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November 30, 2012

## VIA ELECTRONIC FILING

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: ViaSat Response to *Ex Parte* Presentation of Row 44; IBFS File Nos.  
SES-LIC-20120427-00404; SES-STA-20120815-00751, Call Sign  
E120075

Dear Ms. Dortch:

ViaSat, Inc. (“ViaSat”) hereby responds to the *ex parte* submission by Row 44, Inc. (“Row 44”) on November 9, 2012 (“Row 44 November 9 *Ex Parte* Letter”). In this latest submission, Row 44 repeats the same unavailing arguments made in its Petition against ViaSat’s STA request.<sup>1</sup> Row 44 mischaracterizes the salient legal framework for the Ka band and ignores the controlling precedent that Row 44 itself has established.

Contrary to what Row 44 suggests, the limited and temporary excursions of the Section 25.138 off-axis EIRP density levels that may result from ViaSat’s proposed operations are fully consistent with the policy behind Section 25.138. In fact, all Ka band systems (both authorized and planned) long have been required to account for the Section 25.138 framework that is the basis for ViaSat’s demonstration of compatibility with Ka band operations on other spacecraft. Section 25.138 establishes a “default” off-axis EIRP density envelope and a coordination procedure for applicants proposing to transmit at levels that could exceed the default parameters. That rule also provides that an entity authorized to operate at such exceedences must further coordinate with all additional systems that come into operation in the future.

ViaSat has submitted detailed technical demonstrations illustrating the discrete exceedences of Section 25.138 that occasionally may occur with respect to a limited number of spacecraft at specific orbital locations, and explaining why even those isolated cases present no threat of harmful interference. More significantly, ViaSat has coordinated its proposed operations with all potentially affected Ka band networks that are or will be in operation within

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<sup>1</sup> See Row 44, Inc., Petition to Deny or Dismiss, File No. SES-STA-20120815-00751 (filed Sept. 5, 2012) (“Petition”).

the next few years, and, as contemplated by Section 25.138, ViaSat bears the burden of coordinating with other future satellites that come into operation.<sup>2</sup>

Ignoring this well-established Ka band framework, with no legitimate concerns about interference into its own operations, and in an apparent attempt to stifle competition, Row 44 essentially urges that the deployment of proven antenna technology be prohibited in the Ka band until some indefinite additional number of Ka band satellites come into operation, and until a new international regulatory framework is established at the ITU for mobile applications of Ka band FSS spectrum. Fortunately, the Commission recognized long ago that it serves the public interest to authorize the use of new technologies even when the Commission intended to hold future rulemakings and take possible new ITU developments into account in doing so.<sup>3</sup>

The Commission precedent in granting Row 44's Ku band AMSS authorization fully supports grant of this STA.<sup>4</sup> The *Row 44 AMSS Order* firmly establishes that coordination with potentially affected satellite networks obviates the need for the Commission to independently assess the risk of interference into those systems.<sup>5</sup> The Commission recognized in the *Row 44 AMSS Order* that "potentially affected satellite operators are . . . capable of assessing the potential interference impact of proposed Ku-band AES operations," and found that no less weight should be placed on coordination when dealing with an "emerging" technology.<sup>6</sup> This reasoning holds equally true with respect to ViaSat's proposed operations.

Once again, Row 44 attempts to obfuscate matters by focusing on the geographic locations where the source of potential interference could arise,<sup>7</sup> and in doing so ignores the most

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<sup>2</sup> The one currently known and potentially impacted new system that is still being coordinated is a recently authorized satellite with a launch milestone in 2017.

<sup>3</sup> See *The Boeing Company*, 16 FCC Rcd 22645 ¶ 10 (2001) (granting authority to operate aeronautical earth stations in the FSS Ku band before the secondary AMSS allocation in that band ultimately was added in the ITU 2003 World Radiocommunication Conference ("WRC-03")); see also *Service Rules and Procedures to Govern the Use of Aeronautical Mobile Satellite Service Earth Stations in Frequency bands Allocated to the Fixed Satellite Service*, Notice of Proposed Rulemaking, 20 FCC Rcd 2906 ¶ 2 (2005).

<sup>4</sup> Cf. Row 44 November 9 *Ex Parte* Letter at 2.

<sup>5</sup> The distinctions that Row 44 attempts to draw between the Ka band requirement to certify as to coordination and the Ku band requirement to provide copies of coordination letters are inconsequential. The underlying requirement to coordinate remains the same under both frameworks, and ViaSat has satisfied this requirement.

<sup>6</sup> *Row 44, Inc., Application for Blanket Authority to Operate up to 1,000 Technically Identical Aeronautical Mobile Satellite Service Transmit/Receive Earth Stations Aboard Commercial and Private Aircraft*, 24 FCC Rcd 10223 ¶ 24 (2009) ("*Row 44 AMSS Order*").

<sup>7</sup> See Row 44 November 9 *Ex Parte* Letter at 3 (alleging "the potential for interference throughout the continental U.S.").

critical consideration: *the potential impact on a known and limited number of operating spacecraft with which coordination already has been effectuated.* Similarly, Row 44's focus on the pointing accuracy of ViaSat's antenna technology is irrelevant in these circumstances. In granting Row 44's AMSS license, the Commission made clear that any concerns about antenna mispointing were adequately resolved through coordination with potentially affected satellite operators; thus, the Commission declined to address technical concerns about Row 44's antenna pointing capabilities.<sup>8</sup>

The two other points that Row 44 raises are entirely baseless. As with its prior submissions, Row 44 fails to substantiate its claim that "the grating lobes that intersect the geostationary arc can potentially affect a very broad swath of the orbital arc,"<sup>9</sup> and fails to respond to ViaSat's explanation that, as a matter of physics, the potential points of intersection are in fact very limited and are known with certainty at this time.<sup>10</sup> In addition, Row 44's assertion that ViaSat has not provided supporting documentation that its downlink operations will comply with the -118 dBW/m<sup>2</sup>/MHz pfd level is specious. ViaSat has certified in its application that it will comply with this limit and has not proposed to operate at variance from the downlink pfd levels specified in the authorized parameters of the proposed satellite points of communication.

In short, Row 44's most recent submission offers nothing new, and simply seeks to achieve delay for competitive advantage. Therefore, ViaSat respectfully requests that the Commission deny Row 44's Petition and expeditiously grant ViaSat's STA request in order to avoid further delay in the commencement of the planned market trial operations.

Please contact the undersigned if you have any questions regarding this submission.

Respectfully yours,

/s/

John P. Janka  
Elizabeth R. Park

Enclosures

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<sup>8</sup> Row 44 AMSS Order at ¶ 22.

<sup>9</sup> Row 44 November 9 *Ex Parte* Letter at 3.

<sup>10</sup> ViaSat has demonstrated in its application, as well as in a subsequent *ex parte* presentation, that these intersections occur at specified known and fixed points in the GSO. See ViaSat Application, File No. SES-LIC-20120427-00404, Technical Description at 8; ViaSat, Inc., Notice of *Ex Parte* Presentation, File No. SES-LIC-20120427-00404; SES-STA-20120815-00751 (Oct. 15, 2012).

LATHAM & WATKINS <sup>LLP</sup>

cc: Robert Nelson  
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