

Request for Second Extension of Repack Channel 21 Construction Permit Exhibit

B&C Communications, LLC (“B&C”), licensee of full power television station WPAN(TV), Fort Walton Beach, Florida (Facility ID No. 31570, “WPAN”), respectfully requests waiver of the Federal Communications Commission (“FCC”) rules (including but not limited to Sections 73.7300 and 73.3598(b), 47 C.F.R. §§ 73.7300 and 73.3598(b)) and policies to extend B&C’s repack digital Channel 21 construction permit (LMS File No. 0000029983, the “Channel 21 Permit”) for the second time, based on tolling or waiver of the tolling rule due to rare and exceptional circumstances beyond the control of B&C, from its current expiration date of July 15, 2020,¹ for approximately three months, and specifically until Wednesday, October 19, 2020 (which is the date by which WPAN must return to the air to avoid automatic cancellation of its FCC license, after permanently ceasing operations on its pre-auction Channel 40 on October 19, 2019).

As set forth in more complete detail in its first request for extension of the Channel 21 Permit, see LMS File No. 0000098343 (the “First Extension Request”), the First Extension Request was requested and granted based on a series of delays related to: (i) B&C being “unable to construct” the original post-auction reassignment Channel 31 parameters designated by the Commission for WPAN (because B&C did not have legal rights to use the antenna height on the tower on which the Channel 31 reassignment parameters were based, and B&C was unable to reach agreement with that tower owner to lease space on the tower at that height); and (ii) the need to file for an alternate channel during the first priority filing window that would permit duplication of WPAN’s pre-auction coverage, which channel change was eventually granted after an amendment to change site to an existing tower that B&C has already purchased for this purpose (a process that was delayed by the bankruptcy proceeding of the prior tower owner and seller, and necessary structural analysis studies). Id. B&C closed on its purchase of the existing tower (on use of which the Channel 21 Permit is based) on September 24, 2019 (after closing delays due to the seller and then a hurricane that precluded issuance of an insurance policy on the tower to B&C). Id.

Over the following three months, through December 2019, B&C and its project manager, QCommunications, LLC (“QCom”), evaluated studies conducted by its tower vendor, Electronics Research, Inc. (“ERI”), on multiple different potential tower modification scenarios (none of which were then technically feasible) as well as a replacement option. As a result of these studies by ERI and with advice from QCom, B&C determined that at that time, the only technically viable

¹ B&C notes that WPAN originally was assigned to repack transition Phase 7, with a phase deadline and repack construction permit expiration date of Friday, January 17, 2020, based on an original repack assignment of Channel 31, and was in a linked station set (“LSS”) with multiple other stations in LSS #53, but with the change in channel to its current repack Channel 21, WPAN no longer is part of any LSS, nor need to coordinate with any other stations in the repack.

option was a replacement of the tower at its current location, and therefore B&C prepared and filed the First Extension Request based on proceeding with that plan. Id.

The tenant with two FM antennas on B&C's tower (one top-mounted, and both higher than the authorized height for WPAN's repack Channel 21 antenna) has now terminated its tower space license agreement, effective as of February 29, 2020 (i.e., after the First Extension Request); with that load removed from the tower (as well as perhaps removal of some sections from the top of the tower), ERI conducted a new structural analysis, and determined that it would now be technically feasible to modify and strengthen the tower, on a shorter timeframe and at a substantially lower cost (roughly half the cost, approximately \$2 million for the project rather than about \$4 million if the tower was replaced). B&C obtained quotes from its vendors for proceeding with that alternate plan, filed revised Form 399 cost estimates on March 9, 2020 based on that showing, and is awaiting formal confirmation that the reimbursement funds would be approved for proceeding with that plan (B&C has been advised informally that approval would be forthcoming, likely on or about April 15, 2020); B&C already has ordered the transmitter, and plans to complete other necessary orders as soon as confirmation of a reimbursement allocation is obtained.

However, some of B&C's vendors have been advising of potential delays on production, delivery and/or installation due to the coronavirus national emergency, and have advised B&C to seek additional time (beyond the current July 15, 2020 permit expiration date) for construction; therefore, B&C is submitting this second permit extension request. Specifically, B&C has been advised to prepare for potential delays of up to 90 days, and therefore B&C is requesting an extension of time of about three months, to the October 19, 2020 deadline for WPAN to be back on the air (i.e., within 12 months since the date that WPAN ceased operations on its pre-auction Channel 40, on October 19, 2019). Attached hereto as Exhibit A is a letter from B&C's project manager, QCom, advising B&C that some vendors are warning of the potential for delays due to the coronavirus national emergency; also attached as Exhibit B is a copy of an email from ERI (B&C's vendor for the antenna and transmission line, and related equipment, and the tower modification work) advising the same.

