

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Viasat, Inc.
Request to Extend or Waive Milestone Date
IBFS File No.: SAT-MOD-20220819-00091
Call Sign: S2917

ORDER

Adopted: October 31, 2022

Released: October 31, 2022

By the Chief, International Bureau:

I. INTRODUCTION

1. By this Order, we grant the request of Viasat, Inc. (Viasat) to modify the milestone for launching and beginning to operate the VIASAT-3 satellite, which is planned to provide fixed-satellite service (FSS) at the 88.9° W.L. orbital location. Specifically, we modify the milestone by extending it from the current date, October 31, 2022, to April 30, 2023. This action is taken based on a finding that the additional time needed by Viasat to launch and operate is due to continued COVID-19-related delays beyond Viasat's control. Grant of this request for a six-month extension will allow for integration of the completed communications module with the satellite bus and enable Boeing to complete environmental testing of the integrated satellite. The launch and operation of the VIASAT-3 satellite will provide broadband connectivity to customers in rural and urban areas of the United States, as well as to aircraft and ships, and enhanced services for U.S. military and government customers.

II. BACKGROUND

2. On June 18, 2014, the Satellite Division granted Viasat access to the United States market to provide FSS in the 19.7-20.2 GHz (space-to-Earth) and 29.5-30.0 GHz (Earth-to-space) bands, as well as the 18.3-19.3 GHz (space-to-Earth) and 28.1-29.1 GHz (Earth-to-space) bands, via the proposed VIASAT-3 satellite, to be operated at the 88.9° W.L. orbital location. The Commission's rules and the conditions of the grant required that Viasat launch and begin operations of VIASAT-3 by June 18, 2019.

1 See Request to Extend or Waive Milestone Date, IBFS File No. SAT-MOD-20220819-00091 (filed Aug. 19, 2022) (Milestone Request).

2 IBFS File Nos. SAT-LOI-20140204-00013; SAT-AMD-20140218-00023 (grant stamp, dated June 18, 2014). Viasat was also subsequently granted a modification of the terms of market access for VIASAT-3 to change the center frequencies used for telemetry, tracking, and command operations and to reflect other revised technical parameters of the VIASAT-3 satellite under contract for construction. See IBFS File No. SAT-MOD-20150618-00037 (grant stamp, dated Oct. 21, 2015).

3 This satellite was originally to be called VIASAT KA-89W, but the name was subsequently changed to VIASAT-3. See IBFS File No. SAT-MOD-20150618-00037 (grant stamp, dated Oct. 21, 2015).

4 47 CFR §§ 25.137(d), 25.164(a); IBFS File No. SAT-LOI-20140204-00013, condition 12 (grant stamp, dated June 18, 2014). The Satellite Division subsequently re-issued the market access grant for VIASAT-3 on March 23, 2017, to incorporate revised milestone and associated performance bond provisions that were adopted by the Commission

(continued...)

3. On June 17, 2019, Viasat filed a request to modify the terms of the VIASAT-3 grant, noting that delays related to construction of radio-frequency payload necessitated additional time to complete construction.⁵ Viasat noted that it had expended over 80 percent of the total cost of developing and manufacturing the VIASAT-3 satellite and that the satellite bus was in advanced integration and testing stages.⁶ In granting the extension, we concluded that “there are unique and overriding public interest considerations that warrant grant of Viasat’s request,” and that there was no basis for concluding that Viasat was unwilling or unable to proceed with completion of the satellite.⁷ We concluded that Viasat had demonstrated a substantial and continuing commitment towards completion and system implementation, that it was working diligently to overcome construction delays, and that there was no basis to inquire further as to whether the delays were a foreseeable outcome of Viasat’s decision to alter its satellite design.⁸ Additionally, we noted that Viasat’s voluntary proposal to increase its milestone bond was consistent with and supportive of the Commission’s policy of using a market-based approach toward ensuring that licensees complete construction and not warehouse scarce resources.⁹ The request was granted and, among other modifications authorized, the milestone for launching and beginning operations was extended until December 31, 2021.¹⁰

4. On August 25, 2021, Viasat filed a request to extend or waive the launch and begin operations milestone until October 31, 2022,¹¹ stating that additional time was required due to unforeseen circumstances beyond Viasat’s control, specifically delays due to the COVID-19 pandemic.¹² In that request, Viasat stated that it had expended approximately 89 percent of the total construction costs and expected this number to increase to 93 percent by the end of 2021, and that it had secured a launch slot, expended more than 70 percent of launch-related costs, and made significant progress towards deploying the necessary ground infrastructure.¹³ Viasat stated that it had completed two telemetry, tracking, and control sites, and made “very significant progress” regarding the deployment of satellite access nodes (SANs) by conducting extensive engineering work and having completed terrestrial coordination for “almost all” SANs locations that will be used once VIASAT-3 is brought into service.¹⁴ Viasat stated that the COVID-19 pandemic, however, had resulted in supply chain and human resource disruptions, and consequent construction and delivery delays beyond Viasat’s control¹⁵ that made the December 31, 2021,

in 2015. *See Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713 (2015) (*Part 25 Streamlining Second Report and Order*).

