EXHIBIT D – 47 C.F.R. § 25.137 WAIVER REQUEST

NewCom International, Inc. ("NewCom") requests waiver of Section 25.137 of the Commission's Rules. 47 C.F.R. § 25.137. Specifically, NewCom requests waiver of subsection 25.137(d), which requires earth station operators seeking authority to communicate with a foreign-licensed satellite to submit information concerning the satellite responsive to all applicable service rules. NewCom's underlying application seeks authority to communicate with the Russian licensed Express AM44 ("AM44") spacecraft, which has fractional coverage of the conterminous United States from a limited number of transponders. NewCom asks that the Commission waive the requirement that it submit technical data for antennas, frequencies and transponders that are incapable of serving the U.S. market. As detailed below, the Commission has previously waived this obligation for foreign-licensed satellites seeking authority to serve the U.S. market, and the public interest would be served by granting a similar waiver for NewCom.[1]

Pursuant to Section 1.3 of the Commission's Rules, the Commission may grant a waiver of the application of any of its rules "for good cause shown." 47 C.F.R. § 1.3. The Commission may waive a rule where the specific facts make strict compliance with the rule inconsistent with the public interest.[2] In addition, the Commission may take into account considerations of hardship.[3] Thus, the Commission may waive its rules if special circumstances warrant such a waiver, and the waiver will serve the public interest.

As discussed in greater detail below, the AM44 has coverage of the easternmost conterminous U.S. from ten (10) C-band transponders that represent less than one third (1/3) of the satellite's commercial capacity.[4] NewCom seeks access to these transponders to provide data services to remotely located customers in developing countries that are underserved by existing circular C-band satellites, which are currently at or near full capacity. Exhibit C to the underlying application contains comprehensive technical data regarding the AM44 spacecraft and its C-band transponders that reach the U.S. market. NewCom requests waiver of the obligation to submit technical data regarding the AM44's antennas, frequencies and transponders that do not serve or otherwise affect the U.S. market. The AM44 has been properly coordinated with adjacent spacecraft and its commercial operations in non-C-band frequencies present no interference threat to U.S. fixed satellite service ("FSS") operations. Grant of this waiver would be consistent with Commission policy and precedent. The FCC has previously permitted other foreign-licensed satellites to submit technical specifications only for the antennas, frequencies

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1 Please note that the AM44 is not a satellite positioned in the U.S. domestic geostationary arc subject to the Commission's orthogonal linear polarization and polarization switching obligations specified in § 25.210. The AM44 is an intercontinental system with circular polarized C-band transponders similar to other systems designed for international communications that the Commission routinely approves. *See, e.g.*, FCC File No. SAT-MOD-20030723-00136 (concerning U.S.-licensed circular polarized Intelsat 10-02 spacecraft).

2 *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

3 *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

4 The AM44 has ten 40 MHz C-band transponders, sixteen 54 MHz Ku-band transponders available for commercial use. The satellite is also equipped with a single 1.0 MHz L-band transponder.

and transponders that cover the conterminous U.S. or affected U.S. territories. Denial of this waiver request would create undue hardship for NewCom and its customers in the developing world, who lack an alternative transmission medium capable of supporting lifeline communications.

1.0 - Authorizing NewCom To Access the AM44 Will Help Meet The Urgent Need For Additional Trans-Atlantic C-band Capacity And Alleviate Hardship

No alternative satellite medium exists capable of supporting NewCom's remotely located customers in the Caribbean and Africa. Existing trans-Atlantic satellites equipped with C-band transponders capable of communicating with ground station facilities in the U.S. and remote antennas in the Caribbean and Africa are currently at or near 100% capacity.[5] To the extent that limited capacity is available on these satellites, it is offered at a considerable premium in small quantities incapable of accommodating the robust carriers that are needed to support NewCom's customer applications.[6]

Authorizing NewCom to communicate with the AM44 will immediately help alleviate the trans-Atlantic capacity shortage. The AM44 has 400 MHz of C-band capacity available on a station-kept basis that was designed expressly for the purpose of communicating with developing countries. The satellite is circular polarized, permitting it to communicate with the many legacy users of the similarly configured Intelsat fleet that previously functioned as a lifeline for underserved countries.

NewCom's Miami teleport has become a major supplier of lifeline communications to underserved parts of the world, and NewCom is committed to using the AM44 as a transmission medium for such communications, including the delivery of data connectivity to hospitals and schools that can accommodate a wide variety of telemedicine and educational applications. To the extent that NewCom's customers are unable to access the AM44 because NewCom cannot communicate with the satellite, many remote customers would be forced to power down the only lifeline communications infrastructure available to them.

