BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning High-Speed	)	GEN Docket No. 00-185
Access to the Internet Over	)	
Cable and Other Facilities	)	

REPLY COMMENTS OF STARBAND COMMUNICATIONS INC.

StarBand Communications Inc. (AStarBand@), by its attorneys and pursuant to Sections 1.415 and 1.430 of the Commission=s rules,[1] hereby replies to the comments filed in the above-captioned proceeding, through which the Commission is seeking to determine what regulatory treatment should be accorded to cable modem service and the cable modem platform used in providing high-speed access to the Internet.[2] The Commission has also requested input on whether it would be appropriate to extend an approach adopted for cable broadband service providers to other providers of broadband services.

I. SUMMARY

[1] *See* 47 C.F.R. " 1.415 & 1.430.

[2] *See Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, FCC 00-355, slip op. (rel. Sept. 28, 2000) (A*NOI*@).

JANUARY 10, 2001

StarBand notes that the majority of the commenters in this proceeding that have addressed potential regulation of satellite broadband services support StarBand=s view that imposing any mandated access requirements would be wholly inappropriate.[3] Indeed, the few parties that supported open access regulation with respect to provision of broadband access via satellite failed both to support their views and to consider either the key differences between broadband cable providers and satellite broadband providers or the fact that broadband services remain in the very early stages of development. When these characteristics and differences are considered, the Commission must reasonably conclude that the imposition of any open access regulation on broadband satellite providers would be suspect as a matter of law and policy and would harm this emerging industry, denying the public the benefit of a vibrant and competitive broadband market.

II. DISCUSSION

A. Many Commenters Urge Strongly That It Would Be Harmful For The Commission To Impose Open Access Regulation On Satellite Broadband Access.

[3] *See* StarBand Comments in GN Docket No. 00-185. All references to comments herein are to comments filed in GN Docket No. 00-185.

In its Comments, StarBand demonstrated that Commission imposition of open access regulation upon developing satellite broadband services is unwarranted.[4] Most of the parties commenting on the *NOI* apparently agree; indeed, only a few commenters asserted that the FCC needs to intervene to protect competition -- and none offered any legal or policy basis for doing so. Indeed, of the parties that addressed issues relevant to satellite broadband delivery, most recognized that satellite broadband systems contribute to healthy competition in the provision of high-speed Internet service without regulatory intervention. For example, Metricom, Inc., and the Satellite Broadcasting and Communications Association ("SBCA")/Satellite Industry Association ("SIA") explain that because there is and will be an abundance of competition in satellite broadband and other wireless platforms, the Commission has no policy basis for mandating open access.[5] Other commenters show that, while developing broadband satellite systems lack market power in the delivery of Internet services -- *i.e.*, there is no bottleneck control -- they are fostering rapid growth, innovation and competition in the broadband Internet services marketplace.[6] As noted in the Comments filed by the Citizens for a Sound Economy Foundation, "cable companies and DSL providers compete vigorously, with satellite and wireless options poised for major growth."[7] Even CompTel, which supports open access regulation of cable incumbents, agrees that satellite broadband should not be regulated.[8]

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4 *See* StarBand Comments at 3-4.

5 *See* Metricom, Inc. Comments at 1, 6; SBCA/SIA Comments at 2. *See also* Pegasus Communications Corporation (APegasus@) Comments at 4-5; Citizens for a Secondary Economy Foundation (ACSEF@) Comments at 4-6; The Telecommunications Industry Association (ATIA@) Comments at 23.

6 *See e.g.*, The Competitive Telecommunications Association (ACompTel@) Comments at 14-15; Pegasus Comments at 2; CSEF Comments at 1, 4; Net Compete Now Comments at 1, 5-7.

7 CSEF Comments at 4

8 *See* CompTel Comments at 5-9 (proposing rules only for promoting open access to the cable modem platform of incumbent cable operators). *See also* Net Compete Now Comments at 5-8.

And the OpenNet Coalition, which owes its existence to the open access issue, limits its call for immediate intervention in the broadband market to cable services only.[9] In short, most of the parties addressing satellite issues agree with StarBand that there is, and will be, extensive competition in satellite broadband service and that this circumstance is fostering wide consumer choice in the Internet services marketplace. Accordingly, the Commission need not, and should not, intervene to regulate satellite broadband Internet services. Such regulation would only serve to defeat the policy goals the Commission desires to advance.

B. Imposition of Open Access Regulation On Satellite Broadband Service Providers Would Place These Services At Risk.

[9] *See* OpenNet Coalition Comments at 5.

