

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Viasat, Inc.) File No. SAT-MOD-20190617-00047
) Call Sign: S2917
Application to Modify Market Access Grant)
and for Extension or Waiver of Milestone Date)

COMMENTS OF O3B LIMITED

O3b Limited (“O3b”) hereby comments on the above-captioned application by Viasat, Inc. (“Viasat”) to modify its authority to serve the United States using a Ka-band geostationary orbit (“GSO”) fixed-satellite service (“FSS”) spacecraft known as ViaSat-3 by adding frequencies and seeking relief from system implementation milestones.¹ Among other new spectrum, Viasat seeks to use the 19.4-19.6 GHz and 29.1-29.25 GHz segments in which non-geostationary orbit mobile-satellite service networks are primary (the “NGSO MSS Bands”) and there is no GSO FSS allocation under Commission policies.² O3b has a direct interest in the Modification, as O3b is authorized to serve the United States using the NGSO MSS Bands.³

The Modification has two significant flaws. Viasat fails to demonstrate that it can operate in the NGSO MSS Bands without causing harmful interference to O3b’s next-generation satellites that will rely on access to this spectrum or to recognize that Viasat must accept interference from the O3b network. Moreover, Viasat has not provided a valid rationale for its request to extend by two and a half years the initial five-year period the Commission specified

¹ *Viasat, Inc.*, File No. SAT-MOD-20190617-00047 (the “Modification”).

² *See id.*, Narrative at 2-3.

³ *See O3b Limited*, Order and Declaratory Ruling, 33 FCC Rcd 5508 (2018) (“O3b Grant”) at 5515-17, ¶¶ 19-23.

for construction, launch, and commencement of operations of ViaSat-3. Unless and until Viasat rectifies these defects, the Commission cannot act on the Modification.

I. VIASAT HAS NOT JUSTIFIED ITS WAIVER REQUEST FOR ACCESS TO NGSO MSS SPECTRUM

Viasat seeks U.S. market access for the NGSO MSS Bands on a non-conforming basis, recognizing that under the U.S. Table of Allocation and the Commission’s Ka-band plan, the only satellite operations permitted in the 19.4-19.6 GHz and 29.1-29.25 GHz frequencies are feeder links for NGSO MSS networks.⁴ Viasat correctly observes that the Commission has granted waivers to allow non-conforming spectrum use where “a demonstration is made that the non-conforming operations would not likely cause harmful interference into the services for which an allocation or designation exists, and where the non-conforming operator accepts any interference from conforming spectrum users.”⁵ Viasat, however, does not provide a complete showing in this regard.

Specifically, Viasat states that it is seeking to coordinate its proposed use of the NGSO MSS Bands with the Iridium satellite network and pending such coordination, will maintain sufficient separation distance to the Iridium feeder link earth stations,⁶ but Viasat makes no mention of compatibility with the operations authorized in the O3b Grant. The only technical information in the Modification relating to Viasat’s ability to use these bands without causing or experiencing harmful interference is similarly limited to addressing Iridium’s NGSO MSS feeder

⁴ Modification, Narrative at 21 & n.41, citing 47 C.F.R. § 2.106, footnote NG166 (“The use of the bands 19.4-19.6 GHz and 29.1-29.25 GHz by the fixed-satellite service is limited to feeder links for non-geostationary-satellite systems in the mobile-satellite service.”).

⁵ Modification, Narrative at 22 (footnote omitted).

⁶ *Id.* at 23-24.

link operations.⁷ At no point in the Modification does Viasat acknowledge that O3b has been granted Commission authority to use the NGSO MSS Bands for services consistent with the Table of Allocations and Ka-band plan or demonstrate how it would protect the O3b operations.

This omission fatally undermines Viasat's request for waiver. O3b is well on the way to executing its plans for NGSO MSS feeder links, which will be deployed in both equatorial and inclined orbits. The initial mPower satellites that will utilize this spectrum are under construction, with the first set of spacecraft scheduled for launch by 2021. On the ground segment side, O3b's application to add spectrum including the NGSO MSS Bands to its licensed Hawaii gateway earth station is pending before the Commission.⁸

As a prospective non-conforming user of the NGSO MSS Bands, Viasat is obligated to protect not only the current Iridium operations in this spectrum but all future conforming services as well. Because Viasat has failed to demonstrate how it will protect O3b's authorized use of the NGSO MSS Bands or to commit to accepting interference from O3b's operations, Viasat has not met the explicit Commission waiver standard applicable to non-conforming spectrum uses. Accordingly, absent a supplemental showing of compatibility with the authorized use by O3b of the NGSO MSS Bands, Viasat's proposal to use those frequencies must be rejected.

II. VIASAT'S REQUEST FOR MILESTONE RELIEF CONFLICTS WITH COMMISSION PRECEDENT

The Modification also fails to justify giving Viasat an additional period of more than two and a half years, on top of the five-year period originally granted, to complete construction, launch, and begin operating ViaSat-3. The Commission's long-standing policy of requiring satellite licensees to adhere to construction and launch milestones is grounded in the public

⁷ Modification, Attachment A at 9-12.

