555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: +1.202.637.2200 Fax: +1.202.637.2201
www.lw.com

LATHAM & WATKINS LLP

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October 17, 2012

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ViaSat, Inc., *Ex Parte* Presentation
WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; GN Docket No. 12-228

Dear Ms. Dortch:

In recent meetings and submissions, ViaSat has explained that today's satellite broadband systems are providing broadband services that meet the Commission's standards, are attracting consumers that previously were served by terrestrial broadband providers, and are stimulating competitive responses from those terrestrial providers.[1] ViaSat also has explained that its Exede broadband service can be used by incumbent local exchange carriers ("ILECs") to supplement their terrestrial offerings, extend broadband service to the unserved, and reduce the size of the Connect America Fund ("CAF"). To facilitate these goals, ViaSat has urged the Commission to clarify that nothing in the *USF/ICC Transformation Order*[2] prevents ILECs from voluntarily using satellite technologies to meet ILEC obligations under the regulatory framework established thereby. ViaSat respectfully asks the Commission do so regardless of whether the Commission also grants ViaSat's Petition for Reconsideration of the *Order*.[3]

At the outset, ViaSat notes that the proposed clarification would be consistent with paragraph 91 of the *Order*, which provides that "[f]unding recipients may use any wireline, wireless, terrestrial, or satellite technology, or combination of technologies, to deliver service

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1 *See, e.g.*, Letter from ViaSat to FCC, WC Docket 10-90 (Sep. 19, 2012); Comments of ViaSat, Inc., GN Docket No. 12-228 (Sep. 20, 2012).

2 *See Connect America Fund*, Report and Order, 26 FCC 17663 (2011) ("*USF/ICC Transformation Order*").

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

that satisfies [the 'reasonable comparability'] requirement."[4] This statement strongly suggests that the Commission intends to permit ILECs to enter into voluntary contractual arrangements with third parties, including satellite operators, in order to satisfy that requirement. Nevertheless, other statements in the *Order* could be read to inadvertently create ambiguity.

- Although paragraph 91 implies that an ILEC could meet its obligations under the *Order* using capacity provided by a third-party service provider (*e.g.*, a satellite operator), that paragraph does not state so explicitly. At the same time, the *Further Notice of Proposed Rulemaking* ("*FNPRM*") that accompanies the *Order* asks whether certain non-ILEC support recipients should be able to "partner" with third parties to fulfill their CAF obligations[5]—begging the question of whether, under the framework established by the *Order*, an ILEC may be party to such arrangements.[6]

- Although paragraph 91 expressly permits an ILEC to use "satellite technology" to provide "reasonably comparable" broadband service in high-cost areas, that paragraph does not confirm that the latest satellite broadband offerings (*e.g.*, ViaSat's Exede service) would meet that standard. Paragraph 104 of the *Order*, which excludes satellite operators from the definition of "unsubsidized competitor," creates an apparent tension—asserting that current and future satellite services "appear unlikely to offer capacity reasonably comparable to urban offerings in the absence of universal service support."[7] While these statements can be reconciled,[8] the apparent tension creates unnecessary ambiguity

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4 *USF/ICC Transformation Order* ¶ 91.

5 *Id.* at ¶ 1137 (Mobility Fund recipients), ¶ 1196 (recipients of funding in areas where the ILEC has elected not to make a "statewide commitment").

6 Under any such arrangement, the ILEC presumably would receive funding from the CAF based on the costs associated with the use of wireline technologies—even if the ILEC relies upon satellite, wireless, or any other non-wireline technologies to serve a given household. This would be consistent with ILEC cost model proposals advanced by the Commission to date, which focus on wireline cost structures. *See, e.g.*, *Public Notice: Wireleine Competition Bureau Seeks Comment on Model Design and Data Inputs for Phase II of the Connect America Fund*, WC Docket No. 10-90, DA 12-911, at ¶ 7 (June 8, 2012) (asking what "wireline network technology and design the model should use to calculate costs"). ViaSat has suggested that the Commission instead support ILECs based on the costs of the lowest-cost provider in a given market, which would incent ILECs to use the most efficient technologies available. *See* Comments of ViaSat, Inc., WC Docket No. 10-90, at 2-3 (July 9, 2012).

7 *USF/ICC Transformation Order* ¶ 104.

8 An ILEC should be able to contract for access to satellite broadband service to provide "reasonably comparable" service to at least some subset of households served by that ILEC, even if satellite operators did not also have capacity to offer "reasonably

about the possible role of satellite broadband providers in extending an ILEC's CAF-supported service offerings.

- Although paragraph 91 suggests that an ILEC may rely upon satellite technologies if they satisfy the "standard" broadband performance requirements applicable to ILECs, paragraph 1240 of the *FNPRM* proposes to "modestly relax" those requirements in order to "facilitate participation in the Remote Areas Fund [or RAF] by providers of technologies like next-generation satellite broadband . . . ."[9] Paragraph 1240 appears to propose such a relaxation in order to facilitate greater participation in the RAF,[10] but this language also can be read to call into question whether an ILEC actually could rely on satellite technologies to meet the "standard" performance obligations under the CAF—even though such an interpretation would appear inconsistent with the Commission's stated intent elsewhere in the *Order*.[11]

ViaSat requests that the Commission resolve these ambiguities by confirming that an ILEC may contract with a satellite operator to meet the ILEC's obligations under the CAF framework. Doing so would help to ensure that ILECs are able to leverage the capabilities of satellite technologies fully to extend broadband service to the unserved promptly, advance the Commission's universal service objectives, and serve the broader public interest.

Please contact the undersigned should you have any questions in this matter.

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comparable" service throughout a much-larger service area—the latter being a point with which ViaSat respectfully disagrees. *See, e.g.*, Viasat, Inc. Petition for Reconsideration, WC Docket No. 10-90, at 9 (Dec. 29, 2011); *see also* Comments of ViaSat, Inc., WC Docket No. 10-90, at 12-18 (Apr. 18, 2011). Paragraphs 91 and 104 can be reconciled on this basis.

9 *USF/ICC Transformation Order* ¶ 1240.

10 For example, the Commission may have proposed to relax those "standard" obligations to permit satellite operators to satisfy RAF program requirements across relatively large *remote* areas, even though the Commission may not have thought that such relaxation necessary so that an ILEC could use satellite technologies under the CAF for some subset of households in the *non-remote* areas served by that ILEC. Paragraphs 91 and 1240 can be reconciled on this basis.

11 *See id.* at ¶ 30 n.18 (explaining that satellite operators "are not confined to participating only in" the RAF, but "are eligible to participate in any CAF program for which they can meet the specified performance requirements").

Sincerely yours,

/s/ John P. Janka

John P. Janka
Jarrett S. Taubman

Counsel to ViaSat, Inc.

cc: Amy Bender
Ted Burmeister
Patrick Halley
Heidi Lankau
Carol Mattey
Alex Minard