

Request for Fifth Waiver of Tolling Standard to Extend Construction Permits

WLS Television, Inc., Fox Television Stations, LLC, and NBC Telemundo License LLC (the “Chicago Broadcasters”) respectfully request a fifth waiver of the tolling standard set forth at Section 73.3598(b) of the rules of the Federal Communications Commission (“FCC” or “Commission”) as applied to the outstanding post-auction construction permits (“CPs”) for WLS-TV, Channel 22, Facility ID No. 73226 (“WLS”);¹ WFLD, Channel 24, Facility ID No. 22211 (“WFLD”);² and WMAQ-TV, Channel 33, Facility ID No. 47905³ (“WMAQ” and, collectively with WLS and WFLD, the “Chicago Stations”). The CPs for the post-auction facilities of the Chicago Stations specify operations at Willis Tower.

The Chicago Stations timely ceased broadcasts on their respective pre-auction channels by the end of Phase 6. Since that time, the Chicago Stations have been broadcasting on their post-auction channels with their auxiliary or interim facilities while work on their post-auction main facilities continues.

The post-auction CPs for the Chicago Stations have been previously extended pursuant to a waiver of the FCC’s tolling standard and are presently scheduled to expire on **March 22, 2022**.⁴ As a result of special, rare and exceptional circumstances outside of the control of the Chicago Broadcasters (such as the need to comply with local zoning ordinances and other regulations, civil unrest in Chicago, weather-related delays, and pandemic-related issues including the recent sudden and unexpected death of key personnel engaged in the repack process), construction of the post-auction facilities for the Chicago Stations will not be complete by the March 22 deadline.⁵ Accordingly, the Chicago Broadcasters respectfully request a fifth waiver of the FCC’s tolling standard to extend the post-auction CPs for the Chicago Stations until **September 6, 2022**.⁶

¹ WLS channel shares with WXFT, Facility ID No. 60539.

² WFLD channel shares with WPWR-TV, Facility ID No. 48772.

³ WMAQ channel shares with WSNS-TV, Facility ID No. 70119.

⁴ See Applications of WLS Television, Inc., NBC Telemundo License, LLC, Fox Television Stations, LLC, LMS File Nos. 0000161777, 0000161509, and 0000161587 (filed Sept. 30, 2021) (extending the post-auction CPs for the Chicago Stations based upon a demonstration that special, rare and exceptional circumstances precluded construction of the Chicago Stations’ post-auction facilities) (“Fourth Waiver Request”); Letter from Barbara A. Kreisman, Chief, Media Bureau, FCC to the Chicago Stations, LMS File Nos. 0000161777, 0000161509, and 0000161587 (Oct. 7, 2021) (“Fourth Waiver Grant”) (authorizing Fourth Waiver Request).

⁵ Concurrently herewith, the Chicago Stations are submitting a request for legal special temporary authority to extend the deadline to submit invoices for reimbursement from the TV Broadcaster Relocation Fund (“Fund”) from March 22 to September 6, 2022.

⁶ September 6, 2022 is the deadline by which all remaining invoices for reimbursement from the Fund. See TV Broadcaster Relocation Fund Invoice Filing Deadline Approaches in Sixty Days, Public Notice, DA 22-72 at note 6 (rel. Jan. 21, 2022).

I. BACKGROUND – THE WILLIS TOWER REPACK PROJECT

The Chicago Stations broadcast from Willis Tower, a 1,450 foot tall tower (excluding its broadcast antennas) constructed in the early 1970s. Willis Tower is a densely populated multi-tenant communications platform that supports many full-power television stations (including the Chicago Stations), three Class A television stations and several FM radio facilities.⁷ Willis Tower is located in the heart of downtown Chicago and, as a result, various zoning and planning departments within the city of Chicago (“City”) must grant prior approval for work at the Willis Tower site. Additional approvals are also required from the Alderman’s office and the Chicago Police Department (“CPD”) to remove and install the Chicago Stations’ broadcast antennas by helicopter.

