



Federal Communications Commission
Washington, D.C. 20554

October 13, 2023

The Guenter Marksteiner Revocable Trust
PO Box 34990
Palm City, FL 34990
marksteiner@sekur.com

Re: Request for Tolling Waiver
WHDT-LD, Boston, MA
Fac ID No. 59488
LMS File No. 0000220410

Dear Licensee,

This concerns requests for waiver of the Commission's tolling provisions and tolling of construction permit expiration date (Request), as amended, filed by The Guenter Marksteiner Revocable Trust (GMRT), licensee of low power television (LPTV) station WHDT-LD, Boston, Massachusetts (WHDT or Station).¹ For the reasons below, we grant GMRT's Request and toll the expiration date of the construction permit for the Station through December 4, 2023.

Background. Requests for additional time to construct LPTV facilities are subject to the 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

Request. WHDT-LD is a licensed digital station that previously operated in digital on channel 38. The Station's digital channel 38 was displaced by the Incentive Auction and repacking process and was designated as portion of the new wireless "duplex gap."⁵ The Station was granted a construction

¹ LMS File No. 0000220410 (Request). Guenter Marksteiner, the previous licensee of the Station, is the Trustee of GMRT. Through a *pro forma* transaction, Marksteiner transferred the Station to GMRT in February 2023. See LMS File Nos. 0000211012.

² See 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) (*Streamlining MO&O*) (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 *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, et al., Report and Order, 29 FCC Rcd 6567, 6841, para. 672 (2014) (subsequent history omitted).

permit for digital displacement channel 4⁶ on September 18, 2018 and, because the station was already operating in digital, it was assigned an expiration date of September 18, 2021. WHDT-LD was most-recently granted a tolling waiver and the construction permit expiration date was tolled to September 1, 2023.⁷ WHDT-LD is currently silent⁸ while GMRT is relocating the Station's temporary facilities to a new location.⁹

Since the grant of its last tolling waiver in August 2023, GMRT has continued to encounter delays completing construction of its displacement facilities. As previously reported, a new building owner has taken over at the Station's authorized transmitter site and is exercising its right to an architectural review of the rooftop antenna system.¹⁰ Accordingly, GMRT reports that construction remains halted at the site. GMRT includes e-mail correspondence from the building's general manager demonstrating this delay.¹¹ GMRT states that it has met with representatives of the site owner and provided additional information including detailed structural and engineering reports, assumptions of liability, and insurance bonds.¹² GMRT provides a letter from its counsel to support this fact.¹³

Given continued delays receiving authorization to proceed with installation at its currently authorized site, GMRT has decided to move to its permanent facility to a new site.¹⁴ GMRT provides an e-mail from the communications services manager for its new site which confirms that the building owner has reviewed and approved the installation of both intermittent backup facilities, subject to Commission grant of the Station's pending request for special temporary authority, and its permanent facilities.¹⁵ Finally, GMRT states that it has taken delivery of materials and equipment which is being stored at a nearby storage and workshop space where GMRT intends to assemble and test the Station's transmitters and antenna components prior to their installation.¹⁶ GMRT estimates that construction can be completed over the next sixty days and thereby requests waiver of the Commission's rules and tolling of the construction permit expiration date for the Station through December 4, 2023.¹⁷

Discussion. Upon review of the facts and circumstances presented, we find that sufficient

⁶ See LMS File No. 0000052060.

⁷ See LMS File Nos. 0000195693.

⁸ See LMS File No. 0000222732 (granted Oct. 13, 2023). The Station has been silent since July 10, 2023 when it ceased operating from its prior STA site. See LMS File Nos. 0000180264 and 0000195426.

⁹ See LMS File No. 0000220351. Counsel for GMRT has informed Video Division staff that it will be able to resume operations from its new temporary facility within 15 days of grant.

¹⁰ Request, Amendment at 1.

¹¹ *Id.* at 3-4.

¹² *Id.* at 1.

¹³ *Id.* at 5.

¹⁴ *Id.* at 1. The newly proposed location of its Station is the same as its planned back-up site. See *id.* GMRT has filed a minor modification to move to this new site, LMS File No. 0000221668, and also an engineering STA to commence temporary operations from this site while construction of its permanent facility is completed. LMS File No. 0000220351.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 1-2.

circumstances exist to waive the rules and toll the expiration date of the Station's digital construction permit.¹⁸ GMRT has demonstrated that he has been diligently making progress towards completion of the Station's digital facilities, but was unable to complete construction due to construction delays outside of its control, namely the need to relocate to a new transmission site following a change in ownership of its originally authorized site. Ultimately, we conclude that the public interest will be served by grant of waivers and tolling of the Station's digital construction permit through December 4, 2023.

The above facts considered, to the Guenter Marksteiner Revocable Trust request for waiver of the Commission's tolling provisions **IS GRANTED**. Furthermore, the construction permit and minor modification to that construction permit (LMS File No. 0000215010) for WHDT-LD, Boston, Massachusetts, **IS GRANTED AND TOLLED through December 4, 2023**. Further, GMRT's request for minor modification of its construction permit (LMS File No. 0000221668) and its request for engineering special temporary authority (LMS File No. 0000220351) **ARE GRANTED**. **We also remind GMRT that once it resumes operation pursuant to the aforementioned STA, it must file a resumption of operations notice in LMS**. Although we anticipate that this will be GMRT's last request for tolling waiver, to the extent GMRT seeks additional tolling for any station, such a request must include a detailed plan for completing construction and a showing demonstrating that completion of the station's facilities was prevented for either an eligible tolling reason or rare and extraordinary circumstances outside of GMRT's control.¹⁹ We will look unfavorably upon any future request that does not include such information. We further note that grant of this tolling waiver request does not extend GMRT's deadline for submitting final expense documentation for reimbursement for the Station.²⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Lauren Lynch Flick, Esq.

¹⁸ 47 CFR § 73.3598(b).

¹⁹ *Id.* 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 Streamlining MO&O*, 14 FCC Rcd at 17536, para. 42.

²⁰ GMRT was granted an extension of its invoice submission deadline and its deadline was extended to June 29, 2023. *See* Letter to The Guenter Marksteiner Revocable Trust from Barbara A. Kreisman, Chief, Video Division (June 15, 2023), a copy of which is available at LMS File No. 0000216453. *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).