

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

In the Matter of

Appropriate Framework for Broadband Access
to the Internet over Wireline Facilities

CC Docket No. 02-33

Universal Service Obligations of Broadband
Providers

Computer III Further Remand Proceedings:
Bell Operating Company Provision of
Enhanced Services; 1998 Biennial Regulatory
Review – Review of Computer III and ONA
Safeguards and Requirements

CC Docket Nos. 95-20, 98-10

REPLY COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION

The Satellite Industry Association (“SIA”) hereby files these Reply Comments in the above-captioned proceeding.¹

I. SUMMARY

SIA is a national trade association representing the leading U.S. satellite manufacturers, service providers, and launch service companies.² SIA also recently began welcoming non-U.S. associate membership. SIA serves as an advocate for the U.S. commercial satellite industry on regulatory and policy issues common to its members. With member

¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *et. al.*, Notice of Proposed Rulemaking, FCC 02-42 (rel. Feb. 15, 2002) (“*Notice*”).

² SIA’s members are: The Boeing Company; Globalstar, L.P.; Hughes Electronics Corp.; Intelsat; Lockheed Martin Corp.; Loral Space & Communications Ltd.; Mobile Satellite Ventures; PanAmSat Corporation; SES Americom; Teledesic Corporation; TRW Inc., and associate member, Inmarsat.

companies providing a broad range of manufactured products and services, SIA represents the unified voice of the U.S. commercial satellite industry.

SIA recommends that the Commission not impose common carrier regulation on satellite broadband services. Pursuant to the Communications Act of 1934, as amended, (“Act”) and Commission precedent, satellite broadband services are information services or, at most, include a private carriage telecommunications component. The Commission should not allow the assertion that incumbent local exchange carrier (“ILEC”) DSL services should continue to be subject to Title II, to induce the Commission to alter the light-handed regulatory framework currently applicable to the nascent satellite broadband industry. In stark contrast to ILEC wireline-delivered broadband services and cable broadband services, satellite broadband service is a newly developing technology, with extremely limited market share, and with many challenges to overcome before it can effectively compete with wireline or cable broadband platforms. For similar reasons, SIA urges the Commission to not impose universal service contribution obligations on satellite broadband services.

II. TITLE II COMMON CARRIER REGULATION IS INAPPROPRIATE FOR SATELLITE-DELIVERED BROADBAND SERVICES

A. The Act and Commission Precedent Demonstrates that Satellite Broadband Services Are Information Services

The Commission’s *Notice* tentatively concludes that “the provision of wireline broadband Internet access service is an information service” and that “when an entity provides wireline broadband Internet access service over its own transmission facilities, this service, too, is an information service under the Act.”³ Without discussing the applicability of this analysis to

³ *Notice*, at ¶ 17. An “information service” means “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.” *Id.* § 153(20) [emphasis added]. The Act defines “telecommunications,” to include the transmission of information without change in form or

wireline broadband services, SIA strongly agrees that this analysis applies to satellite-delivered broadband. Satellite broadband providers offer information services, which do not include the separate offering of telecommunications.⁴

At most, a satellite broadband provider's use of telecommunications may be considered private carriage telecommunications, subject to Title I of the Act, but certainly is *not* a "telecommunications service" subject to Title II common carrier regulation. Information services are, by definition, provided "via telecommunications," not via telecommunications *services*.⁵ A "telecommunications service" is a common carrier offering, but mere "telecommunications" is not.⁶ Indeed, the Commission has found that, under this statutory framework, the definitions of "information service" and "telecommunications service" are mutually exclusive.⁷

Moreover, under *NARUC I* and *NARUC II*, the "holding out" of oneself to the public to serve all customers indiscriminately makes one a telecommunications service provider

content. 47 U.S.C. § 153(43). A "telecommunications service" is the offering of telecommunications directly to the public for a fee, *i.e.*, service offered on a common carrier basis. *Id.* § 153(46).

⁴ In this limited regard, satellite provisioned broadband services are analogous to cable modem service. Satellite broadband providers offer their subscribers a single integrated broadband offering, "not with separate transmission, e-mail, and web surfing services." *Inquiry Concerning High-Speed Access to Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities, Declaratory Ruling and Notice of Proposed Rulemaking*, 17 FCC Rcd. 4798 (2002).

⁵ 47 U.S.C. § 153(20).

⁶ 47 U.S.C. § 153(46).

⁷ *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11501, ¶¶ 39, 59 (reiterating that the categories of "telecommunications service" and "information service" are "mutually exclusive").

or common carrier.⁸ The telecommunications component of satellite broadband, however, has all of the classic hallmarks of private carriage. Satellite broadband providers do not indiscriminately hold themselves out to the public as offering broadband transmission capability -- they offer only an integrated package of information services. Thus, under the Act and Commission precedent, if the Commission determines that the provision of satellite broadband services includes a separable telecommunications component, that component is properly characterized as private carriage telecommunications and *not* a telecommunications service subject to Title II of the Act.

