

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

COMMENTS OF VIASAT, INC. AND WILDBLUE COMMUNICATIONS, INC.

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ViaSat, Inc. and its wholly-owned subsidiary, WildBlue Communications, Inc. (collectively, “ViaSat”) hereby respond to the *Notice of Inquiry and Notice of Proposed Rulemaking* (“*Notice*”) adopted by the Commission on April 21, 2010 in the above-referenced proceedings.¹ ViaSat, through its WildBlue service, is one of the top-20 broadband ISPs in the country, and the premier provider of satellite broadband to over 400,000 U.S. homes. ViaSat also is authorized to deploy two new, state-of-the-art spacecraft to serve the United States. The innovative ViaSat spacecraft design yields the highest capacity satellite ever constructed, and allows the highest speeds and highest quality of broadband service ever offered by a satellite platform. The first of these spacecraft will be launched in early 2011, and the second can be launched by mid-2014. Thus, in less than a year, ViaSat will start transforming the nature of today’s satellite-delivered broadband service by offering prices and performance levels that are competitive with terrestrial alternatives.

¹ *Connect America Fund; A National Broadband for Our Future; High-Cost Universal Service Support*, Notice of Inquiry and Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, FCC 10-58 (rel. Apr. 21, 2010) (“*Notice*”).

I. INTRODUCTION AND SUMMARY

The *Notice* seeks comment with respect to a number of issues related to the proposed Connect America Fund (“CAF”) detailed in the National Broadband Plan (“Plan”), and is intended to form the analytic foundation necessary for the Commission to distribute universal service funds in an efficient, targeted manner that avoids waste and minimizes burdens on American consumers.² The Plan also recommends that the Commission reevaluate legacy high-cost mechanisms in favor of “alternative approaches, such as satellite broadband, for addressing the most costly areas of the country to minimize the contribution burden on consumers across America.”³ ViaSat appreciates — and agrees wholeheartedly with — the Commission’s recognition that satellite broadband can help advance the goals of the Plan. We look forward to working with the Commission and other parties to make this vision a reality, and offer these comments as initial views.

As is widely recognized, the Universal Service Fund program is long overdue for an overhaul. Allowing for broadband funding through the High-Cost Fund is a logical step in ensuring the universal availability of the broadband communications services that are essential *today*. We note at the outset that satellite broadband can meet the 4Mbps/1Mbps standard of service set as an objective for the entire unserved population, and it can do so starting next year when ViaSat-1 is launched. The next generation of broadband satellites, of which ViaSat-1 is the first of many, will be able to provide this level (or better) service to all of the Commission’s estimated number of unserved households in America, including the 250,000 housing units that

² *Id.* ¶¶ 1, 2.

³ Omnibus Broadband Initiative, *CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN*, at 150 (“NATIONAL BROADBAND PLAN”).

comprise \$14 billion of the \$24 billion broadband gap.⁴ Satellite broadband systems can fill this gap a capital cost of less than \$1,000 per housing unit, not the \$56,000 per housing unit estimated in the Plan that is needed to reach these last 250,000 homes.⁵

The Plan appropriately recognizes the valuable role that competition can play in facilitating the deployment and adoption of broadband, and in fact makes a number of recommendations that are designed “to maximize innovation, investment and consumer welfare, *primarily through competition.*”⁶ As a general proposition, ViaSat believes that competition for CAF funds between and among service providers should be an essential element of the regulatory framework with (i) funding being awarded to the provider that offers the best quality of service for the lowest forward-looking cost, and (ii) the consumer choosing among a variety of qualified service offerings.

Contrary to the *Notice’s* suggestion, and in order to maintain competitive neutrality and minimize the size of the CAF fund, the cost to serve a high-cost area with high quality satellite broadband *should* be included in a forward-looking cost model. In fact, the cost of satellite broadband is an extremely relevant benchmark against which other broadband technologies should be measured.⁷

We urge true technology neutrality so that all types of providers may compete for funding. Administrative requirements that implicitly would exclude certain technologies should be eliminated. For example, the requirement that ETC status be established on a state-by-state

⁴ *Id.* at 138.

