

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Model Design and Data Inputs for Phase II of the Connect America Fund)	

COMMENTS OF VIASAT, INC.

ViaSat, Inc. (“ViaSat”) submits these comments in response to the Public Notice issued by the Commission on June 8, 2012 in this proceeding (“*Notice*”).¹ In the *Notice*, the Wireline Competition Bureau “seeks comment on a number of threshold decisions regarding the design of and data inputs to the forward-looking cost model” that would be used to calculate support for incumbents under Phase II of the Connect America Fund (“CAF”).²

As an initial matter, ViaSat reiterates its request that the Commission reconsider its decision to divert the lion’s share of limited CAF support away from broadband providers with a demonstrated record of extending broadband service, and instead toward incumbent local exchange carriers (“ILECs”) that have made a business decision not to provide broadband service to large numbers of consumers within their designated service areas. As explained in ViaSat’s pending Petition for Reconsideration, ample record evidence exists that competitive providers—including satellite broadband providers—are willing and able to provide service at

¹ See *Public Notice: Wireline Competition Bureau Seeks Comment on Model Design and Data Inputs for Phase II of the Connect America Fund*, DA 12-911, WC Docket Nos. 10-90, 05-337 (June 8, 2012).

² *Notice* ¶ 1.

speeds of 12/3 Mbps and greater to “unserved” households, and that such providers can do so more quickly and more efficiently than ILECS, and at a fraction of the cost to the public.³

If the Commission nevertheless is determined to provide ILECs with funding on a preferential basis, it should at least structure any cost model so as to maximize efficiency, and minimize the burdens on the public, by: (i) ensuring that any forward-looking cost reflect the costs of the lowest-cost provider in a given market; and (ii) ensuring that the capabilities of competitive providers—including satellite broadband providers—are leveraged fully through the Remote Areas Fund.

I. THE CAF PHASE II MODEL SHOULD REFLECT THE COSTS OF THE LOWEST-COST PROVIDER IN A GIVEN MARKET

The *Notice* expresses the Bureau’s intent to explore several “significant threshold model design decisions” in connection with Phase II of the CAF.⁴ Yet, the *Notice* sidesteps a critical “threshold model design decision” by asking “what *wireline* network technology and design the model should use to calculate costs,”⁵ without first considering whether the model should reflect the availability of technologies that may be more efficient, such as satellite and wireless broadband technologies.

ViaSat believes that any forward-looking cost model used to calculate CAF support should incent ILECs to minimize their infrastructure costs, as well as the funding burden placed on the CAF and American consumers. The Commission could achieve this result by ensuring that the model calculates support based on the most efficient broadband technologies available in a given local market—including satellite and wireless broadband technologies—and

³ See ViaSat, Inc., Petition for Reconsideration, WC Docket No. 10-90 *et al.* (Dec. 29, 2011).

⁴ *Notice* ¶ 6.

⁵ *Id.* at ¶ 7 (emphasis added).

not artificially limiting the model to “wireline” technologies.⁶ This approach would incent ILECs to use the most efficient technologies to deliver service to the public, while still giving them the option to use any technology of their choosing, whether on their own, or in a partnership with others.

Any other approach would reward inefficiency and provide ILECs with unnecessarily inflated support at the expense of American consumers. As the *Notice* emphasizes, “model design choices will not obligate providers to deploy the modeled technology,” such that “providers can deploy any technology that meets the obligations laid out in the [CAF Order].”⁷ Consequently, an ILEC could use technologies that are more efficient than those reflected in the proposed model—including low-cost satellite broadband technologies—while still being funded based on higher-cost wireline technologies. Any model that would invite ILECs to game the system in this manner, and realize significant windfalls at the expense of the public, would be inherently flawed. In contrast, a model that calculates support based on the most efficient technologies would provide ILECs the incentive to use those technologies, but also would ensure that the public, and not ILECs, receive the benefits of the resulting cost savings.⁸

⁶ The *Notice* ignores the advantages of satellite broadband technologies—which include lower cost, higher quality, and faster build-out—on an *a priori* basis, without providing any data-driven rationale for this decision. Ample evidence exists on the record that satellite broadband technologies are capable of providing affordable and quality voice and broadband service at speeds far in excess of the Commission’s 4/1 Mbps minimum.

