REQUEST FOR EXTENSION OF SILENT STA AND WAIVER OF SECTION 312(g)

Edge Spectrum, Inc. ("ESI"), licensee of W50CO, Jacksonville, FL (Fac ID 24569) (the "Station"), hereby requests an extension of its silent authority 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 July 3, 2020, the Station went silent while it completed construction of its displacement facilities. *See* LMS File No. 0000118464. Since that time, ESI has been working diligently to complete construction of the Station's displacement facilities as authorized by its construction permit, LMS File No. 0000052065 (the "CP"). However, the circumstances beyond ESI's control that prevented ESI from completing construction have persisted and necessitate a further extension of the Station's silent authority. Despite these challenges, ESI currently expects that the transmitter for the station, which is subject to a pending contract with Comark S010724, will ship on February 4, 2022.

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 recently 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.

ESI and ARK have experienced a number of challenges completing construction of their digital facilities, including: the lack of availability of suitable transmitters, delays in the delivery of antennas, limited installer availability, limited RF engineers, and tower relationships.

ESI and ARK have been working for more than a year to obtain the necessary equipment to enable digital operations for their stations. ESI and ARK originally engaged with Comark, Broadcast Electronics, Anywave, and Technalogix. Although none of these entities had an off the shelf transmitter that fit ARK's specifications, broadcast engineer Rick Goetz marketed that he had a transmitter that would work. ESI and ARK ordered a small batch to test the units in April 2021. The transmitters were committed to be delivered within two weeks. After four months, a single transmitter was delivered. As of this writing, the remaining 6 have not been delivered and Mr. Goetz has informed ESI and ARK that he will not be able to deliver on the original order.

While waiting for the transmitters from Mr. Goetz, Anywave indicated that it had a new transmitter that it was manufacturing which would meet the needs of ESI and ARK. In May 2021, ARK ordered 50 transmitters from Anywave with the commitment for a test unit to be sent quickly, and a second batch of transmitters to be ordered after validation of that test unit. That unit arrived in August 2021. Anywave indicated once it had the first batch completed and its manufacturing more streamlined, it could ship deliver within 30 days on future orders. In the meantime, ARK placed an order with Anywave

for 29 additional transmitters in June 2021 to establish ARK's priority for the hard-to-get units. Anywave shipped the first batch of 43 UHF transmitters via air freight. They did not arrive to ARK until October 2021. 6 more transmitters were delivered in late November 2021, and the remaining 29 transmitters were delivered in December 2021. Upon testing of the first batch of 50 units, 6 were determined to have issues and need to be returned or serviced by Anywave. The remaining units that are not already in the process of deployment are being tested as they come in.

In an effort to secure transmitters, ARK negotiated with Comark to find a way to help. Although Comark did not have a transmitter of its own that would meet ARK's needs, Comark obtained a test transmitter from Technalogix in late October 2021 and determined that they could add a filter to make it suitable. ARK has ordered 57 such transmitters through Comark. The first batch of 7 were delivered to ARK in December 2021. 2 of those 7 have problems which are being resolved by Technalogix.

Once the first batch of transmitters arrived from Anywave, ARK immediately tested and began deploying beginning with Northern states in the hopes to avoid slowdowns from snow. ARK proceeded to install more than 30 of the Anywave transmitters. However, after commencing service with some of the transmitters, a wireless provided indicated to ARK that their operation was causing interference to wireless operations and that a new filter would be required. ARK is currently working to obtain the necessary filters to commence full power operations with the Anywave transmitters without creating impermissible interference. On December 3, 2021, ARK received a delivery of an additional 29 transmitters from Anywave. Given the high failure rate and the interference issues, ARK is not able to deploy those transmitters until it completes extensive testing and installs new filters to avoid the new issue that was pointed out by the wireless provider. ARK is currently working with Anywave to correct these issues and prepare the remaining transmitters for deployment.

With regard to the Technalogix transmitters, ARK obtained the first seven transmitters from Comark on December 6, 2021 and is cautiously optimistic it will receive half of the remaining 50 transmitters before the end of the year. Technalogix has indicated that a supply chain issue for transistors may delay the delivery by as much as 90 days. ARK intends to perform extensive testing on the Technalogix transmitters before it deploys them.

In summary, ARK has ordered more than 130 digital transmitters that it plans to install for facilities with upcoming digital construction deadlines, including the Station. At this time, ARK has only been able to install 30 of those transmitters, and further installations have been delayed while ARK completes testing of each individual transmitter.

In addition to the transmitter and antenna supply issues mentioned above, ESI and ARK have also experienced challenges finding skilled installers. The first two installers that ARK attempted to hire were not available. ARK identified two installers: one who has been working since October 2021 when the first batch of transmitters arrived, and another who only just became available (after ARK discovered the quality and performance issues with its initial supply of transmitters). In an attempt to complete the construction of these digital facilities as soon as possible, ARK's co-founder and CEO, Joshua D. Weiss, has personally installed the transmitters at some of the transmission sites. In the meantime, ARK has entered into arrangements with multiple vendors to expedite the installation process once the necessary equipment is received.

Finally, ESI and ARK have had to recently change the location for most of the transmitter sites for their digital facilities. In March 2020, ESI and ARK began negotiating an agreement for Crown Castle to serve as the primary tower vendor for the ESI and ARK stations. In March 2021, those conversations advanced and ESI and ARK began preparing to move all of their facilities to Crown Castle sites. However, in August 2021, the commercial negotiations failed and ESI and ARK had to quickly transition to American Tower sites. This transition has required an extensive effort on the part of three consulting engineers, one of whom recently retired to care for his wife. Once the engineering consultants complete their engineering, it is taking approximately 3-4 weeks per site to obtain approval from American Tower.

Despite the aforementioned delays, ESI and ARK have been working diligently to obtain the additional equipment needed to complete construction of their digital facilities. ARK ordered 250 yagi antennas from SAMCO. ARK also ordered and has obtained bulk coaxial cable from Dielectric. Accordingly, ESI and ARK have done everything within their 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. Despite these challenges, ESI currently expects that the transmitter for the station, which is subject to a pending contract with Comark S010724, will ship on February 4, 2022.

II. Waiver of Section 312(g) Is 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.[1]

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."[2] 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

[1] *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).

[2] *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)

beyond the station's control, including facts that relate to the post-auction transition process."[3] 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."[4]

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.[5] As a result of these supply chain issues, despite its diligence, ESI has been unable to obtain an adequate supply of transmitters for all of its digital construction permits, including for the Station. Concurrently herewith, ESI is filing a request for tolling of the CP to provide ESI with an additional 180 days to complete construction.

The Commission has granted waivers of Section 312(g) under similar circumstances, and ESI respectfully requests the same consideration here.[6]

[3] *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).

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

[5] *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, 2021), *available at* https://www.radioworld.com/news-and-business/headlines/chip-shortage-hits-radio-technology-marketplace.

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