

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Ronan Telephone Company	)	
	)	WT Docket No. 06-231
Request for Waiver and Extension of Time of	)	File No. 0002831787
Tribal Land Bidding Credit Construction	)	
Requirement for a Lower 700 MHz Band License	)	
	)	
	)	

**ORDER**

**Adopted: January 26, 2007**

**Released: January 26, 2007**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this Order, we address the request by Ronan Telephone Company (Ronan) for waiver and extension of time to meet the tribal land bidding credit (TLBC) construction requirement for the Blackfeet Indian Reservation (Blackfeet Reservation) located in Montana (Extension Request).<sup>1</sup> Specifically, Ronan requests a waiver of section 1.2110(f)(3)(vi) of the Commission’s rules to allow it an additional three years to meet the TLBC construction requirement associated with its Lower 700 MHz Band C-Block license for the Montana RSA 1 market, Call Sign WPZK450.<sup>2</sup> For the reasons stated below, we grant a limited waiver of section 1.2110(f)(3)(vi), providing one additional year for Ronan to meet the TLBC construction requirement.

**II. BACKGROUND**

2. Ronan is a local exchange carrier located in Ronan, Montana.<sup>3</sup> Ronan was the winning bidder in Auction No. 44 for three Lower 700 MHz Band licenses, including the Montana RSA 1 license that is the subject of its Extension Request.<sup>4</sup> On January 29, 2004, the Wireless Telecommunications Bureau (Bureau) granted Ronan a license for the Montana RSA 1 market. As part of its license grant, Ronan received a tribal land bidding credit of \$182,000 (half of the gross winning bid) for the Montana RSA 1 license in exchange for Ronan’s agreement to construct and operate within three years of its initial

<sup>1</sup> File No. 0002831787 (filed Nov. 29, 2006). The Blackfeet Tribal Business Council, the governing body of the Blackfeet Nation on the Blackfeet Indian Reservation, joined in Ronan’s Request.

<sup>2</sup> The license area encompasses northwestern portions of Montana, including the counties of Lincoln, Sanders, Lake, Flathead, Glacier, Pondera, and Teton. The Blackfeet Indian Reservation lies within Glacier and Pondera Counties.

<sup>3</sup> Extension Request at 2.

<sup>4</sup> See Lower 700 MHz Band Auction Closes, Winning Bidders Announced, *Public Notice*, DA 02-2323 (rel. Sept. 20, 2002).

license grant (*i.e.*, January 29, 2007) “a system capable of serving seventy-five (75) percent of the population of the qualifying tribal land (*i.e.*, the Blackfeet Indian Reservation) for which the credit was awarded.”<sup>5</sup> On November 29, 2006, Ronan filed its Extension Request.<sup>6</sup> On December 29, 2006, the Bureau sought comment on Ronan’s Extension Request.<sup>7</sup> On January 12, 2007, Ronan, the only party to do so, filed comments to the Bureau’s public notice.<sup>8</sup>

3. Pursuant to section 1.2110(f)(3)(vi) of the Commission's rules, Ronan must file within fifteen days of the third anniversary of its initial license grant a post-construction certification stating that it has constructed and is operating a system capable of serving seventy-five percent of the population of the Blackfeet Reservation.<sup>9</sup> Pursuant to section 1.2110(f)(3)(vii) of the Commission’s rules, if Ronan fails to provide its post-construction certification, then it must repay the tribal land bidding credit amount in its entirety, plus interest within thirty days of the third anniversary of its initial license grant or its license terminates automatically.<sup>10</sup>

4. In the *Tribal Lands Order*, the Commission stated “[w]e are willing to consider relaxing our buildout requirements in cases where parties can demonstrate that doing so will expedite deployment of service to tribal lands. We therefore encourage parties to file specific waiver requests if need be, and commit to consider such requests expeditiously.”<sup>11</sup> In the *Second Tribal Lands Order*, the Commission noted that “there may be conditions, such as technical obstacles, economic factors, or other difficulties that may make it difficult for carriers to satisfy the stricter [tribal lands] construction requirement. Circumstances may exist on remote tribal lands such as low population density, rough terrain, or other factors that can negatively effect the ability of carriers to provide the requisite coverage to facilities in those areas.”<sup>12</sup> And in the *Third Tribal Lands Order*, the Commission advised “that should a carrier be unable to fulfill its construction requirements at the end of three years, it may seek a waiver from the relevant Commission rule.”<sup>13</sup>

### III. DISCUSSION

5. As described in more detail below, we find that the unique circumstances described by Ronan warrant a limited waiver of the TLBC construction requirement. A waiver may be granted, pursuant to section 1.925 of the Commission’s rules, if the petitioner establishes that: 1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that

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<sup>5</sup> 47 C.F.R. § 1.2110(f)(3)(vi).

