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

Application of	)	
VIASAT, INC.	)	Call Sign: S2985
For Amendment to Petition for Declaratory Ruling Granting Access to the U.S. for the Viasat System	)	File No. SAT-APL-20180927-00076

REPLY OF SPACE EXPLORATION TECHNOLOGIES CORP.

Space Exploration Technologies Corp. ("SpaceX") files these brief reply comments to emphasize two points in response to comments made by Hughes Network Systems, LLC ("Hughes") in the above-cited proceeding. First, the Commission has specifically rejected Hughes' argument that changing orbital planes is tantamount to changing proposed orbital locations for purposes of the Commission's rule on major amendments. Second, in assessing Hughes' arguments, the Commission should consider Hughes' disparate reactions to two currently pending amendments to applications for a non-geostationary orbit ("NGSO") satellite system. In this case, Hughes filed a Petition to Dismiss or Defer the proposal by Viasat Inc. ("Viasat") to reduce the overall number of satellites in its system while maintaining most other operating parameters. In the other case, Hughes made no comment whatsoever in response to the proposal by WorldVu Satellites Limited ("OneWeb") to add over 1,200 satellites to its proposed constellation and to use over 16 gigahertz of additional spectrum. Notably, Hughes holds an equity interest in OneWeb and reportedly has contracts worth over $300 million to provide hardware and related technology for OneWeb's NGSO system. The Commission should recognize this regulatory gamesmanship and treat Hughes' Petition accordingly.

A. The Commission Has Rejected Hughes' Legal Argument

In its initial comments on this application, SpaceX argued that the reduction in satellites and radiofrequency interference proposed by Viasat should be considered minor amendments to its NGSO application that do not require reassignment to a new processing round to protect the Commission's licensing regime.[1] In its Petition, Hughes argued that Viasat proposed "material technical changes" to its NGSO system, and therefore its application constitutes a major amendment under Section 25.116(b) of the Commission's rules that should be dismissed from the current processing round or deferred for consideration in a subsequent processing round.[2] In particular, Hughes contends that, by proposing an additional orbital plane in its NGSO constellation, Viasat's amendment seeks to change the orbital location of all satellites in the constellation – meeting the definition of major amendment by "chang[ing] the proposed . . . orbital locations to be used."[3]

The Commission has previously rejected Hughes' argument. Specifically, when Orbcomm requested a change in orbital planes, one party opposed the amendment based on the argument that a change in orbital plane should be considered a major amendment. The Commission dismissed this argument, holding that "any discussion of orbit locations is inapposite here, as LEO systems

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1 *See* Comments of Space Exploration Technologies Corp., IBFS File No. SAT-APL-20180927-00076 (Dec. 3, 2018).

2 *See* Comments and Petition to Dismiss or Defer, IBFS File No. SAT-APL-20180927-00076 (Dec. 3, 2018) ("Hughes Petition").

3 *See id.* at 2-3.

(continued…)

operate in orbital planes, and are not assigned to specific – and scarce – geostationary orbital slots."[4] The same logic applies to Hughes' argument, and it should be rejected here as well.

B. The Commission Should Reject Hughes' Strategic Behavior

The concerns raised by Hughes about potential interference from Viasat's truly modest amendment are strikingly dissonant with Hughes' contrasting approach to a much more substantial amendment of another NGSO system application. That amendment, filed by OneWeb, proposes to double the number of mid-Earth orbit ("MEO") satellites in OneWeb's V-band NGSO constellation from 1,280 satellites to 2,560, and to use over 16 gigahertz of additional spectrum in the Ku-, Ka-, and E-bands on those MEO satellites.[5] Because that amendment involves the use of additional frequencies and would result in additional interference to other licensed spectrum users, it clearly falls within the category of major amendments covered by Section 25.116(b).

However, Hughes made no comment whatsoever, much less an objection, to that OneWeb application requesting the addition of 1,280 NGSO satellites and 16 gigahertz of spectrum while it does object to a Viasat application requesting to use four fewer NGSO satellites and no additional spectrum. This might seem puzzling, save for Hughes' role as an early investor in OneWeb, reportedly with contracts worth over $300 million to provide hardware and related technology to support OneWeb's NGSO system.[6] By contrast, Viasat's proposed NGSO system could compete

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4 *Orbital Communications Corp.*, 9 FCC Rcd. 6476, ¶ 26 (1994). *See also* Opposition to Petition to Dismiss or Defer and Reply to Comments, IBFS File Nos. SAT-PDR-20161115-00120 and SAT-APL-20180927-00076, at 5-6 (Dec. 18, 2018) (explaining why "orbital location" concept is inapposite in the NGSO context).

5 *See* Amendment, IBFS File No. SAT-AMD-20180104-00004 (Jan. 4, 2018).

6 *See, e.g.,* Press Release, "Hughes Signs $190 M Contract with OneWeb for Production of Ground Network System for Global Internet Services," (Nov. 7, 2017), *available at* https://www.echostar.com/Press/Newsandmedia/Hughes%20Signs%20190M%20Contract%20with%20OneWeb.aspx; Press Release, "OneWeb announces $500 million of A-round funding with group of leading international companies," (June 25, 2015), *available at* http://www.oneweb.world/press-releases/2015/oneweb-announces-500-million-of-a-round-funding-with-group-of-leading-international-companies.

with OneWeb and lacks any similar financial ties with or direct benefits to Hughes. The Commission should discourage such anticompetitive regulatory gamesmanship by rejecting Hughes' Petition.

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The amendment proposed by Viasat reduces the overall number of satellites and does not request additional frequencies or increase the potential for interference to other licensed systems. Amendments with such characteristics are consistent with the Commission's policy of allowing NGSO providers to update their systems when necessary while ensuring the changes do not harm other providers. This balance encourages competition and ultimately leads to better service for consumers. SpaceX therefore encourages the Commission to consider Viasat's amendment within the current processing round.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 31st day of December, 2018, a copy of the foregoing Comments was served by First Class mail upon:

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