

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Expanding Flexible Use of the 3.7 to 4.2 GHz  
Band

GN Docket No. 18-122

International Bureau Releases Preliminary List  
of Incumbent Earth Stations in the 3.7- 4.2  
GHz Band in the Contiguous United States

IB Docket No. 20-205

3.7-4.2 GHz Incumbent Earth Station Waivers

GN Docket No. 20-305

**Request for Waiver of Newcom International, Inc.**

Pursuant to the recent Public Notice<sup>1</sup> issued by the International Bureau and Wireless Telecommunications Bureau (the “Bureaus”), Newcom International, Inc. (“Newcom”), respectfully requests a waiver of Sections 25.138(b) and 27.1411(b)(3) of the Commission’s rules<sup>2</sup> to register one C-band Simulsat-5B receive-only earth station that it operates at its existing teleport in Miami, Florida. ***This request is consistent with the limits proposed in the NAB/NCTA Letter<sup>3</sup> and discussed in the Public Notice because it (1) involves only antennas located within 150 meters of an incumbent earth station; (2) requests a waiver for no more than 25 additional antennas per registrant at any given site; and (3) seeks interference protection only and disavows any claim to reimbursement for the antennas for which the waiver is sought.***

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<sup>1</sup> See Public Notice, “International Bureau and Wireless Telecommunications Bureau Announce Guidance for 3.7-4.2 Incumbent Earth Station Waiver Requests,” GN Docket Nos. 18-122 and 20-305, IB Docket No. 20- 205, DA 20-1094 (rel. Sept. 16, 2020) (the “Public Notice”).

<sup>2</sup> 47 C.F.R. §§ 25.138(b), 27.1411(b)(3).

<sup>3</sup> Letter from Patrick McFadden, National Association of Broadcasters, and Jared Sher, Danielle Pineres, and Jacqueline Clary, NCTA – The Internet and Television Association to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, IB Docket No. 20-205 (filed Sept. 8, 2020).

### Discussion

The Commission may waive its rules for “good cause shown.”<sup>4</sup> A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>5</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>6</sup> In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>7</sup> This request amply meets that standard.

Newcom seeks this waiver of the Commission’s rules in order to register one Simulsat-5B earth station that it operates at an existing teleport in Miami, Florida. Newcom also operates other C-band earth stations at the site under Call Signs E040267 and E050018. The Simulsat-5B antenna has operated at the site since 2002 and performs the vital function of receiving multichannel programming for Speedcast’s multichannel video programming distributor (“MVPD”) customers operating throughout the state of Florida.

Like the earth station operators discussed in the NAB/NCTA letter,<sup>8</sup> Newcom initially believed that it was unnecessary to register the Simulsat-5B receive-only earth station because it

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<sup>4</sup> 47 C.F.R. §1.3.

<sup>5</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also Public Notice, “Temporary Freeze on Applications for New or Modified Fixed Satellite Service Earth Stations and Fixed Microwave Stations in the 3.7-4.2 GHz Band, 90-Day Window to File Applications for Earth Stations Currently Operating in the 3.7-4.2 GHz Band,” GN Docket Nos. 17-183, 18-122, DA 18-398, 33 FCC Rcd 3841 (Int. Bur. 2018), at 4 (waiver is appropriate “where particular facts make strict compliance with a rule inconsistent with the public interest, special circumstances warrant a deviation from the general rule, and the waiver does not undermine the validity of the general rule”).

<sup>6</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

<sup>7</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>8</sup> NAB/NCTA Letter at 3.

was already operating other C-band earth stations at the site. Through this waiver, Newcom now seeks to correct the Commission's database and ensure that this earth station, like the others licensed at the Miami teleport, is protected from future interference in the 4.0-4.2 GHz band.

With respect to the specific information that the Bureaus requested in the Public Notice, Newcom states as follows:

- **Whether the antenna would have been eligible for incumbent protection when the filing window closed on November 7, 2018:** Yes, antenna is a Simulsat-5B that was assembled and has been operating at its current location since 2002.
- **Whether the request involves a site or facility with one or more incumbent earth stations in the 3.7-4.2 GHz band (providing the specific Callsign, SiteID, and AntID of the incumbent earth station(s)):** Yes, the Simulsat-5B antenna is located at Newcom's Miami teleport, where Newcom operates multiple C-band incumbent earth stations under two call signs, as follows:

Call Sign: E040267

- Site ID: 1
- Antenna IDs: 7.3 (two units); 9
- Site Address: 15590 NW 15th Ave. Miami, FL 33169

Call Sign: E050018

- Site ID: 1
- Antenna IDs: 4.5C; ES 2C
- Site Address: 15590 NW 15th Ave. Miami, FL 33169

- **How far away the additional antennas are from an incumbent earth station (providing the specific Callsign, SiteID, AntID, and GPS coordinates of each antenna):** The licensed coordinates of the Miami teleport under Call Signs E040267 and E050018, are 25° 54' 59.3" N, 80° 13' 29.2" W. The Simulsat-5B is

approximately 40 feet north of one of the 7.3-meter C-band incumbent earth stations, Call Sign E040267, Site ID 1, Antenna ID 7.3. The approximate coordinates of each antenna, determined using Google Maps, are:

- Simulsat-5B: 25° 55' 01.2" N, 80° 13' 32.3" W
  - Call Sign E040267, Site ID 1, Antenna ID 7.3: 25° 55' 00.8" N, 80° 13' 32.2" W
- **How many additional antennas per registrant at any given site:** One, a Simulsat-5B.
  - **Whether grant of the waiver would require reimbursement of additional relocation expenses to the applicant:** No.

Registration of this antenna would serve the public interest for the reasons discussed by the Bureaus in the Public Notice. Newcom acknowledges the importance of the Commission's goal to ensure that the C-band transition unfolds without delay according to the schedule set forth in the Commission's *C-band Order*,<sup>9</sup> but this waiver will not hinder that goal.

In this case, Newcom is not seeking to add the Simulsat-5B to any satellite operator transition plan. Indeed, Call Signs E040267 and E050018 are the subject of a lump-sum election filed by Newcom's affiliate, Speedcast Communications, Inc.<sup>10</sup> Therefore, it is impossible that this waiver request could impact the C-band transition timeline. Moreover, the Simulsat-5B is located at an existing teleport, where Newcom operates multiple existing C-band incumbent earth stations. Therefore, any potential bidders in the upcoming of 3.7-4.0 GHz spectrum are already well aware that C-band fixed-satellite service operations will continue at the site.

Moreover, in the *C-band Order*, the Commission also identified the continuity of

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<sup>9</sup> *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, FCC 20-22, 35 FCC Rcd 2343 (2020), at ¶ 155, *appeals pending*.

<sup>10</sup> Letter from Carlos M. Nalda, for Speedcast Communications, Inc., IB Docket No. 20-205 (filed Sept. 14, 2020), at Attachment A.

uninterrupted fixed-satellite service in the C-band to be “as an essential element of the transition.”<sup>11</sup> Without interference protection, Newcom will be unable to ensure the reliable and uninterrupted ability of the Simulsat-5B to receive video programming distributed to its customers. Thus, a waiver to permit Newcom to register this Simulsat-5B earth station will serve that companion public interest goal.

### **Conclusion**

For the reasons set forth above, and consistent with the public interest and the criteria set forth in the Commission’s Public Notice, Newcom asks the Bureaus to grant this Request for Waiver, and permit registration of Newcom’s existing Simulsat-5B earth station at its Miami teleport.

Respectfully submitted,



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*for Newcom International, Inc.*

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<sup>11</sup> *C-band Order* at ¶ 58.