

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	File No.: EB-FIELDSCR-12-00004486
	)	File No.: EB-FIELDNER-12-00004796
Towerstream Corporation	)	NAL/Acct. No.: 201332600006
	)	FRN: 0015467749
Middletown, Rhode Island	)	
	)	
	)	

**ORDER**

**Adopted: July 28, 2016**

**Released: July 29, 2016**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Towerstream Corporation (Towerstream) violated the Communications Act and the Commission's rules, by operating radio transmitters, including Unlicensed National Information Infrastructure (U-NII) transmission systems, without a license and causing harmful interference to Federal Aviation Administration's (FAA) Terminal Doppler Weather Radar (TDWR) systems. The FAA uses TDWR to detect wind shear and other weather conditions near airports.

2. Towerstream has fully cooperated with the Bureau's investigation. In its response to the Commission's Notice of Apparent Liability for Forfeiture (NAL),<sup>1</sup> Towerstream provided the Bureau with detailed financial information establishing its inability to pay the proposed forfeiture.<sup>2</sup> To settle this matter, Towerstream admits that it violated the laws and regulations that prohibit U-NII operators from causing interference to TDWR operators, will comply with these rules in the future, and will pay a civil penalty of \$40,000 for which it has a demonstrated ability to pay. The remainder of the proposed civil penalty will be suspended.<sup>3</sup> However, Towerstream will pay the remainder of the original proposed civil penalty if the Commission finds during the next three years that it failed to comply with the U-NII rules, or that it misled the Commission regarding its current financial status.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, including Towerstream's showing of substantial financial hardship, we find that the public interest would be served by adopting the attached Consent Decree and resolving NAL against Towerstream regarding its compliance with Sections 301 and 333 of the Communications Act, and Sections 15.1(b), 15.5(b) or (c), or 15.407 of the Commission's rules.<sup>4</sup>

<sup>1</sup> *Towerstream Corporation*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 11604 (2013).

<sup>2</sup> E-mail from Donald H. Herman, Counsel for Towerstream, to Steven Spaeth, Field Counsel, Enforcement Bureau, Federal Communications Commission (dated June 8, 2016).

<sup>3</sup> NAL, 28 FCC Rcd 11604.

<sup>4</sup> 47 U.S.C. § 301, 333; 47 C.F.R. §§ 15.1(b), 15.5(b), (c), 15.407.

4. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Towerstream's basic qualifications to hold or obtain any Commission license or authorization.<sup>5</sup>

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Communications Act, as amended<sup>6</sup> and the authority delegated by Sections 0.111 and 0.311 of the Rules,<sup>7</sup> the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

6. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**, and the NAL **IS RESOLVED** in accordance with the terms of the attached Consent Decree.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Towerstream Corporation at 55 Hammarlund Way Tech II Plaza, Middletown, RI 02842 and to its counsel, Donald L. Herman, Jr., at Law Offices of Herman & Whiteacre, 6720B Rockledge Drive, Suite 150, Bethesda, MD 20817.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc  
Chief  
Enforcement Bureau

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<sup>5</sup> See 47 C.F.R. § 1.93(b).

<sup>6</sup> 47 U.S.C. § 154(i), 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311.

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Middletown, Rhode Island	)	NAL/Acct. No.: 201332600006
	)	FRN: 0015467749
	)	
	)	

**CONSENT DECREE**

1. The Enforcement Bureau of the Federal Communications Commission and Towerstream Corporation (Towerstream), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Towerstream violated Sections 301 and 333 of the Communications Act of 1934, as amended,<sup>1</sup> by operating radio transmitters, including Unlicensed National Information Infrastructure (U-NII) transmission systems, without a license and causing harmful interference to Federal Aviation Administration's (FAA) Terminal Doppler Weather Radar (TDWR) systems, which the FAA uses to detect wind shear and other weather conditions near airports.

**I. DEFINITIONS**

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.<sup>2</sup>
  - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
  - (d) "Part 15 Rules" means Part 15 of the Rules; and other provisions of the Act, the Rules, and Commission orders related to the operation of unlicensed devices, including U-NII transmission systems.<sup>3</sup>
  - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
  - (f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Towerstream is subject by virtue of its business activities, including but not limited to the Part 15 Rules.
  - (g) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 11.

<sup>1</sup> 47 U.S.C. §§ 301, 333.

