

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 )

**REPLY OF O3B LIMITED**

O3b Limited (“O3b”) submits this reply regarding the above-captioned application by Viasat, Inc. (“Viasat”) to modify its authority to serve the United States using a Ka-band geostationary orbit fixed-satellite service spacecraft known as ViaSat-3 by adding frequencies and seeking an additional two and a half years to commence operations of the satellite.<sup>1</sup> O3b explained in its initial comments that the Modification is defective in two respects: Viasat has failed to justify either its request for milestone relief or for waiver of the Table of Allocations to allow use of the 19.4-19.6 GHz and 29.1-29.25 GHz segments in which O3b has authority to operate as a provider of non-geostationary orbit mobile-satellite service feeder links (the “NGSO MSS Bands”).<sup>2</sup> Because Viasat’s response<sup>3</sup> wholly fails to cure either of these defects, the record does not support grant of the Modification.

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

<sup>2</sup> Comments of O3b Limited, File No. SAT-MOD-20190617-00047, filed Sept. 9, 2019 (the “O3b Comments”) at 1-2.

<sup>3</sup> Consolidated Response and Opposition of Viasat, Inc., File No. SAT-MOD-20190617-00047, filed Sept. 24, 2019 (the “Viasat Opposition”).

## **I. MILESTONE RELIEF FOR VIASAT-3 IS UNWARRANTED**

As the comments of both O3b and Inmarsat make clear, the Modification falls far short of supplying sufficient information to justify giving Viasat 50% more time to complete its spacecraft than is specified in the Commission's rules.<sup>4</sup> Rather than bolstering its case for milestone relief, the Viasat Opposition mischaracterizes both the record and Commission precedent. Given the strong public interest considerations underlying space station milestone requirements, "the Commission strictly enforces its milestone schedules,"<sup>5</sup> and Viasat has not adequately shown why the Commission should depart from that policy here.

Importantly, Viasat has consistently ignored a key underpinning of the milestone framework: ensuring that licensees "will launch their satellites in a timely manner" to provide "prompt delivery of satellite service to the public."<sup>6</sup> Viasat makes no attempt to explain how a lengthy two and a half year lag before starting ViaSat-3 operations can be reconciled with that fundamental Commission objective. This deficiency alone is grounds for denying Viasat's request for waiver of its system milestones, as showing that relief "would not undermine the policy objective of the rule in question" is an essential element of a waiver justification.<sup>7</sup>

The magnitude of the delay Viasat seeks is also a critical factor in the Commission's assessment of milestone issues. Viasat claims that the O3b Comments "ignore the Commission precedent" cited by Viasat,<sup>8</sup> but nothing could be further from the truth. To the contrary, O3b

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<sup>4</sup> O3b Comments at 3-7; Comments of Inmarsat, Inc., File Nos. SAT-LOA-20190617-00048 & SAT-MOD-20190617-00047, filed Sept. 9, 2019 (the "Inmarsat Comments") at 6-10.

<sup>5</sup> *New ICO Satellite Services G.P.*, 22 FCC Rcd 2229, 2233 (Sat. Div. 2007) ("*New ICO*").

<sup>6</sup> *Id.*

<sup>7</sup> *PanAmSat Licensee Corp.*, 17 FCC Rcd 10483, 10492 (Sat. Div. 2002).

<sup>8</sup> Viasat Opposition at 3.

explicitly addressed the decisions granting milestone relief on which Viasat relies and pointed out that they involved shorter extension periods for satellites more advanced in the construction process than ViaSat-3.<sup>9</sup> Examples in which the Commission extended milestones by no more than a year for operators who had already expended more than 90% of their satellites' construction costs<sup>10</sup> simply do not support Viasat's argument for a two and a half year extension when it has expended only 80% of the costs for ViaSat-3.<sup>11</sup>

The Commission must also consider the extent to which Viasat's own actions have contributed to the claimed need for more time to complete, launch, and operate the ViaSat-3 space station.<sup>12</sup> Viasat's attempts to downplay this factor are contrary to both the text of the relevant Commission rule, which expressly sets forth the requirement to show that "additional time is required due to unforeseeable circumstances beyond the applicant's control,"<sup>13</sup> and applicable case law cited by Viasat. In particular, Viasat completely mischaracterizes the *New*

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<sup>9</sup> See O3b Comments at 6-7 and nn.17-19.

