

Amended 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, to respond to the FCC’s Deficiency Letter dated February 8, 2022. In that Deficiency Letter, the FCC asked for a more detailed, dated accounting of the steps taken since grant of the Station’s last request, and an accounting of the circumstances outside of the Licensee’s control that prevented timely construction and how they prevented that construction.

With respect to the second of these requests, the Licensee was notified in late 2021 that certain of the equipment necessary to construct the Station’s full power CP facility would not be delivered in time due to global supply chain disruptions affecting various vendors. Chief among these is the Station’s antenna. The impact of the supply chain disruption and failure of the vendor to deliver the needed antenna is that the Station is not able to install its permanent, intended, full power antenna prior to the January 2022 deadline.

With respect to the first request, as previously noted, the Licensee substantially completed construction of the Station’s CP facilities, despite the supply chain issues it experienced. Specifically, 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 filed 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. A monthly detail of the steps taken follows:

July 2021

An extension request for additional time to relocate and reconstruct the station's transmission facility on channel 23 is filed with, and granted by the Commission.

Note. Construction of station WXDT-LD parallels the construction of displaced station WZDT-LD as WXDT-LP shared space for its broadcast equipment at the WZDT-LP transmitter site in Naples, Florida. WXDT-LD modified its engineering to co-site with WZDT-LD in Fort Myers, Florida. Construction milestones for WXDT-LD are listed below:

August 2021

Licensee hires the tower owner's engineering company to prepare a detailed study of the impact of licensee's proposed antenna on the tower wind load capacity. The antenna manufacturer delivers mechanical drawings of the proposed antenna for analysis.

The 2.25 inch diameter transmission line specified for the original station engineering is not available from domestic vendors, so proposals for the next diameter transmission line are

obtained. The tower engineering company is advised to modify their study to specify 3 inch diameter helix.

September 2021

Licensee funds ongoing costs and off-site equipment storage.

October 2021

Upon successful completion of the tower loading study, the proposed installation of the station's main antenna is accepted by the tower owner and a final tower lease agreement is negotiated.

Licensee learns that the tower operator cannot provide space within the tower equipment building due to lack of space and air conditioning capacity. The licensee is offered space on the ground to construct a free-standing equipment shelter, subject to the construction meeting Florida hurricane construction guidelines, and being insurable.

A construction consolidator is retained by the licensee to engineer a suitable structure, obtain local permits, evaluate and oversee costs associated with fabrication. A licensed air conditioning company is retained to provide HVAC equipment for the enclosure.

November 2021

Licensee is advised by the antenna manufacturer that projected delivery of the main antenna to the site will be delayed until early 2022 due to supply chain issues that are beyond their control. Plans for the station's equipment shelter are completed and submitted for review. Costs are considerably higher than initially proposed due to rising costs of construction materials, so alternatives are investigated.

December 2021

The construction consolidator suggests that licensee acquire and renovate a prefabricated equipment shelter in lieu of new construction. A suitable enclosure is located and purchased by licensee. Renovation of the building begins immediately.

An electrical contractor is hired to install new power utility panels, and conduits. Metered utility service is connected to the building. Suitable security fences, signage, and doors are installed.

Lightning protection is provided and the shelter is grounded to the tower. Insurance certificates are delivered to the tower owner, and the station's transmitter equipment is delivered to the site.

A tower crew is hired to install a small backup antenna and transmission line on the tower so that transmitter tests can begin. It is proposed that limited broadcast operations under STA begin upon certification of the broadcast equipment.

January 2022

A consulting engineer is hired to install and verify the station's studio-transmitter link. An RF engineer is hired to perform transmitter compliance tests prior to resumption of broadcasting. An application for Special Temporary Authority for the station to operate at reduced power with its backup antenna is filed with the Commission. Commencement of STA broadcast operations began on 6 January 2022.

February 2022

Request for a detailed accounting of construction progress is prepared to support the station's request for tolling of its construction permit.

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 prior to the CP expiration date, 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., *FACT SHEET: 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>.