

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

In the Matter of)
)
ViaSat, Inc.) File Nos. _____
) Call Signs S2737 & S2747
Applications for Modification of)
Authorizations, or Waiver or)
Extension of Satellite Milestones)

**APPLICATIONS FOR MODIFICATION OF AUTHORIZATIONS, OR WAIVER OR
EXTENSION OF SATELLITE MILESTONES**

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SUMMARY

ViaSat, Inc. (“ViaSat”) seeks to modify the authorizations for its two next-generation broadband satellites, authorized at 77° W.L. and 115° W.L. Specifically, ViaSat seeks to “swap” the remaining milestones (construction and launch) in its authorizations to allow ViaSat to reverse the order in which the two Ka-band satellites are implemented. Significantly, ViaSat does not require any net additional time to implement these state-of-the-art spacecraft. In fact, *broadband service to the public still will commence before the earliest of ViaSat’s existing launch milestones.*

Granting the relief requested would provide the certainty that ViaSat needs to complete its U.S. footprint with its second spacecraft at 77° W.L., which is focused primarily on the rural parts of the nation. Deploying that second spacecraft would (i) allow ViaSat to meet the demands of consumers (including many existing subscribers to the WildBlue Internet access service) who reside in the planned coverage area of the 77° W.L. satellite, and (ii) by 2014, significantly advance the Commission’s goal of ensuring the universal availability of high-quality and affordable broadband services to all unserved Americans. To the extent necessary to allow its 77° W.L. satellite to be deployed later than its current remaining milestones (but in accordance with the 115° W.L. milestones), ViaSat seeks a limited waiver or an extension of the two remaining milestones at 77° W.L. No corresponding extension or waiver is needed to allow the 115° W.L. satellite to be implemented in accordance with the 77° W.L. milestones.

ViaSat is a new entrant in the highly-consolidated field of satellite owner/operators, and it recently acquired WildBlue, a leading provider of satellite-based Internet access services to over 400,000 U.S. consumers. ViaSat has invested over \$1 billion to date in order to (i) address the fundamental problem with today’s satellite-based Internet access services (they cost too much and the service quality is not acceptable), and (ii) respond to unmet demand from

consumers who are not reached by DSL or cable modem service, and whom WildBlue has been turning away because it does not have enough satellite capacity.

For these reasons, ViaSat has spent tens of millions of dollars effectuating a redesign of standard satellite network technology — designing each of its spacecraft to have more capacity than all of the communications satellites serving the United States today (combined), and optimizing its entire network to support affordable broadband Internet access services at speeds of 4/1 Mbit/s (and greater) that are competitive with terrestrial broadband alternatives. Doing so required that each of its two authorized spacecraft focus its available capacity on different halves of the United States.

As a result of these efforts, the 77° W.L. and 115° W.L. satellites together will have the capacity to serve three to four million subscribers — approximately 50 percent of the seven million households that the National Broadband Plan estimates are unserved. Therefore, each of these two spacecraft is essential to meeting the needs of ViaSat’s existing customer base, as well as achieving the Commission’s policy goal of providing universal broadband service in the United States by 2020.

No other in-orbit spacecraft can provide these benefits. And no other technology ensures that the households that are the least attractive to terrestrial service providers — households in rural and insular parts of the United States that are expensive to “wire” or otherwise to build out to serve — have the same broadband opportunities as the rest of America.

ViaSat has designed each of these spacecraft and has the financial resources available to deploy both of them. ViaSat has met three of the four milestones at 115° W.L. (contract, critical design review, and construction) and has met two of the four milestones at 77° W.L. (contract and critical design review). Launch contracts are in place for each spacecraft, and international coordination has been effectuated. Moreover, the acquisition of WildBlue provides the demand for these spacecraft, as well as the necessary distribution platform for the provision

of next-generation broadband service to the public. Early next year, ViaSat's first state-of-the-art satellite is scheduled to be launched into 115° W.L. ViaSat is committed to launching its second satellite into 77° W.L. by mid-2014, as long as the relief sought here is timely granted.

During the procurement process for its first spacecraft (originally to be deployed at 77° W.L.), ViaSat received an offer that helped ensure that ViaSat could fully finance the construction and launch of that spacecraft. As a result, ViaSat agreed to sell approximately 15 percent of the capacity in return for payment of a proportionate share of the entire costs of developing and implementing that satellite program. This investment provided ViaSat with financial support that was critical to commencing the construction process and that ensured the prompt completion and launch of its first satellite. However, this investment also necessitated using a different orbital location than 77° W.L. As a result, ViaSat commenced (and has nearly completed) construction of the 115° W.L. satellite (even though the 77° W.L. satellite was authorized first). Nevertheless, the 77° W.L. satellite remains critical to completing ViaSat's geographic coverage of the United States, because the 115° W.L. satellite covers only about one-half of the nation.

This request is consistent with Commission rules, which provide authority to grant license modifications, as well as to grant milestone waivers or extensions for unique and overriding public interest considerations. This request also is consistent with Commission precedent. The Commission has granted relief in analogous circumstances, including a case where a satellite operator swapped its authorized orbital locations, required (and received) additional time to deploy at both locations, and used an eight-year-old, in-orbit spacecraft instead of launching a new one. Significantly, ViaSat does not require any net additional time to implement its state-of-the-art satellite system: each spacecraft will be launched within — indeed, *before* — the milestones that the Commission originally contemplated, albeit in reverse order. Moreover, broadband service to the public will commence from 115° W.L. by mid-2011

— one full year ahead of the July 2012 launch milestone for 77° W.L., and before the earliest date that the Commission could have expected ViaSat to begin providing broadband services with these spacecraft.

This request also is consistent with the type of flexibility afforded to Direct Broadcast Satellite (“DBS”) operators during the nascent stage of that industry. The Commission understood at the time the potential for DBS service to compete with the cable industry and offer rural America access to more sources for high-quality news, information and entertainment programming, as well as access to programming otherwise available only in non-rural areas. The Commission’s flexible approach was critical to the success of the DBS industry today. In this case, grant of the requested relief will facilitate the goals of the National Broadband Plan, by enabling the provision of high-quality, affordable 4/1 Mbps or better broadband service to rural America by mid-2014 — six years before the Commission’s 2020 target. Moreover, the resulting increased competition in those areas should yield the types of benefits realized by the Commission’s nurturing of the DBS industry in its early days — including better quality service from the incumbent terrestrial service providers.

ViaSat’s intention and ability to implement its 77° W.L. authorization is apparent from: (i) the concrete steps ViaSat has taken so far, (ii) the demonstrated need to complete its U.S. geographic coverage, (iii) the existing WildBlue customers in the service area of the 77° W.L. satellite who will benefit from its advanced service capabilities, and (iv) ViaSat’s over \$1 billion investment thus far (together with WildBlue) to bring affordable, quality broadband service to all Americans. Moreover, ViaSat has the necessary financing to construct and launch this satellite. Thus, the Commission has full assurance that the public interests benefits of this application will be realized in a timely fashion.

TABLE OF CONTENTS

SUMMARY i

I. BACKGROUND3

 A. ViaSat’s Satellites at 77° W.L. and 115° W.L. Will Advance National
 Broadband Plan Goals.....11

 B. ViaSat Has Made Significant Progress on its Satellite Program13

 1. ViaSat’s First Spacecraft Is Approximately Nine Months Away
 from Launch.....13

 2. ViaSat Has Made Substantial Progress on Its Second Spacecraft14

 3. ViaSat’s Acquisition of WildBlue Provides a Ready Distribution
 Platform and a Consumer Base with a Demonstrated Need for the
 Capacity of the 77° W.L. Satellite16

II. GRANT OF THE LIMITED RELIEF REQUESTED IS WARRANTED UNDER
ANY LEGAL STANDARD.....16

 A. ViaSat Requests a Permissible “Swap” of its Authorizations16

 B. The Flexibility Requested Is Consistent with the Commission’s Fleet
 Management Policies18

 C. The Requested Relief Is Consistent with the Commission’s Milestone
 Policies23

 1. The Commission Has Granted Milestone Waivers or Extensions in
 Connection with Analogous “Swap” Requests.....24

 2. The Requested Flexibility Does Not Contravene the Commission’s
 Orbital Resource Policies.....26

 3. ViaSat Has Demonstrated its Intent and Ability to Construct and
 Launch at 77° W.L.28

 D. Strong Public Interest Considerations Justify the Requested Flexibility31

III. CONCLUSION.....35

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**APPLICATIONS FOR MODIFICATION OF AUTHORIZATIONS, OR WAIVER OR
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ViaSat, Inc. (“ViaSat”) is authorized by the Commission to serve the United States with two spacecraft that are specifically designed to provide affordable broadband Internet access services at speeds that meet or exceed the 4/1 Mbit/s goal in the Commission’s National Broadband Plan. Together, these spacecraft will provide full coverage of the contiguous United States (“CONUS”), parts of Hawaii and Alaska, as well as Puerto Rico and the U.S. Virgin Islands. One spacecraft is on track to be completely constructed and launched in approximately nine months — by Spring 2011. The second spacecraft can be constructed and launched just over three years later, with its coverage focused primarily on the rural parts of the nation. ViaSat is committed to launching this second spacecraft, and has the financial resources currently available to do so. Grant of these applications will provide the regulatory certainty that ViaSat needs to complete its U.S. footprint with this second spacecraft.