⁷ *Notice* ¶ 13.

⁸ By design, this approach would result in an overall reduction in support to ILECs. It is entirely appropriate, and consistent with established Commission policy, to design the CAF in a manner that minimizes required support levels and serves the interests of consumers, and not incumbents.

II. THE COMMISSION SHOULD EXERCISE CARE IN DETERMINING WHICH AREAS WILL BE ELIGIBLE TO PARTICIPATE IN THE REMOTE AREAS FUND

A. The Commission Should Set the RAF Threshold at a Relatively Low Level

The *CAF Order* relieves ILECs of any obligation to serve “remote areas” where “the cost of providing service is typically much higher for terrestrial networks in the hardest-to-serve areas of the country than in less remote but still rural areas.”⁹ Instead, the *CAF Order* relegates these most-expensive-to-serve households to a separate “Remote Areas Fund” (“RAF”). The *Notice* seeks comment on “how best to determine . . . the extremely high cost threshold to identify the areas eligible for the [RAF].”¹⁰

In discussing the RAF, the Bureau erroneously assumes that it must act to “ensure that the resulting extremely high-cost benchmark [does] not cause more than one percent of American households to be covered by the RAF or unduly increase the size of the RAF.”¹¹ There is no record basis whatsoever for this assertion. While a footnote to the *CAF Order* does “anticipate” that less than one percent of all U.S. residences may fall above the “extremely high-cost” threshold in the final cost model,¹² that statement is speculative and made without a full understanding of the facts or the implementation challenges surrounding the CAF and the RAF—matters which the Commission explicitly directed the Bureau to investigate and resolve with the benefit of public notice and comment.

Indeed, nothing in the *CAF Order* requires the Bureau to limit the size of the RAF at all. To the contrary, the *CAF Order* announces the Commission’s “dedication of an annual

⁹ See *Connect America Fund*, FCC 11-161, WC Docket No. 10-90, at ¶ 533 (Nov. 18, 2011) (“*CAF Order*”).

¹⁰ *Notice* ¶ 67.

¹¹ *Id.* at ¶ 69.

¹² *CAF Order* ¶ 169 n.274.

budget of *at least* \$100 million” for the RAF.¹³ Because the Commission is obligated to prioritize remote areas in allocating limited high-cost support,¹⁴ it is incumbent on the Bureau to design a model that achieves this result by using the RAF to support the most-expensive to serve homes. As ViaSat has demonstrated with the Commission’s own empirical evidence, satellite broadband is the most cost-effective solution for approximately 47 percent of the homes that the Commission deems “unserved.”¹⁵

Critically, statutory principles of universal service also require the Commission to minimize the funding burden that the CAF and RAF place on consumers. Nothing in the *CAF Order* absolves the Bureau (or the Commission) of this obligation. Since satellite broadband technologies are far more efficient than wireline technologies for at least 47 percent of “unserved” households, establishing a RAF cost threshold that takes that efficiency into account would advance this goal. On the other hand, artificially constraining the RAF would inflate unnecessarily the size of the CAF and the burden placed on consumers.

B. The Commission Should Ensure that Eligibility for the RAF is Not Based Solely on the Results of the CAF Model

Regardless of where the RAF threshold is set, the Bureau should ensure that eligibility for the RAF is not based solely on the results of the CAF model. As ViaSat has demonstrated previously, while a model may provide a good “first cut,” it is unlikely to account for a number of circumstances in which the costs of serving a given household would be

¹³ *CAF Order* ¶ 1223 (emphasis added).

¹⁴ *See* 47 U.S.C. § 254(b)(3).

