

Request to Extend or Waive Milestone Date

Viasat, Inc. (“Viasat”) is authorized to serve the United States using ViaSat-3, a Ka-band GSO FSS satellite at 88.9° W.L.¹ ViaSat-3 is currently subject to a launch and operation milestone of October 31, 2022.² Viasat requests that the Commission extend or waive the milestone until April 30, 2023 to allow Viasat to place ViaSat-3 into service while accounting for supply chain issues caused by the COVID-19 pandemic and their persistent effects on ViaSat-3’s integration and test schedule.

Viasat is now in the final stages of the construction process for ViaSat-3. More specifically, Viasat has now completed the construction of the ViaSat-3 payload and provided the completed payload module to Boeing for integration with the satellite bus, and Boeing is now completing all major environmental testing of the integrated satellite. These efforts represent a substantial investment by Viasat and the expenditure of more than 95 percent of total construction costs for the satellite. Viasat has also invested significant resources to deploy the ground infrastructure for the ViaSat-3 network and arranged for the launch of the ViaSat-3 satellite into orbit.

Nevertheless, the persistent effects of the COVID-19 pandemic have continued to adversely impact the ViaSat-3 construction process (e.g., by delaying the completion of critical steps in that process). Even so, Viasat has been able to mitigate these adverse effects in almost all cases—including by working closely with vendors to address supply chain issues. Unfortunately, these efforts have been unsuccessful in the case of Boeing, which is responsible for final integration and testing of the ViaSat-3 satellite.

Despite Viasat’s diligent efforts, Boeing has been unable or unwilling to consistently address staffing shortages, delaying its ability to complete the final stages of the ViaSat-3 construction process. In addition, there have been numerous intermittent and unpredictable COVID-19-related changes to working conditions in the Boeing factory, which have had the effect of impeding or slowing work on the ViaSat-3 construction process. These public health directives have been issued by Los Angeles County authorities and have driven increased inefficiencies in the construction process.

Notably, Boeing has been a leading provider of complex commercial spacecraft, including ViaSat-2, and has had a good reputation for its technical and programmatic performance. Accordingly, there was no reason for Viasat to anticipate Boeing’s poor schedule performance at the outset of the program. Once this became apparent, Viasat deployed additional teams of experts to Boeing’s facilities to directly supervise and direct work, which has resulted in better schedule performance.

¹ The ViaSat-3-class satellite at 88.9° W.L. will also include a VIASAT-89US, a separately authorized payload with a launch and operation milestone of May 27, 2025. *See* IBFS File No. SAT-LOA-20190617-00048, Call Sign S3050 (granted May 27, 2020).

² *Viasat, Inc.*, Order, DA 21-1638 (IB Dec. 23, 2021) (“*Extension Order*”).

More generally, Viasat could not have anticipated the COVID-19 pandemic, which, as the Commission has already recognized, has disrupted supply chains, prevented effective use of human resources, and otherwise led to construction and delivery delays “result[ing] from circumstances outside of [an operator’s] control.”³ The ViaSat-3 program has been impacted by these adverse effects notwithstanding Viasat’s diligence. As a result, Viasat requires additional time to launch ViaSat-3 and place it into operation. As detailed below, these circumstances easily satisfy the requirements of Section 25.117(e) of the Commission’s rules.⁴ Accordingly, Viasat respectfully requests that the Commission grant the requested extension.⁵

I. THE COVID-19 PANDEMIC HAS CREATED “UNFORESEEABLE CIRCUMSTANCES” BEYOND VIASAT’S CONTROL

Under Section 25.117(e), a satellite milestone extension may be granted when “additional time is required due to unforeseeable circumstances beyond the applicant’s control”⁶ The COVID-19 pandemic has clearly created such circumstances.

The Commission has recognized the extraordinary nature of the COVID-19 pandemic in a wide range of contexts, and that it has caused delays in the deployment of communications networks and hindered timely compliance with Commission requirements—without any fault on the part of the network operator. Early in the pandemic, the Commission specifically acknowledged the likelihood that relief would be needed for “supply chain delays and other construction and equipment delivery delays that may occur as a result of COVID-19 and the declared state of national emergency.”⁷ The Commission continues to grant waivers and other forms of relief to address such delays,⁸ and has recognized that there is an ongoing need for relief

³ *Guidance for Stations in Phase 9 of the Post-Incentive Auction Transition as a Result of the Novel Coronavirus (COVID-19) Pandemic*, 35 FCC Rcd 2720 (2020).

⁴ 47 C.F.R. § 25.117(e).

⁵ In the alternative, the Commission could waive the ViaSat-3 launch and operation milestone deadline for good cause shown. *See* 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990). Good cause exists given the special circumstances created by the COVID-19 pandemic, and the fact that deviation from the general rule would serve the public interest without undermining the purpose of the milestone rules, for the reasons discussed herein.

⁶ 47 C.F.R. § 25.117(e)(1).

⁷ *Waiver of FCC Rule Sections 1.946 (c) and (d) for Wireless Site-Based and Mobile-Only System*, 35 FCC Rcd 3536, at ¶ 2 (2020) (extending wireless construction deadlines based on disruptions caused by COVID-19). *See also, e.g., Request for Waiver by the Schools, Health & Libraries Broadband (SHLB) Coalition*, 36 FCC Rcd 9956, at ¶ 4 (2021) (recognizing that “widespread delays in the receipt of ‘communications equipment of all kinds . . .’ is causing delays in network construction . . . [and] in construction projects across the country”).

