Request for Second Waiver of Tolling Standard to Extend Construction Permits

WLS Television, Inc., Fox Television Stations, LLC, NBC Telemundo License LLC, and Unimas Chicago LLC (the "Chicago Broadcasters") respectfully request a second waiver of the tolling standard set forth at Section 73.3598(b) of the rules of the Federal Communications Commission ("FCC" or "Commission") as applied to the outstanding post-auction construction permits ("CPs") for the following broadcast television stations that broadcast from Willis Tower in Chicago:

- WLS-TV, Channel 22, Facility ID No. 73226, and its channel sharing partner, WXFT, Facility ID No. 60539 ("WLS/WXFT");
- WFLD, Channel 24, Facility ID No. 22211, and its channel sharing partner, WPWR-TV, Facility ID No. 48772 ("WFLD/WPWR-TV"); and
- WMAQ-TV, Channel 33, Facility ID No. 47905, and its channel sharing partner, WSNS-TV, Facility ID No. 70119 ("WMAQ-TV/WSNS-TV" and, collectively with WLS/WXFT and WFLD/WPWR-TV, the "Chicago Stations").[1]

On April 8, 2020, the Chicago Broadcasters obtained a waiver of the FCC's tolling standard to extend the post-auction CPs for the Chicago Stations based upon a demonstration that special, rare and exception circumstances precluded construction of the Chicago Stations' post-auction facilities.[2] The Chicago Stations' post-auction CPs are presently scheduled to expire on **October 13, 2020**. Since grant of the tolling waivers for the Chicago Stations by the Media Bureau ("Bureau") last spring, the Chicago Broadcasters have continued to work diligently with Willis Tower to implement their respective post-auction facilities, and all of the Chicago Stations have vacated their pre-auction channels. However, as explained below, it has become clear that, despite these efforts, as a result of special, rare and exceptional circumstances outside of the control of the Chicago Broadcasters, including a newly-imposed requirement to submit zoning drawings to the Chicago Building Department, construction of the post-auction facilities for the Chicago Stations will not be complete by the October 13 deadline. Accordingly, the Chicago Broadcasters respectfully request a second waiver of the FCC's tolling standard to extend the post-auction CPs for the Chicago Stations for an additional six months, until **April 12, 2021**.[3]

Pursuant to FCC rules, a television broadcast station assigned a new channel during the broadcast incentive auction may seek a single, 180-day extension of its construction permit to enable more time to construct post-auction facilities.[4] Stations that require additional time may

[1] Attachment A hereto lists the LMS File Numbers of the post-auction construction permits for the Chicago Stations.

[2] *See* Applications of WLS Television, Inc., NBC Telemundo License, LLC, Fox Television Stations, LLC, LMS File Nos. 0000108674, 0000108706, and 0000108713 (filed Mar. 23, 2020) ("First Waiver Request"); Letter from Barbara A. Kreisman, Chief, Media Bureau, FCC to the Chicago Stations, LMS File Nos. 0000108674, 0000108706, and 0000108713 (Apr. 18, 2020).

[3] The 180th day after October 13, 2020 is April 11, 2021. However, because April 11, 2021 falls on a Sunday, the Chicago Broadcasters respectfully request that the Bureau extend the expiration date of the CPs to April 12, 2021 pursuant to the instant request for waiver of the tolling standard.

[4] 47 C.F.R. § 73.3700(b)(5)(i).

seek a waiver of the tolling standard set forth in Section 73.3598(b) of the FCC's rules upon a showing of rare and exceptional circumstances.[5] The Commission may waive a rule where the particular facts make strict compliance inconsistent with the public interest, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.[6] As explained below, such special, rare and exceptional circumstances are present in the case of the Chicago Stations.

As the FCC is aware, the Chicago Stations broadcast from Willis Tower, a densely populated multi-tenant communications platform that supports many full-power television stations (including the Chicago Stations), three Class A television and several FM radio facilities.[7] All but four of the full-power and Class A television stations that broadcast from Willis Tower were assigned new channels as part of the repacking process.[8] In order to accomplish these channel changes, Willis Tower has planned, and is implementing, a complex repacking project that involves, *inter alia*, transitioning WLS (and its channel sharing partner WXFT) to a new post-auction main antenna to be installed on the east mast of Willis Tower ("East Mast") and transitioning each of WFLD (and its channel sharing partner WPWR-TV) and WMAQ-TV (and its channel sharing partner WSNS-TV) to new post-auction main antennas to be installed on the west mast of Willis Tower ("West Mast"). The project also involves installing a new auxiliary antenna for WLS (and its channel sharing partner WXFT) on the West Mast.[9] All of the work required to implement the repack, including the fabrication and installation of the new post-auction main antennas, must be coordinated through, and cannot be completed without the involvement of, Willis Tower.[10]

Notwithstanding the complex nature of the post-auction transition for the broadcast stations located at Willis Tower, the Chicago Stations have been working diligently to complete

---

[5] *See* 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 ¶ 13 and n. 34. ("Stations 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." (citing 1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999)).

