

Request for Fourth 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 fourth 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

The Chicago Stations timely ceased broadcasts on their respective pre-auction channels by the end of Phase 6 and, at that time, commenced post-auction operations using auxiliary or interim facilities (“Temporary Facilities”). Since having vacated their pre-auction channels, the Chicago Stations have been broadcasting on their post-auction channels with their Temporary Facilities while work on their post-auction main facilities continues.

The post-auction CPs for the Chicago Stations have been previously extended pursuant to a waiver of the FCC’s tolling standard and are presently scheduled to expire on **October 12, 2021**.² As a result of special, rare and exceptional circumstances outside of the control of the Chicago Broadcasters, construction of the post-auction facilities for the Chicago Stations will not

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. 0000139978, 0000139959, and 0000139992 (filed Mar. 21, 2021) (extending the post-auction CPs for the Chicago Stations based upon a demonstration that special, rare and exceptional circumstances precluded construction of the Chicago Stations’ post-auction facilities) (“Third Waiver Request”); Letter from Barbara A. Kreisman, Chief, Media Bureau, FCC to the Chicago Stations, LMS File Nos. 0000139978, 0000139959, and 0000139992 (Apr. 9, 2021) (authorizing Third Waiver Request). See also, 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) (authorizing First Waiver Request); Applications of WLS Television, Inc., NBC Telemundo License, LLC, Fox Television Stations, LLC, LMS File Nos. 0000120815, 0000120796, and 0000120787 (filed Aug. 26, 2020) (“Second Waiver Request”). The Second Waiver Request was granted on October 21, 2020. See Letter from Barbara A. Kreisman, Chief, Media Bureau, FCC to the Chicago Stations, LMS File Nos. 0000120815, 0000120796, and 0000120787 (Oct. 21, 2020) (authorizing Second Waiver Request).

be complete by the October 12 deadline, notwithstanding the Chicago Broadcasters' ongoing and diligent efforts to work with Willis Tower to build their respective post-auction facilities. Accordingly, the Chicago Broadcasters respectfully request a fourth waiver of the FCC's tolling standard to extend the post-auction CPs for the Chicago Stations for an additional six months, until **April 11, 2022**.³

I. LEGAL STANDARD

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 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.

II. BACKGROUND – THE WILLIS TOWER REPACK PROJECT

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

³ The 180th day after October 12, 2021 is April 10, 2022. However, because April 10, 2022 falls on a Sunday, the Chicago Broadcasters respectfully request that the Bureau extend the expiration date of the CPs to April 11, 2022 pursuant to the instant request for waiver of the tolling standard.

⁴ 47 C.F.R. § 73.3700(b)(5)(i).

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.

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 must be coordinated through, and cannot be completed without the involvement of, Willis Tower, which is coordinating, managing, and implementing the major components of the repack project.¹⁰

Willis Tower has created a project plan whereby the repack of the Chicago Stations will be implemented in multiple, interconnected phases. These phases involve, *inter alia*, installation of WLS/WTTW auxiliary antenna on the West Mast; installation of WLS’s post-auction main antenna (“WLS Main Antenna”) on the East Mast; and installation of the post-auction main antennas WFLD and WMAQ (“WFLD/WMAQ Main Antennas”) on the West Mast.

III. UPDATE ON PROGRESS

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 the repack process in accordance with FCC rules and procedures. Since the Bureau granted their most recent request to waive the tolling standard in April 2021, the following progress has been made:¹¹

- WLS/WTTW Auxiliary Antenna. The WLS/WTTW auxiliary antenna system has been installed on the West Mast, and is now operational.¹² As a result, WLS is now broadcasting

⁹ This auxiliary antenna will be shared with WTTW.

¹⁰ Specifically, 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. The repack project plan is managed by Willis Tower’s engineering team, Jeremy Ruck & Associates, Inc. (“Jeremy Ruck”).

¹¹ See Letter from John R. Erichsen, ERE, LLC, to Jeremy Ruck (dated Aug. 24, 2021), attached hereto as Attachment C (“ERE Letter”) for additional information regarding the progress described in the text. See also, Willis Tower Repack Project Plan, attached hereto as Attachment D for detailed timeline of steps required to complete the repack (“Project Timeline”).

