



September 15, 2021

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, DC 20554

Re: *IBFS File Nos. SES-LIC-20170401-00357, SES-LIC-20190411-00503, SES-MOD-20191216-01737, SES-MOD-20200923-01031, SES-LIC-20201204-01303, SES-LIC-20200811-00852*

Dear Ms. Dortch:

In a recent *ex parte*,¹ Viasat, Inc. (“Viasat”) sought to justify its ongoing operations in two spectrum bands for which it is not authorized. Yet, even if the Commission were to accept every statement Viasat asserts in its *ex parte* as correct—and many statements most assuredly are incorrect—Viasat would still be operating in violation of its licenses. Viasat’s violations of Commission rules and the terms of its licenses has continued for years and justify immediate enforcement action. To protect users of non-geostationary orbit (“NGSO”) satellite systems and to ensure the validity of its own rules, the Commission must address these violations and direct Viasat to cease its ongoing violation.

Specifically, Viasat continues to operate in spectrum bands for which the Commission has designated NGSO satellite systems as primary and geostationary orbit (“GSO”) satellite systems as secondary. GSO systems are prohibited from causing harmful interference to or claiming protection from NGSO systems in these bands.² Under the terms of its existing earth station authorizations, Viasat is explicitly prohibited from operating in these bands unless and until it (1) secures a coordination agreement from each NGSO FSS operator or (2) obtains appropriate relief from the Commission—*neither of which it has done*. The various justifications tendered in Viasat’s recent *ex parte* do not actually dispute this fact, but instead merely try to distract from Viasat’s fundamental, ongoing violation of the license terms. The rules are straightforward, and Viasat is in clear breach of those rules.

In each of the above referenced proceedings, Viasat has sought to operate blanket licensed earth stations, including earth stations aboard aircraft, in the 18.8-19.3 GHz and 28.6-29.1 GHz bands (the “NGSO Ka-Bands”) where GSO systems are secondary to NGSO systems. The record

¹ See Letter from Amy R. Mehlman to Marlene H. Dortch, IBFS File Nos. SES-LIC-20170401-00357, et al. (Aug. 30, 2021).

² *Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, 32 FCC Rcd. 7809, ¶ 14 & Appendix B (2017). Prior to this 2017 decision, there was no designation for GSO FSS systems in the NGSO Ka-Bands.

in the first three of those proceedings demonstrates that, to protect priority NGSO systems such as the one operated by Space Exploration Holdings, LLC (“SpaceX”), three blanket earth station licenses covering more than 4,000,000 deployable units nationwide prohibit Viasat from operating in the NGSO Ka-Bands unless and until it (1) secures a coordination agreement from each NGSO FSS operator or (2) obtains appropriate relief from the Commission. Although Viasat has not met either pre-operating requirement, it also has refused to comply with the directive in its licenses that it must cease operations in the NGSO Ka-Bands until it comes into compliance.³

For months while Viasat was operating in the NGSO Ka-Bands without authorization, SpaceX nonetheless worked in good faith to reach a coordination agreement that could allow Viasat’s operations, so long as they did not harm SpaceX’s users. But Viasat refused to offer to meet the Commission’s requirement that it provide a satisfactory demonstration of how it could protect NGSO users. In fact, Viasat’s inability to produce such a showing even now indicates it does not have a solution for the harm it is causing. After Viasat’s refusal to coordinate in good faith scuttled SpaceX’s attempts to resolve the issue, SpaceX requested that the Commission issue an order to show cause why Viasat’s licenses should not be revoked in part, why a cease and desist order should not be issued, and/or why monetary forfeitures should not be imposed in light of Viasat’s clear, impermissible operation in the NGSO Ka-Bands.⁴ But rather than cease operations in these bands until it comes into compliance—as required under the terms of its licenses—Viasat has doubled down, seeking additional authorizations to extend its operations in these bands still further. The above referenced proceedings include requests for blanket authority to operate thousands of gateway earth stations and earth stations in motion.⁵ SpaceX has objected to these requests, arguing that Viasat should not be allowed additional authorizations in the NGSO Ka-Bands given its already unauthorized and harmful use of the spectrum.

Viasat’s *ex parte* does not contradict the facts as SpaceX has laid them out in these proceedings. Viasat merely claims SpaceX was unreasonable in its coordination discussions. SpaceX certainly disagrees with this assertion, but in any event the Commission offered an alternative path to Viasat: before beginning operations, obtain a modification to its licenses by demonstrating how it would protect NGSO systems. But Viasat has simply ignored this option and has gone on operating in the NGSO Ka-Bands anyway, without even requesting a modification—let alone obtaining one—until SpaceX brought Viasat’s unauthorized operations to the Commission’s attention.

Viasat has not produced a coordination agreement with SpaceX nor has it obtained an order from the Commission either modifying its license or concluding that its operations would not cause harmful interference to SpaceX’s operations. Instead, Viasat argues that the Commission should accept its technical showings—most of which are simply resubmissions of analyses the

³ See Radio Station Authorization, Call Sign E170088, Condition 90447 (issued Nov. 9, 2017); Radio Station Authorization, Call Sign E180006, Condition 90257 (issued Apr. 1, 2020); Radio Station Authorization, Call Sign E190201, Condition 90257 (issued Nov. 15, 2019).

⁴ See SpaceX Request for Order to Show Cause, Call Signs E170088, E180006 & E190201, IBFS File Nos. SES-LIC-20170401-00357, SES-LIC-20190411-00503 & SES-MOD-20191216-01737 (Sep. 18, 2020).

⁵ See Applications, IBFS File Nos. SES-LIC-20200811-00852 (Aug. 11, 2020) and SES-LIC-20201204-01303 (Dec. 4, 2020). The remaining application is a request for modification to remove the license condition—many months *after* Viasat was required to file *and obtain* such a modification if it wanted to operate in these bands.

Commission already considered *before* imposing the conditions at issue. Even if the Commission were to agree with Viasat’s analysis—and, to be clear, Viasat presents no basis for doing so—that would not change the fact that Viasat has been unlawfully operating in the NGSO Ka-Bands without the required coordination agreement or Commission relief for over 20 months after SpaceX launched operations in the bands.

Accordingly, even giving Viasat every benefit of the doubt, Viasat continues its longstanding and ongoing violation of the terms of its authorizations, which are clear and definitive. This has gone on too long, and the Commission must act. To protect users of NGSO satellite systems and to ensure the validity of its own rules, the Commission must address this violation and avoid further interference to SpaceX’s users as SpaceX continues to bring high speed, low latency broadband services to underserved Americans in more areas of the country.

Sincerely,

/s/ David Goldman

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