

Request for Sixth Waiver of Tolling Standard to Extend Construction Permits

WLS Television, Inc., Fox Television Stations, LLC, and NBC Telemundo License LLC (the “Chicago Broadcasters”) respectfully request a sixth 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 WLS-TV, Channel 22, Facility ID No. 73226 (“WLS”);¹ WFLD, Channel 24, Facility ID No. 22211 (“WFLD”);² and WMAQ-TV, Channel 33, Facility ID No. 47905³ (“WMAQ” and, collectively with WLS and WFLD, the “Chicago Stations”). The CPs for the post-auction facilities of the Chicago Stations specify operations at Willis Tower.

The Chicago Stations timely ceased broadcasts on their respective pre-auction channels by the end of Phase 6. Since 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.

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 **September 6, 2022**.⁴ As a result of special, rare and exceptional circumstances outside of the control of the Chicago Broadcasters (*e.g.*, weather-related delays, delays resulting from global supply chain failures, multiple denials (including failures to issue) by local officials in Chicago of the permits needed for helicopter lifts, and changes in a third party’s business line that requires securing a replacement vendor for the heavy lift helicopter) construction of the post-auction facilities for the Chicago Stations will not be complete by the September 6 deadline.⁵ Accordingly, the Chicago Broadcasters respectfully request a sixth waiver of the FCC’s tolling standard to extend the post-auction CPs for the Chicago Stations until **January 17, 2023**.

¹ WLS channel shares with WXFT, Facility ID No. 60539.

² WFLD channel shares with WPWR-TV, Facility ID No. 48772.

³ WMAQ channel shares with WSNS-TV, Facility ID No. 70119.

⁴ See Applications of WLS Television, Inc., NBC Telemundo License, LLC, Fox Television Stations, LLC, LMS File Nos. 0000185060, 0000185065, and 0000185076 (filed Feb. 18, 2022) (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) (“Fifth Waiver Request”); Letter from Barbara A. Kreisman, Chief, Media Bureau, FCC to the Chicago Stations, LMS File Nos. 0000185060, 0000185065, and 0000185076 (Mar. 23, 2022) (“Fifth Waiver Grant”) (authorizing Fifth Waiver Request).

⁵ September 6, 2022 is the deadline by which all remaining invoices for reimbursement from the TV Broadcaster Relocation Fund (“Fund”) must be submitted. See TV Broadcaster Relocation Fund Invoice Filing Deadline Approaches in Sixty Days, Public Notice, DA 22-72 at note 6 (rel. Jan. 21, 2022). Concurrently herewith, the Chicago Stations are submitting a request for legal special temporary authority to extend the deadline to submit invoices for reimbursement from the Fund from September 6, 2022 to January 17, 2023 (“Invoice Deadline Extension Request”).

I. BACKGROUND – THE WILLIS TOWER REPACK PROJECT

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 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 and other related equipment 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 (as the tower owner) and its engineering firm.⁶ 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 a waiver of the tolling standard to extend the Chicago Stations’ CPs is being filed to enable the Chicago Broadcasters until **January 17, 2023** to complete construction of their post-auction facilities.

⁶ Willis Tower is coordinating, managing, and executing all of the planning, permitting, 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. As such, the Chicago Broadcasters are tenants that have little ability to control Willis Tower’s work to complete the repack project, which has been frustrated by continuous cancelations of helicopter lifts due to unsafe weather conditions and denials (including failures to issue) by local officials in Chicago of permits needed for helicopter lifts, global supply chain issues, and changes in a third party’s business line that requires securing a replacement vendor for the heavy lift helicopter. The project has been further complicated by the untimely and tragic death of the chief engineer/project manager at the end of 2021. Nonetheless, the Chicago Broadcasters are continuing to work to ensure that Willis Tower understands the obligations under the FCC’s rules and procedures and the corresponding need to complete the repack in conformance with Commission deadlines.

II. 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.⁷ 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.⁸ 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.⁹ Such special, rare and exceptional circumstances are present in the case of the Chicago Stations.

