

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

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109

**COMMENTS OF VIASAT, INC.**

ViaSat, Inc. (“ViaSat”) hereby responds to the *Notice of Proposed Rulemaking* (“*NPRM*”) adopted by the Commission on March 4, 2011 in the above-referenced proceeding. In the *NPRM*, the Commission proposes to “modernize the Lifeline and Link Up program” to “significantly bolster protections against waste, fraud, and abuse; control the size of the program; strengthen program administration and accountability; improve enrollment and outreach efforts; and support pilot projects that would assist the Commission in assessing strategies to increase broadband adoption, while not increasing overall program size.”<sup>1</sup>

ViaSat applauds the Commission’s efforts to modernize the existing Low-Income support mechanisms to ensure that they are as effective as possible. In particular, ViaSat welcomes the Commission’s proposal to implement a pilot program to explore strategies for extending Lifeline and Link Up support to broadband services. As a leading provider of satellite broadband services in the United States, ViaSat understands the significant benefits that flow from access to broadband services, and believes that all Americans should be able to enjoy those benefits—regardless of income.

ViaSat also knows that satellite broadband providers can make a substantial contribution to the Commission’s efforts to reach this goal, both through participation in any

broadband pilot program and within the framework of the larger Low-Income program. Notably, satellite broadband services will soon offer a high-quality, truly competitive alternative to terrestrial broadband services, and thus will provide a vehicle for delivering broadband to millions of households. In modernizing Lifeline and Link Up, the Commission should be sure to leverage the capabilities of next-generation satellite technology fully.

## **I. BACKGROUND**

ViaSat is a leading provider of advanced satellite and other wireless communications solutions and services. Through its WildBlue service, ViaSat is one of the top-20 broadband ISPs in the country, providing satellite broadband to over 400,000 U.S. homes. By the end of this year, ViaSat will introduce next-generation broadband service through its ViaSat-1 satellite, which has more capacity than all other on-orbit communications satellites combined.

ViaSat's next-generation satellite broadband services will provide a high-quality broadband experience, capable of supporting service at 4/1 Mbps and higher speeds (*e.g.*, 8/2 Mbps and 12/3 Mbps). With low jitter (*i.e.*, fluctuations in latency) and high speeds, these services will be ideal for the most popular Internet applications (that also consume the most Internet bandwidth)—including video streaming, peer-to-peer networking, e-mail, and web surfing.<sup>2</sup> Important applications such as distance learning, telecommuting, and telehealth applications also will work extremely well over satellite. In addition, satellite broadband networks will be able to support real-time communications—whether by text, voice, or video. In fact, the ability to provide a “return link” of 3 Mbps or more will allow satellite broadband (unlike DSL) to ensure that high-definition video can be transmitted in

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<sup>1</sup> *NPRM* ¶ 1.

<sup>2</sup> *See Cisco Visual Networking Index: Forecast and Methodology, 2009-2014*, at 10 (Jun. 2, 2010).

both directions during a video conference. In short, ViaSat-1 will make satellite broadband service an attractive option for many consumers—including low-income consumers.

## **II. THE COMMISSION SHOULD PROVIDE LOW-INCOME SUPPORT FOR “VOICE TELEPHONY SERVICE” ON A TECHNOLOGY-NEUTRAL BASIS**

The *NPRM* proposes to redefine “Lifeline” so that the program covers “voice telephony service” instead of “basic, local service.”<sup>3</sup> ViaSat supports the Commission’s efforts to refocus Lifeline support in this manner. Among other things, shifting support to broader “voice telephony service” would reflect fundamental changes in the voice telecommunications market—including the proliferation of new technologies and providers that compete with legacy wireline carriers.<sup>4</sup>

However, ViaSat urges the Commission to ensure that the proposed shift to “voice telephony service” is not merely cosmetic. Rather, the Commission should seize the opportunity to refine the list of supported services so that it is competitively and technologically neutral in light of evolving telecommunications markets and technologies. More specifically, and as is the case under established USF precedent, the Commission should clarify that a provider may use any technology to provide “voice telephony service,”<sup>5</sup> including satellite technologies.<sup>6</sup> The Commission also should eliminate restrictive technical

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<sup>3</sup> *NPRM* ¶ 243.

