

W41DO-D, New York, NY, Facility ID #60554
Request for Limited Extension of December 31, 2022 Deadline to Submit Invoices for
Reimbursement from the TV Broadcaster Reimbursement Fund

Major Market Broadcasting of New York Inc. (“MMBNY”), licensee of digital Low Power Television Station W41DO-D, New York, New York, Facility ID 60554 (“Station”) and permittee of related W33ET-D, a displacement authorization for the Station on Channel 33, hereby seeks a limited extension, to and including March 1, 2023, of its current December 31, 2022 deadline to submit all remaining invoices for reimbursement from the TV Broadcaster Relocation Fund (“Fund”). Barring unforeseen circumstances, such an extension would allow MMBNY adequate time to seek reimbursement for completion of construction of its facilities at the Empire State Building, a transmitter site location only recently (August 3, 2022) approved by the Commission.¹

By Public Notice, *Incentive Auction Task Force and Media Bureau Remind Reimbursement Program Participants that the Third and Final Filing Deadline Approaches in 30 Days*, DA 22-817 (rel. Aug. 4, 2022) (“Notice”), the Incentive Auction Task Force and Media Bureau (“Bureau”) reminded all low power TV and TV translator stations, among others, of the September 6, 2022 deadline to submit invoices for reimbursement from the Fund. The Notice (at n. 5) also made clear that, in appropriate circumstances, the Commission would entertain requests for a limited extension of a station’s deadline.² On September 2, 2022, MMBNY sought, and on September 29, 2022 was granted, an extension of that deadline to December 31,

¹ See LMS File No. 0000196772.

² Pursuant to footnote 5 of the Notice, MMBNY also respectfully requests a waiver of the Legal STA filing fee in LMS.

2022.³ As discussed herein and in the FCC's LMS records for this Station, MMBNY has been diligently working to construct the Station, but has encountered circumstances outside of its control that have delayed its progress. MMBNY therefore respectfully requests that its deadline for submitting reimbursement invoices be extended to March 1, 2023.

On July 1, 2021, MMBNY consummated the purchase of the Station. Prior to that transaction, initiation of T-Mobile operations in the 600 MHz band in New York City had displaced the Station, resulting in interim operation of the Station on Channel 2 pursuant to a channel share agreement. MMBNY's predecessor had also filed a displacement application for regularized operation on Channel 33.⁴ When the channel share agreement terminated on August 30, 2021,⁵ MMBNY took the Station silent. MMBNY's Channel 33 displacement application remained pending until its grant on December 21, 2021.⁶

Despite MMBNY's best efforts, it was unable to construct the Station's new facilities at the Bloomberg Tower location authorized by the December 2021 permit. In the difficult New York City antenna site market, after considerable effort, MMBNY identified a new site for the Station at the Empire State Building. Accordingly, on August 2, 2022, MMBNY filed a request for minor modification of its license, requesting that it be permitted to operate the Station from the Empire State Building. That application was granted on August 3, 2022.⁷ Since the grant of that application, MMBNY has been diligently working on a number of fronts to complete construction at the Empire State Building, including to finalize its lease with a sophisticated

³ See LMS File No. 0000199218.

⁴ See LMS File No. 0000048498.

⁵ See LMS File No. 0000159472.

⁶ See LMS File No. 0000048498.

⁷ See LMS File No. 0000196772.

landlord and procuring necessary antenna and transmitter equipment and storing it in New York City to facilitate installation. In the meantime, MMBNY filed an STA request on August 29, 2022 to operate the Station from an alternate location, the Trump World Building (the “TWB STA”). On August 30, 2022, MMBNY notified the Commission that it had that day resumed on-air operations from that alternate site. Those operations continue; the TWB STA does not expire until February 27, 2023.

Since the grant of the reimbursement filing deadline extension to December 31, 2022, MMBNY has worked to finalize and sign the aforementioned lease with the Empire State Building. Those efforts have now borne fruit. The parties very recently reached agreement on all terms of the lease and are currently in the process of exchanging signatures and related documents, which is taking a few days due to the Holiday season. The lease, like the negotiations which preceded its signing, is lengthy and complex, and represents a substantial financial investment by MMBNY. In any event, MMBNY has taken the critically important steps to put itself in position to construct the Station facilities at the Empire State location. To that end, it has, in parallel with the lease negotiations, worked to finalize a construction plan to be implemented by a New York crew under MMBNYs overall direction. With the necessary equipment already nearby, MMBNY hopes to complete construction within approximately one month of completion, over the next several days, of the final document exchange described above. MMBNY knows from experience, however, that every construction project encounters variables that cannot be anticipated. For that reason, MMBNY hereby asks the Commission for a two-month extension of the current December 31, 2022 deadline (to March 1, 2023) to submit expenses to the Commission for reimbursement.

The FCC may grant a waiver for good cause shown. 47 C.F.R. § 1.3. A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166. Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

The facts and circumstances presented herein amply justify grant of this requested limited extension. In the relatively short period of time since MMBNY was granted its modification to its displacement application, MMBNY has worked diligently and made substantial progress in finding a suitable location from which to operate the Station. As the Commission concluded in *Universal Broadcasting of New York, Inc. et al.*, Memorandum Opinion and Order, 34 FCC Rcd 10319, 10322 para. 11 (2019), a case involving a site search in Mineola, New York (Long Island), “[f]inding an appropriate site for...station operation, even low-power STA operation, is difficult in a densely-populated environment such as Mineola, New York (Nassau County),” and constitutes a “complicating factor beyond [the licensee]’s control.” As noted above, MMBNY has faced this same “complicating factor,” but in a city and antenna environment considerably more densely populated, congested and complicated than Mineola. To address the problem, MMBNY filed for an appropriate permanent site for Channel 33 operation on August 3, 2022 and for a necessary alternate site on August 29, 2022. Having procured necessary equipment, MMBNY has continued to work diligently to finalize lease negotiations and other administrative matters to allow construction to be completed, with the Empire State Building lease signed this

very day. However, despite these considerable efforts, MMBNY is unable to conclude Station construction prior to December 31, 2022. As noted herein and in the Station's record, the Station has experienced many of the factors relevant to Commission consideration of analogous extension requests – including the complexities associated with locating a sufficient site, particularly under the severe time constraints extant in this case, and complex lease negotiations.⁸

Grant of this extension would amply serve the public interest. As detailed above, MMBNY has been diligently working under considerable time constraints to overcome a variety of obstacles and restore Station service. MMBNY has invested substantial resources to return the Station and its programming designed for diverse, minority group audiences to the air. Accordingly, for the foregoing reasons, Commission grant of a limited extension to March 1, 2023 of the deadline for MMBNY to submit W41DO-D repack-related invoices for Fund reimbursement is amply justified. Such relief is respectfully requested.

⁸ See, e.g., *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 ¶ 12 (citing the following as three of five illustrative circumstances relevant to showings justifying construction permit extensions: “delays in construction due to the unavailability of equipment or a tower crew,” “tower lease disputes” and “unusual technical challenges”). These circumstances are present here, and constitute essential components of MMBNY's showing of rare and exceptional circumstances. See, e.g., LMS File No. 0000196772; LMS File No. 0000048498; LMS File No. 0000159472 (detailing site changes and the complex lease negotiations explained above).