III. UPDATE ON PROGRESS

As has been detailed in prior extension requests, the repack project has been moving forward notwithstanding the complex nature of the post-auction transition for the broadcast stations located at Willis Tower.¹⁰ In support of the instant request for extension, Willis Tower

⁷ 47 C.F.R. § 73.3700(b)(5)(i).

⁸ 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)).

⁹ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ See Applications of WLS Television, Inc., NBC Telemundo License, LLC, Fox Television Stations, LLC, LMS File Nos. 0000185060, 0000185065, and 0000185076 (filed Feb. 18, 2022) (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) (“Fifth Waiver Request”); Letter from Barbara A. Kreisman, Chief, Media Bureau, FCC to the Chicago Stations, LMS File Nos. 0000185060, 0000185065, and 0000185076 (Mar. 23, 2022) (“Fifth Waiver Grant”) (authorizing Fifth Waiver Request); 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. 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); 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);

provided the Chicago Stations with an update on progress towards completion of the repack since March 2022.¹¹ Based on these materials and ongoing discussions with representatives of Willis Tower, the Chicago Broadcasters highlight the following progress since the Bureau granted the most recent request to waive the tolling standard on March 21, 2022:

- Removal of WLS’s Pre-Auction Antenna. WLS’s dormant channel 44 antenna and top-mounted damper assembly was removed from the East Mast by helicopter on May 15, 2022.¹²
- WMAQ/WFLD Wedding Cake Antenna Mounts. The West Tower wedding cake and top plate assembly have been submitted to the manufacturer for fabrication. The manufacturer is in the process of acquiring the materials to complete this process. As set forth below, the fabrication process has been delayed due to supply chain issues and other challenges, but is currently expected to be complete by September 2022.
- Structural and Engineering Analyses. The repack project is subject to ongoing and iterative structural analyses to evaluate, *inter alia*, load paths and the impact of adverse weather conditions (e.g., wind load) on the tower. The structural analyses must be completed before much of the other work (e.g., installation of post-auction antennas) can progress. Attachment A provides a detailed list of tasks undertaken in connection with the structural analyses since the first quarter of 2022.
- Helicopter Permitting Process. Willis Tower has reached out to City officials in an attempt to obtain a commitment to provide the required resources to support future helicopter lifts, and to secure additional lift dates. Despite these efforts, in 2022 alone, five of eight scheduled helicopter lifts were canceled because local officials in Chicago either denied or failed to issue the necessary permits (including three lifts scheduled to occur between March 20 and July 17), and two (including one that had been scheduled for July 17) were canceled due to unsafe weather conditions. In addition, we are aware that the Bureau staff submitted a letter to the City to advise the City of the September 6, 2022 deadline by which the Chicago Stations are required under FCC rules to submit all invoices for costs incurred in connection with the repack, as well as the July 3, 2023 statutory deadline under the Spectrum Act by which unobligated funds will be rescinded to the Treasury.

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”); 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).

¹¹ See Attachment A (materials supplied by Willis Tower).

¹² The lift scheduled by Willis Tower for March 20, 2022 to remove WLS’s dormant channel 44 antenna was canceled, and the City did not approve a subsequent lift proposed for April 24, 2022. There were also 2 lifts scheduled before March 15 to remove the channel 44 antenna, which were canceled due to adverse weather, the City’s failure to issue the required permits, and/or lack of police or other manpower.

The vast majority of the repack-related work is managed by Willis Tower as the owner of the tower. In addition to this work, the Chicago Broadcasters have undertaken, and substantially completed, other steps to facilitate the completion of their post-auction facilities (*e.g.*, internal transmission line work). The Chicago Broadcasters also are diligently working to review, process and submit invoices as they receive them from Willis Tower.¹³ The engineering teams for the Chicago Broadcasters also participate on weekly calls with Willis Tower to discuss the project, and have suggested measures Willis Tower (or its vendors and consultants) might take to expedite completion of the repack. The Chicago Broadcasters are working to schedule additional calls on a regular basis for status updates on the project, including estimated costs and timing.

