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State of Florida



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: October 18, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (DuVal, Weisenfeld) *MD TH*
Office of Industry Development and Market Analysis (Deas, Fogleman, Wendel) *J.D. PWN BMW EC*

RE: Docket No. 20180180-TX – Application for limited designation as an eligible telecommunications carrier (ETC) to receive Connect America Fund Phase II Auction (Auction 903) support for voice and broadband services with request for expedited consideration by Viasat Carrier Services, Inc.

AGENDA: 10/30/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: February 25, 2019 (Date By Which ETC Designation Status Must Be Obtained)

SPECIAL INSTRUCTIONS: None

Case Background

Viasat Carrier Services, Inc. (Viasat) is a wholly-owned subsidiary of Viasat, Inc. (VSI), which offers voice over internet protocol (VoIP) and broadband services through the use of their geostationary-satellite orbit satellite technologies. On August 28, 2018, VSI was selected as a winning bidder under the Federal Communications Commission's (FCC) recent Connect America Fund Phase II Auction. The Connect America Fund is a form of high-cost support that is part of the federal universal service fund.

The FCC did not require auction participants to be designated as Eligible Telecommunications Carriers (ETCs); however, winning bidders must obtain ETC designation within 180 days. Viasat

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must obtain ETC designation for 685 Census Blocks Groups covering Florida by February 25, 2019. Section 214(e)(2) of the Telecommunications Act of 1996 authorizes state commissions to designate common carriers as an ETC. In cases where a state commission lacks jurisdiction, Section 214(e)(6) provides that the FCC will make such ETC designations.

Currently, the Florida Public Service Commission (Commission) only evaluates wireline ETC applications, while wireless providers' ETC applications are evaluated by the FCC. In 2011, legislation was passed that removed the Commission's authority to designate wireless providers, including commercial mobile radio service providers as ETCs.¹ Chapter 364.011, Florida Statutes (F.S.), outlines the types of service that are exempt from Commission jurisdiction and oversight. Specifically, Chapter 364.011, F.S., provides:

Exemptions from commission jurisdiction.—The following services are exempt from oversight by the commission, except to the extent delineated in this chapter:

- (1) Intrastate interexchange telecommunications services.
- (2) Broadband services, regardless of the provider, platform, or protocol.
- (3) VoIP.
- (4) Wireless telecommunications, including commercial mobile radio service providers.
- (5) Basic service.
- (6) Nonbasic services or comparable services offered by any telecommunications company.

On September 27, 2018, Viasat filed a petition for designation as an ETC with the Commission. Viasat requests that the Commission find that it meets all requirements for ETC designation. In the alternative, Viasat seeks an affirmative statement that the Commission does not have jurisdiction, and that Viasat should petition the FCC for ETC designation.

¹ 2011 FL H.B. 1231, Adopted May 5, 2011.

Discussion of Issues

Issue 1: Should Viasat be granted limited ETC status in Florida for the purpose of receiving Connect America Fund Phase II Auction (Auction 903) support for voice and broadband services?

Recommendation: No. Staff recommends that the Commission should not grant Viasat limited ETC status in Florida for the purpose of receiving Connect America Fund Phase II Auction (Auction 903) support for voice and broadband services. Staff further recommends that, as a facilities-based satellite provider, Viasat should directly apply for Florida ETC designation with the FCC. (DuVal, Weisenfeld)

Staff Analysis: Pursuant to federal law, the Commission has the authority to designate carriers as ETCs if they meet certain requirements.² In 2011, the Florida Legislature removed the Commission's authority to designate wireless providers as ETCs.³ Accordingly, effective July 1, 2012, the Commission only evaluates wireline ETC applications, while wireless providers must directly apply with the FCC for Florida ETC designation. Furthermore, Section 364.011, F.S., provides that wireless telecommunications, including commercial mobile radio service providers, are exempt from oversight by the Commission.

Viasat is a facilities-based satellite provider that currently offers broadband Internet access and VoIP services. The satellite technology utilized by Viasat to provide its services has not been assessed by this Commission before, and it is not directly addressed in Section 364.011, F.S. However, like wireless providers, a satellite provider is not a wireline provider. As such, staff recommends that the Commission should not grant Viasat limited ETC status in Florida for the purpose of receiving Connect America Fund Phase II Auction (Auction 903) support for voice and broadband services because the Commission only evaluates wireline ETC applications. Staff further recommends that, as a facilities-based satellite provider, Viasat should directly apply for Florida ETC designation with the FCC.

² Section 214(e)(2) of the Telecommunications Act of 1996.

³ 2011 FL H.B. 1231, Adopted May 5, 2011.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (DuVal, Weisenfeld)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.