Since B&C has already been granted the First Extension Request, this request for a second extension of the Channel 21 Permit must be evaluated under Section 73.3598(b) of the FCC's rules, 47 C.F.R. § 73.3598(b), the "tolling" rule, or as for a waiver of that rule.² The grounds for such requests for tolling include circumstances outside of B&C's control, "such as acts of God", or for waiver of the tolling rule, "where 'rare or exceptional circumstances' prevent construction." See Repack Reminders PN at n.34. The FCC has expressly recognized that this nation's current coronavirus crisis has been declared a "national emergency" by President Trump on March 13,

² See 47 C.F.R. § 73.3700(b)(5); see also, DA 18-884 at § 13 and n.34 (released August 27, 2018, the "Repack Reminders PN").

2020,³ and also that this national emergency potentially may affect and delay television stations' repack buildout efforts (in the context of repack transition Phase 9 stations). See DA 20-282 at 1 (released March 17, 2020).

B&C submits that the coronavirus national emergency clearly is an "act of God" outside of B&C's control, that is likely to cause vendor delays that will prevent B&C from completing construction of its repack Channel 21 Permit facilities by the current permit expiration date of July 15, 2020, and therefore the construction permit should be tolled and the permit expiration date extended accordingly. Further, the coronavirus national emergency also is clearly a "rare and exceptional circumstance" that is delaying B&C's construction of its repack Channel 21 Permit facilities, such that waiver of the tolling rule is merited in this case. B&C also submits that while the change in its plans - - to modify rather than replace the existing tower now that the FM antenna tenants have terminated their tower space license agreement with B&C - - may have imposed some delay, the public interest will still be better served by that approach, as it is anticipated that modification of the tower should take less time than replacement of the tower, and will also come at a substantial cost saving (on the order of approximately \$2 million) in costs to be reimbursed with federal repack reimbursement funds.

Therefore, the above factors and its diligence in pursuing the buildout of the repack channel change facilities being considered, B&C respectfully requests a second extension of the Channel 21 Permit for approximately three months, to October 19, 2020. Grant of this request should not adversely affect the Commission's repack transition schedule, or impact any other broadcaster since WPAN is not in any LSS, and WPAN has already permanently ceased operation on its pre-auction Channel 40. B&C submits that the public interest would be served in granting the waivers and extension of the Channel 21 Permit requested herein, by ensuring the ability of WPAN to continue to broadcast once WPAN's repack Channel 21 Permit facilities are completed.

³ This second extension request based on tolling or waiver of the tolling rule is being filed at this time so as to be within 30 days after the declaration of the national emergency, as required by Section 73.3598(b), see § 73.3598(b), see also, Repack Reminders PN at n.34, and also more than 90 days prior to the Channel 21 Permit's current expiration date of July 15, 2020, as required by Section 73.3700(b)(5)(iv). See § 73.3700(b)(5)(iv).

Exhibit A - - QCom Letter



April 10, 2020

William Smith, President
B& Communications, LLC
155 Middle Plantation Lane
Gulf Breeze, Florida 32561

Re: WPAN(TV), Fort Walton Beach, Florida (Facility ID No. 31570, "WPAN")

Dear Bill,

Regarding the current time frame for completion of the tower and other installation work for WPAN's Channel 21 repack facilities, please be advised that the delivery of certain key broadcast equipment and installation times could be delayed by up to 90 days by the current coronavirus crisis, which on March 13, 2020 was declared a national emergency in the United States. While we are working with the broadcast equipment manufacturer and its related divisions and third party vendors to make every effort to keep the project on schedule, B&C should plan and prepare for this potential delay due to this national crisis, which of course is a circumstance not within your control. Therefore, we are advising B&C to request a further tolling extension of your FCC construction permit, beyond the current permit expiration date of July 15, 2020.

If you have any questions regarding this letter, please do not hesitate to contact me.

Very truly yours,

Tony zumMallen for

John R. Owen
Chief of Operations
QCommunications, LLC

Exhibit B - - ERI Email

From: **Joe Wozniak** <jwozniak@eriinc.com>
Date: Wed, Apr 8, 2020 at 3:48 PM
Subject: WPAN Antenna System, ERI Proposal 20200218-051 Rev A
To: William Smith <billsmedia@gmail.com>

Hello Bill,

Regarding your pending order for an ERI antenna system based on our proposal 20200218-051 Rev A, dated March 4, 2020, we have the following delivery estimate and advisory:

Please be advised that the current estimated delivery time of 90 days could be delayed by, among other possible causes, the current coronavirus crisis, which on March 13, 2020 was declared a national emergency in the United States. B&C should plan and prepare for this potential delay due to this crisis.

Our current estimated delivery time is subject to change. We do not presently have the required payment due with order, therefore, this is still considered a pending order. If you have any questions regarding this subject, please do not hesitate to contact me.

Sincerely,

Joe Wozniak

Joe Wozniak

Eastern Region Account Manager, TV Products

267-408-3037 (mobile)

jwozniak@eriinc.com



Electronics Research, Inc. • 7777 Gardner Road • Chandler, IN 47610-9219 • USA

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