

**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	)	

**REPLY 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. replies to the comments submitted in the above-captioned proceeding on February 19, 2013, which address issues related to the design and implementation of the proposed Remote Areas Fund (“RAF”). Those comments address the Public Notice released by the Commission on January 17, 2013 in the above-captioned proceeding, which “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*<sup>1</sup>] and supported by a diverse group of commenters.”<sup>2</sup>

**I. INTRODUCTION AND SUMMARY**

The record in this proceeding reflects widespread recognition that the existing framework for the Connect America Fund (“CAF”) is deeply flawed. This largely is due to the Commission’s unjustified decision to place the interests of incumbents over those of consumers by diverting the lion’s share of CAF support away from those broadband providers (such as ViaSat) with a record of actually improving the quality of broadband service, and instead toward

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<sup>1</sup> *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*”).

<sup>2</sup> 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).

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. ViaSat and others have provided extensive record evidence establishing the need to reform the CAF to facilitate more efficient, competitively-neutral outcomes that would expedite the delivery of high-quality broadband services to consumers, including satellite broadband service at speeds of 12/3 Mbps and higher—far exceeding the Commission’s nominal 4/1 Mbps minimum.

While ViaSat views the RAF as a “second-best” option, the record establishes that its implementation still would serve the public interest (assuming the broader CAF structure remains in place). In particular, the record reflects that the RAF could be used to leverage the capabilities of satellite broadband networks to extend high-quality broadband services to consumers in an efficient and expedited manner. Notably, consumers, the Commission, and even incumbents all acknowledge that today’s satellite broadband services are fully capable of supporting the most popular applications, and should play an important role in closing the broadband availability gap.

The record also establishes the need to implement the RAF without further delay to ensure that consumers in “remote” areas have access to affordable broadband services as soon as possible. There is no basis for delaying such implementation (as some commenters suggest) pending the final implementation of the *second* round of CAF funding, which could take years.

Similarly, the record supports the Commission’s proposal to provide “near-term” support through the RAF to allow consumers in “unserved” (but non-“remote”) areas to benefit from competitive broadband network capacity that already is deployed. While incumbents oppose this approach in an apparent attempt to shield themselves from competition, the record

establishes that this approach would yield considerable consumer benefits. Among other things, this approach would allow consumers to benefit *now* from 12/3 Mbps satellite broadband service, instead of waiting *years* for ILECs to introduce inadequate 3Mbps/768 kbps DSL service offerings in their area.

The record also supports the Commission’s proposal to structure RAF support as a “portable” consumer subsidy. As ViaSat has demonstrated, the most “portable” and pro-competitive approach would be to provide such support on a monthly basis, to facilitate the ability of consumers to switch service providers easily as their preferences or available options evolve. In contrast, it would be difficult to administer a “one-time” or “up-front” subsidy, which would create barriers to “portability” and true consumer choice.

Finally, the record supports proposals by ViaSat and others to streamline the process for designating eligible telecommunications carriers (“ETCs”). In particular, the record establishes that the Commission can and should manage the process for designating “nationwide” satellite broadband providers at the federal level. As ViaSat has explained previously, these providers are not subject to state jurisdiction, such that the Commission has full authority to manage the designation process under Section 214(e)(6) of the Act.

## **II. THE RECORD REFLECTS THE VALUABLE CONTRIBUTION THAT SATELLITE BROADBAND PROVIDERS WILL MAKE TO THE RAF**

### **A. The Availability of Quality Satellite Broadband Service Obviates Any Need to Lower Performance Requirements for the RAF**

The record in this proceeding reflects the valuable contribution that satellite broadband providers will make to the RAF, and more generally to the Commission’s efforts to extend broadband services to consumers in “unserved” areas of the country. Indeed, since the introduction of 12/3 Mbps satellite broadband service (which far exceeds the 4/1 Mbps and lower speeds that ILECs plan to offer in many “unserved” areas), the debate has shifted from *whether*

satellite technologies should play a role in extending broadband service to “unserved” households to *how* satellite technologies should be leveraged to maximize their potential contribution. This shift has been driven by record evidence showing that satellite broadband providers *currently* offer broadband services that meet and exceed the Commission’s performance requirements to virtually all of the United States—including remote and other “unserved” areas:

