

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

In the Matter of	)	
	)	
ViaSat, Inc.	)	File Nos. SAT-MOD-20100714-00158
	)	SAT-MOD-20100714-00159
Applications for Modification of	)	
Authorizations, or Waiver or	)	Call Signs S2737 & S2747
Extension of Satellite Milestones	)	

**RESPONSE OF VIASAT, INC.**

John P. Janka  
Elizabeth R. Park  
Amanda E. Potter  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW, Suite 1000  
Washington, DC 20004-1304

*Counsel for ViaSat, Inc.*

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## SUMMARY

ViaSat, Inc. (“ViaSat”) seeks authority to reverse the order in which it may satisfy the remaining milestones for its new, two-satellite broadband network at 115° WL and 77° WL, while still complying with the overall timing contemplated by the Commission for these spacecraft, and still commencing 4/1 Mbps broadband service across America without delay.

These new satellites have been optimized to address the shortcomings in the satellites currently used to provide Internet access – inadequate capacity that limits the quality of today’s satellite-delivered Internet access services and that prevents new customers who want this service from subscribing. In fact, each of ViaSat’s new satellites has far more capacity than all commercial spacecraft that serve the United States today, combined.

The service areas of these spacecraft are complementary, with each one essentially serving different halves of the United States. ViaSat’s first new satellite, scheduled for launch into 115° WL in the second quarter of next year, has coverage focused on parts of the United States east of the Mississippi River and on the west coast. These areas are precisely where ViaSat’s existing WildBlue service is out of capacity and cannot add subscribers. The second satellite, authorized for 77° WL, will complete the nationwide coverage pattern and enable broadband Internet access to the remaining portions of the country, including the large expanse in between the Mississippi River and the west coast. These two complementary satellites will provide true broadband service not only to the approximately 420,000 existing WildBlue subscribers, but also to the millions of unserved households who are the focus of the Commission’s National Broadband Plan.

The only party to comment on ViaSat’s applications is Hughes Networks Systems, LLC (“Hughes”). Hughes is ViaSat’s primary competitor and the self-described “largest satellite

Internet access provider in the North American consumer market.” Hughes states that it “does not believe” that ViaSat has made a sufficient showing to justify the requested relief and asks that the Commission “weigh carefully” ViaSat’s showing before acting on its applications.

Notably, Hughes does not disclaim the important public interest considerations that support the grant of ViaSat’s applications. Nor could Hughes do so. ViaSat’s two-satellite network will significantly advance the Commission’s goals by deploying universal broadband service at or above 4/1 Mbps to unserved households, and it can do so by 2014 – six years ahead of the Commission’s 2020 target date. This network also will provide a competitive alternative to a similar network that Hughes is deploying.

Nor does Hughes dispute the underlying facts on which ViaSat’s request is based. ViaSat has invested more than \$1 billion to date to develop and deploy its satellite broadband network. In particular, ViaSat has spent tens of millions of dollars to develop a common satellite architecture for its first two satellites (a revolutionary design Hughes copied for its own system) and to redesign the ground network that is needed to support these spacecraft. ViaSat also has obtained all of the financing necessary for each of its spacecraft, and has procured launch services for both spacecraft. ViaSat has constructed its first satellite (115° WL) years ahead of its Commission milestone, and also has timely satisfied the first two milestones for its second satellite (77° WL).

The Commission has longstanding authority to provide milestone relief based on public interest considerations. The circumstances here are more compelling than the cases where the Commission previously has granted such relief. In fact, the Commission has never denied milestone relief to a satellite operator with an existing subscriber base in need of additional capacity, but rather has provided flexibility where the needs of existing customers were at issue,

and also where the need for additional capacity warranted the requested relief. Nor has the Commission denied milestone relief to a satellite operator where the spacecraft at issue is fully financed, satellite construction and launch contracts are in place, the first two milestones have been met, and the necessary ground equipment have been designed.

Thus, this request is consistent with Commission rules and policies, and is supported by precedent. Moreover, grant of the requested relief would ensure that unserved households have an alternative to Hughes when they seek broadband service. The Commission therefore should grant the flexibility that ViaSat has requested.

