

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

Connect America Fund)	WC Docket No. 10-90
)	
Wireline Competition Bureau Seeks Further)	DA 13-69
Comment on Issues Regarding the Design of the)	
Remote Areas Fund)	

COMMENTS OF VIASAT, INC.

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February 19, 2013

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ViaSat, Inc. submits these comments in response to the Public Notice released by the Commission on January 17, 2013 in the above-captioned proceeding. The Public Notice “seeks further detailed comment on issues relating to the implementation of the Remote Areas Fund as a portable consumer subsidy program, as proposed by the Commission in the [*USF/ICC Transformation FNPRM*¹] and supported by a diverse group of commenters.”² ViaSat welcomes the opportunity to provide such detailed comment.

I. INTRODUCTION AND SUMMARY

The Public Notice suggests that the Commission’s Remote Areas Fund (“RAF”) proposal is endorsed by “a diverse group of commenters,” including ViaSat.³ In reality, many parties have supported the RAF only to make the best of a challenging situation—namely, the Commission’s unjustified decision to place the interests of incumbents over those of consumers

¹ *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, at ¶¶ 92-96 (2011) (“*USF/ICC Transformation Order*” or “*USF/ICC Transformation FNPRM*”).

² Public Notice, FCC, *Wireline Competition Bureau Seeks Further Comment on Issues Regarding the Design of the Remote Areas Fund*, WC Docket No. 10-90, DA 13-69, at ¶ 2 (Jan. 17, 2013).

³ *See id.* ¶ 2 n.7 (citing comments of the “Satellite Broadband Providers,” an informal group of which ViaSat is a member).

by diverting the lion's share of Connect America Fund ("CAF") support away from those broadband providers (such as ViaSat) with a record of actually improving the quality of broadband service, and instead toward incumbent local exchange carriers ("ILECs") that have made a business decision not to invest in providing broadband service to large numbers of consumers within their designated service areas.

Thus, as an initial matter, ViaSat reiterates its request that the Commission reconsider its CAF framework, and instead utilize suitable market-based mechanisms to distribute CAF funds to the lowest-cost provider(s) in any given geographic area—including remote areas—consistent with the overwhelming record evidence in support of such approaches. As ViaSat and others have shown on multiple occasions, competitive providers—including satellite broadband providers—could actually extend service to many "unserved" households far more efficiently and far more effectively than ILECs, and at a fraction of the cost to the public.

While satellite broadband service currently is available for subscription by almost all Americans, in some cases the cost of actually providing that service to a given household remains prohibitively expensive. For example, in ViaSat's experience it can cost about \$500 for a technician just to travel to certain parts of Alaska where satellite broadband capacity is available at speeds that meet the Commission's performance requirements. Therefore, if the Commission decides to relegate competitive providers to a separate (and far smaller) RAF, the RAF program rules at least should ensure that the RAF is structured so as to maximize the ability of competitive providers to advance the Commission's universal service objectives. In particular, the RAF program rules should:

- Recognize that satellite broadband providers *already* are providing service that meets and exceeds the CAF performance requirements, such that there is no need to relax those requirements in the case of the RAF;
- Maximize consumer benefits from the RAF by: (i) avoiding any hard limit on annual RAF support, which would be contrary to the *USF/ICC Transformation Order*, Section 254 of the Communications Act of 1934, as amended (the “Act”), and the public interest generally; (ii) providing near-term RAF support in all areas identified as “unserved” by the National Broadband Map, as supplemented by an “opt-in” mechanism; (iii) allowing consumers to retain their RAF-supported service after an ILEC commences service in a given area; and (iv) providing “permanent” CAF support in areas identified as “extremely high cost” by the ILEC cost model, as modified through a deliberative process that would rationalize the resulting support area boundaries; and
- Support the growth of sustainable competition by: (i) structuring RAF support as a monthly, “portable” subsidy; (ii) ensuring that support levels reflect all relevant costs, as well as technological and market realities, as explored through a consultative process involving the Commission, service providers, and other stakeholders; (iii) streamlining eligible telecommunications carrier (“ETC”) designation requirements; and (iv) allowing service providers flexibility to design and offer service rates and plans that are responsive to consumer preferences and market dynamics.