- **First**, as ViaSat explained in its initial comments, consumer response to ViaSat’s new Exede<sup>®</sup> service offering (which offers speeds of up to 12/3 Mbps and higher) has been overwhelming. Indeed, the data indicate that many consumers prefer high-speed satellite broadband service to terrestrial alternatives; approximately 40 percent of new Exede<sup>®</sup> Internet subscribers switched from slower terrestrial services (*e.g.*, DSL and wireless).<sup>3</sup>
- **Second**, the Commission itself recently found that improvements in the speed and quality of satellite broadband technologies, as reflected in ViaSat-1, had significantly “decreased latency and improved the quality of satellite broadband service available to subscribers.” More specifically, the Commission found that today’s satellite networks “support many types of popular broadband services and applications.”<sup>4</sup>
- **Third**, even USTelecom—which represents incumbent interests and has disagreed with much of what ViaSat has advocated in this proceeding—recognizes that satellite broadband providers currently offer high-quality services to consumers. Indeed, USTelecom argues that ILECs should be able to use satellite broadband to serve their customers and meet the broadband performance requirements established by the *USF/ICC Transformation Order*<sup>5</sup>—a tacit admission that satellite technologies satisfy those requirements.

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<sup>3</sup> 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.”).

<sup>4</sup> See *2013 Measuring Broadband America: February Report*, at 8 (2013).

<sup>5</sup> See Comments of the United States Telecom Association, WC Docket No. 10-90, at 7 (Feb. 19, 2013) (“USTelecom Comments”).

These facts put to rest any argument as to whether today’s satellite broadband services meet consumer needs and are capable of powering the applications that consumers use the most. These facts also demonstrate that there is no need for the Commission to relax its broadband performance requirements for purposes of the RAF. ViaSat therefore agrees with the Hawaii Department of Commerce and Consumer Affairs that “remote” areas, and the broadband providers serving those areas, should be subject to the same, technology-neutral performance requirements as other areas.<sup>6</sup>

**B. Satellite Broadband Provides a Quality Experience Across the United States—Including in Alaska**

Notwithstanding their admission that satellite broadband services could provide a “workable solution” in much of the country, the Alaska Rural Coalition suggests that satellite broadband services are not adequate for Alaska.<sup>7</sup> More specifically, it asserts that harsh geography and weather may interfere with the ability of some locations to receive satellite service. Similarly, Alaska Communications Systems (“ACS”) claims that satellite coverage may be limited at high latitudes due to line-of-sight issues,<sup>8</sup> and both ACS and General Communication, Inc. (“GCI”) suggest that satellite latency is too high to support required services in Alaska.<sup>9</sup>

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<sup>6</sup> See Comments of the Hawaii Department of Commerce and Consumer Affairs, WC Docket No. 10-90, at 5-6 (Feb. 19, 2013) (“Hawaii DCCA Comments”).

<sup>7</sup> See Comments of the Alaska Rural Coalition, WC Docket No. 10-90, at 23 (“ARC Comments”).

<sup>8</sup> See Comments of Alaska Communications Systems, Inc, WC Docket No. 10-90, at 5-6 (Feb. 19, 2013) (“ACS Comments”).

<sup>9</sup> See *id.* at 6; Comments of General Communication, Inc., WC Docket No. 10-90, at 4 (Feb. 19, 2013) (“GCI Comments”).

