



Federal Communications Commission
Washington, D.C. 20554

August 26, 2022

Edge Spectrum, Inc.
Randy Weiss
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(via electronic mail)

Re: Request for Reinstatement and
Extension of License and Silent
Authority Under Section 312(g)
and Application for Tolling
Waiver
K34HZ, Cody, WY
LMS File Nos. 0000194809 and
0000194810
Facility ID No. 129088

Dear Licensee:

This letter concerns the requests to reinstate and extend license and silent authority, and provide waiver of the tolling rules, as amended (Requests), filed by Edge Spectrum, Inc. (Edge) licensee of low power television (LPTV) station K34HZ, Cody, Wyoming (K34HZ or Station). For reasons set forth below, we grant Edge's Requests, waive all applicable rules, reinstate and extend the Station's license and silent authority, and toll the Station's digital construction permit to September 6, 2022.

Background. Section 312(g) of the Communications Act of 1934 (the Act) provides that "[i]f 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...for any reason to promote equity and fairness."¹ In the *Incentive Auction R&O*, the Commission explained that it would be receptive to requests for reinstatement or extension of a station's license under section 312(g), "tak[ing] into account the extent to which a station has been involuntarily forced to remain dark as a result of the repacking

¹ 47 U.S.C. § 312(g). The Bureau's discretion under that provision of section 312(g) is severely limited. *See e.g., A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 ("This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited"). The Commission has exercised its authority to reinstate an expired license to "promote equity and fairness" only where the station failed to provide service for 12 consecutive months due to compelling reasons beyond the licensee's control. *See, e.g., V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007). The Commission has declined to reinstate licenses where the failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgment *See, e.g., A-O Broadcasting*, 23 FCC Rcd at 617, para. 27; *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686 (MB 2010); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008).

process and whether, in light of the facts presented, equity and fairness dictate a license extension or reinstatement and a waiver.”²

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

Requests. K34HZ was an analog station operating on channel 34. In connection with the LPTV digital transition, K34HZ went silent on July 13, 2021.⁶ In June 24, 2011, the Station was granted a construction permit to convert to digital on channel 34 (Digital CP).⁷ Because the Station had yet to convert to digital, the Digital CP was assigned an expiration date of July 13, 2021.⁸ The Digital CP’s expiration date was previously extended and tolled to July, 11, 2022.⁹

Edge states that, although the previous issues preventing construction have been resolved, it learned earlier this year that the tower site on which the Station’s analog facility was located was sold. Edge maintains that it obtained a list of new sites from a tower owner on June 15, 2022 and has been working expeditiously to complete the process of relocating to that site. Edge represents that it is currently awaiting permission and a Notice to Proceed from its tower owner. Nevertheless, Edge states that it does not anticipate any issues that would prevent completing construction by September 6, 2022. Edge supplies an email from the tower owner confirming the aforementioned information. In addition, Edge has filed an application for minor change to specify the new tower location.¹⁰

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, GN Docket No. 12-268 et al., 29 FCC Rcd 6567, 6806-07, para. 585 (2014) (*Incentive Auction R&O*).

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 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. 0000158004. LPTV stations were not permitted to operate in analog after 11:59pm on July 13, 2021. See 47 CFR § 74.731(m).

⁷ See CDBS File No. BDFCTL-20100609AAM.

⁸ See 47 CFR § 74.788(a).

⁹ See LMS File No. 0000152262 and 0000179195.

¹⁰ See LMS File No. 0000197233. The minor change application will be processed separately.

Discussion. Upon review of the facts and circumstances presented, we find that Edge's Request for reinstatement and extension of the K34HZ license satisfies the requirements of section 312(g) and are, therefore, in the public interest. Edge's efforts to construct the Station's digital facilities were hindered by documented tower siting delays. For similar reasons, we find that Edge has met the standard for waiver of the tolling rules, tolling, and for extension of silent authority. Grant of Edge's requests will permit the Stations to once again serve its viewers.

Accordingly, we find that in order to promote fairness and equity the request filed Edge Spectrum, LLC **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹¹ and the license and silent authority for K34HZ, Cody, Wyoming, **ARE REINSTATED AND EXTENDED** to September 6, 2022. In addition, the request for waiver of the tolling rules of Edge Spectrum, LLC **IS GRANTED** and the expiration date of the construction permit (CDBS File No. BDFCDTL-20110609AAM) for K34HZ, Cody, Wyoming **IS TOLLED** to September 6, 2022. While we anticipate this will be the Station's final request for tolling and section 312(g) relief, we note that another request for extension of the Station's license under the equity and fairness provision of section 312(g)¹² and/or tolling of a Station's construction permit under section 73.3598(b) of the Commission's rules¹³ will not be viewed favorably unless accompanied by a showing that completion of the Station's displacement facilities was prevented by additional compelling circumstances. Edge must also include with any such request(s) a detailed plan for completing construction and returning the Station to operation.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division

cc (via electronic mail): Ari Meltzer, Esq.

¹¹ 47 CFR §§ 74.15(f) and 74.763(c).

¹² 47 U.S.C. § 312(g).

¹³ 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.