B. Arguments that ILEC Broadband Services Should Be Subject to Title II Common Carrier and Unbundling Regulations are Inapplicable to Satellite Broadband Services

SIA does not comment herein on the proper treatment of wireline broadband providers, whose services are currently subject to the full panoply of Title II common carrier regulation. Those commenters that do advocate continued Title II regulation for ILEC provision of broadband services, however, point to factors that are not at all applicable to satellite broadband providers.⁹ For example, in contrast to ILEC provision of DSL services, the satellite broadband industry is still in the beginning stages of development. A study conducted by Telecommunications Reports International determined that, through the second quarter of 2001, approximately 3.1 million customers subscribed to DSL service, 4.9 million to cable modem

⁸ See *Nat'l Assoc. of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630 (D.C. Cir. 1976) ("NARUC I"); *Nat'l Assoc. of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601 (D.C. Cir. 1976) ("NARUC II").

⁹ See, e.g., *Comments of AT&T Corp.*, at 22-40; *Comments of US LEC Corp.*, at 7-16; *Comments of Business Telecom*, at 11-25; *Joint Comments of WorldCom, Inc., the Competitive Telecommunications Association, and the Association for Local Telecommunications Services*, at 72-83 ("Comments of WorldCom, CTA, and ALTS").

service, and only 114,000 to satellite broadband service.¹⁰ This same survey recognized that “high equipment and installation costs, combined with speed limitations” would cause the satellite broadband industry to continue to struggle.¹¹ These challenges were also recognized by several commenters to this proceeding.¹² Further, as pointed out in the *Comments of SES Americom*, “the Commission established the distinction between ‘telecommunications services’ and ‘information services’ in part to enable new services to develop without application of common carrier regulation.”¹³ Increased regulation would be inappropriate for this nascent technology, and the Commission should continue to regulate satellite-provisioned broadband services as an information service, or, at most, determine that it includes a private carriage telecommunications component.

III. IMPOSING UNIVERSAL SERVICE PAYMENTS ON SATELLITE BROADBAND SERVICES WOULD BE CONTRARY TO THE PUBLIC INTEREST

The Commission should not impose universal service contribution requirements on satellite broadband services. Section 254 of the Act states that the Commission must require

¹⁰ *TR’s Online Census: Number of online Users in U.S. Reaches 70.7 Million, but New Pricing, User Demands for High-Speed Access Mean More Upheaval in Online Industry*, PR Newswire (August 8, 2001).

¹¹ *Id.*

¹² *See, e.g., Comments of Hughes Network Systems, Inc., Hughes Communications, Inc., and Hughes Communications Galaxy, Inc.*, at 4 (“*Comments of Hughes*”) (“Hughes (and subscribers) must make significant investments in infrastructure and subscriber equipment, and . . . Hughes must incur other large subscriber acquisition costs, before an individual subscriber even commences”); *Comments of SES Americom, Inc.*, at 3 (“While there is some deployment, the public has not widely accepted satellite delivery for such services” [footnote omitted]); *Comments of Comments of WorldCom, CTA, and ALTS*, at 34-35 (“At best, satellite is a legitimate alternative only for customers in areas where DSL or cable are not available”).

¹³ *Comments of SES Americom*, at 2 (citing *Regulatory and Policy problems Presented by Interdependence of Computer and Communications Service and Facilities*, Notice of Inquiry, 7 FCC 2d 11 (1966); *Amendment of Sections 64.702 of the Commission’s Rules and Regulations*, 77 FCC 2d 384 (1980)).

each “telecommunications carrier that provides interstate telecommunications services” to contribute to universal service.¹⁴ As set forth above, satellite broadband providers offer only “information services,” that may or may not have a separable private carriage “telecommunications” component. Although Section 254(d) grants the Commission discretion to require providers of private telecommunications to contribute to universal service, it does not mandate such a result. As explained in the *Comments of Hughes*, “it would not serve the public interest for the Commission, as a matter of its discretion under the statute, to require these providers to contribute to universal service support mechanisms.”¹⁵

Imposition of universal service obligations on satellite broadband services would contravene the Commission’s “*primary policy goal . . . to encourage the ubiquitous availability of broadband services.*”¹⁶ As Commissioner Martin’s Separate Statement to the *Notice* makes clear, saddling broadband technology with “an Internet access tax,” “particularly for wireless, cable, and satellite providers – will make deployment only more difficult.”¹⁷ Therefore, the Commission should refrain from imposing an additional hurdle, in the form of universal service assessments, on providers of satellite broadband services.

Additionally, while burdens of a universal service assessment on the satellite broadband would be great, there would be little or no corresponding benefit. Given the nascent state of this developing technology and small customer base, the universal service revenues derived from satellite broadband services would be minimal at best. Moreover, there would be significant practical difficulties associated with identifying the revenue attributable to the

¹⁴ 47 U.S.C. § 254.

¹⁵ *Comments of Hughes*, at 3.

¹⁶ *Notice*, at ¶ 3.

¹⁷ *Notice, Separate Statement of Commissioner Kevin J. Martin, Approving in Part and Dissenting in Part*, at 1-2.

telecommunications component. Satellite broadband services typically include a self-provisioned telecommunications component that has never been marketed as a separate product offering. As such, there is no “market” price for that telecommunications component, nor is there a reliable method for determining what portion of the subscription price is allocated to that portion of the broadband service.

IV. CONCLUSION

For the foregoing reasons, the Commission should find that: (1) satellite-delivered broadband services should not be subject to Title II common carrier regulation; and (2) universal service obligations should not be imposed on satellite broadband services.

Respectfully submitted,

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