

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

In the Matter of)	
)	
Revision of Parts 2 and 15 of the Commission’s Rules to Permit Unlicensed National Information Infrastructure Devices in the 5 GHz Band)	ET Docket No. 03-122
)	
Notice of Proposed Rulemaking)	

To: The Commission

COMMENTS OF TOWERSTREAM CORP.

TowerStream Corp. (“TowerStream”), by its attorneys, hereby submits comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking* (“*Notice*”) released on June 4, 2003 in the above-captioned proceeding, which seeks comment on the allocation of an additional 255 megahertz of spectrum in the Unlicensed National Information Infrastructure (U-NII) spectrum band for unlicensed use. TowerStream supports the proposals contained in the *Notice* and applauds the Commission for moving quickly in getting additional spectrum into the hands of operators who are prepared to immediately commence much-needed competitive broadband wireless services utilizing the U-NII band.

I. STATEMENT OF INTEREST

TowerStream is a provider of wireless broadband services in major metropolitan areas throughout the northeastern United States. TowerStream utilizes unlicensed

spectrum in the U-NII band to provide point-to-point and point-to-multipoint data services at speeds up to 155 megabits per second to businesses, schools, public service entities and residences throughout its service areas. TowerStream's successful deployment of broadband services illustrates the importance of unlicensed spectrum in the marketplace and the ability of new carriers to bring competitive high-speed Internet services to the marketplace.

II. COMMENTS

TowerStream supports the Commission's proposed allocation of an additional 255 megahertz of spectrum in the U-NIII band. TowerStream also supports the proposed requirement that operators utilizing the proposed 5.470-5.725 GHz and 5.250-5.350 GHz subsets of the U-NII band employ dynamic frequency selection (DFS) to help eliminate harmful interference in the band. The allocation of an additional 255 megahertz of spectrum in the U-NII band and the implementation of additional interference controls will ensure that unlicensed point-to-point and point-to-multipoint broadband providers such as TowerStream can continue to provide much-needed competitive broadband services in major metropolitan areas. These proposals, if adopted, will further the FCC's Spectrum Policy Task Force's stated goals of creating greater spectrum efficiency and will allow market forces continue to drive development of the U-NII band.

As the Commission is well-aware, the ability of independent, start-up telecommunications carriers to access licensed spectrum, either through purchase or lease of existing licenses, continues to be severely limited in the current marketplace. Such difficulty in accessing licensed spectrum has fueled the success of applications in

unlicensed bands, and as a result, has driven a flood of would-be operators to share already-scarce frequencies available at 5 GHz.¹ The allocation of additional spectrum and the adoption of new interference controls will help ensure that the U-NII band remains viable for the operation of point-to-point and point-to-multipoint unlicensed devices for years to come by providing greater bandwidth, greater interference protection and greater opportunity to provide new services, including voice, video and data service to consumers and businesses. Should the Commission decline to allocate additional spectrum or adopt new interference controls, TowerStream anticipates that its broadband services will be gradually diminished by interference caused from new users to the band. Accordingly, TowerStream supports the proposals in the *Notice* and urges the Commission to continue to move quickly in enacting them.

While TowerStream generally supports the Commission's proposed modifications to Part 15 of its Rules for operation of unlicensed devices in the proposed 5.470-5.725 GHz and 5.250-5.350 GHz subsets of the U-NII band, TowerStream believes that there must be an increase in the band's current power limitations. For point-to-point and point-to-multipoint operators to continue to be able to manage the costs of building out their networks and to continue to be able provide sustainable competition to wireline and licensed wireless broadband providers, power limits of at least 1 watt, and preferably power limits up to 4 watts are necessary. Another option to facilitate the deployment of broadband services at power levels greater than 1 watt would be for the Commission to designate specific portions of the U-NII band exclusively for outdoor point-to-point and

¹ The FCC has acknowledged that unlicensed bands are experiencing "unprecedented growth, [which is] quite striking in light of the severe downturn in the U.S. telecommunications and technology sectors." *See*, Summary of OSP Working Paper Number 39, "Unlicensed and Unshackled: A Joint OSP-OET White Paper on Unlicensed Spectrum Devices and their Regulatory Issues," *rel.* May, 2003.

point-to-multipoint use. Under such a regime, these higher power point-to-point and point-to-multipoint services would operate separately from lower power Wi-Fi and intra-net users, thus reducing the prospect of harmful interference caused by these higher powered operations. TowerStream appreciates the Commission's recognition of the importance of the broadband services being deployed in the U-NII band and will continue to work with the Commission on ideas to allow such services to operate at higher power levels within the band.

III. CONCLUSION

TowerStream commends the FCC on its forward-looking approach to allocating additional spectrum for unlicensed use in the U-NII band and for taking steps to ensure that the most recent technological advances in limiting harmful interference are reflected in Part 15. TowerStream supports the FCC's proposed spectrum allocation and rules but requests higher power limits.

Such action on the part of the Commission will ensure that the provision of competitive broadband wireless services utilizing the U-NII band will continue for years to come.

Respectfully Submitted

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