

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of) Docket No. 18-2610-01
)
Petition of Viasat Carrier Services, Inc.)
for Designation as an Eligible Telecommunications)
Carrier to Receive Connect America Fund Phase II)
Auction (Auction 903) Support for Voice and)
Broadband Services)

STIPULATION AND SETTLEMENT AGREEMENT

COMES NOW Viasat Carrier Services, Inc. ("Viasat" or the "Company"), the Utah Division of Public Utilities ("DPU"), and the Utah Office of Consumer Services ("OCS") (collectively the "Stipulating Parties" or the "Parties"), through their undersigned representatives, enter into this Stipulation and Settlement Agreement ("Stipulation") regarding the Petition filed by Viasat in this docket. The Parties submit this Stipulation for approval by the Public Service Commission of Utah (the "Commission" or the "PSC") pursuant to the Commission's Rules of Practice and Procedure, Utah Admin. Code R746-I.

INTRODUCTION

1. On August 28, 2018, the Federal Communications Commission ("FCC") announced that Viasat's parent company, Viasat, Inc. ("VSI") was among the winners of the recently-concluded Connect America Fund Phase II Auction ("CAF II Auction"). Specifically, the FCC designated VSI as a winning bidder for \$3,119,687 in CAF II support over ten-years in 65 Census Block Groups covering Utah. Because census blocks do not break along the same lines as service area boundaries, the CAF II Auction included certain census blocks with *de minimis* overlap with rate-of-return carrier service areas, *i.e.*, the overlap is 1% or less of the block. According to the FCC, there should not be significant overlap between CAF II awarded census blocks and rate-of-return carrier service areas. In those census blocks where there is overlap, Viasat is not required to provide CAF II-qualified services to the locations, if any, in the overlap area.

2. In accordance with the FCC's procedures, VSI assigned its winning bid to Viasat. In order for Viasat to receive the CAF II Auction support that it has been awarded, it must demonstrate to

the FCC that it has been designated as an ETC in the areas where it was the winning bidder. The FCC's deadline for submitting proof of the ETC designation is February 25, 2019.

3. To be designated as a federal Eligible Telecommunications Carrier ("ETC") under the Communications Act, an applicant must: (1) be a common carrier; (2) demonstrate an intent and ability to provision the supported services set forth in 47 C.F.R. § 54.101(a) throughout its designated service areas; and (3) demonstrate an intent and ability to advertise its universal service offerings and the charges therefore, using media of general distribution.

4. The FCC supported services under 47 C.F.R. § 54.101(a) are:

- a. Voice telephony service, consisting of voice grade access to the public switched telephone network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers; and
- b. Broadband Internet access service, defined by the FCC as the capability to transmit data to and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service. 47 C.F.R. § 54.101(a)(2)).

5. On September 26, 2018 Viasat filed a petition for designation as an ETC to receive CAF II support to provide voice and broadband services to consumers in Utah in its awarded census blocks.

6. A scheduling conference was held on October 3, 2018, and a schedule was set.

7. On October 9, 2018, Viasat filed Direct Testimony of Robert Blair on behalf of Viasat.

8. Utah Rural Telecom Association petitioned for intervention on November 1, 2018. Intervention was granted on November 27, 2018.

9. Utah Rural Telecom Association is not a party to this Stipulation, but has represented

that it does not oppose the Stipulation.

10. On December 12, 2018, the Division moved to modify the schedule. The Commission granted the Division's Motion on December 13, 2018.

11. The Parties to this Stipulation have now reached agreement on the issues raised in this docket, as set forth herein. The Parties agree this Stipulation should have no legal effect outside of this docket.

AGREEMENT

WHEREFORE, based on their review of the testimony and exhibits submitted and upon their settlement discussions, the Parties hereby stipulate and agree as follows:

1. Viasat is a provider of satellite-based broadband internet access and voice over Internet Protocol ("VoIP") services.

2. Viasat seeks ETC designation authorizing Viasat to obtain \$3,119,687 in CAF II Auction support over the next ten years to provide voice and broadband services to Utah customers in the price cap areas of the awarded census blocks.

