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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90

COMMENTS OF VIASAT, INC.

Keven Lippert
Vice President and General Counsel
VIASAT, INC.
6155 El Camino Real
Carlsbad, CA 92009

John P. Janka
Jarrett S. Taubman
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304

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ViaSat, Inc. ("ViaSat") hereby responds to the *Further Notice of Proposed Rulemaking* ("*FNPRM*") adopted by the Commission on November 14, 2012 in the above-referenced proceeding involving the Connect America Fund ("CAF"). More specifically, the *FNPRM* seeks comment "on potential modifications to the rules governing [CAF] Phase I incremental support to further accelerate the deployment of broadband facilities to consumers who lack access to robust broadband."[1]

I. INTRODUCTION AND SUMMARY

ViaSat applauds the Commission's policy goal of expediting the delivery of broadband services to households throughout the United States that are unserved and underserved by terrestrial technologies. Unfortunately, the *FNPRM* does not facilitate that result. Rather, the proposals in the *FNPRM* would perpetuate the same flawed structure for high-cost support established in the *USF/ICC Transformation Order*, which abandoned the principle of competitive neutrality that previously had guided universal service policy for decades (and subjected high-cost programs to market discipline) in favor of offering incumbent local exchange carriers ("ILECs") preferential access to *billions* of dollars in support.[2]

1 *FNPRM* ¶ 2.

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

The results speak for themselves. Without any market-based incentive to build out quickly or efficiently, many ILECs have bided their time by declining Phase I support and attempting to secure even more funding, even though cost-efficient alternatives to digital subscriber line ("DSL") technologies are available that would allow ILECs to extend service to unserved households at a fraction of the cost projected by the Commission. At the same time, competitive providers have succeeded in upgrading and expanding the capabilities of their broadband networks and improving service quality. But it cannot be assumed, as a business matter, that those competitors will be able to continue investing in their broadband networks in the face of a regulatory environment that dramatically skews the playing field in favor of the ILECS and their outdated technology.

In light of these trends, adopting the proposals set forth in the *FNPRM* cannot be expected to achieve the Commission's broadband policy goals. Of particular concern is the suggestion in the *FNPRM* that the problem with the CAF thus far is that it attempts to solve too *small* a problem. Thus, the *FNPRM* proposes to extend Phase I support to *additional* households—namely households in areas that already have access to terrestrial broadband service at speeds of up to 3 Mbps/768 kbps,[3] and satellite broadband service at speeds of up to 12/3 Mpbs. In reality, the problem is not that Phase I has targeted too few areas for support. Rather, the problem is that the CAF does not incent ILECs to accept and use support effectively.[4]

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3 *FNPRM* ¶¶ 11-12.

4 Among other things, the existing CAF program rules incent ILECs to build networks based on antiquated technologies that rely on the public-switched telephone network ("PSTN"), including DSL technologies. As AT&T has acknowledged, the PSTN "is now an obsolete platform, or at least a rapidly obsolescing platform" that "will not be sustainable for the indefinite future." *See* Jon Brodkin, "*The telephone network is obsolete": Get ready for the all-IP telco,* ARSTECHNICA (Jan. 7, 2013), *at* http://arstechnica.com/information-technology/2013/01/the-telephone-network-is-

At the same time, the CAF denies such support outright to competitive service providers, such as ViaSat, that are ready, willing, and able to provide 12/3 Mbps and even faster broadband services to unserved and underserved areas on an expedited and cost-effective basis. The solutions proposed in the *FNPRM* would not address these fundamental issues, nor would they facilitate the extension of broadband service to households that have been "left behind" by ILECs during the first round of Phase I support. For these reasons, ViaSat agrees with the broad coalition of "non-telco" broadband providers that already has characterized the *FNPRM* as "a giant step backwards in the Commission's efforts to modernize the universal service high-cost program[.]"[5]

Fortunately, it is not too late to change course. The results of the first round of Phase I, which underscore the severe structural issues in the existing CAF program rules, also provide an opportunity to remedy those issues. ViaSat urges the Commission to seize that opportunity, while continuing to focus its efforts during Phase I on expanding broadband service to those areas with the greatest need—*i.e.*, those without even 768/200 kbps terrestrial service. More broadly, ViaSat continues to urge the Commission to reconsider the framework established in the *USF/ICC Transformation Order*, and instead adopt an approach that does not skew the marketplace in favor of ILECs that have made clear their business decision not to invest in the broadband future in those areas most in need of such investment.