Each of these two spacecraft individually is designed to provide over three times the combined capacity of all of the commercial communications spacecraft that serve the Americas today. As a result, in fewer than four years, these two spacecraft will enable ViaSat to

offer affordable 4/1 Mbit/s broadband service to the entire United States, including the approximately seven million unserved households identified in the National Broadband Plan. No other in-orbit satellite has the ability to provide this type of service to the United States. Each of ViaSat's two spacecraft (77° W.L. and 115° W.L.) thus is essential to achieving the goal of providing universal broadband service in the United States. Moreover, coupled with ViaSat's innovative ground network technologies, these spacecraft can provide mobile broadband services to vehicles, aircraft and watercraft, thus furthering the policies underlying President Obama's recent directive to the Commission and the Department of Commerce to take action aimed at promoting mobile broadband services.¹

ViaSat has designed and fully financed these spacecraft. Construction contracts and firm launch arrangements are in place. ViaSat has satisfied its first two license milestones for each of the 77° W.L. and the 115° W.L. spacecraft, as well as its third milestone at 115° W.L. Moreover, ViaSat has a U.S. customer base that sorely is in need of the capacity and capabilities of *each* of these spacecraft. Thus, the plans for these two spacecraft are concrete, a demonstrable need for them exists, and these spacecraft together offer a tangible solution to closing the broadband availability gap. With the launch of the 115° W.L. satellite just around the corner, the limited regulatory flexibility that ViaSat seeks here is intended simply to ensure that the existing plans for the second satellite at 77° W.L. can come to fruition.

Pursuant to Section 308 of the Communications Act of 1934, as amended,² and 25.117 of the Commission's Rules,³ ViaSat respectfully requests a modification of the

¹ President Barack Obama, Memorandum: "Unleashing the Wireless Broadband Revolution" (June 28, 2010).

² 47 U.S.C. § 308.

authorizations for these two satellites.⁴ Specifically, ViaSat seeks flexibility to “swap” the remaining milestones in its authorizations to allow ViaSat to reverse the order in which the two satellites are implemented. Significantly, ViaSat is not seeking any net additional time to implement these state-of-the-art spacecraft. Both would be launched within the timeframe that the Commission originally contemplated (albeit in reverse order), and broadband service to the public would commence without delay.

To the extent necessary to allow its 77° W.L. satellite to be deployed later than currently specified (while its 115° W.L. satellite is deployed earlier than currently specified and within the timeframe for the 77° W.L. satellite), ViaSat seeks either (i) a limited waiver, pursuant to Section 1.3 of the Commission’s rules, of the remaining milestones (construction and launch) for its satellite at 77° W.L., or (ii) a limited extension of these remaining milestones for that satellite, pursuant to Section 25.117(c) of the Commission’s rules.⁵ As detailed below, unique and overriding public interest concerns justify any such waiver or extension of these milestones that may be necessary.⁶

I. BACKGROUND

ViaSat, a new entrant in the highly-consolidated field of satellite owner/operators, is authorized to launch and operate two Ka-band geostationary orbit (“GSO”) fixed satellite service (“FSS”) spacecraft. The first will be located at 115° W.L. and will serve approximately

³ 47 C.F.R. § 25.117. These modification applications address only the remaining satellite milestones of ViaSat’s authorizations, and no other changes to the authorizations are proposed by this submission. *See id.* § 25.117(d)(1).

⁴ Consistent with Commission requirements, separate Forms 312 are being submitted along with this narrative with respect to ViaSat’s authorizations at 77° W.L. and 115° W.L. This narrative is submitted along with each such Form 312.

⁵ *Id.* §§ 1.3, 25.117(c).

⁶ *See id.* § 25.117(c)(2).

half of the United States.⁷ The second will be located at 77° W.L., and will serve primarily the other half of the United States, with a focus on rural America.⁸ Together, these two spacecraft will provide ViaSat with a national platform with which to provide broadband Internet access service to the millions of currently unserved American households, as well as the millions of other households who do not have a competitive choice of broadband service providers.

As an experienced developer and producer of satellite ground segment equipment and other communications technologies, ViaSat saw first-hand the problems with today's satellite-based Internet access services: they cost too much, and the service quality is not acceptable. Moreover, one of the leading service providers was out of capacity, and was turning customers away.⁹ Clearly, there was unmet demand by consumers who were not reached by DSL or cable modem services, as well as the opportunity to compete in areas where today's DSL and cable modem services simply are not adequate or cost too much. Moreover, the satellite industry was not responding to the increased use of the Internet to deliver video and other entertainment content, or to the growing need for every American household to have access to

⁷ See File Nos. SAT-LOI-20080107-00006, SAT-AMD-20080623-00131, and SAT-AMD-20090213-00023 (granted Aug. 18, 2009) ("115° W.L. Authorization"). ViaSat's satellite at 115.1° W.L. generally will serve parts of the United States east of the Mississippi River and along the west coast, and will provide partial coverage of Alaska and Hawaii. ViaSat has sold to a third party a payload consisting of certain beams that cover parts of Canada. This satellite is not licensed by the Commission but rather is authorized to serve the United States under a "DISCO II" market access decision.

⁸ See File Nos. SAT-LOA-20070314-00051, SAT-MOD-20071204-00168, SAT-MOD-20080718-00144, SAT-MOD-20091127-00129 (granted July 18, 2007) ("77° W.L. Authorization"). ViaSat's satellite at 77.3° W.L. generally will serve parts of the United States west of the Mississippi River, as well as Puerto Rico and the U.S. Virgin Islands, with some overlap of the coverage area of the 115° W.L. satellite. The 77° W.L. satellite also is designed with beams that cover parts of Canada and Mexico. This satellite is licensed by the Commission.

⁹ See *infra*, at 8-9.

affordable and reliable Internet access service for education, employment, and health-related purposes.

In order to meet these consumer demands, ViaSat sought authority in 2007 to deploy a satellite at 77° W.L. in order to meet the “continuing demand for high-speed, high-capacity broadband access, particularly in rural areas that are difficult to reach using existing terrestrial technologies.”¹⁰ ViaSat also indicated that it intended to “develop faster, more reliable satellite broadband service to residential and business consumers, particularly those in underserved areas,” and to “further the Commission’s goals of enhancing competition and promoting the growth and development of cost-effective broadband services in rural areas.”¹¹ In the past three years, that is precisely what ViaSat has done.

As an initial matter, ViaSat has developed a revolutionary satellite system architecture and design that will enable it, early next year, to begin to remedy the fundamental problems with today’s satellite broadband service and to provide for the future growth of satellite broadband across all of America. Such a design effort required a tremendous expenditure of resources, including sustained efforts of ViaSat’s co-founders and top engineers. “Off the shelf” communications satellites were unsuitable, because they are designed to transmit the same information to a large number of end users, rather than being optimized to deliver many different high-data-rate streams to many different end users (as broadband access demands). A significant investment was needed to develop new satellite technology that can provide affordable, quality broadband Internet access.

¹⁰ See Application of ViaSat, Inc. for Authority to Launch and Operate a Ka-band Fixed Satellite Service Communications, Satellite, File No. SAT-LOA-20070314-00051, Exhibit D, Application Narrative at 3 (filed Mar. 14, 2007).

¹¹ *Id.* at 1-2.

ViaSat's broadband satellite system design efforts continue to this day. ViaSat has invested tens of millions of research and development dollars to fundamentally change standard communications satellite system design to facilitate the provision of an affordable and competitive broadband service. ViaSat also has maximized its system capacity and lowered the cost per bit of its service by (i) developing the means to share the limited spectrum resource with other licensees, and (ii) focusing the end-user beams of each of its satellites on approximately one-half of the United States. While the second technique mandated the use of a second spacecraft to provide full-CONUS service, it has the important benefit of effectively doubling the available capacity of the areas that are served by each satellite, thus better accommodating future demand in those areas. Along the way, ViaSat sought corresponding modifications of its 77° W.L. authorization to reflect these developments.¹²

Moreover, ViaSat has expended considerable resources in the past three years to develop mobile uses of FSS spectrum, including technology that allows the provision of broadband service to vehicles, aircraft and watercraft.¹³ Those mobile services are important not

¹² See ViaSat Modification Applications, File Nos. SAT-MOD-20071204-00168 (adding use of LMDS frequencies on a secondary basis), SAT-MOD-20080718-00144 (reflecting the technical specifications of the new satellite design, including focusing coverage of the western half of CONUS), SAT-MOD-20091127-00129 (adding use of the 18.8-19.3 GHz and 28.6-29.1 GHz frequencies on a secondary or non-interference basis).

¹³ ViaSat has been authorized to provide service to aircraft over FSS spacecraft. See, e.g., *ViaSat, Inc. Application for Blanket Authority for Operation of 1,000 Technically Identical Ku-Band Aircraft Earth Stations in the United States and Over Territorial Waters*, Order and Authorization, 22 FCC Rcd 19964 (2007). ViaSat's mobile satellite earth station technology has also been implemented to provide maritime services for commercial and governmental users over FSS spacecraft. See, e.g., Application of KVH Industries, Inc. for ESV Network, File No. SES-LIC-20081104-01450 (Call Sign E090001) (granted Dec. 15, 2009); Applications of SES Americom, Inc., File Nos. SES-LIC-20060824-01502 (Call Sign E060335) (granted Nov. 2, 2009); SES-LIC-20070504-00563 (Call Sign E070085) (granted Nov. 4, 2009) (amended to substitute KVH Industries, Inc. as applicant, File Nos. SES-AFS-20090515-00589; SES-AMD-

only for commercial purposes, but also to support the U.S. military and national security initiatives, and to provide reliable communications for first responders. Consistent with the regulatory developments that have enabled use of that technology at Ku-band, and consistent with the President's recent directive on revolutionizing mobile wireless broadband, ViaSat plans to utilize that same technology to support the provision of mobile broadband services over its 77° W.L. and 115° W.L. satellites.

As a result of its pioneering efforts, each of the two authorized ViaSat satellites (77° W.L. and 115° W.L.) shares a common design, and each individually has more capacity than all of the FSS satellites that serve the Americas, combined. This fundamental change will enable ViaSat to offer the most cost-effective solution to America's broadband needs. The capital cost of each home passed with a single one of these ViaSat-designed satellites is just about \$5, and the capital cost per home actually served is under \$1,000. No terrestrial technology comes even close to these metrics. And no other technology ensures that the households that are the least attractive to terrestrial service providers — households in rural and insular parts of the United States that are expensive to “wire” or otherwise to build out to serve — have the same broadband opportunities as the rest of America.

