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December 7, 2010

BY ELECTRONIC SUBMISSION

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

Re: Panasonic Avionics Corporation; Application for Blanket AES Operating Authority; File Nos. SES-LIC-20100805-00992, SES-AMD-20100914-01163 and SES-AMD-20101115-01432; Opposition to Consideration of Late-Filed Pleading of Row 44, Inc.

Dear Ms. Dortch:

Panasonic Avionics Corporation (“Panasonic”), by its attorney, hereby reaffirms its objection to Commission consideration of the late-filed pleading submitted by Row 44, Inc. (“Row 44”) in the above-captioned proceeding.¹ Despite being informed that it had miscalculated the due date and failed to provide a basis for an extension of time,² Row 44 ignored the Commission’s rules and proceeded to file its latest pleading pursuant to its own, self-declared schedule. Row 44 compounds this error by misstating the Commission’s procedural requirements and again failing to justify an extension request. Row 44 is playing fast and loose with the Commission’s rules to improperly obtain additional time to formulate unfounded attacks on its competitor’s AMSS application.

Procedural Background. Row 44 became a party to Panasonic’s AMSS application proceeding by filing a petition within thirty (30) days of public notice of the application. In accordance with Section 25.154(e) of the Commission’s rules, Panasonic filed its response to Row 44 and statement to the

¹ See Consolidated Reply of Row 44, Inc. to Panasonic Avionics’ Response and Panasonic Avionics’ November 15 Amendment, File Nos. SES-LIC-20100805-00992, SES-AMD-20100914-01163 and SES-AMD-20101115-01432 (dated December 1, 2010) (“December 1 Pleading”).

² See Response to Notice Regarding Filing Deadlines from Carlos M. Nalda, Counsel to Panasonic Avionics Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission dated November 22, 2010 (“Panasonic Response to Notice”).

Commission (“Response”) on November 15, 2010. Panasonic separately filed a minor amendment to its AMSS application, which has not been – and need not be – placed on public notice.³

Row 44 subsequently claimed a right to file a reply to Panasonic’s Response pursuant to Sections 25.154(e) and 1.45(c) of the rules, which would be due on Friday, November 26, 2010.⁴ Row 44 also claimed the right to file an opposition to Panasonic’s minor amendment pursuant to Section 1.45(b).⁵ Row 44 argued that it had ten (10) days, plus an additional three days for service by mail, to file an opposition on December 1, 2010. Relying on this invented opposition right and service requirement, Row 44 sought to file a consolidated pleading addressing both Panasonic’s Response and the minor amendment on that date.

Panasonic filed a letter notifying the Commission of Row 44’s error in calculating the deadline.⁶ Although Panasonic did not object to a submission on November 26, 2010 as required by the rules, Panasonic objected to Commission acceptance of such a filing after that date because Row 44 provided no basis for an extension. Row 44 ignored Panasonic’s letter and filed its pleading on December 1, 2010.

The Late-Filed Pleading Should Be Rejected. In an effort to avoid the due date established by the rules, Row 44 claims that Panasonic should have served its minor amendment on Row 44 because “Row 44 is a party to the [AMSS application], and therefore any communication regarding the application, which necessarily includes an amendment, should have been served on Row 44 under the Commission’s Rules, *See* 47 C.F.R. § 1.1202(b)(1) and 1.1208.”⁷ Row 44 cites no Commission precedent for the proposition that a minor amendment must be served upon parties to the underlying application. Rather, Row 44 mistakenly claims that, if the application was not served on Row 44, then it was a prohibited *ex parte* communication under the FCC’s *ex parte* rules.

Section 1.1204(a)(1) of the Commission’s *ex parte* rules expressly exempts from the prohibitions in restricted proceedings presentations that “involve the filing of required forms.” Since Panasonic’s minor amendment was filed on FCC Form 312, it is exempt from the Commission’s *ex parte* restrictions

³ Not even Row 44 suggests that the amendment be placed on public notice as a “major amendment.”

⁴ *See* Notice from David S. Keir to Marlene H. Dortch, Secretary, Federal Communications Commission dated November 19, 2010 (“Row 44 Notice Regarding Filing Deadlines”) at 1.

⁵ *See* Row 44 Notice Regarding Filing Deadlines at 1-2.

⁶ *See* Panasonic Response to Notice. Panasonic explained that Row 44’s pleading was due on November 26, 2010 because Row 44 was not served and thus is not entitled to an additional three (3) days to file its opposition. *See* 47 C.F.R. § 1.4(h). Even if Row 44 did receive the extra three (3) days due to service by mail, the pleading was due by Tuesday, November 30, 2010. Ten (10) days after November 15, 2010 was November 25, 2010. An additional three (3) business days made the deadline November 30, 2010, not December 1, 2010. *See* 47 C.F.R. § 1.4(j) and Example 12. Row 44 has not addressed this issue.

⁷ *See* December 1 Pleading at 20-21.

and need not be served on any other party.⁸ Therefore, Row 44 does not receive the additional three (3) days to file its opposition and – as previously stated by Panasonic – the pleading was due on Friday, November 26, 2010. Row 44 refused to file its pleading by the deadline or otherwise justify an extension.⁹ The Commission should therefore disregard the filing.

Additional Pleadings. Although Panasonic seeks to avoid a seemingly endless battle of pleadings (of which Row 44 is well aware), Panasonic may be compelled to respond if the Commission determines that it will consider the improper, late-filed opposition of Row 44. In this connection, Row 44 acknowledges that its December 1 Pleading should also be considered an opposition pursuant to Section 1.45(b) of the Commission’s rules.¹⁰ Therefore, Panasonic may file a reply on or before Monday, December 13, 2010 in accordance with Section 1.45(c) of the Commission’s rules. That reply would end the pleadings cycle contemplated by the Commission’s rules for this restricted proceeding.

Please feel free to contact me with any questions regarding this submission.

Sincerely,

Squire, Sanders & Dempsey L.L.P.

/s/ Carlos M. Nalda

Carlos M. Nalda

Counsel to Panasonic Avionics Corporation

cc: David S. Keir, Counsel to Row 44, Inc.
Stephen Duall, FCC International Bureau
Paul Blais, FCC International Bureau

⁸ See *Applications of Beyond the Bay Media Group For Renewal of License*, File No. BRED-2004-0601AZI, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 06-1333, ¶ 20 (2006) (“The WTRK(FM) Modification, Assignment, and Renewal Applications are ‘restricted proceedings’ triggering the prohibition on *ex parte* communications. See 47 C.F.R. § 1.1208. However, BBMG was not required to serve MCR with amendments to its Modification Application, because the filing of a required form – such as an FCC Form 301 for amendment to a modification application – is exempt under the *ex parte* rules. 47 C.F.R. § 1.1204(a)(1).”). In that case, the opponent Michigan Community Radio (“MCR”) had filed a petition to deny the Beyond the Bay Media Group (“BBMG”) modification application on April 19, 2004. See *id.*, ¶ 6. The Media Bureau specifically determined that BBMG was not required to serve MCR with amendments filed on October 19, 2004 and November 9, 2004 (after MCR had become a party to the underlying application) because of the *ex parte* exemption for presentations involving the filing of required forms. See *id.*, ¶ 20.

⁹ Facile, *post hoc* claims that the rationale for an extension of the deadline required by the rules “goes without saying” cannot justifiably be relied upon, even if embellished with holiday references and hyperbole. See December 1 Pleading at 20, n.22.

¹⁰ See Row 44 Notice Regarding Filing Deadlines at 1-2; December 1 Pleading at 1, 19-20.