



Federal Communications Commission
Washington, D.C. 20554

DA 07-1654

April 6, 2007

Donald L. Herman, Jr.
Bennet & Bennet, PLLC
10 G Street, NE
Suite 710
Washington, DC 20002

Re: Call Sign E960068
File No. SES-MOD-20070319-00371

Dear Mr. Herman:

On March 19, 2007, TowerStream Corp. (TowerStream) filed the above-captioned application to modify its license for earth station E960068 located in Medley, Florida. In this application, TowerStream seeks authority to provide terrestrial broadband service in the 3650-3700 MHz band under its satellite license. Pursuant to Section 25.112(a)(2) of the Commission's rules, 47 C.F.R. §25.112(a)(2), we dismiss the application as improperly filed.

TowerStream's earth station license authorizes it to provide fixed-satellite service by accessing Intelsat and Solidaridad satellites. It also authorizes the earth station to transmit in the 5850-6425 MHz band (Earth-to-space) and receive in the 3625-4200 MHz band (space-to-Earth).¹ In its modification application, TowerStream seeks authority to use the earth station to transmit to terrestrial users in the 3650-3700 MHz band. An earth station, by definition in the Commission's rules, is a station located on the Earth's surface that communicates with one or more space stations or other objects in space, 47 C.F.R. §25.201. Thus, TowerStream cannot transmit a terrestrial service under the scope of an earth station license. Rather, if it wishes to use a communications facility to provide terrestrial service, TowerStream must file an application for a terrestrial license through the Commission's Wireless Telecommunications Bureau's Universal Licensing System (ULS). Accordingly, we dismiss TowerStream's earth station modification application as defective pursuant to Section 25.112(a)(2) of the Commission's rules, 47 C.F.R. §25.112(a)(2).

In addition, Section 25.161(c) of the Commission's rules, 47 C.F.R. §25.161(c), specifies that an earth station license shall be automatically terminated if the licensee removes or modifies the facility such that the station is not operational for more than 90 days, unless specific authority is requested. In light of TowerStream's plans to provide terrestrial, rather than satellite services, TowerStream must notify the Commission the earth station's operating status in the 3625-3650, 3650-3700, 3700-4200, 5850-5925, and 5925-6425 MHz bands. TowerStream should provide this information within 30 calendar days of the date of this letter. If it fails to do so, we will

¹ See File No. SES-RWL-20060621-01042.

consider taking appropriate action with respect to the earth station, including terminating the license.

Accordingly, pursuant to Section 25.112(a)(2) of the Commission's rules, 47 C.F.R. §25.112(a)(2), and Section 0.261 of the Commission's rules on delegations of authority, 47 C.F.R. §0.261, we dismiss the above-captioned application.

Sincerely,

A handwritten signature in cursive script that reads "Scott A. Kotler".

Scott A. Kotler
Chief, Systems Analysis Branch
Satellite Division
International Bureau