

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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Applications of)	
VIASAT, INC.)	
For a License to Operate VIASAT-89US)	File No. SAT-LOA-20190617-00048
in the 19.7-20.2 GHz and 29.5-30.0 GHz)	
Frequency Bands at 88.9° W.L.)	
To Modify Market Access Grant)	File No. SAT-MOD-20190617-00047
and for Extension or Waiver of Milestone)	
Due Date)	
_____)	

CONSOLIDATED REPLY OF INMARSAT, INC.

Inmarsat, Inc. (“Inmarsat”) hereby replies to the responses filed by Viasat, Inc. (“Viasat”) in the above referenced proceedings.¹

As Inmarsat explained in its initial comments, Viasat failed to justify its extraordinary request for a 2.5-year extension of a 5-year milestone period on the eve of the launch and operate deadline for Viasat-3, and must provide additional information before the Commission even considers granting the application.² In its response, Viasat touts the capabilities of its Viasat-3 satellite in ways that are wholly irrelevant to the issue of milestone compliance. On the decisive question *actually before* the Commission, however—whether “unforeseeable circumstances beyond the applicant’s control” explain these massive delays and “justif[y]” the inordinately long

¹ See Response of Viasat, Inc., IBFS File No. SAT-LOA-20190617-00048 (filed Sep. 24, 2019) (“Viasat LOA Response”); Consolidated Response and Opposition of Viasat, Inc., IBFS File No. SAT-MOD-20190617-00047 (filed Sep. 24, 2019) (“Viasat MOD Response”).

² See Comments of Inmarsat, Inc., IBFS File Nos. SAT-LOA-20190617-00048 and SAT-MOD-20190617-00047 (filed Sep. 9, 2019) (“Inmarsat Comments”).

“extension period requested”—Viasat simply has nothing to add.³ Instead, Viasat curiously claims that the Commission need not “parse” whether the delays “were or were not” within its control,⁴ even though that is the *only* applicable basis for granting an extension, and even though applicants must describe the circumstances justifying an extension “with specificity.”⁵

Viasat fares no better in its attempt to distinguish past denials of milestone extension requests, and its effort to embrace prior grants overlooks significant issues that explain precisely why a grant here would be premature. In these circumstances, the Commission has no choice but to require much more information from Viasat, especially given the potential impact for the Viasat-3 satellite on other systems operating at adjacent orbital slots and the very lengthy extension that it has requested.

DISCUSSION

I. VIASAT STILL HAS NOT PROVIDED THE INFORMATION NECESSARY TO JUSTIFY THE EXTRAORDINARY MILESTONE EXTENSION IT SEEKS.

Section 25.117(e) provides that a milestone extension will be granted only when the additional time is required due to unforeseeable circumstances beyond the applicant’s control, or there are unique and overriding public interest concerns that justify an extension.⁶ Viasat’s application failed to meet this standard, and its responses did not submit the information necessary to cure the defect. Accordingly, the Commission should not consider granting a milestone extension until it has received such information.

³ 47 C.F.R. § 25.117(e).

⁴ Viasat MOD Response at 6.

⁵ 47 C.F.R. § 25.117(e).

⁶ *See id.*

A. The Commission Must Reject Viasat’s Effort To Evade the “Unforeseeable Circumstances” Standard.

By its own terms, Section 25.117(e)(1) requires the Commission to determine whether an applicant’s extension request is based on unforeseen circumstances beyond the applicant’s control described with specificity in the application.⁷ This is not a standard “invented” by Inmarsat,⁸ but rather a straightforward reading of the words in the rule. Nevertheless, Viasat asserts that the Commission “typically declines to parse through which delays were or were not within the applicant’s control.”⁹ In lieu of applying the standard that *actually* governs, Viasat asks the Commission to adopt an alternative standard that exclusively considers the percentage of the “total cost” for development and manufacturing expended by the applicant.¹⁰ Viasat’s attempt to set aside the applicable extension standard must be rejected.