[6] *See* Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[7] *See* Attachment B for a list of stations that broadcast from Willis Tower.

[8] Specifically, the following full-power and Class A television stations at Willis Tower were assigned new channels during the incentive auction: WTTW, WCPX-TV, WFLD, WJYS, WMAQ-TV, WCIU-TV, WLS-TV (which channel shares with WXFT), WEDE-CD, WWME-CD, and WMEU-CD. Two of the full-power television stations, WPWR-TV and WSNS-TV, relinquished their channel assignments in order to channel share with WFLD and WMAQ-TV, respectively. Another two stations (WBBM-TV and WGN-TV) were assigned their pre-auction channels for their post-auction broadcasts.

[9] This auxiliary antenna will be shared with WTTW.

[10] Willis Tower is coordinating and managing the antenna, tower and transmission line portion of the repack project at Willis Tower as well as performing all of the planning, structural design and actual work to complete the project. Willis Tower has created a project plan whereby the repack of the Chicago Stations will be implemented in three phases, as follows: (i) Phase I – complete installation of WLS/WTTW auxiliary antenna on the West Mast; (ii) Phase II – complete installation of the Main Antenna (as defined herein) for WLS on the East Mast; and (iii) Phase III – complete installation of the Main Antennas for WFLD and WMAQ on the West Mast. Willis Tower has not provided a schedule setting forth the estimated completion date for any of the foregoing phases, despite repeated requests of the Chicago Broadcasters for such information. *See* Attachment C (chart detailing workstreams for Willis Tower repack project) and *infra* at note 12 (discussing same).

the repack process in accordance with FCC rules and procedures. To this end, the Chicago Stations timely ceased broadcasts on their respective pre-auction channels by the end of Phase 6, and commenced post-auction operations using auxiliary or interim facilities. Moreover, since the Bureau granted the Chicago Broadcasters' initial request to waive the tolling standard in April 2020, there has been additional progress towards completing construction of their post-auction facilities, as described below. Nevertheless, as explained herein, for reasons outside of their control, including a new requirement to submit zoning drawings to the Chicago Building Department, the Chicago Stations will be unable to complete construction of their main post-auction facilities by October 13, 2020.

As explained in the First Waiver Request, the Chicago Stations contracted with Dieletric to manufacture the three main antennas that will be required for the post-auction facilities of WLS (and its channel sharing partner WXFT), WFLD (and its channel sharing partner WPWR-TV) and WMAQ-TV (and its channel sharing partner WSNS-TV) (collectively, the "Main Antennas"). Last fall, the structural engineer for Willis Tower informed the Chicago Stations that the Main Antennas had not been fabricated by Dielectric in accordance with the structural and welding specifications provided by Willis Tower and agreed upon by Dielectric. The Chicago Stations worked with Willis Tower and Dielectric over the past several months to remedy this issue, and fabrication of all of the Main Antennas is now complete. In addition, Willis Tower has been taking steps to facilitate its applications for the necessary permits to complete the repack process, which includes permits to install the Main Antennas as well as the WLS auxiliary antenna system. For example, the first peer review of the structural engineering studies for the WLS auxiliary antenna system that will be installed on the West Mast has been completed, and the required information has been submitted to the engineering firm selected by the City to conduct its peer review for the West Mast auxiliary installation.[11] In addition, the structural design of the East Mast, and the peer review of this design by an engineering firm selected by Willis Tower, is underway and expected to be completed in the near term, at which time the structural studies will be submitted to the City's engineering firm for peer review.

