

**Request for Special Temporary Authority and
Extension of Deadline to Submit Invoices for Reimbursement
from the TV Broadcaster Relocation Fund**

Pursuant to Sections 1.3 and 73.1635 of the rules of the Federal Communications Commission (“FCC” or “Commission”) and the procedures set forth in the *January 2022 Invoice Reminder PN*,¹ WLS Television, Inc.,² Fox Television Stations, LLC,³ and NBC Telemundo License LLC⁴ (collectively, the “Willis Broadcasters”), respectfully request Special Temporary Authority (“STA”) and limited extension of the March 22, 2022 deadline to submit all remaining invoices for reimbursement from the TV Broadcaster Relocation Fund (“Reimbursement Fund”).⁵ As explained herein, due to circumstances beyond their control (such as the need to comply with local zoning ordinances and other regulations, civil unrest in Chicago, weather-related delays, and pandemic-related issues including the recent sudden and unexpected death of key personnel engaged in the repack process), the Willis Broadcasters will not have incurred all repack-related expenses by March 22, 2022, and thus request that they be given until September 6, 2022 to submit their invoices for reimbursement from the Reimbursement Fund.⁶

I. BACKGROUND

The Chicago Stations broadcast from Willis Tower, a 1,450 foot tall tower (excluding its broadcast antennas) constructed in the early 1970s. Willis Tower is a densely populated multi-tenant communications platform that supports many full-power television stations (including the Chicago Stations), three Class A television stations and several FM radio facilities. Willis Tower

¹ See 47 C.F.R. § 1.3; 47 C.F.R. § 73.1635; TV Broadcaster Relocation Fund Invoice Filing Deadline Approaches in Sixty Days, Public Notice, DA 22-72 at note 6 (rel. Jan. 21, 2022) (“*January 2022 Invoice Submission Reminder PN*”).

² WLS Television, Inc. is the licensee of commercial television station WLS-TV, Channel 22, Facility ID No. 73226, Chicago, Illinois (“WLS”).

³ Fox Television Stations, LLC is the licensee of commercial television station WFLD, Channel 24, Facility ID No. 22211, Chicago, Illinois (“WFLD”).

⁴ NBC Telemundo License LLC is the licensee of commercial television station WMAQ-TV, Channel 33, Facility ID No. 47905 (“WMAQ” and, together with WLS and WFLD, the “Chicago Stations”).

⁵ Concurrently herewith, the Chicago Stations are submitting a request for a fifth waiver of the tolling standard set forth at Section 73.3598(b) of the FCC’s rules as applied to the Chicago Stations’ post-auction construction permits (“Fifth Waiver Request”). The Fifth Waiver request contains additional information regarding recent progress, delays and obstacles faced by the Chicago Stations in connection with the repack, including a detailed construction plan provided by Willis Tower for completing construction of the Chicago Stations’ permanent post-auction facilities.

⁶ The Incentive Auction Task Force and Media Bureau established March 22, 2022 as the deadline by which repacked television stations assigned completion dates in Phases 6-10 must submit all remaining invoices and initiate close-out procedures. See Invoice Filing Deadlines for TV Broadcaster Relocation Fund, Public Notice, 35 FCC Rcd 11273 (rel. Oct. 7, 2020) (“*Invoice Filing Deadline PN*”). The third and final invoice submission deadline was initially set for September 5, 2022, which is Labor Day. Accordingly, the deadline was extended to September 6. See *January 2022 Invoice Submission Reminder PN* at para. 4.

is located in the heart of downtown Chicago and, as a result, various zoning and planning departments within the city of Chicago (“City”) must grant prior approval for work at the Willis Tower site. Additional approvals are also required from the Alderman’s office and the Chicago Police Department (“CPD”) to remove and install the Chicago Stations’ broadcast antennas by helicopter.

The Chicago Stations, along with several other broadcast stations located on Willis Tower, were assigned new channels as part of the broadcast incentive auction repacking process. The Chicago Stations timely ceased broadcasts on their respective pre-auction channels by the end of Phase 6. Since having vacated their pre-auction channels at that time, the Chicago Stations have been broadcasting on their post-auction channels with their auxiliary or interim facilities while work on their post-auction main facilities continues.

