

## REQUEST FOR CP TOLLING

Baraboo Broadcasting Corp. ("BBC"), licensee of Station K25FT-D, Baraboo, Wisconsin (the "Station"), hereby requests tolling of its June 1, 2023 deadline for constructing its digital facilities. BBC is in fact scheduled to commence installation of its transmitter equipment this week, possibly as early as June 1<sup>st</sup>. This is significant progress since the prior request for tolling. This request for tolling is filed in an abundance of caution, in case such installation is not completed on June 1<sup>st</sup>.

### Factual Background

As the Commission knows, BBC was originally forced to file for tolling because of the sudden unavailability of a long-negotiated tower lease, due to the tower owner's discovery of corrosion issues with the tower. Upon grant of the tolling request on February 10, 2022, BBC immediately began to work with antenna manufacturers, its consulting engineer and first one and then the other of the two remaining tower owners in the area. Based on the progress being made, BBC filed a further request for tolling on July 8, 2022, which the Bureau granted on July 21, 2022. That progress has continued subsequent to that grant, working through power and ground lease issues with the tower lessor (CTI Tower), and taking further steps to finalize a tower lease and equipment specifically required for this specific tower site. In its October 9, 2022 filing, BBC explained the extensive negotiations with CTI Tower. The Bureau issued an October 17, 2022 Order tolling the CP through January 10, 2022. Subsequently, BBC filed another request for tolling, noting the significant progress made, but pointing out that construction could not occur during the rigorous Wisconsin winter, due to the difficulty of accessing the tower site in snowy or muddy conditions. The Bureau then granted another tolling, through June 1, 2023.

### SUBSEQUENT ACTIONS:

As predicted, the rigorous winter blocked access to the tower site until very recently. Over 30 inches of snow fell in southwest Wisconsin between February 22 and April 17. In fact, nearly 7 inches fell near the tower site on April 16-17 alone:

<https://www.weather.gov/arx/apr1623>

The rounds of heavy snow, combined with the remote, rural, tree-covered site, prevented melting and drying to allow travel to the site until early May. Recently, however, conditions were satisfactory enough to clear trees and overgrowth from the site (see photo in Attachment 1).

-BBC has recently prepared the tower site for construction, including some vegetation remediation, just to get tower workers into the site.

-BBC has signed up for utility services at the tower site under its own name.

-BBC is expecting to receive delivery of the required equipment from Kathrein Broadcast USA on June 1, 2023. See Attachment 2

-BBC is expecting its tower crew vendor to arrive to install the equipment on June 1<sup>st</sup> or June 2<sup>nd</sup>, weather permitting. See Attachment 3.

In sum, BBC believes that construction should be completed this week, and perhaps as early as June 1st.

However, in an abundance of caution, BBC seeks additional tolling for two weeks, through June 16, 2023, just in case issues arise in the final installation process that delay completion of the task.

### Discussion

Given the significant and continuing delays implementing its new CP due to factors beyond its control as discussed above (i.e., the delayed responses and logistical issues with the tower site and winter weather), and despite its diligent efforts to navigate these difficulties, BBC is in a position to complete construction this week. BBC is very motivated to get the facility built and intends to complete it and file a license to cover as soon as this week.

Section 73.3598(b)(1) of the FCC's rules provides for tolling based on Acts of God. The delays, non-action and logistical issues of the one remaining available tower site in the Station's service area may or may not be defined as an Act of God, but they certainly were beyond BBC's ability to control, or even to reasonably predict. Similarly, the harsh rural Wisconsin Winter that prevented any work at the site was also beyond BBC's control. In addition, Commission policy provides that if a station does not qualify for tolling under that criterion, good cause may exist to waive the tolling provisions and tolling still may be granted where the licensee can demonstrate that "rare and exceptional circumstances" prevented construction by the station's construction permit expiration date.<sup>1</sup> If necessary, BBC requests such a waiver. The delays and other issues here are exceptional. And, it is this circumstance which has prevented timely construction.

