

Guenter Marksteiner
WHDT-LD
July 2022

Request For Waiver of Tolling

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 seeking extension of the Station’s construction permit in FCC File No. 0000153397, to permit completion of construction of the Station’s full construction permit facilities.

As the Commission is aware, the Licensee has constructed a backup facility at the Station’s authorized construction permit site and the Station is operating on the Station’s repacked VHF channel, providing service to the public 24/7 pursuant to Special Temporary Authority. The Station has not filed its license to cover application due to delays affecting the installation of equipment which requires coordination with a crane helicopter to lift the equipment to the Station’s rooftop site. Given the early start to the wildfire season in the West, and the tripling of the price due to fuel cost increases, circumstances have made it impossible to accomplish completion within the planned window.

Specifically, the Station’s antenna delivery has been delayed for months due to global supply chain issues, as previously described. While individual antenna components are now available, the next steps in construction would be for the manufacturer to assemble the antenna and support mast on the West Coast, complete a range test of the antenna system, and then ship the assembly to Boston where a helicopter would remove the existing UHF antenna, and replace it with the new VHF antenna and mast. Heavy lift crane helicopters capable of these tasks are under contract through December for wildfire response purposes. Moreover, the cost to use such a helicopter has tripled due to rising fuel costs, placing the use of a helicopter beyond reach for a single station job of only a few hours’ duration. Given the unavailability and expense of helicopter resources, construction as proposed cannot be completed in 2022, and certainly not before the Commission’s September deadline to reimbursement submissions.

Nevertheless, leveraging the engineering expertise and the familiarity with the site of the Licensee, the antenna manufacturer that previously visited the site, and the tower crew who took a hundred technical photographs and measurements of the existing installation, a construction solution has been found to obviate the need for a crane helicopter. The existing UHF antenna structure extends 42 feet above the central guyed tower on the roof. After extensive engineering analysis, it has been determined that the existing structure can be modified to support the new radiating elements for the Station’s VHF antenna, whereupon, after augmentation those components can be installed without removing the existing support mast.

Accordingly, the Licensee has renegotiated its contract with the antenna manufacturer to delete the mast and ordered detailed mechanical drawings of the antenna as it will be mounted to the UHF antenna mast. These drawings have just been received and are being entered into a computer modeling system along with information from the vendor regarding transmission line and other attachments to the structure, so that the final wind load can be confirmed via the computer model, and an insurance certificate required to permit work on the rooftop can be issued. A tower crew has been hired to commence work in the next few weeks to undertake the

augmentation while antenna components are shipped to the site. This resolution represents the only way to build the facility to full height and power prior to the Commission's deadlines, and has only been realized through the combined efforts of the Licensee and its vendors and contractors who modified their proposals to accommodate use of the existing structure rather than the planned VHF replacement antenna system, along with the cooperation of the building's landlord in accommodating additional manpower to work on the rooftop.

Given these extenuating circumstances and the combined efforts of numerous parties secured and coordinated by the Licensee, a waiver of tolling and extension of the Station's construction permit is justified to permit completion of the facility. 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 has already demonstrated its ability to complete the construction by bringing the Station's backup facility online and serving a large portion of its audience. The inability to complete full power construction is due to rare and exceptional circumstances beyond its control, including global supply chain issues and the need to modify the Station's final buildout plans to account for the loss of scarce helicopter resources..

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/>.