¹⁵ *See* Dr. Charles L. Jackson, *Satellite Service Can Help to Effectively Close the Broadband Gap* (Apr. 18, 2011), attached as Exhibit A to Comments of ViaSat, Inc., WC Docket No. 10-90 (Apr. 18, 2011).

particularly high. For example, the model would not necessarily address the problem of “bypassed” households—*i.e.*, underserved pockets within supposedly lower-cost areas.¹⁶

Moreover, the model would not account for the disconnect between the cost structures associated with incumbent, wireline networks and competitive, non-wireline networks. Specifically, defining “remote areas” narrowly, based solely on *ILEC* costs, could undermine incentives for potential competitors to serve those areas given *their* network architecture, economies of scale, and other technical and business considerations. For example, restricting the universe of customers that may be served through the RAF would leave open the possibility that the number of these customers could be so small, or their locations so dispersed, that it would not be economically viable for a provider to devote limited resources and capacity to serving them. At the same time, this approach could increase unnecessarily the per-household subsidy required to sustain service to those households that are served.

The Bureau should account for these economic realities in defining the boundaries of the “remote areas” that will benefit from RAF support. The Commission thus should act to optimize the number and location of RAF-eligible customers, and establish a support amount based on these costs. Consistent with the previous comments of the Satellite Broadband Providers, ViaSat proposes that the Commission adopt the following process to do so:¹⁷

¹⁶ Although providers often claim to serve a given area in its entirety, inevitably some individual households within that area do not receive service. These “bypassed” households are everywhere; unserved and underserved pockets exist throughout America, even in and around areas that are considered to be densely populated. This reality is reflected in the geographic dispersion of subscribers to prior-generation satellite broadband services, many of which are located within “served” areas because wireline service is not actually available to them. *See, e.g.*, Comments of ViaSat, Inc., WC Docket No. 10-90, at 17-18 (Apr. 18, 2011).

¹⁷ *See* Reply Comments of the Satellite Broadband Providers, WC Docket No. 10-90, at 7-11 (Feb. 17, 2012).

- **First**, the Bureau should make a “first cut” at identifying “remote areas” to be served through the RAF, based on the price-cap cost model outputs.
- **Second**, the Bureau (in consultation with the International Bureau)¹⁸ should engage with service providers and other stakeholders (*e.g.*, through a series of workshops) to assess whether and how the “remote areas” boundaries suggested by the model should be adjusted to better realize the policy goals of the RAF.¹⁹
- **Third**, the Bureau should use the results of the consultative process to propose revised “remote area” boundaries, which would be implemented absent compelling reason for further adjustments.
- **Fourth**, the Bureau should use the results of the consultative process to define “RAF-adjacent” service areas that would lie outside of a “remote area” but would be served by any of the various types of network infrastructure deployed to serve a “remote area.” For example, in the satellite context a “RAF-adjacent” service area could include the entire area covered by a spot beam—except for any “remote areas” contained therein.

In this manner, the Commission could rationalize such boundaries, and ensure that they better serve the policy objectives that underlie the RAF and the CAF generally.

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If the Commission is determined to provide ILECs with an unwarranted preference in the distribution of CAF funds, the Commission should at least ensure that any cost model used to calculate ILEC funding levels is structured so as to maximize efficiency and minimize the burdens placed on the CAF and American consumers. As explained herein, these twin objectives would be served by first ensuring that any forward-looking cost model reflects the costs of the lowest-cost technologies available in a given market—including satellite

¹⁸ International Bureau staff should be included in the consultation because of their extensive knowledge of satellite technologies.

¹⁹ For instance, parties engaged in such consultations could study whether it would make sense to enlarge the boundaries of certain “remote areas” in order to optimize the extent to which there is a business case for the provision of satellite service in remote and adjacent areas—recognizing, for example, that it may be uneconomic for a satellite provider to direct a spot beam at a remote area if support only will be available for serving a smattering of the customers in the coverage area of the beam (the “Swiss cheese problem”).

broadband technologies that would be the lowest-cost alternative for almost half of the households that the Commission has identified as “unserved.” The Commission also should ensure that the capabilities of competitive providers—including satellite broadband providers—are leveraged fully through the Remote Areas Fund by: (i) setting the RAF threshold at a relatively low level so as to maximize the use of efficient satellite and wireless broadband technologies; and (ii) engaging with competitive broadband providers to ensure that the geographic areas eligible for the RAF are defined in a manner that recognizes their unique business models and cost structures.

Respectfully submitted,

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