



Federal Communications Commission
Washington, D.C. 20554

January 8, 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

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 listed in the attached Appendix.¹ For 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 (the 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."² 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), "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."³ Further, in the *Post-Incentive Auction Procedures PN* the Media Bureau (Bureau) stated that, in considering requests to extend or reinstate a stations license under section 312(g) in order to promote fairness and equity, it "will examine whether the station has demonstrated that its

¹ A list of the stations covered by this action (referred to herein collectively as "Stations") and the LMS file numbers of the Requests are contained in the Appendix to this letter.

² 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).

³ *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*).

silence is the result of compelling reasons beyond the stations' control, including facts that relate to the post-auction transition process."⁴ 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.⁵ 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 Commission rule."⁶

Requests for additional time to construct LPTV facilities are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.⁷ 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.⁸ 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.⁹

Requests. As part of the Incentive Auction and repacking process, each of the Stations' pre-auction operating channels were displaced. Each of the Stations filed a displacement application requesting a new digital channel in the Commission's displacement application filing window for LPTV

⁴ *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)).

⁵ 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*).

⁶ *Id.* at n.25 citing 47 U.S.C. § 312(g); *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).

⁷ See 47 CFR § 73.3598(b).

⁸ *Id.*

⁹ 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).

stations that were displaced by the Incentive Auction and repacking process.¹⁰ Each of the Stations were granted digital construction permits for their displacement channels (Displacement CPs).¹¹ The expiration dates of the Displacement CPs were previously tolled.¹² In addition, in preparation for moving to their displacement channels, the Stations all went silent on July 3, 2020.¹³ The Stations' licenses were previously reinstated and their licenses and silent authority extended pursuant to the equity and fairness provision of section 312(g) of the Act.¹⁴

In its Requests, Edge notes that the Stations remain silent and construction of their digital displacement facilities are 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 digital displacement channels. Since the grant of their last tolling and license extension requests, Edge states that all of the prior 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 at the its request. However, additional tower siting and equipment installation delays have prevented Edge from completing construction of each of the Stations' facilities. Specifically, Edge states that it continues to experience delays completing all necessary pre-construction work (i.e. permitting, studies etc.) and proceeding with construction due to a contractual dispute with its tower owner. In addition, Edge's primary contact from the tower owner left the company and Edge states that it has been working with new personnel to coordinate the Stations' facility installations and resolve the outstanding dispute. In light of the circumstances, Edge is actively examining alternative construction options for the Stations should it not be able to proceed with construction at its currently permitted sites. To that end, it provides a timeline of its plans to relocate the Stations to different tower sites should it become necessary. 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.

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

¹⁰ 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).

¹¹ We note that the Displacement CPs were modified since the time of their original grant. The file numbers of the Displacement CPs, as modified, are listed in the Appendix.

¹² See LMS File Nos. 0000155194, 0000178144, 0000178153, 0000159208, 0000178164, 0000178166, 0000178170, 0000178172, 0000178174, 0000178177, 0000178179, 0000159257, 0000159224, 0000178182, 0000199467, 0000168607, 0000178081, 0000178093, 0000178098, 0000199474, 0000199472, 0000178105, 0000159236, 0000156648, 0000199323, 0000199312, 0000178146, 0000178149, 0000159245 and 0000179879.

¹³ See LMS File Nos. 0000118805, 0000118456, 0000118458, 0000118640, 0000118464, 0000118641, 0000118639, 0000118467, 0000118794, 0000118471, 0000118852, 0000190492, 0000118804, 0000118509, 0000118795, 0000118457, 0000118462, 0000118800, 0000118798, 0000118857, 0000118847, 0000118845, 0000118850, 0000118851, 0000118849, 0000118470, 0000118472, 0000118469, 0000118854 and 0000118860.

¹⁴ See LMS File Nos. 0000178127, 0000178130, 0000178143, 0000178043, 0000178194, 0000178195, 0000178200, 0000178204, 0000178206, 0000178213, 0000178214, 0000190492, 0000178218, 0000178219, 0000199468, 0000178061, 0000178062, 0000178072, 0000178085, 0000199475, 0000199473, 0000178091, 0000178094, 0000178117, 0000199434, 0000199418, 0000178137, 0000178141, 0000178147 and 0000178150.