II. SATELLITE BROADBAND OFFERINGS ALREADY MEET AND EXCEED CONNECT AMERICA FUND PERFORMANCE REQUIREMENTS

The Public Notice proposes to provide RAF support to unserved areas “until they become served with broadband that meets the Commission’s performance requirements (*i.e.*, speed, capacity, latency) for non-Remote Areas Fund eligible areas[.]” As explained below, it would make far more sense to permit consumers to retain RAF-supported broadband service even after subsidized terrestrial alternatives are made available (*e.g.*, by the ILEC serving a given area). Doing so would encourage competition and consumer choice, reduce the CAF/RAF funding burden, and incent competitive broadband providers—including satellite providers—to extend service to “unserved” areas in the near term.

More fundamentally, the proposal set forth in the Public Notice is based on a false premise; satellite broadband providers (including ViaSat) *currently* provide broadband service

meeting the Commission’s performance requirements to virtually all of the United States—including remote and other “unserved” areas. Other competitive providers also satisfy those requirements. Thus, there is no valid basis for the suggestion that CAF performance requirements should be “modestly relax[ed]” to ensure adequate service to remote areas.⁴

Satellite providers—including, in particular, ViaSat—have invested billions of dollars of private capital to develop state-of-the-art broadband networks that are designed to overcome the capacity limitations of legacy satellite networks, and are optimized to provide a broadband experience that exceeds that of many terrestrial solutions (*e.g.*, DSL, many cable systems, terrestrial wireless). These efforts are now bearing fruit, and are driving a quantum shift in the speed and quality of satellite broadband service, while simultaneously increasing available capacity and ultimately allowing satellite broadband providers to serve millions of additional customers. For example, ViaSat launched ViaSat-1 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 and other satellites) indicates that many consumers prefer high-speed satellite broadband service to terrestrial alternatives; approximately 40 percent

⁴ See Public Notice at ¶ 47. ViaSat reiterates as well that any interpretation of the broadband performance requirements should be informed by the *actual* usage patterns of consumers. See ViaSat, Inc. Petition for Reconsideration, WC Docket No. 10-90 *et al.*, at 14-19 (Dec. 29, 2011).

of new Exede[®] Internet subscribers switched from slower terrestrial services (*e.g.*, DSL and wireless services).⁵ Moreover, as the Commission recently reported:

[T]he high capacity of ViaSat’s ViaSat-1 satellite, which at the time of launch surpassed the total capacity of all current Ku-, Ka-, and C-band satellites over North America, together with other technological improvements discussed below, have decreased latency and improved the quality of satellite broadband service available to subscribers. In our testing, we found that during peak periods 90 percent of ViaSat consumers received 140 percent or better of the advertised speed of 12 Mbps. In addition, both peak and non-peak performance was significantly higher than advertised rates. While latency for satellites necessarily remains much higher than for terrestrial services, with the improvements afforded by the new technology we find that it will support many types of popular broadband services and applications.⁶

In short, satellite broadband providers are able to meet any truly technology-neutral performance requirements that apply to terrestrial providers under the *USF/ICC Transformation Order*. Thus, there is no need to “modestly relax” such requirements in the case of “remote areas.”

III. SATELLITE BROADBAND TECHNOLOGIES SHOULD BE LEVERAGED FULLY IN IMPLEMENTING THE REMOTE AREAS FUND

A. The RAF Should Be Implemented Without Any Hard Cap on Annual RAF Support Levels

The Public Notice asks how the rule changes it proposes might impact the overall RAF budget, and the Commission’s ability to keep that budget below the \$100 million mark.⁷

As an initial matter, the Commission has not imposed any hard cap on annual RAF support, or

⁵ 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.”).

⁶ See *2013 Measuring Broadband America: February Report*, at 8 (2013).

⁷ Public Notice at ¶ 41; *USF/ICC Transformation Order* at ¶ 534.

even suggested that RAF support levels should be subject to strict limits. To the contrary, the *USF/ICC Transformation FNPRM* announces the Commission’s “dedication of an annual budget of *at least* \$100 million” for the RAF.⁸ Such statements reflect the Commission’s recognition that higher levels of RAF support might be required or prudent.

