



Federal Communications Commission
Washington, D.C. 20554

April 29, 2022

Guenter Marksteiner
5244 SW Orchid Bay Drive
Palm City, FL 34990
MARKSTEINER@WHDT.NET

Re: Requests for Tolling Waiver
WXDT-LP, Naples, FL
WZDT-LP, Naples, FL
WHDT-LD, Boston, MA
Fac ID Nos. 25537, 25539, and 59488
LMS File Nos. 0000179384,
0000179385, and 0000180082

Dear Licensee,

This concerns requests for waiver of the Commission's tolling provisions and tolling of construction permit expiration date (Requests), as amended, filed by Guenter Marksteiner (Marksteiner), licensee of low power television (LPTV) stations WXDT-LP, Naples, Florida (WXDT-LP); WZDT-LP, Naples, Florida (WZDT-LP); and WHDT-LD, Boston, Massachusetts (WHDT-LD) (collectively Stations). For the reasons below, we grant Marksteiner's Requests and toll the expiration date of the construction permits for WXDT-LP and WZDT-LP through July 11, 2022,¹ and the construction permit for WHDT-LD through July 25, 2022.²

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.³ 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.⁴ 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.⁵

¹ Because Marksteiner requests tolling through Sunday, July 10, 2022, for WXDT-LP and WZDT-LP, we will extend the construction permits to the next business day, which would be Monday, July 11, 2022. *See* 47 CFR § 1.4.

² Because Marksteiner requests tolling through Saturday, July 23, 2022, for WHDT-LD, we will extend the construction permit to the next business day, which would be Monday, July 25, 2022. *Id.*

³ *See* 47 CFR § 73.3598(b).

⁴ *Id.*

⁵ *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*

Requests For Tolling Waiver for WXDT-LP and WZDT-LP. WXDT-LP is a licensed LPTV station that previously operated in analog on channel 23. The Station went silent on July 13, 2021, in conjunction with the LPTV digital transition.⁶ The Station was previously granted a digital flash cut construction permit⁷ and, because it was operating in analog at the time, it was given an expiration date of July 13, 2021.⁸ WXDT-LP was granted an extension of its digital construction permit and the expiration date was extended to January 10, 2022.⁹ WXDT-LP is currently operating on its digital channel 23 with temporary facilities.¹⁰

WZDT-LP is a licensed LPTV station that previously operated in analog on channel 39. The Station's analog channel 39 was displaced by the Incentive Auction and repacking process. The Station was granted a construction permit for a digital displacement channel 36¹¹ and, because the Station was operating in analog at the time, it was given an expiration date of July 13, 2021.¹² WZDT-LP was granted an extension of the displacement construction permit and the expiration date was extended to January 10, 2022.¹³ WZDT-LP is currently operating on its displacement channel 36 with temporary facilities.¹⁴

In his Requests, Marksteiner provides well-documented showings to demonstrate why each of the Stations' digital facilities was not constructed by its respective construction deadline. WXDT-LP and WZDT-LP (collectively WXDT/WZDT) are Naples, Florida stations that share transmission facilities including a shared antenna. Marksteiner states that it was notified in late 2021 that certain of the equipment necessary to construct the WXDT/WZDT digital facilities would not be delivered in time due to global supply chain disruptions affecting various vendors. Chief among these, Marksteiner notes, was their shared antenna. Marksteiner provides a letter from the antenna manufacturer attesting to this delay. As a result of the impact of the supply chain disruption and failure of the vendor to deliver the needed antenna, Marksteiner maintains that these stations were not able to complete their permanent shared digital facilities by their January 10, 2022 deadline. Marksteiner notes that WXDT/WZDT were able to begin operating with temporary digital facilities. Marksteiner states that he is expecting delivery of the new shared antenna in May 2022 and, presuming no further delays, that he will be able to install the antenna and remaining equipment and the stations will begin operating with their permanent digital facilities before the extended deadline in July 2022.

Requests For Tolling Waiver for WHDT-LD. 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

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).

⁶ See LMS File No. 0000157388.

⁷ See LMS File No. 0000152394.

⁸ See 47 CFR § 74.788(a). See also *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771 (MB 2021).

⁹ See LMS File No. 0000152503.

¹⁰ See LMS File No. 0000179337.

¹¹ See LMS File No. 0000054428.

¹² See *infra* n. 8.

¹³ See LMS File No. 0000152249.

¹⁴ See LMS File No. 0000179336.

