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March 6, 2009

FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Ex Parte Notice -- Applications of Row 44, Inc. (Call Sign E080100;
File Nos. SES-LIC-20080508-00570, SES-AMD-20080619-00826;
SES-AMD-20080819-01074; SES-AMD-20080829-01117; SES-AMD-
20090115-00041; and SES-STA-20080711-00928)**

Dear Ms. Dortch:

This letter provides notice on behalf of Row 44, Inc. ("Row 44"), pursuant to Section 1.1206(b)(2) of the FCC's Rules, that on March 4 and 5, 2009, the undersigned counsel had separate telephone conversations with William Bell, Attorney, Satellite Division, and Stephen Duall, Chief of the Policy Branch, Satellite Division, concerning the above-referenced applications. The substance of these conversations was virtually identical, and is summarized below.

In addition to inquiring in each case about the status of the pending request for special temporary authority ("STA")(FCC File No. SES-STA-20080711-00928) and procedural matters concerning that application, counsel suggested that it would be appropriate for the Division to use its grant stamp procedures with respect to the STA request. Because STA is requested for only a sixty day period, no public notice concerning the request was required, and no formal pleading cycle applies to the request. *See* 47 U.S.C. § 309(c)(2)(G); 47 C.F.R. §§ 25.120(b)(3) & 25.151(c)(2). Accordingly, the manner in which the Division addresses the limited arguments



raised specifically in opposition to the STA request lies entirely within the Division's discretion. *See* 47 C.F.R. § 25.154(b)(2) (Commission will classify as merely an informal objection any pleading to which the thirty (30) day public notice period of § 25.151 does not apply). Favorable action on the STA would necessarily be without prejudice to action on the underlying application.

Counsel also noted a particularly relevant circumstance in which the Division has employed its grant-stamp authority to permit mobile Ku-band antennas to operate pursuant to STA – a temporary operation much broader than that proposed by Row 44 – despite opposition to the underlying application. *See* Call Sign E070085; FCC File Nos. SES-STA-20070529-00728 (first grant under current call sign for 60-day period), SES-STA-20070720-00973 (extension), and SES-STA-20090219-00196 (currently pending application for extension for 180-day period). The oppositions in that case were premised on issues virtually identical to those that have sparked the most discussion in this proceeding, *i.e.*, compliance with the antenna pointing and shut-down requirements of Section 25.222 of the Commission's Rules. In that instance, however, the applicant did not comply with these rules, and actually sought a waiver in its application to permit it to operate an antenna with a pointing accuracy of $\pm 0.6^\circ$ and a shutdown threshold of $\pm 1.0^\circ$. *See* FCC File No. SES-LIC-20070504-00563, Exhibit B (Request for Waiver). Comments filed concerning this application opposed grant of this waiver. *See, e.g.*, Comments of SeaTel, Inc., FCC File No. SES-LIC-20070504-00563, filed June 15, 2007. Nonetheless, this system was granted several successive STAs permitting deployment of up to 300 remote transmitting antennas. *See* FCC File No. SES-STA-20070529-00728 (authority “to communicate with up to 300 earth stations on vessels ... for a period of sixty days”).

This particular application is also instructive because the supplier of the non-compliant antennas used for the STA operation, as well as the operator of the Hub facility for the remote units, is none other than ViaSat, Inc., the principal opponent of Row 44's applications. Despite its vigorous advocacy of specific, narrow interpretations of Section 25.222(a)(6) and (7) in this proceeding, where Row 44 has shown that its operations will actually comply with these rules, ViaSat evidently has no quibble with a *de facto* waiver of the rule where its own remote terminals and Hub capacity are being used to provide the service.¹ The FCC's Rules, of course, do not change in relation to the volubility of opposition.

Through its request for STA, Row 44 seeks only the same opportunity afforded under the STA granted for Call Sign E070085 – the chance to demonstrate under real world operating conditions the ability of its antenna system to operate compatibly with other licensed services in the Ku-band. Row 44 continues to urge that the STA be granted immediately to permit it to

¹ Row 44 itself does not take issue with the STA grant for Call Sign E070085. As outlined herein, it simply believes that it ought to have the same latitude to demonstrate the capability of its proposed facilities pursuant to the substantially more limited STA operation it has proposed, which it believes it has demonstrated to be compliant with both the letter and the non-harmful-interference objectives of the FCC's Rules.



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execute the Test Plan requested by the Division on January 23, 2009, and filed with the FCC on February 6, 2009, as agreed to by all affected satellite operators.

Should there be any questions regarding this matter, please contact the undersigned counsel.

Respectfully submitted,

s/ David S. Keir

David S. Keir
Counsel to Row 44, Inc.

cc: Stephen Duall
William Bell
John Janka, Counsel to ViaSat