

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

In the Matter of )  
 )  
VIASAT, INC. ) File No. SAT-LOI-20160208-00015  
 )  
Letter of Intent for Authority to )  
Access the U.S. Market Using a )  
Non- Licensed Ka-Band )  
Geostationary Satellite at the )  
Nominal 109° W.L. Orbital Location )

**REPLY OF TELESAT CANADA AND REQUEST FOR PERMIT BUT DISCLOSE  
TREATMENT**

In the above-referenced Letter of Intent (“LOI”) application, ViaSat, Inc. (“ViaSat”) requests authority to serve the U.S. market via a Ka-band satellite that ViaSat would operate at 109° W.L.<sup>1</sup> Telesat Canada (“Telesat”) filed a Petition for Imposition of Conditions,<sup>2</sup> and ViaSat filed an Opposition to the Petition.<sup>3</sup> Telesat hereby replies to ViaSat’s Opposition and requests reclassification of this proceeding for *ex parte* purposes as permit but disclose.

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<sup>1</sup> References in this petition to 109° W.L. are to the nominal orbital location of 109° W.L. The ViaSat Schedule S submitted with its LOI application refers to proposed operation at 109.1° W.L. Telesat’s satellite will be located at 109.2° W.L.

<sup>2</sup> Petition for Imposition of Conditions, File No. SAT-LOI-20160208-00015 (July 5, 2016) (“Petition”). The condition Telesat has requested would apply to the frequencies as to which Telesat’s network has ITU priority over Viasat’s network, *i.e.*, the 29.5 – 30.0 GHz and 19.7 – 20.2 GHz bands. *See* Petition at 2-3.

<sup>3</sup> Opposition of ViaSat, File No. SAT-LOI-20160208-00015 (July 20, 2016) (“Opposition”).

## I. INTRODUCTION AND SUMMARY

In its Opposition, ViaSat contends that the Commission's sole criterion for determining which non-U.S. licensed geostationary satellite will be authorized to serve the U.S. market from a particular orbital location using particular frequencies is whether a satellite operator filed first for U.S. authority. Viasat maintains that ITU priority has no relevance for this purpose. Viasat also claims that the FCC's policies for taking ITU priority into account are limited to U.S.-licensed satellites; questions whether Telesat's satellite network has ITU priority over Viasat's satellite network; and challenges the sincerity of Telesat's proposal to operate a Ka-band satellite at 109° W.L.

In this Reply, Telesat refutes Viasat's contentions. Telesat shows that:

- The Commission's procedures for granting U.S. market access are not based solely on who files first, and take ITU priority into account.
- Viasat has mischaracterized the Commission's procedures for granting U.S. market access.
- The Commission's policies for taking ITU priority into account are applicable to non-U.S. licensed satellites.
- The Commission's policies for granting U.S. market access are necessary to preserve the integrity of ITU process.
- Telesat's ITU satellite network<sup>4</sup> indisputably has ITU priority over Viasat's ITU satellite network<sup>5</sup>.
- Telesat has a viable plan for using its higher priority frequencies at 109° W.L.

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<sup>4</sup> Frequency assignments in the 29.5-30 GHz and 19.7 -20.2 GHz bands of the ITU network CANSAT-49 published as CR/C/2233 in the International Frequency Information Circular (IFIC) 2631/28.10.2008.

<sup>5</sup> In its application (see Viasat Exhibit A, footnote 4) Viasat does not name its ITU satellite network, simply stating that "ViaSat will provide a confirmation letter regarding these ITU filings relating to the proposed operations at the nominal 109° W.L. location, as appropriate." In the ITU's database, however, Viasat is identified as the operator for the ITU network UK-KA-3 published as CR/C/3279 in IFIC 2738/19.02.2013.

Accordingly, the Commission should reject Viasat's arguments and adopt the condition Telesat requested in its Petition.

## II. COMMISSION POLICY SUPPORTS TELESAT'S REQUEST FOR A CONDITION

### A. The Commission's Procedures for Granting U.S. Market Access Take ITU Priority Into Account

Telesat has requested that the Commission, if it grants ViaSat's application, require that ViaSat cease providing service to the United States from 109° W.L. once Telesat's Ka-band satellite network, which has higher ITU priority, is placed into operation at 109° W.L.<sup>6</sup> Telesat relied on the Commission's policy, which it adopted in its *Space Station Licensing Reform Order*,<sup>7</sup> governing FCC applications which seek U.S. market access for a non-U.S. licensed satellite that will operate under an ITU satellite network that has lower ITU priority than an ITU satellite network associated with another non-U.S. licensed satellite.

In these circumstances, the applicant either must show that it has coordinated with the higher priority satellite network or must accept a condition under which "the lower priority satellite would be required to cease service to the U.S. market immediately upon launch and operation of the higher priority satellite."<sup>8</sup> Telesat demonstrated that this policy applies to Viasat's application.<sup>9</sup>

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<sup>6</sup> Petition at 1.

<sup>7</sup> *In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies; Mitigation of Orbital Debris*, First Report and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54, 18 FCC Rcd 10760 (2003) ("Space Station Licensing Reform Order").