While no broadband service will provide the best solution for every individual consumer, satellite broadband services provide a quality experience and a cost-effective solution for most consumers. Indeed, as noted above, the data indicate that many consumers prefer high-speed satellite broadband service to terrestrial alternatives; approximately 40 percent of new Exede<sup>®</sup> Internet subscribers switched from slower terrestrial services (*e.g.*, DSL and wireless). Moreover, the Commission itself has found that technological improvements in satellite networks are capable of overcoming the latency inherent in such networks—and supporting the services that consumers use the most, including VoIP. Satellite broadband technologies also are more than capable of supporting two-way applications, including videoconferencing, distance learning, and telemedicine (which require the low jitter that satellite networks provide). In short, consumers are satisfied with the broadband services that ViaSat makes available to them today.

Notably, ViaSat’s network currently has coverage of most of Alaska’s population—a fact that ACS and GCI themselves acknowledge.<sup>10</sup> The fact that there is no existing satellite beam coverage of certain areas in Alaska is irrelevant; there also is no existing *terrestrial* infrastructure capable of delivering broadband to those areas.<sup>11</sup> The relevant questions are whether satellite technologies could be used to deliver broadband to those areas,

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<sup>10</sup> ACS Comments at 6; GCI Comments at 3.

<sup>11</sup> Thus, the Alaska Rural Coalition’s assertion that “satellite capacity in Alaska is limited” is inapposite. *See* ARC Comments at 23. The Coalition’s further claim that satellite coverage is “unlikely to increase at any affordable cost” is baseless and misleading. As ViaSat has shown, satellite technologies could be leveraged to provide efficient coverage of remote and rural areas in Alaska. Moreover, that approach would be far more “affordable,” and take far less time, than one using terrestrial infrastructure in lieu of satellite coverage.

and whether implementing such solutions would be more efficient than a costly build-out using terrestrial technologies. Generally, the answer to both questions is yes.

More specifically, ViaSat and other satellite broadband providers could extend beam coverage to additional parts of Alaska that would be capable of providing high-speed, high-quality broadband service at a fraction of the cost required to extend landlines to those areas. Notably, ACS has claimed that it is unable to extend broadband service to additional households for less than \$775 per household—and in some cases has insisted it would need support at much higher levels.<sup>12</sup> In contrast, ViaSat could have extended broadband service to *tens* or even *hundreds of thousands* of households in “unserved” areas with a capital expenditure per household of approximately thirty percent of the \$775 per household provided under Phase I, as estimated using the Commission’s own model.<sup>13</sup>

ViaSat acknowledges that terrestrial service providers in Alaska face certain challenges not faced by their counterparts in other parts of the United States. To the extent that this increases the costs of those terrestrial service providers, and the Commission otherwise feels that it would be appropriate to account for those costs, the Commission should consider granting relief in the context of the main CAF. Indeed, a number of Alaskan carriers already have filed petitions to waive certain of the CAF rules, including support limits, as they apply in Alaska.

However, diverting RAF support from *consumers* to subsidize the construction by *ILECs* of

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<sup>12</sup> See Petition for Waiver of the ACS ILECs, WC Docket No. 10-90 (Sep. 26, 2012).

<sup>13</sup> 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).

middle-mile terrestrial infrastructure—a *much* less cost-effective solution—would be counterproductive.<sup>14</sup>

### **III. THE RECORD REFLECTS THAT THE EXPEDITED IMPLEMENTATION OF THE RAF WOULD SERVE THE PUBLIC INTEREST**

The record in this proceeding also reflects broad support for the RAF, which underscores the need to implement this support mechanism in the near term. For example, the Hawaii Department of Commerce and Consumer Affairs expresses a “strong interest in the design and implementation of the RAF because of the number of consumers in Hawaii who need and are likely to be eligible for RAF support.”<sup>15</sup> Other parties express a desire to work with the Commission to ensure the success of the RAF.<sup>16</sup>

A functional RAF is critical if consumers in “remote” areas are to realize the full benefits of broadband access in the near term. Accordingly, ViaSat has, on multiple occasions, urged the Commission to expedite its implementation of the RAF. A number of other parties share this sentiment. For example, DISH, EchoStar, and Hughes Network Systems support the expeditious implementation of the RAF to ensure that consumers in remote areas do “not have to wait any longer to obtain the benefits of a critical service that the rest of the country enjoys.”<sup>17</sup>

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<sup>14</sup> See ARC Comments at 10-12; GCI Comments at 4.