Because no in-orbit satellite has the capacity needed to provide this type of broadband service to the United States, each of the two ViaSat spacecraft is essential to offering universal broadband access throughout the United States. As noted above, each satellite serves about half of the nation. By concentrating the available throughput of each satellite on half of the nation, ViaSat is best able to accommodate the projected capacity needs for the bandwidth-consuming applications that will continue to develop during the satellite's 15-year design life.

20090515-00596). These same technologies can be applied to provide land mobile service over FSS spacecraft.

During the procurement process for its first spacecraft (originally to be deployed under ViaSat's 77° W.L. Authorization) in the fall of 2007, ViaSat was presented with a proposal that would help ensure that ViaSat could fully finance the construction and launch of the first spacecraft. A business partner offered to purchase approximately 15 percent of the capacity on that satellite in return for the payment of a proportionate share of the costs of the entire satellite program. ViaSat accepted the offer, and this investment provided ViaSat with additional financial support that was critical to commencing the satellite construction process at that time. In turn, the investment also ensured the prompt completion and launch of ViaSat's first satellite, much like the pre-launch capacity sales that enabled the construction and deployment of many of the FSS spacecraft in orbit, and much like the strategic joint ventures that ensured the launch of the first Direct Broadcast Satellite ("DBS") spacecraft.¹⁴

In the procurement process, ViaSat also factored in what it had learned as the developer, supplier and manager of the ground-based networks that have powered WildBlue Communications ("WildBlue") from the beginning of its service. WildBlue, one of the two leading satellite-based providers of Internet access and one of the top 20 ISPs in the country, was

¹⁴ See, e.g., *Applications of United States Satellite Broadcasting Company, Inc., for Modification of Construction Permit for Direct Broadcast Satellite Sys. and For Extension of Time to Construct Direct Broadcast Satellite Sys. and Hughes Commc'ns Galaxy, Inc., for Modification of Construction Permit for Direct Broadcast Satellite Sys.*, Memorandum Opinion and Order, 7 FCC Rcd 7247, 7249 ¶ 12 (MMB 1992) ("*USSB Second Extension Order*") (approving requests, characterized as "essential" by USSB and Hughes, to locate USSB's five-channels on a payload that it purchased on Hughes's first DBS satellite); *Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992; Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Comments of the National Rural Telecomms. Coop., CS Docket No. 94-48, at 5 (filed June 29, 1994) (noting the pre-launch contract between the National Rural Telecommunications Cooperative ("NRTC") and Hughes Communications Galaxy, Inc. whereby NRTC, its members, and affiliated companies contributed more than \$100 million to purchase satellite capacity and other services on DirecTV's first satellite).

running out of capacity in certain geographic areas, where consumer demand for its services was (and remains) the highest — large portions of the region east of the Mississippi River and along the west coast. Because of its capacity constraints, WildBlue could not add subscribers in those areas.¹⁵ ViaSat therefore focused the coverage of its first satellite on those areas where the greatest consumer need existed.

In order to provide the requisite coverage of western parts of Canada for its business partner (as well as serve Alaska and Hawaii), ViaSat needed to use an orbital location further west, at 115° W.L. As a result, in January 2008, ViaSat decided to deploy its first spacecraft at 115° W.L., and signed a construction contract with an accelerated three-year, start-to-finish, delivery schedule.

During the first half of 2008, ViaSat worked closely with its satellite manufacturer to optimize the design of its satellites at both 77° W.L. and 115° W.L. ViaSat's second satellite (at 77° W.L.) was focused primarily on the second half of the United States that the 115° W.L. satellite would not serve. ViaSat sought Commission authority to implement an additional spacecraft at 115° W.L.¹⁶ And, as ViaSat's original application for that spacecraft reflects, the existing 77° W.L. authorization remains critical to ViaSat's overall system plans. In July 2008, ViaSat sought a license modification to implement this optimized configuration at 77° W.L, and it also signed a construction contract for the 77° W.L. satellite in accordance with its license milestone.¹⁷ During the remainder of 2008, ViaSat continued the design efforts described

¹⁵ Because an estimated 90% of WildBlue's customers do not have access to any terrestrial Internet access service (just a dial-up connection), only satellite can meet their broadband needs.

¹⁶ See ViaSat Letter of Intent, File No. SAT-LOI-20080107-00006 (filed Jan. 7, 2008).

¹⁷ See ViaSat Modification Application, File No. SAT-MOD-20080718-00144, Supplemental Technical Annex at 3 (filed July 18, 2008); Letter from John P. Janka,

above with respect to both the 77° W.L. and the 115° W.L. spacecraft, culminating in the completion of a critical design review process for each spacecraft in late January 2009.

Next, ViaSat's focus turned to the opportunity to acquire WildBlue, which culminated in a \$570 million transaction that closed in December 2009. As the Commission is well aware, the most sophisticated technology and the best ideas will not come to fruition without a ready market and available financing. The acquisition of WildBlue provides ViaSat with a ready customer base and relationships with distributors of its soon-to-be-deployed broadband capacity. The acquisition also provides the infrastructure to actually deliver broadband service to end users over ViaSat's 77° W.L. and 115° W.L. satellites immediately after launch — access to critical billing, back office and customer support systems. Significantly, the acquisition of WildBlue also provides ViaSat with a ready source of available cash flows that (i) help finance the deployment of the 77° W.L. and the 115° W.L. satellites, and (ii) have already facilitated ViaSat's raising approximately \$100 million in the capital markets earlier this year.

Moreover, the acquisition of WildBlue provides ViaSat with an existing customer base whose needs ultimately cannot be accommodated without the launch of a second ViaSat satellite, thereby increasing ViaSat's incentives to deploy its satellite technology to serve U.S. consumers, including through the construction and launch of the 77° W.L. satellite.

This is how ViaSat came to “reverse” the order in which it is deploying its authorized satellites. In sum, the first will be launched into 115° W.L. by early 2011, and the second can be launched into 77° W.L. a few years later. Significantly, the timing of the launch

Counsel for ViaSat, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, FCC File No. SAT-LOA-20070314-00051, Call Sign S2737 (July 18, 2008); Public Notice, Policy Branch Information, Actions Taken, Report No. SAT-00555 (Sept. 19, 2008) (finding the contract execution milestone for 77° W.L. satisfied).

of the 77° W.L. satellite will not adversely affect end users. The capacity on the satellites currently used to serve WildBlue customers can be optimized to provide ViaSat's enhanced broadband services during the short time period before the launch of the 77° W.L. satellite.

It bears emphasis that the second satellite at 77° W.L. ultimately is essential to serve WildBlue customers and other unserved households in the portions of CONUS that the 115° W.L. satellite does not cover. The satellite at 77° W.L. will complete the coverage footprint that will allow ViaSat to offer affordable, high-quality broadband service to all U.S. consumers. But that second satellite cannot be constructed and launched before these applications are granted.

A. ViaSat's Satellites at 77° W.L. and 115° W.L. Will Advance National Broadband Plan Goals

As the Commission recently has recognized, satellite broadband is a cost-effective solution for reaching unserved households and meeting the universal service goals established by the National Broadband Plan.¹⁸ The Commission also has recognized the benefits of satellite-delivered broadband in rural areas, such as the services to be provided by the 77° W.L. satellite.¹⁹ Once launched, a satellite can provide service to all households in its coverage area without the need to build and maintain expensive last-mile and middle-mile terrestrial infrastructure. Thus, satellite technology is ideally suited to provide broadband service to remote or hard-to-reach unserved households that terrestrial providers cannot serve cost-effectively, or simply choose not

¹⁸ Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan*, 137 (2010) ("National Broadband Plan"); *id.* at 150 (recommending satellite broadband as part of efforts to accomplish universal broadband connectivity); *see also* Omnibus Broadband Initiative, *The Broadband Availability Gap: OBI Technical Paper No. 1*, 89 (2010) ("Broadband-over-satellite is a cost-effective solution for providing broadband services in low-density areas.").

¹⁹ Federal Communications Commission, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, 3-4 ¶ 10 (2009) ("Rural Broadband Report").

to serve. Satellite also is an effective means of introducing much-needed competition to those geographic areas where consumers may have only one broadband service provider and thus no competitive choice.

These factors illustrate the critical role that next-generation satellite technology will play in achieving the National Broadband Plan's goal of ensuring that, by 2020, all U.S. consumers have access to affordable broadband services with a minimum actual download speed of 4 Mbit/s and upload speed of 1 Mbit/s.²⁰ Indeed, the National Broadband Plan acknowledges that satellites like the forthcoming ViaSat satellites are capable of serving *any* household at the target universal service level of 4/1 Mbit/s.²¹

Together, ViaSat's satellites at 77° W.L. and 115° W.L. will be able to serve a total of approximately three to four million subscribers at the 4/1 Mbit/s universal speed goal. Using the broadband adoption rate in rural America of 50 percent,²² and the Commission's estimate of seven million unserved households,²³ it becomes apparent that placing these two ViaSat satellites into operation at 77° W.L. and 115° W.L. could meet the needs of most, if not all, unserved households who actually want broadband service. At under \$1,000 per household *served* (including all customer equipment and installation costs), the total cost to serve all such unserved households with a high-quality 4/1 Mbps level of service with these next-generation broadband satellites would be about \$6 billion – just 25 percent of the **\$24 billion** of governmental funds estimated as necessary to encourage the deployment of terrestrial infrastructure to areas that

²⁰ National Broadband Plan at 135.

²¹ *See id.* at 137 (“satellite is capable of delivering speeds that meet the National Broadband Availability Target”).

²² *See id.* at 167 (Exh. 9-A).