The Chicago Stations, along with several other broadcast stations located on Willis Tower, were assigned new channels as part of the broadcast incentive auction repacking process. The Chicago Stations timely ceased broadcasts on their respective pre-auction channels by the end of Phase 6. Since having vacated their pre-auction channels at that time, the Chicago Stations have been broadcasting on their post-auction channels with their auxiliary or interim facilities while work on their post-auction main facilities continues.

Given the unique engineering and safety considerations that accompany modification and installation of facilities on a skyscraper located in a densely populated area, all construction work related to the repack is being coordinated, managed and executed through Willis Tower and its engineering firm.⁸ Willis Tower has planned, and is implementing, a complex repacking project that involves multiple, interconnected phases involving, *inter alia*, (1) installation of an auxiliary antenna for WLS on the West Mast (“West Mast Auxiliary Antenna”), (2) installation of WLS’s post-auction main antenna (“WLS Main Antenna”) on the East Mast, and (3) installation of the post-auction main antennas WFLD and WMAQ (“WFLD/WMAQ Main Antennas”) on the West Mast. The West Mast Auxiliary Antenna was installed in the fall of 2021, but the remaining two phases of construction are ongoing.

II. LEGAL STANDARD

Pursuant to FCC rules, a television broadcast station assigned a new channel during the broadcast incentive auction may seek a single, 180-day extension of its construction permit to enable more time to construct post-auction facilities.⁹ Stations that require additional time may seek a waiver of the tolling standard set forth in Section 73.3598(b) of the FCC’s rules upon a showing of rare and exceptional circumstances.¹⁰ The Commission may waive a rule where the

⁷ See Attachment A for a list of stations that broadcast from Willis Tower. All but four of the full-power and Class A television stations that broadcast from Willis Tower were assigned new channels as part of the repacking process.

⁸ Willis Tower is coordinating and managing all of the planning, structural design and other work to complete the project, including work relating to installation of the required antennas and transmission lines and other tower-related work.

⁹ 47 C.F.R. § 73.3700(b)(5)(i).

¹⁰ See Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines, Public Notice, DA 18-884 (rel. Aug. 27, 2018) at ¶

particular facts make strict compliance inconsistent with the public interest, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹¹ Such special, rare and exceptional circumstances are present in the case of the Chicago Stations.

III. UPDATE ON PROGRESS

As has been detailed in prior extension requests, the repack project has been moving forward notwithstanding the complex nature of the post-auction transition for the broadcast stations located at Willis Tower. Unfortunately, there have been numerous setbacks over the past few months – all of which are outside of the Chicago Broadcasters’ control – that have impeded progress on the repack project including, *inter alia*, the following:

- Helicopter Lifts. In order to install the WLS Main Antenna, WLS’s existing but currently dormant channel 44 antenna must be removed by helicopter. The helicopter lift to remove this antenna requires a permit from the Alderman’s office (which has been obtained) as well as a special event permit from the City of Chicago and street closures overseen by the CPD. Willis Tower scheduled multiple lift dates throughout November and December but all were cancelled due to harsh weather conditions, CPD manpower shortages, and the unfortunate sudden illness and death of the project manager engaged by Willis Tower to oversee the repack project (“Project Manager”).¹² Willis Tower secured two additional helicopter lift dates in January but both were cancelled due to weather. Most recently, the helicopter lift date scheduled for February 20 was cancelled because the City did not issue the special event permit required for the lift.
- Unexpected Death of Project Manager. As noted above, the Project Manager became unexpectedly ill in early December and, shortly thereafter, passed. Although Willis Tower identified and hired a new project manager promptly upon learning of the Project Manager’s serious condition, the repack project has been necessarily delayed in order to bring the Project Manager’s replacement up to speed.

Despite these significant challenges, the Chicago Broadcasters report the following progress since the Bureau granted their most recent request to waive the tolling standard in October 2021:¹³

13 and n. 34. (“Stations may also seek a waiver of the tolling rule to receive additional time to construct in the case where “rare or exceptional circumstances” prevent construction.” (citing 1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999)).