Given the unique engineering and safety considerations that accompany modification and installation of facilities on a skyscraper located in a densely populated area, all construction work related to the repack is being coordinated, managed and executed through Willis Tower and its engineering firm.⁷ Willis Tower has planned, and is implementing, a complex repacking project that involves multiple, interconnected phases involving, *inter alia*, (1) installation of an auxiliary antenna for WLS on the West Mast (“West Mast Auxiliary Antenna”), (2) installation of WLS’s post-auction main antenna (“WLS Main Antenna”) on the East Mast, and (3) installation of the post-auction main antennas WFLD and WMAQ (“WFLD/WMAQ Main Antennas”) on the West Mast. The West Mast Auxiliary Antenna was installed in the fall of 2021, but the remaining two phases of construction are ongoing. Accordingly, the instant request for an extension of the invoice submission deadline is being filed to enable the Chicago Broadcasters to submit invoices for repack-related expenses incurred after March 22, 2022.⁸

II. THERE IS GOOD CAUSE TO EXTEND THE MARCH 22 INVOICE SUBMISSION DEADLINE

Pursuant to Section 1.3 of its rules, the FCC may waive its rules “for good cause shown.”⁹ Specifically, a waiver is warranted where “particular facts would make strict compliance with the rule inconsistent with the public interest” and “special circumstances warrant a deviation from the general rule.”¹⁰ In evaluating a request for waiver, the Commission takes “into account considerations of hardship, equity, or more effective implementation of

⁷ Willis Tower is coordinating and managing all of the planning, structural design and other work to complete the project, including work relating to installation of the required antennas and transmission lines and other tower-related work.

⁸ The Chicago Broadcasters are in the process of submitting invoices for costs incurred to date in connection with the repacking of the Chicago Stations, and will endeavor to submit substantially all of the remaining invoices for costs to date by March 22.

⁹ 47 C.F.R. § 1.3.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

overall policy”,¹¹ as well as whether waiver would result in a “more effective implementation of overall policy” than enforcing the rule as written.¹²

When establishing the deadlines to submit invoices for reimbursement from the Reimbursement Fund, the Incentive Auction Task Force and Media Bureau (together, the “Bureau”) contemplated that, in some circumstances, strict enforcement of these deadlines would be contrary to the public interest. For example, the Bureau noted that it would consider extensions where the “circumstances requiring the extension were outside of [a station’s] control, such as local zoning”.¹³ In such situations, the Bureau will consider a shift from the assigned submission deadline to the next invoice filing deadline.¹⁴ As explained above, due to rare and exceptional circumstances (including weather-related delays, civil unrest in Chicago, difficulties in obtaining the required permits and approvals from the City and the CPD, and the unexpected sudden death of the project manager engaged by Willis Tower at the end of last year), the final post-auction facilities for the Chicago Stations are not yet fully constructed. Accordingly, the Chicago Broadcasters have not yet incurred all costs associated with the repack of their respective facilities. Thus, a limited extension of the invoice submission deadline – from March 22, 2022 to September 6, 2022 – is warranted.

A. Since Receiving their Post-Auction Channel Assignments, the Chicago Broadcasters Have Worked Diligently with Willis Tower to Complete the Repack

As discussed above, and has been detailed extensively in their filings with the Commission requesting extensions of their post-auction construction permits,¹⁵ the Chicago

¹¹ WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹² WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); Northeast Cellular, 897 F.2d at 1166.

¹³ *Invoice Filing Deadline PN* at para. 13. *See also, January 2022 Invoice Submission Reminder PN* at para. 2.

¹⁴ *Id.*

¹⁵ *See* Applications of WLS Television, Inc., NBC Telemundo License, LLC, Fox Television Stations, LLC, LMS File Nos. 0000161777, 0000161509, and 0000161587 (filed Sept. 30, 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) (“Fourth Waiver Request”); Letter from Barbara A. Kreisman, Chief, Media Bureau, FCC to the Chicago Stations, LMS File Nos. 0000161777, 0000161509, and 0000161587 (Oct. 7, 2021) (“Fourth Waiver Grant”) (authorizing Fourth Waiver Request); Applications of WLS Television, Inc., NBC Telemundo License, LLC, Fox Television Stations, LLC, LMS File Nos. 0000139978, 0000139959, and 0000139992 (filed Mar. 216, 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); 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”); 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); *See also*, Applications of WLS Television, Inc., NBC Telemundo License, LLC, Fox Television Stations, LLC, LMS File Nos. 0000108674, 0000108706,

Broadcasters, through Willis Tower, have been working diligently to construct their permanent post-auction facilities. Work completed to date includes, *inter alia*:

- Ceasing broadcasts on the Chicago Stations' pre-auction channels by the end of Phase 6 (thereby freeing up 600 MHz spectrum for wireless use) and commencing broadcasts on their post-auction channels (thereby ensuring continuity of over-the-air service to viewers) in accordance with the FCC's schedule;
- Designing, fabricating and procuring the main antennas for each of the Chicago Stations, and delivering the WLS Main Antenna to the installation contractor's facility in Sycamore, Illinois where it is currently undergoing off-site assembly;¹⁶
- Constructing the auxiliary antenna system on the West Mast and bringing that system into operation;
- Undertaking complex structural analyses of the East Mast and the West Mast, both of which are required in order to obtain the certain permits and approvals required under local ordinances;¹⁷
- Completing ancillary tower work, such as tower interface and dampening, as well as structural reinforcements and construction of climbing facilities and damper frames and support; and
- Working with City officials to facilitate the permitting and approval process.

