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

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| In the Matter of | ) | |
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| ViaSat, Inc. | ) | File No. SAT-LOI-20160208-00015 |
| | ) | |
| Letter of Intent Seeking Authority to Access the U.S. Market Using a Ka-Band Satellite at the Nominal 109º W.L. Orbital Location | ) | |

**OPPOSITION OF VIASAT, INC.**

ViaSat, Inc. ("ViaSat") opposes the Petition for Imposition of Conditions ("Petition") filed by Telesat Canada ("Telesat") in connection with the above-referenced application ("Application").

In the Application, ViaSat seeks authority to provide broadband service to the United States using a Ka-band satellite that will operate at the nominal 109º W.L. orbital location under authority of the United Kingdom in the 18.3-19.3 GHz, 19.7-20.2 GHz, 28.1-29.1 GHz and 29.5-30.0 GHz segments of the Ka band ("ViaSat-109W"). ViaSat-109W will facilitate the continued deployment of satellite broadband technology that has enabled greater competition with terrestrial services for the benefit of residential and enterprise users (as well as anchor institutions) in the United States, and the extension of broadband WiFi service to passengers and crew on aircraft flying across the United States. Thus, granting the Application will serve the public interest by enabling the provision of broadband service to more customers, and for more applications.

In stark contrast, granting Telesat's Petition would provide Telesat with anti-competitive advantages that are unwarranted and inconsistent with Commission policy. Telesat requests that the Commission impose a condition requiring that ViaSat cease operating ViaSat-109W "once a Ka-band satellite network that has higher ITU priority is placed into operation at 109.2º W.L."[1] Notably, Telesat does not have a Ka-band satellite operating at 109.2º W.L. today. Nor does Telesat indicate when that might occur, or whether any such satellite would serve the United States.

Essentially, Telesat requests that a condition be imposed on ViaSat's authorization simply because of Telesat's temporary operation of Nimiq-2 at 109.2º W.L. more than a year-and-a-half ago on just one-third of the frequencies that ViaSat-109W would employ.[2] Notably, Telesat does not specify a launch date for a particular space station that would operate from 109.2º W.L. before Telesat's current ITU suspension period ends in approximately 19 months.

Allowing Telesat to use Nimiq-2 and its limited Ka-band capabilities to block the provision of broadband service by ViaSat hardly is what the Commission envisions under its space station authorization policies. When the Commission adopted its "first-come, first-served" framework for reserving spectrum rights, the Commission was seeking to reduce the amount of

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1 Telesat Canada, Petition for Imposition of Conditions, File No. SAT-LOI-20160208-00015, at 1 (filed July 5, 2016) ("Petition").

2 *See* International Telecommunication Union, Radiocommunication Bureau, BR IFIC No. 2781, CANSAT-49, Due Diligence Resolution 49/1768 (published Oct. 28, 2014) (notifying the claimed BIU of 19.7-20.2 GHz and 29.5-30.0 GHz frequencies at 109.2° W.L. using Nimiq-2 satellite as of October 28, 2014); International Telecommunication Union, Radiocommunication Bureau, CANSAT-49, Request for Suspension, Notice ID No. 114500121 (received Feb. 17, 2015) (notifying of suspension of operations from 109.2° W.L. as of Feb. 12, 2015), information available at http://www.itu.int/net/ITU-R/space/snl/list1149/index.asp.

time spectrum lies fallow and speed the deployment of service to consumers.[3] Telesat does not have U.S. market access for a satellite at 109º W.L. that would use the 19.7-20.2 GHz and 29.5-30.0 GHz frequencies identified in its Petition. Nor does Telesat even have a pending application to serve the United States in those frequencies from 109º W.L. Telesat merely claims that a Canadian ITU filing for 19.7-20.2 GHz and 29.5-30.0 GHz has date priority over one-third of the spectrum for which ViaSat seeks U.S. market access.[4]

