

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

In the Matter of)	
)	
Telecommunications Carriers Eligible to Receive)	WC Docket No. 09-197
Universal Service Support)	
)	
Petition of Viasat Carrier Services, Inc. for)	
Designation as an Eligible Telecommunications)	
Carrier Pursuant to Section 214(e)(6) in Alabama,)	
California, Florida, and West Virginia)	

REPLY TO OPPOSITION

Viasat Carrier Services, Inc. (“VCS”) replies to the opposition of Hughes Network Systems, LLC (“Hughes”)¹ to VCS’s Petition for designation as an Eligible Telecommunications Carrier (“ETC”).²

INTRODUCTION AND SUMMARY

The premise underlying Hughes’s opposition is absurd on its face. When Hughes offers voice over Internet protocol (“VoIP”) services over its satellite network, it has no qualms about claiming that satellite-provided VoIP services are “virtually indistinguishable from landline voice service” and meet the applicable standard for federal support under the Connect America Fund (“CAF”) program.³ But when a competitor proposes a satellite VoIP offering, Hughes’s view of the world suddenly flips. According to Hughes’s opposition, commitments to offer satellite VoIP services that will meet applicable Commission requirements in states like

¹ See Opposition of Hughes Network Systems, LLC, WC Docket No. 09-197 (filed Mar. 6, 2019) (“Opposition”).

² See Petition for ETC Designation of Viasat Carrier Services, Inc., WC Docket No. 09-197 (filed Feb. 19, 2019) (“Petition”). The Petition covers those parts of Alabama, California, Florida, and West Virginia, in which VCS has been announced as a winning bidder in the Commission’s Connect America Fund Phase II Auction (Auction 903) (the “CAF II Auction”).

³ See *infra* at 3.

Alabama, California, Florida, and West Virginia should now supposedly be viewed with “great skepticism.”⁴ Moreover, according to Hughes’s opposition, a satellite VoIP provider’s requests for ETC designation purportedly should be denied based on skepticism about the ability to meet the requirements, even though the provider is not yet required to offer the services in question.

The Commission should reject these specious arguments. Even setting aside the hypocrisy of Hughes’s position, Hughes’s arguments fundamentally misconceive the Commission’s requirements for ETC applicants and the testing obligations for CAF II-supported services. The Commission does not require that an ETC applicant provide the supported service at the time of its ETC application, or that an ETC applicant engage in testing of a *current* service to assess whether the *future* supported service will comply with the conditions of that support. VCS is not obligated to provide CAF II-compliant services for at least three more years, and the notion that its current, non-supported services should be subject to testing as a threshold to ETC designation is flatly inconsistent with Commission precedent. Tellingly, Hughes was unsuccessful in raising these same types of objections before the Kentucky Public Service Commission (“PCS”), which recently designated VCS as an ETC.⁵ The same result is warranted here—and as discussed below, the Commission should consider reaffirming in its order granting VCS’s Petition that such unreasonable preconditions on ETC designations are improper at the federal *and* state levels.

⁴ Opposition at 2.

⁵ See Kentucky Public Service Commission, *Petition of Viasat Carrier Services Inc. for Designation as an Eligible Telecommunications Carrier to Receive Connect America Fund Phase II Auction Support for Voice and Broadband Service*, Case No. 2018-00330, at 10-11 (entered Feb. 25, 2019), available at https://psc.ky.gov/PSCSCF/2018%20Cases/2018-00330/20190225_PSC_ORDER.pdf.

DISCUSSION

I. HUGHES'S OBJECTIONS ARE CONTRADICTED BY ITS OWN PRIOR CLAIMS AND INCONSISTENT WITH CLEAR COMMISSION PRECEDENT

Hughes's objections to Viasat's Petition do not pass the straight-face test. To begin with, Hughes suggests that *no* geostationary satellite services would *ever* be able to meet the voice quality requirement MOS score of four. But Hughes statements in other contexts belie that claim. Notably, as a participant in the New York Broadband Program for distributing CAF support in that state, Hughes's voice services are also subject to MOS of four or higher.⁶ In seeking its own ETC designation from the Commission for New York, Hughes made the *same certification* as VCS did regarding compliance with the requirement.⁷ In addition, the Wyoming PSC has found Hughes's satellite VoIP services to be a suitable substitute for CenturyLink's wireline services, basing its conclusion in part on testimony that, for satellite VoIP services:

the addition of in-home adapters contributed to minimizing service latency and *has made the service virtually indistinguishable from landline voice service, which has caused an increase of satellite service presence in Wyoming. . . .* The VoIP satellite technology improvements led to the FCC allowing satellite providers to bid in upcoming Connect America Fund (CAF) II auctions to maximize competition.⁸

Thus, as a purely factual matter, Hughes's attempts to discredit VCS's certification statements in the Petition simply are not credible.⁹

⁶ See *Connect America Fund*, Order, 32 FCC Rcd 968 ¶ 50 & n.135 (2017).

⁷ See Conditional Petition for ETC Designation of Hughes Network Systems, LLC, WC Docket No. 09-197, at 7 (filed Feb. 5, 2018).