As an initial matter, Viasat’s proposed standard would read the “unforeseeable circumstances” requirement right out of the rule. While Viasat urges the Commission to consider the “totality of the circumstances,”¹¹ unforeseeable circumstances beyond the applicant’s control must be a necessary component of any “holistic” analysis for the text of Section 25.117(e)(1) to have any force and effect. Moreover, while Viasat pays lip service to its ability to satisfy the *even stricter* “unique and overriding public interest concerns” standard available under Section 25.117(e)(2), it does not come remotely close to justifying relief under that provision. Viasat all but concedes that its expended costs do not distinguish it from past Section 25.117(e)(1)

⁷ *Id.*

⁸ *See* Viasat MOD Response at 4.

⁹ *Id.* at 6.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 5.

applicants,¹² and the projected capabilities of Viasat-3 are insufficient to establish “unique and overriding public interest concerns” under longstanding Commission precedent.¹³ Indeed, the only truly “unique” aspect about Viasat’s application is the extraordinary length of the extension requested. That is not a reason to dilute the Section 25.117(e)(2) standard so that Viasat’s application may be granted. It is a reason to require Viasat to explain with specificity the unforeseeable circumstances outside its control that caused such an extensive delay, as Section 25.117(e)(1) straightforwardly requires, and to justify the precise extension period requested, as both Sections 25.117(e)(1) and (e)(2) demand.

Moreover, the precedent that Viasat claims supports its alternative standard actually confirms that “unforeseeable circumstances beyond the applicant’s control” must be present, especially for extensions as long as 30 months.¹⁴ In *EarthWatch*, the Commission *denied* an extension precisely because it could not determine whether the claimed cause of delay was within the applicant’s control.¹⁵ The Commission ultimately granted a very short-term waiver of the milestone extension rules based in large part upon the fact that earth observation systems are not mutually exclusive, and thus granting EarthWatch more time would not preclude other licensees in the service from going forward with their own plans.¹⁶ In this case, by contrast, granting an extension would allow Viasat to continue to hold onto a valuable orbital slot to the exclusion of others for an additional 2.5 years.

¹² *Id.* at 4 & n.5. *See also* Comments of O3b at 6, IBFS File No. SAT-MOD-20190617-00047 (filed Sep. 9, 2019) (“O3b Comments”).

¹³ *See infra* note 30 & accompanying text.

¹⁴ *See* Viasat MOD Response at 6-7 n.18.

¹⁵ *EarthWatch, Inc.*, Order and Authorization, 15 FCC Rcd. 13594 ¶ 8 (Int’l Bur. 2000).

¹⁶ *Id.* ¶ 11.

In addition, even though it granted EarthWatch a short-term waiver, the Commission found that EarthWatch had failed to justify an 18-month extension, and instead granted only 10 additional months.¹⁷ Here, Viasat requests an unprecedented 30 additional months—a full year longer than the request *rejected* in *EarthWatch* and more than double the extension granted in any case cited by Viasat.¹⁸

Likewise, in *ICO*, the Commission explicitly relied on the presence of unforeseeable circumstances beyond the applicant’s control, described with the specificity the rules require, in granting a far more modest 5-month extension.¹⁹ Only after considering the “performance anomalies” described on the record—and the importance of malfunctioning parts to the applicant’s original satellite design—did the Commission conclude that the delays were caused by outside circumstances rather than an applicant-driven late-stage “design change.”²⁰ Thus, neither *EarthWatch* nor *ICO* allow the Commission to ignore the question of “which delays were or were not within the applicant’s control.”²¹ To the contrary, both cases underscore the critical importance of providing the Commission with a detailed, credible explanation of what exactly went wrong and when, why the problems were unforeseeable, and why the applicant stood helpless in its efforts to right the ship—facts that appear nowhere on the record for this application.

