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April 23, 2018

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters, IB Docket No. 16-408*

Dear Ms. Dortch:

Viasat, Inc. responds to the *ex parte* letters recently filed by Telesat and OneWeb in this proceeding.¹

Telesat and OneWeb reiterate arguments they submitted in the reconsideration phase of this proceeding and ask the Commission to abandon one of the core elements of the *NGSO Order*—namely, the Commission’s decision to facilitate shared use of the Ka band by multiple NGSO systems by utilizing band segmentation to resolve in-line events between NGSO operators in the absence of an applicable coordination agreement.² The Commission explained that the band-segmentation approach would provide “equal access to spectrum and a flexible mechanism that is specific to the particular interference situation and systems involved.”³ Consequently, this approach would help to ensure that all operators authorized in a given processing round have similar (and reliable and predictable) access to Ka-band spectrum.

¹ See, e.g., Letter from WorldVu Satellites Limited to FCC, IB Docket No. 16-408 (Apr. 18, 2018); Letter from WorldVu Satellites Limited to FCC, IB Docket No. 16-408 (Apr. 13, 2018); Letter from Telesat Canada and WorldVu Satellites Limited to FCC, IB Docket No. 16-408 (Apr. 10, 2018); Letter from Telesat Canada and WorldVu Satellites Limited to FCC, IB Docket No. 16-408 (Mar. 19, 2018).

² See *Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7809 (2017) (“*NGSO Order*”).

³ *Id.* ¶ 49.

Telesat and OneWeb ask the Commission to eschew this fair-minded approach and instead substitute one that would resolve in-line events in favor of the operator and NGSO system with filing-date priority before the International Telecommunication Union (“ITU”). Under this approach, qualified applicants filing within a given NGSO processing round would no longer be treated as coequal at the Commission or otherwise be assured access to Ka-band spectrum. Instead, processing round procedures would be replaced with a *de facto* “first-come, first-served” regime in which one applicant in the round would be treated as the “winner” while everyone else would be subordinate. Furthermore, distinctions between the entity with ITU priority and the other dozen or so operators would be based on the timing of filings made years ago at the international level—well before the Commission opened its processing round—in accordance with principles that do not reflect the stated policy of the United States with respect to NGSO systems.

The Commission itself noted as much when it adopted the *NGSO Order* and specifically rejected Telesat’s proposal to resolve in-line events based on ITU priority. In doing so, the Commission explicitly found that adopting Telesat’s proposal—and blindly adhering to ITU priority as a guiding principle—would chill investment in competing systems, create uncertainty for all but the highest-priority system, undermine incentives for the highest-priority system to accommodate lower-priority ones, and ultimately reduce the likelihood that multiple, high-quality service options would be available to the public.⁴ The Commission also observed that Telesat’s proposal (unsurprisingly) would benefit Telesat, at the expense of other systems and the general public.⁵ In short, the Commission correctly concluded that the modified band-segmentation approach it adopted—which had been used in a prior form for decades—would best serve the interests of the United States and its citizens.

As Viasat demonstrated in its Opposition to petitions for reconsideration filed in this proceeding, there is no good or valid reason for the Commission to revisit this decision now.⁶ But if the Commission is nevertheless determined to use ITU priority to resolve spectrum-sharing issues involving NGSO and *NGSO* networks, the Commission should at least be consistent and do the same to resolve spectrum-sharing issues involving NGSO and *GSO* networks. That is, spectrum-sharing conflicts between NGSO systems and GSO systems should be resolved in favor of the operator with filing-date priority before the ITU. After all, most spectrum band segments used by GSO systems are allocated internationally for *both* NGSO *and* GSO use on a coequal basis, such that the ITU filing date determines priority under the ITU’s regime. This includes the 18.8-19.3 GHz and 28.6-29.1 GHz band segments designated under the Commission’s Ka-Band Plan primarily for NGSO use.

In short, there is no principled basis for grounding NGSO-NGSO spectrum sharing on ITU priority without doing the same in the NGSO-GSO context. And, as Viasat has indicated on

⁴ *Id.* ¶ 50.

⁵ *Id.*

⁶ Opposition of Viasat, Inc. to Petition for Reconsideration of WorldVu Satellites Limited, IB Docket No. 16-408 (filed Feb. 20, 2018).

multiple occasions, there is no valid basis for changing the NGSO-NGSO sharing rules adopted last fall in the *NGSO Order*. But if the Commission nevertheless abandons its band-segmentation regime for NGSO-NGSO coordination, it should also abandon the Ka-Band Plan as a mechanism for establishing precedence in the NGSO-GSO context, and instead treat GSO and NGSO systems as co-primary and rely on ITU priority to resolve spectrum sharing conflicts between GSO and NGSO systems.

Respectfully submitted,

/s/ John P. Janka

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