



Federal Communications Commission
Washington, D.C. 20554

August 31, 2022

Val Vista RV Park, LLC
Larry O'Donnell
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LarryODonnell@9and10news.com
(via electronic mail)

Re: Requests for Tolling Waivers

Dear Permittee,

This concerns requests for waiver of the Commission's tolling provisions and tolling of construction permit expiration dates (Requests), as amended, filed by the Val Vista RV Park, LLC (Val Vista), permittee of four Michigan low power television (LPTV) stations.¹ For the reasons below, we grant Val Vista's Requests and toll the expiration dates of the Stations' construction permits to September 30, 2022.

Background. Requests for additional time to construct digital 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

Requests For Tolling Waiver. The Stations are unbuilt, new LPTV stations located in various communities in Michigan (Station CPs). Val Vista was twice granted waivers of the tolling rules and the expiration dates of the Station CPs most recently were tolled to July 31, 2022.

In its Requests, Val Vista provides well-documented, station specific showings that include supporting documentation of its efforts to complete construction of each of the Stations and of the delay that it has encountered since the grant of its most recent tolling waivers on June 16, 2022. Val Vista

¹ A list of the stations covered by this action (referred to herein collectively as "Stations") and the LMS file numbers of the Requests and digital construction permits are contained in the Appendix to this letter.

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).

demonstrates that over the past month it has encountered additional delays beyond its control preventing completion of the Stations.

W16DN-D and W27DU-D. Both stations are located in Traverse City, Michigan, and will be utilizing a shared antenna on an existing tower structure. Construction was previously delayed due to a last minute discovery of issues with the these stations original proposed tower. Val Vista quickly developed a new construction plan that Val Vista anticipated being able to complete by their current July 31, 2022 construction deadline. However, weather and tower construction crew delays have made it impossible for Val Vista to complete construction on time. Val Vista states that, despite hopes that the contractor would be able to start sooner, the work had to be scheduled for the second week of June 2022. At that time, Val Vista states that the contractor anticipated that it would be able to pour the foundations and anchors for the guy lines in one week, let it cure for a required 28 days, and then move the guy lines to the new anchors, which would allow for the antenna to be installed in the second week of July 2022. Val Vista reports that the contractor performed a second inspection in June 2022, when the contractor discovered the soil was looser than anticipated and that it would have to complete construction one step at a time, allowing 28 days for each new anchor in the project to completely cure before proceeding with the next. Given this requirement, Val Vista states that it would require about three months to complete the entire project.

CTC reports that the concrete for the foundation was poured on Tuesday, June 28, 2022. On July 21, 2022, the tower company advised that the foundation was complete and that the anchors could all be completed at the same time. The three anchors and cages have been installed in the ground. Once the inspection has been completed, CTC states that the concrete will be poured and the first break tests will be conducted after ten days. Once the concrete has cured, the guy lines can be transferred within roughly ten days and then the antenna can be installed. CTC predicts that construction can be completed sometime between the end of August 2022 and end of September 2022.

W27DQ-D and W31FA-D. Both stations are located in Elmhurst, Michigan. Construction of these stations' shared tower site was previously delayed due to documented scheduling difficulties outside of Val Vista's control with the equipment rental companies needed for installation of its equipment. Val Vista initially estimated that it would be able to complete construction by the end of June 2022; however, construction has been further delayed due to electrical issues. Val Vista states that, despite its earnest efforts, the electrical contractor has been unable to acquire the required electric panel required to bring the required power to the Stations' transmitters. Val Vista provides a letter from the contractor documenting this delay. As soon as the panel is sourced and installed, Val Vista states that construction will be complete, and Val Vista will be in position to file license application.

Based upon the foregoing, Val Vista contends that grant of the Requests are in the public interest and, to provide time for any additional unexpected delays, it requests waiver of the tolling rules and tolling of the Stations' CPs to September 30, 2022.

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' CPs to September 30, 2022.⁵ Val Vista has demonstrated, since grant of its tolling waivers in June 2022, it has been diligently making progress towards completion of the Stations' facilities, but was unable to complete construction due to continued delays outside of its control, notably delays relating to tower construction and the sourcing of necessary electrical parts. These facts are supported by documentation included with the

⁵ See 47 CFR § 73.3598(b) and *supra* note 4.

Requests. Ultimately, we conclude that the public interest will be served by grant of waivers and a brief tolling of the Stations' CPs to September 30, 2022.

The above facts considered, the requests filed by the Val Vista RV Park, LLC and listed in the Appendix **ARE GRANTED** and the expiration dates of the construction permits listed in the Appendix **ARE TOLLED to September 30, 2022**. To the extent the Stations seek additional tolling, such requests must include a detailed plan for completing construction and a showing demonstrating that completion of the Stations' facilities were prevented for either an eligible tolling reason or rare and extraordinary circumstances outside of Val Vista's control.⁶ 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): Gregg P. Skall, Esq.

⁶ See 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.

APPENDIX

Call Letters	FAC ID	City	ST	Tolling Waiver File No.	Construction Permit File No.
W16DN-D	186363	Traverse City	MI	0000195801	0000143607
W27DQ-D	184934	Elmhurst	MI	0000195799	0000143603
W27DU-D	186364	Traverse City	MI	0000195800	0000143606
W31FA-D	184943	Elmhurst	MI	0000195798	0000143601