

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

Edge Spectrum, Inc. (“Licensee”), licensee and permittee of K34HZ, Cody, WY (Fac. ID 129088) (the “Station”) hereby requests further tolling of the Station’s digital construction permit (LMS File No. BDFCDTL-20110609AAM) (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.

On or around May 24, 2022, the FCC granted a number of requests from Licensee and affiliated licensees EICB-TV East LLC and FidelityTV, LLC (the “Affiliated Licensees”) for tolling and authority to remain silent. The Commission provided most of those stations until September 6, 2022 to complete construction and commence operations. However, for a limited subset of stations identified below, the FCC adopted an interim deadline of July 11, 2022:

W05CO	66995	SARASOTA	FL
K16IP-D	183664	BONNERDALE	AR
K46KW-D	183924	TYLER	TX
WGEI-LD	187828	ENTERPRISE	AL
K21JS	11133	HARRISON	AR
WTKJ-LP	128834	WATERTOWN	NY
K31HT	128862	CASPER	WY
K34HZ	129088	CODY	WY
K41KX-D	131115	JOPLIN	MO
W16CX-D	182839	PANAMA CITY	FL
K19IR-D	184019	ENID	OK
W48DU-D	184035	ALBANY	GA
W33AY-D	49183	SPRINGFIELD	IL
W30BU	66981	GREEN BAY	WI
W26BB	67006	VICKSBURG	MS

As of this filing, the Affiliated Licensees have completed construction of 12 of the 15 stations with July 11 Construction Permit deadlines. The Station is one of three stations that the Affiliated Licensees were unable to construct by the July 11 deadline for reasons beyond their control. As explained below, the Affiliated Licensees expect to complete construction of each of the stations with July 11 deadlines, including the Station, before September 6, 2022.

The Station is an analog LPTV station that was granted a construction permit to convert to digital on its former analog channel (Flash Cut CP). Because the Station was operating in analog at the time it was granted, the Flash Cut CP was assigned an expiration date of July 13, 2021. Supply chain issues resulted in delays in delivers of the Station's digital transmitter.

Although that issue has since been resolved, Licensee learned earlier this year that the tower site on which the Station's analog facility was located was sold. Additionally, in an attempt to efficiently utilize its scarce resources ahead of the September 6 deadlines, Licensee has been unable to deploy a crew to Wyoming since receiving the transmitters for the Station. Licensee obtained a list of new sites from American Tower on June 15 and has been working expeditiously to complete the process of relocating to that site. Licensee is currently awaiting permission and a Notice to Proceed and, although it is a Forest Service site, does not anticipate any issues completing construction by September 6, 2022.

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.¹ 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.²

Tolling is appropriate here because the Licensee's inability to complete construction of its digital facilities for the Station is due to rare and exceptional circumstances beyond its control.³ The Station was on track to complete its digital facilities when it abruptly needed to find a new tower site. Although the Licensee worked with American Tower to identify a new site, it is still awaiting permission and a Notice to Proceed.

Licensee has all of the equipment that it needs to construct the Station's digital facilities. The only thing standing in a way is completing arrangements with American Tower. Although Licensee does not have a definitive timeline, it expects to have the Station completed on the same timeline as other Affiliated Licensees' stations that have been granted tolling through September 6, 2022.

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)

¹ 47 C.F.R. § 73.3598.

² 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").

³ 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").

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.”⁴ 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.”⁵ 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.”⁶

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 need to obtain an NTP from American Tower is 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 September 6, 2022 to complete construction and license its digital facilities.

⁴ *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)

⁵ *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).

⁶ *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).