

Request for Eighth 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 an eighth 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 **April 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, delays in the necessary peer review process prior to installation of the steel required to mount and hold antennas and other equipment, 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 April 17, 2023 deadline. Accordingly, the Chicago Broadcasters respectfully request an eighth waiver of the FCC’s tolling standard to extend the post-auction CPs for the Chicago Stations until **October 17, 2023**.

I. BACKGROUND – THE WILLIS TOWER REPACK PROJECT

The Chicago Stations are authorized to 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

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. 0000205965, 0000205967, and 0000205910 (filed Dec. 27, 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) (“Seventh Waiver Request”); Letter from Barbara A. Kreisman, Chief, Media Bureau, FCC to the Chicago Stations, LMS File Nos. 0000205965, 0000205967, and 0000205910 (Jan. 10, 2023) (“Seventh Waiver Grant”) (authorizing Seventh Waiver Request).

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.⁵ 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 due to steel supply shortages and the need for a peer review process prior to installation, 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 **October 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.⁶ 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.⁷ The Commission may waive a rule where the

⁵ 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. 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.

⁶ 47 C.F.R. § 73.3700(b)(5)(i).

⁷ 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

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

III. REMAINING STEPS

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.⁹ While the Chicago Stations have made some progress on the

Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999)).

⁸ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁹ See Applications of WLS Television, Inc., NBC Telemundo License, LLC, Fox Television Stations, LLC, LMS File Nos. 0000205965, 0000205967, and 0000205910 (filed Dec. 27, 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) ("Seventh Waiver Request"); Letter from Barbara A. Kreisman, Chief, Media Bureau, FCC to the Chicago Stations, LMS File Nos. 0000205965, 0000205967, and 0000205910 (Jan. 10, 2023) ("Seventh Waiver Grant") (authorizing Seventh Waiver Request); 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,

construction of their final post-auction facilities, for reasons outside of their control (including delays resulting from steel shortages due to global supply chain failures, and delays in obtaining peer review approval which is required prior to antenna installation), the Chicago Broadcasters will be unable to complete construction of their main post-auction facilities by April 17, 2023. The repack project is multi-phased, with each phase proceeding concurrently, and is managed by Willis Tower, the tower owner.¹⁰ 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.¹¹

Since the grant of the last tolling waivers, the Chicago 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. Based on ongoing discussions with representatives of Willis Tower, the following steps are required in order to complete the Chicago Broadcasters' transition to their final post-auction facilities:

A. WLS Main Antenna Facility Installation

Prior to installation of the WLS main antenna facility on the East Mast, a peer review process is required. A peer review process conducted by Malouf Engineering International as a representative of Willis Tower is ongoing and will be completed by April 2023, and a City of Chicago-mandated peer review process by Hutter Trankina is ongoing and is expected to be completed by April 2023, rather than the previously anticipated timeline of January 2023.¹² All necessary equipment, including steel components, have been obtained and are ready for installation subject to peer review approval.

Upon completion of the peer review process, Burnham Nationwide ("Burnham"), a permitting expert engaged by Willis Tower, will help expedite obtaining all necessary zoning and permitting, including a permit for the helicopter lift that will result in installation of the WLS main antenna facility. A helicopter lift to install the WLS main antenna is now expected in May 2023.¹³ Once the antenna is installed, tower reinforcement work will take place during May-July 2023 and equipment testing can occur. Even with the potential for weather delays, it is fully anticipated that WLS will be able to file a license application for its final post-auction facilities

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).

¹⁰ Lease requirements make clear that repack-related work is managed by Willis Tower, and not the Chicago Stations.

¹¹ 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.

¹² 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.

¹³ The helicopter lift previously scheduled for February 2023 was canceled because the required peer review process had not been completed.

prior to October 17, 2023.

B. WMAQ/WFLD Wedding Cake Assembly and Antenna Installation

Manufacturing of the West Tower wedding cake and top plate assembly by ROHN are ongoing and should be completed by April 2023 subject to peer review approval of the design. Installation of this wedding cake will follow installation of the WLS main antenna facility. An internal peer review process is ongoing and will be completed by April 2023, and a City of Chicago-mandated peer review process by Hutter Trankina is ongoing and is expected to be completed by April 2023, rather than the previously anticipated timeline of January 2023. All necessary equipment, including steel components, have been obtained and are ready for installation subject to peer review approval.

Upon completion of the peer review process, Burnham will help expedite obtaining all necessary zoning and permitting, including permits for the helicopter lifts that will result in installation of the top plate wedding cake assembly, expected in May 2023, followed by additional tower reinforcement and the installation of the WMAQ wedding cake and antenna, and the WFLD wedding cake, antenna, and damper. All of this work is anticipated to be completed by July 2023. Once installation is complete, equipment testing for WMAQ and WFLD will commence. Even with the potential for weather delays, it is fully anticipated that WMAQ and WFLD will be able to file license applications for their final post-auction facilities prior to October 17, 2023.

C. Post-Licensing Work

Additional post-licensing work will be required, including decommissioning of auxiliary poles and arms on the East and West Masts, and installation of custom radomes. However, this work can be performed after the Chicago Broadcasters have begun operating with their final post-auction facilities.

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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 January 2023 (when the Bureau last extended the CPs for the Chicago Stations) have been caused by a number of factors, including steel shortages resulting from global supply chain failures and a delay in completion of the peer review process – 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 **October 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.