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**RESPONSE OF VIASAT, INC.**

Pursuant to Section 25.154(c) of the Commission’s rules,<sup>1</sup> ViaSat, Inc. (“ViaSat”) responds to the comments filed by Hughes Network Systems, LLC (“Hughes”) to ViaSat’s Applications for Modification of Authorizations, or Waiver or Extension of Satellite Milestones (“Applications”). Hughes provides no basis to withhold the relief that is needed to facilitate the deployment of 4/1 Mbps broadband service to millions of Americans across the nation as soon as 2014. The Commission therefore should modify ViaSat’s satellite authorizations or, in the alternative, waive or extend the remaining satellite milestones for its Ka-band satellite at 77° WL.

**I. INTRODUCTION AND BACKGROUND**

ViaSat, a new entrant in the highly-consolidated field of satellite owners, currently provides Internet access to approximately 420,000 subscribers through its WildBlue service. As ViaSat explained in its Applications, the quality of today’s satellite-delivered Internet access

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<sup>1</sup> 47 C.F.R. § 25.154(c).

service needs significant improvement.<sup>2</sup> The problem is that the third-party-licensed spacecraft on which ViaSat currently relies are not optimized to provide 4/1 Mbps (or better) service to large numbers of subscribers. Moreover, the satellites ViaSat uses are out of capacity in certain areas, and ViaSat cannot add subscribers in those areas, even at current speeds.

ViaSat set out to solve these problems by designing a single spacecraft that has far more capacity than all of the commercial spacecraft that serve the U.S. today, combined. With two of these state-of-the-art spacecraft, ViaSat can offer to millions of households across America broadband Internet service that meets or exceeds the 4/1 Mbps goal of the National Broadband Plan. And ViaSat can do so at prices that are competitive with many terrestrial alternatives.

ViaSat holds authority from the Commission for two such satellites – at 115° WL and 77° WL.<sup>3</sup> The first spacecraft, to be launched into 115° WL in the second quarter of 2011, covers parts of the United States east of the Mississippi River and along the west coast, as well as parts of Alaska and Hawaii. The second spacecraft will have complementary coverage west of the Mississippi River, and over Puerto Rico and the U.S. Virgin Islands. Depending on the result of this proceeding, that second spacecraft could be launched into 77° WL by the middle of 2014. This integrated network will enable ViaSat to provide affordable, high-quality 4/1 Mbps broadband service not only to the existing WildBlue customer base, but also to the millions of unserved households throughout the nation.

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<sup>2</sup> See ViaSat, Inc. Applications for Modification of Authorizations, or Waiver or Extension of Satellite Milestones, File Nos. SAT-MOD-20100714-00158, SAT-MOD-20100714-00159, at i, 4, 8-9 (filed Jul 14, 2010) (“ViaSat Application Narrative”).

<sup>3</sup> See File Nos. SAT-LOI-20080107-00006, SAT-AMD-20080623-00131, and SAT-AMD-20090213-00023 (granted Aug. 18, 2009) (“115° WL Authorization”); File Nos. SAT-LOA-20070314-00051, SAT-MOD-20071204-00168, SAT-MOD-20080718-00144, SAT-MOD-20091127-00129 (granted July 18, 2007) (“77° WL Authorization”).

ViaSat has already invested more than \$1 billion in its satellite broadband network and customer base. ViaSat has met the initial two milestones for each of its spacecraft, and in fact has completed construction of its 115° WL satellite, which is now in final testing. Financing is in place to construct the second satellite at 77° WL. Launch contracts are in place for both spacecraft. The ground network that is needed to deliver 4/1 Mbps service over both spacecraft has been designed, including customer premises equipment that soon will be ready for deployment.

ViaSat determined in the second quarter of this year that it was no longer feasible to implement the 77° WL satellite in accordance with the remaining Commission milestones for that satellite. Thus, ViaSat requested flexibility to reverse the order in which it may satisfy the remaining milestones for 77° WL and 115° WL. As a result, ViaSat would be able to comply with the overall timing contemplated by the Commission for these two spacecraft, and 4/1 Mbps broadband service would become available to the public without delay. ViaSat thus requested, to the extent necessary, either a limited waiver or a limited extension of the remaining milestones at 77° WL.

Hughes, ViaSat's principal competitor and the self-described "largest satellite Internet access provider in the North American consumer market,"<sup>4</sup> is the only party to comment on ViaSat's Applications. Hughes has effectively locked up four valuable Ka-band orbital locations that are capable of serving the U.S., and at three of those locations it has proposed to deploy spacecraft that are virtually identical to ViaSat's revolutionary satellite design.<sup>5</sup> Hughes will

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<sup>4</sup> *ViaSat, Inc. Applications for Modification of Authorizations, or Waiver or Extension of Satellite Milestones*, Comments of Hughes Network Systems, LLC, at 2 (filed Oct. 25, 2010) ("Hughes Comments").