<sup>15</sup> Hawaii DCCA Comments at 1.

<sup>16</sup> See, e.g., Comments of TransWorld Network, Corp., WC Docket No. 10-90 (Feb. 19, 2013).

<sup>17</sup> See Comments of DISH Network L.L.C., EchoStar Technologies L.L.C., and Hughes Network Systems, LLC, WC Docket No. 10-90, at 3 (Feb. 19, 2013) (“DISH Comments”).

The Wireless Internet Service Providers Association (“WISPA”) similarly supports the implementation of the RAF to “rapidly provide service to remote areas.”<sup>18</sup>

Only incumbent interests seek to delay the implementation of the RAF, advancing the fiction that this actually would serve consumers. For example, USTelecom asserts that “it would be most beneficial for the largest number of consumers if the resource-constrained Commission and Bureau focus now on quickly adopting a modified CAF Phase I and expeditiously implementing CAF Phase II . . . .”<sup>19</sup> As an initial matter, USTelecom underestimates the capabilities of the Commission and its staff, which are more than capable of analyzing multiple dimensions of a complex problem at the same time.<sup>20</sup>

More fundamentally, the approach advocated by USTelecom would leave many consumers in “remote” areas (and many other “unserved” areas) without access to broadband services for *years*. In contrast, competitive broadband providers (including, in particular, satellite broadband providers) could use RAF support to deploy service to many “remote” and “unserved” areas almost immediately—and, in many cases, offer higher speeds and quality levels than ILECs could after years of network build-out. In short, delaying the implementation of the RAF would harm consumers and benefit only ILECs by: (i) facilitating ILECs’ efforts to enlarge further the disproportionate share of total CAF support they already have secured; and (ii)

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<sup>18</sup> See Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90, at 7 (Feb. 19, 2013) (“WISPA Comments”).

<sup>19</sup> USTelecom Comments at 3.

<sup>20</sup> Even if the Commission did lack that capacity, Section 254(b) of the Act would demand that the Commission prioritize the implementation of the RAF over the general CAF. 47 U.S.C. § 254(b). As the Commission has found in the voice context, universal service objectives are best served by prioritizing support to the most costly households—*i.e.*, those that would be targeted by the RAF. 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).

undermining the ability of competitive providers to demonstrate their ability to provide, on an expedited basis, broadband services of higher quality and lower cost than those that ILECs plan to provide to non-“remote” areas.

Similarly unavailing is ACS’s suggestion that “[t]he Commission will make better-informed RAF policy choices once the CAF Phase II mechanism is in place . . . .”<sup>21</sup> The Commission has developed an extensive record with respect to CAF issues, already has implemented much of the CAF, and is more than capable of considering the interplay between the CAF and RAF without waiting for the *second* phase of the CAF to be implemented. Moreover, ACS ignores that: (i) *inaction* with respect to the RAF is itself a policy decision with severe consequences for consumers in “remote” and other “unserved” areas; and (ii) if necessary, the Commission always could adjust the RAF framework after the fact in light of the evolving structure of the main CAF.

ACS also ignores that the implementation of the RAF actually could provide valuable information that would inform policy choices made by the Commission in implementing CAF Phase II. For instance, the RAF could be used as a “test bed” that could demonstrate the value of market-based funding mechanisms in facilitating the efficient and expeditious extension of quality broadband services to consumers in “unserved” areas. In addition, the RAF could demonstrate how market incentives would drive the evolution of higher-speed, higher-quality broadband services (as compared to the CAF, which shields ILECs from competitive pressures to innovate). This information would be invaluable, and could challenge the assumptions upon which the Commission appears to have based its CAF policy to date.