⁵ *Id.*

⁶ *Id.* at 11 (emphasis supplied).

⁷ *Cf. Notice* ¶¶ 25-26 (seeking comment on whether the costs associated with providing satellite broadband service should be included in any broadband cost model the Commission develops, but suggesting otherwise).

basis handicaps nationwide service offerings. Moreover, any requirement that every USF-eligible service provider have a facilities-based offering of every supported service precludes the development of potentially more efficient “package” offerings provided by, for example, a broadband provider together with a wired or wireless voice service provider. Nor should assumptions about today’s technology result in regulations that rule out the introduction of innovative new services and simply preserve the *status quo*. Rather, the new CAF rules should facilitate innovation that enables services that may not be feasible today.⁸

II. SATELLITE BROADBAND CAN ADDRESS ALL UNSERVED HOUSEHOLDS

Within the next six years, the satellite broadband industry has the capability to launch and deploy enough satellite broadband capacity to serve all of the Commission’s estimated number of unserved households at 4 Mbps download speeds or higher.⁹ Just two new of these next generation broadband spacecraft could serve about half of the Commission’s-estimated seven million unserved households with 4/1 Mbps service, and at least two such spacecraft in fact are expected to be launched by 2014.¹⁰ And with the launch of just a few more

⁸ For example, it soon may be feasible for satellite broadband providers to use a “mesh” network topology to provide voice service, and to bundle that capability with a broadband service. Doing so would cut in half the latency otherwise present in a voice circuit from one satellite user to another satellite user.

⁹ Although ViaSat intends to change the nature of satellite broadband service, today’s satellite broadband service is one of last resort. Thus, the location of today’s satellite broadband subscribers is a good proxy for those households that are unserved by terrestrial broadband. Contrary to popular perception, satellite broadband subscribers are not all located in rural areas. Instead, they are sprinkled throughout the United States, and many reside in or near major population centers. About 50% are located in pockets of putatively “served” areas that in fact have been left behind by the incumbent service providers. Thus, estimates of the “unserved” that rely on the geographic service areas of terrestrial providers likely understate significantly the extent of the unserved problem.

¹⁰ Using the broadband adoption rate in rural America of fifty percent, *see* NATIONAL BROADBAND PLAN at 167 (Exh. 9-A), and the Commission’s estimate of seven million

new broadband satellites, all seven million estimated unserved households could receive satellite broadband well before the Commission’s 2020 universal service deadline at the 4/1 Mbps service target level (or higher). At under \$1,000 per household *served* (including all customer equipment and installation costs), the total cost to serve all unserved with a high quality 4/1 Mbps level of service with these next generation broadband satellites would be under \$6 billion — just 25% of the **\$24 billion** of governmental funds estimated as necessary to encourage the deployment of terrestrial infrastructure to areas that incumbent providers have chosen not to serve.¹¹

Moreover, no technology *currently* provides enough capacity “to address all of the households that are unserved.”¹² This fact lies at the root of the broadband availability gap and should not be used to exclude satellite broadband from government programs. As compared to any other technology, satellite broadband is the quickest and most efficient way to cover all unserved households — even if a minimum downstream speed of 10 Mbps is a requirement. In short, leaving satellite technology out of any aspect of the CAF program would unnecessarily inflate support levels without any offsetting benefit.¹³ In fact, leaving satellite technology out of any aspect of the CAF program would likely lead to the absurd result where the most disadvantaged rural broadband subscribers (who even with the CAF program will not likely have a broadband alternative other than satellite in the near future, if ever) will be subject to the CAF

unserved households, it becomes apparent that two new broadband satellites therefore could meet the needs of most, if not all, unserved households who actually want broadband service.

¹¹ See *id.* at 20, 136 & Exh. 8-B.

¹² Notice ¶ 26 (citing NATIONAL BROADBAND PLAN at 137).

¹³ Cf. *id.* ¶¶ 25-26.

contribution assessments and thereby would essentially fund broadband subscribers and the development of broadband services in far less disadvantaged areas.