<sup>8</sup> *Space Station Licensing Reform Order* at ¶ 296.

<sup>9</sup> See Telesat's Petition at 2-3.

**B. Viasat Has Mischaracterized the Commission’s Procedures for Granting U.S. Market Access**

ViaSat claims this policy and the cases implementing it are “no longer valid.”<sup>10</sup>

ViaSat bases its claim on a paragraph in the Commission’s 2015 *Comprehensive Review Order* addressing its Part 25 satellite service licensing and operating rules.<sup>11</sup>

The paragraph Viasat cites, however, merely summarizes the “first come, first served” procedures the Commission adopted in its *Space Station Licensing Reform Order*. Those first come, first served procedures always have taken ITU coordination into account. The Commission stated in the *Space Station Licensing Reform Order* that “in the first-come, first-served procedure, when considering requests for U.S. market access from two or more non-U.S.-licensed satellite operators licensed by different Administrations, [it] will continue to take into account the impact of the ITU coordination process.”<sup>12</sup> Nothing in the Commission’s *Comprehensive Review Order* changes that.

To the contrary, the Commission decided in the *Comprehensive Review Order* to retain its first come, first served procedures, except for a discrete number of minor modifications to the procedures that have nothing to do with ITU coordination.<sup>13</sup> In deciding to retain its first come, first served procedures, the Commission cited with

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<sup>10</sup> Opposition at 8.

<sup>11</sup> *Id.* at 3-4, quoting *Comprehensive Review of Licensing and Operating Rules for Satellite Service, Second Report and Order*, 30 FCC Rcd 14713, ¶ 123 (2015) (“*Comprehensive Review Order*”).

<sup>12</sup> *Space Station Licensing Reform Order* at ¶ 296.

<sup>13</sup> See *Comprehensive Review Order* at ¶¶ 123-130.

approval the *Space Station Licensing Reform Order*<sup>14</sup> and its existing policies for granting market access to satellites licensed by other administrations.<sup>15</sup> It is inconceivable the Commission would have cited these policies with approval if it had intended to overrule them.

The Commission's rules, moreover, require that ITU coordination be taken into account. Section 111(b) of the rules states that: (i) "[n]o protection from interference caused by radio stations authorized by other Administrations is guaranteed unless ITU procedures are timely completed or, with respect to individual Administrations, coordination agreements are successfully completed"; and (ii) "[a] license for which such procedures have not been completed may be subject to additional terms and conditions required for coordination of the frequency assignments with other Administrations."<sup>16</sup>

In sum, the Commission's rules and policies continue to require that ITU coordination be taken into account. For that reason, Viasat's objection to a "subject to ITU priority" condition should be rejected.

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<sup>14</sup> *Comprehensive Review Order* at nn. 300, 301, 302, 303. When Viasat quoted language from the *Comprehensive Review Order*, it omitted these footnotes.

<sup>15</sup> See *Comprehensive Review Order* at nn. 313, 314, 315.

<sup>16</sup> 47 C.F.R. § 25.111(b).

**C. The Commission's Policies for Taking ITU Priority Into Account Are Applicable to Non-U.S. Licensed Satellites**

ViaSat also maintains that the Commission's policies for taking ITU priority into account apply only when a non-U.S. satellite licensee seeks a condition vis-à-vis a U.S. satellite licensee, and not when, as is the case here, a non-U.S. satellite licensee seeks a condition vis-à-vis another non-U.S. satellite licensee.<sup>17</sup> Viasat appears to be conceding that an ITU-related condition would be appropriate if Viasat were U.S.-licensed but is claiming that a condition is inappropriate because it is not U.S.-licensed.

Viasat's position is nonsensical. There is no basis for taking into account the inferior ITU priority of a U.S. licensee but ignoring the inferior ITU priority of a non-U.S. licensee. And there is no rationale for treating U.S. licensees more strictly than non-U.S. licensees by applying ITU priority-related conditions only to U.S. licensees.

The Commission's language in the *Space Station Licensing Reform Order*, moreover, contradicts Viasat's position. The Commission expressly stated in the order that its policy for taking ITU priority into account applies when there are "two or more non-U.S.-licensed satellite operators licensed by different Administrations."<sup>18</sup> ViaSat's argument, therefore, should be rejected.

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<sup>17</sup> See Opposition at 4 & n. 7.

<sup>18</sup> *Space Station Licensing Reform Order* at ¶ 296.

**D. The Commission's Policies for Granting U.S. Market Access Are Necessary to Preserve the Integrity of the ITU Process**

The Commission's policy of taking ITU priority into account is necessary to preserve the integrity of the ITU process. It prevents parties such as Viasat with inferior rights from doing an end run around the ITU's Radio Regulations by racing to the FCC. Under Viasat's interpretation of the FCC rules, a party with lower priority could "jump ahead" of a party with higher priority simply by filing for U.S. landing rights first. This practice, if it became widely adopted by other countries, would gut the existing ITU process: ITU priority would mean nothing, and landing rights would establish priority on a country by country basis.

**III. TELESAT HAS ITU PRIORITY OVER VIASAT**

ViaSat questions whether Telesat's satellite network has ITU priority because according to Viasat, Telesat's ITU notification has not been "perfected." There is no basis for Viasat's position.

