

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

In the Matter of)
)
Kuiper Systems LLC) IBFS File No. SAT-MOD-20210806-00095
)
Application for Modification of Authority) Call Sign S3051
for the Kuiper NGSO Satellite System)

REPLY COMMENTS OF VIASAT, INC.

Viasat, Inc. responds to the comments submitted by SES Americom, Inc. and O3b Limited (together, “SES”) on September 20, 2021 in this proceeding.¹

Viasat broadly agrees with SES that the Commission should deny the request set forth in the above-referenced application, in which Kuiper Systems LLC (“Kuiper”) seeks to modify its NGSO system license to “remove the requirement that [its] ‘favorable’ or ‘qualified favorable’ finding from the ITU [with respect to EPFD compliance] explicitly indicate that the ITU considered the joint effect of Kuiper’s ITU filings.”² As SES correctly observes in its comments, granting Kuiper’s request would facilitate its ability to operate in a manner that “fail[s] to provide GSO operators with assurance that their operations will be protected”³—contrary to the intent of Commission and ITU policies. SES therefore emphasizes the need for mechanisms that

¹ See Comments of SES Americom, Inc. and O3b Limited, IBFS File No. SAT-MOD-20210806-00095 (Sep. 20, 2021) (“SES Comments”). SES’s comments also address aspects of the *Third SpaceX Modification Order* granted by the Commission earlier this year. See *Space Exploration Holdings, LLC*, 36 FCC Rcd 7995 (2021) (“*Third SpaceX Modification Order*”). Viasat is challenging that order through an appeal filed with the D.C. Circuit; these reply comments address only Kuiper’s pending application.

² See Kuiper Systems, LLC, IBFS File No. SAT-MOD-20210806-00095, Legal Narrative, at 3 (Aug. 6, 2021) (“Kuiper Application”).

³ SES Comments at 5.

will allow the Commission and third parties to “confirm whether [Kuiper’s] representations of its system’s compliance with the ITU’s single-entry EPFD limits are accurate.”⁴

Viasat agrees that such transparency is critical, including in the case of Kuiper’s system. Among other things, neither the Commission nor interested third parties can meaningfully evaluate Kuiper’s compliance with applicable EPFD limits without understanding the assumptions underlying relevant certifications and other submissions—including whether they are based on a “single entry” value for its NGSO system as a whole, or *aggregated* EPFD values associated with multiple ITU NGSO system filings. Any attempt by Kuiper to claim compliance based on the aggregation of EPFD levels across multiple ITU NGSO system filings would constitute an impermissible attempt to circumvent ITU and/or Commission rules designed to limit NGSO emissions and protect GSO operations.

Conspicuously absent from Kuiper’s application is *any* attempt to address this concern, or demonstrate that, in the absence of the “joint effect” requirement, its compliance with applicable EPFD limits would be or could be assured. More fundamentally, Kuiper makes no attempt to demonstrate that, in the absence of the “joint effect” requirement, GSO operators would be adequately protected from NGSO operations. As such, there is no basis for concluding that grant of Kuiper’s pending modification application would serve the public interest.

Instead of addressing these critical matters, Kuiper asserts that the Administrative Procedure Act (“APA”) requires the Commission to eliminate the “joint effect” requirement—principally because that requirement was not imposed on Space Exploration Holdings LLC

⁴ *Id.*

(“SpaceX”) in the *Third SpaceX Modification Order* adopted earlier this year.⁵ But Kuiper’s reasoning fails for several reasons. Notably:

- The *Third SpaceX Modification Order* is not yet final; it remains subject to petitions for reconsideration pending before the Commission, as well as judicial appeals pending before the D.C. Circuit. Those proceedings involve, among other things, challenges to the Commission’s decision not to impose the “joint effect” requirement on SpaceX.⁶ As such, Kuiper’s suggestion that the Commission *must* conform Kuiper’s license to SpaceX’s is premature at best.
- Nothing in the *Third SpaceX Modification Order* finds that the “joint effect” requirement is contrary to the public interest, or any Commission rule or policy. Rather, the order merely explains that the Commission did “not see the need” to impose the “joint effect” requirement as a separate condition in SpaceX’s case.⁷ Contrary to Kuiper’s claim,⁸ there is no finding in the order that the “joint effect” requirement would be “incongruent with international regulations,” and no indication that the rationale for the Commission’s decision—to the extent one exists—does or must apply with equal force to Kuiper.
- Similarly, the *Third SpaceX Modification Order* in no way suggests that the “joint effect” requirement is inconsistent with Section 25.146(c) of the Commission’s rules, as Kuiper suggests is the case.⁹ Indeed, Section 25.146(c) requires an NGSO operator to obtain a favorable ITU finding with respect to the *operator’s* compliance with applicable ITU EPFD limits—as opposed to compliance under any specific ITU system filing.¹⁰ The operator also must communicate the ITU’s finding to the Commission.¹¹ Assuming the Commission enforces Section 25.146(c) in the case of SpaceX, it is not clear that Kuiper and SpaceX are necessarily being treated in a disparate manner.
- Kuiper asks the Commission to adopt “replacement” language similar to that adopted in the *Third SpaceX Modification Order*, but ignores important factual differences between the operators that make that language highly inappropriate in Kuiper’s case. Critically the language proposed by Kuiper would eliminate not only the “joint effect” requirement, but also Kuiper’s obligation to obtain a finding from the ITU “prior to the initiation of

⁵ See Kuiper Application at 5-10.

⁶ See Hughes Network Systems, LLC, Petition for Reconsideration, IBFS File No. SAT-MOD-20200417-00037 (May 27, 2021).

⁷ *SpaceX Third Modification Order* ¶ 34.

⁸ Kuiper Application at 10.

⁹ See *id.* at 9.

¹⁰ See 47 C.F.R. § 25.146(c).

¹¹ See *id.*

service.”¹² Kuiper ignores that this language was omitted in SpaceX’s case because it had previously been granted a waiver of that requirement by the Commission.¹³ Kuiper fails to suggest, let alone demonstrate, that it is entitled to a similar waiver.

In short, Kuiper’s attempt to invoke the APA falls flat.

That said, Viasat agrees that, as a broader policy matter, it may be desirable for the Commission to harmonize its approach to NGSO authorizations with respect to the “joint effect” and related requirements. In its comments, SES suggests a broad approach that could ensure that all NGSO operators are treated in similar fashion. Specifically, SES urges the Commission to require Kuiper to “make available both [its] own EPFD calculation results from the ITU’s validation software and the data necessary to allow interested parties to verify those results.”¹⁴ Although Viasat appreciates SES’s efforts to initiate this line of inquiry, Viasat believes that it would be more appropriate to explore such matters in a rulemaking of general applicability, as opposed to disparate licensing proceedings.

Respectfully submitted,

/s/

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October 5, 2021

¹² See Kuiper Application at 7.

¹³ See *SpaceX Third Modification Order* ¶ 32.

¹⁴ SES Comments at 1.

CERTIFICATE OF SERVICE

I, Kayla Ernst, hereby certify that on this 5th day of October 2021, I caused to be served a true copy of the foregoing Reply Comments of Viasat, Inc. via first-class mail upon the following:

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