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~~CONFIDENTIAL~~
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December 23, 2015

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BY HAND DELIVERY

Accepted / Filed

DEC 23 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

Re: **CONFIDENTIAL TREATMENT REQUESTED**

ViaSat, Inc., IBFS File Nos. SAT-LOI-20130319-00040; SAT-MOD-20141105-00121, Call Sign S2902

Dear Ms. Dortch:

Pursuant to Section 25.164 of the Commission's rules, 47 C.F.R. § 25.164, ViaSat, Inc. ("ViaSat") is filing the enclosed, unredacted confidential documents to demonstrate compliance with the second and third milestones set forth in ViaSat's market access authorization (IBFS File No. SAT-LOI-20130319-00040, Call Sign S2902 (granted Dec. 12, 2013)) for the ViaSat-2 satellite: (1) a certification by Doug Shepardson of Boeing, which includes photographs of ViaSat-2 under construction; and (2) a certification by Daryl T. Hunter of ViaSat, which includes (a) detailed information regarding the payments made by ViaSat to The Boeing Company ("Boeing") under the Commercial Satellite Terms and Conditions between Boeing and ViaSat, dated May 15, 2013, as amended (the "Contract"), (b) a copy of Amendment 4 to the Contract, dated December 19, 2014, (c) a copy of Amendment 5 to the Contract, dated June 5, 2015, and (d) a copy of Amendment 6 to the Contract, dated June 18, 2015 (each, a "Milestone Document").

Pursuant to the Freedom of Information Act ("FOIA") and Sections 0.457(d) and 0.459 of the Commission's rules, 5 U.S.C. § 552(b); 47 C.F.R. §§ 0.457, 0.459, ViaSat, Inc. ("ViaSat") respectfully requests that the Commission withhold from public inspection, and accord confidential treatment to, the Milestone Documents.

ViaSat separately is providing for the Commission's public files redacted versions of the Milestone Documents, which exclude the confidential portions.

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The Milestone Documents show that physical construction of ViaSat-2 is substantially complete, and ViaSat has already paid over 80 percent of the purchase price for the satellite under the Contract. They also confirm that ViaSat has entered into an agreement with Space Exploration Technologies Corp. for the launch of the satellite. As demonstrated by the enclosed documents, the milestones for critical design review (“CDR”) and commencement of physical construction have long been satisfied. Accordingly, ViaSat requests that the amount of its performance bond be reduced from \$2.25 million to \$750,000.

The Milestone Documents include terms, conditions, and specifications relating to the construction of the ViaSat-2 broadband satellite (the “Satellite”). The Milestone Documents contain trade secrets as well as confidential commercial and financial information that falls within Exemption 4 of FOIA, is protected by the Trade Secrets Act, and for which confidential treatment is warranted under applicable law.

If any request is made to inspect the unredacted versions of the Milestone Documents, ViaSat respectfully requests adequate advance notice so that it may seek to protect its trade secrets and confidential commercial and financial information to the fullest extent possible.

In support of this request for confidential treatment and pursuant to Section 0.459(b) of the Commission’s rules, 47 C.F.R. § 0.459(b), ViaSat provides the following information:

1. **Identification of Specific Information for Which Confidential Treatment Is Sought (47 C.F.R. § 0.459(b)(1)).** ViaSat respectfully requests that the Commission withhold from public inspection, and accord confidential treatment to, all information in the unredacted versions of the Milestone Documents that have been redacted from the contemporaneously filed public version (such redacted information, the “Confidential Material”).
2. **Description of Circumstances Giving Rise to the Submission (47 C.F.R. § 0.459(b)(2)).** The Milestone Documents are being filed voluntarily in order to demonstrate compliance with the second and third milestones for the Satellite: completion of CDR and commencement of physical construction. *See Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871 (D.C. Cir. 1992); 47 C.F.R. § 25.164; IBFS File No. SAT-LOI-20130319-00040.
3. **Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged (47 C.F.R. § 0.459(b)(3)).** The Confidential Material includes trade secrets and confidential commercial and financial information that ViaSat customarily guards from competitors, including without limitation (i) information regarding technical work programs and technical specifications; (ii) information about business plans; (iii) price, payment terms, and other financial terms and conditions; and (iv) performance schedules and consequences of nonperformance; (v) distribution of risk and liability. As explained below, public disclosure of this

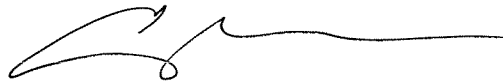
information would place ViaSat at a competitive disadvantage vis-à-vis its competitors and would damage ViaSat's position in the marketplace.

