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September 26, 2008

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**BY HAND**

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

**Re: Application of Row 44, Inc. for Special Temporary Authority  
(File No. SES-STA-20080711-00928; Call Sign E080100)**

Dear Ms. Dortch:

This letter is submitted on behalf of Row 44, Inc. ("Row 44") in response to letters filed by ViaSat, Inc. ("ViaSat") on September 18, 2008 and September 24, 2008 concerning the above-referenced application for Special Temporary Authority. Row 44 seeks to correct several mischaracterizations that pervade ViaSat's filings regarding the STA request. ViaSat is seeking to delay operational testing this Fall of a small number of AeroSat aeronautical systems that Row 44 plans to use to provide in-flight broadband services to airline passengers beginning early next year.

In its two letters, ViaSat broadly asserts that "Row 44's prior submissions have been deficient" (ViaSat September 18 Letter at 1), and that this "fact" has been "recognized by the Commission on two separate occasions" (ViaSat September 24 Letter at 2). These are not accurate characterizations. In fact, the Commission made plain in each of its letters to Row 44 that its requests simply sought "additional information"<sup>1</sup> or "clarification"<sup>2</sup> concerning Row 44's proposed operations, making specific reference to Sections 25.111(a) and 25.112(c) of its rules which allow the staff to request information from an applicant "not specifically required in the prescribed application form or these rules." 47 C.F.R. §§ 25.111(a) & 25.112(c). Thus the Commission's requests did not represent a finding of "deficiency," as ViaSat maintains, but a desire by the FCC to obtain additional technical information about the proposal. Contrary to ViaSat's characterization of

<sup>1</sup> Letter from Scott A. Kotler, Chief, Systems Analysis Branch, Satellite Division, International Bureau to David S. Keir, Counsel to Row 44, at 1, dated August 7, 2008.

<sup>2</sup> Letter from Scott A. Kotler, Chief, Systems Analysis Branch, Satellite Division, International Bureau to David S. Keir, Counsel to Row 44, at 1, dated August 25, 2008.



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Row 44's responsive amendments as "shifting sands," Row 44 made no major changes to its proposal, but in addition to submitting other requested materials, reduced operating power and provided revised information arising from that change. *See* FCC File Nos. SES-AMD-20080819-01074; SES-AMD-20080829-01117. As ViaSat itself is well aware, this sort of refinement is the norm in the processing of non-conforming Ku-band antenna applications.<sup>3</sup>

Moreover, the second of Row 44's two minor amendments was filed four weeks ago, and ViaSat has in both of its letters filed since that time urging delay asserted simply that unspecified "deficiencies" remain. In neither case has ViaSat revealed, even in a general categorical way, any particular remaining concern that it may have with the Row 44 application. It would seem that if these unspecified issues were as critical as ViaSat suggests, it might have at least taken the time to identify them. ViaSat's vague insinuations should not be permitted to delay grant of the minimal testing authority Row 44 is seeking.

To the extent that ViaSat has identified a generalized concern with the "difficulties inherent in detecting and tracking transient interference events from mobile users" (ViaSat September 24 Letter at 1-2), this concern cuts against its case for delaying an STA. Regardless of how extensive the paper record compiled before the Commission may ultimately be, there is no substitute for testing the actual performance of antennas under real world conditions. This truism applies to any mobile Earth station. Given this fact, combined with the very limited potential impact of the small number of terminals requested, it seems clear that early testing and phased deployment is the prudent approach to verifying the predicted performance of new mobile remote terminals.

For purposes of detecting any measurable interference, several aspects of normal system operation will assist in addressing any problems that might potentially arise, including the fact the Row's carrier frequencies will be easily identifiable. Given the limited total number of terminals that would operate during the course of the STA, it would be much easier to pinpoint whether interference observed, if any, could potentially be attributable to the Row 44 terminals, particularly as the small number of terminals proposed would likely be operating in different areas, and not all in the same geographic region. The timing, origination and destination of all test flights would be available, making it easy to identify by date, time and location whether any of the Row 44 terminals was actually operating at the time and place of a particular interference event, if one should occur.

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<sup>3</sup> When ViaSat sought its own aeronautical Earth station blanket license, which was granted last Fall, it filed two amendments to the application, as well as three other supplements to the information provided, prior to the grant of the license. *See* ViaSat, Inc. Application, FCC File Nos. SES-LIC-20051028-01494, SES-AMD-20060314-00440, SES-AMD-20070309-00325, and supplements filed January 23, 2006, April 12, 2006, and April 28, 2006.



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Finally, ViaSat has incorrectly stated that there 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.” ViaSat September 18 Letter at 2. Contrary to ViaSat’s assertion, however, neither report annexed to its filing contains allegations that Row 44 operated without authorization. Instead, ViaSat itself has inferred such a conclusion from the reports. In fact, the two demonstrations cited in the reports took place under the direction of HNS Licensee Sub, LLC (“HNS”), with which Row 44 has contracted for satellite capacity and other support services, pursuant to HNS’s experimental license (Call Sign WE2XEW) for vehicle/vessel-mounted remote Earth terminals. The reported demonstrations were conducted from September 8 to 11, during the World Airline Entertainment Association trade show, using non-airborne terminals, at two separate locations -- the Long Beach Airport and at anchor in the protected channel of water off of the City of Long Beach. Via the pending STA request, Row 44 had sought the capability to offer in-flight demonstrations during the show to potential customers. Because such authority was not granted, Row 44 was constrained to limit its product demonstration activities to the land and maritime mobile uses covered by the HNS license. The accusation that these tests were not authorized, however, is simply incorrect.

Accordingly, in order to meet its testing obligations to its airline customers, Row 44 renews its request for an STA effective October 1, 2008. In this regard, Row 44 notes that ViaSat misinterprets the limitation of Section 25.120(b)(1) providing that “meeting scheduled customer in-service dates” is not generally deemed sufficient justification for an STA. ViaSat ignores the fact that this language was adopted to curtail the then-prevalent practice of filing both an application for a new permanent license and an STA request *simultaneously* in order to allow commencement of service soon after the application was filed. In the context of that rulemaking, the Commission made clear that it would continue to recognize as “extraordinary circumstances,” justifying an STA, the length of time that may be required to process a “non-routine” application, such as Row 44’s. Specifically, the Commission stated, “When an application cannot be routinely granted within sixty days [fn, *e.g.*, VSAT applications], the staff will, in most cases, consider a request for an STA.”<sup>4</sup> This approach is particularly appropriate here, where Row 44 seeks not full commercial implementation of its system, but merely limited testing authority.

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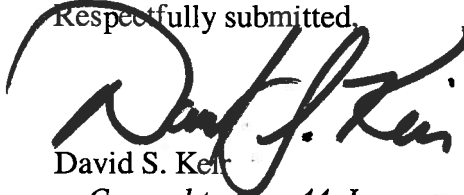
<sup>4</sup> *Amendment of Part 25 of the Commission’s Rules and Regulations*, CC Dkt. No. 86-496, 6 FCC Rcd 2806, 2810 & nn. 69 & 70 (1991). In this case, Row 44 did not file its STA request until the sixty-fourth day following the filing of its application, and an additional seventy-seven days have elapsed since the STA request itself was filed.



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

Respectfully submitted,



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