<sup>2</sup> 47 U.S.C. § 151 *et seq.*

<sup>3</sup> 47 C.F.R. §§ 15.1 *et seq.*

- (h) “Covered Employees” means all employees and agents of Towerstream who perform, or supervise, oversee, or manage the performance of, duties that relate to Towerstream’s responsibilities under the Communications Laws, including the Part 15 Rules.
- (i) “Effective Date” means the date by which both the Bureau and Towerstream have signed the Consent Decree.
- (j) “Investigation” means the investigation commenced by the Bureau in File Nos. EB-FIELDSCR-12-00004486 and EB-FIELDNER-12-00004796 regarding whether Towerstream violated Sections 301 and 333 of the Act, which culminated in the issuance of the NAL.
- (k) “Notices of Apparent Liability for Forfeiture” or “NAL” means *Towerstream Corporation*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 11604 (2013).
- (l) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Towerstream to implement the Compliance Plan.
- (m) “Parties” means Towerstream and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (o) “Towerstream” means Towerstream Corporation and its affiliates, subsidiaries, and predecessors-in-interest.

## II. BACKGROUND

3. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license granted under the provisions of the Act.<sup>4</sup> Part 15 of the Rules, however, allows devices employing relatively low-level radiofrequency (RF) signals to operate without individual licenses, as long as their operation causes no harmful interference to licensed services and the devices do not generate emissions or field strength levels greater than a specified limit.<sup>5</sup> In 2003, the Commission allocated additional spectrum for unlicensed use in the 5 GHz band and established the U-NII service to facilitate the deployment of competitive wireless broadband services.<sup>6</sup> As Part 15 devices, U-NII operators must cease operations upon notification of harmful interference and not resume

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<sup>4</sup> 47 U.S.C. § 301.

<sup>5</sup> *Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License*, First Report and Order, 4 FCC Rcd 3493 (1989). See also 47 C.F.R. §15.5(b), (c). In the event a Part 15 device causes harmful interference, the operator must cease operations upon notification by a Commission representative, and such operations shall not resume until the interference can be resolved. 47 C.F.R. § 15.5(c); NAL, 28 FCC Rcd at 11604–11605, para. 2.

<sup>6</sup> *Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, Report and Order, 18 FCC Rcd 24484 (2003). Since then, U-NII devices have played a significant role in meeting the demand for wireless broadband services, particularly by providing wireless local area networking and broadband access. *Revision of Part 15 of the Commission’s Rules to Permit Unlicensed National Information Infrastructure Devices in the 5 GHz Band*, First Report and Order, 29 FCC Rcd 4127, 4127, para. 1 (2014). U-NII providers are authorized to operate radio transmitters in the 5.15-5.35 GHz, 5.47-5.725 GHz, and 5.725-5.825 GHz bands on an unlicensed basis, but must comply with technical rules specific to U-NII devices to prevent interference. See 47 C.F.R. § 15.407. NAL, 28 FCC Rcd at 11605, para. 3.

operations until the interference can be resolved.<sup>7</sup> Any operation of a U-NII device that is inconsistent with the Part 15 Rules requires a license pursuant to Section 301 of the Act.<sup>8</sup> In addition, such unlicensed operations could violate Section 333 of the Act, which states that “[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this chapter or operated by the United States Government.”<sup>9</sup> TDWR systems operate in the 5.6-5.65 GHz band at 45 major airports in the contiguous United States and Puerto Rico and assist air traffic controllers in detecting low-altitude wind shear that can pose a risk to aircraft,<sup>10</sup> and the Commission requires that U-NII devices operating in the 5.25-5.35 GHz and 5.47-5.725 GHz bands have Dynamic Frequency Selection (DFS) radar detection functionality, which allows them to detect the presence of radar systems and avoid co-channel operations with radar systems.<sup>11</sup>

4. Towerstream provides advanced, high-speed Internet access to businesses in multiple markets, including New York City, Boston, Los Angeles, Chicago, Miami, Seattle, Dallas/Fort Worth, Philadelphia, Nashville, Las Vegas/Reno and the greater Providence area where the Company is based.<sup>12</sup> To provide these services the “company owns, operates, and leases Wi-Fi rooftop tower locations to cellular phone operators, tower, Internet, and cable companies and hosts a variety of customers on its network.”<sup>13</sup> In 2009, the Enforcement Bureau began receiving complaints from FAA TDWR systems about interference caused by U-NII devices. Several of those early investigations of harmful interference to TDWR systems involved Towerstream’s U-NII devices. In 2012, Bureau staff investigated subsequent TDWR interference complaints and determined that Towerstream’s failure to avoid frequencies adjacent to TDWR frequencies resulted in interference to the JFK, Miami, and Fort Lauderdale TDWRs.<sup>14</sup>

5. On August 6, 2013, the Commission issued the NAL and proposed a \$202,000 penalty against Towerstream for apparently violating Sections 301 and 333 of the Act for operating radio transmitters without a license and causing harmful interference.<sup>15</sup> Towerstream filed a response to the NAL<sup>16</sup> in which

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<sup>7</sup> 47 C.F.R. § 15.5(c). *See also* 47 C.F.R. § 15.3(m) (defining harmful interference as “any emission radiation, or induction that endangers the functioning of radio navigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with this chapter”).

