¶ 55-58.

noted, for example, that “[i]n a survey on the DTV transition, the General Accounting Office found that over-the-air households are more likely to have lower incomes than cable or satellite households and that approximately 48 percent of exclusive over-the-air viewers have household incomes less than \$30,000.”⁷ The Commission also stated that:

Because the DTV transition will greatly affect lower income households and the Lifeline/Link-Up programs already serve this same demographic, we have an already established communications path that can be used to further the success of the DTV transition. By communicating with these lower income households, we ensure that all Americans will have the knowledge they need in order to prepare for the DTV broadcast transition.⁸

Multiple parties filing comments in the proceeding took issue with the Commission’s claim that inserts in the bills of voice customers relying on the Lifeline and Link-Up programs would be likely to reach individuals relying on broadcast television. For example, the United States Telecom Association (“USTA”) stated that a 2006 study examining users of Lifeline and Link-Up services in Florida found that a majority of low-income families subscribed to cable (45%) or direct broadcast satellite (13.5%).⁹ USTA concluded that “the application of billing-insert mandates on providers of Lifeline and Link-Up services would be simultaneously over-inclusive (because many low-income telephone customers may rely on cable or wireline video products, or may

⁷ *DTV Consumer Education Initiative Report and Order*, ¶ 57 (citing Statement of Mark L. Goldstein, United States Government Accountability Office, Testimony Before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives at 7 (Feb. 17, 2005)).

⁸ *DTV Consumer Education Initiative Report and Order*, ¶ 57.

⁹ See Comments of the United States Telecom Association, MB Docket No. 07-148 (filed Sept. 17, 2007), at 10 (citing Lynne Holt and Marc Jamison, *Making Telephone Service Affordable for Low-Income Households: An Analysis of Lifeline and Link-Up Telephone Programs in Florida* at 29 (2006)). The study’s authors hypothesized that “households that are heavier users of communications services [might be] more likely [than others] to sign up for Lifeline benefits,” which, according to USTA, suggests that educational efforts aimed at Lifeline users would target precisely the wrong low-income consumers.

not own a television at all) and under-inclusive (because many broadcast viewers do not rely on the low-income USF mechanisms).¹⁰ These arguments were not addressed by the Commission in its *DTV Report and Order*.

The Commission's current proposal to expand the recipient pool for DTV transition notifications to all ETC customers appears to have, once again, been generated based upon comments made by a member of Congress. According to the *FRPRM*, on April 15, 2008, during Chairman Martin's testimony before the House Committee on Energy and Commerce's Subcommittee on Telecommunications and the Internet, Congressman Fred Upton suggested that that the Commission explore revising its rules to require that ETCs provide monthly notices to all of their subscribers, rather than just low-income subscribers.¹¹

Notwithstanding the good intentions of Members of Congress to see that information concerning the DTV transition reaches those who need to know, the Commission has now – on two occasions – failed to adequately substantiate the need for ETCs to provide notice about the DTV transition to customers. In the earlier DTV Consumer Education Initiative proceeding, the Commission attempted to demonstrate a nexus between Lifeline/Link-Up consumers and the allegedly greater proportional effect that the DTV transition would have on lower income households. However, in so doing, the Commission sidestepped industry arguments that there is no compelling nexus between the DTV transition and telephone service.¹² Now, in proposing to expand the

¹⁰ Comments of the United States Telecom Association, at 10.

¹¹ *FRPRM*, ¶ 18 (citing *Oversight of the Federal Communications Commission – the 700 MHz Auction, Hearing before the House Committee on Energy and Commerce's Subcommittee on Telecommunications and the Internet*, 110th Cong. (2008)).

¹² See e.g., Qwest *Ex Parte* Presentation, MB Docket No. 07-148 (filed Dec. 12, 2007).

DTV transition notification to cover all of an ETC's customers, the Commission provides absolutely no justification or rationale to support expansion despite the fact that unknown millions of dollars will be incurred by ETCs in design, printing, mailing, and customer service costs in order to comply with the proposed requirement through March 2009.