B. Due to Circumstances Outside of the Chicago Broadcasters' Control, Construction of the Final Post-Auction Facilities for the Chicago Stations Is Not Yet Complete and Will Result in Additional Invoices After the March 22 Deadline

While the Chicago Broadcasters have been working diligently with Willis Tower since 2017 to implement the repack, due to delays and obstacles outside of their control, the final post-auction facilities have not yet been completed. These delays and obstacles, all of which have been well-documented, include the following:

- Fabrication of the main antennas for the Chicago Stations by a third party contractor was not done in conformance with structural and welding specifications agreed upon between Willis Tower and the contractor;¹⁸

and 0000108713 (filed Mar. 23, 2020) ("First Waiver Request"); and 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).

¹⁶ 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

¹⁷ The structural analyses are substantially finished. *See* Attachment C to Fifth Waiver Request.

¹⁸ *See* First Waiver Request at 1-2.

- Construction of the new wedding cake antenna mount required for the post-auction facilities of WFLD and WMAQ was delayed due to welding and design flaws;¹⁹
- Delays in obtaining certain local approvals due to extensive peer reviews by the City, coupled with an unexpected requirement to submit zoning drawings for each of the planned antenna installations;²⁰
- COVID-19 pandemic related-delays, including difficulty in scheduling on-site inspections during lock-down periods,²¹ and challenges securing tradesman, contractors, and engineers due to illness and site restrictions;
- Lack of access to the site in May 2020 due to a power outage caused by flooding of the lowest levels of Willis Tower as a result of the Chicago River overflowing its banks;
- Lack of access to the site during the summer of 2020 resulting from street closures during periods of civil unrest in Chicago;
- Repeated cancellations of scheduled helicopter lifts to decommission WLS's channel 44 antenna (which is a prerequisite to installing the WLS Main Antenna and, thereafter, the WFLD/WMAQ Main Antennas) throughout the fall of 2021 and into the new year due to harsh weather conditions, CPD manpower shortages, and the unfortunate sudden illness and death of the project manager engaged by Willis Tower to oversee the repack project;²² and
- The need to identify and hire a project manager to replace the project manager, and the corresponding need to bring that project manager up-to-speed on the repack project.

The above circumstances are very much outside of the control of the Chicago Broadcasters and thereby warrant an extension of the March 22 invoice submission deadline.²³

C. Grant of the Requested Relief is Consistent with Congress's Intent that Broadcasters Be Reimbursed for Costs Reasonably Incurred to Relocate to Their Post-Auction Facilities

Grant of the requested extension is consistent with the statutory mandate the repacked broadcasters be reimbursed for costs reasonably incurred in connection with their relocation to new television channels as a result of the broadcast incentive auction.²⁴ While the Chicago

¹⁹ See Second Waiver Request at 4; Fourth Waiver Request at 4.

²⁰ See Second Waiver Request at 5; Third Waiver Request at 5-6.

²¹ See First Waiver Request at 3.

²² See Fifth Waiver Request at 3.

²³ See Attachment D to Fifth Waiver Request (Letter from Gary S. Michon, General Manager, BRE 312 Owner L.L.C. to Hillary DeNigro, Deputy Chief, Media Bureau, FCC (dated Feb. 18, 2022)).

²⁴ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (requiring the FCC to reimburse broadcasters for costs reasonably incurred to transition to a new channel assignment); In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum

Broadcasters successfully transitioned to their post-auction channels (thereby ensuring that the Chicago Stations could provide their viewers with uninterrupted over-the-air service), their final, post-transition facilities are still under construction. If the Chicago Stations are not permitted to seek reimbursement for these costs after March 22, they will be forced to pay for them out-of-pocket, which is contrary to Congress's goal that broadcasters be fully compensated for repack-related expenses.

III. CONCLUSION

For the reasons stated herein, the Chicago Broadcasters respectfully request that the Bureau grant the instant request for a legal STA and extension as needed to shift the deadline to submit its all remaining invoices for reimbursement from the Reimbursement Fund from March 22, 2022 to September 6, 2022.

Through Incentive Auctions, GN Docket No. 12-268, Report and Order, FCC 14-50, at para. 596 (rel. June 2, 2014) ("The Spectrum Act requires the Commission to reimburse broadcast television licensees for costs "reasonably incurred" in relocating to new channels assigned in the repacking process").