<sup>5</sup> With respect to Hughes's comments about the impact of unused orbital locations, Hughes Comments at 7, it bears note that, for all practical purposes, Hughes's initial Letter of



have approximately seven years from the date of its application to implement a spacecraft at 107.9° WL, and it likely will have even more time at 109.1° WL and 90.9° WL. Thus, absent the relief requested, Hughes will have more time to deploy each of its three new satellites than ViaSat would be allotted for 77° WL.

Despite the significant time Hughes has afforded itself to launch three of its own spacecraft into unused orbital locations, Hughes states that it “does not believe” that ViaSat has made a sufficient showing to justify the relief it seeks and asks that the Commission “weigh carefully” ViaSat’s showing before acting on its Applications.<sup>6</sup> As detailed below, the flexibility ViaSat has requested is based on compelling public interest considerations, will advance the provision of service to the public, is consistent with Commission rules and policies, and is supported by Commission precedent.

## **II. COMPELLING PUBLIC INTEREST CONSIDERATIONS SUPPORT THE REQUESTED RELIEF, WHICH IS CONSISTENT WITH COMMISSION RULES AND POLICIES AND SUPPORTED BY PRECEDENT**

As described above, the launch of two new, state-of-the-art satellites is needed to ensure the availability of 4/1 Mbps broadband service to millions of Americans across the nation, and competition with the broadband offerings that Hughes itself is developing. In particular, ViaSat

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Intent (“LOI”) filings for the 107.1° WL, 109.1° WL and 90.9° WL orbital locations effectively locked up that spectrum from the time the filings were made in June 2008. *See* File Nos. SAT-LOI-20080603-00118 (S2753); SAT-LOI-20080618-00129 (S2754); SAT-LOI-20080618-00130 (S2755). More than one year later, Hughes submitted a second round of “replacement” filings for the same orbital locations. *See* File Nos. SAT-LOI-20091110-00119 (Call Sign S2753); SAT-LOI-20091110-00120 (Call Sign S2754); SAT-LOI-20091110-00121 (Call Sign S2755). Hughes’s subsequent replacement LOI filings more than one year later provided a way to jump back in line and continue to “reserve” these locations, while delaying the imposition of Commission milestones and bonds. As a result, Hughes will have nearly seven years to implement its satellite at 107.1° WL, and will have succeeded in reserving even more time to launch satellites into 109.1° WL and 90.9° WL, for which the applications remain pending, no milestones apply, and no bonds have been posted.

<sup>6</sup> Hughes Comments at 1, 13.

must launch a second new satellite in order to serve a large area in the heartland of the nation (roughly between the Mississippi River and the west coast) that is outside the service area of ViaSat's first new satellite.

Subject to the resolution of this proceeding, ViaSat's second new satellite can be launched into 77° WL in 2014 – six years ahead of the 2020 target date in the National Broadband Plan for achieving universal availability of broadband service at 4/1 Mbps.<sup>7</sup> With the capacity to serve 1.5 to 2 million households at these speeds, this second new spacecraft would significantly advance the Commission's goal of deploying broadband infrastructure to millions of unserved households in the United States. With a cost per home passed of approximately \$5, and a cost per home served of under \$1,000, this second satellite also would significantly reduce the cost of serving the unserved, and thus would substantially lessen the estimated \$24 billion that otherwise would be needed to close the broadband availability gap.<sup>8</sup>

Hughes disputes neither the acute need in the United States for high-quality, affordable broadband service, nor the substantial role that satellite-delivered broadband can have in reducing the cost of universal service. Nor could it: Hughes itself seeks to serve unserved and underserved households through its planned next-generation satellite. In fact, the milestone flexibility ViaSat requests is needed to ensure the existence of a competitive alternative to Hughes.

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<sup>7</sup> Hughes's resort to semantic games does not bear scrutiny. *See* Hughes Comments at 12. In particular, the statements that Hughes references in ViaSat's Applications about what ViaSat "can" or "may" do reflects the simple fact that ViaSat's ability to implement its second satellite at 77° WL is constrained by the very Commission approval process that Hughes seeks to thwart.

<sup>8</sup> Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan*, at 138 (2010) ("National Broadband Plan").