¹¹ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹² See Attachment B (email correspondence from Willis Tower regarding helicopter lift cancellations).

¹³ See Willis Tower Repack Project Plan, attached hereto as Attachment C for detailed timeline of steps required to complete the repack (“Project Timeline”). See also Attachment D, Letter from Gary S. Michon, General Manager, BRE 312 Owner L.L.C. to Hillary DeNigro, Deputy Chief, Media Bureau, FCC (dated Feb. 18, 2022).

- WLS Main Antenna. Installation Services, Inc. has been continuing to progress with off-site assembly efforts for the WLS Main Antenna at its facility in Sycamore, Illinois. According to the Project Timeline supplied by Willis Tower, this work is expected to be complete by mid-February to enable installation of the WLS Main Antenna in April, barring weather or other delays in obtaining the required permits and approvals.¹⁴
- WMAQ/WFLD Wedding Cake Antenna Mounts. As previously reported, a redesign of one of the wedding cake antenna mounts (and the existing top plate assembly) that will be used to attach the post-auction main antennas for WFLD and WMAQ to the building, and to connect the WFLD antenna to the WMAQ antenna, was required in order to accommodate the feed lines for the WMAQ and WFLD antennas. The internal peer review of the redesign by Willis Tower's engineering firm has been completed, along with the required fabrication and assembly drawings, and a purchase order was issued in January 2022. The Project Plan estimates that this equipment will be shipped by early April.
- Ancillary Work. During the fall of 2021, progress was made on staging and rigging plans, including completion of the rigging plans for the removal of the auxiliary antenna on the East Mast and WFLD's former channel 31 antenna on the West Mast and the installation lift plan and site staging for the installation of the new WMAQ/WFLD wedding cake antenna mounts on the West Mast.

IV. NEXT STEPS

While the Chicago Stations have made some progress on the construction of their post-auction facilities, for reasons outside of their control, they will be unable to complete construction of their main post-auction facilities by March 22, 2022. As noted above, the repack project is multi-phased, with each phase proceeding concurrently, and is managed by Willis Tower. And, because the phases are interdependent, a delay in any one phase, or with respect to any one station, necessarily impacts the other phases and stations. A high-level description of the work remaining to complete construction of the Chicago Stations' post-auction main facilities is as follows (the detailed construction plan supplied by Willis Tower is included herewith at Attachment C):

- Installation of WLS Main Antenna. There are three primary tasks that must be completed in order to install the WLS Main Antenna: the completion of a structural reanalysis of the East Tower, the removal of the dormant channel 44 antenna, and the helicopter lift to install the WLS Main Antenna.
 - *Structural Reanalysis of the East Tower*. As reported in previous submissions, a structural reanalysis of the East Tower is underway and is now approximately 75% complete. The Willis Tower Project Timeline targets completion of this task in February. Once the structural reanalysis is complete, the peer review and permitting process can commence. According to the Project Timeline supplied by Willis Tower,

¹⁴ See *infra* at Section IV for further discussion of steps required to complete installation of the WLS Main Antenna.

the permit application will be filed in March, with City approval expected shortly after submission.¹⁵

- *Removal of Dormant Channel 44 Antenna.* Willis Tower has scheduled the helicopter lift to remove WLS channel 44 antenna on March 20, with a back-up date scheduled for April 10. The ability to proceed with the lift on these dates is subject to CPD approval and the receipt a special event permit from the City.
- *Helicopter Installation of WLS Main Antenna.* According to the Project Timeline supplied by Willis Tower, the helicopter lift to install the WLS Main Antenna should occur around the second week of April. If successful, this will enable WLS to test and commission its new channel 22 main antenna by April or May of 2022. However, this schedule depends on the ability to secure the necessary approvals from the CPD, and the weather conditions on the day of the lift.
- Installation of WFLD/WMAQ Main Antennas. Once the WLS Main Antenna has been installed, the WFLD/WMAQ Main Antennas will be ready for installation. Prior to installation, however, there are a number of steps to be completed, including, *inter alia*, delivery of the WFLD/WMAQ Antennas to ISI for pre-assembly and off-site assembly;¹⁶ structural reanalysis of the West Mast;¹⁷ peer review and fabrication of the wedding cake antenna mount; and obtaining the required permits, including permits for the helicopter lifts to remove the existing WFLD/WMAQ antennas and to install the WFLD/WMAQ Main Antennas. According to the Project Timeline supplied by Willis Tower, these tasks will be completed in time to enable testing and commissioning of the WFLD/WMAQ antennas in the summer of 2022.¹⁸

