

NON-PUBLIC

FOR INTERNAL USE ONLY

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: +1.202.637.2200 Fax: +1.202.637.2201
www.lw.com

LATHAM & WATKINS LLP

June 17, 2019

~~CONFIDENTIAL - NOT FOR PUBLIC INSPECTION~~

BY HAND DELIVERY

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

Accepted / Filed

JUN 17 2019

Federal Communications Commission
Office of the Secretary

FIRM / AFFILIATE OFFICES

Beijing	Moscow
Boston	Munich
Brussels	New York
Century City	Orange County
Chicago	Paris
Dubai	Riyadh
Düsseldorf	San Diego
Frankfurt	San Francisco
Hamburg	Seoul
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

Re: REQUEST FOR CONFIDENTIAL TREATMENT

Viasat, Inc., Application for Modification of Market Access Grant and for Extension or Waiver of Milestone Date, IBFS File Nos. SAT-LOI-20140204-00013, SAT-AMD-20140204-00023, SAT-MOD-20150618-00037; Call Sign S2917 SAT-AMD20140213-00023

Dear Ms. Dortch:

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 attached confidential version of Viasat's Application for Modification of Market Access Grant and for Extension or Waiver of Milestone Date ("Application") in its entirety. Viasat separately is filing a public, redacted version of the Application through IBFS.

The Application seeks to modify the above-referenced U.S. market access grant for a Ka-band satellite at 88.9° W.L. and includes a request to extend the milestone for launch and operation of the satellite. In support of its request, Viasat is providing sensitive commercial and financial information that is privileged and/or confidential, and thus is exempt from disclosure pursuant to FOIA Exemption 4, 5 U.S.C. § 552(b)(4). 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, the attached unredacted version of the Application in its entirety. The Application contains commercial and

NON-PUBLIC

FOR INTERNAL USE ONLY

LATHAM & WATKINS LLP

financial information that is marked as confidential in the attached version of the Application (the "Confidential Material").

2. **Description of Circumstances Giving Rise to the Submission (47 C.F.R. § 0.459(b)(2)).** The Application is being filed to request a modification of Viasat's U.S. market access grant for a satellite at 88.9° W.L. The Confidential Material is being provided in support of Viasat's request to extend the launch and operation milestone for the satellite.
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 confidential information regarding certain satellite construction matters as well as the amount Viasat has expended on the satellite to date. The Confidential Material is commercial and financial information that is customarily guarded from competitors, and Viasat has a clear commercial interest in this information. 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 Confidential Material pertains to Viasat's deployment of a satellite that will be used to provide broadband services, which are subject to vigorous competition from numerous other existing and potential providers offering services over satellite, wireline, and terrestrial wireless technologies.
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. The Confidential Material contains proprietary information regarding the construction of a state-of-the-art satellite and could be used by competitors to develop a competitive response to Viasat. The Confidential Information also contains cost information regarding the satellite. Access to this information could allow competitors to glean information about Viasat's cost structure. Disclosure of the Confidential Material also could affect Viasat's future negotiations relating to satellite construction.
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 who is not bound by nondisclosure obligations. Viasat routinely takes affirmative steps to protect such information from disclosure, including through non-disclosure agreements or other confidentiality undertakings that preclude disclosing to third parties or using the types of information contained in the Confidential Material.
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,

LATHAM & WATKINS LLP

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.

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. The manufacturing issues and cost information relate to a satellite that will be operational for many years, and would also be relevant information for future satellites, and thus would continue to provide insight into Viasat's operations well into the future.
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)).** In addition to the substantial harm to Viasat's competitive position detailed above, the Confidential Material should be withheld from disclosure even if it is deemed to be information compelled to be provided to the Commission, because public disclosure of confidential information in this case would make it difficult for the Commission to obtain reliable information from regulated companies in the future. *See National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770-71 (D.C. Cir. 1974). Courts have recognized that in cases where agencies compel submission of information, there may still be "circumstances in which disclosure could affect the reliability of such data"¹ and thus would result in the diminution of the "reliability" and "quality" of information submitted to the agency.² If the type of competitive commercial and financial information contained in the Confidential Material were publicly disclosed, applicants may well be less forthcoming and attempt to avoid the provision of more detailed competitive and financial information as much as possible, which would deprive the Commission of the information that would support well-reasoned decisions regarding how best to serve the public interest.³

¹ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) (citing *Wash. Post Co. v. HHS*, 690 F.2d 252, 268-69 (D.C. Cir. 1982)).

² *See id.*

³ *See, e.g., Judicial Watch, Inc. v. Exp.-Imp. Bank*, 108 F. Supp. 2d 19, 29-30 (D.D.C. 2000) ("The government has a compelling interest in ensuring that the information it receives is of the highest quality and reliability, and disclosure of potentially sensitive commercial and financial information, even where submissions of information are mandatory, would jeopardize the [agency's] ability to rely on any such information that is submitted").

LATHAM & WATKINS^{LLP}

For these reasons, Viasat respectfully requests that the Commission withhold from public inspection, and accord confidential treatment to, the Confidential Material.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "John P. Janka", with a long horizontal flourish extending to the right.

John P. Janka
Matthew T. Murchison
Elizabeth R. Park

Attachment