

Guenter Marksteiner  
WHDT-LD  
March 2022

Amended 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 amended request for waiver of the Commission’s tolling rules seeking extension of the Station’s construction permit in FCC File No. 0000153397, 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 VHF antenna. As the Station is being reassigned from a UHF to a VHF channel as part of the repack, the Licensee could not secure another VHF antenna on such short notice and it could not repurpose the Station’s former UHF antenna, or any other UHF antenna, to fit the need. Accordingly, the impact of the supply chain disruption and failure of the vendor to deliver the needed VHF antenna is that the Station is not able to install its permanent, intended, full power VHF antenna prior to the January 2022 deadline.

With respect to the first request, as previously noted, 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 commenced operation and service to the public pursuant to STA by the expiration date. While the backup antenna’s aperture is lower than that of the Station’s proposed permanent antenna and its ERP is reduced, given the considerable height of the Station’s transmitter location, the Station is still able to provide full broadcast service to a considerable portion of its proposed viewing audience. As a result, despite the supply chain issues that prevented the Licensee from filing a license to cover application by the deadline, the Station was substantially built by the expiration date.

A dated timeline of the steps taken since grant of the Station’s last request is set forth below:

September 2021

The station's reimbursement request for equipment invoices is under review by the Fund Repack Administrator. Proposals for construction and installation of the VHF antenna are accepted and executed by licensee and submitted to the Reimbursement Funds System. An engineering management company is retained by the licensee to evaluate and oversee costs associated with installation of the new antenna system.

October 2021

Tower engineering studies are underway to evaluate safety loads, and to determine if additional structural augmentation is needed. Licensee is required by the building owner to engage

additional engineering oversight for safety. Same is secured. Proposals and invoices for tower studies are prepared for submission to the Reimbursement Fund System.

#### November 2021

Licensee is advised by several equipment vendors that projected delivery of equipment to the site will be delayed by several months due to supply chain issues that are beyond their control. Delivery of transmitter components necessary for reduced power operation with the station's backup antenna, however, is guaranteed by vendors for December 2021. Electrical contractors for the transmitter room are paid in advance by licensee to insure readiness.

#### December 2021

The station's reimbursement requests for equipment and engineering invoices are under review by the Fund Repack Administrator. Delivery of promised VHF transmitter components is received. Equipment is installed and tested. An independent RF engineer is retained to verify studio-transmitter-link operation. Chief engineer from the transmitter manufacturer completes RF compliance testing of the VHF transmitter at reduced power. The station's backup antenna is delivered. A tower crew is retained to install the antenna on the tower below the height of the CP antenna aperture. Licensee advances payment for tower rigging to assure completion during the month of December.

#### January 2022

An RF engineer is retained to conduct tests and to verify field reception coverage. An application for Special Temporary Authority for the station to operate at variance to its CP is filed with the Commission. Commencement of STA broadcast operations begins on 21 January with a 24/7 broadcast schedule.

#### February 2022

Request for a detailed accounting of construction progress is prepared in response to FCC request for additional information.

As previously noted, 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 licenseto 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 full 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 substantially completed construction and its inability to complete full power 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/>.