IV. NEXT STEPS

While the Chicago Stations have made some progress on the construction of their post-auction facilities, for reasons outside of their control (including weather-related delays, delays resulting from global supply chain failures, multiple denials (including failures to issue) by local officials in Chicago of the permits needed for helicopter lifts, and changes in a third party's business line that requires securing a replacement vendor for the heavy lift helicopter), they will be unable to complete construction of their main post-auction facilities by September 6, 2022. As noted above, the repack project is multi-phased, with each phase proceeding concurrently, and is managed by Willis Tower, the tower owner.¹⁴ 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.¹⁵ A high-level description of the challenges faced over the past six months, and the work remaining to complete construction of the Chicago Stations' post-auction main facilities is as follows:¹⁶

- Helicopter Lifts. There are at least eight helicopter lifts remaining to complete the Willis Tower repack project. Because the helicopter lifts entail removal and installation of various equipment (*e.g.*, antennas, antenna mounts), thereby impacting structural loads, it is generally necessary to perform the lifts in a particular sequence, such that if one lift is delayed, the entire sequence may be delayed.¹⁷ Willis Tower had scheduled the first of remaining lifts for

¹³ This process is often iterative in nature, as the invoices do not always contain the information the Chicago Broadcasters believe to be required under FCC rules and procedures, such that it is necessary to work with Willis Tower to obtain additional information and/or documentation prior to submission.

¹⁴ Lease requirements make clear that repack-related work is managed by Willis Tower, and not the Chicago Stations.

¹⁵ At the request of the Chicago Broadcasters, Willis Tower has been working to develop contingency plans to address delays, and has discussed these efforts with the FCC staff. *See* Attachment A for Willis Tower's description of these efforts.

¹⁶ A detailed construction plan and related materials, as supplied by Willis Tower on July 25, 2022, is included in the materials attached hereto at Attachment A (such detailed timeline, the "Project Timeline").

¹⁷ *See* Section II for a discussion of delays in helicopter lifts to remove WLS's channel 44 antenna. The Chicago Broadcasters have requested Willis Tower to make adjustments to the lift schedule where possible to expedite the lift process, subject to structural constraints.

July 17, but that lift was canceled due to adverse weather. This lift has been rescheduled to August 28.

At least two of the remaining lifts require heavy lift helicopters. The company that Willis Tower had previously used for heavy lifts is no longer providing this service. Willis Tower has identified a replacement vendor, and has scheduled a meeting with the vendor in early August for a site visit and discussion of logistics. It is the Chicago Broadcasters' understanding that the heavy lift vendor may not be available to perform the required lifts until November 2022 because it is "on call" for potential wildfires in California.

Willis Tower representatives have asked City officials to schedule lifts outside of the City's standard days/times (e.g., on Saturday mornings and/or before 8:00 am), and also are working to schedule contingency dates in the event of adverse weather or other delays.¹⁸

- Installation of WLS Main Antenna. There are two primary tasks that must be completed in order to install the WLS Main Antenna: the completion of a structural reanalysis of the East Tower and the helicopter lift to install the WLS Main Antenna.
 - *Structural Reanalysis of the East Tower*. As noted above, the structural reanalysis of the East Tower is underway. Willis Tower estimates in the Project Timeline that this process is now approximately 80% complete. According to the Project Timeline supplied by Willis Tower, peer review of this work is scheduled to be completed by July, and the permit application is scheduled to be filed in August, with City approval expected shortly thereafter.¹⁹ Willis Tower has represented that it is working to expedite the peer review process by submitting permit documentation based on macro component design, as well as discussing additional measures to expedite completion of peer review with the peer review firm engaged by Willis Tower.
 - *Helicopter Installation of WLS Main Antenna*. According to the Project Timeline supplied by Willis Tower, the helicopter lift to install the WLS Main Antenna is scheduled to occur in September/October 2022. If successful, this will enable WLS to test and commission its new channel 22 main antenna shortly thereafter. However, this schedule depends on the ability to secure the necessary approvals from the City, and the weather conditions on the day of the lift. As noted above, Willis Tower is engaging with City officials to determine whether non-standard lift days/times are feasible, and also is working to secure additional dates for lifts (including back-up dates in the event a lift is canceled due to adverse weather or other reasons).