⁵ *See* Application for Modification of Market Access Grant and for Extension or Waiver of Milestone Date, IBFS File No. SAT-MOD-20190617-00047 (granted May 28, 2020); *Viasat, Inc.*, Order and Declaratory Ruling, 35 FCC Rcd 5416, 5418, para. 6 (IB, OET 2020) (*2020 Extension Grant*).

⁶ *See* IBFS File No. SAT-MOD-20190617, Narrative at 8.

⁷ *See 2020 Extension Grant*, 35 FCC Rcd at 5420, para. 11.

⁸ *Id.* at paras. 9, 11.

⁹ *Id.* at para. 10.

¹⁰ Contemporaneously, Viasat was granted additional authority with respect to certain frequencies on the VIASAT-3 satellite. *See* IBFS File No. SAT-LOA-20190617-00048.

¹¹ *See* Request to Extend or Waive Milestone Date, IBFS File No. SAT-MOD-20210825-00110 (*2021 Milestone Request*).

¹² *2021 Milestone Request*, Narrative at 2.

¹³ *Id.* at 1, 3.

¹⁴ *Id.* at 3-4.

¹⁵ *Id.* at 2.

launch and operation milestone deadline unattainable.¹⁶ Viasat also noted that although it had completed construction of the VIASAT-3 radio-frequency module and delivered it to Boeing for integration into the satellite bus, COVID-related disruptions had affected Boeing's ability to complete integration in a timely fashion.¹⁷ The request was granted and, among other modifications authorized, the milestone for launching and beginning operations was extended until October 31, 2022.¹⁸

5. On August 19, 2022, Viasat filed the present request to extend or waive the launch and begin operations milestone until April 30, 2023. Viasat's request was accepted for filing and placed on public notice,¹⁹ and no comments were filed in response.

III. DISCUSSION

6. Milestone extensions may be granted when the delay in meeting the milestone is due to unforeseeable circumstances beyond the applicant's control, or when there are unique and overriding public interest concerns that justify an extension.²⁰ Additionally, an applicant must justify the precise extension period requested.²¹ According to Viasat, it has now expended approximately 95 percent of the total construction costs and expects this number to increase to 98 percent by the end of October 2022, and it has expended more than 95 percent of launch-related costs.²² Viasat states that it has completed construction of the satellite's payload, *i.e.*, the equipment that receives and generates radiofrequency signals. The completed module has been provided to Boeing for integration, and Boeing is completing all major environmental testing of the integrated satellite.²³ Viasat notes, however, that the COVID-19 pandemic continues to create supply chain and human resource disruptions, and consequent construction and delivery delays beyond Viasat's control,²⁴ making the October 31, 2022 launch and operation milestone deadline unattainable.²⁵ Viasat notes that persistent staff shortages at Boeing, COVID-19-related changes to working conditions in the Boeing factory, and other changes resulting from public health directives have delayed Boeing's completion of the final phase of the construction process.²⁶ In response to such delays, Viasat states that it has assigned more personnel to Boeing to improve performance.²⁷ Viasat states that at the outset of its contract with Boeing, it had no reason to anticipate Boeing's poor scheduling performance.²⁸ Viasat contends that its extraordinary efforts, *e.g.*, working more closely with vendors to mitigate pandemic effects, creating greater contractual incentives for

¹⁶ *Id.* 2-3.

¹⁷ *Id.*

¹⁸ *Viasat, Inc. Application for Extension or Waiver of Milestone Date*, Order, DA 21-1638, 2021 WL 6106176 (IB Dec. 23, 2021).

¹⁹ *Satellite Policy Branch Information: Space Station Applications Accepted for Filing*, Public Notice, Report No. SAT-01664 (Sept. 16, 2022).

²⁰ 47 CFR § 25.117(e).

²¹ *Id.*

²² *Milestone Request*, Narrative at 1.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 1, 3.

