

Request For Waiver of Tolling

Guenter Marksteiner (“Licensee”), licensee of WXDT-LP, Naples, Florida (Facility ID 25537) (“the Station”), hereby submits this request for waiver of the Commission’s tolling rules to allow for extension of the Station’s construction permit in FCC File No. 0000152394.

In accordance with the representations that the Licensee has previously made to the Commission, construction of the Station’s facility is substantially complete and the Station anticipates commencing operations on January 10, 2022, albeit with facilities at variance to the Station’s construction permit. As described below, as a result of circumstances beyond the control of the Licensee, the Station’s facilities could not be completed as authorized by the January 10, 2022 deadline.

Specifically, due to global supply chain disruptions, the Licensee was recently notified that the antenna that the Licensee anticipated installing as the Station’s main antenna at its authorized height on the tower would not be delivered in time to meet the January 10, 2022 expiration date of the Station’s construction permit.

The Licensee leases a second aperture on the Station’s tower for a planned backup antenna that would be mounted low enough on the tower to permit the station to continue to operate whenever tower maintenance and climbing work to service the numerous other occupants of the tower would otherwise dictate that the Station power off for worker safety. The Licensee secured and completed installation of a suitable backup antenna and transmission line to enable the Station to return to service at its licensed ERP by the construction permit deadline. As a result of the Licensee’s prior planning and efforts to advance the timetable for the backup system’s buildout, the Station has been brought to an operational status in time to meet its construction deadline and is filing contemporaneously herewith a separate request for Special Temporary Authority authorizing the temporary use of a Dielectric TUM-C1 antenna mounted at 15.24 meters on the Station’s authorized antenna structure, and to operate the Station with an ERP of 15 kW.

Extension of the Station’s construction permit is still necessary, though, to allow the Station to take delivery of the Station’s main antenna, install it in the authorized aperture, and file a license to cover application specifying the full facilities proposed in the Station’s construction permit. The antenna manufacturer advises that it expects to deliver the previously ordered main antenna for the Station in approximately May 2022. Upon receipt of the antenna, the Licensee will schedule its tower crew, mount the antenna in the Station’s authorized aperture, and connect it to the Station’s existing transmitter. Assuming timely receipt of the antenna in May of 2022 as currently anticipated, the Licensee estimates that mounting the antenna will take approximately one week, and that construction of the full authorized facilities can be completed by July 9, 2022.

Given the unusual circumstances, a waiver of tolling and extension of the Station’s construction permit is justified. The Commission’s rules allow a construction permit deadline to be tolled under specific circumstances involving acts of God, delays due to administrative or judicial

review of the permit's grant, or court proceedings regarding local, state, or federal requirements affecting the construction, including zoning and environmental requirements.¹ Moreover, stations may also be granted a waiver of the tolling rule to receive additional time to construct in the case where "rare or exceptional circumstances" not outlined above prevent construction.²

Tolling is appropriate here because the Licensee's inability to complete construction is due to rare and exceptional circumstances beyond its control. The global supply chain issues that have caused the delay in the delivery of the Station's main antenna are widespread, affecting many parts of American life, and have been the subject of government concern at the highest levels.³ Moreover, the Licensee's ability to complete construction of an alternate transmission system, as evidenced by the Station's readiness to commence on-air operations, demonstrates the Licensee's diligence in pursuing construction of the Station.

For these reasons, the Commission should waive the tolling standard and provide the Licensee with an additional 180 days to complete construction and license the Station's facilities.

¹ 47 C.F.R. § 73.3598(b).

² See, e.g., *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536 (1999) at ¶ 42.

³ See, e.g., *FACTSHEET: Biden-Harris Administration Announces Supply Chain Disruptions Task Force to Address Short-Term Supply Chain Discontinuities*, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/08/fact-sheet-biden-harris-administration-announces-supply-chain-disruptions-task-force-to-address-short-term-supply-chain-discontinuities/>; Biden Announces Measures at Major Ports to Battle Supply Chain Woes, *The New York Times* (October 13, 2021) available at: <https://www.nytimes.com/2021/10/13/us/politics/biden-port-los-angeles-supply-chain.html>.