



Federal Communications Commission
Washington, D.C. 20554

February 6, 2024

NBC Telemundo License, LLC
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Fox Television Stations, LLC
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(via electronic mail)

Re: Requests for Tolling Waivers
WMAQ-TV, Chicago, IL
WFLD(TV), Chicago, IL
Facility ID Nos. 47905 and 73226
LMS File Nos. 0000237723 and 0000237775

Dear Licensees,

On January 30-31, 2024, 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 August 29, 2024.

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 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

¹ See 47 CFR § 73.3700(b)(5).

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,

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 February 29, 2024.⁶

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 and 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 in August 2023 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 most recently delays in obtaining peer review approval which is required prior to antenna installation. Willis Broadcasters report that manufacturing of the West Tower "wedding cake" and top plate assembly have been completed and remain subject to peer review approval. Willis Broadcasters state that installation of this wedding cake will commence once peer review has been completed and all city of Chicago permits have been obtained. Willis Broadcasters reports that all necessary equipment, including steel components, have been obtained and are ready for installation subject to peer review approval.

Willis Broadcasters state that, upon completion of the peer review process, the Stations' outside consulting firm will help expedite obtaining all necessary zoning and permitting, including permits for the helicopter lifts that will result in installation of the top plate wedding cake assembly, followed by additional tower reinforcement and the installation of the WMAQ wedding cake and antenna, and the WFLD wedding cake, antenna, and damper. Willis Broadcasters states that all of this work is anticipated to be completed by the August 29, 2024 extended deadline, even factoring in potential weather delays.

Based on the foregoing, Willis Broadcasters request that the tolling rules be waived and that the Stations' construction permit expiration dates be tolled.

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

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. 0000121577 and 0000140022. 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. A third member of the Willis Broadcasters – WLS-TV, Chicago, Illinois, was able to complete the installation of their post-auction channel facilities on the Willis Tower and filed a license to cover on December 8, 2023. See LMS File No. 0000232100, granted on December 14, 2023.

⁶ See LMS File Nos. 0000219461 and 0000219489.

Stations' construction permits through August 29, 2024. We find that Willis Broadcasters were unable to complete construction of their post-auction channel facilities due to construction-related delays including delays in obtaining approvals to site their facilities on Willis Tower in Chicago. 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.

Willis Broadcasters should diligently pursue submission of all remaining invoices as early as possible without waiting for their August 29, 2024, final invoice filing deadline.⁷ We remind Willis Broadcasters that, pursuant to the Spectrum Act, the Stations are eligible for reimbursement of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."⁸ Additional expenses incurred, such as expenses resulting from changes in a Stations' transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The Willis Broadcaster have filed estimates and received allocations for all remaining work that they have reported might be subject to future incurred expenses and no additional allocations from the TV Broadcaster Reimbursement Fund are available after July 3, 2023 as a result of a statutory deadline. A station's failure to complete any remaining construction in a timely manner and to make final submissions by the revised invoice filing deadline could preclude that station from receiving full reimbursement.

The above facts considered, 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. 0000072366 and 0000080396) for WMAQ-TV, Chicago, Illinois, and WFLD(TV), Chicago, Illinois, **ARE TOLLED through August 29, 2024**. 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

⁷ The Stations were granted extensions of their February 29, 2024 invoice submission deadline and the Stations' deadline was extended to August 29, 2024. *See* Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Willis Broadcasters (Feb. 6, 2024) (on file at LMS File Nos. 0000237720 and 0000237776); *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).

⁸ 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.").

tolling of their construction permit deadlines will be subject to the Commission's tolling provisions.⁹ To the extent a Station seeks an additional extension of tolling, such 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):
Karen Milne, Esq.

⁹ 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).