Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Viasat, Inc.	)	File Nos. SAT-PDR-20161115-00120 &
	)	SAT-APL-20180927-00076
Petition for Declaratory Ruling Granting Access	)	
to the U.S. Market for the Viasat NGSO FSS	)	Call Sign S2985
System	)	

COMMENTS AND PETITION TO DISMISS OR DEFER

I. INTRODUCTION

Pursuant to 47 C.F.R. § 25.154(a), Hughes Network Systems, LLC ("Hughes") submits these comments and petition to dismiss or defer consideration of Viasat, Inc.'s ("Viasat") above-captioned petition, as amended ("Petition"), seeking a declaratory ruling for U.S. market access for its proposed non-geostationary orbit ("NGSO") fixed satellite service ("FSS") system.[1] Viasat fails to demonstrate that its September 27 amendment ("Amendment") seeking material technical changes to its proposed NGSO FSS system is not a major amendment.[2] Thus, Viasat's Petition, as modified by such a major amendment, should be treated as newly filed under the Commission's rules and ineligible for consideration in the current Ku/Ka-band NGSO processing round. Accordingly, the Commission should dismiss the Petition from consideration

[1] *See* Viasat Petition, File Nos. SAT-PDR-20161115-00120 & SAT-APL-20180927-00076; *see also Satellite Policy Branch Information: Space Station Applications Accepted for Filing*, Public Notice, Report No. SAT-01357, at 1 (Nov. 2, 2018) (issuing public notice of Viasat's filing of an amendment to its Petition).

[2] *See* Viasat Amendment, File No. SAT-APL-20180927-00076, Exh. A, at 1 (Sept. 27, 2018).

in the current processing round or defer consideration until commencement of a new processing round.

II. VIASAT'S PETITION, AS MODIFIED BY A MAJOR AMENDMENT, SHOULD BE CONSIDERED AS NEWLY FILED OUTSIDE OF THE CURRENT KU/KA-BAND NGSO PROCESSING ROUND

Viasat's Amendment seeks certain material technical changes to its proposed NGSO FSS system, including increasing the number of orbital planes from three to four, reducing the number of active satellites from 24 to 20, and reducing the number of satellites per orbital plane from eight to five.[3] Viasat claims without basis that it seeks no major amendment that would require treatment of its Petition as newly filed and ineligible for consideration in the ongoing Ku/Ka-band NGSO processing round.[4] Viasat's argument, however, ignores the plain language of the Commission's satellite licensing rules and undercuts the policy objectives of those rules.

Specifically, Section 25.116(c) of the Commission's rules provides that an "application for a NGSO-like satellite license … will be considered to be a newly filed application if it is amended by a major amendment … after a 'cut-off' date applicable to the application."[5] Additionally, Section 25.116(b)(1) defines "major amendments" to include an amendment that "increases the potential for interference" or "changes the proposed … orbital locations to be used."[6] These provisions are intended to prevent NGSO applicants from seeking material changes affecting other NGSO proposals under consideration in the same processing round.[7] This, in turn, allows both the Commission and processing round participants to evaluate the

[3] *See id.*

[4] *See id.* at 15-17.

[5] 47 C.F.R. § 25.116 (c).

[6] *Id.* § 25.116 (b)(1).

[7] *See O3b Limited*, Order and Declaratory Ruling, 33 FCC Rcd 5508, ¶ 39 (2018) (citing *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and FNPRM, 18 FCC Rcd 10760, 10814 (2003)).

orbital environment contemporaneously and determine appropriate spectrum sharing analyses and coordination measures.

By proposing an additional orbital plane in its NGSO constellation, Viasat's Amendment seeks to change the orbital location of all satellites in the constellation. The addition of a new orbital plane changes the pattern and spacing of the satellites. Viasat claims that its proposed changes in configuration of the satellite constellation are merely corresponding adjustments to the proposed reduction in the number of active satellites,[8] but the fact remains that these satellites will move through space in a different configuration than originally proposed.[9] Contrary to Viasat's suggestion that it seeks no major amendment by virtue of its satellites occupying the same range of orbital positions as originally proposed,[10] Section 25.116(b)(1) expressly defines "major amendments" to include an amendment that "changes the proposed … orbital locations to be used,"[11] which is precisely what Viasat proposes by adding a new orbital plane. The impact of Viasat's proposed changes in orbital location and constellation configuration on other participants in the ongoing Ku/Ka-band NGSO processing round should not be overlooked or minimized, as those changes will affect spectrum sharing analyses, including calculating the potential for in-line interference caused by Viasat's proposed new orbital pattern.

Moreover, contrary to Viasat's contention, the Amendment meets Section 25.116(b)(1)'s definition of a "major amendment" with respect to "increas[ing] the potential for interference."[12] Viasat broadly claims that its Amendment does not increase the interference potential, but offers no interference analysis or meaningful technical support. Rather, Viasat merely notes that the

[8] *See* Viasat, Amendment, Exh. A, at 16.

[9] *See id.* at 15-16.

[10] *See id.* at 15.

[11] 47 C.F.R. § 25.116 (b)(1).

[12] *Id.*

satellite antenna beam patterns and emission masks remain unchanged.[13] Viasat further argues that its proposed reduction in number of active satellites reduces the potential for in-line events with other NGSO systems,[14] but again offers no interference analysis or meaningful technical support, and notably remains silent as to whether its proposed increase in orbital planes reduces the potential for in-line events.

Absent substantial evidence that Viasat's Amendment neither increases the interference potential nor changes the proposed orbital locations, the filing should be deemed a major amendment, thus requiring the Petition, as amended, to be considered as newly filed outside of the ongoing Ku/Ka-band NGSO processing round.[15] Additionally, Viasat neither claims nor offers any basis to suggest that any of the exceptions to the rule under Section 25.116(c) should apply to allow Viasat's Petition, as amended by a major amendment, to be considered in the ongoing processing round.[16]

[13] *See* Viasat, Amendment, Exh. A, at 15.

[14] *See id.* at 16.

[15] *See, e.g., Lockheed Martin Corporation*, Order and Authorization, 20 FCC Rcd 11023 (IB 2005) (finding that an amendment to change orbital location is a major amendment and denying waiver request); *Columbia Communications Corporation*, Order on Reconsideration, 18 FCC Rcd 9448, ¶ 4 (IB 2003) (affirming that an amendment to change orbital location is a major amendment and is treated as newly filed).

[16] *See* 47 C.F.R. § 25.116 (c)(1)-(4) (specifying rule exceptions , including for amendments that resolve frequency conflicts with authorized stations or other pending applications, and those that do not create new or increased frequency conflicts and are demonstrably necessitated by events that could not have reasonably foreseen at the time of filing).

III. CONCLUSION

As required under Section 25.116 of the Commission's rules, Viasat's Amendment seeking certain material technical changes to its NGSO FSS proposal should be deemed a major amendment. Thus, as amended, the Petition should be considered as newly filed outside of the current Ku/Ka-band NGSO processing round. Accordingly, the Commission should dismiss the Petition or defer consideration until commencement of a new processing round.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Theresa Rollins, hereby certify under penalty of perjury that the foregoing Comments and Petition to Dismiss or Defer was served this 3rd day of December 2018, by depositing a true copy thereof with the United States Postal Service, first class postage pre-paid, addressed to the following:

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