

March 25, 2019

**VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, N.W.  
Washington, DC 20554

**Re: Notification of *Ex Parte* Meeting;  
WC Docket Nos. 10-90, 14-58 and 09-197**

On March 20, 2019, Jonathan Chambers, on behalf of Conexon, LLC, met with Alex Minard and Nissa Laughner of the Wireline Competition Bureau's Telecommunications Access Policy Division. The purpose of the meeting was to discuss the filings made by Viasat Carrier Services, Inc. ("Viasat") in support of its pending application for Eligible Telecommunications Carrier ("ETC") designation status in states that have deferred jurisdiction over Viasat's ETC petition to the Commission.<sup>1</sup>

Mr. Chambers took no position with respect to Viasat's pending ETC petition, but sought to inquire whether the Commission planned to act on Viasat's request, raised for the first time in its Reply in support of Viasat's ETC Petition, for a declaratory ruling or preemption of any state commission's consideration of a Viasat ETC Petition that would test the quality of Viasat's voice service.<sup>2</sup> Mr. Chambers expressed his opposition to such a declaratory ruling or act of preemption by the Commission, especially without an opportunity for public comment. Mr. Chambers stated that such action would be inconsistent with action taken by the Commission in the *Western Wireless* proceeding that Viasat cited in its Reply to Hughes Network Systems, LLC's ("Hughes") Opposition to Viasat's pending ETC Petition in WC Docket No. 09-197.<sup>3</sup>

Mr. Chambers remarked that Viasat has repeatedly complained about perceived unfairness of testing its voice services for years. Mr. Chambers stated that permitting Viasat to

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<sup>1</sup> See Petition for ETC Designation of Viasat Carrier Services, Inc., WC Docket No. 09-197 (Feb. 19, 2019).

<sup>2</sup> See Viasat Reply to Opposition, WC Docket No. 09-197, at 4-6 and n. 16 (Mar. 13, 2019) ("If VCS is unable to persuade these state commissions to refrain from opposing these onerous requirements in the state ETC application review process, VCS may need to file a petition for preemption with the Commission.").

<sup>3</sup> See *Id.* at 4, n. 11.

participate in the auction was already an accommodation to satellite technology since the latency of such services does not meet the FCC's standard of 100 milliseconds or less. In this regard, Mr. Chambers recounted a 2015 meeting involving Mark Dankberg, Chairman and CEO of Viasat, Inc., and Commission leadership, during which this accommodation was raised. The participants of that meeting discussed voice quality tests using a Mean Opinion Score ("MOS"). Viasat expressed its concern that, in Viasat's testing, its VoIP service scored between 3.7 and 3.8 MOS, lower than the level being considered and lower than the level the Commission would later establish. Mr. Chambers noted to Mr. Minard and Ms. Laughner that the MOS scores cited by Viasat were entirely consistent with the ITU MOS scores cited by Hughes in WC Docket No. 09-197.

Mr. Chambers commented on the proposal by Viasat to lower the MOS standard for voice service in both past and future auctions.<sup>4</sup> Mr. Chambers pointed to Viasat's several seemingly conflicting positions that: (1) Viasat can meet the MOS standard;<sup>5</sup> (2) Viasat need not meet the MOS standard for three more years and would improve its voice service in the interim;<sup>6</sup> and (3) Viasat needed the MOS standard changed in order to comply.<sup>7</sup>

Since Viasat has repeatedly told state commissions that its VoIP service exceeds FCC standards,<sup>8</sup> it is difficult to reconcile its boasts with its pleas for a rule change. To those who

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<sup>4</sup> See e.g., Petition for Reconsideration of Viasat, Inc., WC Docket No. 10-90 (Sept. 19, 2018) ("*Viasat Petition for Reconsideration*"); see also Letter from Matthew T. Murchison, Counsel to Viasat, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (Mar. 13, 2019) ("...[W]e reiterated Viasat's request for reconsideration of two aspects of the Performance Metrics Order: (1) the requirement that satellite broadband providers receiving CAF II support must retain third parties to conduct performance testing, and (2) the reliance on laboratory testing procedures specified in ITU-T Recommendation P.800 to perform 'real-world' tests of latency.") ("*Viasat Mar. 13, 2019 Ex Parte Letter*").

<sup>5</sup> See e.g., Letter from John P. Janka, Counsel to Viasat, Inc., to Marlene H. Dortch, FCC (Aug. 21, 2015) ("Requiring that broadband providers provide access to a voice service that meets a MOS of four would ensure that end users can receive a voice service that consumers perceive as being of high quality.") ("*Viasat Aug. 21, 2015 Ex Parte Letter*").

<sup>6</sup> See e.g., Letter from Michael P. Donahue, Counsel for Viasat Carrier Services, Inc., to Kay Marinos, Manager, PUC of Oregon, Docket No. UM 1970 (Feb. 22, 2019) ("[I]t is Viasat's position that it is not required to perform testing for a service that is not yet offered, in locations where it does not have any customers, using a testing regime that remains subject to further review and potential revision").

<sup>7</sup> See *Viasat Petition for Reconsideration*; see also Letter from John P. Janka to Marlene H. Dortch, WC Docket No. 10-90 (Feb. 25, 2019) ("...Viasat is requesting that the Commission modify or clarify certain rules that apply to performance testing for CAF II recipients on a going-forward basis.").

<sup>8</sup> See e.g., Opening Testimony of Robert Blair, Esq. on behalf of Viasat Carrier Services, Inc. (redacted version), PUC of Oregon, Docket No. UM 1970, at p. 7 (Jan. 3, 2019) ("VSI conducted internal testing in July,

participated in the Connect America Fund - Phase II (“CAF-II”) auction and abided by the rules governing the auction, it would be manifestly detrimental to the integrity of CAF auctions to change the standards now. The bidding behavior of many of the auction participants would have been different had each bidder believed the standards would change from those published before the auction.

Viasat can either meet the MOS standard – or it cannot. Viasat’s lobbying before the CAF-II auction suggested that Viasat could meet the applicable MOS standard.<sup>9</sup> However, Viasat’s lobbying after the CAF-II auction suggests that Viasat cannot meet the applicable MOS standard.<sup>10</sup> The public would be ill-served by yet another accommodation to Viasat either to lower or change the MOS standard post-auction.

Finally, Mr. Chambers explained that he and others would be testing the quality of Viasat’s voice service in the coming months, in comparison with the quality of fiber-based VoIP services (which, unlike satellite-based VoIP services, has no significant latency issues in its provision of VoIP services), with tests that would be made public and performed in the very census blocks where Viasat was the winning CAF-II auction bidder.

Respectfully submitted,



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2018 using the ITU-T Recommendation P.800 conversational-opinion test and other parameters required by the FCC. The test consisted of Viasat employees randomly calling VoIP subscribers and conducting the MOS score test. The subscribers’ mean score was above the score required by the FCC.”).

<sup>9</sup> See e.g., *Viasat Aug. 21, 2015 Ex Parte Letter* (“Requiring that broadband providers provide access to a voice service that meets a MOS of four would ensure that end users can receive a voice service that consumers perceive as being of high quality... [a]nd, importantly, the MOS metric is a more reliable measure of perceived quality than latency alone.”).

<sup>10</sup> See e.g., *Viasat Mar. 13, 2019 Ex Parte Letter*.