Because Hughes cannot debate these compelling public interest benefits arising from the launch of ViaSat’s second new satellite into 77° WL, Hughes resorts to a superficial reading of the cases and an unreasonably narrow application of relevant precedent. Contrary to what Hughes suggests, the relief ViaSat requests is not only consistent with Commission rules and policies, it also is fully supported by Commission precedent.

**A. The Requested Relief Is Consistent with Commission Rules**

The Commission’s rules have long allowed milestone relief to address “unique and overriding public interest concerns.”<sup>9</sup> Hughes does not dispute the compelling need to provide broadband service to unserved American households. Indeed, the Commission’s National Broadband Plan reflects the Obama Administration’s public policy goal of advancing the state of broadband deployment and adoption in the United States. The deployment of ViaSat’s second satellite would significantly advance this goal and the Commission’s broadband policies both by deploying broadband capabilities to unserved areas<sup>10</sup> and facilitating competition among broadband service providers.<sup>11</sup>

A close reading of the Commission’s cases – including those to which Hughes cites – reveals a number of instances where the Commission provided milestone flexibility based on public interest considerations, even in circumstances that were not beyond the licensee’s control. Indeed, the Commission has based such relief, in part, on its long-standing policy of providing flexibility to satellite operators in how they deploy their fleets. Hughes’s comments mischaracterize this precedent.<sup>12</sup>

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<sup>9</sup> 47 C.F.R. § 25.117(c)(2).

<sup>10</sup> See National Broadband Plan at 135.

<sup>11</sup> See *id.* at 29.

<sup>12</sup> Hughes Comments at 5-6.

The *Loral* case is one example – involving a swap of milestones at two authorized locations – in which public interest considerations and the Commission’s policies with regard to fleet management necessitated a concomitant grant of milestone flexibility.<sup>13</sup> As ViaSat explained in its Applications, Loral sought to swap an unconstructed and unlaunched satellite that was authorized at 77° WL with another satellite (already in orbit at 89° WL and near its end of life<sup>14</sup>). Loral required a milestone extension to accomplish its proposed swap because of its voluntary decision to incorporate “technological advances [that] will provide significant operating efficiencies and more valuable services to customers.”<sup>15</sup> Specifically, Loral’s modification request sought approval for several significant design changes to the satellite, including: (1) adding a Ka-band payload to the spacecraft; (2) modifying the C- and Ku-band transponder configuration and channelization; and (3) redefining the coverage area to include both North and South America.<sup>16</sup>

Hughes offers only a superficial commentary of the *Loral* case, and does not address any of the cogent facts regarding Loral’s satellite swap and technical modifications that ViaSat

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<sup>13</sup> *Loral SpaceCom Corp. and Loral Space & Commc’ns Corp.; Applications for Modification of Fixed-Satellite Serv. Space Station Authorizations; Applications for Extension of Milestone Dates; Request for Extension of Time to Construct, Launch, and Operate a Ka-band Satellite Sys. in the Fixed-Satellite Serv.*, Memorandum Opinion, Order and Authorization, 18 FCC Rcd 6301 (IB 2003) (“*Loral Reassignment and Milestone Extension Order*”).

<sup>14</sup> In fact, the eight-year-old satellite used as a replacement to satisfy the license milestones at 77° WL failed a few months after the Commission granted Loral’s request, leaving two unoccupied orbital locations. *See* Loral Space & Communications Ltd. (Debtor-in-Possession) Annual Status Report to the Federal Communications Commission, at 2 (filed June 30, 2004) (“On September 22, 2003, Loral announced that it had been unable to re-establish contact with its Telstar 4 satellite, which had operated at 89° W.L., and declared the satellite a total loss.”).

<sup>15</sup> Loral Space & Commc’ns Ltd. Application for Extension of Milestone Dates, File No. SAT-MOD-19991101-00107, at 4-5 (filed Nov. 1, 1999) (“*Loral First Milestone Extension Request*”).

<sup>16</sup> *See id.* at 2.

identified in its Applications.<sup>17</sup> For example, Hughes ignores the fact that the satellite modifications and the resulting milestone extension were necessitated by Loral's voluntary business decision to reshuffle the deployment of its fleet in order to incorporate the latest technologies into its authorized satellite system.<sup>18</sup> Loral did not claim otherwise. Accordingly, the order approving Loral's swap, including the related extension and waiver of milestones and technical modifications, was based on both the Commission's fleet management policies *and* the public interest benefits that Loral's enhanced satellite capabilities would afford.<sup>19</sup> Hughes simply ignores the point that Loral's need for a milestone extension arose as a result of a satellite swap that the Commission approved under its fleet management precedent.<sup>20</sup> Moreover, Hughes ignores the voluntary nature of the initial milestone extension request, and focuses instead on "unanticipated design problems"<sup>21</sup> that occurred approximately two years *after* Loral's initial milestone extension request and Loral's original December 1999 construction completion milestone.<sup>22</sup> And Hughes ignores that the *Loral* case initially involved an unconstructed and unlaunched satellite.<sup>23</sup>

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<sup>17</sup> ViaSat Application Narrative at 19-23.