Furthermore, to the extent that support distributions must be curtailed, the Commission should focus on the general CAF—which represents more than 90 percent of the \$4.5 billion CAF budget and which dwarfs the proposed \$100 million RAF. This approach also would be consistent with Section 254 of the Act, which recognizes that universal service objectives are best served by prioritizing support to the most costly households.⁹

B. National Broadband Map Data, as Supplemented with Other Data, Should Be Used To Target “Near-Term” RAF Support

The Public Notice seeks to “further develop the record on administratively feasible ways to identify areas . . . where consumers would be eligible for the [RAF].”¹⁰ More specifically, the Commission asks whether it should “use the National Broadband Map [(“NBM”)] to identify unserved census blocks” as the basis for promptly initiating RAF support to certain census areas.¹¹

ViaSat supports the use of NBM data to promptly deploy RAF support, as doing so would: (i) facilitate the extension of broadband service to “unserved” areas on an expedited basis; and (ii) leverage competitive broadband technologies—including satellite broadband

⁸ *USF/ICC Transformation FNPRM* at ¶ 1223 (emphasis added).

⁹ *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).

¹⁰ Public Notice at ¶ 5.

¹¹ *Id.*

technologies—that *already* are well-positioned to achieve the Commission’s universal service objectives. For example, ViaSat’s new Exede[®] service already is available in virtually all of the United States—including Alaska and Hawaii. In contrast, it will take ILECs *years* to implement their wireline broadband networks in many parts of the country. In many cases, that goal will be achievable only if the Commission grants costly waivers of the support limits established in the *USF/ICC Transformation Order*. There can be no justification for forcing consumers to wait years for ILECs to introduce their inefficient service offerings to the public when viable competitive solutions already are in place.

That said, the Commission’s “NBM-centric” proposal can and should be improved in important respects. While NBM data would provide a useful “first cut” at identifying areas that do not currently have access to broadband service meeting the performance requirements established in the *USF/ICC Transformation Order*, it is not enough to rely *solely* on such data. First, the fact that the NBM identifies an area as “served” by terrestrial broadband does not mean that the terrestrial broadband service meets the Commission’s performance requirements. Notably, many areas identified as “served” by the NBM do not have access to 4/1 Mbps speeds from terrestrial providers (*e.g.*, areas served by certain DSL providers).¹²

Second, the NBM data do not identify “bypassed” households or even small geographic areas that do not currently have access to terrestrial broadband service that meets the Commission’s requirements. Although terrestrial providers often claim to serve a given area in its entirety, inevitably some individual households within that area are not actually able to

¹² See *Connect America Fund*, Further Notice of Proposed Rulemaking, FCC 12-138, WC Docket No. 10-90, at ¶ 12 n.17 (noting that “3 Mbps/768 kbps is the best data currently available on the National Broadband Map for determining whether an area is served by 4 Mbps/1 Mbps”).

receive service—even though this fact is not reflected in the NBM data. These “bypassed” households are everywhere; unserved and underserved pockets exist throughout America, even in and around areas that are considered to be densely populated.¹³

Thus, to supplement the NBM data, the Commission should take further steps to identify bypassed households and ensure that they receive support. Among other things, the Commission should provide a mechanism through which bypassed households could self-identify. Notably, the broadbandmap.gov website allows consumers to identify the service providers believed to serve a given address, but currently does not allow consumers to identify “false positives” in the NBM data. Subject to verification, consumers should be able to flag instances in which data indicate that a terrestrial provider serves a given household when, in fact, that is not the case. The Commission also should allow competitive service providers to aggregate and submit data identifying households they believe to be “bypassed” by incumbent terrestrial providers.

C. The RAF Should Allow Consumers in “Unserved” Areas To Retain RAF-Supported Service Once the ILEC’s Offering Is Available

As noted above, the Public Notice proposes to provide RAF support to unserved areas “until they become served with broadband that meets the Commission’s performance requirements . . . for non-[RAF] eligible areas[.]”¹⁴ The Public Notice also asks how the RAF rules should “address the transition where an area that is initially classified as unserved, and therefore eligible for [RAF] support, subsequently becomes served by a terrestrial service

¹³ See, e.g., Comments of ViaSat, Inc., WC Docket No. 11-10, at 5 (Mar. 30, 2011); Comments of the Satellite Broadband Providers, WC Docket No. 10-90 *et al.*, at 3-4 (Jan. 18, 2012).

¹⁴ Public Notice at ¶ 5.

provider”¹⁵ In ViaSat’s view, the most logical approach would be to permit individual consumers to elect to retain their existing RAF-supported service, with continuing support, instead of switching to an ILEC offering that they may not want. This approach would be responsive to actual consumer preferences, and ensure that consumers in high-cost areas have a choice of service provider—just like consumers in the rest of the country. At the same time, this approach would avoid skewing competition in a given area by subsidizing only the ILEC, and effectively pricing unsubsidized competitors out of the market after they had invested private capital to extend broadband to that area.