Although satellite broadband is still in the earlier stages of its technology life cycle, there is every reason to anticipate that the growth of this industry will track or, more likely outpace, the growth of the Direct Broadcast Satellite (“DBS”) industry, which went from one satellite and a few million viewers, to about 30 satellites and over 30 million viewers, in just 16 years. In fact, the state of satellite broadband services is very similar to that of the satellite television industry in 1994 — just before the founding of today’s two largest DBS providers, DIRECTV and DISH Network. At that time, a few visionary entrepreneurs realized that satellite television could be a great business if they could improve the product, make it as good as or better than terrestrial video services, and make it easier, more convenient, more reliable and more predictable than then-existing satellite video services.¹⁴ The key to satellite television’s success was launching a new class of satellites (DBS), and continuing to improve the service through technology, and offering more channels, movies on demand, local programming, High Definition, 3-D, and other innovative services. Today, approximately 30 million Americans receive video services via satellite,¹⁵ and many of them *prefer* satellite-delivered video over competitive offerings from cable and telephone companies. Virtually all Americans get a much

¹⁴ *Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 Annual Assessment of the Status of Competition in the Mkt. for the Delivery of Video Programming*, First Report, 9 FCC Rcd 7442 ¶¶ 62-67, 70 (1994) (describing the efforts of DBS permittees, including DIRECTV and EchoStar, to develop and launch a satellite video service capable of competing with cable and reporting their projections for subscribership growth).

¹⁵ DIRECTV, Annual Report (Form 10-K), at 3 (Feb. 26, 2010) (reporting more than 18.5 million U.S. DIRECTV subscribers as of December 31, 2009); DISH DBS Corp., Annual Report (Form 10-K), at 1 (Mar. 9, 2010) (reporting approximately 14.1 million U.S. DISH Network subscribers as of December 31, 2009).

higher quality video experience from their cable or telephone company because of the competitive forces that satellite video providers bring to the industry.

Due to the broadcast nature of video, satellite video providers did not need to develop technology to lower the cost of delivering individual, *i.e.*, uni-cast, data bits. By contrast, on-demand and interactive satellite broadband services must deliver different data streams to each individual subscriber. The reason today's satellites were not optimized to deliver individual data streams is simple: *Until a few years ago, a big enough market did not exist to warrant the investment needed to develop such satellite and affordable customer premise technology.* That situation changed a few years ago, the result of which will be the launch of the first truly optimized, high-capacity broadband satellite next year, ViaSat-1.

With the new data-optimized satellites, the entire unserved market could be served by spacecraft that feasibly can be launched within the next decade. Technology-neutral policies that encourage satellite broadband adoption could accelerate the timeframe for the launch of these and follow-on satellites. In any event, the new broadband satellites being launched in the next few years will start to meet the needs of the unserved well before the Commission's 2020 goal, and the continued consumer demand for higher and higher speeds will more than justify the launch of many more broadband satellites over the next decade.

III. CHANGES TO THE CURRENT USF PROGRAM ARE NEEDED TO ENSURE PARTICIPATION BY SATELLITE BROADBAND

The current USF program, with its two-way telephone and other requirements unrelated to broadband service, was set up almost 15 years ago as a temporary measure and before the widespread emergence of broadband Internet access. As a result, that program was never intended to, and does not, accommodate the many technologies that have developed in the meantime, including satellite-delivered broadband. Achieving true technology neutrality as part

of USF reform will necessitate the removal of obsolete requirements based on misperceptions or legacy provisions in the existing USF program. Simply translating a legacy high-cost USF support framework to the broadband context would perpetuate a program designed to include only telephone companies, many of which implicitly favor legacy technologies that are neither the least costly nor the most efficient means of achieving the goals of the Plan.

Four examples should suffice to illustrate this point.

