

KPJK Request for Extension of Invoice and Cost Estimate Filing Deadline

Rural California Broadcasting Corporation (“RCBC”), licensee of noncommercial educational television station KPJK, San Mateo, California (the “Station”), requests an extension of the deadline to submit all invoices, cost estimates, and related documentation to the Commission’s repack administrator for reimbursement associated with the Station’s Post-Incentive Auction repack facilities. RCBC requests an extension until May 31, 2023.

As described herein and in the requests of the other Sutro Broadcasters in LMS File No. 214229, due to circumstances beyond RCBC’s control involving complicated and lengthy local zoning, land use, and permitting processes involving its multi-tenant tower landlord, RCBC will not have incurred all repack related expenses by April 30, 2023. All of RCBC’s invoices related to its repack antenna facilities have been submitted to the FCC; only the remaining tower expense cost estimates and invoices from the tower landlord (related to local permitting work, tower improvements required by the local authorities, and tower repainting) and any related project management cost estimates and invoices still need to be submitted.

Background

As part of the Commission’s Broadcast Television Spectrum Incentive Auction in 2017 (the “Repack”), RCBC was notified that KPJK was involuntarily reassigned to a new channel. The Station broadcasts from Sutro Tower (the “Tower”) in San Francisco, California. The Tower is a multi-tenant communications tower that houses multiple antennas for full power television and FM radio stations, as well as other communications entities.¹ The Tower is owned and operated by Sutro Tower, Inc. (“STI”); STI is owned by four major San Francisco television broadcasters (some of which were subject to the Repack). RCBC is a non-owner tenant of the Tower.

The Tower is subject to local building and zoning laws which can be quite burdensome, particularly because the Tower is in a residential area and, since its construction in 1973, the Tower has been “a prominent feature of the city skyline and a landmark for city residents and visitors.”² STI is responsible for zoning and planning work for the Tower, including the city and county approval processes for the Repack.

As explained in the submissions of other television stations on the Tower (including several of STI’s owners),³ in July 2019, after years of organizational and preparatory communications with the San Francisco Department of Building Inspection, the San Francisco Planning Department, local politicians, and neighborhood stakeholders, STI secured the required

¹ *About the Tower*, Sutro Tower Official Website (last visited Feb. 24, 2022), available at <https://www.sutrotower.com/about>; *Broadcast Stations*, Sutro Tower Official Website (last visited Feb. 24, 2022), available at <https://www.sutrotower.com/stations>.

² *Sutro Tower*, Wikipedia (last visited Feb. 24, 2022), available at https://en.wikipedia.org/wiki/Sutro_Tower.

³ See, e.g. LMS file numbers 205004, 204997, and 205012.

city and county approval to conduct the work necessary to achieve the first hurdle of the Commission's repack requirements for their tenants: changing to the new assigned television channels and ceasing operation on the old channels.⁴ However, the Sutro Tower project required several more proceedings before the San Francisco Planning Commission, the complicated history of which can be found in publicly available documents on the Planning Commission website. The result is that RCBC has been unable to close out its Repack account, as there are still cost estimates and invoice submissions forthcoming from STI that RCBC will need to submit for reimbursement. Due to these delays, the Commission has granted RCBC's requests to extend the deadline for KPJK's cost estimates and invoice submissions including, most recently, extending KPJK's January 17, 2023 invoice submission deadline to April 30, 2023.⁶ RCBC now must seek yet another extension.

Additional Time is Needed to Submit Invoices and Cost Estimates

STI has informed RCBC that it needs additional time to complete the City and County of San Francisco's permitting process (notably, a San Francisco Planning Commission hearing that was scheduled for April 20, 2023 has been re-scheduled for May 25, 2023) and to prepare repack cost estimates and obtain repack invoices for the remaining permitting work and tower work, including repainting. STI's commercial tenants with an ownership interest in the Tower recently filed similar requests for additional time to file repack reimbursement invoices and repack cost estimates for ongoing permitting expenses and related tower work and repainting that relates to the Repack (the cost of which STI will invoice to KPJK and the other repacked tenants). The pertinent facts regarding the remaining work, as set forth in the request in LMS file number 214229 are incorporated by reference.

As described in greater detail in those filings, since the grant of the previous extension request, STI has worked to obtain the necessary approvals for the vertical cladding and to begin work on the horizontal cladding replacement. Further required tower work, including permitting work, structural improvements, and repainting, is ongoing and is expected to be completed in the time frames set forth in LMS file number 214229, again incorporated by reference.

Under these circumstances, extension of the invoice and cost estimate filing deadline is warranted. When establishing the deadlines to submit invoices for reimbursement from the Reimbursement Fund, the Incentive Auction Task Force and Media Bureau understood that there could be circumstances where strict enforcement would be contrary to the public interest. Therefore, 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."⁷ Despite the significant progress that has been made, RCBC's tower landlord, STI, needs additional time to

⁴ San Francisco Planning Department, Sutro Tower Spectrum Repacking Project Addendum, Case No. 2007.0206ENV-4, July 5, 2019. Available at <https://sfplanning.org/environmental-review-documents>.

⁶ See LMS File Number 205060.

⁷ Invoice Filing Deadlines for TV Broadcaster Relocation Fund, Public Notice, 35 FCC Rcd 11273 at para. 13 (rel. Oct. 7, 2020).

complete the local zoning and permitting processes. Therefore, RCBC needs additional time to submit related invoices and cost estimates (that it will not have received by April 30, 2023) due to rare and exceptional circumstances beyond RCBC's control, namely the continuing local zoning and permitting process undertaken by STI and the final disposition of the cladding as requested by STI.

Grant of this request would serve the public interest as it would allow RCBC, a nonprofit local community organization engaged in noncommercial educational broadcasting, to be fully reimbursed for all of the costs it has reasonably incurred with the Repack (as envisioned by Congress in the language of the statute). No entity would suffer any harm as a result of the grant of the requested relief.

Conclusion

RCBC respectfully requests that the Commission extend the repack reimbursement invoice and repack cost estimate submission deadline to May 31, 2023 for the Station's Post-Incentive Auction facility. As set forth above, RCBC's landlord, STI, has been working to acquire the required zoning and land use approval for final disposition and completion of the cladding project through the complicated state and local processes. RCBC needs additional time to submit estimated costs received from STI, and invoices for expenses incurred by STI, after April 30, 2023.