



## COUNTY OF ORANGEBURG

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COUNTY ADMINISTRATOR  
BILL CLARK

March 8, 2011

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Senator John W. Matthews, Jr.  
Orangeburg County Legislative Delegation  
Post Office Box 460  
Bowman, South Carolina 29018

Senator C. Bradley Hutto  
Orangeburg County Legislative Delegation  
Post Office Box 1084  
Orangeburg, SC 29116

Re: Broadband Bill – H. 3508

Dear Senator Matthews and Senator Hutto:

I am writing on behalf of Orangeburg County Council to confirm to you our specific objections to the proposed amendments set forth in H. 3508 that recently received a favorable vote in the House and is now pending in the Senate.

1. Definition of the term “Broadband Service”. Within H. 3508, “broadband service” is defined as follows:

“(17) The term ‘broadband service’ means a service that is used to deliver video or to provide access to the Internet or content and services similar to that accessible through the Internet, and that consists of the offering of:

- (a) A capability to transmit information at a rate that is generally not less than one hundred ninety kilobits per second in at least one direction; or
- (b) A service that uses one or more of the following to provide this access:
  - (i) Computer processing;
  - (ii) Information storage; and
  - (iii) Protocol conversion.”

What is most notable about this definition of “broadband” is that 190 kilobits per second in at least one direction is absurdly low and is commonly associated with speeds referred to as “first generation broadband”. As the FCC recently stated in its Sixth Broadband Deployment Report:

“In determining whether broadband is being deployed to all Americans in a reasonable and timely fashion, this Sixth Report takes the overdue step of raising the minimum speed threshold for broadband from services in “excess of 200 kilobits per second (kbps) in both directions” – a standard adopted over a decade ago in the 1999 First Broadband Deployment Report. As anticipated in previous broadband deployment reports, “technologies, retail offerings, and demand among consumers” – or in other words,

network capabilities, consumer applications and expectations – have evolved in ways that demand increasing amounts of bandwidth and require us to “[raise] the minimum speed for broadband from 200 kbps to, for example, a certain number of megabits per second (Mbps). To put 200 kbps in context, in 1999, voice-over-broadband or interconnected voice over Internet protocol (VoIP) was just beginning to emerge as a consumer application, and web pages were almost entirely text based, with little embedded graphics or video, making 200 kbps an arguably sufficient benchmark for broadband capability at that time. Today, interconnected VoIP is subscribed to by over 21 million Americans, most web sites feature rich graphics and many embed video, and numerous websites now exist primarily for the purpose of serving video content to broadband users. As a result, and as predicted by previous broadband deployment reports, services at 200 kbps are not now capable of “originating and receiving high-quality voice, data, graphics, and video telecommunications,” as those capabilities are delivered by today’s technology and experienced by today’s broadband users. As a result, **we find that the 200 kbps threshold is no longer the appropriate benchmark for measuring broadband deployment** for the purpose of this broadband deployment report. (bold added).

As an alternative benchmark for this year’s report, and given that this year’s inquiry was conducted in conjunction with the National Broadband Plan proceeding, we find it appropriate and reasonable to adopt instead the minimum speed threshold of the national broadband availability target proposed in the National Broadband Plan. The National Broadband Plan recommends as a national broadband availability target that every household in America have access to affordable broadband offering actual download (i.e., to the customer) speeds of at least 4 Mbps and actual upload (i.e., from the customer) speeds of at least 1 Mbps. This target was derived from analysis of user behavior, demands this usage places on the network, and recent experience in network evolution. It is the minimum speed required to stream a high-quality – even if not high-definition – video while leaving sufficient bandwidth for basic web browsing and e-mail, a common mode of broadband usage today that comports directly with section 706’s definition of advanced telecommunications capability. As the target for the broadband capability that the National Broadband Plan recommends should be available to all Americans, this speed threshold provides an appropriate benchmark for measuring whether broadband deployment to all Americans is proceeding in a reasonable and timely fashion. It is by this benchmark that we find that broadband remains unavailable to approximately 14 to 24 million Americans.”

Given the FCC’s determinations as quoted above, defining broadband as 190 kbps in one direction as proposed in H. 3508 is not only inconsistent with the recommendations of the FCC and the National Broadband Plan, it also provides a harsh, negative impact on the rural communities in South Carolina that are struggling to provide educational and economic opportunities for citizens without adequate broadband service.

2. Definition of “Unserved Area”. Within H. 3508, “Unserved Area” is defined as follows:

(G) ‘Unserved area’ means a 2000 Census block, as designated by the United States Census Bureau, in which at least ninety percent of households have either no access to broadband service or access to broadband service from only a satellite provider. For the purposes of this subsection, ‘household’ has the same meaning as prescribed by the United States Census Bureau.’

This definition is important because it is used to designate areas that are exempted from the restrictions on government-owned service providers such as Orangeburg and Oconee counties. This definition and the associated exemption from restrictions have two main shortcomings. First, the definition of ‘unserved area’ quoted above is reliant on the definition of ‘broadband service’ at 190 kbps in one direction as previously addressed. Thus, H. 3508’s definition of ‘unserved area’ is substantially more restrictive than the standard that was used by the National Telecommunications and Information Administration (NTIA) and the USDA Rural Utilities Service (RUS) when awarding broadband stimulus grants and loans to Orangeburg and Oconee counties. Using the combined definitions for ‘broadband service’ and ‘unserved area’ that are proposed in H. 3508, it would appear that at least 95% of South Carolina would fail to qualify for the exemption, thus providing a significant barrier to the delivery of high-speed broadband service to many rural communities in South Carolina. On several occasions to date, I have asked AT&T to provide a map that depicts the areas within Orangeburg County that correspond to the proposed definition of ‘unserved area’ within H. 3508. It is of great concern to Orangeburg County that no one has been able to produce a map that we can rely on to fully interpret the intent of AT&T in this regard.