<sup>18</sup> *See generally* *Loral First Milestone Extension Request*.

<sup>19</sup> *Loral Reassignment and Milestone Extension Order*, 18 FCC Rcd 6301 ¶¶ 7-8, 23.

<sup>20</sup> *Id.* ¶ 7.

<sup>21</sup> Hughes Comments at 9 (citing *Loral Reassignment and Milestone Extension Order*, 18 FCC Rcd 6301 ¶ 9).

<sup>22</sup> *Compare Loral First Milestone Extension Request* at 3-5 with *Loral SpaceCom Corp. Application for Extension of Milestone Dates*, File No. SAT-MOD-20020408-00060, at 1-3 (filed Apr. 8, 2002) ("*Loral Second Milestone Extension Request*").

<sup>23</sup> *See* Hughes Comments at 8-9. If the Loral satellite at issue were constructed, as Hughes asserts, Loral would not have needed what amounted to a three-year extension of the construction milestone. *See* ViaSat Application Narrative at 22 n.48.

Similarly, in another case decided on public interest grounds, the Commission granted GE Americom’s request to reassign its unconstructed satellite to a new orbital location – citing GE Americom’s ability to better meet its customers’ needs and “promote greater competition in the 50-state satellite communications market.”<sup>24</sup> Correspondingly, the Commission extended GE Americom’s milestones for three years to provide these benefits.<sup>25</sup> The Commission also relied on public interest grounds to grant Hughes Communications Galaxy a milestone extension needed to combine “two single-band satellites into a single hybrid C-band/Ku-band satellite.”<sup>26</sup> Hughes’s attempt to dismiss the relevance of the *GE Americom* and *Hughes Galaxy* cases because they involved hybrid spacecraft is unavailing. The critical takeaway for each of these decisions is that the Commission has exercised its authority to grant milestone relief on public interest grounds even when such relief was necessitated by a licensee’s voluntary business decisions.

Indeed, given the pressing public interest concerns regarding broadband deployment to unserved areas, the public interest benefits associated with allowing ViaSat to launch its second new satellite into 77° WL are far more compelling than the justifications presented in the *Loral*,

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<sup>24</sup> *GE American Communications, Inc., for Orbital Reassignment and for Modification of Authorization to Construct and Launch the Satcom H-1 Domestic Fixed-Satellite*, Memorandum Opinion and Order, 7 FCC Rcd 5169 ¶ 6 (CCB 1992) (“*GE Americom Extension Order*”).

<sup>25</sup> *Id.* ¶¶ 3, 10.

<sup>26</sup> *Hughes Communications Galaxy, Inc., Application for Modification of Construction Permits and Licenses for the Galaxy 4-R and Galaxy A-R Domestic Fixed-Satellites*, Order and Authorization, 5 FCC Rcd 3423 ¶¶ 3, 10 (1990) (“*Hughes Galaxy Extension Order*”).

Hughes mischaracterizes the *Hughes Galaxy* case when it states that “hybrid satellite construction had begun under [a] Section 319(d) Waiver.” *Id.* at 10 n.19. The Commission granted milestone relief in that case even though it was not clear whether the applicant had commenced construction on its satellite. *Hughes Galaxy Extension Order*, 5 FCC Rcd 3423 ¶ 11 (“If it has not already done so, [Hughes Galaxy] is also required to begin construction of the hybrid satellite promptly upon release of this order.”).

*Hughes Galaxy* and *GE Americom* cases discussed above. In those cases, the Commission found persuasive the licensees' need for additional time to permit the construction and launch of hybrid satellites,<sup>27</sup> where the primary benefit was a *cost savings* to the satellite licensee.

The public interest benefits flowing from the relief that ViaSat seeks are even more compelling, because ViaSat's second satellite would advance the critically important goals of the National Broadband Plan. As detailed above, the milestone flexibility ViaSat proposes would enable the provision of cutting-edge satellite technology capable of delivering broadband services at speeds that meet or exceed 4/1 Mbps to large portions of rural America that cannot be served by ViaSat's first new broadband satellite, and also would facilitate effective competition with Hughes in those areas.