Alternatively, in a similar context, the Commission explained that it would be receptive to requests for waivers of Section 312(g) and, if necessary, tolling of CPs resulting from the repacking process, to be evaluated whether in light of the facts presented, equity and fairness dictate a license extension or reinstatement and a waiver.<sup>2</sup> The Media Bureau expanded upon this position in the Post-Incentive Auction Procedures Public Notice, explaining that in considering requests for waiver of Section 312(g), it "will examine whether the station has demonstrated that its silence is the result of compelling reasons beyond the station's control...."<sup>3</sup> BBC asserts that the same rationale should apply here. BBC has continually and diligently sought to construct its CP and commence operations, but events beyond its control have prevented its timely completion of construction.

For all these reasons, a short period of tolling to complete construction of the Station's CP is in the public interest, and is hereby respectfully requested.

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<sup>1</sup> See 1988 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542 at para. 42.

<sup>2</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 ¶ 585 (2014), *aff'd*, *Nat'l Assoc. of Broadcasters, et al v. FCC*, 789 F.3d 165 (D.C. Cir. 2015)

<sup>3</sup> *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd. 858 ¶ 49 (IATF/MB 2017).

## **ATTACHMENT 1**







## **ATTACHMENT 2**



**Kathrein Broadcast USA, Inc.**  
5 Cowboys Way, Suite 300 Frisco, Texas 75034  
Phone: (541) 879-2300

**QUOTE NUMBER**

1883-2

**PLEASE REFERENCE QUOTE NUMBER WHEN PURCHASING ITEM(S) BELOW**

This quotation is subject to Kathrein Broadcast USA, Inc., "Conditions of Sale" attached

**Contact:** Kory Hartman  
**Customer:** SevereStudios.com  
**Cust Code:**  
**Reference:** W22FK-W25FT-W36FN

**Date:** October 6 2022  
**Telephone:** 605-770-1624  
**Fax:**  
**Email:** kory.hartman@gmail.com

INCOTERMS® 2010	SALES REP	PAYMENT TERMS	EXPIRATION DATE
Ex-Works White City, OR	Les Kutasi	Payment with Order	November 5 2022

ITEM NO.	STOCK / DESCRIPTION	QTY	EXTENDED NET
1	2x1 750 10210 Broadband UHF-TV Panel Array-MP (470-608MHz), max power: 2kW, Input Connector: 1-5/8 EIA, with mounting hardware to attach individual antennas to a customer supplied 1.5-3.7-inch OD pipe. Array consists of: <ul style="list-style-type: none"><li>Quantity 2: 750 10210 Broadband UHF-TV Panel Antenna, 7/16 DF input</li><li>Quantity 2: Single panel mounting clamp (1.6-3.7in.)</li><li>Quantity 2: 7/16 Din 90° elbow adapter</li><li>Quantity 1: RTV 62 EQ split 2-way power divider w/ 1-5/8 EIA and 7/16 DF outs</li><li>Quantity 2: Power divider mounting clamps for 1-5/8" PD mounts to a C/S 2-4" OD pipe</li><li>Quantity 2: RFF-1/2 super flexible jumper 2M long w/ 7/16 DM ee</li><li>Quantity 1: MKPS-310, 10 ft 3.5" OD pipe with 26" stand-ff to mount array to straight or angled leg tower (leg diameter 1-8" OD)</li></ul>	1	6,363.00
2	CIF + Two port Starpoint combiner tuned for narrowband inputs ( Full-Service mask) ATSC Ch 22 / 25 / 36, all rated for 560W TPO w/ 7/16 Din female inputs and 1-5/8 EIA output with 4 port ( 3 forward / 1 reverse ) Directional coupler.	1	12,386.50
3	250 ft of LCF-158 1-5/8" Foam line with 1-5/8 EIA connector installed first off, 1 each 1-5/8 EIA connector loose, with installation and mounting accessories included.	1	2,863.00

Mike Johnson | Broadcast Sales Engineer | Direct: 541-879-2301 | Email: [Michael.johnson@kathrein-bca.com](mailto:Michael.johnson@kathrein-bca.com)  
To Place your Order: Kerri Spader | Sales Administrator | Direct: 541-879-2302 | Email: [kerri.spader@kathrein-bca.com](mailto:kerri.spader@kathrein-bca.com)

Quotation amount may be subject to sales tax.

