

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of)
Panasonic Avionics Corporation) File No.: SES-STA-20110104-00005
)
Request for Special Temporary Authority to) Call Sign: E100089
Operate Up to 10 Technically Identical)
Aeronautical Mobile-Satellite Service (“AMSS”))
Earth Stations (“AESs”) in the 14.0-14.4 GHz and)
11.7-12.2 GHz Frequency Bands)

To: Chief, International Bureau

REPLY OF ROW 44, INC.

Row 44, Inc. (“Row 44”), by its attorneys and pursuant to Section 25.154 of the Commission’s Rules, hereby replies to the “Opposition of Panasonic Avionics Corporation” (“Opposition”) concerning the above-captioned Panasonic Avionics Corporation (“PAC”) application for special temporary authority (“STA”). While Row 44 did not object to grant of any appropriately-conditioned STA in this proceeding,¹ based on the record that has now been assembled, Row 44 believes that the only appropriate course is for the Bureau to dismiss the STA Request as fundamentally defective. As discussed further below, PAC has simply failed to make a showing that grant of an STA in these circumstances is necessary or would otherwise serve the public interest.

¹ Row 44 has consistently maintained, however, that no STA should issue until PAC provides the remaining information necessary to complete its application to operate a Ku-band aeronautical mobile-satellite service (“AMSS”) Earth station network, including submission of complete details of its AMSS system that underpin PAC’s assurances that it can operate without causing harmful interference to other Ku-band FSS users.

In its Petition, Row 44 noted that PAC had not met, nor had it even attempted to meet, the requirement to articulate a public interest basis for grant of an STA. *See* 47 C.F.R. § 25.120(a) (an STA request must include, *inter alia*, “all facts sufficient to justify the temporary authority sought and the public interest therein”). The applicant also failed to show that delay in commencement of its planned operations “would seriously prejudice the public interest.”²

In its Opposition, PAC confuses the issue further. Rather than providing the missing basis for the relief it seeks, PAC states that “grant of the requested STA is not essential to support near term operations of its eXConnect AMSS system.” Opposition at 1. Instead, it maintains that it is seeking an STA “out of an abundance of caution ... if such authority is deemed necessary or appropriate while Panasonic’s AMSS license application remains pending.” Opposition at 2. PAC appears to be asking the Bureau to write its own rationale for an STA grant without itself providing any justification for such relief. Simply put, if PAC is not convinced that it requires immediate temporary operating authority, there is no basis for the International Bureau to expend its own resources to consider a request for extraordinary authority that the applicant has deemed “not essential.”

PAC also gratuitously complains that Row 44 is seeking “to examine proprietary and competitively sensitive information regarding eXConnect operational parameters.” Opposition at 3. This is not correct. Row 44 is simply seeking to ensure that the consideration of PAC’s pending application is premised on a complete record, consistent with the information provided

² The FCC’s rules affirmatively preclude taking private commercial factors into consideration in processing STA requests. *See* 47 C.F.R. § 25.120(b)(1) (“The Commission may grant a temporary authorization only upon a finding that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of these temporary operations would seriously prejudice the public interest. Convenience to the applicant, such as marketing considerations or meeting scheduled customer in-service dates, will not be deemed sufficient for this purpose.”).

by applicants previously authorized to provide non-conforming MSS services in the Ku-band. It does not believe that this would require the submission of any proprietary or other sensitive data. In the absence of any other asserted basis for an STA, however, as well as PAC's specific reliance on Row 44's 2009 STA grant, Row 44 threw PAC a lifeline by identifying a basis, consistent with the Row 44 precedent, upon which PAC could potentially be granted the STA it seeks – *i.e.*, flight testing in support of the underlying application for a permanent license. *See, e.g., Row 44, Inc.*, 24 FCC Rcd 3042 (IB/OET 2009).

Rather than accept this proffered basis for the STA, when it has not provided one itself, PAC has chosen not to grab the lifeline it was extended, and to complain instead that the proposed conditions are “unclear, overly burdensome and internally inconsistent.” Opposition at 3. None of these assertions has merit, particularly given the fact that these are the identical conditions that were imposed on Row 44 less than two years ago under similar circumstances. *See Row 44, Inc.*, 24 FCC Rcd at 3044-45 (¶¶ 7 & 8). The ninety (90) day deadline for submission of a report on flight testing, for example, specifies an end date by which a report must be submitted, it does not anticipate that the party authorized under the STA would require the entire 90-day period for testing and report writing.³ In Row 44's case, it filed its flight test report less than 60 days after the STA was granted (while also submitting within 30 days of the STA grant a separate report relating to ground testing), and had its STA extended for an additional 60 days shortly thereafter. As in Row 44's case, PAC could submit a report as soon as it has gathered sufficient data to provide technical support for its underlying application. Accordingly, PAC's complaint that proposed conditions 5 and 6 are inconsistent is baseless.

³ Compare Opposition at 4 (“Row 44 proposes that this ‘report’ be filed ninety (90) days after grant of the STA Order, even though Panasonic has only requested an STA for sixty (60) days – making timely renewal impossible pursuant to the very conditions proposed by Row 44”).

Finally, given the fact that Row 44's conditioned STA proposal was offered in the spirit of cooperation to provide a foundation for an interim STA that was otherwise lacking, there is particular irony in PAC's assertion that Row 44 "fails to set forth the specific reporting elements and data" to be provided in the required report. Opposition at 3. Submission of the report in support of the underlying application provides the only basis for an STA offered in this proceeding to date. In this instance, the report's content would be largely within PAC's discretion, as a means to bolster the showing made in its application. It would seem prudent nonetheless for PAC at least to provide a complete set of off-axis EIRP spectral density plots, measured antenna gain under maximum skew conditions, and some demonstration of in-flight antenna pointing accuracy.

Conclusion

For the reasons set forth herein and in its original Petition, Row 44 urges the FCC to dismiss the PAC STA request as unsupported.

Respectfully submitted,

ROW 44, INC.

By: 
David S. Keir

Lerman Senter PLLC
2000 K Street, N.W., Suite 600
Washington, DC 20006
(202) 429-8970

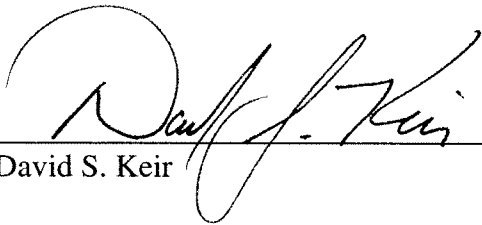
February 7, 2011

Its Attorney

CERTIFICATE OF SERVICE

I, David S. Keir, hereby certify that a true and correct copy of the foregoing "Reply of Row 44, Inc." was sent by first-class mail, postage prepaid this 7th day of February, 2011, to the following:

Carlos M. Nalda, Esquire
Joshua T. Guyan, Esquire
Squire Sanders & Dempsey
1201 Pennsylvania Avenue, NW
Washington, DC 20044



David S. Keir