²³ *See id.* at 20.

incumbent providers have chosen not to serve.²⁴ The need for those types of infrastructure subsidies can be significantly reduced by grant of these applications, which will allow ViaSat to provide nationwide broadband coverage in fewer than four years.²⁵

B. ViaSat Has Made Significant Progress on its Satellite Program

To date, ViaSat (together with WildBlue) has invested over \$1 billion in its satellite broadband system. As detailed below, ViaSat's two spacecraft have been designed and are fully financed. Construction contracts and firm launch arrangements are in place for each spacecraft. ViaSat has satisfied its first two license milestones at each of 77° W.L. and 115° W.L., as well as its third milestone at 115° W.L. Moreover, ViaSat has acquired a U.S. customer base that sorely is in need of the capacity and capabilities of each of these spacecraft. Thus, the plans for these two spacecraft are concrete, a demonstrable need for them exists, and these spacecraft together offer a tangible solution to closing the broadband availability gap described above in fewer than four years.

1. ViaSat's First Spacecraft Is Approximately Nine Months Away from Launch

As explained above, ViaSat's first spacecraft is destined for 115° W.L. Physical construction of this spacecraft is almost completed, and it is scheduled for thermal vacuum testing this month.²⁶ ViaSat has secured a launch window in the first quarter of 2011. These

²⁴ See *id.* at 20, 136, 137 (Exh. 8-B).

²⁵ Of course, subsidies also may be appropriate for other purposes, such as making service affordable to disadvantaged households and communities, and making service available at higher speeds than otherwise would be economically feasible.

²⁶ On March 23, 2010, ViaSat submitted a demonstration that it has satisfied the contract, CDR and construction milestones for its satellite at 115° W.L. ViaSat, Inc., Request for Determination of Compliance with Satellite Implementation Milestones and Allowance of Bond Reduction, File Nos. SAT-LOI-20080107-00006, SAT-AMD-20080623-00131, SAT-AMD-20090213-00023 (filed Mar. 23, 2010).

efforts put ViaSat far ahead of the milestones in its 115° W.L. authorization, which provide for ViaSat to enter into a construction contract by August 18, 2010, complete critical design review (“CDR”) by August 18, 2011, commence construction by August 18, 2012, and launch by August 18, 2014.²⁷ In fact, this spacecraft is on target to be in operation *three years ahead of its fourth and final license milestone.*

2. ViaSat Has Made Substantial Progress on Its Second Spacecraft

As explained above, ViaSat is committed to launch a second spacecraft to complete its U.S. coverage footprint. It plans to launch and operate that satellite at 77° W.L. ViaSat signed a construction contract for that satellite in accordance with the applicable license milestone, and completed CDR six months before it was required to do so. The Commission determined that ViaSat has satisfied the contract execution and CDR milestones for this satellite,²⁸ and that ViaSat has paid all amounts due under the construction contract through CDR.²⁹

Financing for the satellite at 77° W.L. is currently in hand. ViaSat’s available cash, revolving credit line, and cash flows from its existing operations, provide more than adequate funds to pay for the construction and launch of this satellite.³⁰ Significantly, even

²⁷ See 115° W.L. Authorization, Attach. at 3 (Aug. 18, 2009) (Conditions for Letter of Intent).

²⁸ See Public Notice, Policy Branch Information, Actions Taken, Report No. SAT-00555 (Sept. 19, 2008).

²⁹ See Public Notice, Policy Branch Information, Actions Taken, Report No. SAT-00631 (Sept. 4, 2009); Letter from John P. Janka, Counsel for ViaSat, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, Resubmission of ViaSat, Inc. Milestone Compliance Showing for VIASAT-KA1, Call Sign S2737, File Nos. SAT-LOA-20070314-00051, SAT-MOD-20080718-00144, SAT-AMD-20081203-00220 (filed July 14, 2009).

³⁰ ViaSat has a current ratio (ratio of current assets to current liabilities) of over 2, and a leverage ratio (ratio of debt to adjusted EBITDA) of under 2, which demonstrates that it

during a challenging economy, ViaSat has raised capital that may be used toward the construction and launch of its first two satellites. Specifically, ViaSat raised approximately \$100 million in proceeds in a very successful 2010 public offering of common stock.³¹ The overwhelming success of this offering during the midst of a deep and continuing economic downturn is a testament to the market's confidence in ViaSat's strategic plan and business model, including its plans for satellite broadband services.

ViaSat has made other tangible efforts to implement its second satellite at 77° W.L. ViaSat has procured launch services that can be used for a launch of this satellite before December 2014, and has paid over \$7.5 Million to date under that launch contract.³² ViaSat has also completed international coordination for this satellite with a number of satellite networks and is continuing its coordination efforts.

The 77° W.L. satellite has an upcoming commence physical construction milestone deadline of July 18, 2010, and a launch milestone of July 18, 2012, both of which are

has a high level of liquidity and low leverage. As a result, ViaSat has a capital structure that is well-suited to support the capital expenditures needed to deploy a satellite network. In contrast, many satellite companies today have leverage ratios of over 3.5, with some as high as 6.

³¹ Press Release, ViaSat, Inc., Closing of Public Offering of Common Stock (Mar. 31, 2010) *available at* <http://www.viasat.com/news/closing-public-offering-common-stock>. The size of the offering increased due to higher-than-expected demand. *See* Press Release, ViaSat, Inc., Upsizing and Pricing of Public Offering of Common Stock and Exercise of Over-Allotment Option (Mar. 26, 2010) *available at* <http://www.viasat.com/news/upsizing-and-pricing-public-offering-common-stock-and-exercise-over-allotment-option>.

³² ViaSat has two launch contracts. One contract is with ILS for the scheduled launch of its first spacecraft (115° W.L.) in early 2011. The second launch contract is with Arianespace and will be used for the second spacecraft at 77° W.L., unless there is an unexpected problem with the ILS launch of the 115° W.L. satellite.

the subject of these applications. ViaSat has not yet commenced physical construction of this spacecraft.³³

3. *ViaSat's Acquisition of WildBlue Provides a Ready Distribution Platform and a Consumer Base with a Demonstrated Need for the Capacity of the 77° W.L. Satellite*

ViaSat's acquisition of WildBlue for \$570 million is equally as important to ViaSat's satellite program as the efforts made to implement its first two broadband satellites. The acquisition of WildBlue provides ViaSat with relationships with distributors, and access to billing, back office and customer support systems that provide the means for getting next-generation satellite broadband service to end users over ViaSat's satellites almost immediately upon launch. Most important, it provides a ready customer base, much of which is located in areas that cannot be served by the 115° W.L. satellite, and thus needs the services that will be provided by the second satellite at 77° W.L. ViaSat's acquisition of WildBlue illustrates ViaSat's strong commitment to the success of its satellite broadband program and its intent to implement its first two spacecraft at both 77° W.L. and 115° W.L.

II. GRANT OF THE LIMITED RELIEF REQUESTED IS WARRANTED UNDER ANY LEGAL STANDARD

A. ViaSat Requests a Permissible "Swap" of its Authorizations

ViaSat seeks a modification of its two satellite authorizations to allow it to reverse the order in which its spacecraft at 77° W.L. and 115° W.L. are to be implemented. In other words, the 115° W.L. satellite would be constructed and launched in a manner consistent with the milestones for the 77° W.L. satellite, and the 77° W.L. satellite would be constructed and

³³ See Letter from John P. Janka, Counsel for ViaSat, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, Resubmission of ViaSat, Inc. Milestone Compliance Showing for VIASAT-KA1, Call Sign S2737, File Nos. SAT-LOA-20070314-00051, SAT-MOD-20080718-00144, SAT-AMD-20081203-00220 at Description of Amendment No. 1 to Contract (filed July 14, 2009).

launched in a manner consistent with the milestones for the 115° W.L. satellite. Because ViaSat has satisfied the first two milestones (contract and critical design review) for each of these satellites, as well as the construction commencement milestone for 115° W.L., this request affects only the third milestone for 77° W.L. (construction) and the final milestone for both satellites (launch). In essence, ViaSat requests that the Commission “swap” the last two milestones in its authorizations for the two satellites. The following table sets forth the existing license milestones, and the modified milestone dates that ViaSat proposes:

Location	Construction Commencement		Launch	
	<u>Current</u>	<u>Proposed</u>	<u>Current</u>	<u>Proposed</u>
115° W.L.	8/18/2012	7/18/2010	8/18/2014	7/18/2012
77° W.L.	7/18/2010	8/18/2012	7/18/2012	6/1/2014 ³⁴

Significantly, ViaSat is not seeking any net additional time to implement these state-of-the-art spacecraft. They would be launched within the timeframe that the Commission originally contemplated (albeit in reverse order), and broadband service to the public would commence without delay.

As detailed above, the Commission should have confidence that these revised milestones will be met. ViaSat’s first satellite (for 115° W.L.) is almost completely constructed and is scheduled for launch in the first quarter of 2011. In fact, service to the public should commence more than one year ahead of ViaSat’s first launch milestone (July 18, 2012), and thus well before the Commission could have expected satellite broadband services would be brought to consumers from 77° W.L. Moreover, a pent-up demand for the second satellite (for 77° W.L.) exists, both in the existing WildBlue customer base (half of whom would not otherwise have

³⁴ ViaSat proposes June 1, 2014, rather than August 18, 2014, as the launch milestone for 77° W.L., because June 1, 2014 is the date on which U.S. ITU priority for the Ka-band at 77° W.L. expires.

access to the advanced capabilities of this new satellite design) and in the millions of unserved and underserved U.S. households who likewise would not have that opportunity. Significantly, if the Commission grants these applications, ViaSat intends to commence physical construction of its second satellite by the first quarter of 2011 (more than a year earlier than the existing August 18, 2012 milestone for ViaSat's second authorized satellite).

Without a grant of this request, it will not be possible for ViaSat to implement the second satellite at 77° W.L. under its existing license. Significantly, longstanding Commission policy and precedent support the requested relief.

