



Federal Communications Commission
Washington, D.C. 20554

January 24, 2024

Edge Spectrum, Inc.
Randy Weiss
P.O. Box 54025
Hurst, TX 76054
randy@crosstalk.org
(via electronic mail)

Re: Requests for Reinstatement and
Extension of License and Silent
Authority Under Section 312(g)
and Tolling Waivers
K45KS-D, Billings, MT
K51KR-D, Billings, MT
Facility ID Nos. 131138 and
131137
LMS File Nos. 000019920,
0000199199, 0000223737 and
000199647

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 the low power television (LPTV) stations captioned above (K45KS-D and K51KR-D, or collectively Stations). For the reasons set forth below, we grant Edge's Requests, waive all applicable rules, reinstate and extend the Stations' licenses and silent authority, and toll the Stations' digital construction permits to August 1, 2024.

Background. Section 312(g) of the Communications Act of 1934 (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) of the Act, "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

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).

extension or reinstatement and a waiver.”² Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau (Bureau) stated that, in considering requests to extend or reinstate a station’s license under section 312(g) of the Act in order to promote equity and fairness, 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.”³ 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.⁴ 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 applicable Commission rule.”⁵

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

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 *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)).

⁴ 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*).

⁵ *Id.*; *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).

⁶ See 47 CFR § 73.3598(b).

⁷ *Id.*

⁸ 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,

Requests. The Stations are LPTV stations that plan to operate from a shared facility. As part of the Incentive Auction and repacking process, the Stations' pre-auction operating channels (channel 45 for K45KS-D and channel 51 for K51KR-D) were displaced. Edge filed a displacement application for channel 19 for K45KS-D and channel 31 for K51KR-D in the Commission's displacement application filing window for LPTV stations that were displaced by the Incentive Auction and repacking process.⁹ The Stations were subsequently granted digital construction permits for their displacement channels (Displacement CPs).¹⁰ The expiration dates of the Displacement CPs were most recently tolled to September 6, 2022.¹¹ In addition, in preparation for moving to their displacement channels, the Stations went silent on July 3, 2020.¹² The Stations' licenses was previously reinstated and their licenses and silent authority extended to September 6, 2022, pursuant to the "equity and fairness" provision of section 312(g) of the Act.¹³

In its Requests, Edge notes that the Stations remain silent and construction of their shared displacement facility is not yet complete. Edge outlines the efforts it has taken to complete construction of the Displacement CPs and of the delays that it has encountered preventing the Stations from resuming operations on their displacement channels. Since the grant of its last tolling and license extension requests for the Stations, Edge states that all equipment availability issues have been resolved and the equipment needed to construct the Stations has either been delivered to the transmission site or is ready for delivery upon request. However, tower siting and equipment installation delays have continued to prevent Edge from completing construction of the Stations' shared displacement facility.

Specifically, Edge states that it has continued to face delays relating to structural and antenna mount analyses for the Station's shared facility. Between August 2022 and January 2023, multiple antenna mounts were proposed by Edge to the tower owner, but were not approved. In January 2023 Edge requested that it be permitted to investigate installation on an adjacent tower at the same tower site. In February 2023 the Stations' tower owner indicated that it needed to conduct a structural engineering report for the adjacent tower. In July 2023 the tower owner informed Edge that it believed the tower could meet structural requirements, but in order to do so it would need a new antenna mount design. Edge's antenna mount proposal was approved on September 14, 2023. Edge is now working with the tower owner to obtain the necessary structural analysis and completing the required local zoning and permitting processes necessary to obtain a Notice to Proceed from the tower owner; all of which Edge believes can be completed by the extended deadline.

Accordingly, in light of these circumstances, Edge requests waiver of the tolling rule, tolling of the Stations' Displacement CPs, and extension of the Stations' licenses and silent authority through August 1, 2024.

1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

⁹ 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).