<sup>4</sup> *See NPRM* ¶¶ 241-242.

<sup>5</sup> *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, at ¶ 145 (1997) (finding that providers using *any* technology—including satellite technologies—may be eligible for USF support).

<sup>6</sup> *See Federal-State Joint Board on Universal Service*, Fourth Order on Reconsideration, 13 FCC Rcd 5318, at ¶ 10 (1997) (“[N]on-landline telecommunications providers should be eligible to receive universal service support even though their local calls are completed via satellite.”). *See also Connect America Fund*, Notice of Proposed Rulemaking, WC Docket No. 10-90, at ¶ 98 (Feb. 8, 2011) (“*CAF NPRM*”) (suggesting that satellite providers could offer “voice capability that meets the definition of ‘voice telephony service.’”).

requirements from its list of supported services, such as the requirement that ETCs provide a dedicated message path to callers, which could be read to preclude the use of VoIP solutions.<sup>7</sup>

### **III. THE COMMISSION SHOULD USE A PILOT PROGRAM TO EXPLORE HOW TO EXTEND LOW-INCOME SUPPORT TO BROADBAND SERVICES**

The *NPRM* recognizes that “[a]ccess to broadband is increasingly important for all Americans to actively participate in our economy and our society.”<sup>8</sup> Nevertheless, there is a substantial gap in broadband penetration and uptake between low-income and more affluent consumers, which is even more significant than the existing gap in telephone penetration rates.<sup>9</sup> ViaSat supports the expansion of the Lifeline and Link Up programs to cover broadband services as a critical means of closing this gap.

More specifically, ViaSat supports the Commission’s proposal to set aside a discrete amount of USF support to fund a broadband pilot program. A pilot program would allow the Commission to identify the most efficient and effective means of increasing broadband penetration among low-income consumers. To maximize its utility and ensure its consistency with established principals of universal service, this pilot program should:

*Allow broad and inclusive participation on a technology-neutral basis.* The proposed pilot program should fund multiple providers using a range of different technologies. Eligibility should not be limited to participants in NTIA’s State Broadband Data & Development program or any other past or ongoing government program.<sup>10</sup> These programs may have precluded eligibility of certain broadband providers based on reasons unrelated to the success of the proposed pilot program, or limited participation in a way that was not technology-neutral or designed to accommodate nationwide providers. It would

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<sup>7</sup> See 47 C.F.R. § 54.401(a)(4).

<sup>8</sup> *NPRM* ¶ 266.

<sup>9</sup> *NPRM* ¶ 11.

make little sense for satellite broadband providers to be ineligible to participate in the proposed pilot program simply because they were ineligible under an unrelated program. This type of “automatic” ineligibility would not be good policy for a pilot program that is intended to investigate the full range of options, technologies, and business models that could be employed to close the broadband income gap.<sup>11</sup> In particular, the Commission should ensure that satellite providers are able to participate in any pilot program, as they often will be capable of offering the most cost-effective means of providing broadband services to low-income households in large geographic regions of the country.<sup>12</sup> Notably, the launch of ViaSat-1 this summer would provide an excellent opportunity to evaluate how satellite broadband services could be used for this purpose.

***Employ flexible and competitively neutral standards that accommodate variations in services and technologies.*** The proposed pilot program should not adopt any rigid standards for “broadband” service, or restrict the ability of eligible consumers to select the broadband offering that is most responsive to their needs. Broadband service has many attributes, including speed, provisioned rate, jitter, latency, burst capabilities, mobility, price, etc.<sup>13</sup> Different services and technologies represent different trade-offs between these characteristics, leading to a diversity of options that consumers can evaluate in light of their own preferences, which may evolve over time. Any attempt to impose rigid, “top-down”

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<sup>10</sup> See NPRM ¶ 295.