Finally, Viasat’s suggestion that its percentage-of-total-cost standard would faithfully advance the Commission’s “milestone policies” is incorrect.²² If simply paying a significant amount of money to a satellite contractor were sufficient to get an extension, then any licensee

¹⁷ *Id.* ¶ 12.

¹⁸ *See* Inmarsat Comments at 10 (discussing cases).

¹⁹ *ICO Satellite Services, G.P.*, Memorandum Opinion and Order, 22 FCC Rcd. 2229 ¶ 15 (Int’l Bur. 2007).

²⁰ *Id.* ¶ 16.

²¹ Viasat MOD Response at 6.

²² *Id.* at 5.

with deep pockets would be free to defer launch for years without any further justification. Yet the Commission’s milestone requirements were designed to avoid precisely that outcome, and to prevent warehousing by requiring the timely completion of licensed systems. As the Commission repeatedly has explained, “[r]equiring licensees to make and fulfill realistic construction and launch commitments prevents increasingly scarce orbital resources from being warehoused by licensees. Such warehousing could hinder the availability of services to the public *at the earliest possible date* by blocking entry by other entities willing and able to proceed immediately with the construction and launch of their satellite systems.”²³ Viasat has already had five years to deploy Viasat-3, yet it requests another 2.5 years to achieve that goal. The fact that it has spent money on its system is not alone sufficient to justify such an extraordinary request.

B. Because the “Unforeseeable Circumstances” Standard Clearly Applies, Viasat’s Extension Request Cannot Be Granted Without More Information.

Given its preferred (but erroneous) reading of the rule, it is not surprising that Viasat has failed to provide all of the information necessary to make the required determination. The Commission has made clear that “decisions to incorporate additional technological capabilities into a satellite are business decisions within the control of the licensee, and therefore cannot justify a milestone extension.”²⁴ Thus, if the delays were the result of changes Viasat requested from its vendor, they would provide no basis for an extension. Viasat’s application and responses provide virtually no insight into that critical question, and similar issues related to the “unforeseeable circumstances” inquiry. Viasat’s continuing refusal to provide additional information should preclude grant of its application.

²³ *PanAmSat Licensee Corp.*, Memorandum Opinion and Order, 16 FCC Rcd. 11534 ¶ 12 (2001) (emphasis added). See also *Amendment of Commission’s Space Station Licensing Rules and Policies*, Notice of Proposed Rulemaking and First Report and Order, 17 FCC Rcd. 3847 ¶ 101 (2012).

²⁴ *PanAmSat*, 16 FCC Rcd. 11534 ¶ 13.

Indeed, given its claims to have “expended well over 80 percent of the total cost of developing and manufacturing its first ViaSat-3 satellite,” that “[t]he satellite bus has been constructed and is in advanced integration and testing stages,” and that “long-lead items and other components have been acquired and are available for integration,”²⁵ one can only wonder why Viasat would need another 15 months to complete satellite construction and a total of 30 months to satisfy its milestone. Thus, even if the Commission were inclined to conclude that *some* additional time could be warranted, it cannot grant the application until Viasat has provided the information necessary to justify the “precise extension period” that Viasat requested.²⁶

II. VIASAT’S ATTEMPTS TO JUSTIFY ITS EXTENSION BASED ON PRIOR COMMISSION PRECEDENT ARE UNAVAILING.

In their comments, both Inmarsat and O3b Limited (“O3b”) cited prior Commission precedent to show that the Commission has either required more from applicants than Viasat has provided before granting an extension or denied an extension based on such shortcomings.²⁷ In response, Viasat attempts to show that the circumstances presented here are sufficient to satisfy past precedent. Its arguments are unconvincing.

First, Viasat attempts to distinguish itself from past applicants by pointing yet again to the costs it has expended to date, claiming that those costs establish its “intent to proceed with . . . deployment.”²⁸ As explained above, however, Viasat’s willingness to deploy *at some point in time* is not sufficient. To comply with Section 25.117(e)(1), and to serve the anti-warehousing objectives of the Commission’s milestone requirements, Viasat must provide a compelling reason for why it has diverged so sharply from the schedule to which it committed.