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<sup>21</sup> ACS Comments at 1.

#### **IV. THE RECORD REFLECTS THAT CONSUMERS WOULD BENEFIT FROM THE PROVISION OF NEAR-TERM RAF SUPPORT IN “UNSERVED” AREAS**

##### **A. Near-Term Support Would Facilitate Expeditious Access to Broadband Services in “Unserviced” Areas**

In its comments, ViaSat seconded the Commission’s proposal 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[.]”<sup>22</sup> As ViaSat explained, this approach would: (i) facilitate the extension of broadband service to “unserved” areas on an expedited basis; and (ii) leverage competitive broadband technologies—including satellite broadband technologies—that *already* are well-positioned to achieve the Commission’s universal service objectives. Simply stated, 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—including high-speed, high-quality satellite broadband solutions—already are in place.

Other parties to this proceeding support this approach. For example, WISPA supports the near-term use of National Broadband Map (“NBM”) data to identify “unserved” areas that would be supported through the RAF.<sup>23</sup> Similarly, DISH, EchoStar, and Hughes Network Systems maintain that “initial RAF support should be made available as soon as

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<sup>22</sup> Comments of ViaSat, Inc., WC Docket No. 10-90, at 3-4 (Feb. 19, 2013) (“ViaSat Comments”). ViaSat also advocated an approach that would 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.

<sup>23</sup> WISPA Comments at 4. ViaSat agrees with the Hawaii Department of Commerce and Consumer Affairs that the Commission should supplement NBM data with that derived from other sources—including consumers themselves. *See* Hawaii DCCA Comments at 3-4.

practicable for customers that lack access to terrestrial broadband service that meets CAF standards.”<sup>24</sup>

Unsurprisingly, incumbent interests object to this approach, driven by a desire to shield themselves from competition while securing a perpetual flow of universal service support for their own benefit. These parties confuse the interests of *consumers* with those of *ILECs*. The primary objective of the CAF is not to ensure that ILECs receive government subsidies, but rather that consumers in “unserved” areas have access to affordable broadband services—regardless of which entity provides those services. This objective would be frustrated if competitive broadband providers were prevented from offering broadband services in “unserved” areas on an expedited basis because of the perceived need to protect ILEC interests.<sup>25</sup>

USTelecom complains that the Commission should refrain from providing near-term support through the RAF because consumers might prefer the service provided by a competitive provider, and therefore choose to retain that provider’s service even after the ILEC has implemented its network.<sup>26</sup> In other words, USTelecom argues that ILECs must be protected by the Commission because they might lose in head-to-head competition with other service providers. This outcome would not be unlikely were a consumer to face the choice between

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<sup>24</sup> DISH Comments at 5.

<sup>25</sup> GCI complains that providing near-term support through the RAF would “strongly favor satellite-based service”—presumably because terrestrial providers have not built broadband networks in “unserved” areas and thus could not benefit from near-term RAF support. *See* GCI Comments at 5. Yet, this is precisely the correct result; the Commission should not sacrifice the ability of consumers to access quality broadband services simply because terrestrial providers like GCI would not benefit from the underlying support.

<sup>26</sup> USTelecom Comments at 4.

retaining superior 12/3 Mbps satellite broadband services (such as those offered by ViaSat) and switching to inferior DSL services with 4/1 Mbps or lower speeds.

While competition might not be good for *ILECs*, no cognizable harm to *consumers* possibly could flow from allowing them to choose the provider that best meets their own needs. It bears emphasis that consumers would refuse to switch to the ILEC's service, once available, only if: (i) the ILEC's service were more expensive than that offered by the competitive provider; or (ii) the ILEC's service were inferior to that offered by the competitive provider. In either case, consumers would be left in a better position than they would enjoy if they were forced to accept the ILEC's service.

