



ViaSat's AFR establishes that the issuance of the December 5 Public Notice was arbitrary, capricious, and contrary to law—and therefore should be reversed by the full Commission. *First*, the AFR demonstrates that ViaSat's RBE application *did* establish that it would satisfy all applicable RBE program requirements, and notes that the December 5 Public Notice fails to provide any basis for reaching a contrary conclusion. *Second*, the AFR demonstrates that the Bureau failed to give ViaSat's waiver request the "hard look" required by the Commission's RBE policies and Section 1.3 of the Commission's rules. *Third*, the AFR discusses the Bureau's inexplicable decision to seek public comment with respect to *other* waiver requests filed by bidders that provisionally have been awarded *more than one-half of the total available RBE funds*, but not ViaSat's waiver request, and notes that such action demonstrates that the Bureau could have and should have evaluated ViaSat's waiver request fully on the merits without any threat of being "prejudicial to the integrity" of the RBE auction process. *Fourth*, the AFR notes that this disparate treatment of ViaSat raises significant questions about whether the RBE reverse auction has been conducted in a fair and impartial manner consistent with longstanding universal service policies and established principles of federal procurement law.

NTCA's Opposition does nothing to refute these arguments. Instead, NTCA focuses on points that are largely irrelevant to the Commission's consideration of the AFR on its merits. Specifically, NTCA incorrectly asserts that: (i) ViaSat submitted its waiver request in an improper manner; (ii) ViaSat's AFR is somehow "internally inconsistent;" and (iii) ViaSat somehow ignores that "legal significance" of voice telephony service within the federal universal service framework. Each of these assertions is easily addressed, such that the arguments presented in ViaSat's AFR stand un rebutted.

## I. VIASAT PROPERLY SUBMITTED ITS WAIVER REQUEST

NTCA suggests that the Bureau’s disparate treatment of ViaSat’s waiver request is warranted because ViaSat somehow “chose” to improperly submit its waiver request “in a way that put no other interested stakeholder on notice that the waiver request even existed.”<sup>4</sup> But ViaSat did not “choose” to submit its waiver request on a confidential basis. To the contrary, ViaSat submitted its waiver request in the precise manner *required* and *anticipated* by the procedural rules governing the RBE auction.

In particular, both the full Commission and the Bureau have stressed the importance of maintaining the confidential nature of bids submitted as part of the RBE auction. Indeed, the *Rural Broadband Experiments Order* explicitly precludes RBE applicants from “disclos[ing] their bids to other bidders.”<sup>5</sup> Furthermore, the Bureau has emphasized that RBE applicants may not disclose information publicly that could have the “potential to affect [the] bids or bidding strategy” of other RBE applicants.<sup>6</sup> ViaSat’s waiver request was an integral part of its RBE application and any public disclosure of that request could have run afoul of these restrictions by signaling ViaSat’s participation in and bidding strategy for the RBE auction.

Furthermore, ViaSat’s waiver request was fully consistent with the policies adopted by the full Commission in the *Technology Transitions Order*, which establishes the framework for the RBE process. Indeed, that order specifically directs “applicants” to seek waivers where they “believe compliance with a specific requirement is not necessary in the

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<sup>4</sup> NTCA Opposition at 2.

<sup>5</sup> *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, at ¶ 50 (2014) (“*Rural Broadband Experiments Order*”).

<sup>6</sup> *Wireline Competition Bureau Announces Application Process for Entities Interested in Participating in the Rural Broadband Experiments*, Public Notice, DA 14-1203, at ¶ 39 (Aug. 19, 2014).

context of an experiment . . . .”<sup>7</sup> Thus, contrary to NTCA’s claim, the path taken by ViaSat was “expressly contemplated by process guidelines filed well in advance of the filing deadline.”<sup>8</sup>

