

**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 *June 2022 Invoice Submission Reminder PN*,¹ KGO Television, Inc.,² Fox Television Stations, LLC,³ and San Francisco Television Station KBCW Inc.⁴ (collectively, the “Sutro Broadcasters”) respectfully submit the instant request for Special Temporary Authority (“STA”) and limited extension of the deadline to submit all invoices for reimbursement from the TV Broadcaster Relocation Fund (“Reimbursement Fund”). The Sutro Broadcasters are not requesting a further extension of the May 31, 2023 deadline to submit all cost estimates.

As explained herein, due to circumstances beyond their control, the Sutro Broadcasters will not have incurred all repack-related expenses by the current invoice deadline on May 31, 2023.⁵ Accordingly, the Sutro Broadcasters request that they be given until **August 31, 2023** to submit invoices for reimbursement from the Reimbursement Fund.

¹ See 47 C.F.R. § 1.3; 47 C.F.R. § 73.1635; Incentive Auction Task Force and Media Bureau Remind Reimbursement Program Participants that the Third and Final Filing Deadline Approaches in 90 Days, Public Notice, DA 22-619 at note 5 (rel. June 8, 2022) (“*June 2022 Invoice Submission PN*”).

² KGO Television, Inc. is the licensee of commercial television station KGO-TV, Facility ID No. 34470, San Francisco, California (“KGO”).

³ Fox Television Stations, LLC is the licensee of commercial television station KTVU, Facility ID No. 35703, Oakland, California (“KTVU”).

⁴ San Francisco Television Station KBCW Inc. is the licensee of commercial television station KBCW, Facility ID No. 69619, San Francisco, California (“KBCW” and, together with KGO and KTVU, the “Sutro Stations”).

⁵ 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 PN*”). On March 21, 2022, the Media Bureau granted a request to extend the invoice filing assignment deadlines for the Sutro Broadcasters from March 22, 2022 to September 6, 2022. See Letter to KGO Television, Inc. et al from Barbara A. Kreisman, Chief, Video Division, Media Bureau, Federal Communications Commission (March 21, 2022). On August 31, 2022, the Media Bureau granted a request to extend the invoice filing assignment deadlines for the Sutro Broadcasters from September 6, 2022 to January 17, 2023. See Letter to KGO Television, Inc. et al from Barbara A. Kreisman, Chief, Video Division, Media Bureau, Federal Communications Commission (Aug. 31, 2022). On December 20, 2022, the Media Bureau granted a request to extend the invoice filing assignment deadlines for the Sutro Broadcasters from January 17, 2023 to April 30, 2023. See Letter to KGO Television, Inc. et al from Barbara A. Kreisman, Chief, Video Division, Media Bureau, Federal Communications Commission (Dec. 20, 2022). On May 2, 2023, the Media Bureau granted a request to extend the estimate and invoice filing assignment deadlines for the Sutro Broadcasters from April 30, 2023 to May 31, 2023. See Letter to KGO Television, Inc. et al from Barbara A. Kreisman, Chief, Video Division, Media Bureau, Federal Communications Commission (May 2, 2023).

I. BACKGROUND

The Sutro Stations broadcast from Sutro Tower, a 977-foot tall tower constructed in the mid-1970s. Sutro Tower is used by 18 television and FM broadcast stations, satellite and cable providers, and nearly two dozen public and commercial wireless communication services. Sutro Tower is located in a residential area of San Francisco, and is subject to local building ordinances, zoning and other restrictions, such as the requirement to obtain a building permit from the San Francisco Planning Commission (“Planning Commission”) and the Department of Building Inspection (“Building Department” and, together with the Planning Commission, the “City”) before any changes are made to the broadcast facilities located on Sutro Tower.

The Sutro Stations, along with 4 other full-power broadcast stations located on Sutro Tower, were assigned new channels as part of the broadcast incentive auction repacking process. All of the repacked television stations at Sutro Tower were assigned to Phases 8 and 9 of the Transition Scheduling Plan. Sutro Tower, Inc. (“STI”), the owner of Sutro Tower, is coordinating, managing, and implementing the major components of the repack project, including obtaining the required approvals for the project from the City.

As explained above, the Sutro Stations cannot complete the repack process without the required permits and consents from the City. Working with the Sutro Stations, STI submitted its initial application to the City for the repack-induced modifications shortly after the Sutro Stations received their channel assignments in 2017. This application sought authority from the City to (1) remove and replace the broadcast antennas used by the repacked stations (including the Sutro Stations) and associated structural strengthening of the tower and (2) remove the architectural cladding existing on the vertical legs of Sutro Tower to reduce weight and lessen wind loading in compliance with local wind and seismic standards. Both of these tasks are essential components of the repack of the Sutro Stations.

After many discussions with the City, local politicians, and neighborhood stakeholders, it became clear that, so long as cladding elimination was included in the repack application, it would not be possible to obtain the requisite approvals from the City in time for the Sutro Broadcasters to complete the repack within the FCC-established timeframe for the Sutro Stations.⁶ In light of these deadlines, the City permitted STI to modify the repack application to bifurcate the required work into two parts: (1) the removal of pre-transition antennas and replacement with post-transition antennas (“Repack Application”) and (2) eliminating the cladding as initially proposed in order to ensure the structural soundness of Sutro Tower (“Cladding Elimination Application”). Thereafter, on July 18, 2019 (nearly two years after STI and the Sutro Stations began the process of obtaining the required local permits and consents for the repack project at Sutro Tower), the City approved the Repack Application.