<sup>8</sup> *See* 47 C.F.R. § 15.1(b); 47 U.S.C. § 301.

<sup>9</sup> 47 U.S.C. § 333. According to the legislative history for Section 333, willful and malicious interference includes such activities as “intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking devices to interfere with the communications or radio signals of other stations.” H.R. Rep. No. 101-316, at 8 (1989).

<sup>10</sup> MIT Lincoln Laboratories, *available at* <http://www.ll.mit.edu/mission/aviation/faawxsystems/tdwr.html> (last visited Jan. 26, 2011).

<sup>11</sup> *See* 47 C.F.R. § 15.407(h)(2). *See also* 47 C.F.R. § 15.403(s) (defining U-NII devices as “[i]ntentional radiators operating in the frequency bands 5.15-5.35 GHz and 5.470-5.825 GHz that use wideband digital modulation techniques and provide a wide array of high data rate mobile and fixed communications for individuals, businesses, and institutions.”). *See also* Memorandum from Julius Knapp, Chief, Office of Engineering and Technology, FCC, and P. Michele Ellison, Chief, Enforcement Bureau, FCC, to Manufacturers and Operators of Unlicensed 5 GHz Outdoor Network Equipment Re: Elimination of Interference to Terminal Doppler Weather Radar (TDWR) (dated July 27, 2010), *available at* <http://transition.fcc.gov/eb/uniitdwr.pdf> (last visited April 27, 2013).

<sup>12</sup> NAL, 28 FCC Rcd at 11606, para. 6.

<sup>13</sup> “Towerstream Reports Fourth Quarter and Year End 2012 Results,” Press Release (March 18, 2013). *See* NAL, 28 FCC Rcd at 11606, para. 6.

<sup>14</sup> NAL, 28 FCC Rcd at 11608, para. 13.

<sup>15</sup> NAL, 28 FCC Rcd at 11608–11610, paras. 14–19. The NAL includes a more complete recitation of the facts and history of this case and is incorporated herein by reference.

Towerstream argued that it consistently operated in accordance with the requirements of Part 15 of the FCC rules and was not the source of interference to FAA TDWR systems.

6. Following release of the NAL, the Bureau and Towerstream conducted settlement negotiations. During those negotiations, Towerstream admitted for purposes of this investigation that operation of its U-NII transmission systems violated the Part 15 rules and Sections 301 and 333 of the Communications Act. Towerstream also presented financial information establishing its inability to pay the proposed forfeiture amount. Among the materials submitted to the Bureau by Towerstream were its federal income tax returns for 2012-2014, as well as its 2015 10-K form and first quarter 2016 10-Q form submitted to the Securities and Exchange Commission (SEC). In addition, the FAA has not reported any further harmful interference by Towerstream U-NII transmission systems to the TDWR installations at issue in this proceeding. After further discussions, the Parties agree to the following terms and conditions of settlement and hereby enter into this Consent Decree as provided below.

### III. TERMS OF AGREEMENT

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

8. **Jurisdiction.** Towerstream agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Towerstream agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Towerstream concerning the matters that were the subject of the Investigation.

11. **Admission of Liability.** Towerstream admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 herein, that the operation of its U-NII transmission systems violated the Part 15 Rules and Sections 301 and 333 of the Act, as detailed in paragraph 4 herein.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Towerstream shall designate an officer of the company to serve as a Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Towerstream complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Part 15 Rules prior to assuming his/her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, Towerstream agrees that it shall within sixty (60) calendar days after the Effective Date develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Part 15 Rules, and Sections 301 and 333 of the Act, Towerstream shall implement, at a minimum, the following procedures:

(Continued from previous page) \_\_\_\_\_

<sup>16</sup> Response of Towerstream Corporation (Nov. 1, 2013) (on file in EB-FIELDSCR-12-00004486 and FIELDNER-12-00004796).

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, Towerstream shall establish Operating Procedures that all Covered Employees must follow to ensure Towerstream's compliance with the Part 15 Rules, and Sections 301 and 333 of the Act. The Compliance Officer shall ensure that Towerstream will comply with the Commission's requirements concerning the operation of unlicensed devices, including U-NII transmission systems.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Part 15 Rules, and Sections 301 and 333 of the Act, and set forth the Operating Procedures that Covered Employees shall follow to ensure Towerstream's compliance with the Part 15 Rules, and Sections 301 and 333 of the Act. Towerstream shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Towerstream shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Towerstream shall establish and implement a Compliance Training Program on compliance with the Part 15 Rules, and Sections 301 and 333 of the Act. As part of the Compliance Training Program, Covered Employees shall be advised of Towerstream's obligation to report any noncompliance with the Part 15 Rules, and Sections 301 and 333 of the Act, under paragraph 12 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Towerstream shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

14. **Reporting Noncompliance.** Towerstream shall report any noncompliance with the Part 15 Rules, and Sections 301 and 333 of the Act, and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Towerstream has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Towerstream has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Federal Communications Commission, Enforcement Bureau, Office of the Field Director, 445 12<sup>th</sup> Street, S.W., Washington, DC, 20554, with a copy submitted electronically to SCR-Response@fcc.gov.