Telesat's ITU priority relates to frequency assignments of the CANSAT-49 ITU network that were brought into use and notified to the ITU within the requisite time frames and therefore are in full compliance with the ITU Radio Regulations. The CANSAT-49 network publication identified a number of administrations and associated ITU networks with which coordination was required. Coordination remains with a single ITU network at 140 degree orbital separation for which Telesat and the Canadian administration are still awaiting a response from the associated administration.

As the Commission is aware, the notification process occurs in multiple stages beginning with a Part I submission. What Viasat calls a “rejection” by the ITU<sup>19</sup> is a routine Part III publication recognizing that the Canadian administration is awaiting a response from another administration. The ITU’s process provides time and procedures to resolve such administrative issues while remaining in compliance with the Radio Regulations. A Part III publication for CANSAT-49 has no impact on the ITU priority Telesat’s network has over Viasat’s network.<sup>20</sup>

#### **IV. TELESAT HAS A VIABLE PLAN FOR USING ITS HIGHER PRIORITY FREQUENCIES AT 109° W.L.**

Viasat seeks to support its argument that the ITU priority system – the foundation of the satellite industry – is irrelevant and should be ignored by insinuating that Telesat’s plans and ability to utilize its frequency rights are inferior to Viasat’s and therefore deserving of less consideration.

Not only is there no precedent for ignoring valid ITU priority on this basis, Viasat’s premise is simply wrong. Telesat, which is the world’s fourth largest FSS operator, has been operating satellites for almost 50 years. Telesat currently has a global fleet of fifteen satellites (with two additional GSO satellites and two LEO satellites under construction) that use C-band, Ku-band, and/or Ka-band frequencies, and it has a spotless record.

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<sup>19</sup> See Opposition at 6.

<sup>20</sup> These facts, because they clearly establish Telesat’s ITU priority, are distinguishable from the convoluted circumstances that confronted the International Bureau in the EchoStar case cited by ViaSat and that led to the Bureau’s concern with becoming embroiled in an international coordination dispute. See *EchoStar Satellite Operating Company*, 28 FCC Rcd 4229 (Int’l Bur. 2013), *aff’d* at 28 FCC Rcd 10412 (2013).



Telesat recently launched a combined Ka- and Ku-band satellite, Telstar 12V, to 15° W.L., a U.S.-licensed orbital location. Telesat has announced the purchase of two more satellites that utilize both Ka-band and other frequencies: Telstar 19V at 63° W.L. — a combined Ka- and Ku- band satellite — and Telstar 18V at 138° E.L. — a combined C-, Ku- and Ka-band satellite.<sup>21</sup> The construction of both satellites is well underway and launch is planned in the first half of 2018.

Telesat will build on this track record by launching an additional multi-frequency satellite, Telstar 20V, to 109° W.L., an orbital location at which Telesat has ITU priority rights to C-band, Ku-band and 500 MHz of Ka-band. Telesat has recently begun operating a Ku-band satellite at that location and has well developed plans to launch its fourth satellite that uses Ka-band frequencies combined with other frequencies.<sup>22</sup>

Telesat is in full compliance with the ITU Radio Regulations and with respect to Viasat, Telesat has priority at 109° W.L. and will utilize its rights on Telstar 20V.

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<sup>21</sup> See Press Release, Telesat Orders New Telstar 19 VANTAGE High Throughput Satellite from SSL – Launch Planned for Early 2018 to 63 Degrees West, Telesat Ottawa, Canada (November 25, 2015), available at <https://www.telesat.com/news-events/telesat-orders-new-telstar-19-vantage-high-throughput-satellite-ssl>; Press Release, Telesat Orders New Telstar 18 VANTAGE High Throughput Satellite and Launch Services: State-of-the-art spacecraft will be located at 138 degrees East and significantly expand Telesat’s capacity over Asia, Telesat, Ottawa, Canada (December 23, 2015), available at <https://www.telesat.com/news-events/telesat-orders-new-telstar-18-vantage-high-throughput-satellite-and-launch-services>.

<sup>22</sup> Viasat’s suggestion that Telesat would not launch a satellite that is limited to 500 MHz of Ka-band spectrum, see Opposition at 7, overlooks Telesat’s access to multiple bands at 109° W.L. Telesat can implement its plans utilizing the Ka-band frequencies to which it has priority, in combination with other frequencies.

**V. THIS PROCEEDING SHOULD BE RECLASSIFIED AS PERMIT BUT DISCLOSE**

Telesat respectfully requests that this proceeding be classified as permit but disclose for *ex parte* purposes. The issues in this matter involve important policy considerations that extend beyond the confines of Viasat's application, and permit but disclose classification will facilitate a complete airing of the considerations at play. Establishing a better record on which the Commission can base its decision is unquestionably in the public interest.

**CONCLUSION**

For the reasons stated herein and in Telesat's Petition, the arguments in ViaSat's Opposition should be rejected and the condition sought by Telesat should be adopted.

Respectfully submitted,

TELESAT CANADA

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August 1, 2016

## CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2016, a copy of the foregoing  
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