

**Before the
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
AND THE RURAL UTILITIES SERVICE
Washington, D.C. 20554**

In the Matter of:)
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AMERICAN RECOVERY AND REINVESTMENT) Docket No. 090309298–9299–01
ACT OF 2009 BROADBAND INITIATIVES)
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Joint Request for Information)
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COMMENTS

EchoStar Corporation (“EchoStar”), a major satellite service provider with a long history of completing large satellite projects, responds to the Joint Request for Information made by the National Telecommunications and Information Administration (“NTIA”) and Rural Utilities Service (“RUS”). 74 Fed. Reg. 10,716 (Mar. 12, 2009) (the “Request”).

I. INTRODUCTION AND EXECUTIVE SUMMARY

In brief, to effectuate the congressional intent of funding broadband satellite projects, the NTIA must clarify that the two-year substantial completion requirement is satisfied if more than fifty percent (50%) of the project is completed. Satellite projects, with their natural lifespan of more than three years for construction and launch, would otherwise be unwittingly excluded contrary to congressional intent. With respect to state participation in project selection, while NTIA and RUS would both do well to ensure an important consultative role for all states, the primacy of the expert federal agencies should be preserved for projects that straddle state borders. In the interest of sustainability, the agencies should consider awarding a bonus point in the selection process for projects where the private funding participation exceeds the twenty

percent (20%) minimum. The agencies should further clarify that broadband improvements for projects already underway should be eligible for funding, so long as they would not be undertaken but for the requested federal funds. The agencies should coordinate in arranging for complementary funding of projects with both rural and non-rural aspects consistent with congressional direction. Furthermore, federal funding of satellite construction would help lower the major hurdle to sustainable adoption of satellite broadband service – high front-loaded costs. Finally, the agencies should enunciate standards that permit flexible application and resist micromanagement by overly rigid advance rules.

II. DISCUSSION

With their large geographic footprint, satellites are perhaps the only technological alternative that can provide excellent service to the disenfranchised -- Americans living in areas of the nation that terrestrial broadband networks cannot feasibly reach. Satellite service is thus well situated to accomplish the objectives of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“Recovery Act”), including access of unserved and underserved areas to broadband service, job creation, and stimulation of demand for broadband services. To date, satellite broadband service has not fulfilled its formidable potential partly because it has been beset by cost-related hurdles. EchoStar believes that, if carefully formulated and meted out, the federal assistance contemplated in the Recovery Act can become the critical “but-for” factor that will allow broadband satellite service truly to “take off.”

The suitability of satellite projects for funding under the Act is not news either to Congress or to the agencies. The conference report demonstrates beyond peradventure that Congress intended “satellite carriers” to receive funds.¹ H.R. Rep. No. 111-16, at 775 (2009)

¹ Rep. Rick Boucher, Chairman of the House Subcommittee on Communications, Technology, and the Internet, also recently noted that “[t]he agencies should truly consider all

(Conf. Rep.) (“It is the intent of the Conferees that, consistent with the public interest and purposes of this section, as many entities as possible be eligible to apply for a competitive grant, including . . . satellite carriers . . .”). And agency officials have eloquently acknowledged that “particularly in some of the unserved areas that [satellite-based rural broadband providers] will be a very attractive sort of application.” Transcript, Public Meeting of NTIA’s Broadband Technology Opportunities Program, at 45 (Mar. 10, 2009), *available at* http://www.ntia.doc.gov/broadbandgrants/090310/transcript_090310.txt.

But precisely because building satellites is a labor-intensive, job-creating business that is well suited to accomplish the congressional objectives, it does not take a fortnight. Satellites can take three years or more to construct. And still more time may have to elapse before a launch “window” on a rocket is secured. It should be almost needless to say, therefore, that NTIA should be careful not to interpret the two-year substantial completion requirement, Recovery Act, § 6001(d)(3), so as to thwart the congressional intention to include satellite carriers as promising targets of federal munificence. Rather, NTIA should clarify that substantial completion means the completion of more than fifty percent (50%) of the project. If NTIA decided to develop more specific guidance, it would do well to consult with the Federal Communication Commission, expert agency on monitoring satellite construction projects.