15. **Compliance Reports.** Towerstream shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Towerstream's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Part 15 Rules, and Sections 301 and 333 of the Act. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Towerstream, stating that the Compliance Officer has personal knowledge that Towerstream: (i) has established and implemented the Compliance Plan; and (ii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 12 of this Consent Decree.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.<sup>17</sup>
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Towerstream, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Towerstream has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Towerstream has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to Federal Communications Commission, Enforcement Bureau, Office of the Field Director, 445 12<sup>th</sup> Street, S.W., Washington, DC, 20554, with a copy submitted electronically to SCR-Response@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 10 through 13 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

17. **Civil Penalty.** Subject to the provisions of paragraph 18 below, Towerstream will pay a civil penalty to the United States Treasury in the amount of forty thousand dollars (\$40,000) within thirty (30) calendar days of the Effective Date (Civil Penalty). Towerstream acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in Section 3701(b)(1) of the Debt Collection Improvement Act of 1996 (DCIA).<sup>18</sup> In the event Towerstream shall assign or transfer its wireless system to a party not currently affiliated with Towerstream, the Commission shall not enforce the Civil Penalty against such assignee or transferee.

18. **Suspended Penalty.** Towerstream further agrees that, upon an Event of Default (as described below in paragraph 20), it will pay a further civil penalty to the United States Treasury in the amount of one hundred, sixty-two thousand dollars (\$162,000) (Additional Civil Penalty), shall also become a "Claim" or "Debt" as defined in Section 3701(b)(1) of the DCIA,<sup>19</sup> and that all procedures for collection of the Additional Civil Penalty may, at the Commission's discretion, be initiated against Towerstream.

19. **Payment.** Towerstream shall send electronic notification of payment to SCR-Response@fcc.gov on the date payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>20</sup> When completing the FCC Form 159, enter the NAL/Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-

<sup>17</sup> 47 C.F.R. § 1.16.

<sup>18</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996) (DCIA).

<sup>19</sup> *Id.*

<sup>20</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.



9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

20. **Event of Default.** Towerstream agrees that an Event of Default shall occur upon (1) the failure to pay the Civil Penalty to the United States Treasury on or before the date specified in paragraph 17; or (2) the release of an order within three years of the Effective Date by the Commission, such as a Notice of Apparent Liability for Forfeiture that is uncontested or a Forfeiture Order that is not appealed, finding that Towerstream or any other entity owned, operated, or controlled by, or under common control with Towerstream caused harmful interference to an FAA TDWR system by violating Sections 301 or 333 of the Act or Sections 15.1(b), 15.5(b) or (c), or 15.407 of the Rules; or (3) the release of an order by the Commission finding that Towerstream materially misstated its financial condition in the documents it produced to support its claim of inability to pay.

21. **Interest, Charges for Collection, and Acceleration of Maturity Date.** Upon an Event of Default, all procedures for collection permitted by the DCIA and other provisions of law<sup>21</sup> may, at the Commission's discretion, be initiated and the following shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Towerstream: (a) any unpaid Civil Penalties referenced in paragraph 17, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (b) the Additional Civil Penalty referenced in paragraph 18, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (c) any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717; and (d) any administrative charge(s), including the costs of collection, litigation, and attorneys' fees.

22. **Waivers.** As of the Effective Date, Towerstream waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues the Adopting Order as defined in this Consent Decree. Towerstream shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Towerstream nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Towerstream shall waive any statutory right to a trial *de novo*. Towerstream hereby agrees to waive any claims it may have under the Equal Access to Justice Act<sup>22</sup> relating to the matters addressed in this Consent Decree.

<sup>21</sup> See 31 C.F.R. Part 900, *et seq.*

<sup>22</sup> See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

23. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

24. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

25. **Subsequent Rule or Order.** The Parties agree that, if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Towerstream does not expressly consent), that provision will be superseded by such Rule or Order.

26. **Successors and Assigns.** Unless stated otherwise, Towerstream agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees in which Towerstream has an ownership interest, holds any official title, or has any employment or contractual relationship for the provision of services.

27. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

28. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

29. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

30. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

31. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

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Travis LeBlanc  
Chief  
Enforcement Bureau

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Date

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Arthur G. Giftakis  
COO  
Towerstream Corporation

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Date