The Commission should not expand the ETC DTV transition notification requirement beyond the current recipient pool – *i.e.*, Lifeline and Link-Up customers. However, if it does, the Commission must first provide significantly more factual support for the expanded notification requirement, allow interested parties to comment on the specific facts provided by the Commission supporting the proposed expansion (other than a suggestion by one well-meaning Congressman), and support its decision with a cost-benefit analysis based upon its cost estimate for complying with the proposed expanded requirement.

II. THE COSTS ASSOCIATED WITH PROVIDING MONTHLY NOTICES ABOUT THE DTV TRANSITION WOULD BE EXCESSIVE

The Commission has provided a variety of means by which ETCs can provide notice about the DTV transition on a monthly basis to their Lifeline and Low-Income customers, including bill messages, bill inserts, brochures, postcards, and other mailings.¹³ For some carriers, the current notification requirement is already a significant economic burden. Compliance cost estimates from multiple RCA members, each with tens of thousands Lifeline and Link-Up customers, range from \$300,000 to more than \$1 million, including all printing, mailing and call center costs.

If the Commission elects to expand the recipient pool for DTV transition notices to all of an ETC's customers, the ETC's costs to comply will be exponentially more

¹³ 47 C.F.R. § 54.418.

expensive because, in most instances, Lifeline and Link-Up customers make up just a small subset of an ETC's total customer base. By way of example, one RCA member reports that it has fewer than 100 Lifeline customers, substantially limiting the costs associated with the current DTV notification requirement for the carrier. However, if the FCC decides to expand the DTV notification requirement so that an ETC has to provide the FCC's prescribed message about the DTV transition to all of its customers, the RCA member would end up spending thousands of dollars each month in order to provide notice to its customer base totaling approximately 13,000 subscribers. Another member with over 350,000 subscribers estimates that if the Commission expands the notification requirement, it would likely cost the carrier \$40,000-\$55,000 per month, excluding additional call center costs.

Providing notice about the DTV transition to tens or hundreds of thousands (or more) customers on a monthly basis would be both excessive and unreasonable – regardless of the method chosen to convey the message. Moreover, the significant volume of calls that monthly notices about the DTV transition are likely to generate will place substantial strain on an ETC's customer call centers. Perhaps most importantly, however, requiring ETCs to provide monthly notices about the DTV transition to all of their customers will reduce the ability of ETCs to spend universal service funding on its intended purpose – the further enhancement and expansion of wireless service in rural areas – as set forth in Section 254(b) of the Communications Act.¹⁴

¹⁴ 47 U.S.C. § 254(b).

III. PRESCRIBED MONTHLY NOTICES ABOUT THE DTV TRANSITION HAVE ALREADY PROVEN TO CAUSE SIGNIFICANT CUSTOMER CONFUSION

RCA members that hold ETC designations have already begun providing monthly notices about the DTV transition to their Lifeline and Link-Up customers.¹⁵ Thus far, RCA member carriers have reported that the information provided by carriers about the DTV transition has resulted in significant customer confusion. For example, customers of RCA member carriers have called member customer care departments asking whether their cell phone is going to be affected by the DTV transition or whether the carrier is going to somehow turn off their television. Other RCA members report multiple incidents of customers calling customer call centers asking why their wireless carrier is providing them with any information about the DTV transition. These calls are being made by customers despite the fact that the DTV transition message provided by RCA member carriers instructs customers to contact www.DTV.Gov for information about the DTV transition, or www.dtv2009.gov or 1-888-DTV-2009 for information about subsidized coupons for digital-to-analog converter boxes.

¹⁵ See 47 C.F.R. § 54.418.

IV. CONCLUSION

For all of the foregoing reasons, RCA strongly opposes the Commission's proposal to expand the pool of recipients receiving monthly notices from ETCs about the DTV transition.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

filed electronically

David L. Nace

Todd B. Lantor

**Lukas, Nace, Gutierrez & Sachs,
Chartered**

1650 Tysons Boulevard, Suite 1500

McLean, Virginia 22102

Phone: (703) 584-8678

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