This approach also would help to incent competitive broadband providers to participate in the RAF and extend service to unserved and remote areas as soon as possible. It bears emphasis that while satellite providers currently provide service to most of the country, they can justify the enormous capital costs of deploying additional capacity to a given area only if they expect to serve a critical mass of customers in that area for a long enough period of time to recoup those costs. If ViaSat were assured that it would have the opportunity to compete meaningfully for available funds, even after the ILEC begins to provide broadband service, ViaSat would be far more likely to design and deploy new spacecraft to serve a given area. On the other hand, satellite and other competitive broadband providers would be unlikely to devote capacity to an area if they believed that, after a time, the Commission would subsidize *only* the ILEC’s service, again, effectively pricing unsubsidized competitors out of the market.

Finally, this approach likely would reduce the overall CAF funding burden. As ViaSat has explained, repeatedly, competitive broadband services often can be provided at lower cost than those provided by ILECs. Providing continuing support to the competitive provider

¹⁵ *Id.* ¶ 14.

through the RAF would allow the Commission to reduce ILEC support in such situations on a proportionate, per-line basis.

D. The ILEC Cost Model, Along With Other Data, Should Be Used To Target “Permanent” RAF Support

The Public Notice asks whether the Commission should employ an NBM-centric approach “[i]n lieu of using the [ILEC] cost model to define eligible areas”¹⁶ As discussed above, ViaSat supports the use of NBM data as the primary mechanism for identifying areas that would benefit from near-term RAF support. That said, ViaSat also believes that any RAF support should be available on a “permanent” basis in areas that could be served by an ILEC only at “extremely high cost,” as modified to ensure that resulting area boundaries reflect technological and market realities.

In implementing this approach, the Commission should recognize that reliance on the results of the ILEC cost model alone would not achieve the Commission’s broadband policy goals, for a number of reasons. As an initial matter, the model would not necessarily identify “bypassed” households—requiring, at a minimum, the continued availability of the supplemental mechanisms discussed above in connection with the use of NBM data.

Moreover, the model would not account for the impact that defining “remote area” boundaries based on ILEC costs could have on the business case for competitors with different cost structures to serve those areas. In particular, defining “remote areas” narrowly, based solely on *ILEC* costs, could undermine incentives for potential service providers 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

¹⁶ *Id.* ¶ 5.

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 competitive provider to devote limited resources and capacity to serve 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 Commission should account for these economic realities in defining the boundaries of the “remote areas” that would benefit from RAF support. In particular, the Commission should optimize the number and location of RAF-eligible customers by commencing a deliberative process that would analyze and refine ILEC cost model outputs. 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.

IV. THE COMMISSION SHOULD STRUCTURE THE REMOTE AREAS FUND TO FACILITATE SUSTAINABLE COMPETITION

A. The RAF Should Be Structured as a Monthly Subsidy

The Public Notice cites the *USF/ICC Transformation FNPRM*'s tentative decision to structure the RAF as a portable consumer subsidy, and seeks to “further develop the record on implementation details regarding how a portable consumer subsidy should be structured”¹⁷ As a threshold matter, ViaSat continues to support the Commission’s proposal to structure the RAF as a portable consumer subsidy.¹⁸ Making support “portable” would facilitate competition and consumer choice, while ensuring that the RAF remains subject to some level of market discipline.

¹⁷ *Id.* ¶¶ 16-17.

¹⁸ *Id.* ¶ 16; *USF/ICC Transformation FNPRM* at ¶ 1225.

Among the key issues explored in the Public Notice is whether RAF support should be structured as a one-time as opposed to a monthly subsidy.¹⁹ By definition, RAF support will be “portable” only to the extent that it can be transferred from one service provider to another based on the consumer’s preference. Thus, a “portable” consumer subsidy must be provided in a form conducive to such transfer. Simply stated, a one-time subsidy could not be transferred easily from one provider to another; it would be difficult to determine how to allocate the one-time subsidy between the relevant service providers and, as a practical matter, much of that subsidy may have been used to support service initiation costs. This would leave the Commission with the prospect of providing duplicative support to multiple providers—a far from attractive option.

It would be more practical to provide “portable” support in the form of a monthly subsidy.²⁰ This would facilitate the consumer’s ability to move to a new service provider with a minimum amount of red tape; even if a switch occurred in the middle of the month, the Commission could easily allocate support based on the date of that switch. Notably, Lifeline support has been structured in this fashion for years. The resulting competition among providers would ensure that RAF customers continue to receive the benefits of competition, including lower prices, better service, and more innovative service offerings.

