

REQUEST FOR REINSTATEMENT, SILENT STA NUNC PRO TUNC, AND WAIVER OF SECTION 312(g)

Edge Spectrum, Inc. (“ESI”), licensee of W24CP-D, Durham, NC (Fac ID 70098) (the “Station”), hereby requests reinstatement of the Station’s license, authority to remain silent nunc pro tunc, and an extension of the deadline by which the station must return to the air or forfeit its license pursuant to Section 312(g) of the Communications Act of 1934, as amended.

On or around November 1, 2020, the Station was forced off the air on its temporary facilities when a tower crew performing work on behalf of another station cut its transmission line. Rather than reconstruct the temporary facility, ESI shifted its focus to constructing its approved post-incentive auction facilities. Although that effort has taken longer than anticipated, ESI expects for the Station to resume operations by July 1, 2022 and seeks authority to continue its construction efforts to achieve that milestone.¹

I. Background

The Station is one of many stations licensed to ESI and operated by ARK Multicasting, Inc. (“ARK”) that ESI and ARK plan to include as part of a nationwide broadcast and data network using the ATSC 3.0 transmission standard. ARK is developing solutions to use broadcast technology to bridge the connectivity gap in the rural United States. ARK’s ATSC 3.0 network will relieve congestion for Internet Service Providers and provide datacasting services for many verticals including distance learning, the connected car market, smart agriculture, telehealth, and over the top video streaming providers. In furtherance of these efforts, ARK has entered into an agreement with Hewlett Packard Enterprise to manage orchestration of the broadcast environment virtualizing from edge-to-cloud. ARK has also entered into an agreement with General DataTech for staging, burn-in, and station deployments as well as management of the end-to-end environment which optimize operational processes.

On or around May 5, 2020, ESI applied for authority to begin operating on its post-auction channel, 36, using temporary facilities while it awaited the delivery of its permanent equipment. *See* File No. 0000112818. Shortly thereafter, on or around May 15, 2020, the Station began operating on its temporary channel 36 facilities, which it intended to use until its permanent channel 36 facilities were completed. *See* File No. 0000115166. However, on or around November 1, 2020, a tower crew working for another station notified ESI by telephone that the transmission line for the Station had been damaged. The line quickly filled with water and had to be opened. As a result, the Station had to discontinue operations.

Rather than replace the transmission line with a line that could not be used long term, ESI instead focused on completing its full power operations. Unfortunately, that process has taken much longer than expected and is the subject of a pending request for tolling. *See* File No. 0000159257. ESI currently expects to commence permanent operations on Channel 36 by July 1, 2022.

¹ Due to an administrative oversight, ESI failed to submit a timely request for silent authority or a request for waiver of Section 312(g). For the same reasons set forth herein for a waiver of Section 312(g), ESI also seeks reinstatement of the Station’s license.

II. Reinstatement of the Station's License and Waiver of Section 312(g) Are Appropriate

Section 312(g) provides that “If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, *except that the Commission may extend or reinstate such station license* if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, *or for any other reason to promote equity and fairness.*” 47 U.S.C. § 312(g) (emphasis added). The Commission has regularly reinstated licenses that have been off the air for more than one year where there is a reasonable explanation for the station's extended silence.²

In the *Incentive Auction Report and Order*, the Commission explained that it would be receptive to requests for waivers of Section 312(g) as a result of the repacking process, “tak[ing] into account the extent to which a station has been involuntarily forced to remain dark as a result of the repacking process and whether, in light of the facts presented, equity and fairness dictate a license extension or reinstatement and a waiver.”³ The Media Bureau expanded upon this position in the *Post-Incentive Auction Procedures Public Notice*, explaining that in considering requests for waiver of Section 312(g), it “will examine whether the station has demonstrated that its silence is the result of compelling reasons beyond the station's control, including facts that relate to the post-auction transition process.”⁴ Finally, in the *Special Displacement Window Public Notice*, the Media Bureau explained that if an LPTV or TV translator station needed to remain silent for a consecutive 12-month period, the Bureau would “consider a request for extension or reinstatement pursuant to Section 312(g) of the Communications Act and a request for waiver of the Commission rule.”⁵

The Commission should grant the instant request for waiver because the Station's silence is fully attributable to circumstances beyond its control relating to the post-Incentive Auction transition and concurrent and well documented disruptions in the supply chain for broadcast equipment.⁶ After its

² See *V.I. Stereo Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd. 14259 ¶ 8 (2006) (reinstating license of station that was off air due to hurricane damage); *Community Bible Church*, Letter, 23 FCC Rcd. 15012, 15014 (MB 2008) (reinstating license of station unable to obtain building permit and ASR discrepancies); *Sumiton Broadcasting Company, Inc.*, Letter, 22 FCC Rcd. 6578 (MB 2007) (reinstating license of station where silence was to effectuate court order).

³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 ¶ 585 (2014), *aff'd*, *Nat'l Assoc. of Broadcasters, et al v. FCC*, 789 F.3d 165 (D.C. Cir. 2015)

⁴ *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd. 858 ¶ 49 (IATF/MB 2017).

⁵ See *Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, and Make Location and Channel Data Available*, Public Notice, 33 FCC Red. 1234 ¶ 7 & n.25 (IATF/MB 2017).

⁶ See, e.g., Lazaro Gamio and Peter S. Goodman, *How the Supply Chain Crisis Unfolded*, The New York Times (Dec. 5, 2021), <https://www.nytimes.com/interactive/2021/12/05/business/economy/supply-chain.html>; Randy J. Stine, *Chip Shortage Hits Radio Technology Marketplace*, Radio World (Aug. 25,

channel 24 facilities were displaced, ESI initially was able to transition to channel 36 using temporary facilities. Due to a technical disruption, however, ESI had to discontinue operations. The process of completing the Station's facilities and resuming operations has taken longer than expected and is directly attributable to the repacking process.

The Commission has granted waivers of Section 312(g) under similar circumstances, and ESI respectfully requests the same consideration here.⁷

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2021), *available at* <https://www.radioworld.com/news-and-business/headlines/chip-shortage-hits-radio-technology-marketplace>.

⁷ See e.g., Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to KRCA License LLC, LMS File No. 0000059940 (Mar. 15 2019).