



Federal Communications Commission
Washington, D.C. 20554

May 2, 2023

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. 0000214235

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. 0000214242

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. 0000214229

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

Re: Request for Invoice Deadline Extension
KCNS(TV), San Francisco, CA
Facility ID No. 71586
LMS File No. 0000214243

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. 0000214238

Dear Licensees,

On April 26, 2023, Fox Television Station LLC, licensee of KTVU, Oakland, California (KTVU); San Francisco Television Station KCBW Inc., licensee of KCBW, San Francisco, California (KCBW), and KGO Television, Inc., licensee of KGO-TV, San Francisco, California (KGO) (collectively the Sutro Broadcasters), filed the above-captioned requests¹ for extension of the Commission's invoice

¹ See, e.g., LMS File No. 0000214235 and Attach. (Sutro Tower Stations – Reimbursement Invoice Submission Extension Request).

filing deadline for the TV Broadcaster Relocation Fund (the Reimbursement Fund or Fund) from their current invoice filing deadline of April 30, 2023, to May 31, 2023. Two other stations also filed extension requests on April 26, 2023: RNN National LLC, licensee of KCNS(TV), San Francisco, California, and Rural California Broadcasting Corporation, licensee of KPJK(TV), San Mateo, California,² and both cite the Sutro Broadcasters' requests in support of the stations' KCNS and KPJK (the Stations) requests to extend their April 30, 2023, deadline to May 31, 2023. For the reasons below, we grant the Sutro Broadcasters' and the Stations' requests (collectively, Requests) and extend the date of their invoice filing deadlines to May 31, 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.³ 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 faced 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, 2022.⁴ 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.⁵ 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.⁶ 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.⁷

The Sutro Broadcasters and Stations requested and received extensions of both the March and September 2022 invoice filing assignment deadlines (the latter being further extended to April 30, 2023) for their respective stations.⁸ The Sutro Broadcasters and Stations, which have transitioned to and are

² See, e.g., LMS File No. 0000214238 and Attach. (KPJK request).

³ 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: October 8, 2021; March 22, 2022; and September 6, 2022).

⁴ See *Invoice Filing Deadline PN*, 35 FCC Rcd at 11277-78, para 13.

⁵ *Id.*

⁶ *Id.*

⁷ *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).

⁸ 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); LMS File No. 0000196868 (Aug. 31, 2022) (granting requests

operating from their post-auction channels, state that they will incur repack-related expenses after the April 30, 2023, invoice filing deadline because Sutro Tower (Tower), the tower from which the stations broadcast and 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 the cladding elimination projects.⁹ Thus, despite diligent efforts to obtain the necessary permits and consents, Sutro Broadcasters and the Stations state that the ongoing delays are circumstances beyond their control.

As noted in their 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 still-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 with regard to the cladding work that has been subject to applications for City approval and which includes two components, the horizontal cladding application and vertical cladding application. With respect to the horizontal cladding, the Sutro Broadcasters state that the work to replace horizontal cladding on the second, third and fourth levels of Sutro Tower with stronger material that is attached with sturdier fasteners is commencing and that invoices are being submitted as they are incurred.¹⁰

With respect to the vertical cladding application, which proposes removal of the Tower's vertical, non-structural cladding, the Sutro Broadcasters report that the environmental review of the cladding elimination application was completed in April 2023 and, via a Planning Department memorandum dated April 10, 2023, recommends approval of Vertical Cladding Elimination, subject to certain conditions of approval to mitigate the impact of the elimination.¹¹ The Sutro Broadcasters state that a final hearing

to extend the invoice filing assignment deadlines for the Sutro Broadcasters from September 2022 to January 17, 2023); and LMS File No. 0000205004 (Dec. 20, 2022) (granting requests to extend the January 17, 2023, deadline to April 30, 2023).

⁹ See, e.g., LMS File No. 0000214235, Attach. at 2-3.

¹⁰ *Id.* at 4-5.

¹¹ *Id.* at 5.

concerning this matter (where Sutro Broadcasters anticipate receiving a decision on the mitigation measures required) has been rescheduled several times and is now set for May 25, 2023.¹²

The Sutro Broadcasters further report that work that would be authorized under any permit associated with the vertical cladding application is substantially complete, but 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 including, but not limited to, repainting of the tower to its original aviation orange and white color scheme.¹³ The Sutro Broadcasters state that they will work with STI to obtain invoices for work performed in connection with the environmental assessment on a rolling basis, though it is possible that these invoices will not all be available until the fall of 2023, despite all efforts to expedite the process.¹⁴

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to extend the Sutro Broadcasters' and Stations' invoice filing deadlines from the current April 30, 2023, deadline to May 31, 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 May 31, 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."¹⁵ 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 caution the stations that we do not anticipate allowing further extensions of this final May 31, 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.¹⁶

In consideration of the above facts, the requests for extension of invoice filing deadlines of Fox Television Station LLC; KGO Television, Inc.; San Francisco Television Station KCBW Inc.; RNN

¹² *Id.* The meeting to approve the vertical cladding project had been set for April 20, 2023, but has been rescheduled for May 25, 2023, which the Sutro Broadcasters state will not be subject to further postponement based on the agreement of all parties. *Id.* at 5, n.16.

¹³ *Id.* at 5.

¹⁴ *Id.* at 5, n.17. Additionally, the Sutro Broadcasters state that the repainting work in connection cannot commence until after the requisite application is granted and the associated permit is issued, and that because weather conditions significantly determine when repainting can occur, this work will likely take three to four years to complete, such that invoices for repainting will not be available for submission until well after July 3, 2023.

¹⁵ 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.").

¹⁶ *See Invoice Filing Deadline PN*, 35 FCC Rcd at 11277-78, para 13.

National, LLC; and Rural California Broadcasting Corporation **ARE GRANTED**. The deadline for filing estimates, and any invoices pending as of May 31, 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 May 31, 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
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