⁸ *See, e.g., Connect America Fund*, WC Docket No. 10-90, Order, FCC 22-32, at ¶ 10 (rel. May 10, 2022) (“CAF Waiver Order”) (“Telecommunications companies, including legacy

because impacts from “[t]he COVID-19 pandemic ha[ve] continued to put all Americans under strain and demonstrated the importance of broadband.”⁹

The ViaSat-3 program has been significantly and adversely impacted by the persistent effects of the COVID-19 pandemic. Among other things, the pandemic has caused staffing shortages at Boeing that have impeded its ability to complete critical-path construction items in a timely manner.

Notably, the ViaSat-3 program has experienced these impacts despite Viasat’s considerable efforts to mitigate those impacts. Among other things, Viasat has reallocated work amongst its critical suppliers wherever possible to minimize disruptions to critical-path items. Viasat has also worked closely with its vendors and suppliers—including Boeing in particular—to: (i) mitigate the impact of the pandemic on their operations; (ii) structure contractual relationships to provide incentives to accelerate the completion of critical-path items; and (iii) enhance schedule management to identify interdependencies between various suppliers’ work scopes to take advantage of potential slack time to compensate for other delays. Viasat has incurred significant additional expenses as a result of these efforts, both as the result of direct costs and resulting process inefficiencies, and has deployed additional teams of its own experts to Boeing’s facilities to directly supervise and direct work.

These extraordinary efforts explain why Viasat has been able to make as much progress as it has. Nevertheless, as a result of the COVID-19 pandemic, additional time is required. An extension of the launch and operation milestone until April 30, 2023 would allow Viasat to deploy the satellite and place it into service.

II. “UNIQUE AND OVERRIDING PUBLIC INTEREST CONSIDERATIONS” ALSO JUSTIFY THE REQUESTED EXTENSION

Section 25.117(e) of the Commission’s rules also allows extension of a satellite milestone based on “unique and overriding public interest concerns that justify an extension.”¹⁰

In modifying and establishing the October 31, 2022 launch and operation milestone for ViaSat-3, the Commission credited “Viasat’s representation that VIASAT-3 is at an advanced

companies serving some of the most rural areas of the country, have been and will continue to be subject to increased costs to address labor and supply issues, maintain existing services, and meet the demands of new customers.”); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, DA 22-691 (rel. Jun. 30, 2022) (further extending COVID-related waivers of Lifeline program rules as applied to subscribers on Tribal lands through at least September 30, 2022).

⁹ *CAF Waiver Order* ¶ 10; see also *Wireline Competition Bureau Seeks Comment on Extending Waiver of Letter of Credit Rules for Connect America Fund Phase II Auction (Auction 903) and Rural Broadband Experiments Support Recipients*, Public Notice, DA 21-794, at 1 (rel. Jul. 6, 2021) (recognizing that the COVID-19 pandemic “remains ongoing, even though the situation in the United States has improved”).

¹⁰ 47 C.F.R. § 25.117(e)(2).

stage of construction, representations concerning diligent efforts to overcome construction delays, and circumstances indicating that warehousing spectrum is not a concern due to Viasat's intent and ability to launch and operate VIASAT-3.”¹¹ In light of these factors, the Commission found that an “extension will serve the public interest by allowing Viasat to expeditiously complete implementation of its system.”¹²

These factors are even more compelling today and demonstrate that there are unique and overriding public interest considerations that justify further extension. ViaSat-3 is now at an *even more* advanced stage of construction, and over the past eight months Viasat has continued to expend significant resources on satellite-related construction costs. Indeed, Viasat has now expended approximately 95 percent of total construction costs for ViaSat-3. Furthermore, Viasat expects to expend about 98 percent of total construction costs by the end of October (the current milestone). Viasat has also expended about 95 percent of launch-related costs for the satellite.

Viasat has also made substantial progress with respect to the ground network for ViaSat-3. In particular, Viasat has completed construction of two large telemetry, tracking and control (“TT&C”) sites, and made very significant progress with respect to the satellite access nodes (“SANs”) that will be deployed across the United States. Among other things, Viasat has obtained access to real estate for these SAN sites, conducted extensive engineering work, and successfully completed terrestrial coordination for almost all of the SAN locations that will be utilized shortly after ViaSat-3 is brought into service—all of which are resource-intensive activities. Viasat also has filed earth station applications for those sites.

In addition, Viasat remains willing and able to place ViaSat-3 into service such that there could be no legitimate warehousing concerns.¹³ Viasat's incentives to complete construction of the satellite and commence operations as soon as possible are even stronger today given the even more advanced state of ViaSat-3's construction and increased financial investment in its completion.

At the same time, the COVID-19 pandemic continues to underscore the importance of deploying robust networks delivering high-speed broadband connectivity for remote work, education, and health care.¹⁴ ViaSat-3 will deliver that critical connectivity. Indeed, the advanced technology and capabilities of ViaSat-3 are key to bridging the digital divide through increased availability and affordability of high-quality, high-speed connectivity, including for unserved and underserved communities.

¹¹ *Extension Order* ¶ 6.

¹² *Id.*

¹³ *See id.*

¹⁴ Statement of Jessica Rosenworcel before the Senate Committee on Commerce, Science, and Transportation, “Oversight of the Federal Communications Commission,” at 4 (Jun. 24, 2020), *available at* <https://docs.fcc.gov/public/attachments/DOC-365132A1.pdf> (“If there is one thing this crisis is demonstrating, it's the value of faster and more robust networks.”).

CERTIFICATION

I, David Abrahamian, hereby make the following certifications to the Federal Communications Commission.

1. I am Vice President, Satellite Systems of Viasat, Inc.
2. The factual information contained in the foregoing Request to Extend or Waive Milestone Date is true and correct to the best of my knowledge, information and belief.

/s/
David Abrahamian

Executed August 19, 2022