



Federal Communications Commission
Washington, D.C. 20554

December 7, 2023

Edge Spectrum, Inc.
Randy Weiss
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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
W32DJ-D. Melbourne, FL
Facility ID No. 71240
LMS File Nos. 0000199215 and
000199216

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), the licensee of the low power television (LPTV) station captioned above (W32DJ-D or Station). For the reasons set forth below, we grant Edge's Requests, waive all applicable rules, reinstate and extend the Station's license and silent authority, and toll the Station's digital construction permit to January 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 extension or reinstatement and a waiver."² Further, in the *Post-Incentive Auction Procedures PN* the

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).

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*).

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

Requests. As part of the Incentive Auction and repacking process, the Station's pre-auction operating channel, channel 32, was displaced and Edge filed a displacement application for channel 19 in

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

the Commission's displacement application filing window for LPTV stations that were displaced by the Incentive Auction and repacking process.⁹ The Station was subsequently granted a digital construction permit for its displacement channel (Displacement CP).¹⁰ The expiration date of the Displacement CP was most recently tolled to September 6, 2022.¹¹ In addition, in preparation for moving to its displacement channel, the Station went silent on July 3, 2020.¹² The Station's license was previously reinstated and its license 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 Station remains silent and construction of its displacement facility is not yet complete. Edge outlines the efforts it has taken to complete construction of the Displacement CP and of the delays that it has encountered preventing the Station from resuming operations on its displacement channel. Since the grant of its last tolling and license extension requests, Edge states that all 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 its request. However, tower siting and equipment installation delays have also prevented Edge from completing construction of the Station's displacement facilities.

Specifically, Edge states that it has continued to face delays completing construction of the W32DJ-D displacement facilities resulting from leasing and permitting delays. Edge states that the owner of the location where the W32DJ-D is to be sited took additional time than expected in order to determine ground space for station's facilities. Edge reports that a final agreement, successful structural analysis, and building permit application were provided by the owner in April 2023. However, Edge states, permitting was delayed in May 2023 because the general contractor employed to complete the installation work had an expired Florida license. Edge reports that a new general contractor was hired in June 2023 and was able to complete all the necessary permitting requirements by September 22, 2023. While on September 22, 2023, Edge was notified that all permitting requirements had been met, the Station's tower crew was still in the process of obtaining a required safety certification and completing registration requirements with the Station's tower owner. According to a letter sent by the Station's tower crew on October 24, 2023, it has now obtained the necessary safety certification and is completing the final registration steps with the Station's tower owner to verify its insurance and qualifications.

Accordingly, in light of these circumstances, Edge requests waiver of the tolling rule, tolling of the Station's construction permit, and extension of the Station's license and silent authority through January 1, 2024.

Discussion. Upon review of the facts and circumstances presented, we find that Edge's Requests for reinstatement and extension of the Station's license satisfies 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

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. 0000052050 modified by LMS File No. 0000150182.

¹¹ See LMS File No. 0000178180.

¹² See LMS File No. 0000118807.

¹³ See LMS File No. 0000178216.

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 Station was displaced by the Incentive Auction and repacking process. Edge's efforts to construct the Station's displacement facilities have been hindered by equipment manufacturing, zoning and permitting delays. Most recently, the Station has been prevented from completing construction of its facility while its tower crew completed a necessary safety certification and registration with its tower owner. 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 Station to once again serve its viewers.

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 Station's license and extension of the Station's silent authority **ARE GRANTED**, the applicable Commission rules **ARE WAIVED**,¹⁴ and the license of the above captioned LPTV station **IS REINSTATED AND EXTENDED to January 1, 2024**. In addition, based on the same circumstances, we find that the request for waiver of the tolling rules **IS GRANTED** and the expiration date of the Station's construction permits **IS TOLLED to January 1, 2024**. We anticipate this will be Edge's final requests for tolling of the Station's construction permit and extension of its license. Any additional requests for extension of the Station's license under section 312(g)¹⁵ or tolling of the Station's construction permit through waiver of section 73.3598(b) of the Commission's rules¹⁶ will not be favorably viewed.¹⁷ Further, grant of this waiver of the tolling rules does not extend Edge's deadline for submitting final expense documentation for reimbursement for the Station.¹⁸

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division

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

¹⁴ 47 CFR §§ 74.15(f) and 74.763(c).

¹⁵ 47 U.S.C. § 312(g).

¹⁶ 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.

¹⁷ 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.

¹⁸ The Station was granted an extension of the March 22, 2022 invoice submission deadline and the Station's deadline was extended to 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, paras. 10-11 (IATF/MB 2020) (setting filing deadlines for submission of repack invoices).