



Federal Communications Commission
Washington, D.C. 20554

March 23, 2022

WLS Television, Inc.
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(via electronic mail)

Re: Requests for Tolling Waivers
WLS-TV, Chicago, IL
WMAQ-TV, Chicago, IL
WFLD(TV), Chicago, IL
Facility ID Nos. 22211, 47905, and
73226
LMS File Nos. 0000185060,
0000185065 and 0000185076

Dear Licensees,

On February 18, 2022, WLS Television, Inc., licensee of station WLS-TV, Chicago, Illinois (WLS); NBC Telemundo License, LLC, licensee of station WMAQ-TV, Chicago, Illinois (WMAQ); and Fox Television Stations, LLC, licensee of station WFLD(TV), Chicago, Illinois (WFLD) (collectively Chicago Licensees and Stations) filed the above-referenced requests for waiver of the Commission's tolling provisions and tolling of the Stations' construction permit expiration dates. For the reasons below, we grant Chicago Licensees' requests and toll the expiration date of the Stations' construction permits through September 6, 2022.

Background. Pursuant to section 73.3700(b)(5) of the Commission's rules (Rules), a station that was assigned a new channel as a result of the Commission's incentive auction and repacking process may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.¹ All subsequent requests for additional time to construct are subject to the

¹ See 47 CFR § 73.3700(b)(5).

Commission's tolling provisions of section 73.3598(b) of the Rules.² The Commission's tolling provisions provide that a construction permit deadline may be tolled under specific circumstances such as acts of God, delays due to administrative or judicial review, or construction that is delayed by any cause of action pending before a court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.³ If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission's tolling provisions and tolling may still be warranted where the licensee can demonstrate that "rare and exceptional circumstances" prevented construction by the station's construction permit expiration date.⁴

Chicago Licensees request waivers of the tolling rule and tolling of their Stations' construction permits for their post-incentive auction channel facilities. The Stations are currently operating on their post-auction channels with interim facilities.⁵ The Stations were each granted construction permit extensions and tolling and their construction permit expiration dates were most recently tolled to March 22, 2022.⁶

In largely identical requests for tolling waivers, Chicago Licensees note that the Stations broadcast from Willis Tower, which hosts a shared, multi-tenant communications facility that supports a variety of broadcast stations, including full power television stations, Class A television stations, and several FM radio stations. All of the work required to implement the repack, including the fabrication and installation of the Stations' post-auction main antennas, must be coordinated through Willis Tower and their engineering/construction firm. In addition, all work on the Willis Tower site requires prior approval from various city zoning and planning departments (CBD).

Chicago Licensees report that, since the grant of their last tolling waivers, there have been numerous setbacks, outside of their control, that have impeded construction of their post-auction channel facilities. For example, a helicopter lift to remove an antenna required a permit from the Chicago Alderman's office as well as a special event permit from the City of Chicago and street closures overseen by the Chicago Police Department (CPD). Willis Tower scheduled multiple lift dates throughout November and December 2021 but all were cancelled due to harsh weather conditions, CPD manpower shortages, and the death of the project manager engaged by Willis Tower to oversee the project. Willis Tower subsequently secured two additional helicopter lift dates in January 2022 but both were cancelled

² See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

³ *Id.*

⁴ See *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 42 (1999) (recognizing that there may be "rare and exceptional circumstances" beyond the control of the licensee that do not fall under the tolling provisions, but "which would warrant the tolling of construction time." The Commission concluded that in such "limited circumstances," it would entertain requests for waiver of its "strict tolling provisions"); *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).

⁵ See LMS File Nos. 0000139981, 0000121577 and 0000140022. WLS was repacked from channel 44 to 22 and shares channel 22 with WXFT, Aurora, Illinois. WMAQ was repacked from channel 29 to 33 and shares channel 29 with WSNS-TV, Chicago, Illinois. WFLD was repacked from channel 31 to 24 and shares channel 24 with WPWR-TV, Gary, Indiana.

⁶ See LMS File Nos. 0000078105, 0000078137, 0000082055, 0000108674, 0000108706, 0000108713, 0000120815, 0000120786, 0000120787, 0000139978, 0000139992, 0000139959, 0000161509, 0000161587, and 0000161777.

due to weather. Most recently, Chicago Licensees report, the helicopter lift date scheduled for February 20, 2022 was cancelled because the City of Chicago did not issue the special event permit required for the lift.