⁸ See Public Service Commission of Wyoming, *Quality and Reliability of Telecommunications Service Provided by Qwest Corporation (d/b/a CenturyLink QC) in its Certificated Territories in Wyoming, et al.*, Findings of Fact, Conclusions of Law, and Order, Docket No. 90000-113-XI-10, Record No. 12650, *et al.*, (issued Feb. 28, 2019), available at <https://drive.google.com/file/d/12GnESU69fGCMv-3hzSUtVAbKo3E85MAL/view>.

⁹ Notably, Hughes qualified for but declined to bid in the CAF II Auction.

Moreover, as a legal matter, Hughes is categorically wrong in suggesting that, in order to obtain an ETC designation, VCS must demonstrate that its *current*, non-supported services satisfy the testing requirements that will apply to *future*, supported services under the CAF II program. Under the Commission's rules, it is only *after* recipients of high-cost support deploy their networks and are ready to provide CAF II services that they must test their broadband networks for compliance with speed and latency metrics and must report and certify the results on an annual basis, with those results subject to audit.¹⁰ CAF support recipients are *not* required to offer supported service before being certified as an ETC. Indeed, the Commission has long held that ETC designations pursuant to Section 214(e) of the Act may not be conditioned on the provision of service in the funded service area prior to ETC designation, because imposing such a requirement would prohibit competitive carriers from providing telecommunications services in high-cost areas.¹¹ And it is obviously not possible to test services that are not yet being offered.

The Commission was well aware of the latency associated with geostationary satellite service, and determined that satellite providers should be eligible to participate in CAF II, subject to satisfying applicable service quality requirements, including the provision of voice service

¹⁰ See *Connect America Fund*, Order, 33 FCC Rcd 6509 ¶ 3 (2018). CAF II support recipients are required to report the results of testing as part of the annual certification and reporting obligations, the first of which will be due in July 2020 *at the earliest*, see 47 C.F.R. § 54.313(a)(6), (e)(2)(i)—*after* the support recipient has actually begun deploying its CAF II-supported services.

¹¹ See, e.g., *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of The South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd 15168 ¶¶ 2, 14 (2000) (“*Western Wireless Preemption Order*”).

with a MOS of four or higher.¹² And VCS’s short-form application, approved by the Commission, appropriately addressed “what capabilities of this technology and *proposed network* will enable performance tier (speed and usage allowance), latency and (where applicable) voice service mean opinion score (MOS) requirements *to be met*.”¹³ That certification is all that is required at this stage, and Hughes has identified no factual or legal grounds for concluding otherwise.

II. THE COMMISSION SHOULD REAFFIRM THAT TESTING PRECONDITIONS FOR ETC DESIGNATIONS ARE IMPROPER AT THE FEDERAL AND STATE LEVELS

Hughes’s opposition—which, as noted above, advances the same types of arguments that it raised unsuccessfully in opposing VCS’s ETC application in Kentucky—also underscores the need for a clear statement from the Commission reaffirming that the imposition of testing preconditions on ETC designations is improper both at the federal *and* state levels. In fact, in at least two of the states where VCS’s ETC applications are pending—Mississippi and Oregon—the state commissions are entertaining objections from third parties that, like Hughes, insist that VCS is required to conduct testing to demonstrate today that the voice services VCS will offer in the future actually satisfy the Commission’s MOS score of four requirements.

The Commission has held that “although Congress granted to state commissions, under section 214(e)(2), the primary authority to make ETC designations, [the Commission does] not agree that this authority is without any limitation.”¹⁴ Under Section 253(b) of the Act, any denial

¹² See *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 ¶ 30 (2016).

¹³ *Connect America Fund*, Public Notice, 33 FCC Rcd 1428, App’x A (emphasis added) (setting forth questions for applicants).

¹⁴ *Western Wireless Preemption Order* ¶ 18.

of an ETC designation by a state “must be based on the application of competitively neutral criteria that are not so onerous as to effectively preclude a prospective entrant from providing service.”¹⁵ In particular, to require that VCS (as a new entrant seeking to provide CAF-funded services) demonstrate today that it meets a particular quality standard for voice services not yet offered, at locations where VCS does not have customers, would fly in the face of the Commission’s admonition that states may not require supported services be provided prior to obtaining an ETC designation.¹⁶ The Commission thus can and should couple its rejection of Hughes’s proposed testing requirements with a reaffirmation that state commissions cannot impose such requirements either, as doing so would exceed the authority of state commissions to designate ETCs under Section 214(e) of the Act and would be subject to the Commission’s preemption authority.

CONCLUSION

For the foregoing reasons, Viasat respectfully requests that the Commission dismiss Hughes’ Opposition and to promptly grant VCS’s Petition for ETC designation in Alabama, California, Florida and West Virginia.

¹⁵ *Id.*

¹⁶ If VCS is unable to persuade these state commissions to refrain from imposing these onerous requirements in the state ETC application review process, VCS may need to file a petition for preemption with the Commission. *See id.* ¶ 20 (finding “that a requirement to provide the supported services throughout the service area prior to designation as an ETC . . . is not competitively neutral, consistent with section 254, or necessary to preserve and advance universal service,” and is therefore “subject to our preemption authority under section 253(d)”).

Respectfully submitted,

/s/

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