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obsolete-get-ready-for-the-all-ip-telco/ (reporting on the panel presentation of Hank Hulquist, AT&T's Vice President for Federal Regulatory Affairs, at the 2013 Consumer Electronics Show).

[5] *See* Letter to FCC from American Cable Association, Competitive Carriers Association, National Cable & Telecommunications Association, Wireless Internet Service Providers Association, DISH Network L.L.C., EchoStar Corporation, and ViaSat, Inc., WC Docket No. 10-90 (Dec. 14, 2012).

II. THE PROPOSALS SET FORTH IN THE *FNPRM* WOULD NOT SOLVE THE PROBLEMS ARISING FROM THE FIRST ROUND OF PHASE I

The *FNPRM* seeks comment on "two alternative approaches to advancing [the Commission's] broadband objectives in price cap territories using the remaining 2012 Connect America Phase I funding."[6] The first of these proposals would use those funds to supplement whatever Phase I funding is made available in 2013.[7] In connection with this proposal, the *FNPRM* proposes expanding the areas eligible for support. More specifically, instead of directing Phase I support to those areas without access to 768/200 kbps service, the *FNPRM* would make that support available in areas without access to 3 Mbps/768 kbps service.[8] The *FNPRM* also would establish a "challenge process" that would allow interested parties to question the accuracy of the National Broadband Map data on which revised Phase I rules would continue to rely.[9] Finally, the *FNPRM* potentially would adandon the $775/household support cap established under existing Phase I program rules, and instead tie support levels in some manner to estimates of ILEC infrastructure costs.[10]

The second proposal set forth in the *FNPRM* is much simpler: The Commission would roll remaining Phase I funding into the $1.8 billion of funds that the Commission already plans to make available to ILECs in price cap areas during CAF Phase II.[11] The Commission explains that "increasing the budgeted amount might allow more locations to be supported . . .

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6 *FNPRM* ¶ 3.

7 *Id.* at ¶ 36.

8 *Id.* at ¶¶ 11-12.

9 *Id.* at ¶ 14.

10 *Id.* at ¶¶ 17-35.

11 *Id.* at ¶ 41.

and also potentially encourage carriers to deploy broadband-capable networks more rapidly."[12] The *FNPRM* acknowledges, though, that the Commission instead could keep the total Phase II budget as-is (*i.e.*, at $1.8 billion), and use Phase I support to reduce the contributions that must be collected from end users to fund that budget.[13]

Unfortunately, these approaches are premised on the assumption that preserving ILECs' preferential access to billions of dollars in annual funding, with modest rule changes, would best serve the public interest. However, data presented in the *FNPRM* itself establish that the existing CAF structure has not worked, and will remain incapable of achieving the Commission's universal service objectives in an expedient and cost-effective manner—unless the Commission takes this opportunity to change course.

As the *FNPRM* acknowledges, ILECs accepted less than 40 percent of the high-cost support made available to them under Phase I of the CAF.[14] ILECs declined the majority of available support even though it was offered at a level many times higher than the costs those ILECs would have been required to incur to extend broadband service.[15] Critically, nothing in the CAF program rules would have precluded those ILECs from using cost-efficient alternatives to DSL—including satellite technologies—to extend broadband services to unserved areas. This would have allowed those ILECs to participate in Phase I while realizing significant profits; for example, ViaSat could have extended broadband service to unserved areas with a capital

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12 *Id.*

13 *Id.* at ¶ 44.

14 *Id.* at ¶ 2 (noting that only about $115 million of the $300 million in Phase I incremental support allocated to price cap carriers was accepted).

15 For example, AT&T declined support, noting uncertainty as to how participating in the program would affect its "continuing efforts to be relieved of outdated legacy obligations . . . ." *See* Letter from AT&T to FCC, WC Docket No. 05-337 (Jul. 24, 2012).

expenditure per household of approximately thirty percent of the $775 per household provided under Phase I, as estimated using the Commission's own model.[16]

Yet, many ILECs chose to forego that approach and instead sought waivers, the grant of which would provide support at levels as much as 10 times the amount designated by the Commission—even in areas currently served by 12/3 Mbps or 4/1 Mbps satellite broadband service.[17] Such decisions reflect that ILECs are not really incentivized to meet the Commission's universal service objectives. While unfortunate, this result is predictable because the CAF program rules shield ILECs from competition for available support. As a result, ILECs lack any reason to adopt cost-efficient technologies and practices, and instead have been able to treat the CAF program rules as an invitation to "negotiate" with the Commission by declining funding and/or filing waiver requests.