¹² Jeremy Ruck had previously advised that installation of the WLS/WTTW auxiliary antenna was expected to be complete in the March/April 2021 timeframe. See Third Tolling Request at Attachment C. At that time, it was expected that the permits necessary for the West Mast auxiliary installation would be issued imminently, and that installation would begin a few weeks thereafter. However, unexpected delays in the peer review process extended this timeframe significantly. Specifically, the engineering firm engaged by the City of Chicago to participate in the peer review process required inclusion of antenna structures that the Willis Tower peer review team had deemed not germane to the final engineering analysis. This request – which was necessary to obtain the requisite permits from the City – added more than six weeks to the permitting process. See ERE Letter.

on channel 22 using its auxiliary antenna.¹³

- WLS Main Antenna. The WLS Main Antenna has been delivered to the installation contractor, Installation Services, Inc. (“ISI”) at its facility in Sycamore, Illinois. Pre-assembly and off-site assembly efforts are underway currently. As explained below, however, the WLS Main Antenna cannot be installed until a structural reanalysis of the East Mast is complete (this is in process) and WLS’s channel 44 antenna (which is dormant) is removed by helicopter.
- Ancillary Tower Work. As noted in the Chicago Stations’ prior waiver requests, Willis Tower has been undertaking ancillary tower work, such as tower interface and dampening, as well as structural reinforcements and construction of climbing facilities. Fabrication of the climbing equipment and damper frames required for the top-mounted damper support structures for the West and East Masts has been completed, and the components have been released for assembly.¹⁴ This work was expedited to facilitate installation of the WLS Main Antenna.¹⁵
- WMAQ/WFLD Wedding Cake Antenna Mount. As previously reported, wedding cake antenna mounts will be used to attach the post-auction main antennas for WFLD and WMAQ to the building, and to connect the WFLD antenna to the WMAQ antenna. Fabrication of one of these antenna mounts has been completed. However, a redesign of one of the antenna mounts (and the existing top plate assembly) was required in order to accommodate the feed lines for the WMAQ and WFLD antennas. The redesign has been completed and is undergoing internal peer review by Willis Tower’s engineering firm.

IV. NEXT STEPS

While the Chicago Stations have made progress on the construction of their post-auction facilities, for reasons outside of their control, they will be unable to complete construction of their main post-auction facilities by October 12, 2021. As noted above, the repack project is multi-phased, with each phase proceeding concurrently, and is managed by Willis Tower. And, because the phases are interdependent, a delay in any one phase, or with respect to any one station, necessarily impacts the other phases and stations. A high-level description of the work remaining to complete construction of the Chicago Stations’ post-auction main facilities is as follows:¹⁶

¹³ See LMS File No. 0000160938. Since WLS has transitioned from broadcasting via its temporary reduced power channel 22 facility to its channel 22 auxiliary facility at Willis Tower, WLS is not seeking renewal of special temporary authority to operate the temporary facility.

¹⁴ Due to dynamic loads and cyclical vibration, a liquid tuned damper support structure is required on each main tower structure. See ERE Letter.

¹⁵ As noted above, the WLS Main Antenna has been delivered to ISI’s facility in Sycamore, Illinois, where pre-assembly is expected to be completed in the near term. But, installation of the WLS Main Antenna will be delayed as described below. See ERE Letter.

¹⁶ See ERE Letter and Project Timeline for additional details regarding steps remaining to complete construction of the Chicago Stations’ post-auction facilities. See also, Attachment E (depicting

