Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Rural Broadband Experiments	)	WC Docket No. 14-259

PETITION FOR RECONSIDERATION AND CLARIFICATION OF VIASAT, INC.

ViaSat, Inc. hereby petitions for reconsideration and clarification of two discrete aspects of the *Report and Order* adopted by the Commission on May 26, 2016 in the above-captioned proceeding (the "*R&O*"). The *R&O* formalizes the Commission's decision to distribute the limited support available to competitive providers in Phase II of the Connect America Fund ("CAF") through a reverse-auction mechanism.[1]

Although ViaSat applauds this decision generally,[2] ViaSat has concerns about the Commission's decision to "reserv[e] the option" of conducting a reauction of areas won by satellite broadband bidders if they do not achieve a significant level of broadband adoption in those areas by 2020. This reauction, which could be conducted in the middle of the six-year period that the CAF rules provide for support recipients to complete the construction of their networks, would prematurely terminate support to those winning bidders, strand investment, and undermine the certainty they need to participate in the reverse auction and thereby drive efficient auction outcomes. More fundamentally, there is no legitimate basis for treating bidders that

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1 *See* 47 C.F.R. § 1.429.

2 *See* ViaSat Press Release, *ViaSat Applauds FCC Action to Include New and Innovative Technologies to Compete for Connect America Fund; Gives Rise to New High-Speed Options for Consumers Nationwide* (May 27, 2016).

propose to deploy satellite broadband technology differently than bidders using terrestrial technologies, which would be under no obligation to achieve any level of broadband adoption during the ten years in which they would receive support.

ViaSat also requests that the Commission confirm that auction applicants may satisfy the requirement that they have access to sufficient spectrum resources by certifying: (i) that they have obtained authority to serve the United States with one or more satellites that they plan to employ; and (ii) that the capacity they will have available in a given coverage area is sufficient to serve covered households in that area under reasonable assumptions with respect to network loading. This confirmation will provide additional certainty to those providers that wish to participate in the reverse auction using satellite broadband technology.

I. THE COMMISSION SHOULD RECONSIDER ITS DECISION TO RESERVE THE RIGHT TO REAUCTION AREAS WON BY SATELLITE BROADBAND PROVIDERS AND TERMINATE THEIR SUPPORT

The framework adopted by the Commission in the *R&O* is broadly inclusive and explicitly permits satellite broadband providers to compete for available funds.[3] Nevertheless, the *R&O* "reserv[es] the option" of reauctioning areas won by satellite broadband providers and terminating further support if they do not achieve a significant level of broadband *adoption* in those areas by 2020.[4] This reauction would be conducted in the middle of the six-year period that the CAF rules provide for support recipients to complete the construction of their networks (and during the first third of the ten-year support term for winning bidders in the CAF II reverse

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[3] *See, e.g.*, *R&O* ¶ 30.

[4] *Id.* ¶ 34 (emphasis added). Geostationary satellite systems are the only technology the Commission has identified as likely not able to satisfy a 100 ms latency standard. *See id.* at ¶ 30.

auction)—and would result in the termination of support to those winning bidders.[5] Areas potentially subject to reauction would be identified based on whether, when evaluated in 2020, the subscription rate in a given CAF-supported census block is more than the national average minus 35 percent.[6]

As an initial matter, treating winning bidders that use satellite broadband technology in a fundamentally different manner than other winning bidders violates the principles of competitive and technological neutrality, which have played a central role in the Commission's universal service policies for decades.[7] There simply is no justification for such discrimination, particularly as *all* winning bidders that use satellite technology will have satisfied the Commission's rigorous eligibility criteria, and the reverse-auction mechanism will have determined that *all* such winning bidders can offer service that best advances the public interest.

Furthermore, the Commission's criterion for selecting census blocks for reauction—whether, when evaluated in 2020, the subscription rate in such blocks is more than the national average minus 35 percent—presents a significant hurdle that satellite broadband providers alone must clear in order to remain entitled to receive previously promised support. The Pew Internet & American Life Project estimates that approximately 67 percent of U.S. households had broadband service in 2015.[8] Even assuming no growth in national penetration, this means that winning satellite broadband bidders would be required to surpass a 32 percent

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5 *Id.*

6 *Id.*

7 *See, e.g.*, *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, at ¶ 48 (1997) (concluding that rules that minimize competitive and technological bias would "facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier").

8 *See* Pew Research Center, *Home Broadband 2015* (Dec. 21, 2015), *available at* http://www.pewinternet.org/2015/12/21/home-broadband-2015/.

subscription rate by 2020 in order to avoid a reauction. But this would be extremely unlikely given that the relevant areas are the hardest-to-serve parts of the country, with extremely low adoption rates today. Indeed, these areas can be expected to face special challenges due to income limitations and demographics, given the likely prominence of certain market segments that the Commission has recognized have extremely low adoption rates, including: (i) adults making less than $20,000 per year (only a 40% subscription rate); (ii) those with less than a high school degree (only a 24% subscription rate); (iii) those older than 65 (only a 35% subscription rate); and (iv) people with disabilities (only a 42% subscription rate).[9]

Moreover, the subscription level would be evaluated in only the third year after support is distributed (assuming the reverse auction is conducted in 2017). At that point, many winning bidders, including satellite broadband providers, will still be implementing their networks. In fact, the *R&O* allows "the entities authorized to receive Phase II auction support to complete construction and commercially *offer* service to 40 percent of the requisite number of locations in a state by the end of the third year of funding authorization."[10] And in those service areas in which winning bidders *have* initiated service, they will be in the very early stages of driving adoption (consistent with the adoption curves in other areas, which typically see subscription rates growing slowly over time).