²⁵ Viasat MOD Response at 2.

²⁶ 47 C.F.R. § 25.117(e)(1) & (e)(2).

²⁷ See Inmarsat Comments at 7-9; O3b Comments at 3-7.

²⁸ Viasat MOD Response at 4.

Viasat also attempts to distinguish itself based on what it claims to be the “revolutionary” capabilities of its Viasat-3-class design.²⁹ But all satellite operators tend to think highly of the systems they have designed. Recognizing this fact, the Commission has rejected extension arguments premised on the applicant’s claims about its proposed satellite’s capabilities, finding that allowing a licensee “to delay implementation of its system based on the ‘uniqueness’ of its system would allow it to encumber spectrum to the exclusion of other applicants seeking to implement their own ‘unique’ systems.”³⁰ Here again, Viasat’s belief that its satellite is “revolutionary” should not figure into the Commission’s extension analysis.

Viasat also tries to embrace a case in which the Commission extended a launch and operate milestone for DIRECTV.³¹ Yet in that case, DIRECTV received a small fraction of the 30 additional months that Viasat seeks here. And to justify the much lesser relief that it requested, DIRECTV provided the Commission with far more information, explaining not only the precise reason for a construction delay—its contractor’s inability to secure a basic satellite component—but the precise timing of the delay and its efforts to overcome it.³² Specifically, DIRECTV explained its decision to move the project to a different contractor in order to expedite delivery of the satellite. That decision meant that the delivery date would fall slightly beyond the final milestone “unless the parties could accelerate production along the way.”³³ Ultimately, the satellite was scheduled to be delivered just 45 days after that final milestone. By the time the

²⁹ *Id.* at 5.

³⁰ *AstroVision International, Inc.*, Order, 22 FCC Rcd. 2379 ¶ 14 (Int’l Bur. 2007).

³¹ See Viasat MOD Response at 5-6 (citing *DIRECTV Enterprises, LLC*, 30 FCC Rcd. 4796 (2015)).

³² See Application for Milestone Extension at 3-4, IBFS File No. SAT-MOD-20140624-00075 (filed June 24, 2014).

³³ *Id.* at 3. Thus, it appears that DIRECTV continued to accelerate construction in order to meet the milestone, and in fact cut the delivery time by over one month. Its decision to file for extension more than a month before the milestone date is much more understandable than Viasat’s decision to file the day before its deadline for a satellite that will take another 15 months to complete.

Commission ruled on the extension request, DIRECTV had delivered the completed satellite to the launch provider, and the Commission found that its imminent launch justified a limited waiver of the final milestone.³⁴

In contrast to DIRECTV, Viasat claims that it will need another 15 months to complete satellite construction, and a total of 30 months to satisfy its milestone. Moreover, while Viasat bases its extension request on unexpected delays experienced with one of its vendors, it has so far declined to provide complete information on when those delays first arose or what caused them. Thus, Viasat's case is markedly different from the one presented by DIRECTV. In fact, the grant to DIRECTV shows precisely why Viasat's application is facially deficient.

CONCLUSION

Viasat makes no attempt to articulate the facts required to justify a milestone extension, and resorts to claiming that the Commission should hold it to a lesser standard—because “broadband.” Neither the Commission's milestone rules, nor their underlying objectives, nor the precedent applying them supports Viasat's extreme position. Under these circumstances, and especially considering the unusual length of the extension period sought, the Commission must enforce its rules and require Viasat to describe with specificity why unforeseeable circumstances beyond its control merit providing another 30 months to launch and operate Viasat-3. This is especially important given that Viasat has proposed a system that does not conform to its ITU filings and could therefore cause excess interference to other systems operating at nearby orbital locations. If Viasat persists in its refusal to provide the information required, the Commission has no choice but to deny the application.

³⁴ See *DIRECTV*, 30 FCC Rcd. 4796 ¶ 6.

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