

Request for Seventh 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 seventh 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 **January 17, 2023**.⁴ As a result of special, rare and exceptional circumstances outside of the control of the Chicago Broadcasters (including equipment and steel manufacturing delays resulting from global supply chain failures, and delays and cancellations in connection with necessary helicopter lifts to install and remove equipment at the top of Willis Tower in downtown Chicago), construction of the post-auction facilities for the Chicago Stations will not be complete by the January 17, 2023 deadline.⁵ Accordingly, the Chicago Broadcasters respectfully request a seventh waiver of the FCC’s tolling standard to extend the post-auction CPs for the Chicago Stations until **April 17, 2023**.

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

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. 0000196983, 0000196988, and 0000196980 (filed Aug. 4, 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) (“Sixth Waiver Request”); Letter from Barbara A. Kreisman, Chief, Media Bureau, FCC to the Chicago Stations, LMS File Nos. 0000196983, 0000196988, and 0000196980 (Sept. 1, 2022) (“Sixth Waiver Grant”) (authorizing Sixth Waiver Request).

⁵ 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 January 17, 2023 to April 17, 2023 (“Invoice Deadline Extension Request”).

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, all of which must be performed via complicated and dangerous helicopter lifts during restricted hours.

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 for reasons beyond the control of the Chicago Broadcasters, the remaining two phases of construction have been delayed and 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 **April 17, 2023** to complete construction of their post-auction facilities.

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

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.

⁷ 47 C.F.R. § 73.3700(b)(5)(i).

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 Since the grant of the last tolling waivers, the Chicago

⁸ See *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240 (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. 0000196983, 0000196988, and 0000196980 (filed Aug. 4, 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) (“Sixth Waiver Request”); Letter from Barbara A. Kreisman, Chief, Media Bureau, FCC to the Chicago Stations, LMS File Nos. 0000196983, 0000196988, and 0000196980 (Sept. 1, 2022) (“Sixth Waiver Grant”) (authorizing Sixth Waiver Request); 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); Applications of WLS Television, Inc., NBC Telemundo License, LLC, Fox Television Stations,

Broadcasters have undertaken and substantially completed the work that is within their control. The remaining tasks have been delayed due to setbacks outside of the Chicago Broadcasters' control. In support of the instant request for extension, Willis Tower provided the Chicago Stations with an update on progress towards completion of the repack since September 1, 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 September 1, 2022:

- Helicopter Removal of Dormant Antennas and Related Equipment. Prior to installation of the WFLD/WMAQ Main Antennas, existing antennas had to be removed. The helicopter lift to remove WFLD's channel 31 antenna occurred in October 2022, and the helicopter lift to remove the triple stack antenna occurred in November 2022, as shown in the Project Timeline.
- 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. Although the fabrication process had been expected to be completed by September 2022, the manufacturer, ROHN, has faced continued supply chain delays. According to ROHN's most recent estimate as of December 7, 2022, as further described in Attachment A, materials testing will take another 3 weeks minimum, but the Project Timeline estimates that this work will be completed in January 2023.
- 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 September 1, 2022.
- Helicopter Permitting Process. Willis Tower has worked with City officials to obtain approval for future helicopter lifts, with backup dates. The Bureau staff's July 19, 2022 letter to the City to advise the City of the July 3, 2023 statutory deadline has been instrumental in expediting the City's approval process. According to Willis Tower, since receiving the Bureau staff's letter, the City has been more cooperative and responsive in connection with the helicopter permitting process, but delays have continued. For example, as described below, the helicopter lift scheduled for December 11, 2022 was canceled and will need to be rescheduled.

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

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).

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.¹² 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 delays resulting from global supply chain failures, and multiple delays in the helicopter permitting and lift process),¹³ they will be unable to complete construction of their main post-auction facilities by January 17, 2023. 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 needed to complete the Willis Tower repack project, of which four have been completed. 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 July 17, 2022, but that lift was canceled due to adverse weather. The lift was rescheduled to August 28, 2022 but was again canceled and postponed until December 11, 2022.¹⁸ However, the lift was postponed once again because

¹² 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.

¹³ It was also necessary to replace the vendor for the heavy lift helicopter.

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 December 13, 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.