Despite these efforts, there are still several tasks that must be completed before the Chicago Stations can begin broadcasts with the facilities specified in their post-auction CPs, as follows:[12]

(1) Antenna Fabrication and Ancillary Tower Work. As explained above, fabrication of the Main Antennas has been completed, and the Main Antennas have been placed in storage until such time as they can be delivered to Willis Tower for installation. However, all of the parts required for installation of the Main Antennas are not expected to be delivered

[11] *See infra* at note 19 (discussing peer review process). Given the commonalities between the auxiliary design and the design for the WMAQ and WFLD Main Antenna installations on the West Mast, it is likely that the structural engineering work for the auxiliary antenna can be leveraged to expedite the structural design and associated peer reviews for the WMAQ and WFLD Main Antenna installations on the West Mast.

[12] The attached chart, which was provided by Willis Tower to the Chicago Broadcasters on August 17, illustrates the workflow for the repack project at Willis Tower. As evidenced in the chart, while there has been significant progress towards completion of the Chicago Stations' post-auction CP facilities, there remain several open complex and interwoven work flows that are either in progress or not yet started. Indeed, the chart makes clear that the construction of the Chicago Stations' post-auction CP facilities is a complicated, multi-step project, with multiple work streams that individually will take several months to complete, even if run in parallel.

to the warehouse until early October. At this time, the Main Antennas will be assembled and tested at the warehouse and, assuming successful results, the Main Antennas then will be disassembled for delivery to Willis Tower for installation.[13]

As noted in the First Waiver Request, concurrently with the fabrication process for the Main Antennas, Willis Tower has been undertaking ancillary tower work, such as tower interface and dampening, as well as structural reinforcements and construction of climbing facilities.[14] While some of this work has been completed (e.g., 5 of the 6 damper tanks have been fabricated),[15] much of the ancillary work is still in progress. For example, there have been some unanticipated delays in the construction of the new wedding cake antenna mount required for the post-auction facilities of WFLD (and its channel sharing partner WPWR-TV) and WMAQ-TV (and its channel sharing partner WSNS-TV).[16] In addition, while the preliminary drawings for the climbing equipment and damper frames have been submitted, the production drawings required to initiate the peer review of the climbing equipment and damper frames have not yet been finalized.[17] Based upon information available to date, the Chicago Stations anticipate that the ancillary tower work required to facilitate installation of the Main Antennas will be completed no earlier than mid-October 2020.

(2) Structural Engineering and Permits. Willis Tower is relocating some of the broadcast stations, including the Chicago Stations, to new antennas and supporting structures. In order to accomplish this task, it is necessary to obtain structural permits to install the WFLD and WMAQ Main Antennas on the West Mast, to install the WLS Main Antenna on the East Mast, and to install an auxiliary antenna for WLS on the West Mast. As a prerequisite to apply for these permits, Willis Tower must have completed structural engineering studies to determine whether the new antennas and supporting structures comply with the ANSI/TIA-222-G structural standard, the standard required by the city of Chicago.[18] The structural studies then are submitted for peer review.[19] As noted

---

[13] *See supra* at note 10 (discussing Willis Tower phased installation plan).

[14] *See* First Waiver Request at note 9.

[15] The last damper tank was not fabricated in accordance with specifications. Willis Tower is working with the manufacturer to address this matter.

[16] Specifically, the steel used in the WFLD/WMAQ wedding cake adapter was improperly welded and the replacement steel failed the Charpy V Notch Test, and thus will need to be replaced and retested a second time. This process is likely to add a minimum of three weeks to the timeline for completion of the wedding cake antenna for WFLD and WMAQ. WLS (and its channel sharing partner WXFT) will reuse the wedding cake antenna mount that had been installed for its pre-auction channel 44 facilities, such that this issue does not impact WLS directly. However, because Willis Tower has defined a repack plan that creates dependencies among the stations, *see supra* at note 10, the delay in the construction of the WFLD/WMAQ wedding cake antenna mount may indirectly impact the timeline for completion of the WLS/WXFT post-auction facilities.

[17] It will take approximately six to eight weeks to procure the climbing equipment and damper frames once the order is submitted. Thus, in order to expedite the ancillary tower work, the Chicago Broadcasters anticipate that the orders for the climbing structures and damper frames will be placed prior to completion of the peer review process.

[18] It is the Chicago Stations' understanding that Willis Tower began the structural engineering process in the summer of 2017 but, due to the complexity of the project, this process has been ongoing.