<sup>6</sup> See generally Extension Request.

<sup>7</sup> See Wireless Telecommunications Bureau Seeks Comment on Ronan Telephone Company Request for Three Additional Years to Meet Tribal Lands Bidding Credit Construction Requirement, *Public Notice*, WT Docket No. 06-231, DA 06-2625 (rel. Dec. 29, 2006).

<sup>8</sup> See Comments of Ronan Telephone Company filed on January 12, 2007 in WT Docket No. 06-231 (Ronan Comments).

<sup>9</sup> 47 C.F.R. § 1.2110(f)(3)(vi).

<sup>10</sup> 47 C.F.R. § 1.2110(f)(3)(vii).

<sup>11</sup> Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-266, 15 FCC Rcd 11794, 11809 ¶41 (2000) (*Tribal Lands Order*).

<sup>12</sup> Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775, 4783 ¶22 (2003) (*Second Tribal Lands Order*).

<sup>13</sup> Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Third Report and Order*, 19 FCC Rcd 17652, 17656 ¶8 (2004) (*Third Tribal Lands Order*).

grant of the waiver would be in the public interest; or 2) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>14</sup>

6. Ronan states that the presence of a co-channel UHF television transmitter prevents the use of one or more “high altitude” sites that would be capable of serving seventy-five percent of the population on the Blackfeet Reservation.<sup>15</sup> Ronan asserts that as a result of the television transmitter’s location, “low elevation” sites were sought that are “geographically shielded” from the television transmitter.<sup>16</sup> Ronan does state that a “low elevation” transmitter capable of serving the town of Browning (the headquarters of the Blackfeet Nation and largest community on the Blackfeet Reservation), which represents fifty-percent of the Blackfeet Reservation’s total population (5,050 out of 10,100 persons) is operational.<sup>17</sup> Ronan also states that the Browning site is used to provide a fixed broadband data service, which was deployed on November 20, 2006, and consists of a download speed between 1.0 and 2.0 megabytes per second and an upload speed between 512 kilobytes per second and 1.5 megabytes per second.<sup>18</sup> Furthermore, Ronan states that as of January 12, 2007, there were sixty-six customers and pending requests by fifty additional customers for service, which Ronan expects to be online by the end of January 2007.<sup>19</sup> Finally, Ronan states that an additional fifty customers per month are expected to be added over the “next couple of months” and expectations are for “higher revenue sooner than [originally] anticipated.”<sup>20</sup>

7. In addition to the Browning location where broadband service is currently available, Ronan states that additional “low elevation” sites could be constructed to serve other much smaller communities on the Blackfeet Reservation, including East Glacier Park, Heart Butte, and the St. Mary River Valley (downstream from Glacier National Park) without causing interference to the UHF TV transmitter, with sites constructed initially at East Glacier Park and Heart Butte.<sup>21</sup> However, Ronan asserts that several “obstacles” prevent construction of these sites to occur by its current January 29, 2007 TLBC construction deadline, including the lack of an integrated data transport infrastructure between the current transmitter in Browning and the locations of the other potential sites and certain “financial constraints.”<sup>22</sup> Finally, Ronan asserts that the relatively small volume of sales for equipment in the Lower 700 MHz Band, due to the band being encumbered by TV broadcast stations, has resulted in a “high cost” for constructing a system.<sup>23</sup>

8. In this case, we find that a limited extension of time for Ronan to meet its TLBC

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<sup>14</sup> 47 C.F.R. § 1.925.

<sup>15</sup> Extension Request at 7. The UHF TV transmitter is a low power TV translator operating under Call Sign K54AM.

<sup>16</sup> *Id.* at 8.

<sup>17</sup> *Id.* at 9 – 10. In its Comments, Ronan states that the initial prediction of coverage was limited to the town of Browning, which encompasses a three mile radius. However, Ronan now asserts that coverage can be provided as far out as 10 or 11 miles from the site of the transmitter. Ronan Comments at 9. Based on analysis by Commission staff, it appears that the extended coverage area could increase the total coverage to as much as sixty-one percent of the Blackfeet Reservation’s population.