While it is true that other bidders publicly requested waivers of the financial statement requirements established under the RBE rules, they were able to do so only because the restrictions discussed above no longer applied to provisionally “winning” bidders following the RBE auction. But as the AFR demonstrates, the Bureau’s decision to designate those bidders as “winners” subject to the review of any subsequent waiver requests while summarily dismissing ViaSat’s waiver request and denying its RBE application outright was arbitrary; nothing precluded the Bureau from treating ViaSat in like manner and designating it as a provisional “winner” subject to public review and comment with respect to its waiver request. As ViaSat has noted, it would have been willing to have the Bureau make its waiver request available to the public.<sup>9</sup> In short, nothing in ViaSat’s conduct necessitated a “summary” decision from the Bureau or precluded review and comment by the public or interested stakeholders.<sup>10</sup>

## **II. VIASAT’S APPLICATION FOR REVIEW IS NOT “INTERNALLY INCONSISTENT”**

NTCA asserts that ViaSat’s AFR is “internally inconsistent.” In truth, there is nothing inconsistent about the position taken in the AFR, which is simple and straightforward.

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<sup>7</sup> See *Technology Transitions*, Order, 29 FCC Rcd 1433, at ¶ 128 (2014) (“*Technology Transitions Order*”).

<sup>8</sup> See NTCA Opposition at 2. While the Bureau did issue specific guidance in an FAQ document noting that parties could request waivers of the financial statement requirement after the fact, this informal guidance—issued in response to specific questions received by the Bureau—does not negate the more general language in the *Technology Transitions Order* contemplating waivers, or the right to seek waivers under Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3—a rule cited several times by the Commission in the *Rural Broadband Experiments Order* and in no way limited by that order.

<sup>9</sup> See AFR at 13 n.13.

<sup>10</sup> See NTCA Opposition at 2.

NTCA first attempts to find “inconsistency” in the fact that the AFR simultaneously argues that: (i) ViaSat was capable of meeting the RBE program requirements and (ii) the summary denial of ViaSat’s waiver request nevertheless was improper.<sup>11</sup> But this “inconsistency” is easily reconciled. As ViaSat explained therein in the AFR, although its RBE application satisfied any reasonable interpretation of the RBE program requirements, ViaSat sought a waiver to allow it to commence service in a more expeditious and efficient manner than that mandated by the Commission—thus serving important public interest objectives established for the CAF and RBE programs. The denial of ViaSat’s waiver request would not have precluded ViaSat’s participation in the RBE program on a less efficient and effective basis and did not provide any basis for denying ViaSat’s RBE application outright.

NTCA next attempts to find “inconsistency” by asserting, without foundation, that the AFR “conflates” the various categories of RBEs by: (i) asserting that the “requested waiver would not undermine the purposes of the RBE program because the Commission had already found for ‘Category 3’ experiments that a MOS of four could substitute for the 100 millisecond latency requirement” and (ii) allegedly “gloss[ing] over the fact that the Commission expressly ruled that the MOS metric could *only* be considered a substitute for a more reasonable millisecond-based latency standard in Category 3[.]”<sup>12</sup> But ViaSat clearly acknowledged that the *Rural Broadband Experiment Order* did not permit the use of the MOS metric in Categories 1 and 2.

The argument advanced by ViaSat in the AFR (which NTCA apparently fails to grasp) is that the policy justifications that allow the Commission to use the MOS metric for

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<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* Even if true, it is unclear how this would give rise to an “inconsistency” in ViaSat’s argument.

Category 3 also justify the use of that metric for Categories 1 and 2—particularly when considered in conjunction with other aspects of ViaSat’s waiver request. More specifically, ViaSat’s AFR explains that: (i) in allowing the use of the MOS metric for Category 3, the *Rural Broadband Experiments Order* implicitly finds that the MOS metric is sufficient to ensure “reasonable comparability” between urban and rural areas—including but not limited to Category 3 areas; and (ii) it follows that use of the MOS metric should be sufficient to ensure “reasonable comparability” in Category 1 and Category 2 areas as well.<sup>13</sup> Indeed, there is no basis for finding that the “reasonable comparability” standard in Section 254(b) of the Communications Act<sup>14</sup> can or should apply differently to different funding categories; as NTCA itself has acknowledged, “Congress, though section 254, specifically rejected the notion that one service level is sufficient for part of America while a lesser service is sufficient for a different part of America.”<sup>15</sup>