¹⁰ See LMS File No. 0000051841 modified by LMS File No. 0000197428 (K45KS-D) and 0000051843 as modified by LMS File No. 0000197432 (K51KR-D).

¹¹ See LMS File No. 0000178136 (K45KS-D) and 0000178135 (K51KR-D).

¹² See LMS File No. 0000118473 (K45KS-D) and 0000118474 (K51KR-D).

¹³ See LMS File No. 0000178120 (K45KS-D) and 0000178119 (K51KR-D).

Discussion. Upon review of the facts and circumstances presented, we find that Edge's Requests for reinstatement and extension of the Stations' licenses satisfy 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 Stations were displaced by the Incentive Auction and repacking process. Edge's efforts to construct the Stations' shared displacement facility has been hindered by equipment manufacturing, zoning, and permitting delays. Most recently, the Stations have been prevented from completing construction of the Stations' shared facility due to delays relating to structural and antenna mount analyses, which appear to now be resolved. Edge is now proceeding with efforts to obtain necessary zoning and permit approvals in order to obtain a Notice to Proceed from the tower owner, all of which it believes can be completed by August 1, 2024. 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 their viewers. In order for the Bureau to monitor the Stations' construction progress, Edge has also voluntarily agreed to provide Bureau staff with bi-weekly construction status report for the Stations (Status Report).¹⁴

Accordingly, in light of the facts and circumstances presented, we find that in order to promote equity and fairness, the requests for reinstatement and extension of the Stations' licenses and extension of the Stations' silent authority **ARE GRANTED**, the applicable Commission rules **ARE WAIVED**,¹⁵ and the licenses of the above captioned LPTV stations **ARE REINSTATED AND EXTENDED** to August 1, 2024. In addition, based on the same circumstances, we find that the requests for waiver of the tolling rules **ARE GRANTED** and the expiration date of the Stations' construction permits **ARE TOLLED** to August 1, 2024. We anticipate this will be Edge's final requests for tolling of its construction permits and extension of its licenses. Any additional requests for extension of the Stations' licenses under section 312(g)¹⁶ or tolling of the Stations' construction permits under section 73.3598(b) of the Commission's rules¹⁷ will not be favorably viewed.¹⁸ Further, grant of this waiver of the tolling rules does not extend

¹⁴ The Status Report includes all Stations licensed to Edge that were displaced by the post-incentive auction repack and have not yet been completed. The last Status Report was provided on January 12, 2024, with the next one being due on January 26, 2024.

¹⁵ 47 CFR §§ 74.15(f) and 74.763(c).

¹⁶ 47 U.S.C. § 312(g).

¹⁷ 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.

¹⁸ Any request for additional tolling, extension of the Station's silent authority, or reinstatement and extension of the Station's license must be accompanied by a showing that completion of the Station's permanent displacement facilities was prevented by additional compelling circumstances beyond Edge's control. It must include station specific information describing the compelling circumstance, all work that has been completed, what work remains, and a detailed plan for completing construction and returning the station to operation. Any such request must also include documentation supporting the information provided. Failure to provide such information will result in prompt dismissal of any application.

Edge's deadline for submitting final expense documentation for reimbursement for the Stations.¹⁹ We also condition this grant on Edge continuing to provide Bureau staff with bi-weekly Status Report.²⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division

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

¹⁹ The deadline for the Stations' to submit their invoices was September 6, 2022. *See* LMS File No. 0000185719. *See also Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, para. 12 (IATF/MB 2020) (setting filing deadlines for submission of repack invoices).

²⁰ A copy of the Status Report should be sent by e-mail to: Barbara Kreisman, Chief, Video Division, Media Bureau at Barbara.Kreisman@fcc.gov; Evan Morris, Associate Bureau Chief, Media Bureau at Evan Morris@fcc.gov; Mark Colombo, Associate Division Chief, Video Division, Media Bureau at Mark.Colombo@fcc.gov, and Shaun Maher, Attorney-Advisor, Video Division, Media Bureau at Shaun.Maher@fcc.gov.