



Federal Communications Commission
Washington, D.C. 20554

October 7, 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. 0000161509,
0000161587, and 0000161777

Dear Licensees,

On September 30, 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 Chicago 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 Licensees' requests and toll the expiration date of the Stations' construction permits through March 22, 2022.

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 of its post-auction facility.¹ All subsequent requests for additional time to construct are subject to the

¹ See 47 CFR § 73.3700(b)(5).

Commission's tolling provisions of section 73.3598(b) of the Rules.² 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.³ 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.⁴

Chicago Licensees request waivers of the tolling rule and tolling of their Stations' construction permits for their post-incentive auction channel facilities. The Stations are currently operating on their post-auction channels with interim facilities.⁵ The Stations were each granted construction permit extensions and tolling and their construction permits are scheduled to expire on October 12, 2021.⁶

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, since the grant of their last tolling waivers, the WLS auxiliary antenna system has been installed on the West Mast of the tower, and is now operational. The WLS post-auction channel main antenna has been delivered to the installation contractor and preassembly and off-site assembly efforts are underway. The Chicago Licensees state that the WLS main antenna cannot be installed until the ongoing structural reanalysis of the East Mast is complete and WLS's inactive pre-auction channel 44 antenna is removed by helicopter.

Chicago Licensees further report that Willis Tower has been undertaking ancillary tower work, such as tower interface and dampening, as well as structural reinforcements and construction of climbing facilities. In addition, fabrication of one the "wedding cake" antenna mounts for the WMAQ/WFLD

² See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

³ *Id.*

⁴ 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).

⁵ 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.

⁶ See LMS File Nos. 0000078105, 0000078137, 0000082055, 0000108674, 0000108706, 0000108713, 0000120815, 0000120786, 0000120787, 0000139978, 0000139992, and 0000139959.

antenna mount has been completed. However, Chicago Licensees state that a redesign of one of the antenna mounts was required in order to accommodate the feed lines for the WMAQ and WFLD antennas. The redesign has been completed and is undergoing internal peer review by Willis Tower's engineering firm. The remaining work on the Stations' antenna installations, Chicago Licensees predicts, will take from November 2021 until March 2022. Based on the foregoing, Chicago Licensees request that the tolling rules be waived and that the Stations' construction permit expiration dates be tolled.

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 March 22, 2022. We find that Chicago Licensees were unable to complete construction of their post-auction channel facilities due to a variety of construction related delays. We also find that grant of Chicago Licensees' waivers and tolling requests are 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. Although Chicago Licensees request tolling through April 11, 2022, we find that tolling through March 22, 2022, is appropriate based on the facts provided, as well as the Stations' assigned deadline for submitting final reimbursement documentation.

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."⁷ 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, 2022.⁸ 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**

⁷ 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.").

⁸ *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 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).

through March 22, 2022. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. While we anticipate this will be the Stations' final requests for tolling, we remind Chicago Licensees that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁹ To the extent the Station seeks an additional extension of tolling, such a request must include a detailed plan 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
Media Bureau

cc (via electronic mail):
Susan Fox, Esq.
Karen Milne, Esq.

⁹ See 47 § CFR 73.3598(b).