B. The Flexibility Requested Is Consistent with the Commission's Fleet Management Policies

As an initial matter, the relief ViaSat requests is consistent with the Commission's long-standing policy of providing flexibility to satellite operators in how they deploy their fleets.³⁵ Recognizing that licensees are in a better position to determine how best to tailor their systems, the Commission routinely has authorized licensees to rearrange satellites "to reflect business and customer considerations where no other public interest factors are adversely affected."³⁶ For example, the Commission has applied a flexible approach to satellite relocations that were effectuated to serve consumer needs and to generate revenues for the satellite

³⁵ See, e.g., *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service and the Applications of GE American Commc'ns, Inc.; For Modification of Authorizations to Construct, Launch and Operate Space Stations in the Fixed Satellite Service; For Special Temporary Authority to Test a Space Station at 146 W.L.; and For Authority to Operate a Space Station Temporarily at 141.5 W.L.; GE American Commc'ns, Inc. and Alascom, Inc; For Authorization to Launch and Operate a C-Band Replacement Satellite*, Memorandum Opinion, Order and Authorization, 15 FCC Rcd 23583, 23588 ¶ 11 (IB 2000) ("GE Americom Modification Order").

³⁶ *Id.*

operator,³⁷ promote more efficient use of orbital resources,³⁸ or maximize a satellite's useful life.³⁹ Moreover, the Commission has authorized orbital location swaps (including associated milestone waiver requests in at least one instance) involving unlaunched satellites.⁴⁰

In particular, the Commission authorized Loral to swap the orbital locations of an unlaunched satellite authorized for 77° W.L. with an eight-year old satellite then in operation at 89° W.L.⁴¹ The swap was necessary to permit Loral to implement two separate satellite

³⁷ *Application of AMSC Subsidiary Corp.; For Modification of Mobile Satellite Serv. License; For Modification of Earth Station Licenses*, Order and Authorization, 13 FCC Rcd 12316, 12319 ¶ 12 (IB 1998) (“*AMSC Modification Order*”) (explaining that granting AMSC’s application would enable it “to secure needed funds by receiving compensation for its unused capacity[, which] will improve AMSC’s commercial viability, placing it in a better position to continue to operate and expand its system, including constructing and launching a second generation system”).

³⁸ *See GE Americom Modification Order*, 15 FCC Rcd at 23590 ¶ 20 (concluding that grant of GE Americom’s requests “is in the public interest as it will promote efficient use of the western orbital arc for service to Alaska, and provide GE Americom with the flexibility to manage its fleet to meet customer requirements”).

³⁹ *Application by GE American Commc’ns, Inc. For Modification of Authorization to Construct, Launch and Operate a Space Station in the Fixed-Satellite Service*, File No. SAT-MOD-19981023-00074, at 6-7 (filed Oct. 23, 1998) (granted by *GE Americom Modification Order*, 15 FCC Rcd 23583).

⁴⁰ *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, 6302 ¶ 1 (IB 2003) (“*Loral Reassignment and Milestone Extension Order*”); *Application of Intelsat LLC to Modify Authorizations to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Commc’ns Sys. in Geostationary Orbit*, File No. SAT-MOD-20011221-00139 (filed Dec. 21, 2001) (granted by date stamp on March 22, 2002) (authorizing launch of Intelsat 903 into a different orbital location than originally authorized); *see also Pan American Satellite Corp.; Application for Modification of Conditional Authority to Construct a Subregional Western Hemisphere Satellite System*, Memorandum Opinion, Order and Authorization, 60 Rad. Reg. 2d 398 (authorizing PanAmSat to launch its first satellite to 45° W.L. instead of 57° W.L. as first proposed).

⁴¹ *Loral Reassignment and Milestone Extension Order*, 18 FCC Rcd at 6306 ¶ 7. When the Commission granted Loral’s request in 2003, the satellite operating at 89° W.L. had been

authorizations: (i) a portion of its unutilized Ka-band license at 89° W.L., which Loral proposed to include on the C/Ku-band satellite then under construction for 77° W.L., and (ii) the vacant C/Ku-band frequencies at 77° W.L., which Loral intended to occupy with an in-orbit satellite.⁴² At its essence, the request was a simple swap that provided Loral with flexibility to implement its unutilized spectrum assignments at two different orbital locations. Significantly, Loral sought additional time to implement spacecraft at both locations: a 28-month milestone extension at 77° W.L. and a 2-month milestone extension at 89° W.L.⁴³

In stark contrast to ViaSat, Loral could not meet the milestones at *either* of its authorized orbital locations.⁴⁴ As a result, the C/Ku-band frequencies at 77° W.L. and the Ka-band frequencies at 89° W.L. remained unutilized after Loral’s original launch milestone at each

in orbit for nearly eight years. *See* Loral SpaceCom Corp. Application for Modification of Space Station Authorization, File No. SAT-MOD-19991101-00109, at 4 (filed Nov. 1, 1999) (“*Loral Satellite Reassignment Request*”) (noting that the 89° W.L. satellite had been in operation for four years as of 1999).

⁴² *Loral Reassignment and Milestone Extension Order*, 18 FCC Rcd at 6306 ¶ 7.

⁴³ Loral Space & Commc’ns Ltd. Application for Extension of Milestone Dates, File No. SAT-MOD-19991101-00107, at 1, 2 (filed Nov. 1, 1999) (“*Loral First Milestone Extension Request*”). As discussed *infra*, at 21-22 nn.46, 48, Loral required even more time to implement its new satellite by the time the Commission acted on Loral’s first request to extend its milestones.

⁴⁴ Loral could not relocate its in-orbit satellite from 89° W.L. to 77° W.L. “until [the new satellite] has been tested and is ready to be placed into service at 89° W.L.” *Loral Satellite Reassignment Request* at 2.

In addition to adding a Ka-band payload, Loral requested approval for several other changes to the C/Ku-band configuration of the satellite proposed to be launched into 89° W.L. instead of 77° W.L. *See* Loral Space & Commc’ns Ltd. Application for Modification of Authorization, File No. SAT-MOD-19991102-00106, at 1-2 (filed Nov. 2, 1999) (seeking authority to modify the satellite design to, among other things, expand the C/Ku-band coverage area to include both North and South America and modify the C- and Ku-band transponder configuration and channelization). Loral also stated its intention to launch its new satellite *after* the current launch milestone set for the Ka-band portion of its 89° W.L. license. *See Loral First Milestone Extension Request* at 2 (extension requested “is only two months beyond the current launch milestone” for the Ka-band license at 89° W.L.).

location while Loral constructed its new satellite for 89° W.L. In contrast, ViaSat is implementing its satellite at 115° W.L. over three years *before* its launch milestone there.

When Loral submitted its modification requests in November 1999, construction completion at 77° W.L. was due the following month (December 1999), and the launch deadline was only four months away (March 2000).⁴⁵ Accordingly, Loral also sought — and the Commission granted — modifications of the milestones originally associated with 77° W.L. *and* with 89° W.L. Notably, Loral did not assert that flexibility was needed as a result of circumstances beyond its control.⁴⁶ Loral instead acknowledged that the additional time was required to incorporate “technological advances [that] will provide significant operating efficiencies and more valuable services to customers.”⁴⁷ The Commission found these

⁴⁵ *Loral First Milestone Extension Request* at 1. The *Loral Reassignment and Milestone Extension Order*, 18 FCC Rcd at 6302 ¶ 2 incorrectly reflected September 1999 as the construction completion deadline. The original construction completion deadline for 77° W.L. in fact was December 1999. The September 1999 construction completion deadline applied to a different Loral satellite, at 129° W.L. See *Loral Space & Commc’ns, Ltd., for Authority to Construct, Launch and Operate Space Stations in the Domestic Fixed-Satellite Serv.*, Memorandum Opinion and Order, 11 FCC Rcd 20441, 20444 ¶¶ 9, 12 (IB 1996).

⁴⁶ About *two years after* its first milestone extension request, Loral experienced “unanticipated technical problems” associated with the redesign of the new satellite. *Loral Reassignment and Milestone Extension Order*, 18 FCC Rcd at 6307 ¶ 9; Loral SpaceCom Corp. Application for Extension of Milestone Dates, File No. SAT-MOD-20020408-00060 (filed Apr. 8, 2002) (“*Loral Second Milestone Extension Request*”). Loral’s original requests for reassignment and milestone extensions were not premised on any such unanticipated problems. See *Loral First Milestone Extension Request*. In fact, there is no indication that the technical issues it experienced were unrelated to its decision to alter the design of the satellite. See *Loral Second Milestone Extension Request*. See also *GE Americom Modification Order*, 15 FCC Rcd at 23584, 23586, 23587 ¶¶ 2, 6, 8 (finding that GE Americom’s 1997 request for a milestone extension, which was based on a pending motion for reconsideration before the Commission, to be insufficient justification for an extension, but nevertheless granting a ten-month extension of the launch deadline based on delays unrelated to GE Americom’s original extension request that were reported three years later, in June 2000).

⁴⁷ *Loral First Milestone Extension Request* at 4-5.

arguments compelling, (i) granting both an extension and a waiver of milestones to permit Loral to launch its new satellite into 89° W.L. (and correspondingly relocate the in-orbit Telstar 4 from 89° W.L. to 77° W.L.)⁴⁸ and (ii) citing, among other things, the public interest benefit of allowing consumers to “gain timely access to a wide range of services that can be deployed using the Ka-band.”⁴⁹

The underlying rationale of the Commission’s fleet management policy and of the *Loral* decision is relevant even though ViaSat is not seeking to implement its authorized satellites at different locations, but rather is seeking in effect to swap the authorizations for those Ka-band satellites.⁵⁰ As a result of the financing opportunity arising from the sale of capacity on its first satellite at 115° W.L., ViaSat decided to expedite service to consumers by proceeding at 115° W.L. first. ViaSat may not have been able to commence and complete the construction of the first satellite as quickly if it had declined the opportunity at 115° W.L. and if it instead had proceeded with its first satellite at 77° W.L. Thus, moving forward at 115° W.L. first (and over three years earlier than required) has facilitated ViaSat’s ability to expedite satellite capacity to areas where WildBlue subscribers need the capacity most, as well as its ability to deliver cost-effective broadband services to unserved U.S. households.