<sup>18</sup> Ronan Comments at 8.

<sup>19</sup> *Id.* at 7 – 8.

<sup>20</sup> *Id.* at 7.

<sup>21</sup> Extension Request at 11.

<sup>22</sup> *Id.* at 11.

<sup>23</sup> *Id.* at 13.

construction requirement is warranted. We note that the Commission is responsible for promoting the “development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas.”<sup>24</sup> Furthermore, Congress directed the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”<sup>25</sup>

9. In connection to its rural initiatives, in the *Rural Order*, the Commission established a baseline definition of a “rural area” as those counties (or equivalent) with a population density of 100 persons per square mile or less, based upon the most recently available Census data.<sup>26</sup> The population density of the Blackfeet Reservation is 4.3 persons per square mile.<sup>27</sup> In comparison, over ninety-percent of U.S. counties have a higher population density than the Blackfeet Reservation.<sup>28</sup> As previously stated, the Commission has acknowledged that low population density could be a factor that “negatively” affects the ability of a licensee to timely meet its TLBC construction requirement.<sup>29</sup>

10. In addition to low population density being a potential factor for an extension of time, the Commission also acknowledged that economic factors may be a condition that makes it difficult for carriers to timely satisfy the stricter TLBC construction requirement.<sup>30</sup> Ronan asserts that backhaul between the existing Browning site and the three additional proposed sites is “extremely expensive” based on the type of infrastructure currently in place.<sup>31</sup> Furthermore, Ronan asserts that there is currently a “high cost” associated with constructing a system in the Lower 700 MHz Band because of the lack of readily available equipment, which is a result of the band being encumbered by TV broadcast stations.<sup>32</sup> Based on Ronan’s own comments that higher revenues are anticipated sooner than originally expected because of an increase in initial demand for service,<sup>33</sup> we believe a limited extension to overcome the possible economic hurdles associated with constructing additional sites across an area with an extremely low population density is warranted in this specific instance.

11. We recognize that Ronan has already constructed sufficient facilities to provide wireless broadband access to approximately sixty-percent of the population of an area almost exclusively comprised of Native Americans on a tribal land located in a rural area. While this amount of broadband coverage is encouraging, we are not convinced that a three-year extension to meet the TLBC construction requirement is warranted in this instance. Specifically, Ronan has not demonstrated why it needs an additional three years to meet its TLBC construction requirement on the Blackfeet Reservation especially in light of the fact that the UHF TV translator station cited as the main reason for a three-year extension is

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<sup>24</sup> 47 U.S.C. § 309(j)(3)(A).

<sup>25</sup> 47 U.S.C. § 157(a).

<sup>26</sup> Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 02-381, 19 FCC Rcd 19078, 19087 ¶11 (2004) (*Rural Order*).

<sup>27</sup> Based on 2000 Census figures.

<sup>28</sup> *Id.* Based on analysis by Commission staff, the population density of the Blackfeet Reservation outside of Browning is less than two persons per square mile

<sup>29</sup> Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775, 4783 ¶22 (2003) (*Second Tribal Lands Order*).

<sup>30</sup> *Id.*

<sup>31</sup> Extension Request at 11.

<sup>32</sup> *Id.* at 13.

<sup>33</sup> Ronan Comments at 7.

secondary in status to Ronan's license.<sup>34</sup> However, based on the facts before us, we believe a grant of a one-year extension is in the public interest. We believe that strict application of the TLBC construction requirement in this case, which would result in Ronan's repayment of its TLBC or if the TLBC is not repaid, automatic termination of its license, is not warranted. Instead, we believe that a one-year extension will provide enough time for additional construction to occur where at least seventy-five percent of the population of the Blackfeet Reservation will be covered, which furthers the public interest by ensuring prompt delivery of advanced telecommunications capability to the residents located on the rural Blackfeet Reservation.

12. Accordingly, IT IS ORDERED that pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, that section 1.2110(f)(3)(vi) of the Commission's Rules IS WAIVED to extend the tribal land bidding credit construction deadline for Call Sign WPZK450 until January 29, 2008.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>34</sup> Low Power TV and TV translator stations are being authorized on a secondary basis to existing land mobile uses and must correct whatever interference they cause to land mobile stations or cease operation. *See* 47 C.F.R. § 74.703(e).