

Request for Extension of Special Temporary Authority to Remain Silent and Waiver of Section 312(g) of the Communications Act

Guenter Marksteiner (“Licensee”), licensee of WHDT-LD, Boston, MA (Facility ID 59488) (“the Station”) hereby requests an extension/reinstatement of Special Temporary Authority to remain silent pending construction of the Station’s new channel 4 facility. Additionally, because the Station has been silent for more than a year, the Station seeks a waiver of Section 312(g).

As a result of the incentive auction and repacking process, the Station was displaced from its out of core channel 38 operations, and subsequently filed and was granted a construction permit to relocate from channel 38 to channel 4.¹ The Licensee was proceeding towards construction when the station was forced off-air upon receiving notice from T-Mobile to vacate its out of core channel due to the commencement of wireless operations.² This occurred just as cold New England weather conditions made scheduling the required work on the tower impractical. Shortly thereafter, challenges associated with the onset of the COVID-19 pandemic began and have impacted construction of the station’s channel 4 facility for the majority of the preceding 12 months.

Specifically, the Licensee has provisioned equipment to construct the displacement facility, including the required transmitter, antenna, mask filter, and transmission line. The facility will be built atop a tall building equipped with a broadcast transmission tower. Before the necessary work can commence on the tower, however, the building’s owner is requiring that a damage inspection be completed on the tower. Thereafter, the Licensee must remove an existing antenna from the tower in a two-stage process, then mount its own antenna and transmission line. This requires mobilizing a considerable number of specialized crew members to conduct the safety inspection, dismount the legacy broadcast antenna, lift the new antenna into place via helicopter, mount transmission line and install the station’s transmitter in the equipment room on the top story of the building. There is no practical way to conduct these various steps piecemeal, dictating a high degree of coordination in their execution.

However, COVID-19 has caused significant delays and uncertainty which have restricted construction. For example, the building in which the Licensee’s crews must install the Station’s transmitter and through which the Licensee’s crews must pass to access the rooftop tower site is closed because of COVID-19 precautions. Moreover, travel restrictions impact the diverse crew members needed for the project, making coordination of the various steps needed especially challenging. The Licensee himself currently resides in Florida and has been limited in his ability to travel to the station’s transmitter site with the necessary equipment to oversee the work due to restrictions of travel, which particularly impact those from Florida seeking to enter

¹ See FCC File No. 0000052060.

² See FCC File No. 0000087705.

Massachusetts.³ All of this is on top of what was already a challenging environment for a small low power television operator to line up tower crews during the final phases of the Commission's repack.

As such, the Licensee respectfully requests Special Temporary Authority to remain silent as it works to transport the needed equipment and coordinate with tower crews and other necessary parties to complete construction. The Licensee also requests a waiver of Section 312(g), as the Station has been silent for more than 12 consecutive months. The Commission has recognized that issues attendant to the repack process may require some stations to go off-air while completing their transition to post-auction channels, and that circumstances beyond a station's control may warrant waiver of 312(g).⁴

Grant of this request would preserve the license of a station that was displaced, and then forced off-air, before facing further unexpected delays due to circumstances beyond its control, including limited travel ability, stay-at-home orders, and other COVID-19-related restrictions. Licensee regrets that the timely filing of an extension request has already passed, but respectfully submits that grant of this request will serve the public interest and promote equity and fairness.

³ See, e.g., Governor Baker Declares State of Emergency to Support Commonwealth's Response to Coronavirus (March 10, 2020), <https://www.mass.gov/news/governor-baker-declares-state-of-emergency-to-support-commonwealths-response-to-coronavirus>; Jennifer Levitz, *Massachusetts Ranks Third Among Coronavirus Cases*, WALL ST. J. (April 18, 2020), <https://www.wsj.com/articles/massachusetts-ranks-third-among-states-with-most-coronavirus-cases-11587211201>.

⁴ *Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 873 ¶ 48-49 (MB 2017) ("We recognize that, in order to successfully complete the transition to its post-auction channel, a reassigned station or band changing station may need to temporarily suspend operations or 'go silent' . . . In considering such [312(g)] requests, we will examine whether the station has demonstrated that its silence is the result of compelling reasons beyond the station's control . . .").