<sup>10</sup> See *TerreStar Networks, Inc.*, 22 FCC Rcd 17698, 17699-700 (IB 2007) (granting a launch milestone change that did not alter the required date to commence operations when 97 percent of the construction price and 70 percent of the launch price had been paid); *New ICO*, 22 FCC Rcd at 2230 (extending the milestone by roughly 5 months for a satellite that was "substantially complete" and for which 93 percent of the construction contract price and 75 percent of total launch costs had been paid); *DIRECTV Enterprises LLC*, 30 FCC Rcd 4796, 4796-97 (Sat. Div. 2015) ("*DIRECTV*") (granting a milestone extension of less than a year in light of the "imminent launch" of a satellite for which 91.4% of pre-launch construction payments and 90 percent of launch payments had been made).

<sup>11</sup> Viasat complains that although O3b highlighted the discrepancy between the completion levels of ViaSat-3 and the other satellites for which milestone relief was granted, O3b did not suggest a completion value that would pass muster. Viasat Opposition at 4 n.5. But O3b's argument does not represent an attempt to substitute its judgment for that of the Commission by defining the degree of satellite completion that should be considered sufficient to justify an extension request. O3b is only observing that Viasat's performance falls below the requirements for relief deemed adequate in the very cases on which Viasat relies.

<sup>12</sup> See O3b Comments at 4-5; Inmarsat Comments at 7-9.

<sup>13</sup> 47 C.F.R. § 25.117(e).

*ICO* decision, stating that the Commission in that ruling “determined that there was no need to address whether the reason for the extension was attributable to a business decision within the control of the applicant.”<sup>14</sup> In fact, the *New ICO* decision was granted due to “unanticipated technical problems . . . beyond the licensee’s control.”<sup>15</sup> In deciding in *New ICO*’s favor, the International Bureau expressly distinguished cases in which:

the licensee had requested an extension of its milestones in conjunction with requests to modify the technical terms of its authorization. The Commission denied the extension requests, finding that a license modification is a business decision within the discretion and control of the licensee.<sup>16</sup>

Unlike in *New ICO*, Viasat is attempting to obtain a lengthy delay of its milestones based on matters firmly within Viasat’s control – including changes in the satellite design and the addition of a broad range of new frequencies – all of which have previously led the Commission to deny milestone relief.

Moreover, rather than diligently keeping the Commission apprised of the ViaSat-3 schedule changes, Viasat waited until the last possible moment to seek a change in the satellite’s milestone date. Viasat points to the *DIRECTV* ruling to suggest that failure to timely seek milestone relief is not of decisional significance.<sup>17</sup> But *DIRECTV* filed more than a month before its milestone date, whereas Viasat’s modification was submitted the day before its authorization would have been subject to automatic cancellation. Condoning Viasat’s dilatory behavior would effectively reset the standard to a new low, encouraging future applicants for milestone relief to likewise put off filing until mere hours before the deadline.

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<sup>14</sup> Viasat Opposition at 7.

<sup>15</sup> *New ICO*, 22 FCC Rcd at 2233.

<sup>16</sup> *Id.* at 2234 (footnote omitted).

<sup>17</sup> Viasat Opposition at 5-6 & n.13.

Finally, Viasat’s claims that the ability to rely on a more advanced satellite design satisfy the standard for “unique and overriding public interest concerns”<sup>18</sup> justifying milestone relief must be rejected. Viasat’s self-classification of the ViaSat-3 class spacecraft design as “revolutionary”<sup>19</sup> does not make it so. If developments in space station technology were deemed sufficient to trigger milestone relief, deadlines set by the Commission for commencing service to customers would be significantly undermined, as applicants could always claim that delaying construction and launch would enable them to deploy more state-of-the-art capabilities.