⁸ *O3b Limited*, Call Sign E100088, File No. SES-MOD-20190207-00084.

interest. As the International Bureau has explained, “[b]ecause it is manifestly in the public interest to ensure that licensees proceed expeditiously in completing construction of their systems and commencing service, the Commission has strictly enforced its [satellite] milestone schedules.”⁹ A party seeking milestone relief must demonstrate either that the delay was due to factors over which it had no control or show that unique and overriding public interest concerns justify extension or waiver of the schedule.¹⁰ Because the Modification does not include a sufficient showing on either point, Viasat’s request for extension or waiver of the ViaSat-3 launch and operations milestone must be denied.

As a threshold matter, although Viasat suggests that manufacturing issues with an initial vendor caused some delay in the ViaSat-3 program,¹¹ it is clear that the major factors underlying Viasat’s failure to timely build and launch the satellite were within Viasat’s own control. For example, Viasat indicates that it changed the original contract specifications to implement a “ViaSat-3-class design” rather than the “Viasat-2-generation design” previously used.¹² Moreover, the Modification proposes the addition of multiple new frequency band segments and

⁹ *PanAmSat Licensee Corp.*, 15 FCC Rcd 18720 (IB 2000) (“*PanAmSat*”) at 18722, ¶ 8. *See also New ICO Satellite Services G.P.*, 22 FCC Rcd 2229 (Sat. Div. 2007) (“*New ICO*”) at 2233, ¶ 14 (“the Commission strictly enforces its milestone schedules,” which “ensure prompt delivery of satellite service to the public”); *Astrolink International LLC*, 17 FCC Rcd 11267, 11268-69, ¶ 5 (Sat. Div. 2002) (“Because it is in the public interest to ensure that licensees proceed expeditiously in completing construction of their systems and commencing service and are not blocking entry by other qualified service providers, the Commission has strictly enforced its milestone schedules.”).

¹⁰ *New ICO*, 22 FCC Rcd at 2233, ¶ 14. *See also* 47 C.F.R. § 25.117(e).

¹¹ Modification, Narrative at 9-10. Because the limited discussion of this issue in the Modification is heavily redacted, the public record does not disclose the nature of the issues or the time frame over which they occurred, preventing parties from commenting on the specific construction problems alleged by Viasat.

¹² *Id.* at 2-3.

changes to other technical parameters.¹³ Any schedule delay resulting from these voluntary Viasat decisions cannot be grounds for a milestone extension, as the Commission has consistently held that alterations such as the addition of frequency bands do not justify milestone extensions.¹⁴ Such alterations are within a licensee’s discretion, but Commission precedent makes clear that a licensee proposing to modify its spacecraft design assumes the risk if the intended modification causes it to miss its construction milestones.¹⁵

Viasat presumably is aware of this precedent and does not explicitly attempt to justify its extension request based on the major changes to the satellite’s design. However, the Commission must independently determine whether Viasat’s decision to alter the underlying spacecraft design and add frequency bands in fact prevented timely completion of ViaSat-3.

The timing of the Modification also undercuts Viasat’s assertion that it is entitled to milestone relief. The Commission has consistently been critical of applicants who failed to timely notify the Commission of claimed obstacles to compliance with the specified construction and launch schedule.¹⁶ Viasat clearly has known for many months, if not years, that ViaSat-3

¹³ Modification, Narrative at 2-3.

¹⁴ See, e.g., *PanAmSat*, 15 FCC Rcd at 18723, ¶ 10 (“modifications that PanAmSat voluntarily proposed to its system” seeking to add inter-satellite link frequencies could not justify failure to comply with applicable milestones); *Columbia Communications Corp.*, 15 FCC Rcd 15566, 15571, ¶ 12 (IB 2000) (seeking to add Ku-band authority cannot justify a milestone extension because the decision to propose a license modification is “wholly within the control of the licensee”).

¹⁵ *PanAmSat*, 15 FCC Rcd at 18723, ¶ 11 (because PanAmSat chose not to comply with its milestones, there is “no good cause for extending, suspending or otherwise waiving PanAmSat’s milestone schedule”).

¹⁶ See, e.g., *Motorola, Inc.*, 17 FCC Rcd 16543, 16550, ¶ 21 (IB 2002) (observing that the “Applicants failed to apprise [the Commission] in a diligent manner . . . of the problem that allegedly thwarted timely compliance with the milestone requirement”); *PanAmSat*, 15 FCC Rcd at 18723, ¶ 11 (PanAmSat “filed its extension request just days before the expiration of its initial milestone”).

was not going to be completed in time to satisfy Viasat’s obligation to have the payload launched and operational by the June 18, 2019 date specified in its authorization. The fact that Viasat waited until June 17, 2019 – the very eve of the deadline – to request an extension suggests that Viasat was intentionally attempting to evade Commission review and further weakens Viasat’s request for extension or waiver of the launch and operations milestone.

