



Federal Communications Commission
Washington, D.C. 20554

January 10, 2023

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. 0000205965,
0000205205967 and 0000205910

Dear Licensees,

On December 27, 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 Willis Broadcasters 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 Willis Broadcasters' requests and toll the expiration date of the Stations' construction permits through April 17, 2023.

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

Willis Broadcasters 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 January 17, 2023.⁶

In largely identical and well documented requests for tolling waivers, Willis Broadcasters 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.

Willis Broadcasters report that since the grant of their last tolling waivers they have undertaken and substantially completed the work that is within their control. Willis Broadcasters maintain that the remaining tasks have been delayed due to setbacks outside of their control. Willis Broadcasters document circumstances, including difficulties in obtaining the necessary steel components due to global supply-chain shortages which are outside of their control. With respect to supply shortages, the Willis Broadcasters state that the company that is fabricating the WFLD/WMAQ wedding cake antenna mount and top plate steel assembly (hereinafter "the company") has not only had difficulty procuring certain

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, 0000161777, 0000185060, 0000185065, 0000185076, 0000196980, 0000196983 and 0000196988.

materials necessary to complete fabrication, but has received some materials that failed to meet applicable specifications. The Willis Broadcasters state that the company advised Willis Tower that as of December 7, 2022, it is still experiencing delays in providing the wedding cake mount due to a worldwide delay of rolled steel delivery, as well as the company's need to procure specific material that fits the engineering specifications of the project. According to the Willis Broadcasters, the company has been testing material for the last 6-8 months, has narrowed down the options to three raw parts, and indicates that it is in the process of testing a sample of one material with a metallurgist company for review on December 16, 2022, which will take another three weeks, minimum, to complete.

In addition, the Willis Broadcasters report that the remaining work requires at least four additional helicopter lifts. The Willis Broadcasters note that the lifts entail removal and installation of various equipment (e.g., antennas, antenna mounts) that affect the structural loads of the lifts, so it is generally necessary to perform the lifts in a particular sequence such that if one lift is delayed, the entire sequence may be delayed. The Willis Broadcasters further report that, after several scheduled helicopter lifts were previously delayed due to weather or permitting issues, a lift scheduled for December 11, 2022, was postponed once again because of the unavailability of steel components essential to securing the equipment that will be installed during the lift. The Willis Broadcasters state that Willis Tower has confirmed that Chicago city officials are now promptly issuing permits needed for helicopter lifts, and Willis Towers has reserved helicopters for both scheduled and fallback dates beginning on the last Sunday in January (potentially for the WLS Main Antenna installation) and continuing through February 2023.

Finally, the Willis Broadcasters state that Willis Tower has been working to identify measures to expedite the timeline to complete the repack project, mitigate further delays, and develop contingency plans if such delays nonetheless occur. Based on the foregoing, Willis Broadcasters request that the tolling rules be waived and that the Stations' construction permit expiration dates be tolled to April 17, 2023.

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 April 17, 2023. We find that Willis Broadcasters 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 Willis Broadcasters' 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 Willis Broadcasters 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 Willis Broadcasters 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

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.").

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 Willis Broadcasters of the deadline for submitting final expense documentation for reimbursement for the Stations is **April 17, 2023**.⁸ **We caution the Stations that we do not anticipate allowing further extensions of the Station's extended 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 Station's extended 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 deadline and we encourage Willis Broadcasters 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 April 17, 2023**. 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 Willis Broadcasters 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

⁸ The Stations were granted extensions of the September 6, 2022 invoice submission deadline and the Stations' deadline was extended to April 17, 2023. *See* Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Willis Broadcasters (Jan. 10, 2023) (on file at LMS File Nos. 000020591, 0000205966 and 0000205968); *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 filing deadlines for submission of repack invoices).

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).

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.