USTelecom's suggestion that consumers would be forced to remain with a competitive provider because they *already* have paid for equipment and installation suffers from flawed economic reasoning; rational consumers ignore sunk costs, and consider only their costs and preferences on a going-forward basis.<sup>27</sup> Similarly unavailing is ACS's suggestion that consumers would be harmed by long-term contracts with competitive service providers. As ViaSat has explained, such contracts allow service providers to best meet the needs of their customers through lower prices and/or the ability to recoup start-up costs through monthly rates.

Simply stated, the protectionist approach advocated by incumbent interests is contrary to the Communications Act, which seeks to build sustainable competition in all areas of the country, as well as decades of Commission precedent. The fact that ILECs might not exercise their "right of first refusal" to receive CAF funds absent such protection is hardly a

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<sup>27</sup> Even if this were a valid concern, it is one that could be addressed easily by structuring the RAF as a monthly subsidy and encouraging support recipients to recoup their installation and equipment fees through their monthly rates. ViaSat plans to adopt this approach.

reason for the Commission to abandon its commitment to competition. ILECs were granted that “right of first refusal” in the first place, notwithstanding its inconsistency with the principles of competitive and technological neutrality, because the Commission assumed that ILECs would be in the best position to extend broadband service to “unserved” areas quickly and cheaply.<sup>28</sup> Thus, under the Commission’s own reasoning, the “right of first refusal” is not worth protecting where: (i) a competitor has beat the ILEC to market; and (ii) ILECs themselves admit that the competitor may provide services that better meet the needs of consumers.

**B. Near-Term Support Would Be “Efficient”**

USTelecom claims that providing near-term support to “unserved” areas through the RAF would be “inefficient” because that support would go to at least some areas that subsequently would be eligible for CAF support.<sup>29</sup> Similarly, ACS asserts that providing near-term support in “unserved” areas through the RAF would be the equivalent of supporting multiple networks in those areas, contrary to the *USF/ICC Transformation Order*.<sup>30</sup> While ViaSat appreciates the newfound interest in efficiency espoused by these incumbents—which have favored the “right of first refusal” and other *inefficient* mechanisms for shielding *inefficient* ILECs from competition—these arguments are misguided for a number of reasons.

First, USTelecom and ACS fail to consider the significant harm caused by delaying access to broadband services in “unserved” areas. If these ILEC interests have their way, consumers in these areas would be left without broadband service for *years*—a result that could be viewed as “efficient” only if the Commission were willing to ignore the consumers who

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<sup>28</sup> See *USF/ICC Transformation Order* ¶ 177.

<sup>29</sup> USTelecom Comments at 4.

<sup>30</sup> ACS Comments at 3.

would be “left behind,” contrary to Section 254 of the Act and the Commission’s universal service objectives. Stated differently, there would be nothing “inefficient” about ensuring that consumers have near-term access to beneficial broadband services—particularly where those services offer superior speed and quality to those that ILECs plan to offer.

Second, the provision of near-term support through the RAF would be unlikely to result in widespread support for duplicative network build-out—and if it did this would be consistent with Commission policy in other areas. The Commission *already* is funding multiple providers in a given area through the overlap of the main CAF and the Mobility Fund. More importantly, near-term support, by its nature, likely would flow to service providers that *already* have deployed capacity to a given geographic area—*e.g.*, satellite providers with existing beam coverage. Such support simply would facilitate consumer access to that capacity at a reasonable price point.

Third, the provision of near-term support through the RAF need not siphon funds away from “remote” areas.<sup>31</sup> As ViaSat explained in its initial comments, the Commission has not imposed any hard cap on annual RAF support, or 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.<sup>32</sup> Thus, there is no reason to believe that the provision of near-term support would “squeeze out” longer-term support to “remote” areas.

Finally, the provision of near-term support need not increase the size of the overall CAF. To the extent that the Commission feels the need to offset any increase in RAF

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<sup>31</sup> See, *e.g.*, Hawaii DCCA Comments at 4-5.