Chicago Licensees state that they have hired a new project manager who is continuing to work on the project and arrange the timely antenna lift. Work continues on other aspects of the project including off-site assembly efforts for WLS' main antenna which is expected to be completed and the antenna installed in April 2022. A redesign of one of the "wedding cake" antenna mounts that will be used to attach the post-auction channel main antennas for WFLD and WMAQ to the building, and to connect the WFLD antenna to the WMAQ antenna, was purchased and expects to be shipped in April 2022. In addition, progress was made on antenna staging and rigging plans.

The remaining work on the Stations' antenna installations, Chicago Licensees predicts, will take until the Summer of 2022. However, Chicago Licensees states that this schedule depends on the ability to secure the necessary approvals from the CPD, and the weather conditions on the day of the antenna lift. Based on the foregoing, Chicago Licensees request that the tolling rules be waived and that the Stations' construction permit expiration dates be tolled to September 6, 2022.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive section 73.3598(b) of the Rules and to toll the expiration date of the Stations' construction permits through September 6, 2022. We find that Chicago Licensees were unable to complete construction of their post-auction channel facilities due to a variety of construction related delays. We also find that grant of Chicago Licensees' waivers and tolling requests are not likely to negatively impact the overall transition schedule and will not cause interference to other stations. The Stations have already ceased operation on their pre-auction channels and initiated temporary operations on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate using interim facilities, we believe that Chicago Licensees have every incentive to ensure viewers are fully informed about the Stations' transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Stations' construction permits.

We remind Chicago Licensees 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."⁷ Additional expenses incurred, such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

We further remind Chicago Licensees of the deadline for submitting final expense documentation for reimbursement for the Stations is September 6, 2022.⁸ **We caution the Stations that we do not**

⁷ 47 U.S.C. § 1452(b)(4)(A)(i). *See also 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, 6821, para. 622 (2014) (*Incentive Auction R&O*), aff'd, Nat'l Ass'n of Broadcasters v. FCC, 789 F.3d 165 (D.C. Cir. 2015) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

⁸ The Stations were granted extensions of the March 22, 2022 invoice submission deadline and the Stations' deadline was extended to September 6, 2022. *See* LMS File Nos. 0000185061, 0000185066 and 0000185075; *see also Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is

anticipate allowing further extensions of the final September 6, 2022 invoice filing deadline. A station's failure to complete any remaining construction in a timely manner and to make final submissions by the assigned invoice filing assignment deadline could preclude that station from receiving full reimbursement. Unobligated amounts in the Fund must be rescinded to Treasury and the Commission staff (with the support of the Fund Administrator) must have sufficient time to fully process all reimbursement requests and complete close-out procedures prior to July 3, 2023.⁹ The Fund Administrator will initiate close out procedures for any entity that has failed to initiate interim close-out procedures by the September 6, 2022 invoice filing deadline. Any unused allocations made to that entity's account will be returned to the Fund and made available for allocation to other program participants or rescinded to Treasury. Thus, we strongly encourage the Stations to diligently pursue satisfaction of the current deadlines and we encourage Chicago Licensees to submit eligible invoices as soon as practicable.

The above facts considered, WLS Television, Inc., NBC Telemundo License, LLC, and Fox Television Stations, LLC's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 0000034300, 0000072366 and 0000080396) for WLS-TV, Chicago, Illinois, WMAQ-TV, Chicago, Illinois, and WFLD(TV), Chicago, Illinois, **ARE TOLLED through September 6, 2022**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. While we anticipate this will be the Stations' final requests for tolling, we remind Chicago Licensees that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹⁰ To the extent the Station seeks an additional extension of tolling, such a request must include a detailed plan for completing construction of the Station's permanent post-auction facilities. We will look unfavorably upon any future request that does not include such a plan.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail):
Susan Fox, Esq.
Karen Milne, Esq.

October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 6, 2022).

⁹ See *id.* at 11277-78, para 13.

¹⁰ See 47 CFR § 73.3598(b). A station 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. See *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).