¹⁸ Historically, helicopter lifts have occurred on Sunday mornings between 8:00 am and 11:00 am.

¹⁹ 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.

- Installation of WFLD/WMAQ Main Antennas. There are a number of steps to be completed before the WFLD/WMAQ Main Antennas can be installed. These steps include, *inter alia*:
 - *Fabrication and Shipment of Wedding Cake Mount.* As discussed above, the West Tower wedding cake and top plate assembly have been submitted to the manufacturer for fabrication, and are currently scheduled to be completed by September 2022. According to Willis Tower, the manufacturing process has been delayed due to global supply chain issues and failure to meet technical specifications. Willis Tower has stated that it is taking steps to expedite the manufacturing process, including requesting that the manufacturer look to alternative vendors, establishing additional sources to fabricate steel required for tower reinforcements, identifying a third-party firm to assist in locating and expediting access to materials, and prioritizing components to ensure that components to be installed first will be fabricated first.
 - *Structural Reanalysis of West Tower.* Like the East Tower, the West Tower is subject to a structural reanalysis. Because the East Tower and the West Tower were created using the same framing details, it is expected that expediting the completion of the peer review permit documentation for the East Tower as described above will support, and expedite, the West Tower submission. Accordingly, the permit documentation for the West Tower will be submitted after the permit process for the East Tower is completed. The West Tower permitting process is currently estimated to be complete by September 2022.
 - *Helicopter Removal of Dormant Antennas and Related Equipment.* Prior to installation of the WFLD/WMAQ Main Antennas, it is necessary to remove existing antennas. It is possible that the helicopter lift to remove WFLD's channel 31 antenna will occur on August 28.²⁰ In addition to removing this antenna, the existing triple stack antenna must be removed from the West Tower. Because this lift requires a heavy lift helicopter that is "on call" for California wildfires, it is not likely to occur until after November 2022 (and thus has not yet been scheduled).
 - *Helicopter Installation of WFLD/WMAQ Antennas.* According to the Project Timeline supplied by Willis Tower, the helicopter lift to install the WFLD/WMAQ Antenna is scheduled to occur in January 2023, with testing and commissioning to occur by March 2023. However, this schedule depends on timely occurrence of prior lifts in the sequence of helicopter lifts, the ability to secure the necessary approvals from the City, and the weather conditions on the day of the lift. As noted above, Willis Tower is engaging with City officials to determine whether non-standard lift days/times are feasible, and also is working to secure additional dates for lifts

²⁰ It was previously expected that the channel 31 antenna would be removed on August 28. However, as explained above, the lift scheduled for July 17, which was intended to remove the auxiliary antennas from the East tower, was canceled due to adverse weather. As a result, Willis Tower is currently evaluating whether the August 28 date will be used to remove the channel 31 antenna or to remove the auxiliary antennas.

(including back-up dates in the event a lift is canceled due to adverse weather or other reasons).

Note that there is additional repack-related work to be completed even after the Chicago Stations' main antennas are commissioned, including, *inter alia*, tower reinforcements, removal of auxiliary poles and arms as well as installation of custom radome mods.²¹

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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. And, delays since March 2022 (when the Bureau last extended the CPs for the Chicago Stations) have been caused by the cancelation of helicopter lifts as described above, global supply chain failures, and changes in a third party's business line that requires securing a replacement vendor for the heavy lift helicopter – all of which are 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 **January 17, 2023** 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 According to the Project Timeline, it is currently anticipated that all work relating to the repack will be complete by May 2023.

Attachment A
Materials Provided by Willis Tower

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