<sup>32</sup> *USF/ICC Transformation FNPRM* ¶ 1223 (emphasis added).

support, the Commission could achieve that objective through the main CAF—which represents more than 90 percent of the \$4.5 billion CAF budget and which dwarfs the proposed \$100 million RAF. ViaSat notes that, if USTelecom is taken at its word, some ILECs would decline to exercise their “right of first refusal” if near-term support is provided through the RAF. Under the existing CAF framework, that would lead to the use of a competitive reverse auction or other market-based mechanism to distribute support, which in all likelihood would yield significant cost savings.

**V. THE RECORD REFLECTS THE NEED TO ENSURE THE GROWTH OF SUSTAINABLE COMPETITION BY STRUCTURING THE RAF AS A “PORTABLE” CONSUMER SUBSIDY**

In its comments, ViaSat supported the Commission’s proposal to structure the RAF as a “portable” consumer subsidy in order to facilitate competition and consumer choice, while ensuring that the RAF remains subject to some level of market discipline.<sup>33</sup> As ViaSat noted, 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. For this reason, ViaSat suggested that RAF support be structured as a monthly subsidy, which would facilitate the consumer’s ability to move to a new service provider with a minimum of red tape.

Several parties instead suggest approaches that incorporate some element of “up-front” support. More specifically, WISPA suggests structuring RAF support as a one-time, \$500

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<sup>33</sup> ViaSat Comments at 11-12. ViaSat also supported the use of a market-based mechanism to determine the actual support amount.

“up-front” voucher.<sup>34</sup> DISH, EchoStar, and Hughes Network Systems, while proposing a monthly subsidy, also proposes a “non-recurring subsidy to establish each customer account[.]”<sup>35</sup>

As ViaSat observed in its comments, 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 also would be extremely difficult to determine an appropriate level of “up-front” support. While WISPA suggests that one-time support could be administered easily like the DTV coupon program, WISPA ignores that the RAF would support not only the one-time purchase of equipment, but also ongoing service. Any attempt to reimburse a support recipient for prospective service-related costs would require the Commission to predict how markets, broadband technologies, and cost structures will develop over time. On the one hand, there would be a danger of *underestimating* the required subsidy level, which would need to be sufficient to support the provision of service to the consumer on an ongoing basis—perhaps for a period of many years. On the other hand, there would be a danger of *overestimating* the required subsidy level; many areas that currently are “unserved” could benefit from robust competition within a few years, which would reduce costs and rates. Given these difficulties, it would be more sensible to structure the RAF as a monthly subsidy, the level of which could be recalibrated over time in response to changes in prevalent market conditions.

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<sup>34</sup> WISPA Comments at 5-6.

<sup>35</sup> DISH Comments at 6.

## **VI. THE RECORD SUPPORTS STREAMLINING THE PROCESS FOR DESIGNATING SATELLITE PROVIDERS AS ETCS**

ViaSat has consistently urged the Commission to explore ways to streamline the ETC designation process to permit satellite broadband providers with “nationwide” service offerings to be designated at the *federal* level, instead of being forced to seek ETC designation in every state in which they plan to provide service.<sup>36</sup> The record supports streamlining the designation process in this fashion. Among others, DISH, EchoStar, and Hughes Network Systems urge the Commission to “make clear that satellite broadband providers may seek eligibility for support on a nationwide basis from the FCC rather than the states.”<sup>37</sup>

As ViaSat has noted, the ETC designation process is time-consuming, and would delay significantly the ability of satellite broadband providers to extend broadband service to “unserved” areas. “Nationwide” providers like ViaSat—which use centralized infrastructure (*e.g.*, a satellite) to provide service directly to consumers in multiple states—would face particular difficulties if forced to satisfy the requirements and comply with the regulations of up to 50 (or more) different jurisdictions. Given these impediments, and the significant benefits that satellite broadband providers can deliver, there are compelling reasons to manage the designation process for such providers at the federal level. As the Commission recognized in 2000, “it is unreasonable to expect prospective entrants to enter a high-cost market and provide service in

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<sup>36</sup> See ViaSat Comments at 15-16; *see also* Comments of the Satellite Broadband Providers, WC Docket Nos. 10-90, at 19-21 (Apr. 18, 2011); Comments of the Satellite Broadband Providers, WC Docket Nos. 10-90, at 10-12 (Jan. 18, 2012).