[19] Willis Tower is using a peer review process for the structural engineering studies. During the peer review, the structural studies will be independently evaluated by at least two professional engineering firms (one

above, the first peer review of the structural engineering studies for the WLS auxiliary antenna system that will be installed on the West Mast has been completed, and the required information has been submitted to the engineering firm that will conduct the peer review of the West Mast for the City. Given the commonalities between the auxiliary design and the design for the WMAQ and WFLD Main Antenna installations on the West Mast, it is likely that the structural engineering work for the auxiliary antenna can be leveraged to expedite the structural design and associated peer reviews for the WMAQ and WFLD Main Antenna installations on the West Mast. In addition, the structural design of the East Mast, and the peer review of this design by an engineering firm selected by Willis Tower, is underway and expected to be completed in the near term, at which time the structural studies will be submitted to the City's engineering firm for peer review. That said, Willis Tower has not yet submitted the structural engineering studies for installation of the Main Antennas on the East and West Masts for peer review by the City, and has not provided the Chicago Broadcasters with a timeline for when this task will be completed, notwithstanding their repeated requests for this information. Once Willis Tower has completed the necessary structural engineering studies and associated peer reviews, it can begin the process of applying for structural permits required by the city of Chicago for installation of the Main Antennas.[20] In the Chicago Broadcasters' experience, it will take a minimum of thirty days from the date of application for the city of Chicago to approve the structural permits.

(3) Zoning Requirements. The Chicago Broadcasters have recently learned that the Chicago Building Department is requiring Willis Tower to submit zoning drawings for each of the planned antenna installations, i.e., the installation of the WLS auxiliary antenna on the West Mast, the installation of the WLS Main Antenna on the East Mast, and the installation of the WFLD and WMAQ Main Antennas on the West Mast.[21] This process may interject additional delay into the construction project as Willis Tower and the Chicago Broadcasters work to obtain any zoning approvals from the Chicago Building Department as may be required to implement the repack project for the Chicago Stations.

(4) Installation by Helicopter Lift. In order for the Chicago Stations to commence operations of their post-auction main facilities, it is necessary to first remove the existing, pre-auction channel main antennas[22] and then install the three new Main Antennas on the

---

engaged by Willis Tower and one identified by the city of Chicago) to verify the results. The use of a peer review process can shorten the timeline to obtain structural permits for the installation of the Main Antennas because, in the absence of peer review, the city of Chicago would conduct more in-depth analyses of the structural engineering studies performed by Willis Tower.

[20] It is the Chicago Broadcasters' understanding that Willis Tower intends to submit each of the three permit applications individually as soon as the required structural engineering studies and associated peer reviews are completed. At this time, the Chicago Broadcasters do not anticipate the need for permits other than the structural permits and the helicopter lift permits described elsewhere herein, though as noted in the text, the Chicago Building Department has now requested zoning drawings, such that is possible that approvals from the Chicago Building Department also may be required.

[21] *See supra* at note 10 (describing Willis Tower's phased repack plan).

[22] The Chicago Stations have requested that, to the extent possible, Willis Tower coordinate the removal of the existing pre-auction main antennas as soon as feasible in order to mitigate the number of helicopter lifts needed at the time the Main Antennas are ready to install. However, if the pre-auction antennas are removed from their current positions more than six months prior to installation of the new Main Antennas, additional structural

applicable support structure at Willis Tower. Both the removal and installation of antennas must be done via helicopter lifts, which require approvals and permits from the city of Chicago. The Chicago Stations presently anticipate that four to eight helicopter lifts will be required to remove the antennas currently at Willis Tower and install the three new Main Antennas. Given the constraints imposed by the city of Chicago,[23] the helicopter lift process may take as long as twelve weeks, even in the absence of adverse weather conditions.[24]

As demonstrated above, completion of construction of the facilities specified by the post-auction CPs is a complex, multi-step process, with the vast majority of the steps outside of the control of the Chicago Broadcasters. In light of these special, rare and exceptional circumstances, further waiver of the tolling standard to provide the Chicago Broadcasters with additional time to complete construction of the post-auction main facilities for the Chicago Stations. Grant of this request to extend the Chicago Stations' CPs to **April 12, 2021** will not harm the public interest because the Chicago Stations all have ceased broadcasts on their respective post-auction channels, and are presently serving their viewers on their post-auction channels.

certifications will be required (specifically, under the city of Chicago's structural standards, recertification is required if loads are removed for more than six months). As a result, it is the Chicago Stations' understanding that Willis Tower is waiting to remove the existing pre-auction antennas until it can ensure that approval of the structural design and the installation of the new Main Antennas can be achieved within the requisite six-month window.