First, existing legacy high-cost support mechanisms for telephony calculate funding based on the “last mile,” a concept with its roots in the traditional wireline context. Support is calculated based on the costs associated with “last mile” infrastructure, and is supposed to support such infrastructure. This may have been a sensible approach when it was necessary to string wire, often over long distances and difficult terrain, to connect remote users with a central office. However, many next-generation broadband networks do not incorporate an obvious analog to this “last mile.” For example, in the case of satellite broadband networks, radio signals pass directly from the satellite to the end-user’s terminal. Thus, including satellite broadband within the CAF will require the development of appropriate criteria for reimbursable satellite network costs, which on an end-to-end basis may be less than traditional terrestrial “last mile” costs alone.

Second, legacy procedures for the designation of eligible telecommunications carriers (“ETCs”) require carriers to petition for such designation, and satisfy certain related requirements, on a state-by-state basis.¹⁶ Moreover, carriers must seek such designation from the public utilities commission of each relevant state, unless that state has disclaimed jurisdiction

¹⁶ See 47 U.S.C. § 214(e); 47 C.F.R. §§ 54.201 *et seq.*

over the carrier.¹⁷ This time-consuming and costly process obviously can impede the deployment of a nationwide service. Again, these requirements may have made sense in the localized wireline context, where operations traditionally have been subject to at least some level of intrastate jurisdiction. However, these requirements make far less sense in the satellite broadband context, in which service providers operate on a nationwide basis, without maintaining network infrastructure in each state, and without being subject to nearly the same degree of state regulation. The Commission should expedite service to the public by allowing nationwide broadband providers to seek ETC designation from the Commission alone, and satisfy ETC obligations (*e.g.*, advertising) on a nationwide basis.¹⁸

Third, legacy high-cost support mechanisms provide funding based on the costs of the incumbent telco that have been averaged over a particular geographic area — normally a study area. In the wireline context, these costs tend to be relatively stable over contiguous geographic areas, such that geographic averaging may have made sense. Moreover, virtually all households receive some level of telephone service, even if only as a result of carrier-of-last-resort and ETC obligations. This does not hold in the broadband context, where terrestrial network costs can vary considerably over short distances, and unserved households are sprinkled throughout areas that generally are considered served. ViaSat estimates that these “bypassed” households account for more than 50 percent of the unserved households in the U.S. and believes that many of these bypassed households may have not been included in the Commission’s estimates of “unserved” broadband households.¹⁹ Yet, satellite technologies can, and do, extend

¹⁷ *Id.*

¹⁸ If necessary, the Commission should use its forbearance authority to facilitate this result. *See* 47 U.S.C. § 160.

¹⁹ *See supra* n.9.

service to all such households at a cost that is no different than the cost of serving any other household — a fact that the Commission should take into account as it develops and implements its broadband policies.

Fourth, the facilities-based requirement of the current high-cost USF program does not appear to allow either a voice or broadband provider to create economically efficient bundles of services, by, for example, combining one facilities-based supported service (*e.g.*, broadband) with another supported service (*e.g.*, voice) that it resells. Allowing such bundling may in fact be the best way to hasten the introduction of broadband to unserved areas — both by allowing telcos to resell the broadband service of others, and by allowing broadband providers to resell the voice services of others. This type of “reciprocal resale” also would ensure that all service providers can compete on the same terms.²⁰

It bears emphasis that simply translating the existing high-cost USF support framework to the broadband context could actually thwart the goal of serving those most in need, particularly those in rural America. As the Commission is well aware, many satellite broadband subscribers are in fact located in rural America. If a satellite broadband provider were not eligible to participate in the CAF, the broadband services it provides presumably still would be subject to a CAF contribution assessment that ultimately would be paid by any satellite broadband subscriber in those rural areas. The result could well be an outflow of CAF contributions from those rural areas, to other, less needy, parts of the nation. As a result, the funds that should be invested in those rural areas to provide lower cost and better broadband service might not be available to serve their needs. And those rural citizens would be footing the bill to improve service in other parts of the nation. The only way to avoid such an unintended

consequence is to tailor the CAF to the realities of today's broadband marketplace, and thereby ensure that *all* broadband service providers are eligible to participate in the CAF.