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[5] *See, e.g.*, Peter B. de Selding, *African Bandwidth Drought Showing Signs of Reversal*, Space News, Sep. 25, 2009 (noting that satellite C-band capacity over Africa has "completely run out" and how remaining slivers of bandwidth are being sold at "once inconceivable prices"); *see also Satellite Capacity Shortages Confirmed In Middle East and North Africa*, SpaceMart, Nov. 3, 2008 (discussing the near 100% utilization rate for the majority of FSS transponders covering the Middle East and North Africa).

[6] *See, e.g.*, Peter B. de Selding, *African Bandwidth Drought Showing Signs of Reversal* (noting that a 100% increase in per MHz pricing for coverage of Africa has been observed in recent years); *see also* Russell Southwood, *Satellite Failure Shows Africa's Underbelly*, Balancing Act, Mar. 2007 (noting that trans-Atlantic African transponder capacity pricing was expected to increase an 50% per MHz after the launch failure of the NewSkies 8 spacecraft).

2.0 - NewCom's Proposed Operations Present No Interference Threat To Other C-band Spectrum Users

NewCom's use of the AM44 has been successfully coordinated with potentially affected fixed satellite and terrestrial users of the relevant C-band frequencies. The results of this coordination demonstrate that NewCom can transmit and receive in the desired standard and extended C-band frequencies without creating interference for other spectrum users. Given that NewCom anticipates communicating with the AM44 exclusively from its flagship teleport facility in Miami using large, highly directional antennas that are fully compliant with all FCC and International Telecommunications Union ("ITU") 2-degree orbital spacing obligations, it is unlikely that future applicants seeking to transmit over the C-band frequencies that NewCom has requested authority to use in the underlying application would be unable to coordinate their own use of the spectrum or inadvertently experience co-channel interference created by NewCom's communications with the AM44. Further, NewCom's proposed operations will be exclusively Single Channel Per Carrier ("SCPC"), which assigns dedicated spectrum to each RF carrier between NewCom's hub earth station facility and remote customer terminals. This architecture prevents the elevated levels of EIRP density that may occur when a network of earth stations uses a contention protocol scheme (*e.g.*, TDMA) that allows multiple remote terminals to transmit earth-to-space over the same frequencies.

The AM44 satellite has been successfully coordinated by the Russian administration with all other relevant commercial spacecraft positioned in proximity to the AM44's orbital position at 11.0 degrees west longitude.

3.0 - The Commission Has Previously Approved Foreign-Licensed Satellite Applications That Provide Data For U.S. Antennas, Frequencies and Transponders Only

Permitting the AM44 to use its C-band transponder payload to communicate with NewCom's Miami teleport without requiring NewCom to submit technical data for antennas, frequencies and transponders that are incapable of reaching the U.S. or creating interference for U.S. licensees is consistent with the Commission's policies and prior treatment of similarly configured foreign-licensed satellites. The Commission has allowed other foreign-licensed satellites with partial coverage of the conterminous U.S. and/or U.S. territories to submit streamlined technical exhibits and Schedule-S filings that avoid burdening the FCC staff with information related to elements of the satellite that were never intended to serve the U.S. market.[7] The AM44 presents no greater interference risk to U.S. licensees relative to other foreign satellites that have been approved to communicate with U.S. based earth stations. In fact, given that NewCom will only access the AM44 from its flagship teleport facility in Miami, the AM44 has very limited coverage of the U.S., and the AM44 is not immediately adjacent to a

[7] *See, e.g.*, FCC File No. SAT-MOD-20060821-00090 (the Solidaridad-2 satellite has been added to the FCC Permitted List; the satellite is enabled with an L-band transponder payload but has not provided information concerning these transponders to the Commission); *see also* FCC File No. SAT-PPL-20051101-00208 (the SuperBird-B2 has similarly been added to the FCC Permitted List; the satellite is enabled with a Ka-band transponder payload but has not provided information concerning these transponders to the Commission).

U.S.-licensed satellite, the satellite is actually far less likely to create harmful interference for other U.S. spectrum users relative to other satellites that have been added to the FCC's Permitted List that occupy orbital positions in the domestic geostationary arc.[8]

The potential for the AM44 to create interference for other U.S. licensed spectrum users is also greatly diminished because NewCom is ***not*** petitioning the FCC to the add the satellite to its Permitted List. This prevents earth station licensees with ALSAT authority from casually accessing the satellite, and ensures that the Commission must individually evaluate and approve additional communications to and from the satellite. Moreover, in the unlikely event that an earth station communicating with the AM44 created harmful interference for a higher priority spectrum user in the future, the Commission will be able to quickly isolate the origin of the interference.

4.0 - Conclusion

In light of the good cause shown and unnecessary hardship that would result if NewCom were unable to utilize the AM44's C-band transponder payload, NewCom respectfully requests that the Commission grant its waiver request and approve the underlying application.

[8] For example, Solidaridad-2 is positioned at 114.9 degrees west longitude operating from an inclined orbit with multiple U.S. licensed satellites positioned +/- six (6) degrees.