[23] In the Chicago Stations' experience, the city of Chicago typically approves the use of a helicopter for approximately two hours on Sunday mornings, and requires that these lifts be done at certain times during the month so as to minimize disruptions to the public.

[24] Notably, because installation of the Main Antennas requires the use of a helicopter, the installation cannot be completed in adverse weather conditions, such as the harsh winds and other winter weather common to the Chicago area.

Attachment A
Post-Auction Construction Permits

Call Sign	CP File No.	CP Extension File No.	First Tolling Request File No.	Channel Share Partner
WLS-TV	0000034300	0000078137	0000108713	WXFT
WFLD	0000072366	0000082055	0000108674	WPWR-TV
WMAQ-TV	0000080396	0000078105	0000108706	WSNS-TV

Attachment B
Willis Tower Broadcast Stations

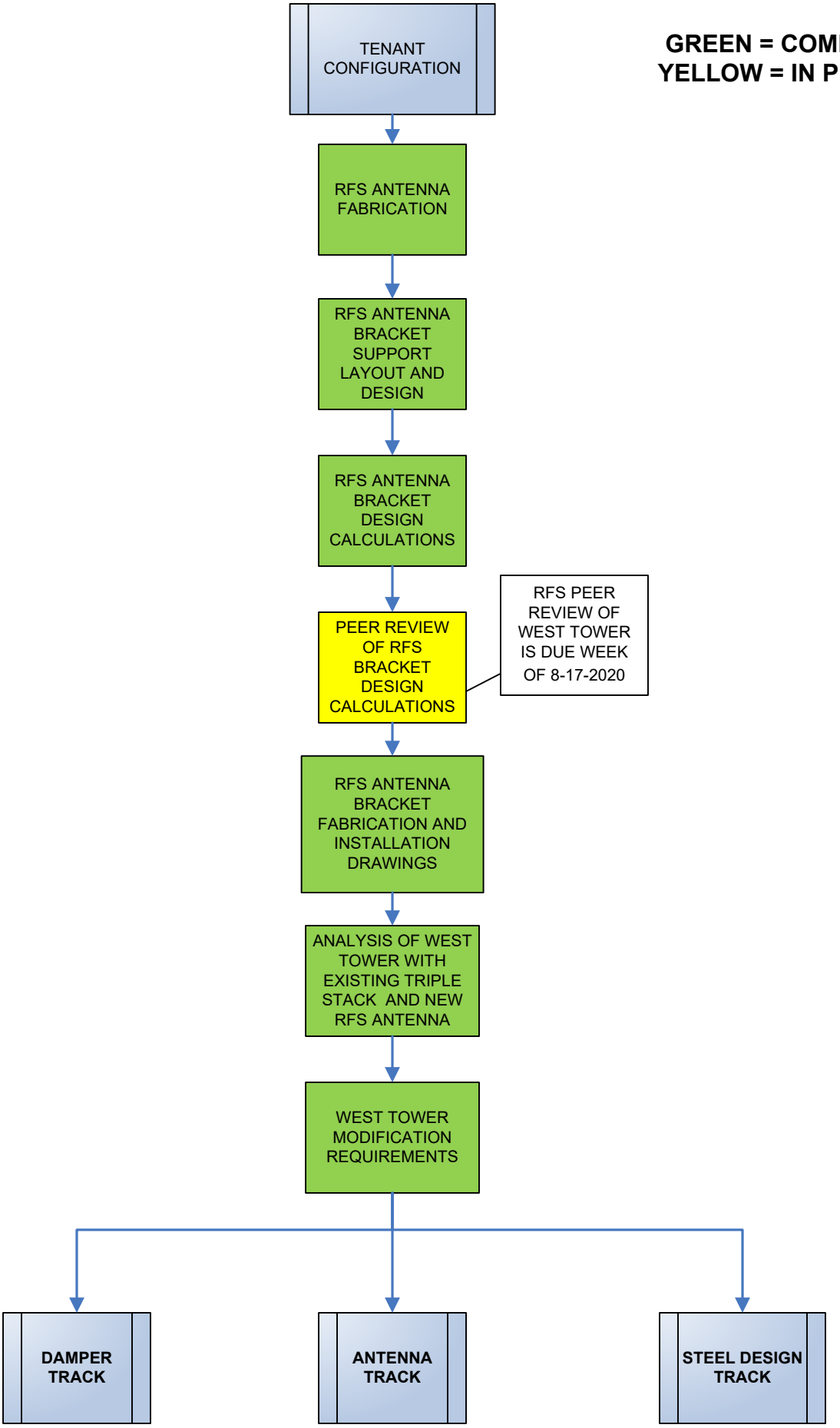
Callsign	City of License	Facility	Service
WBBM-TV	Chicago, IL	9617	DT
WTTW	Chicago, IL	10802	DT
WCPX-TV	Chicago, IL	10981	DT
WFLD	Chicago, IL	22211	DT
WJYS	Hammond, IN	32334	DT
WMAQ-TV	Chicago, IL	47905	DT
WPWR-TV	Gary, IN	48772	DT
WSNS-TV	Chicago, IL	70119	DT
WCIU-TV	Chicago, IL	71428	DT
WGN-TV	Chicago, IL	72115	DT
WLS-TV	Chicago, IL	73226	DT
WXFT	Aurora, IL	60539	DT
WEDE-CD	Arlington Heights, IL	66978	DC
WWME-CD	Chicago, IL	71425	DC
WMEU-CD	Chicago, IL	168662	DC
WTMX	Skokie, Illinois	6377	FM
WBBM-FM	Chicago, IL	9613	FM
WFMT(FM)	Chicago, IL	10801	FM
WJMK(FM)	Chicago, IL	28621	FM
WGCI-FM	Chicago, IL	51165	FM
WEBG(FM)	Chicago, IL	53971	FM
WLIT-FM	Chicago, IL	70042	FM
WCFS-FM	Elmwood Park, IL	71283	FM
WLS-FM	Chicago, IL	73228	FM
WKSC-FM	Chicago, IL	74178	FM