As an initial matter, under the current state of the law, it is not apparent how the circumstances that Telesat envisions could ever occur—should Telesat ever propose U.S. service from 109.2º W.L. Namely, it is unclear how Telesat thinks it could obtain market access once the Commission has granted U.S. market access to ViaSat at 109.1º W.L. In fact, the Commission's most recent licensing reform order makes clear that once ViaSat's application at 109.1º W.L is granted, (i) the Commission would dismiss any later-filed Telesat application with overlapping frequencies, polarizations, and coverage, and (ii) Telesat will not be able to seek such market access again as long as ViaSat holds that authority:

> [T]he Commission places applications for new U.S.-licensed space station operation, and requests for new U.S. market access via non-U.S. licensed space station operation, in a single processing "queue" in the order in which they are filed. The Commission will grant the first-in-line application if the operation it proposes is compatible with authorized space station operations and the applicant is otherwise qualified and will dismiss later-filed space station applications that are incompatible with the newly authorized space station operation. In the event that a license or market access grant is revoked, the Commission will begin accepting new

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[3] *See Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order, 18 FCC Rcd 10760, ¶¶ 5-6, 74 (2003) ("*2003 Space Station Licensing Reform Order*") (adopting new licensing procedures to enable faster and more efficient processing of applications, speed the provision of service to customers, and reduce the amount of time spectrum lies fallow).

[4] Petition at 3.

> applications for use of the resources as of the time of adoption of the Order revoking the grant.

*Comprehensive Review of Licensing and Operating Rules for Satellite Service*, Second Report and Order, 30 FCC Rcd 14713, ¶ 123 (2015) ("*2015 Licensing Reform Order*") (footnotes omitted).[5]

Second, the discussion in one of the paragraphs in the *2003 Space Station Licensing Reform Order* that Telesat cites[6] is wholly inapposite because it addresses the Commission's approach with respect to *U.S. space station licensees* and satisfying U.S. obligations under ITU processes as to U.S. space station licensees. In contrast, this matter involves *two non-U.S.-licensed satellite networks*.[7]

Third, to the extent the circumstances described in the second paragraph of the *2003 Space Station Licensing Reform Order* that Telesat cites[8] could arise, Telesat has misconstrued what the Commission said. That discussion in the *2003 Space Station Licensing*

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5 *See also 2015 Licensing Reform Order*, 30 FCC Rcd 14713 at ¶ 127 ("At present, a list of space station licenses and grants of U.S. market access through Letters of Intent and Petitions for Declaratory Ruling may be generated on the International Bureau Filing System (IBFS) website. This list includes information on assigned frequency bands and orbital locations of GSO space stations. In order to assess the compatibility of potential GSO-like space station operations with existing authorizations, however, a prospective applicant must also know the authorized coverage areas and emission polarization(s).").

6 *See* Petition at 2 n.3.

7 *See 2003 Space Station Licensing Reform Order*, 18 FCC Rcd 10760 at ¶ 295 ("Moreover, ITU date priority does not preclude us from licensing the operator of a *U.S.-licensed GSO satellite* on a temporary basis pending launch and operation of a satellite with higher priority in cases where the non-U.S.-licensed satellite has not been launched yet. *When we have authorized a U.S. licensee* to operate at an orbit location at which another Administration has ITU priority, we have issued the license subject to the outcome of the international coordination process, and emphasized that the Commission is not responsible for the success or failure of the required international coordination.") (emphasis supplied and footnotes omitted).

8 Petition at 2-3 & nn.2, 3, 4, 6.

*Reform Order*[9] occurred in the context of dismissing the very same type of argument that Telesat is making here: "[T]he only relevant issue should be whether the non-U.S.-licensed satellite operator has ITU date priority."[10] In rejecting that argument, the Commission discussed one particular way in which it could take ITU priority into account in its authorization process. Notably, the Commission addressed a circumstance where it had *already granted* U.S. market access to a system with ITU priority and that system was actually brought into service.[11] Those factual circumstances simply are not present in this case—Telesat has not even proposed to serve the United States from 109.2º W.L. Moreover, as explained above, the *2015 Licensing Reform Order* is clear that Telesat cannot obtain U.S. market access in overlapping frequencies, polarizations and coverage, once the Commission grants U.S. market access to ViaSat at 109.1º W.L.