<sup>11</sup> See NPRM ¶ 279.

<sup>12</sup> See, e.g., CAF NPRM at ¶ 133 (“Satellite service is ideally suited for serving housing units that are the most expensive to reach via terrestrial technologies . . .”). See also Dr. Charles L. Jackson, *Satellite Service Can Help to Effectively Close the Broadband Gap*, at 17 (Apr. 18, 2011), attached as Exh. A to Comments of ViaSat, Inc., WC Docket No. 10-90 (Apr. 18, 2011) (concluding that satellite is the least expensive way to serve about 47% of currently “unserved” households).

<sup>13</sup> See Mark D. Dankberg, Thomas E. Moore, and Girish Chandran, *Toward a National Broadband Plan: Ensuring a Meaningful Understanding of Broadband Capabilities and Facilitating Competitive Choices* (Aug. 31, 2009) (filed with the Commission on Aug. 31, 2009 in GN Docket No. 09-47).

standards could disrupt the natural, market-based evolution of “broadband” services, as well as efforts by service providers to introduce innovative broadband solutions that are responsive to the needs of consumers.

***Consider different ways in which broadband service might be packaged.***

The proposed pilot program should explore how broadband services might be packaged effectively for low-income consumers. In particular, any pilot program should evaluate how broadband services might be supported both on a stand-alone basis and within a voice-broadband bundle. The pilot program also should evaluate ways that different providers (*e.g.*, a LEC and satellite broadband provider) might partner to offer a cost-efficient “complete package” of services to the consumer, without limiting any provider/technology from serving as the “prime” customer contact. The public interest would be served by allowing each broadband provider to offer the services that it believes it can offer the most efficiently, while partnering with other providers that may be more efficient with respect to different components of the “complete package” of services.

***Explore how to support customer equipment efficiently.*** ViaSat agrees that the proposed pilot program should “test variations in discounts to reduce the cost of hardware,” as “[t]he cost of customer equipment. . . has been shown to be a major barrier to [broadband] adoption, particularly for low-income households”<sup>14</sup> Notably, for certain technologies and network architectures, including satellite, customer equipment (*e.g.*, the satellite antenna and modem) represents a significant component of total network costs, and effectively absorbs many “last mile”-type costs present in legacy wireline cost models. The Commission should use the pilot program to experiment with different approaches to subsidizing these “last mile” equipment costs in order to minimize barriers to adoption.

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<sup>14</sup> *NPRM* ¶ 283.

Specifically, satellite equipment that is used to complete the network connection at a customer's premises should be supported under the program.

*Explore “voucher” approaches, such as that suggested by AT&T.* The proposed pilot program should explore how the Commission might use its forbearance authority to advance the objectives of the Low-Income program.<sup>15</sup> In particular, the Commission should explore whether a “voucher” approach similar to that proposed by AT&T would be beneficial.<sup>16</sup> This approach could encourage competition while facilitating a consumer's ability to receive service that is responsive to his or her needs, without introducing many of the complicated issues that arise in the High-Cost context (*e.g.*, cream-skimming concerns).<sup>17</sup> The pilot program could evaluate whether this approach is feasible and effective by testing it within one or more small markets.

#### **IV. THE COMMISSION SHOULD ESTABLISH A PROCESS TO DESIGNATE “NATIONWIDE” PROVIDERS AS ETCs AT THE FEDERAL LEVEL**

The *NPRM* seeks comment on whether the Commission should use forbearance or other authority to modify its ETC designation framework as applied in the Lifeline context. As discussed above, ViaSat believes that these approaches are worth exploring, and that their feasibility can be tested as part of the broadband pilot program. However, ViaSat also believes that the Commission should establish a streamlined process to designate “nationwide” providers as ETCs at the federal level for all USF purposes—particularly if support is extended to broadband services.

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<sup>15</sup> See *NPRM* ¶¶ 306-312.