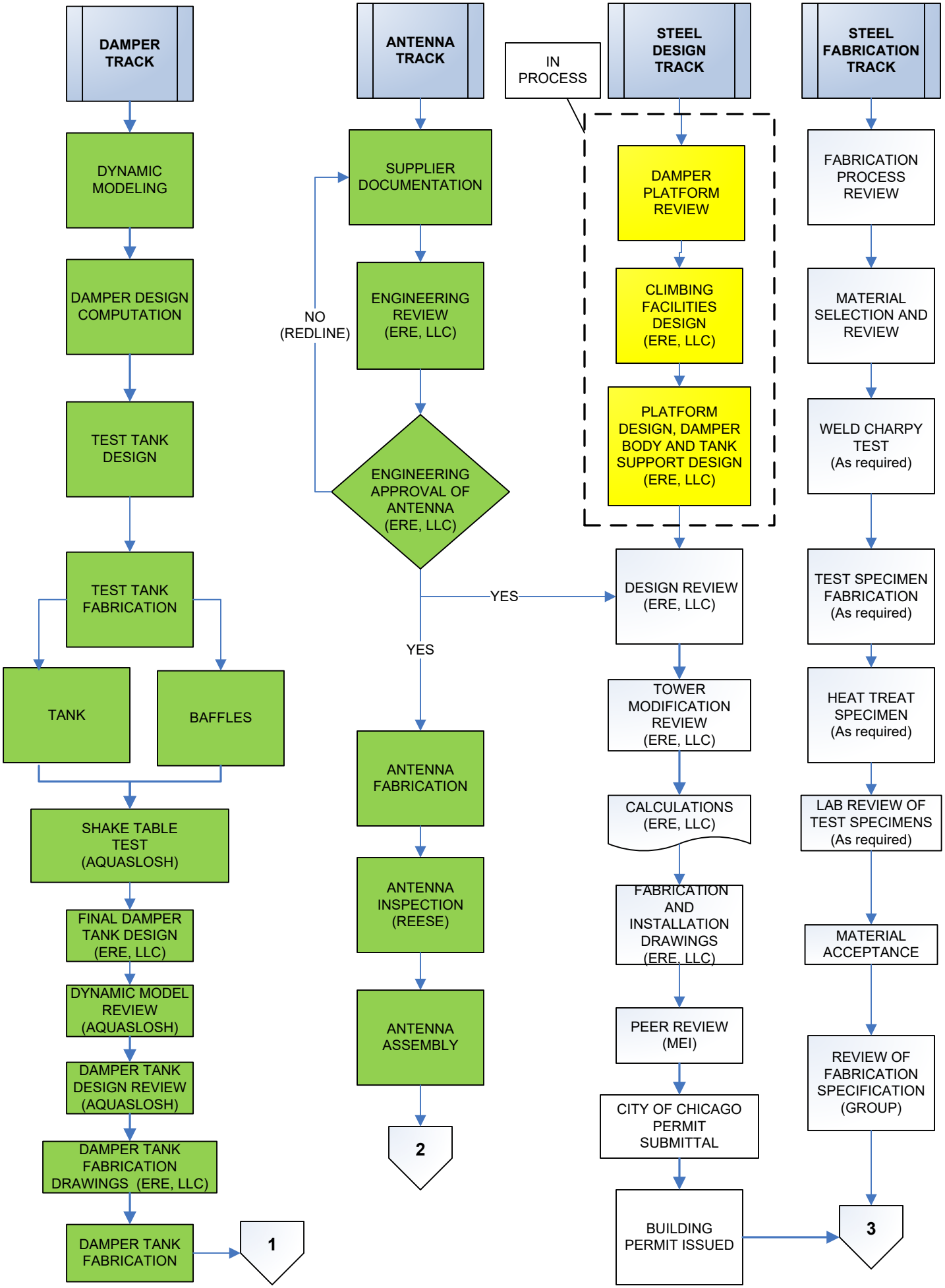
Attachment C
Workstreams for Willis Tower repack project