3. Viasat's awarded census blocks are identified on the map included as Attachment A to this Stipulation.

4. Viasat has shown the intent and ability to offer each of the supported services set forth in 47 C.F.R. § 54.101(a) once designated as an ETC throughout its requested service area. With respect to toll limitation service, Viasat's service plans will offer unlimited calling in the United States and Canada and will not offer plans with minute allowances. Because qualifying low-income consumers participating in the Lifeline program will not have "toll" services or "toll" usage, there is no need for toll limitation service. In addition, Viasat will have the ability to limit international calling as a limitation on overall services and charges. However, to the extent requested, Viasat will provide toll limitation services to qualifying low-income consumers.

5. Viasat will comply with all applicable FCC and Utah ETC requirements.

6. Under the FCC's requirements, Viasat must commit to provide at least one service

offering that provides at least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps) and a minimum usage allowance of 150 GB per month, or that reflects the average usage of a majority of fixed broadband customers, whichever is higher.¹ The minimum monthly usage allowance for 2019 is 215 GB.² As permitted by the FCC,³ Viasat may offer service plans with different speeds and/or usage caps depending on market and consumer demand.

7. Viasat will also offer an interconnected VoIP service that includes unlimited local and long distance calling within the United States and Canada and access to emergency services via 911 or E-911, wherever available from local government or public safety organizations.

8. Viasat, as a condition of CAF II Auction support, will provide federal Lifeline services, and applicable Lifeline discounts to eligible Utah customers.

9. Viasat meets and will continue to meet the requirements for federal ETC designation and will comply with all federal requirements for the services it offers in Utah as an ETC.

10. Viasat is not seeking Utah Universal Public Telecommunications Service Support Fund support at this time and reserves the right to file an appropriate application for Utah Lifeline support at a later date. However, Viasat will comply with applicable Utah ETC and Lifeline requirements.

11. Viasat's proposed CAF II-supported services, including its Lifeline offers, further the statutory goal that services be available and affordable to all citizens of the State of Utah.

12. The Parties stipulate and agree that Viasat shall provide its services, including its ETC Lifeline universal service offerings, in Utah pursuant to this Stipulation. Viasat's provision of its universal

¹ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 14-58, 14-259, FCC 16-64, 31 FCC Rcd 5949, paras. 2, 24-25 (2016) (available here <https://docs.fcc.gov/public/attachments/FCC-16-64A1.pdf>). See also *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, FCC 18-6, 33 FCC Rcd 1428, para. 12 (2018) (available here <https://docs.fcc.gov/public/attachments/FCC-18-6A1.pdf>).

² See *Wireline Competition Bureau Announces Results of 2019 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowances for ETCs Subject to Broadband Public Interest Obligations*, Public Notice, WC Docket No. 10-90, DA 18-1280 (rel. Dec. 20, 2018) (available here <https://docs.fcc.gov/public/attachments/DA-17-1093A1.pdf>).

³ *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, FCC 18-6, 33 FCC Rcd 1428, para. 13 (2018).

service offerings as an ETC shall be governed by the following additional requirements:

- A. Viasat will maintain a Utah-specific fact sheet that provides customers concise and complete information about the services Viasat will provide. Viasat will provide its Utah-specific fact sheet to the DPU and OCS prior to initiating service. Viasat will provide the fact sheet to prospective new customers, each new customer at the time of enrollment, and to existing customers upon request and will make the fact sheet publicly available for download by posting it on the Viasat website. Viasat agrees to promptly update the fact sheet anytime it changes its Utah service offers.
 - B. Viasat will comply with all applicable state service quality and consumer protection requirements.
 - C. If a Utah CPCN is necessary for the service offerings provided by Viasat in Utah, Viasat will obtain a Utah CPCN prior to offering service to Utah customers.
 - D. Approval of Viasat's Petition is conditioned upon the verified payment of all applicable state and local regulatory fees, including, but not limited to, universal service fees (subject to Utah Admin. Code R746-8-403), emergency services, and relay services.
 - E. Viasat agrees to adopt any changes to the Lifeline certification and verification process required by the FCC or by the Commission.
 - F. Upon implementing any changes to its Lifeline offerings, Viasat will timely file a notice with the Commission, DPU and OCS describing the changes.
13. Viasat will pay all state and local regulatory fees required by applicable laws of the State of Utah, including payments to the Utah Universal Service Support Fund and the Utah 911 Fund.
14. The Parties stipulate and agree that designating Viasat an ETC for the price cap areas of the census blocks identified in Exhibit A to the Petition serves the public interest, convenience and necessity.

