

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

Edge Spectrum, Inc. (“Licensee”), licensee and permittee of K41KX-D, Joplin, MO (Fac ID 131115) (the “Station”) hereby requests further tolling of the Station’s displacement construction permit (File No. 0000058756) (the “CP”).

As Licensee has previously explained, prior to July 1, 2021, the Station was operating at a site owned by Deb Kenny and her husband using a shared antenna. The Station had to go silent on July 1, 2021 because Ms. Kenny (whose husband had passed away shortly beforehand) abruptly terminated the sharing arrangement to allow her to sell the land on which the tower was located. (See File No. 0000184412). ESI had no advance notice of Ms. Kenny’s plans. Since Ms. Kenny terminated the sharing arrangement, ESI has been working with the owner of the tower, EMF, to obtain permission to install ESI’s own antenna.

On September 14, 2021, ESI requested tolling of the Station’s CP. (File No. 159401). ESI amended its request on April 7, 2022. As part of its amendment of this and other tolling requests, ESI indicated that it intended to complete construction of the Station’s displacement facility by July 1, 2022. Shortly thereafter, on April 27, 2022, the tower owner, EMF, notified ESI that EMF was going to be making revisions to the tower that would necessitate, among other things, the completion of a load study. As a result, ESI’s ability to resume operations has been delayed. EMF has advised ESI that the structural report has been ordered and is currently being conducted.

In the interim, ESI is awaiting approval of its Engineering STA to operate the Station from the same tower at a reduced power and height. See File No. 0000194709. This will allow ESI resume serving the public as soon as possible while it completes construction of the site. An email from EMF confirming the foregoing is attached.

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>

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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

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 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).

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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).

<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).

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.

**From:** Cyndi Byrd <[CByrd@kloveair1.com](mailto:CByrd@kloveair1.com)>

**Date:** August 25, 2022 at 3:35:26 PM GMT+1

**To:** Josh Weiss <[jweiss@arkmulticasting.com](mailto:jweiss@arkmulticasting.com)>

**Subject:** RE: [EXTERNAL] Confirmation email - K34NJ-D/K41KX-D FIN: 131115 Joplin, MO

Good Morning, Josh,

This email confirms that Educational Media Foundation (EMF) has been working with ARK Multicasting, Inc., on behalf of Edge Spectrum, Inc. (ESI) regarding placing equipment to broadcast K34NJ-D/K41KX-D, FIN: 131115 on our EMF owned tower ASR# 1028313, in Joplin, MO.

This particular location had a unique circumstance in that the original landowner and operator of LPTV, KJPX-LP (Gary Kenny) passed away and his widow (Deb) tried unsuccessfully to sell the LPTV license(s). Deb Kenny retained the land and an equipment shelter where the EMF tower is located. This equipment shelter and the LPTV antenna was formerly used by both ESI and the former analog station owner Gary Kenny. Although EMF was not a party to the agreement between Kenny and ESI, EMF does have knowledge that there was a previous agreement between them that is no longer in effect. The LPTV license for Deb Kenny of DKJPX-LP was cancelled, 8/4/2021 as a digital companion station was not built before the required FCC deadline. EMF can confirm that the LPTV broadcast antennas were removed from the tower. ESI, through ARK Multicasting, has been working with EMF regarding the reconstruction of K34NJ-D. EMF has notified ARK that the tower is going to require modifications which would impact ARK's build intentions as tower modifications will be required before any installation can occur. A structural engineering report which includes the antenna needed for K34NJ-D is in progress. In the meantime, the landowner has agreed to allow ARK to resume service to the public through a modified installation on the equipment shelter, while waiting for EMF to conduct a structural analysis and modification design that will be needed to support the K34NJ-D equipment installation. It is EMF's understanding that this interim build is a lower power level and lower antenna height than what will eventually be placed at 106 meters (348') above ground level on the EMF owned tower.

Please let me know if you need anything else regarding this matter.



**Cyndi Byrd**

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Manager

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