⁴⁸ Specifically, the Commission extended the launch milestone for the new 89° W.L. satellite until May 2003, more than three years beyond its original launch deadline for 77° W.L. *Loral Reassignment and Milestone Extension Order*, 18 FCC Rcd at 6307, 6302 ¶¶ 9, 2. In addition, the Commission granted a waiver of certain Ka-band milestones for 89° W.L. *Id.* at 6313 ¶ 23.

⁴⁹ *Id.*; *see id.* at 6306-07 ¶ 8 (finding Loral’s request to add a Ka-band payload to its satellite to be in the public interest).

⁵⁰ As in other fleet management cases, no new orbital resources are sought in this request. Moreover, the satellites will operate within the same technical parameters currently authorized and in accordance with the parameters coordinated for each location. After the proposed swap, ViaSat would comply with the milestone conditions originally established for each satellite but at the other orbital location. *See, e.g.*, 47 C.F.R. § 25.118(e).

Significantly, and unlike the *Loral* case, there will be *no* delay in launching service to the public (or any lapse of service) as a result of this request.⁵¹ Indeed, the first satellite will be launched more than a year ahead of the earliest date the Commission expected ViaSat to commence service — July 18, 2012. The only difference will be that the service will be provided from 115° W.L. instead of from 77° W.L.

Moreover, if these applications are granted, ViaSat will construct and launch two state-of-the-art satellites, rather than relying on an eight-year old satellite, as *Loral* did.⁵² ViaSat's second satellite can be launched prior to the date the Commission expected service to commence at 115° W.L. — August 18, 2014 — but service will be provided instead from 77° W.L. ViaSat thus proposes to provide full CONUS coverage — with capacity to serve about three to four million unserved households — no later than 2014, consistent with the Commission's focus on achieving the universal broadband goals of the National Broadband Plan by 2020.

In recognition of the public interest benefits of ViaSat's implementing the 115° W.L. satellite *even before* the existing milestones for 77° W.L., extending the type of flexibility that the Commission has granted to other operators is warranted to enable ViaSat to implement the 77° W.L. satellite in accordance with the remaining 115° W.L. milestones (and vice versa).

C. The Requested Relief Is Consistent with the Commission's Milestone Policies

Because ViaSat proposes to construct its first satellite at 115° W.L. within the milestones established for its authorization at 77° W.L. (and vice versa), ViaSat does not believe that its request for flexibility should be viewed as a milestone extension request. However,

⁵¹ See e.g., 47 C.F.R. § 25.118(e)(7); *AMSC Modification Order*, 13 FCC Rcd at 12318-19 ¶¶ 9, 11-12 (finding relocation of satellites for fleet management purposes in the public interest where customers would continue to be served with minimal disruption).

⁵² See *Loral Satellite Reassignment Request* at 4.

because this request to “swap” the milestones in its authorizations would result in ViaSat launching its second satellite into 77° W.L. after the current milestone date for that satellite, ViaSat acknowledges that the policies underlying the Commission’s milestone extension policies may be relevant.

1. *The Commission Has Granted Milestone Waivers or Extensions in Connection with Analogous “Swap” Requests*

To the extent necessary, ViaSat requests a limited waiver of the Commission’s milestone requirements for its authorization at 77° W.L.,⁵³ or alternatively, an extension of the third and final (construction and launch) milestones for that satellite. Pursuant to Section 1.3 of the Commission’s rules, the Commission may waive its rules for good cause shown.⁵⁴ “Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.”⁵⁵ Circumstances that justify a waiver include “more effective implementation of overall policy.”⁵⁶ Moreover, pursuant to Section 25.117(c) of the Commission’s rules, the Commission may extend a date for completion of a space station when there are “unique and overriding public interest concerns that justify an extension.”⁵⁷

⁵³ 47 C.F.R. § 25.164.

⁵⁴ *Id.* § 1.3.

⁵⁵ *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, 11041 ¶ 9 (IB 2001) (“*GE Americom Waiver Order*”) (internal citations omitted); *Loral Reassignment and Milestone Extension Order*, 18 FCC Rcd at 6313 ¶ 23 (finding that “a limited waiver [of the milestone requirements] will not contravene the purpose of the rule”).

⁵⁶ *GE Americom Waiver Order*, 16 FCC Rcd at 11041 ¶ 9.

⁵⁷ 47 C.F.R. § 25.117(c)(2); *See TerreStar Networks, Inc.; Request for Milestone Extension*, Memorandum Opinion and Order, 22 FCC Rcd 17698, 17699-700, 17702 ¶¶ 6, 10 (IB

ViaSat’s request and the unique circumstances described herein satisfy any legal standard that the Commission may apply to this request, and are consistent with the circumstances where the Commission has waived or extended license milestones. The Commission has allowed satellite licensees to reassign the locations of satellite assets and combine separate authorizations into a single satellite, and has granted waivers to extend milestones to accommodate those proposals, even when made right before the applicable milestone date.⁵⁸ Significantly, the Commission has granted such extensions where the additional time sought was *not* based on circumstances beyond the licensee’s control.⁵⁹

2007) (“*TerreStar Modification Order*”) (granting milestone waiver under public interest standard of Section 25.117(c)).

⁵⁸ See, e.g., *Loral Reassignment and Milestone Extension Order*, 18 FCC Rcd at 6307, 6313 ¶¶ 9, 23 (granting an extension and waiver of milestones to accommodate a satellite redesign and an over three-year delay, even though the requests were made shortly before the construction completion milestone and in order to accommodate fundamental changes to the satellite); *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 (CCB 1992) (“*GE Americom Extension Order*”) (granting a waiver to extend milestones by nearly three years to allow licensee to combine two authorizations into a hybrid C/Ku-band satellite and realigning the milestones of the authorizations to coincide with the end of expected life of an existing satellite, and based on the licensee’s intent to proceed demonstrated by its non-contingent construction contract and its existing customer base that would require follow-on capacity in the near future); *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 (1990) (“*Hughes Galaxy Extension Order*”) (granting a two-year extension of complete construction and launch milestones on public interest grounds to allow combination of two separately authorized spacecraft into a single hybrid satellite, even though it was not clear that construction had commenced); *USSB Second Extension Order*, 7 FCC Rcd 7247 (granting a two-year extension to USSB to allow it time to make the technical modifications necessary to deploy its payload on a Hughes DBS satellite that had a later completion deadline, even though the request to make fundamental changes was made less than 17 months before the satellite was required to be in operation).

⁵⁹ See cases cited *supra*, at 21 n.46 & 25 n.58. See also *TerreStar Modification Order*, 22 FCC Rcd at 17699-702 ¶¶ 6-10 (granting a milestone extension based on “unique and overriding public interest considerations,” based in part on TerreStar’s “substantial and

Moreover, the length of additional time that ViaSat would need at 77° W.L. is consistent with this Commission precedent.⁶⁰

2. *The Requested Flexibility Does Not Contravene the Commission’s Orbital Resource Policies*

The Commission milestone’s requirements are intended to “prevent[] increasingly scarce orbital resources from being warehoused by licensees.”⁶¹ Significantly, ViaSat’s proposal does not contravene the Commission’s policy concerning “warehousing” of orbital locations. That policy concern is triggered by the absence of a demonstrated intention and ability to proceed with the construction, launch and implementation of an authorized satellite system.⁶²

continuing commitment to satellite construction and system implementation,” including payments for launch services).

⁶⁰ See *supra*, at 25 n.58. ViaSat’s request to swap milestones is distinguishable from EchoStar’s request to realign milestones for two DBS orbital slots – 145 ° W.L. and 175° W.L. – and extend the milestones for one of the slots. See *EchoStar Satellite Corporation, et al., Request to Change Milestone Dates for Direct Broadcast Satellite Systems*, Memorandum Opinion and Order, 13 FCC Rcd 8595, 8600-01 ¶ 10 (1998). Unlike EchoStar, each of the slots for which ViaSat seeks to swap milestones is an integral part of ViaSat’s demonstrated plan to provide broadband service in the next four years. As discussed in detail below, ViaSat has an established customer need, has secured a launch, and has available financial resources to proceed at 77° W.L. In contrast, EchoStar expressly conceded that it had not even developed a business plan for 175° W.L. and acknowledged that its ability to proceed at the slot was uncertain. See *Direcst Corporation, et al., Request to Change Milestone Dates for their Direct Broadcast Satellite Systems, Consolidated Request to Change Milestones for Commencing Operation*, File Nos. SAT-MOD-19981125-00089, SAT-MOD-19981125-00091, SAT-MOD-19981125-00092, at 7-10, (filed Nov. 25, 1998). The Commission ultimately rejected EchoStar’s request because it failed to demonstrate its intent to implement its system at 175° W.L. *EchoStar Satellite Corporation, Direcst Corporation Direct Broadcasting Satellite Corporation Consolidated Request for Additional Time to Commence Operation*, Memorandum Opinion and Order, 17 FCC Rcd 8831, 8835 ¶ 11 (SD 2002).

⁶¹ See, e.g., *GE Americom Waiver Order*, 16 FCC Rcd at 11040 ¶ 6 (internal citation omitted).

⁶² *Amendment of the Comm’n’s Space Station Licensing Rules and Policies; Mitigation of Orbital Debris*, First Report and Order, 18 FCC Rcd 10760, 10827 ¶ 173 (2003)

The Commission has determined on many occasions that warehousing of spectrum or orbital resources has not occurred (despite not meeting license milestones) where a satellite licensee has demonstrated its intent and ability to proceed with the authorized satellite.

