

Guenter Marksteiner
WHDT-LD
January 2023

Amended Request For Waiver/Extension 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 and seeks 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 operational, on the Station’s repacked VHF channel, providing service to the public pursuant to Special Temporary Authority. However, the Station has not been able to file its license to cover application as yet, due to circumstances beyond the Licensee’s control.

Specifically, the Station’s antenna delivery was delayed due to global supply chain issues, which cost the Licensee its window of opportunity to secure the necessary heavy lift helicopter which was by then under contract through December 2022 for wildfire fighting on the West Coast. Waiting until a helicopter was available would push completion of construction of WHDT-LD’s full licensed facilities into Spring 2023. In an attempt to avoid that result, the Licensee innovated a new buildout plan to obviate the need for a helicopter.

The new approach would involve modifying the existing UHF antenna support structure on the site that was otherwise slated for removal due to its inability to support the Station’s heavier VHF antenna; modifying much of the antenna to reduce its weight by removing part of its cross section and height, and adding weldments to permit attachment of VHF radiating elements directly to the remaining support mast; and assembling the antenna on the rooftop so that it could be brought to the rooftop location in pieces. This new approach represented the only way to complete buildout in 2022, and was only a possibility because of the combined efforts of the Licensee and its various antenna and transmitter suppliers in modifying their proposed installations to accommodate use of the existing structure rather than the anticipated replacement structure and the cooperation of the building’s landlord in accommodating additional manpower working on the rooftop. The Licensee worked at the new proposal diligently, submitting required drawings and wind loading showings to get construction approvals, as well as submitting revised invoices to the Fund Administrator for reimbursement of the required costs. Unfortunately, due to delays associated with securing approvals for the costs, construction could not commence in advance of the cold weather setting into the Boston area which now makes construction at the Station’s high transmitter site impossible until approximately March 2023.

Accordingly, the Licensee shall revert to its original buildout plan, from which it only deviated due to the delayed equipment and unavailability of the required helicopter. With those obstacles removed, the Licensee can complete a conventional antenna installation in only a few weeks’ time as soon as weather permits. The antenna and mast have been received on the West Coast. The antenna manufacturer will deliver the antenna to the mast fully assembled and tested and ship it as a unit to the Station’s site in Boston. The Licensee is contracting with the helicopter to lift the mast/antenna assembly as soon as weather conditions in Boston permit, as well as correcting the reimbursement request to eliminate the costs associated with its prior buildout plan and secure the flow of funds needed.

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.

For these reasons, the Commission should waive the tolling standard and provide the Licensee with additional time through June 30, 2023, to complete construction and license the Station's facilities.³

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 To the extent necessary, extension of time to submit invoices related in connection with the buildout is also requested consistent herewith.