

## **Supplemental Request for Further Tolling and Extension of Silent STA and Authority to Remain Silent**

Edge Spectrum, Inc. (“Licensee”), licensee and permittee of KHVM-LD Facility ID 130940 serving Minneapolis, MN (the “Station”), hereby requests further tolling of the Station’s displacement construction permit (LMS File No. 0000195102 (the “CP”), an extension of the Station’s authority to remain silent, and a waiver 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. As described herein, Licensee has been working diligently to complete construction of the Station’s displacement facilities. Nevertheless, as described herein, Licensee has encountered circumstances beyond its control that have precluded it from completing construction before the September 6 deadline.

The Station was displaced as a result of the post incentive auction repack. In its prior tolling requests, Licensee detailed three issues outside of its control that contributed to its inability to complete construction of the Station: (1) “transmitter and antenna supply issues”; (2) “challenges finding skilled installers”; and (3) having to “change the location for most of the transmitter sites for [its] digital facilities.” Licensee explained that it had done everything within its control “to complete construction as soon as possible once ARK completes its testing of the newly received transmitters, obtains the proper filters, finalizes the engineering, and schedules the installers.”

In the period since Licensee last requested tolling, 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. Moreover, as detailed in the attached letter from Marc S. Dunham, President of Kathrein Broadcast USA, Inc. (“Kathrein”), ARK Multicasting (“ARK”), on behalf of Licensee, has engaged Kathrein not only to build out the stations, but also to actively project manage the builds alongside American Tower Corp. (“ATC”). Thus, all that is left is to obtain the necessary approvals and complete construction.

Unfortunately, Licensee has continued to face delays resulting from leasing and permitting. A summary of the Licensee’s extensive efforts to obtain the necessary authorizations to complete construction of the Station’s facilities is provided below and supported by the attached email from ATC:

- February 5, 2020 – ARK provides ATC with a station list to identify ATC assets to house ARK stations
- February 5, 2020 – ATC provides initial scrub of ATC assets within 10 miles of ARK assets
- March 4, 2020 – Crown Castle provides term sheet for master lease agreement
- March 25, 2020 – ARK provides Crown Castle with list of stations needing tower sites
- May 1, 2020 – ARK receives third party site survey of tower site indicating very little space available inside of building
- October 2, 2020 – ARK places order for antenna from Dielectric for original tower with invoice 1932586
- December 31, 2020 – ARK places order for transmitter from Hitachi Comark with sales order S010751
- March 15, 2021 – Transmitter ready for ship
- May 5, 2021 – Crown Castle provides initial locations for ARK managed stations
- May 6, 2021 – ATC provides strategic collocation agreement for consideration

- May 8, 2021 – Antenna ready for ship
- May 20, 2021 – ARK enters into fully executed term sheet for MLA with Crown Castle
- May 28, 2021 – Crown Castle provides updated list of locations with available RADs
- July 21, 2021 – After engineering needs more info, Crown Castle provides a more complete list of locations
  - August 20, 2021 – Crown Castle informs ARK that Crown Castle does not intend to proceed with master lease agreement
  - October 7, 2021 – ARK begins deploying installers on ATC assets prior to fully executed agreement
  - October 29, 2021 – ARK receives fully executed SCA from ATC
  - July 15, 2022 – Existing tower owner indicated that they had a very difficult time with local municipalities and was skeptical if we could now move forward with our build
    - August 16, 2022 – Existing tower said their third party engineering firm indicated that the tower would require significant modifications
    - September 5, 2022 – Updated site scrub provided by ATC, new tower site was selected, third party engineering confirmed, and application filed
    - Current ATC project number is OAA781622

Between October of 2021 and June of 2022, ARK participated in weekly meetings with ATC (and recently Kathrein) to discuss construction efforts, including for this asset. That information helped ARK to work with a third-party engineering firm to move amendments through the ATC online portal with the hired services of ATC to do so. ATC is continuing its efforts to expedite the project completion.

As explained in the attached letter from Mr. Dunham, the remaining steps include:

- Structural engineering (2-4 weeks)
- Local zoning and permitting (2-4 weeks)
- Building structure brought in (60-90 days)
- Tower and rigging plan provided (1 week)
- Possible electric work (1-2 weeks)
- ATC process to issue NTB (2-4 days)

Based on this timeline, Kathrein has scheduled the final installation for a window between February 2023 and April 2023.

Under the present circumstances, a further waiver of tolling and extension of the CP is justified. 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>1</sup> If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission's tolling provisions and still toll the expiration of the Station's construction permit where the station can demonstrate that "rare and exceptional circumstances" prevented construction.<sup>2</sup>

Tolling is appropriate here because the Licensee's inability to complete construction of its displacement facilities for the Station is due to rare and exceptional circumstances beyond its control.<sup>3</sup> The Licensee has taken all reasonable actions within its control to complete construction by the current deadline. Specifically, the Licensee has procured all of the necessary equipment and has arranged for a crew to promptly install the equipment as soon as possible. However, as explained above, Licensee does not yet have all of the permissions and authorizations required to install its facilities at the transmission site. Accordingly, further tolling is required.

