

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: +1.202.637.2200 Fax: +1.202.637.2201
www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

Barcelona	New Jersey
Brussels	New York
Chicago	Northern Virginia
Dubai	Orange County
Frankfurt	Paris
Hamburg	Rome
Hong Kong	San Diego
London	San Francisco
Los Angeles	Shanghai
Madrid	Silicon Valley
Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

September 24, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Call Sign E080100: Applications of Row 44, Inc. for
Authority to Operate up to 1,000 Technically-Identical Aeronautical-Mobile
Satellite Service Transmit/Receive Earth Stations Aboard Commercial and Private
Aircraft, FCC File Nos. SES-LIC-20080508-00570; SES-AMD-20080619-00826;
SES-AMD-20080819-01074; SES-AMD-20080829-01117;
Special Temporary Authority, FCC File No. SES-STA-20080711-00928; and
Special Temporary Authority, FCC File No. SES-STA-20080811-01049.
Notice of Ex Parte Presentation

Dear Ms. Dortch:

On September 23, 2008, representatives of ViaSat, Inc. ("ViaSat") met with Commission staff regarding the above-captioned applications of Row 44, Inc. ("Row 44"). Specifically, John P. Janka and Jarrett S. Taubman of Latham & Watkins LLP, counsel to ViaSat, met with members of the International Bureau listed below. Daryl T. Hunter, Director, Regulatory Affairs of ViaSat, participated by telephone. Also present were John Guidon, Jim Costello, and David S. Keir on behalf of Row 44.

During the meeting, ViaSat urged the Commission to refrain from issuing Row 44 any special temporary authority ("STA") before the upcoming October 10, 2008 deadline for public comment in response to Row 44's recently-filed amendments to its underlying aeronautical mobile satellite service ("AMSS") system application.

In response to a question asking why STA should not issue before the pleading cycle completed, ViaSat explained that any grant of STA would pose an unacceptable risk of harmful interference into the operations of adjacent satellite users – a risk that would be exacerbated by the difficulties inherent in detecting and tracking transient interference events from mobile users. In this respect, ViaSat emphasizes that the risks presented here are different than those typically presented by an STA for a single earth terminal at a fixed location.

It could be particularly difficult to identify Row 44 terminals as the source of interference. As an initial matter, the interference likely would manifest itself to end users of a victim VSAT network (such as ViaSat's) simply as a network failure. Customers who call the network operator likely would only be able to indicate that their system was experiencing unexpected performance problems. The network operator would then have to commence an investigation, and, only after ruling out issues with its own system (as required by Section 25.274 of the Commission's Rules), proceed to inquire of adjacent satellite operators as to whether one of their many end-users was the source of the problem. However, by that point in the investigation (which could take a few hours), the interference event likely would be over, either because the flight had landed, or the brief banking maneuver that caused the problem had long since been completed. Unable to pinpoint the source of the problem, a network operator could find its customers complaining about the reliability of the VSAT network. Through no fault of its own, the reputation of the network operator could be damaged by the operation of non-compliant equipment, such as Row 44's, being used in a mobile environment and operating at relatively high power levels.

This is one of the reasons that it is important for the Commission to make sure that the Row 44 system works on *paper* before allowing Row 44 to actually operate. Thus, throughout the meeting, ViaSat stressed that Row 44 has failed on multiple occasions to provide a complete, internally consistent technical showing in support of its AMSS system application – a fact recognized by the Commission on two separate occasions.¹ ViaSat explained that Row 44 must make such a cogent showing before the Commission may consider allowing Row 44 to take the next step, and operate its system under real-world conditions. In fact, the Commission's rules require just that.² ViaSat further noted that its preliminary review of Row 44's amendments to its AMSS system application reveal continued technical deficiencies, which will be fully described in comments to be filed by ViaSat on October 10, 2008. Accordingly, ViaSat requested that the Commission take no action with respect to Row 44's STA requests – which are entirely dependent on the data in the underlying AMSS system application – until such time as Commission staff has had the opportunity to review ViaSat's forthcoming comments, and those of any other parties that may file.

