



Federal Communications Commission
Washington, D.C. 20554

December 20, 2022

Fox Television Stations, LLC
Ann West Bobeck, Esq.
101 Constitution Ave., NW
Suite 200 West
Washington, DC 20001
ann.bobek@fox.com
(via electronic mail)

Re: Request for Invoice Deadline Extension
KTVU(TV), Oakland, CA
Facility ID No. 35703
LMS File No. 0000205004

KGO Television, Inc.
John W. Zucker, Esq.
77 West 66TH Street, 16th Floor
New York, NY 10023
john.w.zucker@abc.com
(via electronic mail)

Re: Request for Invoice Deadline Extension
KGO-TV, San Francisco, CA
Facility ID No. 34470
LMS File No. 0000205012

San Francisco Television Station KBCW Inc.
Daniel G. Ryson
2020 M. St., NW - Licensing Department
Washington, DC 20036
dryson@cbs.com
(via electronic mail)

Re: Request for Invoice Deadline Extension
KBCW(TV), San Francisco, CA
Facility ID No. 69619
LMS File No. 0000204997

RNN National, LLC
Christian French
800 Westchester Avenue
Suite 640
Rye Brook , NY 10573
cfrench@rnnv.com
(via electronic mail)

Re: Request for Invoice Deadline Extension
KCNS(TV), San Francisco, CA
Facility ID No. 71586
LMS File No. 0000205016

Rural California Broadcasting Corporation
Darren LaShelle
5850 Labath Avenue
Rohnert Park, CA 94928
Darren_LaShelle@norcalpublicmedia.org
(via electronic mail)

Re: Request for Invoice Deadline Extension
KPJK(TV), San Mateo, CA
Facility ID No. 58912
LMS File No. 0000205060

Dear Licensees,

On December 9, 2022, Fox Television Station LLC, licensee of KTVU, Oakland, California (KTVU); and San Francisco Television Station KCBW Inc., licensee of KCBW, San Francisco, California (KCBW), and on December 12, 2022, KGO Television, Inc., licensee of KGO-TV, San Francisco, California (KGO) (collectively the Sutro Broadcasters), filed the above-captioned requests¹ for

¹ See, e.g., LMS File No. 0000205004 and Attach. (Sutro Tower Stations – Reimbursement Invoice Submission Extension Request (Redacted) (“Request”)).

extension of the Commission's invoice filing deadline for the TV Broadcaster Relocation Fund (the Reimbursement Fund or Fund) from the their current and final invoice filing assignment deadline of January 17, 2023, to April 30, 2023. On December 12 and 13, 2022, RNN National LLC, licensee of KCNS(TV), San Francisco, California, and Rural California Broadcasting Corporation, licensee of KPJK(TV), San Mateo, California, respectively, filed similar requests as captioned above; these requests cite the Sutro Broadcasters' requests in support of the KCNS and KPJK (the Stations) requests to extend their January 17, 2023, deadline to April 30, 2023. For the reasons below, we grant the Sutro Broadcasters' and the Stations' requests (Requests) and extend the date of the Sutro Broadcasters' and Stations' invoice filing deadlines to April 30, 2023.

Background. Pursuant to the Commission's direction, the Incentive Auction Task Force and Media Bureau set deadlines for final invoice submission to the Reimbursement Fund using a phased assignment approach.² All repacked stations assigned to Phases 6 through 10 of the Transition Scheduling Plan were required to submit all remaining invoices and supporting documentation using the Reimbursement Form, and initiate interim close-out procedures, no later than March 22, 2022. We stated that we did not anticipate a need to grant extensions because the deadline was more than a year after the July 13, 2020, statutory end of the transition period, and more than a year after the announcement of the invoice filing assignment deadline. We noted, however, that if an entity faces circumstances beyond its control, we could consider a limited extension by means of shifting an entity with the second invoice filing assignment deadline to the third and final invoice filing assignment deadline on September 6, 2022.³ An entity requesting such a shift was required to provide evidence that circumstances requiring the extension were outside of its control, such as local zoning or a force majeure event occurring proximate to the final submission deadline.⁴ We further stated that we would not grant extensions that do not provide the staff with sufficient processing time to complete close-out procedures for all stations.⁵ On August 4, 2022, we issued a final reminder to Fund entities that any outstanding invoices must be filed by the September 6 deadline and that we did not anticipate further extensions of the invoice filing deadline, barring limited extensions requested by entities that are able to provide evidence that circumstances outside of their control, such as local zoning or a force majeure event occurring proximate to the final submission, would necessitate a limited deadline extension.⁶

