

Request for “Unable to Construct” Waiver

B&C Communications, LLC (“B&C”) is the licensee of full power television broadcast station WPAN(TV), digital Channel 40, Fort Walton Beach, Florida (FCC Facility ID No. 31570, “WPAN”). B&C became the licensee of WPAN pursuant to a court-ordered assignment and transfer of WPAN’s Federal Communications Commission (“FCC”) license and all related assets from the prior licensee, Franklin & Hoynacki Communications, LLC (“F&H”), as authorized by the FCC in File No. BALCDT-20150424ABD (the “Assignment Application”); the court order was issued during the course of a foreclosure proceeding against the prior licensees, F&H and Franklin Media, Inc. (“FMI”), and while F&H and FMI were in receivership for the benefit of its creditors (including B&C, as a senior secured creditor).¹ The Assignment Application was granted by the FCC on July 10, 2015, a request for extension of time to close was timely-filed on October 8, 2015, and the parties closed on the assignment of WPAN’s FCC license and other assets to B&C on January 7, 2016.

WPAN currently operates on digital Channel 40 from a 217.3 meter (713 feet) above ground level (“AGL”) tower owned by Pinnacle Towers LLC d/b/a Crown Castle (“Crown Castle”) located at 5521 Maverick Lane, Gulf Breeze, Florida 32561, and specifically at North American Datum 1927 (“NAD27”) geographic coordinates of 30° 24’ 09” north latitude and 86° 59’ 35” west longitude (or NAD 1983 geographic coordinates of 30° 24’ 13.4” north latitude and 86° 59’ 33.8” west longitude), with FCC antenna structure registration (“ASR”) number 1058824 (the “Crown Castle Tower”). WPAN’s prior licensees, FMI and F&H, installed WPAN’s antenna and transmission equipment on the Crown Castle Tower pursuant to a Short Form Tower License Agreement dated September 9, 2008, between FMI and Crown Castle (the “Tower Lease”); however, the prior licensees FMI and F&H were in default under the Tower Lease and owed substantial back rent to Crown Castle, as an unsecured creditor, when the court ordered all assets of the debtors FMI and F&H (including the WPAN assets, which included the FCC license for WPAN) to be liquidated and/or delivered to B&C, as a senior secured creditor, in partial satisfaction of the debts FMI and F&H owed to B&C.

After the closing of the FCC’s television broadcast spectrum incentive auction, the FCC has assigned digital Channel 31 as the post-auction channel for WPAN, based on the approximate geographic coordinates of the Crown Castle Tower,² with an antenna height center of radiation of 211 meters (692 feet) AGL, or 222 meters (728 feet) above mean sea level (“AMSL”), and antenna height above average terrain (“HAAT”) of 219 meters (718 feet), with a directional antenna and an effective radiated power (“ERP”) of 28 kilowatts.

¹ Copies of the court order and other details related to the assignment of the FCC license to B&C are provided in the Assignment Application and exhibits thereto.

² The geographic coordinates specified by the FCC for WPAN are off from WPAN’s licensed NAD27 geographic coordinates by one second of latitude, at 30° 24’ 10” north latitude and 86° 59’ 35” west longitude.

B&C has communicated with Crown Castle regarding a lease for WPAN on the Crown Castle Tower; however, to date Crown Castle has declined to lease space on that tower to B&C for WPAN's antenna and other transmission equipment unless B&C pays to Crown Castle the substantial past due back rent owed to Crown Castle by the prior debtor licensees, FMI and F&H. Specifically, at the time the WPAN's FCC license and other assets were assigned to B&C in partial satisfaction of the debts FMI and F&H owed to B&C as a senior secured creditor, on January 7, 2016, FMI or F&H owed approximately \$62,670 in back rent to Crown Castle.³ Since the court order required that the FCC license of WPAN and all other assets of FMI and F&H to be transferred to B&C "free and clear of all lien rights" (except one specific lien in favor of a third party other than Crown Castle),⁴ B&C believes it is unreasonable and contrary to law and the court order for B&C to be required to pay the past due back rent owed to Crown Castle by other third party debtors (i.e., the prior licensees, FMI and F&H), and B&C has reasonably declined to do so (nor has Crown Castle presented any reasoned argument why one creditor, and a senior secured creditor at that, should pay an obligation of a third party debtor to another creditor, particularly where such other creditor is an unsecured creditor).

As a result, B&C currently does not have a legal right to use the Crown Castle Tower, nor has B&C been able to reach agreement with Crown Castle to replace WPAN's existing antenna and transmission equipment on that tower with the new Channel 31 antenna and transmission facilities, at least without paying the \$62,670 debt of the third party prior licensees, FMI and F&H; therefore, B&C submits that it is "unable to construct" its assigned post-auction Channel 31 facilities, which are based on the Crown Castle Tower, and respectfully requests an "unable to construct" waiver to permit B&C to file for alternate facilities, based on an alternate site and perhaps other different parameters (such as an alternate channel), during the first priority filing window.⁵ Approval of this waiver request should not affect the phased post-auction transition, since WPAN is included in Transition Phase 7, which has a phase completion date of January 17,

³ Attached hereto as Exhibit A is a copy of an email dated September 16, 2015, from Ashley Piovesan, an in-house attorney for Crown Castle, to B&C and its FCC and litigation counsel, demanding B&C pay the back rent FMI and F&H owed to Crown Castle before Crown Castle would consent to an assignment of the Tower Lease to B&C (Crown Castle has also declined to enter into a new tower space lease with B&C for WPAN); at that time, the back rent was \$56,020.47 as of October 31, 2015, and with rent accruing at \$3,031.24 per month, B&C calculates the amount due when WPAN's FCC license and other assets were assigned to B&C on January 7, 2016, was \$62,669.64.