In addition to granting further tolling, the Commission should also extend the deadline by which the Station must return to the air or forfeit its license pursuant to Section 312(g). 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).

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."<sup>4</sup> 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."<sup>5</sup> Finally, in the *Special Displacement Window Public Notice*, the Media Bureau explained that if an LPTV or TV

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<sup>1</sup> 47 C.F.R. § 73.3598.

<sup>2</sup> See *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd. 17525 ¶ 42 (1999) (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").

<sup>3</sup> See *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd. 17525 ¶ 42 (1999) (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").

<sup>4</sup> *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).

<sup>5</sup> *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).

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.”<sup>6</sup>

The Commission should grant the instant request for waiver because the Station’s silence is fully attributable to circumstances beyond its control both relating to and not relating to the post-Incentive Auction transition. The supply chain delays the Licensee faced were exacerbated by the post-incentive auction repack. Moreover, the delays in obtaining site approvals and permissions are the equivalent of a zoning delay, which the Commission has routinely recognized as a valid basis for waiver of Section 312(g).

For the reasons stated above, the Commission should waive the tolling standard and provide Licensee until March 6, 2023 to complete construction and license its displacement facilities.

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<sup>6</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*, Public Notice, 33 FCC Red. 1234 ¶ 7 & n.25 (IATF/MB 2017).

# KATHREIN

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October 24, 2022

Federal Communications Commission  
Marlene Dortch, Secretary  
45 L Street NE  
Washington, DC 20554

## **Subject: ARK Installation Minneapolis**

Dear Ms. Dortch,

This letter is to confirm that ARK Multicasting, Inc. ("ARK") has contracted Kathrein Broadcast USA, Inc ("KBU") to conduct Tower Services on several low power television assets licensed to Edge Spectrum, Inc. ("ESI"). KBU currently has 3 crews who provide Tower Services throughout the United States and are uniquely capable of helping ARK build out the ESI portfolio due to our specialized training and skills in Broadcast (Tall Tower) Services work. These crews are led by Forepersons with 20+ years of experience in Broadcast Services with an acute awareness of many of the American Tower Corporation ("ATC") tower assets, gained through the years performing work on ATC tower assets. As a result, ARK and KBU determined that partnering together would be the most expeditious path to getting the ESI stations built and serving the public.

KBU began engaging with ARK with both in-person and remote meetings dating back to October of 2018 and countless subsequent emails, phone calls, and meetings ever since. ARK took an additional step early this year to add KBU to ARK's corporate account within the ATC website portal, On Air Access to enable KBU to project manage the builds. This has allowed KBU to further support ARK to expedite the process of moving the stations through the various stages of the project planning requirements. Earlier this year, ARK also added KBU to a standing weekly conference call between ARK and ATC, again, as a benefit to expedite the process. This has resulted in KBU being directly involved in the planning process as ARK has worked with ATC to tackle various challenges, as they have arisen, with RAD heights, building needs, structural discussions, and overall project management to the point that KBU has had countless meetings with ATC on behalf of ARK to continue progressing projects forward to Notice to Proceed.

Traditionally, unless KBU is directly managing the NTP process and has foresight into progress made, KBU does not schedule a tower crew for a specific job until the customer has completed the necessary application, zoning, permitting, and obtained the proper Notice to Proceed from the tower owner. KBU has, however, made an exception in the case of ARK to tentatively forward plan

the schedule of tower crews for installation work based on the involvement and visibility that KBU has into the project.

The broadcast asset KHVM-LD Facility ID 130940 that serves the Minneapolis, MN market. It is tentatively on the KBU tower installation schedule for the window between February 2023 and April 2023 due to the extensive coordination and permitting requirements. These date projections are based on our experience with ATC and takes into consideration weather conditions and crew availability. Due to the coordination efforts remaining, it is not something that can be guaranteed. We have come to this conclusion based on the remaining steps needed before NTP will be issued. These steps include the following:

- Structural Engineering (2-4 weeks)
- Local zoning and permitting (4-6 weeks)
- Possible electric work that will be required (2 weeks)
- Tower and rigging plan provided (1 week)
- ATC process to issue NTB (2-4 days)

We remain committed to helping ARK to complete this site expeditiously and look forward to serving you as we build out these LPTV stations.

Best regards,

A handwritten signature in black ink, appearing to read "Marc S. Dunham", with a long horizontal flourish extending to the right.

**Marc S. Dunham**  
President & Managing Director  
Kathrein Broadcast USA, Inc