Second, the exception for ‘unserved areas’ is so restricted as to be essentially meaningless. In its present form, H. 3508 has been amended to extend the period that the restrictions on government-owned service providers would not apply to a period of 36 months after the effective date of the Act or 12 months after the Public Service Commission determines that one or more private providers are now making broadband service available to 10% of the households in the area. Although these time periods have been extended from their initially proposed terms of 12 and 3 months respectively, they remain unrealistic. No prudent public entity would invest in broadband infrastructure in an area if it could potentially be required to close its doors within 12 months of the date that a private provider begins to *offer* – not necessarily *provide* – “broadband service” of 190 kbps to at least 10% of the households in the area. This is especially so because the bill allows private providers to do so through low-cost terrestrial wireless service.

3. “Level Playing Field”. Orangeburg County is being told by the private sector providers that if it intends to offer broadband service in areas outside of the poorly defined ‘unserved areas’, it must meet the same level of legal and regulatory requirements as the private sector in order to have a “level playing field”. It is the position of Orangeburg County that the playing field is not level now and would only become more unbalanced if the provisions of H. 3508 become law. Let me explain. The private providers like AT&T and others have the ability to

“cherry pick” service areas without restriction in order to maximize profit potential. This is done at the expense of rural areas and is demonstrated by the lack of service options that presently exist in rural communities. By directing government-owned providers into the ‘unserved areas’ while also imposing unreasonable restrictions within more populated areas, the sustainability of Orangeburg County’s project is at risk. This is a big concern because Orangeburg County is committed to a \$4.66 million obligation (25% match) as part of the \$18.65 million grant/loan award it received from USDA RUS. As of this date, Orangeburg County has already incurred project expenses in excess of \$500,000.

In addition, the restrictions on government-owned providers that H. 3508 seeks to impose with regard to such matters as cost and rate computations and accounting requirements are vaguely written and would be subject to endless disputes and litigation. While many of these restrictions may appear to be superficially fair and reasonable, they will in reality result in severe additional barriers to public entry and competition.

4. Other Concerns. Orangeburg County has other concerns with H. 3508 that include:
  - a. The State Budget and Control Board is exempt from the Act while two political subdivisions of the State are being targeted. This raises a question of equity.
  - b. The rural areas of Orangeburg County, as well as other rural areas across the State, currently have few options for true, high-speed broadband service. If the private providers had a requirement to provide broadband service to rural areas using the level of service recommended by the FCC, then a level playing field might exist. In reality, the private providers in Orangeburg County have chosen to not just neglect our rural communities, but our commercial and industrial locations as well. For example, the Orangeburg County-City Industrial Park at I-26 and US 301 has over one million square feet of developed facilities including two Fortune 500 companies, yet it remains unserved by the private providers.
  - c. Orangeburg County is designated as a “persistent poverty county”, meaning that more than 20% of our population has exceeded the national poverty rate for the last three consecutive census periods (30 years). Orangeburg County committed to its broadband project as a means to connect children in poor, rural areas with their schools and to bring broadband service to existing and prospective industrial park sites in order to stimulate job creation in an area with generational high unemployment rates. The private providers are not addressing these issues.
  - d. The broadband project that is being constructed by Orangeburg County will deliver speeds of 5 Mbps. This is well above the FCC standard for broadband speed and is not comparable to the 190 kbps speed used in H. 3508.

To summarize the position of Orangeburg County, it is our belief that the proposed amendments within H. 3508 are poorly crafted and will do more harm than good to the broadband goals of our State. There are obvious problems with the inconsistencies in the definitions that are used in H. 3508 with those set forth by the FCC and the National Broadband Plan. In addition, the wording of the restrictions that are intended for government-owned broadband providers will inevitably lead to disputes and litigation

that will be detrimental to the deployment of high-speed broadband services to the rural areas of our State. For these reasons, Orangeburg County is asking for your support in opposing the amendments set forth in H. 3508. We further believe that any action on the Bill at this time would be premature until such time as the true impacts can be studied by the Legislature. When similar legislation was introduced in North Carolina, it drew wide opposition from both the public sector and private sector entities including Google, Intel, the AARP, and others.

Orangeburg and Oconee counties have engaged the services of the Baller Herbst Law Group in Washington, DC to assist our governing bodies with interpreting the impacts of H. 3508. I will be happy to put you in direct communication with their offices if they can be of assistance to you regarding any specific technical or legal questions. Our research indicates that similar legislation has been introduced in approximately eighteen states including South Carolina and is part of an effort on behalf of private providers to restrict and create barriers to entry to public providers. If I can assist you with any additional information, please contact me directly at 803.533.6101 or [bclark@orangeburgcounty.org](mailto:bclark@orangeburgcounty.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Bill Clark", is written over a printed name.

Bill Clark

Orangeburg County Administrator

cc: Orangeburg County Council  
Orangeburg County Legislative Delegation  
South Carolina Congressional Delegation  
Scott Moulder, Oconee County Administrator  
South Carolina Association of Counties  
Municipal Association of South Carolina