



Federal Communications Commission
Washington, D.C. 20554

August 16, 2023

Fort Myers DTV, LLC
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
Fac ID Nos. 25537 and 25539
LMS File Nos. 0000217456
0000217472

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 Fort Meyers DTV, LLC (FMD), licensee of low power television (LPTV) stations WXDT-LP, Naples, Florida (WXDT-LP) and WZDT-LP, Naples, Florida (WZDT-LP) (collectively Stations). For the reasons below, we grant FMD's Requests and toll the expiration date of the construction permits for the Stations through September 1, 2023.

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.¹ 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.² 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.³

Requests. WXDT-LP and WZDT-LP are co-located stations that share transmission facilities, including a shared antenna that operates from a shared tower. 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.⁴ The Station was previously granted a digital flash cut construction

¹ See 47 CFR § 73.3598(b).

² *Id.*

³ 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).

⁴ See LMS File No. 0000157388.

permit⁵ and, because it was operating in analog at the time, it was given an expiration date of July 13, 2021.⁶ WXDT-LP was granted an extension of its digital construction permit and a tolling waiver and the expiration date was most recently extended to July 1, 2023.⁷ WXDT-LP is currently operating on its digital channel 23 with temporary facilities.⁸

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 36⁹ and, because the Station was operating in analog at the time, it was given an expiration date of July 13, 2021.¹⁰ WZDT-LP was granted an extension of the displacement construction permit and a tolling waiver and the expiration date was extended to July 1, 2023.¹¹ WZDT-LP is currently operating on its displacement channel 36 with temporary facilities.¹²

Since the grant of their previous tolling waivers in May 2023, FMD states that the construction of the Stations' shared facilities is complete and the Stations are ready to begin operating with their new facilities. However, construction was not completed until after the Stations July 1, 2023 construction permit expiration date. FMD explains that, while the Stations' tower riggers were hired in advance and were expected to have completed their work prior to the current expiration date of the Station's digital construction permits, the crew was delayed on another project that they maintained must be completed before commencing work on the Stations' facilities. FMD provides supporting documentation of this construction delay. Upon installing the Stations' equipment, FMD also discovered a slight error in the information contained in the Stations' digital construction permits. FMD has filed applications for minor modifications to correct these errors.¹³ FMD requests brief waiver of the rules and tolling of the Stations' digital construction permits, as modified, to September 1, 2023, in order for the modified construction permits to be granted, FMD to file license applications, and the Stations to commence operations.

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 through September 1, 2023.¹⁴ FMD has demonstrated that while construction of the Stations are now complete, it was unable to complete construction by July 1, 2023 due to delays outside of its control, notably delays in the arrival of its tower crew. Ultimately, we conclude that the public interest will be served by grant of waivers and tolling of the Stations' digital construction permits, as modified.

⁵ See LMS File No. 0000152394.

⁶ 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).

⁷ See LMS File Nos. 0000179384 and 0000194814.

⁸ See LMS File No. 0000179337.

⁹ See LMS File No. 0000054428.

¹⁰ See *infra* n. 6.

¹¹ See LMS File Nos. 0000179385 and 0000194815.

¹² See LMS File No. 0000179336.

¹³ See LMS File Nos. 0000219048 and 0000219049.

¹⁴ 47 CFR § 73.3598(b).

The above facts considered, Fort Myers DTV, LLC's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The applications for minor modification of construction permit (LMS File Nos. 0000219048 and 0000219049) for WXDT-LP, Naples, Florida and WZDT-LP, Naples, Florida **ARE GRANTED** and the construction permits **ARE TOLLED through September 1, 2023**. Although we anticipate that this will be FMD's last request for tolling waiver, to the extent FMD 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 eligible tolling reason or rare and extraordinary circumstances outside of FMD's control.¹⁵ We will look unfavorably upon any future request that does not include such information. Further, grant of these waivers of the tolling rules does not extend FMD's deadline for submitting final expense documentation for reimbursement for WZDT-LP.¹⁶

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

¹⁵ 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.

¹⁶ FMD was granted an extension of its September 6, 2022 invoice submission deadline and WZDT-LP's deadline was extended to June 29, 2023. *See* Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Fort Myers DTV, LLC (June 15, 2023) (on file at LMS File No. 0000216664); *see also 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 filing deadlines for submission of repack invoices).