Even if it were possible to accommodate Telesat, granting Telesat the relief it seeks would put the Commission in the untenable position of determining whether Telesat has, as it asserts, actually "perfected" its claimed ITU priority at 109.2º W.L. The Commission has appropriately recognized that when faced with possibly conflicting ITU filings of two other Administrations, is not appropriate for the Commission to attempt to determine whose ITU rights have been "perfected" and thus actually have priority.[12] The wisdom of this approach is evident from the facts in this case: while Telesat suggests that it has completed coordination and

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9 *2003 Space Station Licensing Reform Order,* 18 FCC Rcd 10760 at ¶ 296.

10 *Id.* at ¶ 293.

11 *Id.* at ¶ 296.

12 *See, e.g., EchoStar Satellite Operating Company,* 28 FCC Rcd 10412, ¶ 12 (2013) (affirming the order in which the International Bureau "appropriately declined to make determinations concerning the 'perfecting' of ITU filings of other Administrations, observing correctly that such determinations are for the ITU").

successfully notified its ITU filing, the ITU actually rejected that notification filing because requisite coordination with another administration has not been completed.[13]

Moreover, where a U.S. applicant seeks a satellite authorization, the Commission does not place a thumb on the scale in the ITU process in favor of another Administration, and thus provide that Administration with an advantage in the U.S. authorization process. Rather, the Commission grants the U.S. license subject to the outcome of the international coordination process.[14] Consistent with Commission policy, ViaSat accepts the "risks inherent in the international coordination process" in seeking U.S. market access.[15] In keeping with the United States' WTO commitments, which obligate it to treat non-U.S. applicants no less favorably than U.S. applicants, the Commission should not impose any more burdensome conditions in connection with ViaSat's market access request.

For the foregoing reasons, the extraordinary conditions sought by Telesat not only are unnecessary, but also are unlawful.

Finally, it bears emphasis that Telesat claims priority at 109.2º W.L. only with respect to the 19.7-20.2 GHz and 29.5-30.0 GHz portions of the proposed ViaSat system at 109.1º W.L.[16] Telesat does not claim ITU priority in the 17.7-19.7 GHz or 27.5-29.5 GHz segments of the Ka band at this location. Moreover, Telesat has not specified any plans for a

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13 International Telecommunication Union, Radiocommunication Bureau, BR IFIC No. 2824, CANSAT-49, Part III-S (published July 19, 2016) (returning frequency assignments to the notifying Administration under Article 11 of the Radio Regulations).

14 *See 2015 Licensing Reform Order*, 30 FCC Rcd 14713 at ¶ 42; *2003 Space Station Licensing Reform Order,* 18 FCC Rcd 10760 at ¶ 295.

15 *See, e.g., Hughes Network Systems, LLC, Letter of Intent Seeking Access to the United States Market*, Declaratory Ruling, 26 FCC Rcd 8521, n.65 (2011) ("*Hughes Market Access Order*").

16 *See* Petition at 3.

space station to operate from 109.2º W.L. in the frequencies for which ViaSat seeks market access. As noted above, Telesat's ITU suspension period ends in approximately 19 months. Should Telesat eventually decide to launch a Ka-band satellite into 109.2º W.L., it is highly likely that Telesat would do what virtually every operator recently has done, and construct a satellite with more than 500 MHz of spectrum. Thus, it is virtually certain that Telesat (acting under the auspices of Canada) would have to engage in coordination with ViaSat (acting under the auspices of the United Kingdom).

