

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

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.

LATHAM & WATKINS LLP

September 18, 2008

Ms. Helen Domenici  
Chief, International Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Row 44, Inc. Request for Special Temporary Authority and Expedited Action;  
FCC File No. SES-STA-20080711-00928; Call Sign E080100

Dear Ms. Domenici:

On behalf of ViaSat, Inc. (“ViaSat”), we are responding to the letter sent to you by Row 44, Inc. (“Row 44”) on September 11, 2008 (“September 11 Letter”). In that letter, Row 44 urges the Bureau to act on Row 44’s pending request for special temporary authority (“STA”) to operate aeronautical-mobile satellite service (“AMSS”) terminals on commercial and private aircraft – even though the public comment period with respect to two substantive technical amendments on which its STA request relies has not yet closed, and will not close until October 10, 2008.<sup>1</sup>

As detailed below, action on the STA request at this time would be premature at best:

1. Row 44’s prior submissions have been deficient, and ViaSat’s forthcoming comments on Row 44’s recent amendments will detail continuing technical problems and deficiencies that should be considered before any STA issues; and
2. Two independent sources confirm that Row 44 has in fact conducted some of the proposed operations within the United States *without having obtained the STA from the Commission that Row 44 seeks*.

As an initial matter, Row 44 is mistaken when it asserts that Row 44’s two recent substantive amendments provide the Commission with “all of the data necessary to permit grant of the limited interim authority that Row 44 has sought in the pending STA request[.]”

---

<sup>1</sup> See FCC File Nos. SES-LIC-20080508-00570; SES-AMD-20080819-01074; SES-AMD-20080829-01117 (“Application”). The amendments were placed on public notice on September 10, 2008.

LATHAM & WATKINS LLP

September 11 Letter at 2. Although Row 44 made essentially the same claim in submitting the initial Application, and in response to ViaSat's pleadings identifying the deficiencies in that Application, the Commission (i) has twice noted the incomplete nature of the initial Application,<sup>2</sup> (ii) has required Row 44 to file corrective amendments or face dismissal, and (iii) has sought further public comment on the two recent technical amendments filed by Row 44. By the October 10, 2008 comment deadline, ViaSat will address the continued technical deficiencies in Row 44's amendments, which should be taken into account if and when the Commission gives further consideration to Row 44's pending request to test its nascent technology on aircraft.<sup>3</sup>

More troubling, however, are recent reports that Row 44 has been operating at least one of its terminals on an aircraft without having received Commission authority to do so.<sup>4</sup> While Row 44's September 4, 2008 letter to the Bureau ("September 4 Letter") acknowledged that Row 44 needed STA to conduct demonstrations in connection with the recent World Airline Entertainment Association trade show in California,<sup>5</sup> it appears that Row 44 went ahead with those very demonstrations even in the absence of Bureau action on the pending STA request. At least two independent sources confirm that Row 44 transmitted signals to and from spacecraft over a Row 44 terminal mounted on a Row 44 sea plane. Mary Kirby, author of the Runway Girl blog published by Flight, the world's leading provider of aerospace news and data, notes that she sent herself an email while aboard a seaplane "equipped with Row 44's in-flight connectivity service," which "floated happily on the waters off of Long Beach before our flight."<sup>6</sup> KNBC(TV) reports that tests were conducted from the Van Nuys, California airport, and in fact includes footage of a demonstration of Row 44's technology.<sup>7</sup> Thus, the "initial

---

<sup>2</sup> See Letter from Scott A. Kotler, Chief, Systems Analysis Branch, Satellite Division, International Bureau to Counsel for Row 44 (Aug. 7, 2008); Letter from Scott A. Kotler, Chief, Systems Analysis Branch, Satellite Division, International Bureau to Counsel for Row 44 (Aug. 25, 2008).

<sup>3</sup> Row 44 mischaracterizes ViaSat's position when Row 44 suggests that its STA request should be granted because ViaSat has "expressed as a key concern that 'transmit/receive flight testing of [Row 44's] proposed antenna' should be conducted prior to grant," September 11 Letter at 2. While the lack of such testing is problematic, a more fundamental problem is that the analysis Row 44 has presented to the Commission is incomplete and internally inconsistent. Row 44 should not receive any authority to operate on aircraft unless and until it has presented a cogent and complete written technical analysis that withstands Commission scrutiny.

<sup>4</sup> Row 44's existing STA is limited to a single terminal at a manufacturer's facility in Amherst, New Hampshire. See FCC File No. SES-STA-20071121-01610.

<sup>5</sup> September 4 Letter at 2.

<sup>6</sup> See Mary Kirby, *A whale of a good time aboard Row 44's Albatros seaplane* (Sep. 8, 2008) available at <http://www.flightglobal.com/blogs/runway-girl/2008/09/a-whale-of-a-good-time-aboard.html> (attached as Exhibit 1).

<sup>7</sup> KNBC News, *Wireless Access at 35,000 Feet* (Sep. 10, 2008), available at <http://video.knbc.com/player/?id=645225> (screen shot attached as Exhibit 2).