B. RAF Support Should Be Sufficient to Incent Broadband Providers to Serve Unserved and Remote Areas

The RAF subsidy level should be sufficient to incent carriers to offer service in remote areas, by accounting for all relevant costs (including both “hard” costs and opportunity

¹⁹ Public Notice at ¶¶ 18-27.

²⁰ The “portable” nature of support would not affect contractual restrictions such as those imposed by extended service contracts. Even so, monthly subsidies would be far easier to transfer than one-time subsidies would be.

costs) as well as technological and market realities. In the longer term, the Commission should use the consultative approach discussed above to solicit and evaluate information about the full range of costs faced by satellite and other providers likely to serve remote areas. For example, in the satellite context these costs might include: (i) a share of the capital needed to construct and maintain the satellite and ground components of that network; (ii) purchasing and installing a satellite antenna, modem, and other equipment at the end-user location;²¹ (iii) those associated with subscriber acquisition and service initiation; and (iv) those associated with devoting satellite capacity to a “remote area” instead of more densely populated areas, where “fill rates” undoubtedly would be a higher and would provide more lucrative opportunities.

This consultative process also should be used by the Commission to gain a better understanding of the dynamics of business models likely to play out in remote areas. In the satellite context, for instance, it is important that the Commission recognize: (i) that satellite and beam “fill rates” historically are much lower in rural areas, such that devoting capacity to those areas results in higher effective per-subscriber network costs in those areas, even though satellite providers may offer regional or nationwide pricing; and (ii) that the costs of providing a stand-alone voice service may converge with those of providing an integrated voice and broadband service, since VoIP typically would be provided as an “over-the-top” application using the same

²¹ End-user equipment, including satellite antennas and modems, would best be viewed as components of the satellite network, such that the costs of that equipment should be factored into the overall costs of providing monthly service on a per-subscriber basis for purposes of computing the monthly subsidy amount. This approach would recognize fundamental architectural differences between satellite and terrestrial networks. For example, whereas terrestrial network costs may be associated with physical facilities connecting a wire center or switch with a customer location, satellite networks typically have no physical infrastructure between the satellite and the end-user location. Consequently, the infrastructure costs associated with the user downlink are heavily concentrated in end-user equipment—to a far greater extent than in the wireline case.

end-user equipment as a customer receiving integrated service, and a similar share of the capital costs of the satellite network.²²

Pending completion of that process, the Commission can and should specify an interim subsidy amount at a level intended to offset all of the costs associated with providing satellite service to the end user (including network capital costs, subscriber acquisition costs, subscriber equipment costs, opportunity costs, etc.), and otherwise ensure that satellite and other competitive broadband providers are incented to provide service in “remote” areas.

However, ViaSat cannot support the Commission’s proposal to set the RAF subsidy amount at a level “equal to the difference between the retail price of a ‘basic’ satellite voice-broadband service and an appropriate reference price for reasonably comparable service in urban areas.”²³ Such an approach focuses on retail *rates* and ignores more important considerations—including the *costs* that a satellite provider incurs when serving a remote, sparsely populated area, the interplay between the *level* of the subsidy offered and the *area* in which service is provided, and the need to ensure that satellite and other competitive broadband providers have appropriate incentives to extend service to a given household. This approach also does not account for the fact that satellite providers could provide better than “basic” service (*e.g.*, service with a higher data thresholds than under the basic package) if subsidized accordingly. For example, with an appropriate subsidy, a satellite provider would be able provide even more capacity to a given consumer without affecting the rate the consumer pays.

²² See *USF/ICC Transformation FNPRM* at ¶ 1265.

²³ Public Notice at ¶ 22 (quoting *USF/ICC Transformation FNPRM* at ¶ 1267).

C. The Commission Should Streamline the Process for Designating Satellite Providers as ETCs

The Public Notice seeks comment on “issues relating to ETC participation in the [RAF] program”²⁴ More specifically, the Commission asks whether it should take steps to streamline the designation of ETCs at the state level.²⁵ ViaSat applauds the Commission’s willingness to explore this issue, and urges the Commission also to explore ways to streamline the designation of ETCs at the *federal* level.

