



Federal Communications Commission
Washington, D.C. 20554

DA 12-1292

August 9, 2012

SkyWave Broadband Internet, LLC
P.O. Box 404
Fate, TX 75132
ATTN Scott Hammond

Donald L. Herman, Jr., Esq.
Counsel for Towerstream Corp.
Herman & Whiteaker, LLC
P.O. Box 341684
Bethesda, MD 20827

RE: SkyWave Broadband Internet, LLC, Call Sign WQNJ948 (NN), applications to register base/fixed stations:
Elmo: ULS 0004693432, RL in Elmo, TX, filed 4/18/11, Accepted, 4/20/11
Quinlan: ULS 0004693445, RL in Quinlan, TX, filed 4/18/11, Accepted, 4/20/11

Towerstream Corp., former licensee of International FSS earth station KA306, DeSoto, TX
Petition for Reconsideration of the Acceptance of the *Elmo* and *Quinlan* registrations

Dear Messrs. Hammond and Herman:

Summary. This is in regard to the above referenced registration applications filed by SkyWave Broadband Internet, LLC (SkyWave), and Towerstream Corp.'s (Towerstream's) Petition for Reconsideration, or In the Alternative, Request for Informal Commission Action (Petition) of our acceptance of the *Quinlan* and *Elmo* registrations.¹ For the reasons discussed below, Towerstream's Petition is dismissed as moot and its Request for Informal Action is denied.

Background. SkyWave is a nonexclusive, nationwide licensee in the 3650-3700 MHz band (3650 MHz band) under Call Sign WQNJ948.² Towerstream is a provider of wireless, high-speed broadband services in numerous metropolitan areas in the United States. Towerstream was also the licensee of a grandfathered Fixed Satellite Service (FSS) earth station, Call Sign KA306, in Desoto, Texas. Pursuant to Section 90.1331 of the Commission's rules, 3650 MHz band licensees must obtain the consent of the licensee of any grandfathered FSS earth station to operate a 3650 MHz band base/fixed station within 150 km of a grandfathered FSS earth station.³

¹ Petition for Reconsideration, or In the Alternative, Request for Informal Commission Action filed by Towerstream, Corp., on July 28, 2011 (Recon Petition).

² See ULS File No. 0004634098, granted Mar. 1, 2011.

³ See 47 C.F.R. § 90.1331.

On April 18, 2011, SkyWave filed registration applications for 3650 MHz band stations in Elmo and Quinlan, Texas.⁴ On April 20, 2011, the Wireless Telecommunications Bureau's Broadband Division accepted these registrations and added the locations under Call Sign WQNJ948.⁵ Both stations are located within 150 km of the coordinates of grandfathered FSS earth station Call Sign KA306, DeSoto, Texas. On July 28, 2011, Towerstream filed the Recon Petition against our acceptance of the *Quinlan* and *Elmo* registrations. Towerstream alleges standing as a party-in-interest as the licensee of co-channel Fixed FSS earth station Call Sign KA306.⁶ SkyWave did not oppose Towerstream's Recon Petition.

Discussion. On March 31, 2012, Towerstream's license for Call Sign KA306 expired. Towerstream did not seek renewal of that license. Because Towerstream is no longer licensed for Call Sign KA306, SkyWave no longer requires Towerstream's consent to operate base/fixed 3650 MHz band stations within 150 km of former earth station Call Sign KA306. Accordingly, we conclude that Towerstream's above-referenced petition is moot. Furthermore, inasmuch as the grandfathered license for earth station KA306, Desoto, Texas, has expired, we note that terrestrial licensees are no longer required under Section 90.1331 of the Commission's Rules to have an agreement with Towerstream to operate within 150 km of the site of former earth station KA306.

Ordering Clause. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Sections 1.106 and 1.41 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.41, that the Petition for Reconsideration or in the Alternative, Request for Informal Commission action, filed by Towerstream Corp., on July 28, 2011, against the Broadband Division's Acceptance of SkyWave Broadband Internet, LLC, applications to register 3650 MHz stations in Quinlan and Elmo, Texas, under nationwide license Call Sign WQNJ948 (File Nos. 0004693432 and 0004693445, respectively), IS DISMISSED AS MOOT and IS DENIED as a request for informal Commission action.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Blaise A. Scinto
Chief, Broadband Division,
Wireless Telecommunication Bureau

⁴ See *Elmo* and *Quinlan* applications.

⁵ In ULS, the Acceptance of 3650-3700 MHz band registrations under the "licensed-lite" regime that governs this service is shown with the status "Q-Accepted," which is distinct from the status of applications in other licensed services that are "accepted for filing" as described in, e.g., 47 C.F.R. § 1.933.

⁶ See, e.g., Recon Petition at 2 (Statement of Interest).