

## REQUEST FOR CP TOLLING

Baraboo Broadcasting Corp. ("BBC"), licensee of Station W22FK-D, Baraboo, Wisconsin (the "Station"), hereby requests tolling of its July 11, 2022 deadline for constructing its digital facilities. BBC is eager to construct and commence operation of this Station, and but has been stymied by rare and exceptional circumstances outside of its control – the dilatory non-action of the only two remaining tower owners in this remote rural area, and the fact that one of these sites had significant issues regarding the lack of power and other required facilities. BBC has scrambled to obtain a tower lease with both of these tower owners, and anticipates finalizing a new tower lease shortly with one of them.

### Factual Background

As the Commission knows, BBC was forced to previously 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 (Mobilitie Wilton and CTI Tower) in the area:

February 18, 2022 – BBC began work with its Consulting Engineer (Clarence Beverage) on studies for the Mobilitie Wilton tower. There was a Phone call with Mobilitie to discuss "fast tracking" the BBC application and to discuss the construction timeline. Yet on this phone call, Mobilitie told BBC they would need:

- 5 months "or maybe a bit more" total to fully complete a lease, including doing a Tower Study (wind load) and an Intermod Study before they could draft a lease;
- Complete "signed and sealed site drawings" (including site, elevation, equipment, antenna, electrical, and grounding plans) from a Professional or Civil Engineer - before they could draft a lease agreement;
- A building permit or "No permit letter" from the local jurisdiction for installation;
- A ground lease from their corporate parent Bug Tussel; and
- BBC must supply its own power facilities, even though there was power already available at this working tower site.

February 22, 2022 – BBC began working with providers Kathrein, Dielectric and Broadcast Electronics regarding antennas and combiners. Mr. Beverage finished power calculations. See Attachment 1.

February 25, 2022 – BBC began receiving quotes for transmitters and equipment. Providers estimated 4-6 weeks for delivery of the combiner, and less time for the remaining equipment. Mobilitie continued to make unreasonable demands for civil engineering studies, as well as that BBC dig its own power

trench and bring its own power to the site and pour its own concrete pad, when power and facilities were already available at the site. Accordingly BBC had a call with Bug Tussel Wireless (the corporate owner of Mobilitie Tower) to discuss power and facility issues and attempted to bypass the unreasonable demands and delays by Mobilitie. Bug Tussel suggested that it would resolve the unreasonable demands of Mobilitie, and BBC decided to try to keep moving forward with Mobilitie as one of the only two apparently workable towers in the area. *See Attachment 2.*

March 2, 2022 – BBC received an updated quote and information from Kathrein. *See Attachment 3.*

March 3, 2022 – BBC engaged in further phone discussions with its consulting engineer regarding equipment selection at the new site.

March 15 through March 29, 2022 – BBC engaged in discussion with Kathrein regarding use of its tower crew to do the installation and antenna requirements. *See Attachment 4.*

April 5, 2022 – Mr. Beveridge called suppliers regarding equipment availability. The lead time was confirmed on the combiner and the remaining equipment. *See Attachment 5.*

May 3, 2022 - Kathrein confirms equipment and tower crew still can complete work by July 10, 2022. *See Attachment 6.*

May 3, 2022, BBC concluded that the Mobilitie site is unlikely work out, due to extensive documentation requests and its refusal to make existing power and other facilities available to BBC.

May 4, 2022 - BBC and project consultants meet to discuss alternatives. BBC decides to look at 3rd tower location belonging to Mediacom and represented by CTI Tower, in Ontario, Wisconsin.

May 9, 2022 - Lease application filled out for CTI Tower - Ontario, WI tower site. *See Attachment 7.*

May 18, 2022 - CTI requests additional information and (incorrectly) informs BBC that there is no space or power for a broadcast facility. *See Attachment 8.*

May 23, 2022 - Follow up email sent to CTI after no response to prior inquiry. *See Attachment 9.*

June 3, 2022 - CTI finally responds and tells BBC that there IS power on site available. *See Attachment 10.*

June 6, 2022 - CTI shares additional site info with BBC and confirms lease terms. *See Attachment 11.*

June 7, 2022 – BBC immediately visited CTI tower site in person to confirm condition and workability. BBC informed for the first time by landowner that CTI's land lease lapsed at the end of December 2021.

June 9, 2022 - Follow up email sent to CTI regarding key issues. *See Attachment 12.*

June 28, 2022 - CTI follows up and begins drafting tower lease, including building space. *See Attachment 12.*

June 29, 2022 - CTI advises BBC that a new land lease is being worked out with the landowner. *See Attachment 12.*

July 5, 2022 - Follow up email sent to CTI. *See Attachment 13 .*

In sum, BBC has made constant and diligent efforts to obtain a tower lease in a remote rural area with only two remaining towers. In spite of significant barriers and non-action imposed by Mobilitie, and the logistical and ground lease difficulties at the remaining CTI site, BBC is confident that a new ground lease will be executed at the CTI site shortly, and thus a new tower lease will be executed with CTI, leading to construction and operation.

The proposed estimated timeline from grant of tolling to completion of construction is as follows:

Grant + 30 days – sign lease agreement with CTI, and order required equipment (transmitter, encoder, and antenna)

Grant + 60 days – Engineering study completed, file for modification of CP to CTI site.

Grant +90 days – CP mod granted and tower lease signed

Grant + 150 days – all equipment acquired

Grant + 180 days – installation complete, commence broadcast operations.

BBC is fully prepared to take all of the above steps, if this tolling request is granted.

### Discussion

Given the significant and continuing delays implementing its new CP due to factors beyond its control as discussed above (i.e., the dilatory non-actions and demands of one tower owner, and the logistical issue with the second tower site), and despite its diligent efforts to navigate these difficulties, BBC requests a 180-day tolling of its CP to allow it to complete construction. BBC is very motivated to get the facility built and intends to complete it and file a license to cover as soon as the work can safely be completed.

Section 73.3598(b)(1) of the FCC's rules provides for tolling based on Acts of God. The dilatory non-action and logistical issues of the two remaining tower sites in the Station's service area may or may not be defined as an Act of God, but they certainly was beyond BBC's ability to control, or even to reasonably predict. 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).