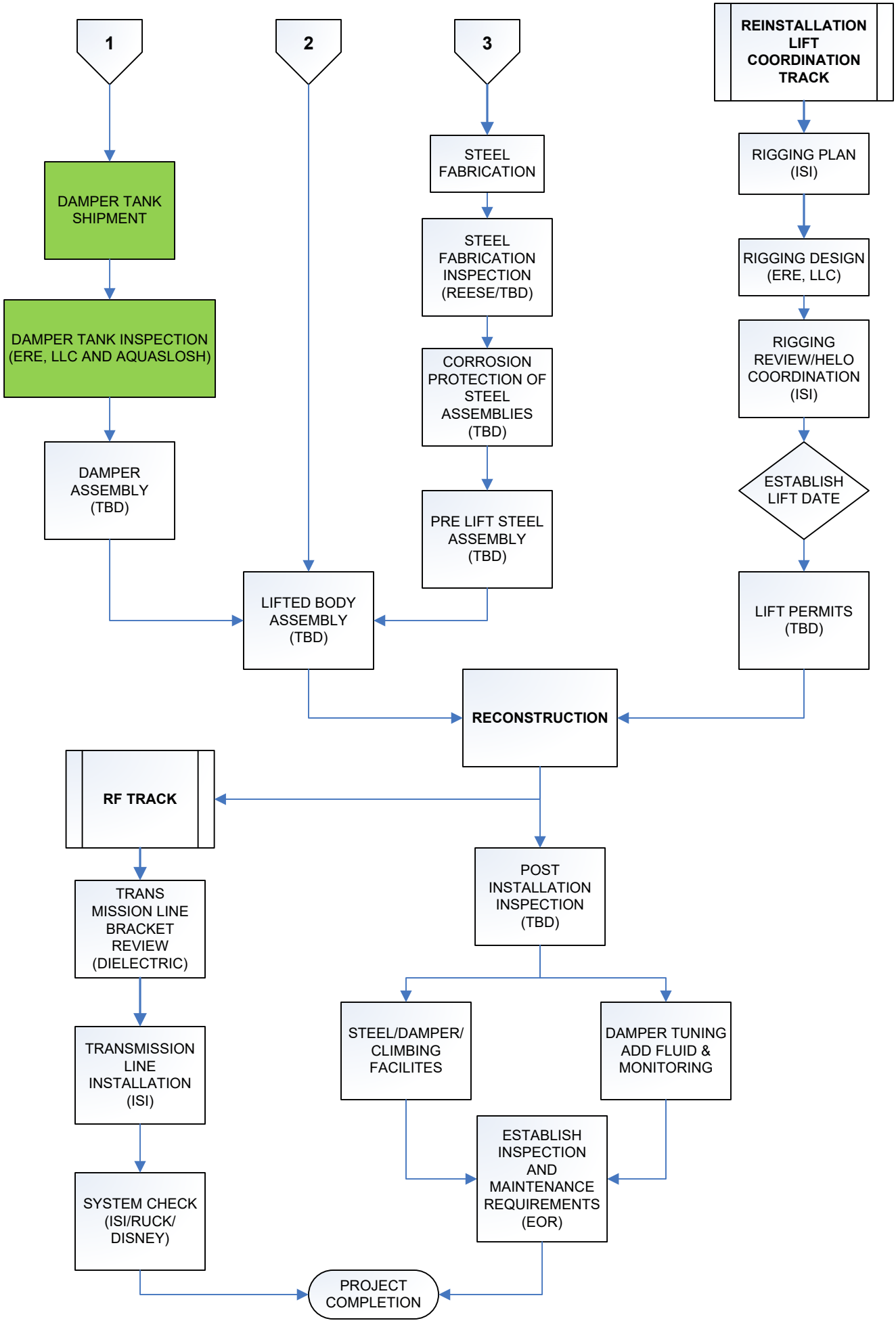
(see attached)