<b>SUB-TOTAL:</b>	21,612.50
<b>FREIGHT:</b>	Not Included
<b>DISCOUNT:</b>	-3,241.88
<b>TAX:</b>	0.00
<b>USD TOTAL:</b>	18,370.62

**WIRE INSTRUCTIONS:**

Payment with order by wire transfer or ACH EFT (within the USA only) to Chase Bank N.A., New York, NY, Kathrein Broadcast USA, Inc. Account #397790152, Wire Routing #: 021000021. ACH Routing #: 111000614, Swift#: CHASUS33. A \$25.00 wire transfer fee must be added to your wire payment.

Thank you for the opportunity to offer Kathrein USA, Inc. professional products and services. We look forward to serving you!

1. **Priority of Terms and Conditions.** This document is an abbreviated version of our Terms and Conditions. Please see [www.kathrein-bca.com](http://www.kathrein-bca.com) for the FULL terms. Unless otherwise agreed to in writing by Seller, the following terms and conditions are part of Seller's quotation and shall govern any resulting order. No term or condition stated in any Buyer solicitation, purchase order or contract shall become part of an order or shall otherwise be binding on Seller unless expressly agreed to in writing by Seller. Seller's failure to object to any term or condition contained in any customer communication shall not be construed as consent to such terms or conditions nor be deemed a waiver of any term or condition set forth herein. All international shipping terms specified herein shall be construed in accordance with the 2020 INCOTERMS published by the International Chamber of Commerce.

2. **Commercial Contract.** All sales are made in strict accordance with Seller's commercial conditions and prices and shall not be subject to the procurement regulations of the United States Government or of any state, local or foreign government unless agreed to in writing by Seller.

3. **Quotation, Prices and Taxes.** Quotations are valid for a period of 30 days. Quotations are available for other specific time periods upon request. Unless specified otherwise, prices do not include retailer's occupation, sales, use, privilege, value-added tax, excise or any other tax (except for gross income tax), duty, tariff or assessment which may arise from the sale of the products or services quoted. Such amounts shall be added to the contract price in the event Seller becomes liable to pay or bear the burden thereof. A request for exemption from any such tax, duty or assessment must be accompanied by a properly executed exemption certificate prior to shipment.

4. **Shipment and Risk of Loss.** Products will be packed, packaged and crated in accordance with Seller's standard commercial practices. Export packing is available upon request at an additional charge. Orders delivered within the United States are shipped F.O.B. Seller's Factory, Freight Prepaid and Billed. Orders delivered outside the United States are shipped Ex Works, Seller's Factory, unless otherwise requested. Title to and risk of loss of the products shall pass to Buyer upon delivery to the common carrier. Seller may make partial shipments and submit invoices for such partial shipments in accordance with the payment terms set forth below. International shipments are contingent upon receipt of required United States export licenses.

5. **Terms of Payment.** Payment for orders delivered in the United States is due in US Dollars within 30 days from the invoice date on approved credit, unless otherwise specified by Seller. Orders delivered outside the United States shall be paid in US Dollars by irrevocable letter of credit, by wire transfer or by cash in advance, at the option of the Seller. Orders accepted on other terms shall be due in strict accordance with the terms quoted. Past due payments are subject to a service charge of 1.5% per month (18% annual) on the unpaid balance or the maximum legal rate permitted by state law, whichever is lower. Seller reserves the right in its sole discretion, to reject Buyer's purchase orders or to withhold shipment of Buyer orders if Buyer's account is in arrears. Buyer is responsible to Seller for all reasonable attorney fees, court costs, and/or collection agency fees should Buyer default on payment. Buyer acknowledges that Seller retains full security interest in all products until Buyer renders payment in full and upon request agrees to execute any documents necessary to perfect Seller's security interest.

6. **Delivery.** Seller shall make every reasonable effort to meet Buyer's requested delivery and performance dates, but shall not be liable for delays due to causes beyond its control, including, but not limited to, acts of God, acts of the public enemy, acts of the United States, its States Territories, or any political subdivision of the foregoing, acts of the Buyer, its employees, agents, or subcontractors, fires, floods, strikes, freight embargoes, unusually severe weather conditions, inadequate transportation facilities or any cause whatsoever beyond the control and without the fault or negligence of Seller, its suppliers or subcontractors, whether similar to or dissimilar from the causes herein enumerated. In the event of any such delay, Seller shall be given a reasonable extension of time within which to complete performance.

