



Federal Communications Commission
Washington, D.C. 20554

July 3, 2023

WLS Television, Inc.
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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. 0000213354,
0000213355 and 0000213352

Dear Licensees,

On March 31, 2023, 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 Willis Broadcasters 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 Willis Broadcasters' requests and toll the expiration date of the Stations' construction permits through August 31, 2023.

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

Willis Broadcasters 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 permit expiration dates were most recently tolled to April 17, 2023.⁶

In largely identical and well documented requests for tolling waivers, Willis Broadcasters 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 and 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.

Willis Broadcasters report that since the grant of their last tolling waivers in January 2023 they have undertaken and substantially completed the work that is within their control. Willis Broadcasters maintain that the remaining tasks have been delayed due to setbacks outside of their control most recently delays in obtaining peer review approval which is required prior to antenna installation. The Willis Broadcasters state that Willis Tower recently advised them that the peer review process should be completed by July 7, 2023, although Willis Broadcasters note that Willis Tower is unable to offer any guarantees concerning that timeline.⁷ The Willis Broadcasters state that, upon completion of the peer

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. 0000205965, 0000205205967 and 0000205910.

⁷ See LMS Files Nos. 0000217250, 0000217251 and 0000217253 – the Willis Broadcasters' requests for extension of their invoice filing deadlines, filed June 28, 2023.

review process, Willis Tower will then need to obtain all necessary permits to schedule the helicopter lifts for the antenna installations (such lifts are weather-dependent and must be coordinated to avoid downtown Chicago events during the summer), after which construction of the Willis Broadcasters' final facilities should begin in earnest. Based on the foregoing, Willis Broadcasters 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 August 31, 2023. We find that Willis Broadcasters were unable to complete construction of their post-auction channel facilities due to construction-related delays. We also find that grant of Willis Broadcasters' 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 Willis Broadcasters 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 Willis Broadcasters request tolling until October 17, 2023, in order to continue to monitor progress of the Stations' construction, and to ensure that they are taking all steps necessary to complete construction, we find that tolling through August 31, 2023 is appropriate.

Willis Broadcasters should diligently pursue submission of all remaining invoices as early as possible without waiting for their August 31, 2023, final invoice filing deadline.⁸ We remind Willis Broadcasters that, pursuant to the Spectrum Act, the Stations are eligible for reimbursement of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."⁹ Additional expenses incurred, such as expenses resulting from changes in a Stations' transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The Willis Broadcaster have filed estimates and received allocations for all remaining work that they have reported might be subject to future incurred expenses and no additional allocations from the TV Broadcaster Reimbursement Fund are available after July 3, 2023 as a result of a statutory deadline. A station's failure to complete any remaining construction in a timely manner and to make final submissions by the revised invoice filing deadline could preclude that station from receiving full reimbursement.

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**

⁸ The Stations were granted extensions of their April 17, 2023 invoice submission deadline and the Stations' deadline was extended to August 31, 2023. See Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Willis Broadcasters (July 3, 2023) (on file at LMS File Nos. 0000217250, 0000217251 and 0000217253); see also *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 filing deadlines for submission of repack invoices).

⁹ 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

through August 31, 2023. 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 Willis Broadcasters that any subsequent requests for tolling of their construction permit deadlines will be subject to the Commission's tolling provisions.¹⁰ To the extent a Station seeks an additional extension of tolling, such 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.

¹⁰ See 47 CFR § 73.3598(b). A station 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. See *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).