The results indicate that the CAF is failing to extend broadband service to unserved households in an expedient and cost-effective manner. Rather than double-down on an experiment that ILECs have not embraced, the Commission instead should seize this opportunity to make needed CAF support available to all qualified service providers through a competitive,

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16 ViaSat's April 2011 comments in the CAF proceeding include a quantitative analysis by Dr. Charles Jackson, which calculated the capital expenditure per household associated with satellite broadband service, using the Commission's own assumptions, at $230 per subscriber under the "Medium Usage" scenario, assuming an 83 percent take rate. *See* Dr. Charles L. Jackson, *Satellite Service Can Help to Effectively Close the Broadband Gap*, at Attachment A (Apr. 18, 2011), attached as Exhibit A to Comments of ViaSat, Inc., WC Docket No. 10-90 (Apr. 18, 2011).

17 *See, e.g.*, Windstream Election and Petition for Waiver, WC Docket No. 10-90, at 6. (filed July 24, 2012) (seeking approximately $3700 per additional location served); ACS of Anchorage et al. Petition for Waiver, WC Docket Nos. 10-90 and 05-337, at 8 (filed Sep. 29, 2012) (seeking $5000 to $7800 per additional location served).

technologically-neutral, and transparent mechanism.[18] Notably, this approach would be consistent with the *Notice of Proposed Rulemaking* initially issued by the Commission in this proceeding, and would allow the Commission to harness market forces to: (i) determine how much universal service support, if any, is truly needed in any given area to provide 4/1 Mbps broadband service; and (ii) help to ensure that limited funding flows to efficient providers with low costs, thus reducing the amount of support needed to advance the Commission's universal service objectives.

Moreover, a properly designed CAF program would advance the principle of "competitive neutrality" that was central to the Commission's universal service policy for decades prior to the *USF/ICC Transformation Order*.[19] As the Commission recognized in adopting the *Universal Service First Report and Order* in 1997, rules that minimize competitive and technological bias "facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier."[20] On the other hand, the "wholesale exclusion" of

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18 Consistent with its policy prior to the adoption of the *USF/ICC Transformation Order*, the Commission should ensure that support is made available on a competitively and technologically neutral basis. As ViaSat has noted previously, these principles demand an inclusive approach to participation in universal service funding mechanisms. *See* ViaSat, Inc. Petition for Reconsideration, WC Docket No. 10-90 at 4-5 (Dec. 29, 2011).

19 In the *Universal Service First Report and Order*, the Commission adopted "competitive neutrality"—defined as the state in which "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another"—as a guiding principle for the administration of the USF under Section 254(b)(7). *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, at ¶ 47 (1997) ("*Universal Service First Report and Order*"); 47 U.S.C. § 254(b)(7).

20 *Universal Service First Report and Order* ¶ 48.

a class of providers effected by existing CAF program rules not only is *in*efficient, but also is "inconsistent with the language of the statute and the pro-competitive goals of the 1996 Act."[21]

The *USF/ICC Transformation Order* abandons the principle of competitive neutrality with only the faintest attempt at a justification. More specifically, the Commission attempts to justify its decision to provide ILECs with a presumptive right to CAF funding, to the exclusion of competitive providers, by asserting its belief that ILECs somehow are in a "unique" position to deploy broadband networks rapidly and efficiently in unserved areas.[22] The results of the first round of Phase I flatly belie this claim; ILECs have demonstrated that they are poorly positioned to extend actual broadband service to unserved areas in an expeditious and cost effective manner.

In stark contrast, many competitive broadband providers have worked tirelessly both to expand their network capacity and improve the quality of available broadband services—all in the face of the significant handicap effected by the Commission's decision to subsidize ILECs on a preferential basis. For example, ViaSat launched ViaSat-1 as the highest-capacity satellite in the world, and as part of a system that is transforming the economics and quality of service that satellite broadband can provide—*e.g.*, by making speeds in excess of 12/3 Mbps available in a service area that includes the vast majority of Americans (as compared to the 4/1 Mbps standard established in the *USF/ICC Transformation Order*). Notably, consumer response to ViaSat's new Exede® service offering (which relies on capacity provided over ViaSat-1) indicates that many consumers prefer high-speed satellite broadband service to terrestrial

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21 *Id*.