WILLIS REPACK WEST TOWER DESIGN/ REINSTALLATION PROCESS

GREEN = COMPLETED
YELLOW = IN PROCESS




DAMPER TRACK
DYNAMIC MODELING
DAMPER DESIGN COMPUTATION
TEST TANK DESIGN
TEST TANK FABRICATION
TANK
BAFFLES
SHAKE TABLE TEST (AQUASLOSH)
FINAL DAMPER TANK DESIGN (ERE, LLC)
DYNAMIC MODEL REVIEW (AQUASLOSH)
DAMPER TANK DESIGN REVIEW (AQUASLOSH)
DAMPER TANK FABRICATION DRAWINGS (ERE, LLC)
DAMPER TANK FABRICATION
1
ANTENNA TRACK
SUPPLIER DOCUMENTATION
ENGINEERING REVIEW (ERE, LLC)
NO (REDLINE)
ENGINEERING APPROVAL OF ANTENNA (ERE, LLC)
YES
ANTENNA FABRICATION
ANTENNA INSPECTION (REESE)
ANTENNA ASSEMBLY
2
IN PROCESS
STEEL DESIGN TRACK
DAMPER PLATFORM REVIEW
CLIMBING FACILITIES DESIGN (ERE, LLC)
PLATFORM DESIGN, DAMPER BODY AND TANK SUPPORT DESIGN (ERE, LLC)
YES
DESIGN REVIEW (ERE, LLC)
TOWER MODIFICATION REVIEW (ERE, LLC)
CALCULATIONS (ERE, LLC)
FABRICATION AND INSTALLATION DRAWINGS (ERE, LLC)
PEER REVIEW (MEI)
CITY OF CHICAGO PERMIT SUBMITTAL
BUILDING PERMIT ISSUED
STEEL FABRICATION TRACK
FABRICATION PROCESS REVIEW
MATERIAL SELECTION AND REVIEW
WELD CHARPY TEST (As required)
TEST SPECIMEN FABRICATION (As required)
HEAT TREAT SPECIMEN (As required)
LAB REVIEW OF TEST SPECIMENS (As required)
MATERIAL ACCEPTANCE
REVIEW OF FABRICATION SPECIFICATION (GROUP)
3


1
2
3
REINSTALLATION LIFT COORDINATION TRACK
DAMPER TANK SHIPMENT
STEEL FABRICATION
RIGGING PLAN (ISI)
DAMPER TANK INSPECTION (ERE, LLC AND AQUASLOSH)
STEEL FABRICATION INSPECTION (REESE/TBD)
RIGGING DESIGN (ERE, LLC)
DAMPER ASSEMBLY (TBD)
CORROSION PROTECTION OF STEEL ASSEMBLIES (TBD)
RIGGING REVIEW/HELO COORDINATION (ISI)
ESTABLISH LIFT DATE
PRE LIFT STEEL ASSEMBLY (TBD)
LIFTED BODY ASSEMBLY (TBD)
LIFT PERMITS (TBD)
RECONSTRUCTION
RF TRACK
POST INSTALLATION INSPECTION (TBD)
TRANS MISSION LINE BRACKET REVIEW (DIELECTRIC)
STEEL/DAMPER/ CLIMBING FACILITES
DAMPER TUNING ADD FLUID & MONITORING
TRANSMISSION LINE INSTALLATION (ISI)
ESTABLISH INSPECTION AND MAINTENANCE REQUIREMENTS (EOR)
SYSTEM CHECK (ISI/RUCK/ DISNEY)
PROJECT COMPLETION