



Federal Communications Commission  
Washington, D.C. 20554

January 22, 2020

B&C Communications, LLC  
William Smith, Manager  
155 Middle Plantation Lane  
Gulf Breeze, FL 32561

Re: Request for Extension of  
Construction Permit  
WPAN, Fort Walton Beach, Florida  
Facility ID No. 31570  
LMS File No. 0000098343

Dear Licensee,

On January 17, 2020, B&C Communications, LLC (Licensee), the licensee of Station WPAN, Fort Walton Beach, Florida (the Station), filed the above captioned application, as amended, seeking an extension of the Station's construction permit expiration date and waiver of the 90-day construction permit extension filing deadline. For the reasons below, we grant Licensee's requests and extend the Station's construction permit expiration date 180 days to July 15, 2020.

*Background.* Pursuant to Section 73.3700(b)(5) of the Commission's rules, a station may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.<sup>1</sup> Grant of an extension of the construction permit deadline does not alter the deadline by which a station must cease operating on its pre-auction channel. A station anticipating the need for an extension must submit an extension application using FCC Form 2100, Schedule 337, not less than 90 days before the assigned construction permit deadline.<sup>2</sup> For Phase 7 stations, such application was due by October 21, 2019. The application must demonstrate that the station is unable to complete construction on time due to circumstances that were either unforeseeable or beyond the station's control.<sup>3</sup> In addition, a waiver of the application filing deadline is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.<sup>4</sup>

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<sup>1</sup> See 47 CFR § 73.3700(b)(5). All subsequent requests for additional time to construct are subject to the Commission's tolling provisions, 47 CFR § 73.3598(b).

<sup>2</sup> 47 CFR § 73.3700(b)(5)(iv).

<sup>3</sup> The *Incentive Auction R&O* provides examples of six circumstances that might justify an 180-day extension of a station's post-auction construction permit: (1) weather related delays; (2) delays in construction due to the unavailability of equipment or a tower crew; (3) tower lease disputes; (4) unusual technical challenges; or (5) delays caused by the need to obtain government approvals, such as land use or zoning approvals, or to observe competitive bidding requirements prior to purchasing equipment or services; and (6) financial hardship with sufficient supporting evidence. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567,6804-05, paras. 581-2 (2014) (*Incentive Auction R&O*); 47 CFR § 73.3700(b)(5)(ii) and (iii).

<sup>4</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

The Station was repacked from channel 40 to channel 21 and assigned to phase 7 which had a phase completion date of January 17, 2020. The Station ceased operation on its pre-auction channel and will remain silent and may return to the air with temporary facilities on its post-auction channel while Licensee completes construction of its permanent facilities.<sup>5</sup>

Licensee states that it has been working with the manufacturer of its post-auction channel antenna to develop a plan for mounting the antenna on its current tower location. After lengthy studies, Licensee and the manufacturer determined in December 2019 that the only technically viable option was a replacement of the tower at its current location. Licensee is proceeding with the current plan of replacing the tower at its current location which it estimates could take up to six months to complete. Therefore, Licensee is requesting a 180-day extension.

Licensee also requests a waiver of the 90-day construction permit extension filing deadline because it did not know for certain it would require an extension at the time of the deadline.

*Discussion.* Upon review of the facts and circumstances presented, we find Licensee's request to extend the construction permit deadline to construct the Station's post-auction facility meets the requirements for a construction permit extension. Licensee has demonstrated that an extension is needed because of construction delays. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. The Station ceased operations on its pre-auction and is silent and may return to the air with temporary facilities on its post-auction channel. To the extent some viewers are unable to receive the Station's signal while it is silent or operating with temporary facilities, we believe that Licensee has every incentive to ensure viewers are fully informed about the Station's transition plan. Finally, we find that waiver of the 90-day construction permit extension filing deadline is in the public interest and consistent with the Commission's general waiver standard because Licensee was unaware at the time an extension request was due that an extension of the Station's construction permit would be needed.<sup>6</sup>

We remind Licensee that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."<sup>7</sup> Additional expenses incurred, for instance, as a result of the grant of changes in the Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, B&C Communications, LLC's application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000029983) for WPAN, Fort Walton Beach, Florida **IS EXTENDED 180 days to July 15, 2020**. Grant of this extension does not permit the Station to recommence operation on its pre-auction channel. We

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<sup>5</sup> See LMS File No. 0000087608.

<sup>6</sup> See *supra* note 4.

<sup>7</sup> See *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

also remind Licensee that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>8</sup>

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara A. Kreisman". The signature is fluid and cursive, with a long horizontal flourish at the end.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Jeffrey L. Timmons, Esq.

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<sup>8</sup> See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).