



Federal Communications Commission
Washington, D.C. 20554

April 9, 2021

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(via electronic mail)

Re: Requests for Tolling Waivers
WLS-TV, Chicago, IL
WMAQ-TV, Chicago, IL
WFLD(TV), Chicago, IL
Facility ID Nos. 22211, 47905, and
73226
LMS File Nos. 0000139978,
0000139992, and 0000139959

Dear Licensees,

On March 15, 2021, WLS Television, Inc., licensee of station WLS-TV, Chicago, Illinois (WLS); NBC Telemundo License, LLC, licensee of station WMAQ-TV, Chicago, Illinois (WMAQ); and Fox Television Stations, LLC, licensee of station WFLD(TV), Chicago, Illinois (WFLD) (collectively Licensees and Stations) filed the above-referenced requests for waiver of the Commission's tolling provisions and tolling of the Stations' construction permit expiration dates. For the reasons below, we grant Chicago Licensee's requests and toll the expiration date of the Stations' construction permits 180 days through October 12, 2021.¹

Background. Pursuant to section 73.3700(b)(5) of the Commission's rules (Rules), a station that was assigned a new channel as a result of the Commission's incentive auction and repacking process may request a single extension of its construction permit deadline of up to 180 days to complete construction

¹ Because 180 days from the Station's current construction expiration date falls on a Federal holiday, Columbus Day, October 11, 2021, we will extend the construction permit to the next business day, which would be Tuesday, October 12, 2021. See 47 CFR 1.4.

of its post-auction facility.² All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.³ The Commission's tolling provisions provide that a construction permit deadline may be tolled under specific circumstances such as acts of God, delays due to administrative or judicial review, or construction that is delayed by any cause of action pending before a court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.⁴ If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission's tolling provisions and tolling may still be warranted where the licensee can demonstrate that "rare and exceptional circumstances" prevented construction by the station's construction permit expiration date.⁵

Chicago Licensees request waivers of the tolling rule and tolling of their Stations' construction permits for their post-incentive auction channel facilities through October 12, 2021. The Stations are currently operating on their post-auction channels with interim facilities.⁶ The Stations were each granted construction permit extensions and tolling and their construction permits are scheduled to expire on April 12, 2021.⁷

In largely identical requests for tolling waivers, Chicago Licensees note that the Stations broadcast from Willis Tower, which hosts a shared, multi-tenant communications facility that supports a variety of broadcast stations, including full power television stations, Class A television stations, and several FM radio stations. All of the work required to implement the repack, including the fabrication and installation of the Stations' post-auction main antennas, must be coordinated through Willis Tower and their engineering/construction firm. In addition, all work on the Willis Tower site requires prior approval from various city zoning and planning departments (CBD). Chicago Licensees report that they are continuing to work with CBD to obtain the necessary approvals for the installation of their post-auction channel facilities. Some CBD approvals have been obtained but additional permits are still required. Once current pending approvals are obtained and installation is finally approved, Chicago Licensees will then need to obtain separate CBD approvals for the six helicopter lifts that will be needed to install the Stations' antennas. As a result, Chicago Licensees seek waivers of the tolling rules and tolling of the Stations' construction permit deadlines.

² See 47 CFR § 73.3700(b)(5).

³ See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

⁴ *Id.*

⁵ See *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 42 (1999) (recognizing that there may be "rare and exceptional circumstances" beyond the control of the licensee that do not fall under the tolling provisions, but "which would warrant the tolling of construction time." The Commission concluded that in such "limited circumstances," it would entertain requests for waiver of its "strict tolling provisions"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

⁶ See LMS File Nos. 0000139981, 0000121577 and 0000140022. WLS was repacked from channel 44 to 22 and shares channel 22 with WXFT, Aurora, Illinois. WMAQ was repacked from channel 29 to 33 and shares channel 29 with WSNS-TV, Chicago, Illinois. WFLD was repacked from channel 31 to 24 and shares channel 24 with WPWR-TV, Gary, Indiana.

⁷ See LMS File Nos. 0000078105, 0000078137, 0000082055, 0000108674, 0000108706, 0000108713, 0000120815, 0000120786 and 0000120787.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive section 73.3598(b) of the Rules and to toll the expiration date of the Stations' construction permits through October 12, 2021. We find that Chicago Licensees were unable to complete construction of their post-auction channel facilities due to a variety of construction related delays including most recently the need to obtain local city approvals. We also find that grant of Chicago Licensees' waivers and tolling requests is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. The Stations have already ceased operation on their pre-auction channels and initiated temporary operations on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate using interim facilities, we believe that Chicago Licensees have every incentive to ensure viewers are fully informed about the Stations' transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Stations' construction permits.

We remind Chicago Licensees that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."⁸ Additional expenses incurred, such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

We further remind Chicago Licensees of the deadline for submitting final expense documentation for reimbursement for the Stations is March 22, 2022.⁹ Thus, we strongly encourage the Stations to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Stations for their legitimate repacking expenses, and we encourage Chicago Licensees to submit eligible invoices as soon as practicable.

The above facts considered, WLS Television, Inc., NBC Telemundo License, LLC, and Fox Television Stations, LLC's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 0000034300, 0000072366 and 0000080396) for WLS-TV, Chicago, Illinois, WMAQ-TV, Chicago, Illinois, and WFLD(TV), Chicago, Illinois, **ARE TOLLED through October 12, 2021**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind Chicago Licensees that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹⁰ To the extent the Station seeks an additional extension of tolling, such a request must include a detailed plan

⁸ 47 U.S.C. § 1452(b)(4)(A)(i). *See also Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567, 6821, para. 622 (2014) (*Incentive Auction R&O*), *aff'd*, Nat'l Ass'n of Broadcasters v. FCC, 789 F.3d 165 (D.C. Cir. 2015) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

⁹ *See Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

¹⁰ *See* 47 § CFR 73.3598(b).

for completing construction of the Station's permanent post-auction facilities. We will look unfavorably upon any future request that does not include such a plan.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
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