

Guenter Marksteiner  
WHDT-LD  
January 2022

Request For Waiver of Tolling  
Waiver of Section 312(g), to the Extent Necessary

Guenter Marksteiner (“Licensee”), licensee of WHDT-LD, Boston, Massachusetts, (Facility ID 59488) (“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. 0000153397.

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 21, 2022, albeit with facilities at variance to the Station’s construction permit.

Since its last filing with the Commission, the Licensee has completed and equipped its transmitter room with electric service and HVAC adequate to support the Station’s transmission system, installed a means for remote program delivery, and installed the Station's transmitter and mask filter.

Due to circumstances beyond the control of the Licensee, the Station’s facilities cannot be completed as authorized by the January 21, 2022 deadline. The Licensee was notified that, due global supply chain disruptions, the antenna which the Licensee anticipated installing as the Station’s main antenna at its authorized height on the tower could not be delivered in time to meet the January 21, 2022 expiration date of the Station’s construction permit.

The Licensee accelerated plans with the landlord to secure space on the rooftop tower for the Station's backup antenna, financed the antenna and transmission line, and retained a construction firm and engineer to install the antenna and enable the Station to return to service at 25% of its authorized ERP. Installation of the backup antenna at 50 meters below the height authorized for the Station’s main antenna and installation of the backup transmission line are complete. An engineer is en route from the Midwest ahead of Winter Storm Izzy to test and verify the RF system so that the Station can resume over-the-air service in advance of its construction permit deadline. The Licensee is filing contemporaneously herewith a separate request for Special Temporary Authority seeking permission for the temporary use of the backup facility.

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 April or May 2022. Upon receipt of the antenna, the Licensee will follow its previously detailed installation plan to schedule the required tower crew, coordinate the main antenna’s delivery to the rooftop, mount the antenna in the Station’s authorized aperture, and connect it to the Station’s main transmitter. Assuming timely delivery

of the antenna in late Spring 2022, 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 20, 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> Moreover, the Licensee's ability to complete construction of other necessary aspects of the Station's operation, as evidenced by its readiness to commence on-air operations, as well as the Licensee's efforts to construct backup facilities not slated to be built until well in the future, evidence the Licensee's diligence in completing the Station's construction.

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.

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<sup>1</sup> 47 C.F.R. §73.3598(b).

<sup>2</sup> 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.

<sup>3</sup> 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/>.