IV. THE NEW HIGH-COST SUPPORT MECHANISM FOR BROADBAND SHOULD REFLECT THE STRUCTURE OF THE MARKETPLACE

The Commission also should ensure that any new high-cost support mechanism for broadband reflects the structure of the broadband marketplace, and the needs of the American consumer. As Blair Levin recently said about the available policy choices:

One path ... is "to convince government officials to increase the level of your government subsidy" and "that subsidies should be provided no matter what else is going on in the economy or your market" Another path is ... to adopt policies that don't involve subsidies but "increase the value of what you can deliver for your communities, that depend not on government kindness but on the forces that create economic growth." The first path is "wrong for you and wrong for the country" and it is unlikely to succeed.²¹

In many areas, the market will provide broadband solutions without a need for government intervention in the short term. The best outcome for taxpayers and the government is to allow the competitive marketplace to operate as efficiently as possible. Funding less efficient providers can and will undermine the competitive marketplace and deter private investment. In order to minimize the potential for such adverse effects, the Commission should ensure that any new support mechanism for broadband services satisfies several criteria.

Any support mechanism should be technology-neutral. As noted above, any support mechanism runs the risk of skewing competition and favoring less-efficient or less-effective (or simply less desirable) services. Any support mechanism should be administered in a truly technology-neutral manner. Among other things, the Commission should: (i) make

²⁰ If necessary, the Commission should use its forbearance authority to facilitate this result. *See id.*

²¹ COMMUNICATIONS DAILY, at 9 (Jul. 1, 2010).

support available to the full range of service providers that contribute to the universal service fund; and (ii) ensure that new technologies are not shackled by legacy wireline telephony regulations.

Any support mechanism should allow multiple service providers to join together to provide a cost-efficient package of services to consumers. It is a fundamental economic principle that higher levels of efficiency can be obtained through specialization using a given party's comparative advantage. This fact holds true in communications markets as well. For example, some carriers can provide low-cost voice service efficiently, but cannot do the same with broadband service, while other carriers (including satellite broadband operators) are optimized to provide higher speeds, even in traditionally high-cost areas. By partnering with each other, these providers could improve their collective efficiency and reduce any subsidy required to otherwise have a single entity provide the entire suite of USF services. Applying the Commission's existing rules to require a *single* service provider to offer all services supported by USF (including broadband) and to use its own physical facilities would create inefficiencies in the use of available funding. Going forward, the Commission should ensure that consumers, service providers, and the public generally can benefit from efficient partnerships between multiple service providers.²²

Any support mechanism should base support on the forward-looking economic costs of the lowest-cost, most efficient provider(s) in a given market. Legacy high-cost support mechanisms award support based on the costs of the incumbent local exchange carrier — even if that carrier provides service in an inefficient manner. To ensure competitive neutrality in that situation, it would be necessary to then provide the same (inefficient) level of funding to other

eligible carriers on a per-line basis, even if their costs are far less. Instead, any broadband support mechanism should provide support based on the forward-looking economic costs of the lowest-cost, most efficient provider(s) in a given market. And this cost model should include satellite-delivered broadband. This would limit the size of the high-cost fund, reward efficiency, and encourage all providers to innovate and reduce their infrastructure costs, while minimizing the skewing effects of government subsidies.²³

Any support mechanism should facilitate competition and consumer choice.

Limiting support by creating monopoly territories restricts the number of market participants and denies consumers the ability to choose the service provider(s) and plans that best meet their needs. The Commission should ensure that even high-cost markets benefit from competition by allowing multiple providers to qualify for available funds. While this may make the administration of any broadband support mechanism slightly more complicated, the resulting competition will produce the greater good of ensuring that *overall* funding and average cost per household served is decreased, and ensuring that citizens at least have the opportunity to get a better service quality than specified by the Plan. Without a provision that allows competition, the CAF could in fact *enforce* a huge digital divide between urban citizens who receive 100 Mbps service, and rural citizens who are denied the opportunity to get anything faster than 4 Mbps. It would be an extraordinary failure of policy if the CAF were to *cement* a digital divide, instead of promoting *closure* of the digital divide.