While the Commission often has been reluctant to extend the first milestone under a license, in general it has been more flexible in granting relief on requests to extend interim or final milestones (as is the case here).⁶³ The Commission has granted milestone extensions or waivers where, as here, the satellite licensee entered into a non-contingent satellite construction contract and completed critical design review.⁶⁴ The Commission also examines a number of factors and considers all of the circumstances and justifications taken together when making

(“*Satellite Licensing Reform Order*”); *see also TerreStar Modification Order*, 22 FCC Rcd at 17699-700 ¶ 6.

⁶³ *See Application of Motorola, Inc. and Teledesic, LLC for Consent to Assignment of Authority to Launch and Operate the Millennium Geostationary Fixed-Satellite Service Sys.; Request of Teledesic LLC for Exemption from the Cut-Off Rule for Pending Applications for Authority to Launch and Operate Geostationary and Non-Geostationary Fixed Satellite Sys.; Petition of Motorola, Inc. and Teledesic LLC for Extension of Time Allowed for Commencement of Construction*, Memorandum Opinion and Order, 17 FCC Rcd 16543, 16547 ¶ 11 (IB 2002) (stating that the first milestone is “especially important because [it] provide[s] an initial objective indication as to whether licensees are committed to proceeding with implementation of their proposals”); *see also GE Americom Waiver Order*, 16 FCC Rcd at 11041-42 ¶ 10 (granting a milestone extension upon finding that GE Americom met the first milestone by entering into a non-contingent contract).

Prior to satellite licensing reform, there were three FSS satellite license milestones: (i) commence construction, (ii) complete construction, and (iii) launch and operate. The previous initial “construction commencement” milestone was met by executing a non-contingent construction contract and was equivalent to the current initial milestone to execute a non-contingent construction contract. *See Satellite Licensing Reform Order*, 18 FCC Rcd at 10828 ¶ 174 n.407.

⁶⁴ *ICO Satellite Services, G.P., Application for Modification of 2 GHz LOI Authorization*, Memorandum Opinion and Order, 20 FCC Rcd 9797, 9803-04 ¶ 25 (IB 2005) (“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.”).

determinations of a licensee's intent to proceed.⁶⁵ For example, the Commission has found an existing customer base that would soon require follow-on capacity⁶⁶ and substantial progress on international coordination⁶⁷ to be compelling factors that demonstrated a satellite licensee's intent to proceed, and that justified an extension or waiver of milestones.⁶⁸

3. *ViaSat Has Demonstrated its Intent and Ability to Construct and Launch at 77° W.L.*

The extraordinary efforts that ViaSat has undertaken to date toward deploying its first two broadband satellites exemplify the very principles advanced by the Commission's milestone policy. ViaSat has expended significant sums and has made real progress in both advancing the state of the art in satellite and ground system design, as well as in implementing its satellite program, and in acquiring a distribution platform and customer base for its new broadband service. In fact, the advanced design of the ViaSat spacecraft, and the competitive threat they pose to the satellite broadband market, spurred a ViaSat competitor to adopt that design for itself and commence the deployment of its next-generation satellite program.

⁶⁵ See e.g., *TMI Commc'ns and Co., Ltd. P'ship and TerreStar Networks Inc., Application for Review and Request for Stay; TMI Commc'ns and Co., Ltd. P'ship, Application for Modification of 2 GHz LOI Authorization; TMI Commc'ns and Co., Ltd. P'ship, and TerreStar Networks, Inc., Request to Assign Spectrum Reservation*, Memorandum Opinion and Order, 19 FCC Rcd 12603, 12620 ¶ 47 (2004).

⁶⁶ *GE Americom Extension Order*, 7 FCC Rcd at 5170 ¶ 10.

⁶⁷ *AMSC Subsidiary Corp. Applications to Modify Space Station Authorizations in the Mobile Satellite Serv.*, Memorandum Opinion and Order, 8 FCC Rcd 4040, 4042-43 ¶ 14 (1993).

⁶⁸ See also *Loral Reassignment and Milestone Extension Order*, 18 FCC Rcd at 6313 ¶ 23 (granting an extension of milestones where the request was submitted one month prior to the construction completion milestone); *Hughes Galaxy Extension Order*, 5 FCC Rcd at 3424 ¶ 11 (granting an extension of milestones to accommodate a radical redesign of the satellite and finding Hughes intended to implement its system even though it was not clear that it had commenced construction).

ViaSat's intent to proceed on the construction and launch of its satellite at 77° W.L. is also made apparent by its business plan and the half-CONUS coverage of its first two satellites. As noted above, ViaSat's first satellite was designed to serve parts of the United States east of the Mississippi River and along the west coast, where customers of the WildBlue service no longer can be added because of capacity constraints. In order to reach the unserved and underserved households throughout CONUS with high-quality broadband service that is competitive with DSL, cable broadband and wireless services, ViaSat must launch its second satellite with coverage west of the Mississippi River that complements the coverage of its first satellite. Serving all households who want this type of economical broadband service simply is not viable without the use of this next-generation class of satellites. Thus, a second satellite at 77° W.L. is necessary to ensure that ViaSat can provide high-quality service throughout the United States in order to meet the demands of current and future WildBlue customers, as well as to provide a competitive alternative in areas where consumers currently have only one choice of provider. Just as competition from DBS providers required cable and other terrestrial television service providers to improve service offerings and quality, competition provided by next-generation ViaSat satellites should lead to improved service quality from traditional terrestrial and wireless broadband service providers.

As detailed above, ViaSat has invested considerable amounts toward its 77° W.L. satellite.⁶⁹ In addition to entering into a satellite construction contract and completing critical

⁶⁹ The scale and scope of ViaSat's investment and implementation activities for its broadband satellite program are highly distinguishable from those in the case of ATCONTACT Communications, LLC ("AtContact"), in which the Commission declined to waive the bond requirement after AtContact failed to implement its system. *See ATCONTACT Communications, LLC, Petition for Reconsideration, Motion for Stay, Order, FCC 10-100 ¶ 45* (rel. June 3, 2010) ("*AtContact Reconsideration Order*"). In addition to ViaSat's direct investments with respect to the satellite at 77° W.L., the level

design review, ViaSat has procured a second launch that is available for this satellite (within the revised launch date proposed above). International coordination for the 77° W.L. satellite has been completed with a number of foreign administrations, and ViaSat continues to progress coordination of this satellite. In addition to efforts already undertaken, and as detailed above, ViaSat has the financial resources to proceed with the construction and deployment of its 77° W.L. satellite. ViaSat's cash on hand, available line of credit, and cash flows from its existing operations, provide the ability to fully fund the construction and launch of the 77° W.L. satellite.

With the second satellite fully financed, and with an established distribution platform and a customer base at the ready, ViaSat's intent and ability to proceed with and complete its 77° W.L. satellite are abundantly clear. ViaSat is not just sitting on the sidelines while others prove the viability of satellite broadband. To the contrary, ViaSat has been at the forefront of developing a new business model, new technology, and new service offerings for satellite-delivered broadband. Indeed, no other satellite provider has achieved as much as ViaSat to bring next-generation satellite broadband to consumers. Thus, ViaSat is in the best position to proceed immediately with the construction of a satellite at 77° W.L., and deployment by the 2014 ITU priority deadline. Finally, actual service to the public will commence in advance of the Commission's final milestones for both 115° W.L. and 77° W.L. Under these circumstances, the Commission's warehousing policy is not compromised by the proposed relief.

of ViaSat's commitment to a new satellite broadband industry is unique. Moreover, ViaSat has financial resources in place to fully fund the satellite at 77° W.L. and a customer base that needs access to the satellite. ViaSat is not waiting for financing or depending upon the grant of governmental subsidies, as was the case for AtContact. *See id.* ¶ 46. Moreover, ViaSat has secured launch services for this satellite.

D. Strong Public Interest Considerations Justify the Requested Flexibility

The National Broadband Plan establishes the vitally important public interest benefits of universally-available, high-quality and affordable broadband services.⁷⁰ As a result, the Commission is currently undertaking an ambitious agenda aimed at achieving universal broadband connectivity in the United States by 2020.⁷¹ Grant of ViaSat's request to modify its satellite milestones would significantly advance these goals by enabling the launch of a second dedicated broadband satellite six years before that 2020 target date, which together with ViaSat's first satellite would provide full-CONUS coverage and support the Commission's target 4/1 Mbit/s service level throughout the nation.

Historically, the Commission has exercised its discretion to provide milestone flexibility during the early developmental stages of new satellite technologies, and to advance important new policies.⁷² In the DBS context, in particular, the Commission recognized that early attempts did not succeed and that licensees who were attempting to move forward needed flexibility to respond to changes in the marketplace.⁷³ The Commission recognized early on the

⁷⁰ National Broadband Plan at 10.

⁷¹ *See id.* at 135-36; *see, e.g., Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, FCC 10-58 ¶ 13 (rel. Apr. 21, 2010) (seeking comment on the National Broadband Plan's USF reform recommendations in support of "universal access to broadband" (citing National Broadband Plan at 144)).

⁷² *See, e.g., Applications of United States Satellite Broadcasting Co., Inc. and Dominion Video Satellite, Inc.; For Extensions of Time to Construct Direct Broadcast Satellite Sys.*, Memorandum Opinion and Order, 3 FCC Rcd 6858, 6859-60 ¶ 12 n.13 (1988) ("*USSB First Extension Order*") ("Construction deadlines [for FSS satellites] were not strictly enforced in the early years, and became strictly enforced only after the satellite communications industry and markets were established.").