¹ See Letter from Scott A. Kotler, Chief, Systems Analysis Branch, Satellite Division, International Bureau to David S. Keir (Aug. 7, 2008); Letter from Scott A. Kotler, Chief, Systems Analysis Branch, Satellite Division, International Bureau to David S. Keir (Aug. 25, 2008). ViaSat raised the deficient nature of Row 44's technical showing in support of its STA request in ViaSat's August 8, 2008 filing, and included a copy of its Petition to Deny Row 44's AMSS system application and subsequent Reply in support.

² See 47 C.F.R. § 25.120(a) (STA request must contain "the full particulars of the proposed operation."). This position is entirely consistent with ViaSat's earlier statement that the deficiencies in Row 44's AMSS application are particularly troubling given the absence of extensive transmit/receive flight testing of the proposed antenna. See ViaSat, Inc. Petition to Deny at 4 (Jun. 27, 2008). While the lack of such testing data is problematic, Row 44's failure to provide a cogent and complete written technical system description is the more fundamental problem.

ViaSat also indicated that the reasons Row 44 expressed during the meeting for seeking STA – namely, to conduct commercial trials to ascertain consumer interest in Row 44’s service and to satisfy the timing expectations of airlines interested in installing Row 44 terminals – are not adequate bases to support grant of STA. Indeed, Section 25.120(b)(1) of the Commission’s rules specifically provides that STA may be granted only in “extraordinary circumstances,” and that “[c]onvenience to the applicant, such as marketing considerations or meeting scheduled customer in-service dates, will not be deemed sufficient for this purpose.”

ViaSat further noted that STA apparently is not needed to enable Row 44 to gather technical data about the performance of its terminals, since Row 44 claimed to have conducted tests in Canadian airspace (although it has not submitted the resulting data for the record). ViaSat urged the Commission to require Row 44 to file that test data – which would be relevant to a full evaluation of the above-reference applications – prior to granting any STA. Any substantiation of the performance of Row 44’s antenna would be relevant to the issues in this proceeding, and performance in Canada should be relevant to the antenna tracking/pointing issues that are currently at issue (particularly with respect to the planned service to and from Alaska).

Moreover, ViaSat noted that Row 44 is on record as indicating that flight routes exist where adequate satellite service does not exist to support Row 44’s service, and that the “solution” would be “to avoid the affected flight paths, not to increase transmit power.”³ ViaSat indicated that it was impractical to expect airlines to reroute their flight paths to maintain service to Row 44 terminals, or to turn off Row 44 service during certain banking maneuvers. Row 44 claimed at the meeting that it does not intend to have airplanes with Row 44 terminals avoid those coverage areas with inadequate satellite service – but rather indicated that airplanes traversing those routes would not have Row 44 terminals installed. To ensure that such a commitment is honored, any grant of authority should specifically identify those areas where service is not possible under the specified power limits, so that airline customers clearly understand that there are geographic regions where Row 44 service cannot operate. Similarly, any grant of authority should identify the aircraft maneuvers (*e.g.*, bank angles) during which Row 44 service must be constrained to avoid the risk of adjacent satellite interference because the effective skew angle toward the adjacent satellite could exceed the appropriate skew angle limit on Row 44’s operations.

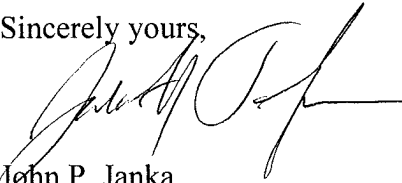
For these reasons, ViaSat urges the Commission to allow interested parties to comment by October 10, 2008 on Row 44’s recently-filed amendments to its underlying AMSS system application, before considering any grant of STA.

³ Row 44 Inc.’s Statement Pursuant to Section 25.154(e) of the Commission’s Rules and Opposition to ViaSat, Inc.’s Petition to Deny, Call Sign E080100 (filed Jul. 23, 2008), at n.11.

LATHAM & WATKINS^{LLP}

Please contact the undersigned should you have any questions.

Sincerely yours,



John P. Janka
Jarrett S. Taubman

Counsel for ViaSat, Inc.

cc: Helen Domenici
Rod Porter
Steve Spaeth
Karl Kensinger
Andrea Kelly
Scott Kotler
Steve Duall
Kal Krautkramer
Trang Nguyen
Frank Peace
David Keir, Counsel for Row 44, Inc.