<sup>16</sup> AT&T proposes that the Commission allow all providers to offer Lifeline discounts on a competitively neutral basis where they offer service, subject only to a registration process. See *NPRM* ¶ 310.

<sup>17</sup> *Virgin Mobile USA, LP*, Order, DA 10-2433, at ¶ 19 (Dec. 29, 2010) (“We note that we do not need to perform a creamskimming analysis because Virgin Mobile is eligible for Lifeline support only.”).

Under the existing ETC framework, “nationwide” broadband providers like ViaSat would be forced to seek ETC designation in every state in which they plan to provide service. The ETC designation process is time-consuming and historically has delayed the introduction of competitive voice service. Such a requirement likewise would delay significantly the ability of providers to extend broadband service to low-income households quickly, and at low cost. Notably, state ETC designation proceedings can be highly politicized, often as the result of routine opposition by incumbent providers. These factors could contribute to delay in or denial of state ETC designation of broadband providers for reasons unrelated to the qualifications of the applicant. Further, states could lack the necessary expertise or desire to deal expeditiously with the designation of providers using newer technologies that do not fit within established state regulatory frameworks or that have been introduced on a “nationwide” (as opposed to intrastate) basis, such as satellite technologies.

At the same time, “nationwide” providers would be unduly constrained by the need to satisfy the requirements and comply with the regulations of up to 50 (or more) different jurisdictions. These requirements could conflict with each other, as well as with the requirements and policies adopted by the Commission and elsewhere at the federal level—potentially in irreconcilable ways. The potential for such conflict is particularly acute where providers use centralized infrastructure (*e.g.*, a satellite) to provide service directly to consumers in multiple jurisdictions, as well as to support interstate services.

Fortunately, the Commission has the requisite jurisdiction to avoid these issues by streamlining the ETC designation process for nationwide providers. If the Commission decides to support broadband services outside of the Section 214 framework, then the ETC framework in Section 214, and state designation requirements, would not apply at all. On the other hand, if the Commission determines that Section 214 is applicable, Section 214(e)(6) would give the Commission the requisite authority to designate satellite

providers on a nationwide basis because satellite services are “not subject to the jurisdiction of a State commission.”<sup>18</sup> Notably, federal law and policy preempt state regulation where such regulation would “stand[] as an obstacle to the accomplishment and execution of the full objectives” of federal policy,<sup>19</sup> and any assertion of state jurisdiction over satellite broadband services necessarily would conflict with federal policy, and thus be subject to preemption.<sup>20</sup> Accordingly, the Commission can and should act to designate satellite providers as ETCs on a nationwide basis.<sup>21</sup>

## V. CONCLUSION

For the reasons set forth herein, ViaSat urges the Commission to modify its framework for Low-Income support in a manner consistent with these comments. In particular, ViaSat urges the Commission to ensure that any new rules: (i) reflect an approach to Low-Income support that is flexible, inclusive, and competitively neutral and (ii) leverage the capabilities of next-generation satellite broadband fully.

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<sup>18</sup> 47 U.S.C. § 214(e)(6).

<sup>19</sup> *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 368-69 (1986). The Supreme Court has held that preemption may result not only from action taken by Congress but also from a federal agency action that is within the scope of the agency’s congressionally delegated authority. See *Fidelity Federal Savings & Loan Ass’n v. De la Cuesta*, 458 U.S. 141 (1982); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984).

<sup>20</sup> *Cf. Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004). See also Comments of ViaSat, Inc., WC Docket No. 10-90, at 41-44 (Apr. 18, 2011).

<sup>21</sup> Critically, nothing in Section 214(e)(6) requires the Commission to wait for states to “waive” jurisdiction where it is clear that they would be preempted from asserting such jurisdiction. While the Commission has done so with respect to terrestrial wireless services, over which states have exercised jurisdiction in the past and which rely on infrastructure that can be segregated by jurisdiction, satellite broadband services are easily distinguished in both respects.

Respectfully submitted,

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