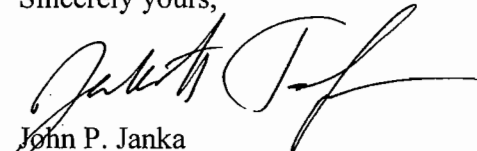
LATHAM & WATKINS LLP

stage” of testing using “one to two aircraft-mounted antenna,” which Row 44 represents would follow grant of STA, appears already to have occurred.<sup>8</sup>

Row 44’s history of presenting incomplete and internally inconsistent information to the Commission highlights the need for public comment on Row 44’s recent technical amendments, *before* the Commission may even consider authorizing the proposed STA operations. Particularly considering that Row 44 already has conducted demonstrations, without authorization, it is entirely appropriate to wait just a few more weeks (until the October 10, 2008 pleading deadline) before taking any further action on this STA request. Indeed, Row 44’s unauthorized operations of a terminal on its own sea plane raise material issues about Row 44’s compliance with the Commission’s rules and its candor before the Commission that can and should be examined in the meantime.

For these reasons, ViaSat urges the Bureau to allow the public to comment on Row 44’s recent technical amendments, and to allow its own staff the opportunity to scrutinize those comments, as well as the information provided in this letter, before acting on either Row 44’s STA request or the amended Application.

Sincerely yours,



John P. Janka  
Jarrett S. Taubman

*Counsel for ViaSat, Inc.*

cc: Robert Nelson  
Fern Jarmulnek  
Karl Kensinger  
Andrea Kelly  
Scott Kotler  
Sophie Arrington  
Jeanette Spriggs  
David S. Keir, Counsel for Row 44, Inc.

**EXHIBIT 1:**

**MARY KIRBY REPORT**

Please enter your search term

[Home](#) | [Premium](#) | [Archive](#) | [Video](#) | [Images](#) | [Forum](#) | [Blogs](#) | [Jobs](#) | [Shop](#)



Worth being delayed for



Search this blog

Recent Entries

Chatter boxes: A Podcast discussion from WAEA

A whale of a good time aboard Row 44's Albatros seaplane

Swallowing at a price

Show me the money, says IFE expert

Bombardier CSeries order talk

## A whale of a good time aboard Row 44's Albatros seaplane

By Mary Kirby on September 8, 2008 11:36 PM | [Permalink](#) | [Comments \(0\)](#) | [TrackBacks \(0\)](#) | [ShareThis](#)

**Hello fair readers,**

**I'm sending this email from a Grumman Albatros seaplane that has been equipped with Row 44's in-flight connectivity service. Row 44 in June acquired the 1952-built aircraft, originally used by the US Air Force, for use as a testbed of its high-speed service.**



PHOTO: Bombardier confirms CRJ1000 first flight

UPDATE: Bombardier CRJ1000 does Mirabel fly by

BREAKING: Bombardier CRJ1000 first flight today

How low can you go - air fares then and now

The Canadian shuffle - Newair and old air, Zoom

## Recent Assets

**The company completely redid the avionics, and is in the process of modernizing the leather interior (although, from my roomy seat, the inside is pretty damn swanky for a 56-year old bird).**

**So why an Albatros testbed? Row 44 discovered that the curvature atop the fuselage is the same as the top of a Boeing 737.**

**The radome that contains the AeroSat-made antenna and the ring fit snugly on top of the aircraft. Alaska Airlines and Southwest Airlines are each planning to trial the system on 737s. Alaska's trial will occur in a few weeks. Nice!**

## Mary

That's the email I sent to myself today while the seaplane floated happily on the waters off of Long Beach before our flight. California-based Row 44 has been successfully demonstrating it's Ku band-based in-flight connectivity service over Canadian skies but is awaiting forthcoming US approvals to do its flight testing closer to home.



Seasoned pilot Dave Cummings installed the new avionics (Dynon and Garmin) in 21 days and managed to get the aircraft certified within two months. Is that a record?

In any case, the flight was quite memorable, not least of all because we flew over a whale while it was using its blow hole. He nearly stole the show, but not quite.

**Categories:** Air Transport, In-flight Entertainment/Communications

**Tags:** Aircraft Interiors Expo, Alaska Airlines, Boeing 737, Dynon, Garmin, Grumman Albatros, Long Beach, Row 44, seaplane, Southwest Airlines, WAEA, World Airline Entertainment Association

## 0 TrackBacks

Listed below are links to blogs that reference this entry: [A whale of a good time aboard Row 44's](http://www.flightglobal.com/blogs/runway-girl/2008/09/a-whale-of-a-good-time-aboard.html)  
Allied Pilots Association

**EXHIBIT 2:**  
**KNBC(TV) REPORT**

**Site Index**

- Home
- Video
- News
- Olympic Zone
- As Seen on NBC4
- Most Popular Stories
- Weather Forecast
- Traffic Report
- Entertainment
- Sports News
- Health
- Contests
- Photo Galleries
- Politics
- Blogs
- Green Is Universal
- Community Events
- Financial News
- Family
- Education
- Employment
- Food
- House & Home

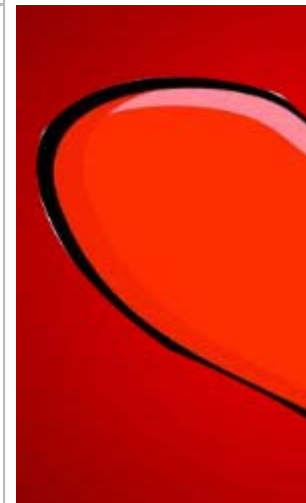


**Categories**

KNBC

- NEWS
- HEALTH
- ENTERTAINMENT
- COOL STUFF
- GREEN

**Search Videos**



**About This Video**



**Wireless Access At 35,000 Feet**  
 Sept. 10, 2008  
 John Cadiz Klemack reports on Row 44.

<http://video.knbc.com/player/?id=645225>

[SEND TO FRIEND](#)

**Rate this video**

2 ratings

**Other Videos**

- Most Watched
- Most Shared
- Most Recent**

**Comments**