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SUBMITTED ELECTRONICALLY

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

Re: 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-AMD-20090416-00501; and SES- STA-20080711-00928 & SES-STA-20090417-00507

Dear Ms. Dortch:

This letter is submitted on behalf of Row 44, Inc. (“Row 44”) in response to the May 7, 2009 *ex parte* letter filed by ViaSat (“ViaSat Letter”) concerning the above-referenced request for extension of Special Temporary Authority (“STA”), File No. SES-STA-20090417-00507.¹ ViaSat has asked that the Bureau reject Row 44’s extension request. The asserted justifications ViaSat advances for such an unusual step are wholly insubstantial, and should be rejected without further consideration. Indeed, ViaSat’s filing is most notable for what it does not contain – any claim, let alone a showing, that harmful interference has been caused to ViaSat, or to anyone else, by Row 44’s STA operations.

ViaSat first argues that no additional testing should be permitted because “Row 44 has had ample time to test its proposed AMSS system.” ViaSat Letter at 1. This is a peculiar assertion coming from ViaSat, which has consistently demanded, often without justification, that Row 44 continually present additional ground testing or other supplemental technical data regarding its aeronautical-mobile satellite service (“AMSS”) antenna system. As a threshold matter, ViaSat offers no reason why collection of more data in this instance would be unhelpful. Although Row 44 is filing contemporaneously with the submission of this letter the report required under the STA concerning in-flight testing², it has pledged in the STA extension request

¹ Row 44 seeks extension of the STA initially granted to it on March 13, 2009. See *Row 44, Inc.*, DA 09-585, slip op. (Sat. Div., rel. Mar. 13, 2009) (“Row 44 STA”).

² Row 44 STA at 4 (¶ 7(d)) (providing that Row 44 “shall submit to the Commission a detailed written report on the results of technical testing pursuant to this authorization no later than 90 days after the release of this order”).



to keep the FCC informed of any additional relevant data that is gathered during STA operations.³ One would expect ViaSat to welcome the availability of such data.

Moreover, ViaSat is simply wrong in suggesting that the STA initially granted to Row 44 on March 13, 2009 was somehow limited to conducting sixty days of in-flight testing. *See* ViaSat Letter at 2. The STA stated plainly both at the outset and in the ordering clause that Row 44 was being granted STA to operate up to twelve aeronautical earth stations “for testing, *including in-flight testing*, for a period of sixty days,” subject only to the specific conditions contained in the authorization. Row 44 STA at 1 (¶ 1) & 4 (¶ 7) (emphasis added). Thus, the STA expressly included in-flight testing, but was not limited to that purpose. Other than the requirements to file both ground testing and flight testing reports, the STA contained only standard conditions and coordination requirements, as well as a single operating condition with respect to avoiding harmful radiation exposure.⁴ *Id.* at 4 (¶ 7).

ViaSat nonetheless argues that the Bureau’s inclusion of language stating that the STA is “not one relating to an ‘activity of a continuing nature’” under FCC rules (*id.* at 5 (¶ 8) (*i.e.*, that it does not allow the STA to continue in effect automatically while a timely-filed renewal application remains pending), “strongly suggests that the Commission viewed the grant of STA to Row 44 as a one-time event.” ViaSat Letter at 3. ViaSat offers no basis for this assertion. Had the Bureau intended the STA to be so limited, however, it would have stated as much by providing, for example, that the STA was “non-renewable” or was limited to a single 60-day term. The Bureau did not do so. Instead, it made the STA subject to the same limitation that applies to experimental authorizations⁵, thereby affording itself an opportunity to review the STA prior to continued operation by Row 44. Row 44 itself enhanced the opportunity for such review by filing its extension request almost four weeks before the expiration of the initial STA.

ViaSat further postulates, again without foundation, that its own review of and commentary upon Row 44’s ground testing report, filed on April 13, 2009, is somehow a prerequisite to continued STA operation.⁶ It invents the notion that the April 13 deadline, thirty days before expiration of the STA, “appears to have been designed to allow interested parties to review and comment on the results of ground-based testing *prior* to the grant of any additional STA to Row 44.” ViaSat Letter at 3 (emphasis in original). The conclusion ViaSat draws is not

³ *See* Row 44 STA Extension Request, File No. SES-STA-20090417-00507, Explanatory Statement at 2.

⁴ Row 44 has sought a minor modification of the condition concerning radiation exposure in light of the amendment to its application filed April 16, 2009. *See* Row 44 Amendment, FCC File No. SES-STA-20090416-00501, filed April 16, 2009 and Row 44 STA Extension Request, File No. SES-STA-20090417-00507, Explanatory Statement at 3.

⁵ *See* 47 C.F.R. § 1.62.

⁶ ViaSat’s assertions regarding Row 44’s request for confidential treatment of the ground testing report are not relevant here, but its assertion that it would have been beneficial for Row 44 to submit such elements of that report as the “cover page” or “table of contents” is transparently meritless. ViaSat Letter at 4. In any case, as ViaSat notes, Row 44 and ViaSat agreed several weeks ago to a Proposed Protective Order that would allow ViaSat to review the ground test report upon adoption by the FCC and execution of an Acknowledgement of Confidentiality by ViaSat reviewers that Row 44 has approved. Row 44 urges that this Protective Order be adopted and issued expeditiously, so that ViaSat may submit whatever final comments it has concerning Row 44’s license application.



apparent, or even plausible, as it ignores the fact that the STA specifically provided for service of the ground test report only upon the satellite operators who were signatories to the February 6, 2009 Test Plan. These appear to have been the actual parties that the Satellite Division desired to inform with the ground test data. And all of these parties have already stated on the record in this proceeding that they have no objection to extensions of the STA beyond the initial 60-day period.⁷

ViaSat also erroneously suggests that Row 44's current use of its limited STA to conduct market studies, in addition to technical trials, provides "no basis" for extending the STA, and that the market studies themselves are "unauthorized." ViaSat Letter at 4-5. The latter contention is simply wrong. STA operations are subject only to the limits of FCC regulations and those conditions which the FCC imposes. There is no condition in the current Row 44 STA that precludes market studies during the technical trials. *See* Row 44 STA at 4 (¶ 7).

In addition, Row 44 has made no secret of the fact that it was employing its STA to develop information concerning passenger preferences to assist in commercial deployment of its service by Southwest Airlines and Alaska Airlines. As a practical matter, delay or denial of an STA extension would have an adverse impact upon both Row 44 and its airline customers by disrupting their efforts to prepare to launch commercial AMSS operations upon FCC approval. The equipment installed on each test aircraft is expensive, and the installation process is time consuming. To deny these parties the continued benefit of the limited STA for the wholly insubstantial and unsupported reasons advanced by ViaSat would be arbitrary and contrary to the public interest. Fundamentally, ViaSat has failed to offer, let alone demonstrate, any legitimate reason to reject the requested extension. Accordingly, the requested STA extension should be granted prior to the expiration of the current authorization.

Respectfully submitted,

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⁷ *See* Letter to Stephen Duall, Chief, Policy Branch, Satellite Division, from David S. Keir, Counsel to Row 44, File No. SES-STA-20090417-00507, dated May 8, 2009, and attached Statements on behalf of Echostar Corporation, Intelsat, and SES Americom, Inc.