* * *

As demonstrated above, completion of construction of the facilities specified by the post-auction CPs is a complex, multi-step process, with the vast majority of the steps outside of the control of the Chicago Broadcasters. In light of these special, rare and exceptional circumstances, further waiver of the tolling standard to provide the Chicago Broadcasters with additional time to complete construction of the post-auction main facilities for the Chicago Stations.¹⁹ Grant of

¹⁵ As the Chicago Stations have previously explained, this process is complex, involves multiple components (e.g., internal peer reviews, city peer review, applying for and obtaining the requisite permits), and is largely outside of the Chicago Stations' control as it is managed by Willis Tower in coordination with the City of Chicago.

¹⁶ The WFLD/WMAQ Main Antennas have been fabricated and placed in storage in a warehouse until such time as they can be delivered to Willis Tower for installation.

¹⁷ The structural reanalysis of the West Mast is currently targeted for completion by mid-March. See Project Timeline.

¹⁸ See Project Timeline for more details regarding the estimated completion dates for each of these tasks.

¹⁹ Consistent with the Fourth Waiver Grant, the Chicago Broadcasters have attached hereto a detailed plan for completing construction of the Chicago Stations' permanent post-auction facilities. See Project Plan included at Attachment C.

this request to extend the Chicago Stations' CPs to **September 6, 2022** will not harm the public interest because the Chicago Stations all have ceased broadcasts on their respective post-auction channels, and are presently serving their viewers on their post-auction channels.

Attachment A
Willis Tower Broadcast Stations

Callsign	City of License	Facility	Service
WBBM-TV	Chicago, IL	9617	DT
WTTW	Chicago, IL	10802	DT
WCPX-TV	Chicago, IL	10981	DT
WFLD	Chicago, IL	22211	DT
WJYS	Hammond, IN	32334	DT
WMAQ-TV	Chicago, IL	47905	DT
WPWR-TV	Gary, IN	48772	DT
WSNS-TV	Chicago, IL	70119	DT
WCIU-TV	Chicago, IL	71428	DT
WGN-TV	Chicago, IL	72115	DT
WLS-TV	Chicago, IL	73226	DT
WXFT	Aurora, IL	60539	DT
WEDE-CD	Arlington Heights, IL	66978	DC
WWME-CD	Chicago, IL	71425	DC
WMEU-CD	Chicago, IL	168662	DC
WTMX	Skokie, Illinois	6377	FM
WBBM-FM	Chicago, IL	9613	FM
WFMT(FM)	Chicago, IL	10801	FM
WJMK(FM)	Chicago, IL	28621	FM
WGCI-FM	Chicago, IL	51165	FM
WEBG(FM)	Chicago, IL	53971	FM
WLIT-FM	Chicago, IL	70042	FM
WCFS-FM	Elmwood Park, IL	71283	FM
WLS-FM	Chicago, IL	73228	FM
WKSC-FM	Chicago, IL	74178	FM

Attachment B:
Correspondence Re Cancellations of Helicopter Lifts

CONFIDENTIAL - REDACTED FROM PUBLIC REVIEW

Attachment C:
Willis Tower Repack Project Schedule

CONFIDENTIAL – REDACTED FROM PUBLIC REVIEW

Attachment D
Willis Tower Letter

CONFIDENTIAL – REDACTED FROM PUBLIC REVIEW