The upshot is that satellite broadband bidders would face significant risk and uncertainty, not faced by bidders using any other technology, if they were to participate in the reverse auction under threat of this early termination of funding. As the Commission knows, recipients of CAF support must accept significant obligations, not least of which is the obligation

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9 *See* Dr. John B. Horrigan, *Broadband Adoption and Use in America*, at 24-26 (OBI Working Paper Series No. 1, Feb. 2010).

10 *R&O* ¶ 40 (emphasis added).

to construct a broadband network capable of meeting interim and final buildout and coverage milestones. Potential bidders may be unwilling to accept these obligations, and make the massive infrastructure investments necessary to satisfy them, if they know that the Commission can terminate promised support and undermine the business case for those investments simply because those bidders do not achieve in just three years, and in the middle of the six-year construction period, subscription levels that: (i) do not apply to other bidders and (ii) are highly unreasonable to expect. Even under the best-case scenario, the additional risk created would increase the implicit costs faced by such providers as they decide whether and how much to bid. The likely result would be greatly decreased auction participation and efficiency and inflated CAF funding requirements.

Accordingly, the Commission should reconsider its decision to "reserve the option" of conducting a reauction of, and terminating support for, areas won by satellite broadband providers by 2020, and instead should make clear that all winning bidders will be treated the same and enjoy support for their full ten-year terms, provided they comply with the same program rules and construction milestones that apply to everyone else.

II. THE COMMISSION SHOULD CLARIFY THE REQUIREMENT THAT POTENTIAL BIDDERS HAVE ACCESS TO SUFFICIENT "SPECTRUM RESOURCES"

The *R&O* requires bidders to establish, in their short-form applications, that they have "proper authorizations" and access to "spectrum resources . . . sufficient to cover peak network usage and meet the minimum performance requirements to serve all of the fixed locations in eligible areas."[11]

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[11] *Id.* ¶ 98.

ViaSat respectfully requests that the Commission confirm that satellite providers can make the "proper authorization" showing by demonstrating that they have obtained authority to serve the U.S. using one or more space stations (*i.e.*, satellites) that they intend to use to provide supported service prior to filing their short-form reverse auction applications. Obtaining such authority is the critical step in securing the spectrum resources necessary to support a viable satellite network. It also is frequently the only authority that satellite providers can obtain early in the build-out process; for example, user terminal and gateway licenses typically would be obtained much later due to Commission's rules requiring such facilities to be licensed less than one year before the initiation of service over those facilities.[12] For these reasons, the requested confirmation is both necessary and appropriate.

ViaSat also requests that the Commission confirm that applicants can demonstrate the "sufficiency" of available spectrum resources by making reasonable assumptions about how the network is likely to be used. Commercial networks of all types—whether based on fiber, cable, or spectrum—are designed to support a maximum level of usage within a given geographic area based on expected network loading, which takes into account both the projected subscription level among area residents (which will be less than 100 percent even in the best case) and projected usage patterns among those who subscribe to the network. Assumptions with respect to these factors allow providers to build efficient networks that do not result in costly "overbuilds" or otherwise leave valuable spectrum resources lying fallow. Moreover, commercial networks of all types (not just spectrum-based) have design limitations that are

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[12] *See* 47 C.F.R. § 25.133.

based on these very same factors.[13] It would not be reasonable to preclude spectrum-based networks from relying on such factors when their fiber- and cable-based competitors serving other supported areas would likely employ the same types of factors in designing their own networks. The requested confirmation therefore would be consistent with decades of Commission policy.

CONCLUSION

For the reasons set forth above, ViaSat urges the Commission to reconsider its decision to retain the right to reauction, and terminate support for, any areas won by satellite broadband bidders in which they do not achieve a significant broadband subscription level by 2020. Reversing this decision would ensure greater consistency with the principles of competitive and technological neutrality, encourage participation by satellite broadband providers, and lead to more efficient auction outcomes. The Commission also should provide certainty by confirming that potential bidders may demonstrate access to sufficient spectrum resources by: (i) showing that they have obtained authority to serve the United States with one or more satellites that they intend to use to provide supported service and (ii) establishing that the capacity available in a given coverage area is sufficient to serve locations in that area under reasonable assumptions with respect to network loading.

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[13] For example, all networks, regardless of technology, have points where bandwidth is aggregated and "shared" among multiple end users. Notably, ViaSat has designed its existing and future networks to allocate per-subscriber bandwidth at a level sufficient to overcome any congestion that otherwise would occur as a result of such sharing and ensure that high-quality service is delivered to consumers. *See* Letter from ViaSat to FCC, WC Docket No. 10-90, at 4 (Apr. 14, 2016); *see also, e.g.,* Comments of ViaSat, Inc., GN Docket No. 09-51, at 4-5 (June 8, 2009); Comments of ViaSat, Inc., GN Docket No. 09-40, at 6 (Apr. 13, 2009); Comments of ViaSat, Inc., CG Docket No. 09-158, at 4 n.7 (May 26, 2011).

Respectfully submitted,

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