Moreover, the Commission has determined that a waiver of milestones is appropriate where "deviation [from milestone requirements] would better serve the public interest than would strict adherence to the general rule" and where a waiver would more effectively implement the Commission's overall policy goals.<sup>28</sup> The *Loral* and *GE Americom* cases cited above each involved waivers of license milestones, which the Commission granted based on public interest considerations. In *Loral*, the Commission specifically noted the public interest benefits that would result from consumers "gain[ing] timely access to a wide range of services

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<sup>27</sup> *Loral Reassignment and Milestone Extension Order*, 18 FCC Rcd 6301 ¶ 8 ("We believe that granting Loral's request to add a Ka-band payload to Telstar 8 will permit the most effective use of the limited orbit spectrum resource, and is therefore, in the public interest."); *Hughes Galaxy Extension Order*, 5 FCC Rcd 3423 ¶ 8 (noting the efficiencies of operating a hybrid satellite system instead of two single-band satellites and the "cost savings to operators and customers"). See also *GE Americom Extension Order*, 7 FCC Rcd 5169 ¶¶ 7, 9-10 (GE Americom's milestone extension request "will further the public interest").

<sup>28</sup> *GE American Commc'ns, Inc.; Request for Extension of Time to Construct, Launch, and Operate a Ka-band Satellite Sys. in the Fixed-Satellite Serv.*, 16 FCC Rcd 11038 ¶ 9 (IB 2001) (internal citations omitted).

that can be deployed using the Ka-band.”<sup>29</sup> Likewise, the timeframe in which ViaSat seeks to complete the deployment of ViaSat’s second new satellite will enable the provision of next-generation satellite broadband service to consumers throughout the United States in 2014.

**B. The Requested Relief is Consistent with Commission Policies and Precedent**

In its 2003 satellite licensing reform decision, the Commission explained that its milestone policies are designed to ensure that orbital resources are not tied up in the absence of a demonstrated intention and ability to proceed with the deployment of an authorized system.<sup>30</sup> As ViaSat demonstrated in its Applications, these policy concerns are not at issue here. Hughes does not contest ViaSat’s technical or financial wherewithal. Nor does Hughes challenge any of the core facts that evidence ViaSat’s need for and ability to deploy this second new satellite:

- ViaSat has an existing customer base of approximately 420,000 WildBlue subscribers who need the additional capacity and capabilities of this second satellite.<sup>31</sup>
- Unmet demand for satellite broadband services cannot currently be accommodated with the limited capacity of the existing satellites on which ViaSat relies.<sup>32</sup>
- ViaSat has completed construction of its first new satellite, and the satellite is in final testing.
- ViaSat accelerated the deployment of its first new satellite (expected to be launched three years ahead of its milestone) in order to deploy services to areas most in need of additional capacity.<sup>33</sup>

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<sup>29</sup> *Loral Reassignment and Milestone Extension Order*, 18 FCC Rcd 6301 ¶ 23.

<sup>30</sup> *See Amendment of the Comm’n’s Space Station Licensing Rules and Policies; Mitigation of Orbital Debris*, First Report and Order, 18 FCC Rcd 10760 ¶ 173 (2003).

<sup>31</sup> *See* ViaSat Application Narrative at i.

<sup>32</sup> *See id.* at 8-9.

<sup>33</sup> *Id.* at 9.



- There is a need to “fill in” the areas outside the coverage of ViaSat’s first new satellite with a second new satellite.<sup>34</sup>
- ViaSat has invested more than \$1 billion in its broadband satellite network and customer base, including tens of millions of dollars to develop revolutionary new designs for each of its two satellites (which share a common design) and to develop the related ground network that is needed for both satellites.<sup>35</sup>
- ViaSat has a launch contract in place for its second satellite and has paid \$7.5 million to date for that launch.<sup>36</sup>
- ViaSat has all of the financing needed to construct and deploy its second satellite.<sup>37</sup>

Each of these facts demonstrates ViaSat’s significant commitment to deploying its nationwide satellite network, including its second satellite.