GENERAL PROVISIONS

1. The Parties stipulate to the admission into evidence in this docket of Viasat's

Petition, pre-filed Testimony and Exhibits. This Stipulation to the admission of the Testimony does not represent an agreement by the Parties as to any positions taken in such Testimony.

2. Not all Parties agree that each aspect of this Stipulation is warranted or supportable in isolation. Utah Code Ann. § 54-7-1 (2018) authorizes the Commission to approve a settlement so long as the settlement is just and reasonable in result. While the Parties may not be able to agree that each specific component of this Stipulation is just and reasonable in isolation, all of the Parties agree that this Stipulation as a whole is just and reasonable in result and in the public interest.

3. All negotiations related to this Stipulation are confidential, and no Party shall be bound by any position asserted in negotiations. Except as expressly provided in this Stipulation, neither the execution of this Stipulation nor the order adopting it shall be deemed to constitute an admission or acknowledgment by any Party of the validity or invalidity of any principle; nor shall they be construed to constitute the basis of an estoppel or waiver by any Party; nor shall they be introduced or used as evidence for any other purpose in a future proceeding by any Party except in a proceeding to enforce this Stipulation.

4. The Parties agree that no part of this Stipulation or the formulae and methods used in developing the same or a Commission order approving the same shall in any manner be argued or considered as precedential in any future case except with regard to issues expressly called-out and resolved by this Stipulation. This Stipulation does not resolve and does not provide any inferences regarding, and the Parties are free to take any position with respect to, any issues not specifically called-out and settled herein.

5. The Parties request that the Commission hold a hearing on this Stipulation. The Parties will support the Commission's approval of this Stipulation. As applied to the DPU and the OCS, the explanation and support shall be consistent with their statutory authority and responsibility.

6. The Parties agree that if any person challenges the approval of this Stipulation or requests rehearing or reconsideration of any order of the Commission approving this Stipulation, each Party will use its best reasonable efforts to support the terms and conditions of this Stipulation. As

applied to the DPU and the OCS, the phrase "use its best reasonable efforts" means that they shall do so in a manner consistent with their statutory authority and responsibility. In the event any person seeks judicial review of a Commission order approving this Stipulation, no Party shall take a position in that judicial review proceeding in opposition to the Stipulation.

7. Except with regard to the obligations of the Parties under the four (4) immediately preceding paragraphs of this Stipulation, this Stipulation shall not be final and binding on the Parties until it has been approved without material change or condition by the Commission.

8. This Stipulation is an integrated whole, and any Party may withdraw from it if it is not approved without material change or condition by the Commission or if the Commission's approval is rejected or materially conditioned by a reviewing court. If the Commission rejects any part of this Stipulation or imposes any material change or condition on approval of this Stipulation or if the Commission's approval of this Stipulation is rejected or materially conditioned by a reviewing court, the Parties agree to meet and discuss the applicable Commission or court order within five (5) business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, any Party retains the right to seek additional procedures before the Commission, including presentation of testimony and cross-examination of witnesses, with respect to issues resolved by the Stipulation, and no party shall be bound or prejudiced by the terms and conditions of the Stipulation.

9. This Stipulation may be executed by individual Parties through two (2) or more separate, conformed copies, the aggregate of which will be considered as an integrated instrument.

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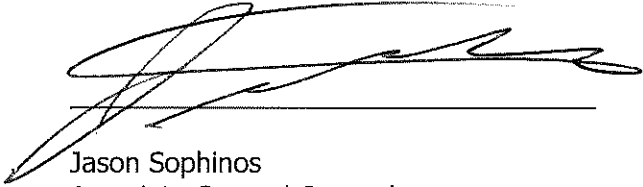
Attachment A

Map of Awarded Census Blocks

WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

Dated this 22 day of January, 2019

FOR VIASAT CARRIER SERVICES, INC.



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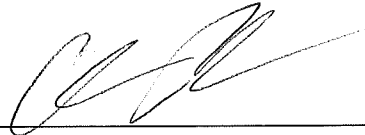
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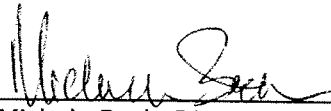
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Stipulation filed by the Utah Division of Public Utilities was emailed on 22 January 2019 to the following in Utah Docket 18-2610-01

BY Electronic-Mail:

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