Having obtained the City’s approval for the Repack Application in July 2019, the Sutro Stations were able to remove their pre-auction antennas and install their post-auction antennas and thus successfully transition to their respective post-auction facilities by their assigned

⁶ The controversy over the cladding elimination structural improvement was the result of efforts by the City to designate Sutro Tower a historical resource.

transition deadlines in Phases 8 and 9. However, the City’s approval of the Repack Application is subject to several conditions, including as follows:

- *Completion of certain tasks related to repacked stations’ broadcast frequencies.* This condition has been satisfied, and substantially all expenses incurred in connection therewith have been submitted to the Commission for reimbursement.
- *Completion of a structural analysis of the adequacy of Sutro Tower in accordance with the San Francisco Code for Existing Buildings (“SFEBC”).* This work has been completed, and invoices for such work have been submitted.
- *Completion of structural improvements to Sutro Tower to ensure that Sutro Tower complies with specified wind and seismic standards pursuant to Section 403.9 of the SFEBC (“Structural Upgrade Condition”).* In October 2022, the Planning Commission voted to approve the replacement of interior-facing horizontal cladding, which protects internal equipment on lower levels 2-4 of the Sutro Tower. However, the Planning Commission only recently came to a decision concerning the exterior-facing vertical cladding on the Sutro Tower legs, which serve no structural purpose and exist for historical aesthetic reasons. The Planning Department completed environmental review of the Cladding Elimination Application on April 6, 2023, along with a Planning Department Memorandum dated April 10, 2023, recommending permanent removal of Sutro Tower’s architectural cladding from the legs of the tower (“Vertical Cladding Elimination”), subject to certain conditions of approval mitigating the impact of Vertical Cladding Elimination. A hearing concerning this matter was held on May 25, 2023 during which the Planning Commission approved the Cladding Elimination Application subject to a number of conditions, as described in Attachment A hereto.

As a result of these delays with the local permitting process, the Sutro Broadcasters, to date, have incurred only a portion of the costs for the repack of the Sutro Stations. Accordingly, the instant request for an extension of the invoice submission deadline is being filed to enable the Sutro Broadcasters to submit invoices received on or before August 31, 2023.⁷

II. THERE IS GOOD CAUSE TO EXTEND THE MAY 31, 2023 INVOICE SUBMISSION DEADLINE

Pursuant to Section 1.3 of its rules, the FCC may waive its rules “for good cause shown.”⁸ 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.”⁹ In evaluating a request for waiver, the Commission takes “into account considerations of hardship, equity, or more effective implementation of

⁷ The Sutro Broadcasters have submitted all cost estimates and substantially all invoices for costs incurred to date in connection with the repacking of the Sutro Stations.

⁸ 47 C.F.R. § 1.3.

⁹ *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”,¹⁰ as well as whether waiver would result in a “more effective implementation of overall policy” than enforcing the rule as written.¹¹

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. An entity seeking an extension of the final invoice deadline is required to demonstrate that “circumstances requiring the extension were outside of its control, such as local zoning or a force majeure event occurring proximate to the final submission deadline.”¹² As explained herein, due to the need to comply with local permitting laws and regulations, the Sutro Broadcasters have not yet incurred all costs associated with the repack of their respective facilities, for reasons that are beyond the Sutro Broadcasters’ ability to control. Thus, a limited extension of the invoice submission deadline, to August 31, 2023, is warranted.

The Sutro Broadcasters, through STI, have been working tirelessly to obtain the requisite City approvals to implement the Structural Upgrade Condition, and finally obtained all necessary approvals on May 25, 2023.

However, there are still costs to be incurred in connection with the permitting process, as well as the approved mitigation measures to reduce the visual impact, including but not limited to repainting of the tower to its original aviation orange and white color scheme. These costs will be incurred, and invoices will be issued, on a rolling basis as the process proceeds. Thus, some invoices relating to the Cladding Elimination Application will not be available for submission until well after the current May 31, 2023 deadline.¹³

III. 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 that 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.¹⁴ Indeed, as

¹⁰ *WAIT Radio*, 418 F.2d at 1159.

¹¹ *Id.*; *Northeast Cellular*, 897 F.2d at 1166.

¹² *See June 2022 Invoice Submission PN* at note 5.

¹³ The Sutro Stations will work with STI to obtain invoices for work performed in connection with the environmental assessment on a rolling basis, though it is possible that these invoices will not all be available until the Fall of 2023, despite all efforts to expedite. Additionally, the repainting work to be undertaken in connection with the Cladding Elimination Application cannot commence until after the permit associated with the Cladding Elimination Application has been issued. Because weather conditions significantly impact when repainting can occur, this work will take several years (likely 3 to 4 years) to complete, such that invoices for repainting will not be available for submission until well after July 3, 2023.

¹⁴ *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*

set forth above, improvements to Sutro Tower to satisfy the Structural Upgrade Condition, along with mitigation measures and preservation conditions, are necessary components of the repack and expressly required by the City as a condition of its consent to the repack-related modifications to Sutro Tower. STI, as the owner of Sutro Tower, has taken all steps necessary to obtain the required permits and approvals to implement these structural improvements, with the final approval being obtained mere days ago. While the Sutro Broadcasters and STI were able to execute a plan to timely transition the Sutro Stations to their post-auction channels (thereby ensuring that the Sutro Stations could provide their viewers with uninterrupted over-the-air service), the Sutro Broadcasters are still required to implement the structural improvements and associated mitigation and preservation measures necessitated by the repack, and to incur the expenses associated therewith. If the Sutro Stations are not permitted to seek reimbursement for these costs after May 31, 2023, 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.

IV. CONCLUSION

For the reasons stated herein, the Sutro Broadcasters respectfully request that the Bureau grant the instant request for a legal STA and extension as needed to shift the deadline to submit all invoices for reimbursement from the Reimbursement Fund from May 31, 2023 to August 31, 2023.

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”).

Attachment A
Planning Commission
Preservation Conditions of Approval

See attached