### **III. VIASAT HAS NOT IGNORED THE “LEGAL SIGNIFICANCE” OF VOICE TELEPHONY OR THE NEED TO PROVIDE QUALITY VOICE SERVICE WITHIN THE UNIVERSAL SERVICE FRAMEWORK**

NTCA accuses ViaSat of ignoring the “legal significance” of voice telephony within the federal universal service framework.<sup>16</sup> This claim is without foundation; as ViaSat’s RBE application and AFR make clear, ViaSat understands that support recipients must provide quality voice service to consumers and stands ready to provide such service.

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<sup>13</sup> AFR at 5-6.

<sup>14</sup> 47 U.S.C. § 254(b).

<sup>15</sup> See Joint Comments of NECA, NTCA, OPASTCO, WTA, and the Rural Alliance, WC Docket No. 10-90, at 16 (Jul. 12, 2010). If anything, Section 254(b) requires *more* favorable treatment and a *stricter* standard in those areas with higher costs (*i.e.*, Category 3 areas).

<sup>16</sup> NTCA Opposition at 4.

Notably, ViaSat’s RBE application and AFR establish that it would be capable of meeting the 100 millisecond latency standard for latency-sensitive applications—including, in particular, voice applications.<sup>17</sup> That said, ViaSat’s RBE application and AFR also explain that the MOS metric actually is a more reliable predictor of perceived service quality than the latency metric and that ViaSat’s commitment to meet a MOS of four would ensure that consumers actually receive what they perceive as a high-quality service (as the MOS metric accounts for the many dimensions of service quality that impact the end-user experience). Indeed, as discussed above, the *Rural Broadband Experiments Order* itself finds that a MOS of four is sufficient to establish “reasonable comparability” in Category 3 areas, demonstrating that a stand-alone 100 millisecond latency standard can in no way be characterized as “essential” as NTCA asserts.<sup>18</sup>

The Commission previously has found that satellite technologies can and should play an important role in fulfilling universal service objectives—including by facilitating the provision of quality voice services to consumers. Thus, the Commission has found that satellite technologies should enjoy equal footing under competitively and technologically “neutral” policies and procedures—notwithstanding relatively high levels of latency.<sup>19</sup> And, more recently, the Commission has acknowledged that ViaSat’s service is meeting consumer needs because of technological advances and high speeds, finding that the “high capacity of ViaSat’s ViaSat-1 satellite” and a number of “other technological improvements” are sufficient to ensure that ViaSat’s service can “support many types of popular broadband services and applications,”

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<sup>17</sup> AFR at 5.

<sup>18</sup> NTCA Opposition at 6.

<sup>19</sup> *Federal-State Joint Board on Universal Service*, Fourth Order on Reconsideration, 13 FCC Rcd 5318, at ¶ 10 (1997) (finding that “the principles of competitive and technological neutrality” demand that “non-landline telecommunications providers should be eligible to receive universal service support even though their local calls are completed via satellite”).

notwithstanding relatively high latency.<sup>20</sup> NTCA provides no basis for precluding ViaSat from providing these substantial benefits to the public through the RBE program.

#### IV. CONCLUSION

For the reasons set forth herein and in its AFR, ViaSat reiterates its request that the Commission reverse the Bureau's summary rejection of ViaSat's RBE application and summary denial of ViaSat's waiver request. Nothing in NTCA's Opposition refutes the arguments set forth in the AFR, and consequently the record overwhelmingly supports the relief requested by ViaSat.

Respectfully submitted,

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January 30, 2015

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<sup>20</sup> See *2013 Measuring Broadband America: February Report*, at 8 (2013).

## CERTIFICATE OF SERVICE

I, Jarrett S. Taubman, hereby certify that on this 30<sup>th</sup> day of January, 2015, I served a true and correct copy of the foregoing “Reply of ViaSat, Inc.” via first-class mail, postage prepaid, on the following:

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