7. **Final Acceptance.** Buyer's express acceptance of the products, or Buyer's possession, use or beneficial use of the products for more than 30 days after delivery shall constitute final acceptance and, except as provided in Seller's warranty below shall waive all Buyer claims of nonconformity of the products.

8. **Warranty.** Seller warrants that its products are transferred rightfully and with good title, that its products are free from any lawful security interest or other lien or encumbrance unknown to Buyer. Seller warrants its products to be free of defects in workmanship and materials that arise under proper and normal use and service for a period of two years from date of original shipment. Broadcast products and accessories manufactured by Kathrein Broadcast and sold by Seller are covered by the above limited warranty but for a period of **12 months**. Products manufactured by others are covered only by the warranties, if any, issued by their respective manufacturers and Seller assumes no liability or responsibility of any kind for these goods. Damage caused by wind, ice, fire, lightning, improper installation or use, unauthorized disassembly or modifications or repairs, improper handling or any other causes beyond the control of Seller are not covered by this limited warranty. In the event that Seller determines that defects have occurred, Buyer's exclusive remedy hereunder is limited to Seller's repair or replacement (either at its plant or at such other place as may be agreed upon between Seller and Buyer) of such defects at no cost to Buyer. Transportation costs to Seller's plant or designated facility in connection with the return of products alleged to be defective shall be paid by Buyer. Products supplied as warranty replacements and products repaired under warranty are covered for the balance of the original warranty period or for a period of 90 days after shipment from Seller, whichever is longer. SELLER MAKES NO WARRANTY EXPRESS OR IMPLIED OTHER THAN AS STATED ABOVE. EXPRESSLY EXCLUDED ARE THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE. THE FOREGOING SHALL CONSTITUTE ALL OF SELLER'S LIABILITY UNDER THIS WARRANTY WITH RESPECT TO THE PRODUCTS. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INSTALLATION COSTS, LOST REVENUE OR PROFITS, OR ANY OTHER COSTS OF ANY NATURE AS A RESULT OF THE USE OF PRODUCTS MANUFACTURED BY THE SELLER, WHETHER USED IN ACCORDANCE WITH THE INSTRUCTIONS OR NOT UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY TO BUYER UNDER THIS WARRANTY EXCEED THE ACTUAL SALES PRICE OF THE PRODUCTS PROVIDED HEREUNDER. No representative is authorized to assume for Seller any other liability in connection with the products.

9. **Limitation of Liability.** Seller shall not be liable to Buyer for any indirect, exemplary, incidental, special or consequential damages arising from any action for breach of contract, breach of warranty, or for any action based on the tortious act or omissions of Seller. Buyer acknowledges that such lack of liability includes but is not limited to, loss of actual or anticipated revenue or profits, costs of installation and or removal of products, loss of actual or anticipated value of the business to Buyer, or damage to the business reputation or goodwill of Buyer.

10. **Patent Infringement Assurance.** Seller shall, at its own expense, settle or defend any claim, suit or action which may be brought against Buyer for infringement of United States patents arising out of Buyer's use of Seller's products. Seller shall pay any final judgment for damages and costs which may be awarded against Buyer, provided that Buyer promptly notifies Seller of any such claim, suit or action and affords Seller complete control of the conduct of such settlement or defense, and that Buyer provides Seller with all available information regarding such claim, suit or action. Seller may at its own expense, elect to procure for Buyer the right to continue using the allegedly infringing products, or replace it with non-infringing products or modify it so that it becomes non-infringing products, or remove it and repay the purchase price applicable thereto, as well as transportation costs. This paragraph shall not apply to any infringement arising out of any feature incorporated in the product at the request of Buyer or from the use of the product for purposes other than as advertised, sold or intended by Seller. In no event shall Seller's total liability to Buyer under the provisions of this article exceed the aggregate sum paid to Seller by Buyer for the allegedly infringing product. The foregoing states the entire warranty by Seller for patent infringement of the product and any part of it.

11. **Certificate of Compliance.** All products are manufactured and inspected by Seller in accordance with Seller's current product specifications and quality control procedures and will be accompanied by a Certificate of Compliance upon request. Products manufactured in accordance with Buyer specifications will not be issued a Certificate of Compliance unless requested by Buyer at the time of order placement.

12. **Inspection and Equipment Testing.** Prices do not include source inspections or product testing and the cost of performing any such tests shall be added to the purchase order price.

