



Federal Communications Commission
Washington, D.C. 20554

June 16, 2022

Val Vista RV Park, LLC
Larry O'Donnell
P.O. Box 627
Cadillac, MI 49601
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 six 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 July 31, 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 previously granted waivers of the tolling rules and the expiration dates of the Station CPs most recently were tolled to June 7, 2022.⁵

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).

⁵ See LMS File Nos. 0000178655, 0000178650, 0000178651, 0000178652, 0000178649, 0000178656, 0000178654, 0000178653, 0000188967, 0000189003, 0000189005, 0000188979, 0000188976, 0000188981, 0000188984, and 0000188980.

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 April 21, 2022. Val Vista demonstrates that over the past two months 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, will be utilizing a shared antenna on an existing tower structure. Val Vista states that a last-minute review of the original tower analysis revealed discrepancies, demonstrating that it would be dangerous to mount these stations' antenna and requiring modifications to the construction plan to ensure the public safety before construction could be scheduled and begin. Val Vista reports that a new construction plan has been developed and construction is scheduled to begin the week of June 6, 2022 with the contractor installing new anchors and completing modifications to the foundation. Val Vista states that the concrete used for the new anchors will need at least 28 days to cure before the guy-lines can be moved to the new anchors, which will likely not occur until early-July 2022. Based upon the current construction timeline, Val Vista anticipates that these stations' antenna will be installed in mid-July 2022. Val Vista notes that its request to mount the antenna prior to the reinforcement work being completed was rejected by the tower owner.

W20DT-D and W22EL-D. Both stations are located in Vanderbilt, Michigan, and will be utilizing a shared antenna. Val Vista reports that it recently filed for a minor modifications⁶ to change the authorized maximum power and antenna type for these stations in order to use a common antenna already installed for a sister station. Due to its proximity to Canada, Val Vista states that its minor modification application requires Canadian coordination. Val Vista reports that as of the June 3, 2022 filing of its request for tolling waiver it has not yet received clearance from Canada. Val Vista states that it has been in touch with Commission staff as recently as May 31, 2022 to determine when clearance will occur. Val Vista states that, once Canadian clearance is received and the minor modification applications are granted, no further construction will be required other than to finalize the connection to the already installed antenna and change the transmitter power setting. Val Vista states that it will be able to complete construction of these stations' facilities and begin operating very soon after the minor modification applications are granted.

W27DQ-D and W31FA-D. Both stations are located in Elmhurst, Michigan. The antenna and transmitters for each have been delivered to the stations' shared tower site. However, Val Vista has experienced delays due to scheduling difficulties outside of its control with the equipment rental companies needed for installation of its equipment. As documented in a series of recent emails from the companies, Val Vista had been attempting to schedule delivery with two different companies for a crane and shelter to ensure the antenna and line installation could be properly and timely completed. At the last minute the companies informed Val Vista that they were not available to come to the location at the same time, which was required for the installation, until June 2022. Val Vista reports that the scheduling conflict has now been resolved and the antenna is scheduled to be installed after installation of Val Vista's other new stations at Charles, Michigan (see below) is complete. Barring weather delays, Val Vista estimates that these stations facilities should be completed and ready to begin operating by the end of June 2022.

⁶ LMS File Nos. 0000188896 and 0000188895.

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 July 31, 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 July 31, 2022.⁷ Val Vista has demonstrated, since grant of its tolling waivers in April 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 obtaining its transmitters, in scheduling its installation crews, and in obtaining international clearances. These facts are supported by documentation included with the Requests. Ultimately, we conclude that the public interest will be served by grant of waivers and a brief tolling of the Stations' CPs to July 31, 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 July 31, 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.⁸ 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.

⁷ See 47 CFR § 73.3598(b) and *supra* note 4.

⁸ See *id.* 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	0000192909	0000143607
W20DT-D	184928	Vanderbilt	MI	0000192911	0000143604
W22EL-D	184927	Vanderbilt	MI	0000192912	0000143605
W27DQ-D	184934	Elmhurst	MI	0000192913	0000143603
W27DU-D	186364	Traverse City	MI	0000192910	0000143606
W31FA-D	184943	Elmhurst	MI	0000192915	0000143601