4. **Explanation of the Degree to Which the Information Concerns a Service That Is Subject to Competition (47 C.F.R. § 0.459(b)(4)).** The Milestone Documents concern the development and construction of the Satellite, which will support, among other things, broadband satellite service offerings, as well as the financial terms and conditions relating to the construction of the Satellite. Broadband satellite service offerings are subject to vigorous competition from other existing and potential satellite service providers, as well as existing and potential terrestrial broadband offerings, such as those provided by cable, wireless, and telephone companies.
5. **Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (47 C.F.R. § 0.459(b)(5)).** As noted above, satellite service providers and cable, wireless, and telephone companies compete, or potentially compete, with ViaSat. As an initial matter, ViaSat's Satellite is a state-of-the-art spacecraft with unique design elements. ViaSat would be severely disadvantaged if its competitors were able to discern the process by which the Satellite has been designed, developed and constructed. Moreover, if ViaSat's satellite-based competitors were to obtain access to the Confidential Material, they would unfairly benefit from the time and resources ViaSat has expended in negotiating and entering into the Contract, as well as the outcome of that negotiation (*i.e.*, they could use that information to seek to obtain more favorable terms with satellite vendors). Disclosure of the Confidential Material could harm ViaSat in future negotiations regarding satellite construction, as manufacturers may be reluctant to agree to terms that would not be kept confidential.
6. **Identification of Any Measures Taken by the Submitting Party To Prevent Unauthorized Disclosure (47 C.F.R. § 0.459(b)(6)).** The Confidential Material is not normally made available to any party (outside of ViaSat and its satellite manufacturer) who is not bound by nondisclosure obligations. In addition, the Contract contains provisions requiring both parties to maintain the confidentiality of proprietary information, which includes the Contract itself.
7. **Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (47 C.F.R. § 0.459(b)(7)).** The Confidential Material is not available to the public. As noted above, third parties who have or need access to the information are bound by nondisclosure obligations, because the Confidential Material would not be released to the public by ViaSat or its satellite manufacturer.
8. **Justification of the Period During Which the Submitting Party Asserts That Material Should Not Be Available for Public Disclosure (47 C.F.R. § 0.459(b)(8)).** ViaSat requests that the Commission withhold the Confidential Material from public inspection indefinitely. Neither ViaSat nor its satellite manufacturer would, in the normal course of business, provide the Confidential Material to the public.

9. **Other Information That ViaSat Believes May Be Useful in Assessing Whether Its Request for Confidentiality Should Be Granted (47 C.F.R. § 0.459(b)(9)).** The Confidential Material falls under Exemption 4 of FOIA, which provides that the public disclosure requirement “does not apply to matters that are ... trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). The Confidential Material includes sensitive trade secrets and commercial and financial information that squarely fall within Exemption 4, insofar as this information is (i) commercial or financial in nature; (ii) obtained by a person outside government; and (iii) confidential. *See Washington Post Co. v. U.S. Dep’t of Health and Human Svcs.*, 690 F.2d 252, 266 (D.C. Cir. 1982). Accordingly, the Trade Secrets Act prohibits the Commission from releasing the Confidential Material. *See, e.g., McDonnell Douglas Corp. v. NASA*, 180 F.3d 303, 305 (D.C. Cir. 1990). More specifically, any prior agency practice of granting access to information falling within Exemption 4 “is of no consequence,” because when disclosure “is likely to cause substantial competitive harm[,] ... that is the end of the matter,” as such “disclosure would violate the Trade Secrets Act.” *Id.* at 306; *see also* 18 U.S.C. § 1905.

For these reasons, ViaSat respectfully requests that the Commission withhold from public inspection, and accord confidential treatment to, the Confidential Material. Please contact the undersigned should you have any questions regarding this submission.

Respectfully submitted,



John P. Janka
Elizabeth R. Park

Counsel for ViaSat, Inc.

Enclosures