²⁸ *Milestone Request*, Narrative at 1.

improved performance for critical items, and improving schedule management between various suppliers, are responsible for why it has made the progress it has.²⁹

7. The COVID-19 pandemic, as the Commission has acknowledged, is a unique and unusual circumstance that has resulted in “widespread delays in the receipt of communications equipment” and has caused delays in network construction.³⁰ The Commission has noted that COVID-19 delays differ from, for example, natural disaster delays in that COVID-19 delays are more ubiquitous whereas natural disaster delays are more discrete, and that various stay-at-home orders, while necessary for public health and safety, have created “gaps in all phases of the supply and deployment chain.”³¹ Therefore, we find Viasat’s statements regarding COVID-19-related delays to be generally credible. Further, the factors that led us to grant the milestone extension in 2020 and 2021 are still present here, *e.g.*, Viasat’s representation that VIASAT-3 is at an advanced stage of construction, representations concerning diligent efforts to overcome construction delays, COVID-19-related delays, and circumstances indicating that warehousing³²spectrum is not a concern due to Viasat’s intent and ability to launch and operate VIASAT-3.³³ Given that COVID-19 is the singular new variable, and Viasat has made significant progress toward completion of the project despite the unforeseeable delays associated with COVID-19, we see no reason to reach a different conclusion regarding the merits of a milestone extension. In light of these factors, grant of an extension will serve the public interest by allowing Viasat to expeditiously complete implementation of its system.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that Viasat Inc.’s Request to Extend or Waive Milestone Deadline for the VIASAT-3 satellite is GRANTED pursuant to sections 0.51, 0.261, and 25.117(e) of the Commission’s Rules, 47 CFR §§ 0.51, 0.261 and 25.117(e).

9. Viasat must maintain a surety bond requiring payment in the event of default as defined in section 25.165(c) of the FCC rules, in an amount, at a minimum, determined according to the following formula, with the resulting dollar amount rounded to the nearest \$10,000: $A = \$3,000,000 + \$2,000,000 * D / 1827$, where A is the amount to be paid and D is the lesser of 1412 or the number of days elapsed from June 19, 2019, until the date when the grant is surrendered.

²⁹ *Id.* at 3.

³⁰ *See, e.g., Waiver of FCC Rule Sections 1.946 (c) and (d) for Wireless Site-Based and Mobile-Only System*, Order, 35 FCC Rcd 3536, 3536-3539, paras. 2-5 (WTB, PSHSB 2020) (*Waiver of 1.946*); *Request for Waiver by the Schools, Health & Libraries Broadband (SHLB) Coalition*, Order, 36 FCC Rcd 9956, 9958-59, paras. 4-7 (WCB 2021) (*SHLB Coalition*).

³¹ *Waiver of 1.946*, 35 FCC Rcd at 3537, paras. 4-5; *SHLB Coalition*, 36 FCC Rcd at 9958, para. 4 (“[T]he impacts of the virus are still being felt. For example, widespread delays in the receipt of ‘communications equipment of all kinds, which extends not only to electronics (such as routers, optical network terminals, and customer premises equipment (CPE)) but also fiber’ is causing delays in network construction. The impact of the pandemic is causing delays in construction projects across the country.”).

³² *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713 (2015). As the Commission has elaborated, warehousing refers to the retention of preemptive rights to use spectrum and orbital resources by an entity that “does not intend to bear the cost and risk of constructing, launching, and operating an authorized space station, is not fully committed to doing so, or finds out after accepting the license that it is unable to fulfill the associated obligations.” *Id.* at 14735, para. 53.

³³ The previous milestone extension was conditioned on maintenance of an escalating surety bond for VIASAT-3. The escalation of the bond value beyond the regular five-year period is a simple extrapolation of the linear increase, *i.e.*, \$400,000 per year, applicable within the five years. *See* 47 CFR § 25.165(a)(2) (requiring the posting of a surety bond equal to \$1 million plus an amount per day that escalates to \$2 million over a five-year period, *i.e.*, approximately \$1,100 per day, rounded to the nearest \$10,000). As part of this grant, we modify the conditions of Viasat’s grant to continue the escalation of the bond through April 30, 2023.

10. Viasat must launch the VIASAT-3 satellite, position it in its assigned orbital location, and operate it in accordance with the grants in *Viasat, Inc.*, 35 FCC Rcd 5416, and in IBFS File No. SAT-LOA-20190617-00048, no later than April 30, 2023.

11. This grant will be null and void automatically, without further Commission action, if Viasat fails to comply with these requirements. Failure to comply with the milestone requirement will also result in forfeiture of Viasat's surety bond. By May 15, 2023, Viasat must either demonstrate compliance with its milestone requirement or notify the Commission in writing that the requirement was not met. 47 CFR § 25.164(f).

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Sullivan
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