13. **Assignment.** Seller reserves the right to assign, delegate or subcontract any order in whole or in part, to its subsidiaries or affiliates without the prior consent of Buyer. Seller's subsidiaries and affiliates shall fully comply with Seller's performance obligations and shall be entitled to assert its rights against the Buyer.

14. **Governing Law.** An order is valid only when accepted in writing at Seller's main office, 5 Cowboys Way, Frisco, Texas 75034. The contract arising therefrom shall be deemed to have been entered into in the State of Texas and its interpretation, construction, and the remedies for its enforcement shall be governed in accordance with Texas law.

15. **Specification Changes.** Seller's product specifications are subject to change without notice to Buyer, provided such changes do not materially affect performance. Tide to all materials and information provided by Seller to Buyer, including but not limited to, specifications, drawings, engineering data, and technical designs, shall remain vested in Seller, unless otherwise agreed to in writing by the parties. All such information shall be treated as confidential by Buyer and shall not be disclosed to any third party without the written consent of Seller.

16. **Returns.** Standard catalog products may be returned for credit, provided such products are returned within 90 days after the original shipment date. Products must be new and in Seller's packing containers. The amount of credit issued for any returned product shall be determined solely by the Seller based on the condition and re-salability of the product. All returns are subject to a 20% minimum restocking charge and management's approval. Nonstandard products, including products specially manufactured in accordance with Buyer's specifications, may not be returned for credit. Buyer shall obtain Seller's written return goods authorization prior to returning any product for credit.

17. **Cancellations.** Orders for standard catalog products may be canceled prior to shipment, however any order that has been cut, fitted or packaged prior to Seller's receipt of cancellation notice shall be subject to a 20% restocking charge. Orders for nonstandard products or specially manufactured products may be cancelled prior to the start of manufacture provided Buyer reimburses Seller for any actual costs incurred on the order prior to the effective cancellation date. After manufacture commences, orders for nonstandard products or specially manufactured products may not be cancelled. In the event Buyer terminates such orders, Buyer shall be liable to Seller for termination charges, including, but not limited to, reasonable profits.

18. **Shipment Delays/Billing in Place.** Upon completion of Buyer's order, any delay in shipment attributable to Buyer, including, but not limited to Buyer's request to defer the delivery date, shall cause the following to occur. Thirty (30) days after the original shipment date, a storage charge of 1.5% of the invoice price per month will be billed to Buyer and tide to the shipment will automatically pass to Buyer. Seller will invoice Buyer for completed goods and Buyer will pay in accordance with the terms of the original sale, as the goods will be deemed to have shipped in place. Seller will insure against risk of loss until physical shipment of the goods to a common carrier.

19. **Change Orders.** Buyer change orders must be in writing and no change shall be made pursuant to this clause unless agreed to in writing and signed by duly authorized representatives of Seller and Buyer. If any such change causes an increase or decrease in the cost or the time required for the performance of any part of the work, an equitable adjustment shall be made in the contract price and schedule. Seller shall have no obligation to commence any extra or changed work without written agreement as to adjustments to contract price and delivery schedules affected thereby.

20. **Termination.** In the event Buyer fails to render payment on any invoice or Buyer's account is in arrears, or Buyer becomes insolvent enters into bankruptcy or has a receiver appointed to protect its assets, Seller shall have the right without prejudice to any other remedy, to immediately cease manufacture of all Buyer orders and to stop all shipments to Buyer, including stoppage in transit.

21. **Sales and Use Tax.** This purchase may be subject to state use tax unless it is specifically exempt. This purchase is also not exempt merely because it is made over the internet, by catalog, or by other remote means. The Buyer's state may require reporting any purchase of tangible personal property not taxed by Seller and to pay use tax on the purchase. The tax may be reported and paid on the appropriate state use tax form. Use tax forms and corresponding instructions are available on Department of Revenue websites.

### **ATTACHMENT 3**





Kory Hartman <kory@wrpq.com>

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## TV antenna

1 message

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**Chris Kasper** <kasperchris@rocketmail.com>

Wed, May 31, 2023 at 10:14 AM

To: Kory@wrpq.com

Hello Kory,

I'm available tomorrow 6/1 or Friday 6/2 to install the antenna, weather permitting. Please let me know if either of those work.

Regards,

Chris Kasper  
608-692-0853