Viasat urges the Commission to consider the “totality of the circumstances”<sup>20</sup> in assessing the company’s claim for milestone changes, and O3b agrees that such a review is appropriate. Doing so, however, makes clear that Viasat is attempting to push well past the limits of the Commission’s existing precedent in this area, seeking a longer extension for a more incomplete satellite than what the Commission has typically allowed and basing its request on changes that are clearly attributable to Viasat’s own business decisions. Given these facts, granting Viasat’s request to delay commencing service to customers by two and a half years is unjustified and would conflict with Commission policy mandates.

## **II. VIASAT HAS NOT MET THE STANDARD FOR NON-CONFORMING USE OF NGSO MSS SPECTRUM**

As O3b explained in its comments, Viasat’s silence with respect to how it would prevent interference to, and withstand interference from, O3b’s authorized use of the NGSO MSS Bands is fatal to its request to access that spectrum on a non-conforming basis.<sup>21</sup> Despite the

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<sup>18</sup> 47 C.F.R. § 25.117(e)(2).

<sup>19</sup> Viasat Opposition at 5.

<sup>20</sup> *Id.* at 5.

<sup>21</sup> O3b Comments at 2-3. *See also* Comments and Petition to Hold in Abeyance of Iridium Constellation LLC, File No. SAT-MOD-20190617-00047, filed Sept. 9, 2019, at 2-

opportunity to do so, Viasat fails to correct this omission by supplying any compatibility analysis with respect to the operations O3b is preparing to commence in these bands. Instead, the cursory discussion of this matter in the Viasat Opposition patently does not comply with the applicable standard that Viasat itself has identified: waivers for non-conforming spectrum use can be granted if the applicant both demonstrates that its operations are unlikely to cause harmful interference into allocated services and commits to accepting any interference from conforming spectrum users.<sup>22</sup>

Rather than submitting a detailed assessment of the risk of interference that is specific to O3b's planned feeder links, Viasat dismisses O3b's concerns by suggesting that the look angle from ViaSat-3 to O3b's Hawaii gateway site is "extremely low," and claiming that Viasat will use the same techniques to accommodate O3b's operations that were described in the Modification for managing interference to Iridium.<sup>23</sup> Neither of these statements is satisfactory. By limiting its discussion of risk to the O3b location in Hawaii, Viasat fails to recognize that it is obligated to protect all future O3b NGSO MSS operations. O3b is actively preparing applications for additional U.S. gateways that will employ the NGSO MSS Bands, and Viasat will not simply be able to rely on a low look angle from the 89° W.L. location to ensure those operations are protected.

Moreover, the analysis Viasat has done with respect to Iridium is blatantly inadequate and does not provide a valid basis for concluding that Viasat will not create unacceptable interference to O3b. Specifically, Viasat's claims in the Modification that Iridium operations

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5 (challenging the adequacy of Viasat's showing that it will protect Iridium's use of the NGSO MSS Bands).

<sup>22</sup> See Modification, Narrative at 22.

<sup>23</sup> Viasat Opposition at 9.

would not suffer unacceptable interference are based on an interference-to-noise (“I/N”) threshold of -12.2 dB, which is equivalent to the 6%  $\Delta T/T$  criterion used to trigger coordination between co-primary operators.<sup>24</sup> This value cannot legitimately be used to assess the acceptability of interference from Viasat’s proposed non-conforming operation into the primary operations of either Iridium or O3b.

Viasat has failed the second prong of the test for waiver of the Table of Allocations as well. Neither the Modification nor the Viasat Opposition provides the required commitment that Viasat will accept interference from conforming users of the NGSO MSS Bands such as O3b.

These uncured defects in the materials supporting the Modification disqualify Viasat from being granted authority to use the NGSO MSS Bands.

### **III. CONCLUSION**

As discussed above and in the O3b Comments, Viasat has not met Commission requirements to justify either extension of the deadline to commence operations of ViaSat-3 or a waiver of the Commission’s spectrum allocation policies.

Respectfully submitted,

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<sup>24</sup> See Modification, Attachment A at 9-12.

## CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2019, I caused to be served a true copy of the foregoing "Reply of O3b Limited" by first class mail, postage prepaid, upon the following:

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