22 *USF/ICC Transformation Order* ¶ 177.

alternatives; approximately 40 percent of new Exede® Internet subscribers switching from slower terrestrial services (*e.g.*, DSL and wireless services).[23]

At bottom, no reasoned basis exists for the Commission to perpetuate its departure from the principle of competitive neutrality. Accordingly, ViaSat urges the Commission to seize this opportunity to return to that principle, while continuing to focus its efforts during Phase I on expanding broadband service to those areas without even 768/200 kbps service. ViaSat submits that this goal can be accomplished through the utilization of suitable market-based mechanisms to distribute CAF funds to the lowest-cost provider(s) in any given geographic area, consistent with the overwhelming record evidence in support of such approaches.

III. UNLESS THE DEEPER PROBLEMS WITH THE CAF'S STRUCTURE ARE ADDRESSED, THE COMMISSION SHOULD DIVERT REMAINING PHASE I FUNDING TO THE REMOTE AREAS FUND

The *USF/ICC Transformation 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."[24] Instead, the *USF/ICC Transformation Order* relegates these households to a separate "Remote Areas Fund." Although households in these areas are *most* in need of support, and *least* likely to receive broadband service absent such support, the CAF currently does not provide any support

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[23] *See Press Release: ViaSat-1 and Exede Service Win 2012 Popular Science Best of What's New Award* (Nov. 16, 2012), *available at* http://www.viasat.com/news/viasat-1-and-exede-service-win-2012-popular-science-best-whats-new-award ("The technology is elevating satellite into a much more competitive position in the broadband service marketplace with approximately 40% of new Exede Internet subscribers switching from slower DSL and wireless services.").

[24] *USF/ICC Transformation Order* ¶ 533.

to these areas. In contrast, the *USF/ICC Transformation Order* provides additional near-term funding to price cap ILECs serving comparatively well-off areas.[25]

This timetable turns Section 254 of the Act on its head. As the Commission has recognized in the voice context, the most costly households to serve are the ones most in need of funding, such that funding to those households should be prioritized above funding households that are less costly to serve.[26] The objectives of universal service, and the goals embodied in Section 254, are best served by directing limited funding to these challenging areas, rather than attempting to pick relatively "low hanging fruit." In short, while the Remote Areas Fund should have been established at the same time as (if not before) the general CAF, the opportunity still exists to ensure the effectiveness of the Remote Areas Fund.[27]

The program rules established in the *USF/ICC Transformation Order* provide $775 per line in incremental broadband support to price cap ILECs that accept Phase I funding. Even that amount, distributed through the Remote Areas Fund, would offset significantly the price that a household in a remote area otherwise would need to pay to obtain broadband service. Accordingly, if the Commission chooses not to restructure the CAF as a whole,[28] it should at least divert remaining Phase I funding to the Remote Areas Fund, so that it can be used for the benefit of the consumers most in need of immediate support.

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[25] *Id.* at ¶ 22.

[26] *See, e.g., Federal-State Joint Board on Universal Service; Access Charge Reform*, 14 FCC Rcd 8078, at ¶ 31 (1999) (providing limited support to states with per-line costs significantly above the national average).

[27] ViaSat, together with other satellite broadband providers, has made specific recommendations with respect to the implementation of the Remote Areas Fund. *See* Comments of the Satellite Broadband Providers, WC Docket No. 10-90, at 2-12 (Jan. 18, 2012); Reply Comments of the Satellite Broadband Providers, WC Docket No. 10-90, at 3-16 (Feb. 17, 2012).

[28] *See* ViaSat Petition for Reconsideration at 4-7.

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For the reasons provided above, ViaSat urges the Commission not to adopt the proposals suggested in the *FNPRM*, but rather to ensure that CAF support is distributed through suitable market-based mechanisms. The results of the first round of Phase I funding confirm that the CAF suffers from structural issues that have nothing to do with the Commission's decision to target initial funding to those "unserved" areas without access to terrestrial-based 768/200 kbps service. Rather, those issues stem from the fact that the existing CAF program rules do not incent ILECs to accept and use support effectively, while at the same time those rules deny such support to the competitive service providers that are in the best position to extend broadband services at speeds of 12/3 Mbps and beyond to unserved and underserved areas on an expedited and cost-effective basis. The Commission should address those issues in a manner consistent with these comments and those filed previously by ViaSat in this proceeding.

Respectfully submitted,

/s/ Keven Lippert
Keven Lippert
Vice President and General Counsel
VIASAT, INC.
6155 El Camino Real
Carlsbad, CA 92009

/s/ John P. Janka
John P. Janka
Jarrett S. Taubman
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304

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