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

necessary structural designs to accommodate the antenna installation were not completed, and therefore a permit could not be obtained from the City. In its updated materials in Attachment A, Willis Tower has confirmed that City officials are now promptly issuing permits needed for helicopter lifts, and Willis Towers has reserved helicopters for both scheduled and fallback dates beginning on the last Sunday in January (potentially for the WLS Main Antenna installation) and continuing through February 2023.¹⁹

- 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 re-analysis of the East Tower and the helicopter lift to install the WLS Main Antenna.
 - *Structural Re-analysis of the East Tower.* As noted above, the structural re-analysis of the East Tower is underway. Willis Tower estimates in the Project Timeline that this process is now complete with the exception of steel availability. According to the Project Timeline supplied by Willis Tower, peer review of this work can be completed upon sourcing the steel. Willis Tower indicates that Malouf Engineering International is providing peer review as a representative of Willis Tower, and that Mr. Malouf is consulted and briefed as the design/analysis process proceeds. According to Willis Tower, formal peer review documentation will be completed in parallel with Hutter Trankina peer review (a City permitting requirement).²⁰ The Project Timeline indicates that this work will be completed in January 2023 subject to steel sourcing, and that City permitting and zoning will be subject to an expedited peer review permitting process.
 - *Helicopter Installation of WLS Main Antenna.* According to Willis Tower, the helicopter lift to install the WLS Main Antenna and damper, which previously had been scheduled to occur in September/October 2022, is now scheduled to occur on February 19, 2023, weather permitting. If successful, this will enable WLS to test and commission its new channel 22 main antenna shortly thereafter. According to Willis Tower, all necessary approvals for this helicopter lift have now been received from the City. Willis Tower has secured additional fallback dates for lifts in the event a lift is canceled due to adverse weather or other reasons.
- 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 had been scheduled to be completed by September 2022.

¹⁹ 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, but Willis Tower has contracted with a replacement vendor.

²⁰ As the Chicago Stations have previously explained, this process is complex, involves multiple components (e.g., internal peer reviews, City peer review, and 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.

According to Willis Tower, the manufacturing process has been delayed due to global supply chain issues and failure to meet technical specifications. On December 7, 2022, the wedding cake mount manufacturer, ROHN, advised Willis Tower that an extension is needed to provide the wedding cake mount due to: 1) the worldwide delay of rolled steel delivery; and 2) the need to procure specific material that fits the engineering specifications of the project. According to ROHN, they have been testing material for the last 6-8 months and are down to three raw parts: 4x4" angle, 3.5" solid round bar, and C6x13 channel. ROHN indicates that it is in the process of testing the solid round bar with a metallurgist to get the material approved. The C6x13 channel has been changed to plate so that ROHN can move forward with that material. ROHN sent another sample of the 4x4" angle to the metallurgist company for review, and indicated that the testing will take another 3 weeks minimum to get the results back. Accordingly, delays beyond the Chicago Broadcasters' ability to control are preventing them from completing construction prior to January 17.

- *Structural Re-analysis of West Tower.* Like the East Tower, the West Tower is subject to a structural re-analysis. 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 Project Timeline indicates that, subject to steel availability, the West Tower structural re-analysis is estimated to be complete by January 2023, along with completion of the modification design, permitting, and peer review. As with the East Tower, Willis Tower has indicated that City permitting and zoning will be subject to an expedited peer review permitting process.
- *Helicopter Removal of Dormant Antennas and Related Equipment.* Prior to installation of the WFLD/WMAQ Main Antennas, existing antennas had to be removed. The helicopter lift to remove WFLD's channel 31 antenna occurred in October 2022, and the helicopter lift to remove the triple stack antenna occurred in November 2022, as shown in the Project Timeline.
- *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 February 2023, with testing and commissioning to occur by April 2023. However, this schedule depends on the timely occurrence of prior lifts in the sequence of helicopter lifts, the ability to secure the necessary approvals from the City, the ability to source the necessary steel, and the weather conditions on the day of the lift. As noted above, Willis Tower has secured additional fallback dates for lifts.

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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. As described above, delays since September 2022 (when the Bureau last extended the CPs for the Chicago Stations) have been caused by a number of

factors, including the cancelation of helicopter lifts, City permitting delays, and steel shortages resulting from global supply chain failures – 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 **April 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.

Attachment A
Materials Provided by Willis Tower

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