⁷³ *See, e.g., Petition of R/L DBS Co., L.L.C. For Extension of its Direct Broadcast Satellite Construction Permit*, Memorandum Opinion and Order, 16 FCC Rcd 9, 14-15 ¶ 15 (IB 2000) ("*R/L DBS Extension Order*") (recognizing that R/L was a new entrant and was

potential for DBS service to spur sorely needed competition in the video marketplace.⁷⁴

Therefore, the Commission nurtured the growth of that industry, recognizing that households not reached by cable stood to reap tremendous benefits from new entrants into that marketplace.⁷⁵

With the right business opportunities that attracted the needed capital investments, the DBS industry has been able to expand capacity to provide a suite of video services that are comparable to, or in some cases better than, terrestrial technologies. Today, millions of American consumers *prefer* satellite-delivered video over competitive offerings from cable and telephone companies, and all Americans get a much higher quality video experience from their cable or telephone company because of the competitive forces that DBS providers brought to the MVPD industry.

The current evolutionary stage of satellite broadband services is very similar to the inception of the satellite-TV-to-the-home industry. Satellite Internet access services available today are well below the speed and quality that most consumers expect, and the prices are higher than DSL and cable modem service. However, with the same type of investment and regulatory flexibility that promoted the growth of DBS, satellite broadband could grow to be competitive with terrestrial technologies, much like DBS is competitive with terrestrial video services today.

incorporating the latest technological advances in satellite video technology); *USSB First Extension Order*, 3 FCC Rcd at 6859-60 ¶ 12 (noting the shortcomings of earlier attempts at direct-to-home satellite services and observing that “it would not have been prudent, even if feasible, to proceed with nearly obsolete, less cost effective technology”).

⁷⁴ See *Competition, Rate Deregulation and the Comm’n’s Policies Relating to the Provision of Cable Television Serv.*, Report, 5 FCC Rcd 4962, 5017-18 ¶ 104 (1990) (“*1990 Cable Report*”) (“If and when DBS becomes a reality, it could readily compete with cable.”).

⁷⁵ See, e.g., *R/L DBS Extension Order*, 16 FCC Rcd at 16 ¶ 19 (“[A]llowing R/L DBS additional time in which to implement its system has the potential to enhance both competition in the industry and the variety of service offerings available to the public.”).

ViaSat’s satellite broadband technology will drastically improve broadband speeds and quality of service. Next-generation satellite technology promises to revolutionize the broadband industry, and rapid development of this industry will be ignited by the launch of ViaSat’s satellites at 115° W.L. and 77° W.L. ViaSat continues to invest heavily in design improvements that will increase capacity and throughput on future satellites. Thus, future generations of broadband satellites not only will be capable of providing a high-quality and affordable broadband service to the unserved and underserved, but also promise to raise the bar for broadband services offered by terrestrial service providers.

The Commission’s compelling interest in serving the unserved and otherwise spurring broadband competition warrants consideration of the regulatory flexibility afforded to DBS providers that pioneered that industry.⁷⁶ In particular, the Commission granted milestone extensions to DBS permittees who played a unique role in the early development and promotion of DBS services,⁷⁷ invested substantial resources and overcame legal hurdles to their deployment of service,⁷⁸ or sought to offer a competitive alternative.⁷⁹ In granting the requested milestone

⁷⁶ ViaSat acknowledges that the standard applicable to DBS milestone extensions is different than in the FSS context. *See USSB First Extension Order*, 3 FCC Rcd at 6859 ¶ 10. ViaSat is not seeking to apply the DBS milestone standard, but rather seeks the same type of flexibility here that the Commission applied in the early days of the DBS industry.

⁷⁷ *Id.* at 6860 ¶ 13 (noting, in addition to the millions of dollars spent on design and re-design of satellite buses, the applicants’ efforts to market and sign up advance subscribers, clarify FCC rules, participate at DBS conferences, symposia, and seminars, etc.).

⁷⁸ *See R/L DBS Extension Order*, 16 FCC Rcd at 14-15 ¶ 15 (concluding that “R/L DBS has made a significant effort to implement its DBS system” based on expenditures of more than \$14 million in connection with satellite design and construction and its “comprehensive business plan that incorporates the latest technological advances”).

⁷⁹ *Id.* at 16 ¶ 19 (explaining that “R/L DBS’s planned service is perhaps the last opportunity in the near-term for entry by a competitive provider within the DBS service itself” and

flexibility in those cases, the Commission recognized the significant contributions of these DBS permittees, noting that the success of future DBS operators “would likely be built on the foundation painstakingly laid by these parties.”⁸⁰

ViaSat has been the leader in developing the next-generation broadband satellite technology that is transforming the way satellite broadband services will be delivered in the United States and globally. ViaSat’s broadband technology will be deployed around the world through ViaSat’s partnerships with Barrett in Canada, Eutelsat in Europe, and Yahsat in the Middle East. ViaSat is pioneering satellite broadband through its revolutionary satellite and ground network technology, acquisition of a robust platform for delivering service to consumers once its satellites are launched and operational, and numerous unquantifiable other expenditures of time and expense to educate and advocate satellite broadband service before Congress, the Commission, NTIA, RUS, and the public regarding its vision for the future of the industry.⁸¹

taking note of R/L DBS’s provision of original local and regional programming to meet unserved demand for such offerings).

⁸⁰ *USSB First Extension Order*, 3 FCC Rcd at 6860 ¶ 15 (granting extensions of time in light of the efforts of USSB and Dominion to implement their systems, which the Commission found also had benefited other DBS permittees); *see also USSB Second Extension Order*, 7 FCC Rcd at 7249-50, 7251 ¶¶ 13, 15-18, 23 (granting USSB’s request for further milestone extension to “reconcile[]” its service commencement deadline with the Hughes satellite on which USSB sought to operate its licensed channels, in light of, among other factors, “the overall contribution that USSB has made to the development of DBS”).

⁸¹ *See, e.g.*, Testimony of Mark Dankberg, Chairman and CEO, ViaSat, Before the Committee on Energy and Commerce Subcommittee on Communications, Technology and the Internet, United States House of Representatives, Hearing on the National Broadband Plan: Deploying Quality Broadband Services to the Last Mile (Apr. 21, 2010); *A National Broadband Plan for Our Future*, Comments of ViaSat, Inc., GN Docket No. 09-51 (filed June 8, 2009); American Recovery and Reinvestment Act of 2009 Broadband Initiatives, Joint Request for Information, National Telecommunications and Information Administration, Rural Utilities Service, Docket No. 090309298-9299-01, Comments of ViaSat (filed Apr. 13, 2009); ViaSat, Inc., Notice of *Ex Parte* Communications, GN Docket No. 09-51, WC Docket No. 10-90, WC Docket No. 05-337 (Jun. 7, 2010). Mr. Dankberg has also participated in a recent roundtable discussion

In order to implement its long-term strategic mission to pass *all* of the nation's unserved households, ViaSat requires a limited amount of flexibility to construct and launch its second satellite at 77° W.L. within the timeframe provided for the satellite authorized at 115° W.L. Consistent with its public interest mandate, ViaSat urges the Commission to use its discretion to allow a new satellite entrant that is leading the industry and has invested over \$1 billion in its deployment efforts to expedite the provision of broadband services to millions of American consumers in this manner.

III. CONCLUSION

ViaSat urges the Commission to grant this request to swap the construction and launch milestones in the authorizations for its satellites at 77° W.L. and 115° W.L. At its essence, this request preserves the milestone deadlines that the Commission originally established for ViaSat's first two satellites, but applies them to different spacecraft. Significantly, ViaSat is not seeking any net additional time to implement these state-of-the-art spacecraft. They would be launched within the timeframe that the Commission originally contemplated (albeit in reverse order), and broadband service to the public would commence without delay.

hosted by the Wireline Competition Bureau regarding broadband universal service issues. *See* Public Notice, Wireline Competition Bureau Announces June 23, 2010 Roundtable Discussion to Explore Broadband Pilot Programs for Low-Income Consumers, WC Docket No. 03-109, DA 10-1041 (June 8, 2010).

ViaSat has demonstrated its intent and ability to proceed with the construction and launch of its second satellite at 77° W.L., and its satellite program more generally. Therefore, neither the Commission's milestone policy nor its orbital resource policy would be undermined by the grant of this request. Proceeding on its satellites at 115° W.L. and 77° W.L. in the reverse order will actually expedite broadband service to consumers and also enable ViaSat to compete more meaningfully with a competitive provider of satellite-based Internet access services.

Finally, ViaSat's extraordinary efforts to launch a new era in satellite broadband, together with the critically important National Broadband Plan initiatives that will be advanced by the deployment of ViaSat's first two satellites, satisfy the required public interest showing applicable under any legal standard that the Commission may apply. Grant of the requested relief is in the public interest, as it will enable ViaSat to provide quality, affordable, and competitive broadband service to Americans throughout the nation at the earliest possible date. Moreover, a prompt grant will enable ViaSat to provide mobile broadband services to vehicles, aircraft and watercraft, thus furthering the policies underlying President Obama's recent directive on mobile wireless broadband.

For these reasons, ViaSat respectfully requests prompt processing and grant of these applications.

Respectfully submitted,

/s/

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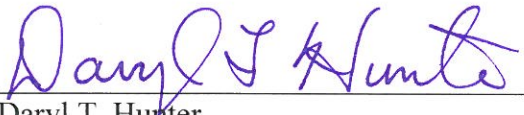
Counsel for ViaSat, Inc.

July 14, 2010

DECLARATION

I, Daryl T. Hunter, hereby make the following declarations under penalty of perjury. I understand that this Declaration will be submitted to the Federal Communications Commission.

1. I am Director, Regulatory Affairs, of ViaSat, Inc.
2. I have reviewed the foregoing document entitled "Applications for Modification of Authorizations, or Waiver or Extension of Satellite Milestones" of ViaSat, Inc.
3. I certify that the facts set forth in the foregoing document entitled "Applications for Modification of Authorizations, or Waiver or Extension of Satellite Milestones" of ViaSat, Inc. are true and correct to the best of my knowledge.



Daryl T. Hunter
Director, Regulatory Affairs
ViaSat, Inc.

Executed July 14, 2010