

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
International Comparison and Consumer Survey))	
Requirements in the Broadband Data)	GN Docket No. 09-47
Improvement Act)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Deployment of Advanced Telecommunications)	GN Docket No. 09-137
Capability to All Americans in a Reasonable)	
And Timely Fashion, and Possible Steps to)	
Accelerate Such Deployment Pursuant to)	
Section 706 of the Telecommunications Act of)	
1996, as Amended by the Broadband Data)	
Improvement Act)	

To: The Commission

**REPLY COMMENTS OF ECHOSTAR CORPORATION
NBP PUBLIC NOTICE #1**

EchoStar Corporation (“EchoStar”) submits reply comments on the definition of “broadband” for purposes of the Commission’s development of a National Broadband Plan pursuant to the American Recovery and Reinvestment Act of 2009 (“the Act”).¹ In short, as aptly stated by Hughes Network Systems, LLC (“Hughes”) and WildBlue Communications, Inc. (“WildBlue”)², that definition should be based entirely on advertised data rate thresholds of at least 768 kbps downstream and 200 kbps upstream. The Commission should be mindful that the definition of “broadband,” required as it is by the Act, must be informed by the Act’s goals.

¹ *Comment Sought on Defining “Broadband,”* Public Notice DA 09-1842 (rel. Aug. 20, 2009) (“Public Notice”).

² Joint Comments of Hughes Network Systems, LLC and WildBlue Communications, Inc., *filed in* GN Docket No. 09-47, GN Docket No. 09-51, GN Docket No. 09-137 (filed Aug. 31, 2009) (“Hughes and WildBlue Comments”).

These goals, first and foremost, are the widespread, indeed universal, deployment of broadband services, as well as the widespread adoption of these services by U.S. consumers.³

In pursuing these goals, the Commission should not let the perfect become the enemy of the good. This means two things. First, the Commission should ensure that satellite technology, with its unique ability to reach remote areas, is not hampered from being put to duty to serve the Act's goals by an unduly rigorous definition. Testimony to that need for flexibility does not come only from satellite providers. As AT&T correctly puts it:

. . . setting an excessively high throughput requirement would make deployment of broadband extremely expensive and render it impossible for providers to roll out broadband services in high-cost areas. The same is true of a definition that sets goals that are too ambitious for latency, jitter, or reliability: Deployment of services like satellite or mobile broadband that are most likely to be deployed most quickly in hard-to-serve areas may be deterred entirely – just at the time when national policy dictates that providers be given incentives to supply unserved Americans with meaningful connectivity as quickly as possible.⁴

In a related vein, EchoStar agrees with Hughes and WildBlue that “latency” is a highly misleading indicator and an improper component of the broadband definition.⁵ Satellites, of course, are situated farther from the user than the hubs of terrestrial networks, but any delays associated with that distance are very small, immaterial for many applications, and offset (or more than offset) by the reduction in the number of “handoffs” that satellite service allows.

Second, broadband providers should not be inhibited by a strict definition of broadband from offering basic services at low prices. EchoStar, for example, has filed an application with

³ See American Recovery and Reinvestment Act of 2009, Publ. L. No. 111-5, 123 Stat. 115, 512-13 (Feb. 17, 2009) (“The purposes of the program are to provide access to— (1) broadband service to consumers residing in unserved and underserved areas of the United States . . . [and] (5) stimulate the demand for broadband”).

⁴ Comments of AT&T, Inc., *filed in* GN Docket No. 09-47, GN Docket No. 09-51, GN Docket No. 09-137 at 4 (filed Aug. 31, 2009).

⁵ Hughes and WildBlue Comments at 5.

the Agriculture Department's Rural Utilities Service ("RUS") and Commerce Department's National Telecommunications and Information Administration ("NTIA") requesting funding for a nearly-ready-to-deploy broadband satellite system. By means of that system, EchoStar plans to offer to rural areas throughout the nation a basic service at a low price and higher speed services at higher, though still competitive, prices. EchoStar believes that a low price point for a service that meets the needs of the vast majority of consumers is essential for the widespread adoption of the service in rural areas.

The thresholds suggested by Hughes and WildBlue are sufficiently high to ensure service with the functional characteristics that these commenters describe: "a dedicated Internet access service that enables consumers to easily use core on-line applications –such as e-mail, social networking, healthcare/telemedicine, educational and job-training programs, information dissemination, and the downloading of entertainment materials, including music, photographs and videos."⁶ To avoid uncertainty over whether a particular service performs all of these functions, the Commission should opt for the numerical, bright-line definition.

The 768 x 200 kbps threshold also has the advantage of being consistent with the broadband qualifications settled upon by NTIA and RUS after consultation with the Commission.⁷ It would be unfortunate if a broadband provider were deemed eligible to receive funding under the NTIA/RUS programs, and yet were not deemed to even be proposing a

⁶ Hughes and WildBlue Comments at 4.

⁷ Broadband Initiatives Program; Broadband Technologies Opportunities Program, 74 Fed. Reg. 33104, 33108-09 (July 9, 2009), Joint Release of Rural Utilities Service ("RUS") and National Telecommunications and Information Administration ("NTIA") ("Broadband means providing two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users."); *Id.* at 33105 ("RUS, NTIA, and the FCC have worked closely . . . to develop a coordinated federal government approach to addressing the challenge of rapidly expanding the access and quality of broadband services across the country.").

broadband service under a heightened Commission standard. For all the foregoing reasons, the Commission should define broadband based entirely upon advertised data rate thresholds of 768 kbps downstream and 200 kbps upstream

Respectfully submitted,

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