As the Commission has acknowledged, “the ETC designation process imposes burdens on carriers that are interested in providing supported services in multiple states.”²⁶ Under the generally applicable ETC designation procedures, “nationwide” broadband providers would be forced to seek ETC designation in every state in which they plan to provide service. Because the ETC designation process is time-consuming, this would delay significantly the ability of these providers to extend broadband service to “unserved” areas quickly, and at low cost. Notably, state ETC designation proceedings can be highly politicized, and subject to the undue influence of incumbent providers. Further, states naturally lack expertise with newer technologies 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—

²⁴ Public Notice at ¶ 44.

²⁵ *Id.* ¶ 45.

²⁶ Notice of Proposed Rulemaking, WC Docket No. 10-90, at ¶ 429 (Feb. 8, 2011).

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.

The Commission has the requisite authority to avoid these issues by utilizing Section 214(e)(6) to streamline the ETC designation process for “nationwide” providers. Such authority is particularly evident in the case of satellite providers because satellite services are “not subject to the jurisdiction of a State commission.”²⁷ Satellite providers do not provide any significant intrastate services, and generally do not use any facilities or rights-of-way located within the states.²⁸ Satellite service is provided using spectrum licensed pursuant to the Commission’s exclusive jurisdiction, and satellite service is inherently interstate in nature. In addition, any attempt by the states to regulate satellite service would be subject to federal preemption.²⁹

D. The RAF Should Allow Service Providers to Structure Rates and Service Plans that Respond to Consumer Preferences

The Public Notice seeks further comment on “issues relating to the use of extended contracts by [RAF]-supported providers.”³⁰ More specifically, the Public Notice asks whether the maximum permitted contract term should be 24 months, or whether other restrictions

²⁷ 47 U.S.C. § 214(e)(6).

²⁸ *See* 47 U.S.C. § 152(b) (reserving to the states authority over intrastate services and facilities).

²⁹ 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. *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 368-69 (1986). Any assertion of state jurisdiction over satellite broadband services necessarily would conflict with federal policy, and thus be subject to preemption.

³⁰ Public Notice at ¶ 30.

should be imposed.³¹ There is no basis for imposing these types of *ex ante* restrictions on the ability of broadband providers to employ rate structures of their choosing—including the use of extended contracts. Often, these rate structures are designed to make broadband service more affordable for consumers, and to facilitate their ability to obtain and retain broadband service. For example, an extended contract requirement aids in reducing the risk faced by providers that may wish to extend broadband networks to “unserved” areas, while allowing those providers to spread the costs of subscriber acquisition and equipment across an extended period—resulting in lower up-front and/or monthly rates.

Restricting providers’ flexibility to structure rates and service plans would be particularly bad policy in the context of satellite broadband services. As the Commission has recognized, satellite broadband providers typically offer nationwide service plans and pricing.³² As a result, consumers in “unserved” areas benefit from the market discipline imposed by vigorous competition in the more urbanized areas of the country. For similar reasons, any concern that satellite broadband providers would raise their rates in order to “game” the system are unfounded.³³

V. CONCLUSION

The Commission would best leverage the capabilities of satellite broadband providers, and thus best serve the public, by first recognizing that satellite broadband providers *already* are providing service that meets and exceeds the CAF performance requirements.

³¹ *Id.* ¶ 31.

³² *See, e.g., id.* ¶ 26.

³³ *See id.* ¶ 29.

Thus, ViaSat reiterates its request that the Commission reconsider its CAF framework, and instead utilize suitable market-based mechanisms to distribute CAF funds to the lowest-cost provider(s) in any given geographic area—including remote areas—consistent with the overwhelming record evidence in support of such approaches. Competitive providers—including satellite broadband providers—actually could extend service to many “unserved” households far more efficiently and far more cost-effectively than ILECs.

If the Commission decides to relegate competitive providers to a separate (and far smaller) RAF, the RAF program rules at least should ensure that the RAF is structured so as to maximize the ability of competitive providers to advance the Commission’s universal service objectives. ViaSat believes the most prudent course would be to structure the RAF so as to provide “near-term” support to unserved areas, as well as “permanent” support to remote areas that could not be served by ILECs except at “extremely high cost.” ViaSat also urges the Commission to structure the RAF so as to incent competitive providers to enter those areas, thereby expediting the ability of consumers in “unserved” areas to access broadband services, and encouraging the growth of sustainable competition. Accordingly, if the Commission decides to implement a separate RAF, ViaSat respectfully requests that the Commission structure that RAF in a manner consistent with these comments.

Respectfully submitted,

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February 19, 2013