Particularly in a case like this, it is important not to impose conditions that would skew coordination discussions in Telesat's favor. In similar recent cases, the Commission expressly has declined to impose the types of conditions that Telesat seeks here.[17] Indeed, the Commission has wisely declined to "inject elements of the ITU coordination process into any grant of market access" in such cases.[18]

Telesat's reliance on the *Loral* and *Star One* cases does not change the result.[19] The legal premise underlying those cases—that two non-U.S.-authorized satellites simultaneously could have U.S. market access with overlapping frequencies, polarizations and

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17 *See, e.g., Inmarsat Mobile Networks, Inc.*, Order and Authorization and Declaratory Ruling, 30 FCC Rcd 2770, ¶ 33 & nn.68, 69 (2015) (declining to impose a condition requested by Eutelsat that would have required Inmarsat to cease serving the U.S. upon the launch of Eutelsat's satellite network under a claimed higher-priority ITU filing, noting that Eutelsat had not described any plans to launch a space station under that filing before the ITU expiration date); *Hughes Market Access Order* at ¶ 26 & n.64 (declining to impose conditions requested by Ciel that would have required Hughes to cease serving the U.S. upon the launch of Ciel's network under a claimed higher-priority ITU filing); Inmarsat Hawaii Inc., Stamp Grant, File No. SAT-LOI-20140326-00034, Conditions at n.3 (granted Sept. 18, 2014) (declining Telesat's request to impose a condition requiring Inmarsat to cease service from 63º W.L. if a Telesat satellite is placed into operation there).

18 *See Hughes Market Access Order*, 26 FCC Rcd 8521 at ¶¶ 24, 26.

19 *See* Petition at 3, citing *Loral Spacecom Corp*., Order, 18 FCC Rcd 16374 (2003), *Star One S.A.*, Order on Reconsideration, 23 FCC Rcd 10896 (2008).

coverage—clearly is no longer valid. The Commission recently and definitively stated that a later-filed market access application for space station operations that conflicts with existing authorized space station operations will be dismissed on procedural grounds alone (*i.e.*, without taking subjective factors such as ITU status into account).[20] Thus, it would make little sense to impose an onerous condition on ViaSat to benefit a network like Telesat's that could not even seek U.S. market access once ViaSat's application is granted.

Moreover, Commission policy has evolved considerably since *Loral* was decided in 2003, and *Star One* was decided in 2008. As noted above, the Commission has since recognized that, when faced with competing claims between two non-U.S.-licensed systems, it is not for the Commission to determine whose ITU rights have been properly "perfected" and actually have priority.[21] Consistent with that approach, the Commission recently has declined to impose the type of condition that Telesat requests, and instead now typically leaves the matter to the relevant administrations and their satellite operators.[22] Telesat identifies no extraordinary circumstances that even theoretically might warrant a different result.[23]

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Telesat's request to impose a condition on the grant of U.S. market access to ViaSat is unwarranted. It would not serve the public interest to allow Telesat to exploit the Commission's licensing procedures and hamper ViaSat's planned system implementation and

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20 *2015 Licensing Reform Order*, 30 FCC Rcd 14713 at ¶ 123.

21 *See, e.g., EchoStar Satellite Operating Company*, 28 FCC Rcd 10412 at ¶ 12.

22 *See, e.g., Inmarsat Mobile Networks, Inc.*, 30 FCC Rcd 2770 at ¶ 33 & nn.68, 69 (2015); Inmarsat Hawaii Inc., Stamp Grant, File No. SAT-LOI-20140326-00034, Conditions at n.3 (2014); *Hughes Market Access Order*, 26 FCC Rcd 8521 at ¶ 26 & n.64 (2011).

23 *See Star One S.A.*, Order on Reconsideration, 23 FCC Rcd 10896, ¶ 5 (2008) (conditions imposed would be unnecessary in ordinary circumstances).

provision of U.S. broadband service at 109.1º W.L. (secured by a performance bond), particularly when Telesat does not serve, and has no stated plans to serve, the United States from that nominal location in the same frequencies. For these reasons, ViaSat respectfully requests that the Commission summarily dismiss Telesat's Petition and decline to impose the requested condition.

Respectfully submitted,

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July 20, 2016

## CERTIFICATE OF SERVICE

I, Kayla Ernst, hereby certify that on this 20th day of July, 2016, I served a true copy of the foregoing Opposition of ViaSat, Inc. via first-class mail upon the following:

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*/s/*
Kayla Ernst