In its Comments, StarBand also showed that open access regulation of broadband satellite providers would pose an unreasonable risk to this segment of the industry.[10] Many other commenters agree with this conclusion. Comcast argues, for example, that unbundling is risky for Internet services provided by satellite.[11] RCN states that new entrants must be permitted to implement open access under market conditions, recognizing that they are at a significant disadvantage as compared to incumbent operators.[12] Similarly, TIA believes that Commission intervention could have an adverse impact on the emergence of high-speed Internet access.[13] Others also note that open access requirements would burden the efforts of satellite service providers to compete.[14] Thus, there is broad support both for FCC restraint, based on the danger that undue regulation would place emerging satellite-based high-speed Internet access at risk, and

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10 *See* StarBand Comments at 1-2, 10-11.

11 *See* Comcast Comments at 35-36.

12 *See* RCN Telecom Services, Inc. Comments at 1.

13 *See* TIA Comments at 23.

14 *See e.g.*, The Commercial Internet Exchange Association Comments at 5-7.

for the view that the Commission should let ISP arrangements with other providers be dictated by the market and not through regulation.

Numerous commenters urged the Commission to refrain from imposing open access regulation even on cable broadband providers[15] and StarBand showed in its Comments the significant differences between these more established broadband services and satellite delivered services that would make open access regulation substantially less appropriate for the latter group of providers.[16] Other commenters also recognized these distinctions. For example, Pegasus noted the great disparity in market penetration separating broadband cable services (78% of the market) and satellite systems (6% of the market),[17] while CompTel emphasized that two-way broadband Internet systems are Ajust beginning to get off the ground.@[18] Given these well-recognized differences between broadband cable and satellite systems, and the risk to the development of satellite-delivered Internet applications that could arise from blanket regulation of broadband services, a national policy to treat all such services alike would be harmful to the broadband industry, and particularly devastating to the broadband satellite segment. Commenters advocating a contrary approach offer no support for their assertions that all broadband access services should be subject to full-blown common carrier regulation.[19] As many commenters have recognized, vibrant competition and consumer choice are emerging in the marketplace without

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15 *See e.g.*, AT&T Corp Comments at 2-4, 35, 65; CSEF Comments at 4-6; Comcast Comments at 3; Metricom Comments at 6; Progress & Freedom Foundation Comments at 9..

16 *See* StarBand Comments at 5-6.

17 *See* Pegasus Comments at 5-6.

18 *See* CompTel Comments at 15.

19 *See* Communications Workers of America Comments at 1, 7. In fact, the CWA position is not entirely clear as most of its discussion focuses solely on regulation of cable modem services, with no specific discussion relating to other types of broadband platforms. *See id*. at 3.

government action[20] -- Commission intervention, without reasonable factual or policy grounds for doing so, would be the antithesis of sound decision-making.

III. CONCLUSION

StarBand urges the Commission to determine, regardless of other determinations that may be made in this proceeding, that open access regulation of broadband satellite services is inappropriate, a view that is supported by a wide and diverse group of other commenters. If the Commission considers any further action on open access in this docket, it must do so in a manner that ensures that there is no harm to emerging satellite broadband services which, if allowed to thrive, will contribute to a competitive market that will benefit the public.

Respectfully submitted,

STARBAND COMMUNICATIONS INC.

By: /s/ David S. Keir
Norman P. Leventhal
David S. Keir
Juan F. Madrid

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W.
Suite 600
Washington, D.C.

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Its Attorneys

[20] *See, e.g.*, United States Telecom Association Comments at 1, 5-8.

CERTIFICATE OF SERVICE

I, Barbara Robinson, hereby certify that a true and correct copy of the foregoing "Reply Comments of StarBand Communications Inc." was this 10th day of January, 2001 served by hand upon each of the following persons:

Donald Abelson, Chief
International Bureau
Federal Communications Commission
445 12th St., SW
Room 6-C752
Washington, DC 20554

Karl Kensinger
International Bureau
Federal Communications Commission
445 12th St., SW
Room 6-A663
Washington, DC 20554

Fern J. Jarmulnek, Chief
Satellite Policy Branch
Satellite and Radiocommunication Div.
Satellite and Radiocommunication Div.
Federal Communications Commission
Federal Communications Commission
445 12th St., SW
Room 6-A523
Washington, DC 20554

Cassandra Thomas
International Bureau
Federal Communications Commission
Federal Communications Commission
445 12th St., SW
Room 7-A666
Washington, DC 20554

Christopher Libertelli
Common Carrier Bureau
Federal Communications Commission
445 12th St., SW
Room 5-C264
Washington, DC 20554

Carl Kandutsch
Cable Services Bureau
Federal Communications Commission
445 12th St., SW
Room 3-A832
Washington, DC 20554

Douglas Sicker
Office of Engineering and Technology

Robert Cannon
Office of Plans & Policy

Federal Communications Commission
445 12th St., SW
Room 7-A325
Washington, DC 20554

Federal Communications Commission
445 12th St., SW
Room 7-B410
Washington, DC 20554

International Transcription Service, Inc.
445 12th St., SW
Room CY-B402
Washington, DC 20554

/s/ Barbara Robinson
Barbara Robinson