The Sutro Broadcasters and Stations requested – and received – extensions of both the March and September 2022 invoice filing assignment deadlines, and currently has a January 17, 2023, invoice filing

² See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6815-16, 6819, paras. 607, 616-17 (2014) (*Incentive Auction R&O*), subsequent history omitted; *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (MB/IATF 2020) (*Invoice Filing Deadline PN*) (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 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).

³ See *Invoice Filing Deadline PN*, 35 FCC Rcd at 11277-78, para 13.

⁴ *Id.*

⁵ *Id.*

⁶ *TV Broadcaster Relocation Fund Third and Final Invoice Filing Deadline Approaches In Thirty Days*, Public Notice, DA 22-817, n.5 (MB/IATF Aug. 4, 2022).

deadline for their respective stations.⁷ The Sutro Broadcasters and Stations, which have transitioned to and are operating from their post-auction channels, state that they will incur repack-related expenses after the January 17, 2023, invoice filing deadline because the Sutro Tower (Tower), which is owned by Sutro Tower, Inc. (STI), is still working with the City to obtain the remaining approvals necessary to complete the project, notably cladding elimination projects.⁸ The Stations' further note that after they've obtained approval and associated permitting for the cladding elimination projects, invoices will thereafter be incurred after July 2023.⁹ Thus, despite diligent efforts to obtain the necessary permits and consents, Sutro Broadcasters state that the ongoing delays are circumstances beyond their and the Stations' control.

As noted in their prior extension requests, the Tower is located in a residential area of San Francisco and must comply with local zoning, land use and permitting laws and regulations. The Sutro Broadcasters state that the primary reason they have been unable to make all of the required structural improvements, and thus complete the repack process, is due to the fact that, despite the efforts of STI (working on behalf of Tower tenants such as the Sutro Broadcasters and Stations), the City has not yet fully approved the pending application to implement required improvements through the cladding elimination.

The Sutro Broadcasters, along with STI, sought authority from the City in 2017 to replace the broadcast antennas used by the repacked Stations and remove the architectural cladding existing on the vertical legs of the Tower to reduce weight and lessen wind loading in compliance with local wind and seismic standards. Discussions with the City, local politicians, and neighborhood stakeholders over the course of two years did not generate the requisite approvals, but the City accepted a modified repack application that bifurcated the required work into two parts which enabled the Sutro Broadcasters and Stations to meet their deadlines for transitioning to their post-auction channels while they continued to work to meet several remaining conditions.

The Sutro Broadcasters state that despite their best efforts, STI continues to encounter ongoing delays in obtaining City approvals for the cladding elimination structural improvements due to local efforts to designate Sutro Tower a historical resource. Since grant of their prior extension request, however, the Sutro Broadcasters report that there has been progress. The Sutro Broadcasters had expected to obtain City approval of the cladding elimination application at a meeting that was repeatedly rescheduled and ultimately held on October 13.¹⁰ The cladding working that has been subject to applications for City approval includes two components, the horizontal cladding application and vertical cladding application. With respect to the horizontal cladding application, the Sutro Broadcasters state that the City approved the proposal to replace horizontal cladding on the Tower with stronger material attached with sturdier fasteners, and that on November 4, 2022, the City issued a permit authorizing that

⁷ See, e.g., Letters from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to KGO Television, Inc., et al., LMS File No. 0000185003 (Mar. 21, 2022) (extending the invoice filing assignment deadlines for the Sutro Broadcasters from March 22 to September 6, 2022) and LMS File No. 0000196868 (Aug. 31, 2022) (granting requests to extend the invoice filing assignment deadlines for the Sutro Broadcasters from September 2022 to January 17, 2023).

⁸ See, e.g., LMS File No. 0000205004, Attach. at 3.

⁹ *Id.* at 7, n.19.