ViaSat’s commitment and progress toward constructing a second new satellite at 77° WL are similar to the efforts upon which the Commission has previously relied to grant milestone extensions. In particular, in the *ICO* case that ViaSat cited<sup>38</sup> (which, in fact, is a post-satellite licensing reform case),<sup>39</sup> the Commission permitted ICO to modify its NGSO system into a single GSO satellite and correspondingly extended ICO’s remaining milestones.<sup>40</sup> The Commission granted that relief even though ICO had yet to commence construction of its GSO

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*Id.*

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*See id.* at 13.

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*Id.* at 15. Hughes takes ViaSat’s statements regarding the terms of its launch contract out of context. *See* Hughes Comments at 12 n.24. The December 2014 expiration date for ViaSat’s launch contract is relevant because it demonstrates the availability of a launch for ViaSat’s second new satellite at the time of the June 1, 2014 launch milestone proposed for that satellite.

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ViaSat Application Narrative at 14.

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*Id.* at 27 n.64 (citing *ICO Satellite Services, G.P., Application for Modification of 2 GHz LOI Authorization*, Memorandum Opinion and Order, 20 FCC Rcd 9797 (IB 2005) (“*ICO GSO Modification Order*”)).

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*Cf.* Hughes Comments at 11.

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*ICO GSO Modification Order*, 20 FCC Rcd 9797 ¶¶ 1, 25.

satellite.<sup>41</sup> Indeed, the Commission specifically credited ICO's prior efforts on the defunct NGSO system as one of the reasons for extending ICO's remaining milestones,<sup>42</sup> and it relied on ICO's entry into a contract with a satellite manufacturer and its completion of CDR for the GSO satellite.<sup>43</sup> Under this precedent, ViaSat should be credited with its even more meaningful efforts – designing the 77° WL satellite and the related ground network, completing construction of a satellite that complements the coverage of the 77° WL spacecraft, entering into a construction contract and a launch contract, completing CDR for the authorized 77° WL spacecraft, and having all necessary financing in place.<sup>44</sup> In contrast to ICO, ViaSat's efforts have advanced its complementary network of two satellites rather than an abandoned system design. Hughes's attempt to distinguish the *ICO* case is thus unavailing.

As detailed above and in ViaSat's Applications, other Commission precedent also supports the grant of milestone flexibility that ViaSat requests here. In particular, the *Loral*, *GE Americom* and *Hughes Galaxy* cases discussed above are illustrative of instances in which the Commission has extended or waived milestones. In those cases the Commission found that

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<sup>41</sup> *Id.* ¶ 24 (stating in an order adopted May 24, 2005 that “ICO indicated ... that physical construction of the GSO satellite will begin in July 2005”).

<sup>42</sup> Hughes's characterization of *ICO* as a case in which there had been “tangible construction” thus is misleading. Hughes Comments at 12 & n.23.

<sup>43</sup> *ICO GSO Modification Order*, 20 FCC Rcd 9797 ¶ 25 (stating as justification in part for its grant of milestone flexibility that: “i) ICO has met all of the past-due milestone requirements in its current authorization, including completing construction of two satellites and launching them, within the time periods originally prescribed; [and] ii) ICO has demonstrated, by entering into a non-contingent satellite construction contract and completing CDR for the proposed GSO satellite prior to disposition of its modification application, that it is committed to rapid implementation of the proposed GSO satellite system”).

<sup>44</sup> These facts also clearly distinguish ViaSat from *AtContact*, which attempted to rely on unrelated business activities in the satellite services industry (without any real showing of efforts at satellite network deployment). *ATCONTACT Communications, LLC, Petition for Reconsideration, Motion for Stay*, Order, FCC 10-100, ¶ 45 (rel. June 3, 2010).

milestone flexibility was necessary to enable the licensee to deploy its fleet in a manner that best suits the needs of its customers and its business.<sup>45</sup> The broader public interest benefits of ViaSat’s case present considerations that offer a far more compelling justification for relief.

Critically, Hughes has not pointed to a single case where the Commission denied milestone relief to a satellite operator with an existing subscriber base in need of additional capacity. To the contrary, the Commission has provided milestone flexibility where the needs of an existing customer base were at issue,<sup>46</sup> and where the need for additional capacity warranted the requested relief.<sup>47</sup> Nor has Hughes identified a single case where the Commission denied milestone relief to a satellite operator where the spacecraft is fully financed, satellite construction and launch contracts are in place, the first two milestones have been met, and necessary ground equipment had been designed.<sup>48</sup> Thus, this case simply is not analogous to the cases Hughes cited that involved start-up companies with no existing customer base.<sup>49</sup>

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<sup>45</sup> *Loral Reassignment and Milestone Extension Order*, 18 FCC Rcd 6301 ¶ 7; *GE Americom Extension Order*, 7 FCC Rcd 5169 ¶ 6; *Hughes Galaxy Extension Order*, 5 FCC Rcd 3423 ¶¶ 8, 11.