- Installation of WLS Main Antenna. As noted above, prior to installing the WLS Main Antenna, a structural reanalysis of the East Tower must be completed. This process is approximately 70% complete, but was placed on hold to enable ERE, LLC (the engineering firm hired by Jeremy Ruck to perform, *inter alia*, structural analyses for the repack project) to work on the re-design of the West Mast wedding cake described above. Once the structural reanalysis is complete, the permitting process can commence, and is expected to take approximately six to eight weeks.¹⁷ Additionally, the WLS Main Antenna installation cannot progress until the existing, but currently dormant, channel 44 antenna is removed by helicopter lift.¹⁸ This lift had been scheduled for September 26 but, due to City of Chicago employee labor shortages, was cancelled. According to Jeremy Ruck, the next potential date for the helicopter lift is November 14 and, if that is unsuccessful, the lift will not occur until December at the earliest.¹⁹ Given that both of these dates fall squarely within the onset of winter, a time when high winds and cold weather are the norm in Chicago, it is possible that there will be further delays with the helicopter lift process for the removal of the dormant channel 44 antenna. And, because installation of the WLS Main Antenna (which will involve a separate helicopter lift that has not yet been scheduled by Willis Tower) cannot proceed until the channel 44 antenna is removed and the structural reanalysis is complete,²⁰ any delays with removing the channel 44 antenna will impact the timeline for installing the WLS Main Antenna, which will, in turn, impact the timeline for installing the WFLD/WMAQ Main Antennas.
- Installation of WFLD/WMAQ Main Antennas. Once the WLS Main Antenna has been installed, the WFLD/WMAQ Main Antennas will be ready for installation. Prior to installation, however, there are a number of steps to be completed, including, *inter alia*,

the Chicago skyline and noting the antennas and support structures involved in the repack project). Extremely rigorous engineering and inspections are required to eliminate any chance of the antenna stacks breaking off and falling into the street and/or onto other buildings in the event of a natural disaster (e.g., storms, earthquakes, etc.) or other catastrophic event.

¹⁷ As the Chicago Stations have previously explained, this process is complex, involves multiple components (e.g., internal peer reviews, city peer review, applying for and obtaining the requisite permits), and is largely outside of the Chicago Stations' control as it is managed by Willis Tower in coordination with the City of Chicago.

¹⁸ Willis Tower previously anticipated removing WLS's channel 44 antenna at the end of May, and removing the antenna stack used for WMAQ and WFLD's pre-auction transmissions at the end of June. *See* Third Waiver Request. However, this did not occur as a result of the delays described herein with completing installation of the WLS/WTTW auxiliary antenna. *See* ERE Letter.

¹⁹ *See* Email from Jeremy Ruck to Willis Tower Broadcasters dated Sept. 22, 2021, attached hereto as Attachment F.

²⁰ Jeremy Ruck has told WLS that it does not believe that structural modifications to the tower will be required as a result of the structural reanalysis but if it is determined after the structural reanalysis is completed that such modifications are, in fact, necessary this will introduce additional delays. The extent of any such delays will depend on, *inter alia*, that nature of any structural modifications, whether structural modifications will be required for both the East Mast and the West Mast (e.g., it may not be safe to work on both towers concurrently), and whether there is adequate manpower available to conduct the required work.

delivery of the WFLD/WMAQ Antennas to ISI for pre-assembly and off-site assembly;²¹ structural reanalysis of the West Mast;²² peer review and fabrication of the wedding cake antenna mount; and obtaining the required permits,²³ including permits for the helicopter lifts to remove the existing WFLD/WMAQ antennas and to install the WFLD/WMAQ Main Antennas.²⁴ And, as is the case with the WLS Main Antenna, because installation of the WFLD/WMAQ Main Antennas requires the use of a helicopter, the installation cannot be completed in adverse weather conditions common to the Chicago area from approximately November through March.

* * *

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 11, 2022** 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.

²¹ The WFLD/WMAQ Main Antennas have been fabricated and placed in storage in a warehouse until such time as they can be delivered to Willis Tower for installation.

²² The structural reanalysis of the West Mast is approximately 70% complete, and has been able to leverage the structural work done for the WLS/WTTW auxiliary antenna. This reanalysis will be finalized after the East Mast structural reanalysis is completed. *See* Project Timeline.

²³ *See supra* at “Installation of WLS Main Antenna” for discussion of complexities of the permitting process.

²⁴ 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.

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

Letter from John R. Erichsen, ERE, LLC, to Jeremy Ruck (dated Aug. 24, 2021)

[REDACTED FROM PUBLIC INSPECTION]

Attachment D
Willis Tower Repack Project Schedule
[REDACTED FROM PUBLIC INSPECTION]

Attachment E
**Email from Jeremy Ruck to Willis Tower
Stations**

[REDACTED FROM PUBLIC INSPECTION]

Attachment F
Image of Chicago Skyline