Viasat asserts that its commitment to construction and launch of ViaSat-3 – as indicated by the substantial payments the company has made – is sufficient to demonstrate a public interest rationale for the requested milestone relief under Commission precedent, but the cases cited by Viasat involved factual scenarios very different from the situation here. As one example, Viasat is seeking to add two and a half years – a 50% increase – to the implementation period for ViaSat-3. In contrast, the *Terrestar* case on which Viasat relies involved only a ten-month launch extension and, critically, no delay in the date on which service to the public would commence.¹⁷ Other decisions cited by Viasat approved comparably brief extensions.¹⁸ Similarly, Viasat’s claim that it has paid 80 percent of the contract price for ViaSat-3 is not persuasive, as other cases in which milestone relief was granted involved satellites even more advanced in their construction.¹⁹

¹⁷ *TerreStar Networks, Inc.*, 22 FCC Rcd 17698 (IB 2007) (“*TerreStar*”) at 17699, ¶ 5 (Terrestar seeks a launch milestone change but “does not request any change to the November 2008 deadline for certifying that its system is operational”).

¹⁸ *See, e.g., AT&T Co.*, 5 FCC Rcd 5590, 5590-91 (Dom. Fac. Div. 1990) (granting milestone extensions of four to six months and emphasizing that the “requested extensions are brief”); *New ICO*, 22 FCC Rcd at 2229, ¶ 1 (granting an extension of approximately five months); *DIRECTV Enterprises LLC*, 30 FCC Rcd 4796 (Sat. Div. 2015) (“*DIRECTV*”) at 4796, ¶ 1 (granting a milestone extension of less than a year in light of the “imminent launch” of the satellite).

¹⁹ *See, e.g., TerreStar*, 22 FCC Rcd at 17700, ¶ 7 (satellite was “in the final stages of construction,” and 97 percent of construction price and 70 percent of the launch price had been paid); *New ICO*, 22 FCC Rcd at 2230, ¶ 8 (satellite was “substantially complete” and 93 percent of construction contract price, along with 75 percent of total launch costs, had been paid);

Finally, there are no “unique and overriding public interest concerns”²⁰ in this case to justify a milestone extension or waiver. Instead, the only interests at stake are those of Viasat, which has made voluntary business decisions that have delayed completion of ViaSat-3. Furthermore, extending or waiving the milestone would fundamentally undermine the Commission’s milestone enforcement efforts by allowing Viasat to effectively set its own schedule for launching and commencing operations of the spacecraft. Viasat claims that “[g]iven the 15+ year design life of the satellite to be deployed at 88.9° W.L.,” prospective customers will benefit from Viasat’s decision to “implement[] the most state-of-the-art technology,” but the same can be said by virtually every holder of space station authority. If the opportunity to employ the latest technical advancements were sufficient grounds to extend satellite milestones, such deadlines would become meaningless.

In short, Viasat’s attempts to rationalize its requested milestone relief rely on selective citation of the applicable facts and misreading of the relevant Commission decisions. Primary responsibility for the factors that led to delays in implementation of ViaSat-3 lies with Viasat itself, and no special circumstances are present that would justify the lengthy extension Viasat seeks. Accordingly, absent additional evidence, the Commission must protect the integrity of its milestone policies by rejecting the Viasat extension request.

DIRECTV, 30 FCC Rcd at 4797, ¶ 3 (launch of satellite was imminent, and 91.4% of pre-launch construction payments and 90 percent of launch payments had been made).

²⁰ 47 C.F.R. § 25.117(e)(2).

III. CONCLUSION

As discussed above, the Modification fails to provide a basis on which the Commission can waive its allocation rules or extend the deadline for construction and launch of ViaSat-3. Unless and until these deficiencies are corrected, the Commission cannot grant the Modification.

Respectfully submitted,

O3B LIMITED

Of Counsel

Karis A. Hastings
SatCom Law LLC
1317 F Street, N.W., Suite 400
Washington, D.C. 20004
(202) 599-0975

/s/ Suzanne Malloy

Vice President, Regulatory Affairs
O3b Limited
1129 20th Street, NW, Suite 1000
Washington, DC 20036
(202) 813-4026

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th of September, 2019, I caused to be served a true copy of the foregoing "Comments of O3b Limited" by first class mail, postage prepaid, upon the following:

Christopher J. Murphy
Associate General Counsel, Regulatory Affairs
Daryl T. Hunter
Chief Technical Officer, Regulatory Affairs
VIASAT, INC.
6155 El Camino Real
Carlsbad, CA 92009

John P. Janka
Matthew T. Murchison
Elizabeth R. Park
LATHAM & WATKINS LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004
Counsel for Viasat, Inc.

By: /s/ Roxana Hernandez