<sup>46</sup> *GE Americom Extension Order*, 7 FCC Rcd 5169 ¶ 8 (noting GE Americom’s “existing customer base”); *Hughes Galaxy Extension Order*, 5 FCC Rcd 3423 ¶ 11 (stating that Hughes Galaxy would provide its customers with “continuous service”).

<sup>47</sup> *GE Americom Extension Order*, 7 FCC Rcd 5169 ¶ 10 (finding that GE Americom’s “follow-on customer base . . . provides further evidence of its intent and ability to implement its system”).

<sup>48</sup> Although the Commission granted a milestone extension to TerreStar in part because of the status of its spacecraft construction, TerreStar (unlike ViaSat) was a start-up company that lacked an existing customer base and had no existing business. *See TerreStar Networks, Inc.; Request for Milestone Extension*, Memorandum Opinion and Order, 22 FCC Rcd 17698 (IB 2007).

<sup>49</sup> *See Hughes Comments* at 11-13.

Finally, the timing of ViaSat's request is consistent with the precedent cited by Hughes, and provides no basis for Hughes's second guessing.<sup>50</sup> As an initial matter, ViaSat's construction contract, including the April 2009 Amendment (which was reviewed by the Commission in the context of confirming compliance with the CDR milestone), provided for construction by the July 2010 construction and July 2012 launch milestones for the 77° WL satellite. Thus, ViaSat's decision to prioritize the launch of its 115° WL satellite did not preclude the timely construction and launch of its 77° WL satellite. It did not become clear until the second quarter of 2010 that it would not be feasible to meet the remaining milestone schedule for 77° WL.<sup>51</sup> And at that time, ViaSat promptly sought the relief requested in its Applications. In fact, in the *Loral* case cited by Hughes, Loral's approved request to radically change its satellite design and extend its milestones was filed the month before its construction completion deadline and four months prior to its launch milestone.<sup>52</sup>

### III. CONCLUSION

As the foregoing discussion demonstrates, compelling public interest considerations warrant the limited milestone relief requested in ViaSat's Applications. Among other things, granting that relief would facilitate the provision of 4/1 Mbps service to the unserved across America, and ensure a meaningful competitive alternative everywhere that Hughes provides satellite broadband service. Notably, ViaSat has an existing customer base that needs the capabilities of ViaSat's second new satellite at 77° WL. ViaSat has invested over \$1 billion to

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<sup>50</sup> *Id.* at 2-3, 9-10.

<sup>51</sup> Hughes's attempt to draw a parallel between the timing of ViaSat's filing of the Applications and Loral's request to modify satellite authorizations to add inter-satellite links ("ISLs") is a red herring. *Id.* at 9-10. Loral's inaction in seeking authority for ISLs for two years is entirely incongruous with ViaSat's satisfaction of its first two milestones for 77° WL and the other efforts details in this response.

<sup>52</sup> *See Loral First Milestone Extension Request* at 1-2.

date in its next generation satellite network and this customer base. Moreover, ViaSat has taken significant and concrete steps towards implementing this second satellite, including: (1) entering into a construction contract, (2) procuring launch services, (3) completing satellite design, (4) meeting the first and second milestones under its authorization, (5) expending tens of millions of dollars in research and development on a revolutionary new satellite design, and (6) engineering a new ground network, including gateways and customer terminals that are optimized for 4/1 Mbps and better broadband services.

Hughes's efforts to stall the implementation of ViaSat's second satellite provide no basis for withholding the relief ViaSat seeks. In fact, it would make for an absurd policy result to deny ViaSat the limited relief it seeks while permitting Hughes, its principal competitor, what amounts to nearly seven years to deploy its newly authorized Ka-band satellite and *even more time* for Hughes's two other pending Ka band applications. Fortunately, neither the Commission's rules, policies nor precedent warrant such a result. Accordingly, ViaSat respectfully requests that the Commission grant the limited relief sought in the Applications.

Respectfully submitted,

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John P. Janka  
Elizabeth R. Park  
Amanda E. Potter  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW, Suite 1000  
Washington, DC 20004-1304

*Counsel for ViaSat, Inc.*

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