<sup>37</sup> DISH Comments at 7.

competition with an incumbent carrier that is receiving support, without knowing whether they are eligible to receive support.”<sup>38</sup>

As ViaSat has explained previously, Section 214(e)(6) of the Act grants the Commission the necessary authority to designate satellite broadband providers as ETCs at the federal level. More specifically, Section 214(e)(6) provides that the Commission may designate as ETCs service providers that are “not subject to the jurisdiction of a State commission.”<sup>39</sup>

While Section 214(e)(6) does not, in and of itself, exclude any technology from the scope of state jurisdiction, today’s satellite broadband networks are inherently interstate in nature. Satellite providers do not provide any significant intrastate services, and generally do not use any facilities or rights-of-way located within the states.<sup>40</sup> Satellite services are provided using spectrum licensed pursuant to the Commission’s exclusive jurisdiction. Unlike terrestrial wireline and wireless networks, today’s satellite networks serve multiple jurisdictions using the same facilities (*e.g.*, a satellite), which would not be separable on a state-by-state basis if multiple states attempted to regulate such networks. Consequently, while states generally have not attempted to regulate satellite services, any such attempt would be subject to federal preemption.<sup>41</sup>

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<sup>38</sup> *Federal-State Joint Board on Universal Service*, Twelfth Report and Order, 15 FCC Rcd 12208, at ¶ 120 (2000) (“*USF Twelfth Report and Order*”).

<sup>39</sup> 47 U.S.C. § 214(e)(6).

<sup>40</sup> *See* 47 U.S.C. § 152(b) (reserving to the states authority over intrastate services and facilities).

<sup>41</sup> 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.

That said, ViaSat understands that the Commission may be reluctant to preempt or otherwise preclude state involvement in the designation process for satellite broadband providers. While the Commission has found that Section 214(e)(6) does not place any technology beyond the scope of state authority on a *per se* basis,<sup>42</sup> it would be reasonable, and consistent with the Act, for the Commission to adopt a rebuttable presumption that states do not exercise jurisdiction with respect to such providers. This would afford states the opportunity to present evidence to the Commission establishing that they can and do exercise such jurisdiction, while otherwise permitting satellite broadband providers to seek designation from the Commission on a “nationwide” basis without needing to first apply to each state.

## **VII. CONCLUSION**

The record in this proceeding clearly establishes that satellite providers can make a significant contribution to the Commission’s efforts to extend broadband service to “unserved” areas. Indeed, market data, Commission studies, and incumbent business plans all reflect that today’s satellite broadband services—including ViaSat’s Exede<sup>®</sup> service, which offers speeds of 12/3 Mbps and higher—are capable of meeting the Commission’s broadband performance requirements and powering the most popular consumer applications.

If the Commission does not act to reform the overall framework for the CAF, as proposed by ViaSat and others, it should at least ensure that the RAF fully leverages the capabilities of satellite broadband networks. As discussed herein, this result could be facilitated by: (i) expediting the implementation of the RAF to ensure that consumers have access to affordable broadband services as soon as possible; (ii) providing near-term support through the RAF to allow satellite broadband providers and other competitive providers with existing

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<sup>42</sup> *USF Twelfth Report and Order* ¶ 115.

network coverage to extend service to “unserved” households almost immediately; (iii) encouraging competition by structuring RAF support as a “portable” and monthly consumer subsidy; and (iv) streamlining the process for ETC designation, including by allowing satellite broadband providers to pursue “nationwide” ETC designation at the federal level.

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 and ViaSat’s earlier submissions 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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