



Federal Communications Commission  
Washington, D.C. 20554

August 17, 2023

Edge Spectrum, Inc.  
Randy Weiss  
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[randy@crosstalk.org](mailto:randy@crosstalk.org)  
(via electronic mail)

Re: Request for Reinstatement and  
Extension of License and Silent  
Authority Under Section 312(g)  
and Tolling Waiver  
K22HS-D, Eureka Springs, AR  
Fac. ID No. 11137  
LMS File Nos. 0000199454  
0000199455, and 0000218891

Dear Licensee:

This letter concerns the requests to reinstate and extend license, extend 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 K22HS-D, Eureka Springs, Arkansas (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, toll the Station's digital construction permit, and grant its application for license to cover (License Application).

*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."<sup>1</sup> 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 process and whether, in light of the facts presented, equity and fairness dictate a license extension or

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<sup>1</sup> 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).

reinstatement and a waiver.”<sup>2</sup> Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau (Bureau) stated that, in considering requests to extend or reinstate a stations license under section 312(g) in order to promote fairness and equity, it “will examine whether the station has demonstrated that its silence is the result of compelling reasons beyond the stations’ control, including facts that relate to the post-auction transition process.”<sup>3</sup> Finally, in the *Special Displacement Window PN*, the Bureau permitted stations to file a displacement application on a contingent basis for channels in the repacked television band (channels 2-36) that full power and Class A stations would be relinquishing as a result of the Incentive Auction and repacking process.<sup>4</sup> The Bureau stated that, if a conditional grant would require a LPTV or TV translator station to be silent for a consecutive 12-month period prior to discontinuation of operation by the full power or Class A station, it would “consider a request for extension or reinstatement pursuant to section 312(g) of the Act and a request for waiver of the Commission rule.”<sup>5</sup>

Requests for additional time to construct LPTV facilities are subject to the Commission’s tolling provisions of section 73.3598(b) of the Rules.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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<sup>2</sup> *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*).

<sup>3</sup> *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 858, 873-74, para. 49 (IATF/MB 2017) (*Post-Incentive Auction Procedures PN*); see also *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 8240, 88243, n.25 (MB/IATF 2018) (citing *Christian Broadcasting of East Point, Inc.*, 30 FCC Rcd 13975, 13976-77, para. 4 (2015)).

<sup>4</sup> 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*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 1234, 1237, para. 7 (IATF/MB 2018) (*Special Displacement Window PN*).

<sup>5</sup> *Id.* at n.25 citing 47 U.S.C. § 312(g); *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations During the Post-Incentive Auction Transition*, Public Notice, 32 FCC Rcd 3860, 3865-66, para. 12 (IATF/MB 2017).

<sup>6</sup> See 47 CFR § 73.3598(b).

<sup>7</sup> *Id.*

<sup>8</sup> 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).

*Requests.* As part of the Incentive Auction and repacking process, the Station's pre-auction digital operating channel was displaced. The Station filed a displacement application requesting a new digital channel in the Commission's displacement application filing window for LPTV stations that were displaced by the Incentive Auction and repacking process.<sup>9</sup> The Station was granted a digital construction permit for its displacement channel (Displacement CP) with an expiration date of June 21, 2021.<sup>10</sup> In preparation for moving to its displacement channel, the Station went silent on July 3, 2020.<sup>11</sup> The Station's license was also previously reinstated and its license and silent authority extended to September 6, 2022, pursuant to the equity and fairness provision of section 312(g) of the Act.<sup>12</sup>

In its Requests, Edge outlines the efforts it has taken to complete construction of the Displacement CP and of the delays that it has encountered preventing the Station from resuming operation on its digital displacement channel. These challenges have included equipment delivery, zoning, and permitting delays. Since grant of its last tolling and license extension request, Edge states that "all of the equipment availability issues have been resolved, and the equipment needed to construct the Station has either been delivered to the transmission site or is ready for delivery at the Licensee's request." Edge has included with its Requests an e-mail from its tower owner confirming both Edge and the tower owner are working closely, including weekly meetings, to obtain all necessary zoning and permitting approvals as quickly as possible in order to proceed with installation. Edge goes on to state that it secured a tower crew to complete the installation. On August 3, 2023, during the pendency of its Requests, Edge filed a License Application for the Station indicating that construction was complete and the Station was prepared to begin operating on its displacement channel.<sup>13</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that Edge's Requests for reinstatement and extension of the Station's license satisfies the requirements of section 312(g) as described in the *Incentive Auction R&O*, the *Post-Incentive Auction Procedures PN*, and the *Special Displacement Window PN* and are, therefore, in the public interest. Consistent with the public interest and prior Bureau actions, we will provide section 312(g) relief to displaced LPTV and TV translator stations that were displaced by the Incentive Auction and pursued new displacement channels. The Station was displaced by the Incentive Auction and repacking process. Edge's efforts to construct the Station's displacement facilities have been hindered by equipment manufacturing, zoning, and permitting 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 Station to once again serve its viewers.

Accordingly, the Requests filed by Edge Spectrum, Inc. **ARE HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,<sup>14</sup> and the Station's application for license to cover **IS**

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<sup>9</sup> See *Special Displacement Window PN; Incentive Auction Task Force and Media Bureau Extend Post Incentive Auction Special Displacement Window Through June 1, 2018*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 3794 (IATF/MB 2018).

<sup>10</sup> LMS File No. 0000051803.

<sup>11</sup> LMS File No. 0000118455.

<sup>12</sup> LMS File Nos. 0000149675 and 0000149676.

<sup>13</sup> LMS File No. 0000218891.

<sup>14</sup> 47 CFR §§ 74.15(f) and 74.763(c).

**GRANTED.** We note that grant of the Requests and License Application do not extend Edge's deadline for submitting final expense documentation for reimbursement for the Station.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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