¹⁰ *Id.* at 5, n.16 (stating "The hearing was initially scheduled for May 12, 2022 but was postponed by the City first to June 2, 2022, then to July 14, 2022, then to August 25, 2022, and ultimately to October 13, 2022").

work.¹¹ The Broadcaster Stations state that they expect to start work shortly but do not anticipate completing the project until Summer 2023 due to a limited number of working days in the late fall and winter, and that they will submit invoices for this work as early as possible, but do not currently anticipate that estimated invoices will be available before the end of January 2023.¹²

With respect to the vertical cladding application, which proposes removal of the Tower's vertical, non-structural cladding, the Sutro Broadcasters state that the City deferred action pending an environmental review, and that STI has advised that it is "actively pushing for a lessened environmental review . . . with a completion target date of April 30, 2023."¹³ The Sutro Broadcasters add that the City has proposed approving this project in a discretionary review hearing that would not be subject to extended environmental review, provided that STI agrees to proposed mitigation measures to reduce visual impacts of permanent removal of the architectural cladding, and that STI anticipates receiving the City's proposed mitigation measures in December 2022.¹⁴ The Sutro Broadcasters note that much of the work that would be authorized under any permit associated with the vertical cladding application is already substantially complete, but that there are still costs to be incurred in connection with the permitting process, as well as the anticipated mitigation measures to reduce the visual impact such as repainting the Tower to its original red and white color scheme.¹⁵ The Sutro Broadcasters state they anticipate that estimated invoices relating to the repainting will be available by the end of January 2023 and that they anticipate submitting such estimated invoices promptly, but they also note that despite their best efforts, the Sutro Broadcasters and Stations will not be able to provide all invoices for remaining Tower work and related expenses by the January 17, 2023, deadline.¹⁶

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to extend the Sutro Broadcasters' and Stations' invoice filing deadline from the current January 17, 2023 deadline to April 30, 2023. The Sutro Broadcasters and Stations have demonstrated that circumstances beyond their control require the extension. We also find that granting the Requests is not likely to negatively impact the staff's ability to process the Sutro Broadcasters' and Stations' invoices or complete close-out procedures for all stations. We therefore conclude that the public interest will be served by grant of the extension. We strongly encourage the Sutro Broadcasters and Stations to pursue diligently submission of all remaining invoices and any estimates as early as possible without waiting for this invoice filing assignment deadline of April 30, 2023. We remind the Sutro Broadcasters and the Stations that, pursuant to the Spectrum Act, the stations are eligible for reimbursement for costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."¹⁷ 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.

¹¹ *Id.* at 5.

¹² *Id.* at 5-6.

¹³ *Id.* at 6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 47 U.S.C. § 1452(b)(4)(A)(i). *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.").

We caution the stations that we do not anticipate allowing further extensions of this final April 30, 2023, filing deadline. A station's failure to timely submit all estimates or any pending invoices by the filing deadline could preclude that station from receiving full reimbursement. Unobligated amounts in the Fund must be rescinded to Treasury on July 3, 2023, and Commission staff (with the support of the Fund Administrator) must have sufficient time to fully process all invoices and any estimates that, if approved, could obligate and allocate funds to the stations.¹⁸

In consideration of the above facts, the requests for extension of invoice filing assignment deadlines of Fox Television Station LLC; KGO Television, Inc.; San Francisco Television Station KCBW Inc.; RNN National, LLC; and Rural California Broadcasting Corporation **ARE GRANTED**. The deadline for filing estimates, and any invoices pending as of April 30, 2023 for KTVU, Oakland, California; KGO-TV, San Francisco, California; KCBW, San Francisco, California; KCNS, San Francisco, California; and KPJK, Mateo, California, **IS MODIFIED TO April 30, 2023**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Susan Fox, The Walt Disney Company, at Susan.Fox@disney.com
Martha E. Heller, VP, Paramount Global, at martha.heller@viacomcbs.com
Christina Burrow, Esq., at cburrow@cooley.com
Margaret L. Miller, Esq., at mmiller@graymillerpersh.com

¹⁸ See *Invoice Filing Deadline PN*, 35 FCC Rcd at 11277-78, para 13.