Sustainability is another important criterion that the Act instructs the agencies to apply. *See* Recovery Act, H. R. 1-14 (2009); *see also Request*, 74 Fed. Reg. at 10,718. In making that objective concrete, the agencies may want to assign a “bonus point” to projects where the private

technologies, including wireline, wireless, *satellite*, and point-to-point microwave, as appropriate for the terrain, size of the population to be served and other location specific factors.” (emphasis added) *Oversight of the American Recovery and Reinvestment Act: Broadband*, 111th Cong. 3 (2009) (statement of Rep. Boucher, Chairman, House Subcomm. on Communications, Technology, and the Internet).

funding participation exceeds the twenty percent (20%) minimum set forth by the law. In the same regard, sustainability would also be enhanced by favorably considering funding requests to support the improvement of projects that may be already underway, for example, the retrofitting of a satellite work in progress for improved broadband service. Such projects should be considered good funding candidates so long as the applicant can establish that the improvement would not feasibly be undertaken but for the requested funding, and thus demonstrate “but-for” causation.

The *Request* also inquires about the proper role of states in awarding grants, loans and guarantees. *Request*, 74 Fed. Reg. 10,717. The law has delineated the states’ role wisely: the Act states that NTIA may consult the states with respect to various aspects of the Broadband Technology Opportunities Program (“BTOP”), and NTIA should use this authority to do so. Recovery Act, § 6001(c). At the same time, the primacy of the expert federal agencies in selecting the projects is logical, and indeed indispensable, for projects that are not confined to one state but rather straddle the borders of many states and promise to benefit broad geographic regions.

NTIA asks about the treatment of projects that encompass both rural and non-rural areas, specifically whether those projects should be funded by one or both programs. *Request*, 47 Fed. Reg. at 10,719. Complementary funding of the rural and non-rural aspects from both agencies is the most efficiency-enhancing mechanism for aiding such projects. This idea is fully consistent with congressional intent: when Congress prohibited duplicative funding from the two agencies, it took pains to qualify that prohibition by saying that “[t]he Assistant Secretary shall ensure that the [NTIA] program complements and enhances and does not conflict with other Federal broadband initiatives and programs.” Recovery Act, § 6001(a). Careful accounting and auditing should dispel any risk of double counting and unjust enrichment.

NTIA's *Request* is also focused on ways to foster "innovative programs to encourage sustainable adoption of broadband services." *Request*, 74 Fed. Reg. at 10,718. A major adoption hurdle that has somewhat hampered satellite broadband service to date has been the relatively high subscription costs needed to recoup the huge upfront investment in the satellite itself. If federal aid is applied to this upfront investment – the construction and launch of the satellite itself – this could be a great stride towards assuring success of sustainable adoption programs, as it would lower a substantial hurdle to adoption of satellite broadband. It would specifically lower the service provider's cost of goods sold and therefore allow a sustained, more affordable price for subscribers.

Finally, while general criteria are a must, one size does not fit all in broadband projects. The agencies should resist overly rigid standards that attempt to force the cornucopia of diverse broadband technologies, meeting different consumer needs, to fit on the same Procrustean bed. Flexibility in applying general guidelines will permit broadband services to flourish and the paramount statutory objective of job creation to be handily met.

Respectfully submitted,

EchoStar Corporation

Pantelis Michalopoulos
Petra A. Vorwig
Steptoe & Johnson LLP
1330 Connecticut Avenue N.W.
Washington, D.C. 20036
(202) 429-3000

/s/
R. Stanton Dodge
Executive Vice President, General Counsel
and Secretary
EchoStar Corporation
90 Inverness Circle E
Englewood, CO 80112
(303) 723-1000

Counsel for EchoStar Corporation

April 13, 2009