

LATHAM & WATKINS^{LLP}

March 9, 2009

Marlene H. Dortch
Secretary
Federal Communications Commission
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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; SES-AMD-20090115-00041 and

Special Temporary Authority, FCC File No. SES-STA-20080711-00928.

Ex Parte Presentation

Dear Ms. Dortch:

ViaSat, Inc. ("ViaSat") hereby responds to the letter filed by Row 44, Inc. ("Row 44") on March 6, 2009, in which Row 44 claims that "it would be appropriate for the Division to use its grant stamp procedures with respect to [Row 44's] STA request." As explained below, given the strong and broad opposition to Row 44's STA request and underlying application, the unresolved technical issues with respect to the operations proposed therein, and the lingering questions as to Row 44's basic qualifications to serve as a Commission licensee, grant by a ministerial grant stamp would be inappropriate.

As an initial matter, ViaSat emphasizes that *no* grant of Row 44's STA request would be appropriate given the numerous unresolved issues in this proceeding. The Commission should be wary of Row 44's attempt to conflate the *availability* of grant stamp procedures with the *appropriateness* of a grant of STA as a substantive matter. The availability of grant stamp procedures for certain types of applications does not relieve Row 44, as the applicant, of the obligation to provide a fully-supported technical analysis demonstrating that its system would operate in a manner consistent with a two-degree spacing environment, and without causing harmful interference into adjacent systems.¹ Row 44 has failed to make this showing, and until it does, further action with respect to its STA request would be inappropriate.

¹ In particular, Row 44 still has not provided the Commission with any technical demonstration of Row 44's pointing capabilities, any data from the ground-based tests

In any event, grant stamp procedures are unavailable with respect to Row 44's STA request. As the Commission has explained, grant stamp procedures were adopted "for unopposed routine requests for special temporary authority that comply with the requisite rules and are in the public interest, convenience, and necessity[.]"² Row 44's STA request: (i) has been opposed by ViaSat and other parties; (ii) is, according to Row 44, non-routine³ and (iii) proposes operations that would be inconsistent with a two-degree spacing environment.

Instead of citing relevant legal support for its proposition, Row 44 claims that its STA request is similar to an STA request filed by SES Americom ("SES") in 2007 and granted pursuant to grant stamp procedures.⁴ However, that grant is distinguished easily because:

- (i) The SES STA request was unopposed, and the application underlying the SES STA request was not subject to any formal petition to deny. In contrast, several parties have opposed grant of Row 44's STA request, and ViaSat has filed a formal petition to deny Row 44's underlying application.
- (ii) The SES STA request sought authority to operate earth stations on vessels ("ESVs"), for which both service rules and appropriate spectrum allocations were in place. In contrast, Row 44 requests authority to operate aeronautical earth stations ("AESs"), for which neither service rules nor appropriate spectrum allocations have been adopted.
- (iii) The performance capabilities of SES's proposed system were undisputed, and SES demonstrated, through unopposed technical analysis, that its system would operate in a manner consistent with a two-degree spacing environment.⁵ In contrast, the performance capabilities of Row 44's proposed system are highly disputed, several parties have highlighted the deficiencies in Row 44's technical analysis, and ViaSat has demonstrated that Row 44's operations would cause

that Row 44 and AeroSat claim to have conducted, or any clear path for gathering this type of pointing data.

² See *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, Report and Order, 11 FCC Rcd 21581, at ¶ 3 n.1 (1996).

³ See Letter from David S. Keir, Counsel for Row 44, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (Jul. 10, 2008).

⁴ See FCC File Nos. SES-STA-20070329-00421; SES-STA-20070529-00728; SES-STA-20070720-00973; SES-STA-20090219-00196.

⁵ The sole issue with respect to the underlying SES application concerned the appropriateness of SES's request for a waiver of Section 25.222 of the Commission's rules. Notably, no party questioned SES's showing that, because SES would operate at low power-density level, any mispointing would not cause harmful interference into adjacent systems. Unlike Row 44's proposed system, the SES system was capable of meeting the Commission's off-axis EIRP density mask with a positive margin, even when pointed directly at an adjacent satellite.

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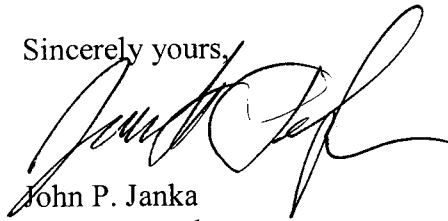
harmful interference into adjacent operations – even if Row 44 were able to satisfy the peak pointing accuracy limit that has been adopted for ESVs.⁶

- (iv) SES's basic qualifications to hold a Commission license were never in doubt. In contrast, there are outstanding questions with respect to Row 44's character given its unauthorized operation of its proposed system and lack of candor with respect to such operations.⁷

Accordingly, use of grant stamp procedures would be inappropriate with respect to Row 44's STA request.

Please contact the undersigned should you have any questions.

Sincerely yours,



John P. Janka
Jarrett S. Taubman

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David S. Keir, Counsel for Row 44, Inc.

⁶ See Letter from John P. Janka, Counsel for ViaSat, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 8, 2008).

⁷ See Letter from John P. Janka, Counsel for ViaSat, Inc., to Helen Domenici, Chief, International Bureau, Federal Communications Commission (Sep. 18, 2008); Letter from John P. Janka, Counsel for ViaSat, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 1, 2008); Letter from John P. Janka, Counsel for ViaSat, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 11, 2008); Letter from John P. Janka, Counsel for ViaSat, Inc., to Helen Domenici, Chief, International Bureau, Federal Communications Commission (Jan. 11, 2009).