⁴ See Final Judgment of the First Judicial Circuit Court in and for Escambia County, Florida, date March 23, 2015, at ¶ 11 (a copy of which was attached to Exhibit 5 to the Assignment Application).

⁵ B&C notes that if the FCC denies this "unable to construct" waiver request and requires B&C to use the Crown Castle Tower, the payment of the \$62,670 past due back rent due to Crown Castle from the prior licensees FMI and F&H would be a necessary cost of B&C's transition to its post-auction Channel 31 at that site, and such expense should be approved and reimbursed to B&C.

2020, which should be more than sufficient enough time for B&C to receive approval of and construct alternate facilities.

B&C also has investigated the potential to use an alternate tower or site, but has no reasonably viable alternatives. Attached hereto as Exhibit B is a map showing the “area to locate” for WPAN on its assigned post-auction Channel 31, based on maintaining the same spacing to co-channel and adjacent channel stations on which the Channel 31 reassignment was based (with respect to the relevant separation requirements for digital television channel allotments, WPAN would be short-spaced on Channel 31); as can be seen from this map, the area to locate is very limited, consisting primarily of a small coastal area of Florida around the communities of Gulf Breeze and Navarre, including the protected Gulf Islands National Seashore (which potentially could raise environmental review issues, including with respect to the vista), and there also are a number of military bases nearby with related military aviation concerns which may limit taller tower alternatives. B&C’s research found no other existing towers of similar height within the area to locate, and only one tower over 400 feet AGL (a 500 feet AGL tower owned by Sinclair Communications, LLC, ASR No. 1029918, a direct competitor in the market to B&C and WPAN, which is licensed or operates under contractual agreements four of the other competing full power television stations in the market, which B&C submits does not make it a good candidate for a reasonable tower lease).⁶ B&C also filed and has pending with the Federal Aviation Administration (“FAA”) a notice of proposed construction of a new 700 feet AGL tower for the Channel 31 frequency at the designated parameters (FAA Aeronautical Study No. 2017-ASO-9243-OE), to determine if FAA approval for a new tower is even possible in that location, but has not yet received a determination or other response from the FAA.

B&C has investigated other alternate existing towers, at sites outside of the Channel 31 area to locate, which appear viable (either on Channel 31 or potentially an alternate channel), and specifically existing towers used by other television stations in WPAN’s local market or located close to such towers, which will have the additional public interest benefits of: (i) being located in an area where the viewing public may already have oriented their receive antennas, improving reception of WPAN on any new facilities constructed, and (ii) increasing the channel options available to B&C, since B&C may propose to locate WPAN very close to other existing stations, potentially allowing use of adjacent channels (without causing impermissible interference).

B&C submits that based on the extraordinary legal issues with Crown Castle for use of WPAN’s existing tower, and the lack of viable options for use of any alternate existing taller towers or to construct a new tall tower within the very limited area to locate for Channel 31, are circumstances beyond its control that justify the grant of the “unable to construct” waiver requested herein. The public interest would be served by grant of the waiver, based on (i) the economic savings that would be achieved from use of a tower other than the Crown Castle Tower or one leased from a direct economic competitor or the construction of a new tall tower (if the latter two approaches are even technically and otherwise viable), and (ii) construction of WPAN’s post-auction facilities at an alternate location, outside of the very limited Channel 31 area to locate, where reception to the viewing public may be greatly improved. Furthermore, since WPAN is

⁶ B&C notes that its “area to locate” map shows an ASR No. 1244828 close to the Crown Castle Tower and within the area to locate; this ASR is for a proposed new tower that has not yet been constructed.

included in Transition Phase 7, with a phase completion date of January 17, 2020, B&C should be able to complete construction within its assigned transition phase.

Therefore, all of these factors set forth herein being considered, B&C respectfully requests grant of the “unable to construct” waiver requested herein.

EXHIBIT A

Jeff Timmons

From: Piovesan, Ashley <Ashley.Piovesan@crowncastle.com>
Sent: Wednesday, September 16, 2015 1:52 PM
To: Jeff Timmons; billsmedia@gmail.com; Robert Beasley
Cc: Merce, Kathryn; Hopper, David
Subject: License (185974) Agreement at Crown Castle Site 870288
Attachments: AGREEMENT AND CONSENT - Franklin Media - Gulf Breeze (Highway 98) 870288 (9-15-15) (2).pdf

Jeff,

In follow up to our telephone conversation, it is my understanding that the above-referenced license agreement may be assigned to B&C Communications, LLC. Attached please find the Agreement and Consent for the potential assignment from Franklin Media, Inc. to B&C Communications. If B&C Communications wishes to take assignment of the license agreement, the attached Agreement and Consent must be executed by Crown, the assignor, and the assignee, and the included Assignor's Notice (the exhibit to the Agreement & Consent) must be sent to Crown upon the assignment. As noted in the Agreement and Consent, the assignor must pay to Crown \$56,020.47 upon its execution of the agreement as payment in full of all rents owed by assignor to Crown under the license through and including October 31, 2015.

Please let me know if B&C Communications intends to take assignment of the license agreement.

Thank you.

Ashley

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EXHIBIT B