Incentive Auction and repacking process and was designated as portion of the new wireless “duplex gap.”¹⁵ The Station was granted a construction permit for digital displacement channel 4¹⁶ 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 previously granted a tolling waiver and the construction permit expiration date was tolled to January 22, 2022.¹⁷ WHDT-LD is currently operating on its displacement channel 4 with temporary facilities.¹⁸

Marksteiner states that construction of this station’s permanent displacement facilities was also delayed when, in late 2021, he was notified that the station’s antenna would not be delivered before the station’s construction deadline in January 2022. Marksteiner also supplies a letter from the manufacturer attesting to this delay. Because the WHDT-LD is moving from a UHF to VHF displacement channel, Marksteiner states that he could not secure another VHF antenna from an alternate source on such short notice and WHDT-LD’s existing UHF antenna could not be repurposed to fit the need. Marksteiner notes that WHDT-LD was able to construct and begin operating on its displacement channel with temporary facilities. Marksteiner estimates that the antenna should be delivered in May 2022 and that, without further delays, he will be able to complete construction of the WHDT-LD permanent facilities before the extended deadline in July 2022.

In conclusion, Marksteiner maintains that grant of his Requests are appropriate because his inability to complete construction was due to rare and exceptional circumstances beyond his control, namely, the documented supply chain issues that have caused the delay in the delivery of the Stations’ antennas. Marksteiner cites to the fact that he was able to complete construction of temporary facilities as evidence of his diligence in pursuing construction of the Stations’ final facilities.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration dates of the Stations’ digital construction permits.¹⁹ Marksteiner has demonstrated that he has been diligently making progress towards completion of the Stations’ digital facilities but was unable to complete construction due to delays outside of his control, namely delays in obtaining the Stations’ antennas. Ultimately, we conclude that the public interest will be served by grant of waivers and tolling of the Stations’ digital construction permits.

¹⁵ 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).

¹⁶ See LMS File No. 0000052060.

¹⁷ See LMS File No. 0000159609.

¹⁸ See LMS File No. 0000180264.

¹⁹ 47 CFR § 73.3598(b).

We remind Marksteiner that, pursuant to the Reimbursement Expansion Act, WZDT-LP and WHDT-LD are eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs reasonably incurred as a result of the reorganization of broadcast television spectrum.²⁰ Please note, however, that additional expenses incurred, such as those resulting from changes in a Station's plans to construct its displacement facilities that are unrelated to the displacement, may not be eligible for reimbursement from the Fund.

We further remind Marksteiner of the deadline for submitting final expense documentation for reimbursement for WZDT-LP and WHDT-LD is September 6, 2022.²¹ **We caution Marksteiner that we do not anticipate allowing extensions of the final September 6, 2022 invoice filing deadline. A station's failure to complete any remaining construction in a timely manner and to make final submissions by the assigned invoice filing assignment deadline could preclude that station from receiving full reimbursement.** Unobligated amounts in the Fund must be rescinded to Treasury and the Commission staff (with the support of the Fund Administrator) must have sufficient time to fully process all reimbursement requests and complete close-out procedures prior to July 3, 2023.²² The Fund Administrator will initiate close out procedures for any entity that has failed to initiate interim close-out procedures by the September 6, 2022 invoice filing deadline. Any unused allocations made to that entity's account will be returned to the Fund and made available for allocation to other program participants or rescinded to Treasury. Thus, we strongly encourage Marksteiner to diligently pursue satisfaction of the current deadlines and we encourage Marksteiner to submit eligible invoices as soon as practicable.

The above facts considered, Guenter Marksteiner's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 0000152394 and 0000054428, respectively) for WXDT-LP, Naples, Florida and WZDT-LP, Naples, Florida **ARE TOLLED through July 11, 2022**. The construction permit (LMS File No. 0000052060) for WHDT-LD, Boston, Massachusetts, **ARE TOLLED through July 25, 2022**. To the extent Marksteiner 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 eligibl

²⁰ See *Consolidated Appropriations Act, 2018*, Pub. L. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)). See also 47 CFR § 73.3701 (Reimbursement Under the Reimbursement Expansion Act); *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 34 FCC Rcd 1690 (2019); and *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking and Order, 33 FCC Rcd 7855 (2018).

²¹ See *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 three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 6, 2022).

²² See *id.* at 11277-78, para 13.

tolling reason or rare and extraordinary circumstances outside of Marksteiner's control.²³ We will look unfavorably upon any future request that does not include such information.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

²³ 47 CFR § 73.3598(b). 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.