²² Again, the Commission should use its forbearance authority to facilitate this result. 47 U.S.C. § 160.

²³ For these reasons, the Plan's estimate of the \$24 billion broadband availability gap likely is overstated, insofar as it is based on the economics of terrestrial technologies only, and does not consider the tremendous cost savings that would flow from the use of satellite technologies. *See Notice* ¶ 22.

Any support mechanism should target support to those unserved households, as opposed to unserved areas. As noted above, over 50 percent of the “unserved” households in the U.S. are located in areas that generally are considered “served.” In shaping any broadband support mechanism, the Commission should focus on providing service to these “bypassed” households in particular, rather than funding the construction and upgrade of infrastructure that also supports the already “served” neighbors of these unserved households. At a minimum, the Commission should ensure that any funding mechanism facilitates the ability of nationwide carriers — including satellite operators — to compete effectively, since these carriers will be able to provide service to otherwise “bypassed” households in an efficient manner. As initial measures, and as suggested above, the Commission should allow for “nationwide” ETC designation by the FCC, and ensure that network operators can receive funding even if they do not have “local” network infrastructure. At the same time, the Commission should *not* provide overly broad subsidies to terrestrial operators covering households that lie in “high-cost” areas but already receive broadband service. Such unnecessary funding skews market competition and destroys the competitive advantages that some network operators have earned fairly through appropriate investments in efficient technology, network design, and research and development.

V. THE BENEFITS OF SATELLITE BROADBAND ARE NOT REPLICATED BY OTHER TECHNOLOGIES AND CAN PLAY A VITAL ROLE IN THE CAF PROGRAM

As noted above, the Commission already has recognized the important role that satellite broadband can play in providing broadband to millions of unserved Americans. The record in this proceeding should reflect these benefits, so that the Commission can leverage them fully in developing the CAF. The following are just a few of the benefits offered by satellite broadband technologies:

- **Quality Service.** Forthcoming satellite broadband services are designed to be competitive with terrestrial alternatives, better than most DSL and wireless (3G/4G) services, and comparable to many cable services. In fact, these satellite broadband services have many advantages over their competitors, including higher speeds (up and/or down), the availability of very high surge speeds (*e.g.*, for telemedicine and distance learning applications), faster web page loading, higher speeds for video communications and media, and more total usage availability (GB per month).
- **Ubiquitous Nationwide Coverage.** Satellite broadband networks have a nationwide footprint. In addition, satellites are capable of efficiently serving the millions of households located in pockets of otherwise “served” areas — which account for upwards of 50 percent of the total “unserved” households in the United States.
- **Low Costs.** The launch of a single satellite enables any consumer within its service area to receive broadband access simply by installing a small user terminal costing a few hundred dollars — even if the consumer lives in a sparsely populated area. Consequently, the required capital expenditure (“capex”) per “unserved” household passed and served is far lower than for terrestrial technologies. In fact, ViaSat estimates the capex per home passed by ViaSat-1 at about \$5 and the capex to actually serve a single unserved home at less than \$1,000. Satellite technology also has lower operating and maintenance costs than terrestrial technologies.
- **Competitive Pressure.** The availability of next-generation satellite broadband service will “raise the bar,” creating competitive pressure and encouraging private investment to improve the quality of terrestrial broadband services. This phenomenon will be similar to the way in which the introduction of satellite-delivered television provides a strong competitive alternative to cable and telco-provided video services, driving those terrestrial providers to improve their services.
- **Consumer Choice.** The availability of satellite broadband services will help to ensure that all Americans have a choice of service providers and plans. For instance, consumers in rural areas will no longer be forced to take service from their rural telephone company, but instead will have the option of taking service from one or more competitive satellite providers. Apart from the competitive benefits noted above, a greater array of choices will facilitate the ability of consumers to select service plans that meet their specific needs.
- **Robustness.** Satellite broadband can provide service more readily during and post natural and man-made disasters.

* * * * *

ViaSat urges the Commission to ensure that any new broadband support mechanism, and the implementation of the National Broadband Plan generally, be consistent with the views set forth above.

Respectfully submitted,

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