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 complete construction of the the displacement facilities have been prevented due to a contractual dispute with the owner of the Stations' proposed tower sites. 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, some for the first time in digital. 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).¹⁵

Accordingly, we find that in order to promote fairness and equity, the requests filed by Edge Spectrum, Inc. and listed in the Appendix, **ARE HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹⁶ and the licenses of the low power television stations set forth in the Appendix **ARE REINSTATED AND EXTENDED to August 1, 2024**. In addition, the requests for waiver of the tolling rules listed in the Appendix **ARE GRANTED** and the expiration date of the 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 any of the Stations' licenses under section 312(g)¹⁷ or tolling of the Stations' construction permits under section 73.3598(b) of the Commission's rules¹⁸ will not be favorably viewed. Further, grant of this waiver of the tolling rules does not extend 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, as it commenced doing on December 22, 2023.²⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division

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

¹⁵ The first Status Report was submitted to the Bureau on Friday December 22, 2023. The Status Report includes all Stations licensed to Edge that were displaced by the post-incentive auction repack and have not yet been completed.

¹⁶ 47 CFR §§ 74.15(f) and 74.763(c).

¹⁷ 47 U.S.C. § 312(g).

¹⁸ 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.

¹⁹ Edge was granted an extension of the March 22, 2022 invoice submission deadline and its deadline was extended to September 6, 2022. *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. 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.

APPENDIX

| Fac. Id No. | Call Sign | City | ST | Silent STA LMS File No. | Tolling LMS File No. | Digital Construction Permit File No. |
|------------------------|------------------|--------------------------|-----------|--|-------------------------------------|---|
| 14883 | K40KC-D | Tulsa | OK | 0000199141 | 0000199336 | 0000195612 |
| 14884 | K27JP-D | Little Rock | AR | 0000199431 | 0000199344 | 0000192997 |
| 17401 | K39EO-D | Crescent City | CA | 0000199421 | 0000199321 | 0000195102 |
| 17784 | W14CX-D | Knoxville | TN | 0000215308 | 0000214338 | 0000195611 |
| 24569 | W50CO | Jacksonville | FL | 0000215306 | 0000214339 | 0000149468 |
| 25042 | W42CK | Hagerstown | MD | 0000199426 | 0000199386 | 0000197497 |
| 33955 | WFYW-LP | Fairfield/Waterville | ME | 0000217448 | 0000217315 | 0000195605 |
| 40743 | K38IM | Albuquerque | NM | 0000215311 | 0000214340 | 0000195613 |
| 49239 | WCNT-LP | Chattanooga | TN | 0000215305 | 0000214341 | 0000197997 |
| 57592 | W39CV-D | Minocqua | WI | 0000217506 | 0000217317 | 0000199251 |
| 67015 | W41BQ-D | Asheville | NC | 0000217471 | 0000217321 | 0000197624 |
| 67023 | K43JV | Provo | UT | 0000199438 | 0000199364 | 0000197498 |
| 70098 | W24CP-D | Durham | NC | 0000215307 | 0000214342 | 0000197388 |
| 74376 | K20KF-D | Davenport | IA | 0000199422 | 0000199315 | 0000198325 |
| 74379 | W24DL-D | Saginaw | MI | 0000217446 | 0000217443 | 0000198178 |
| 125157 | K40IJ-D | Topeka | KS | 0000215310 | 0000214343 | 0000197508 |
| 125496 | K42IQ-D | Flagstaff | AZ | 0000199425 | 0000199318 | 0000196820 |
| 126700 | KHGS-LD | Glenwood Springs | CO | 0000199447 | 0000199446 | 0000197511 |
| 130174 | K47JK-D | Pocatello | ID | 0000217333 | 0000217332 | 0000197644 |
| 130175 | K18HQ-D | Sandpoint | ID | 0000217059 | 0000217510 | 0000197944 |
| 130199 | K48KJ-D | Geneva | MN | 0000217461 | 0000217462 | 0000197632 |
| 130213 | K47JE-D | Olivia | MN | 0000217464 | 0000217463 | 0000197947 |
| 130215 | K43MH-D | Vesta | MN | 0000217466 | 0000217465 | 0000199271 |
| 130222 | W28DQ-D | Windsor | VT | 0000199444 | 0000199346 | 0000197950 |
| 130940 | KHVM-LD | Minneapolis | MN | 0000199433 | 0000217467 | 0000202614 |
| 130941 | KTCJ-LD | Minneapolis | MN | 0000217532 | 0000217531 | 0000199282 |
| 131348 | K43JQ-D | Bismarck | ND | 0000217470 | 0000217469 | 0000199122 |
| 167489 | K39JC-D | Butte | MT | 0000217507 | 0000217505 | 0000199254 |
| 167526 | K42IM-D | Minot | ND | 0000199517 | 0000217508 | 0000199252 |
| 182493 | K21KJ | Mineral Wells | TX | 0000199514 | 0000199339 | 0000195176 |
| 183206 | K31MU-D | Lingleville - Crowley | TX | 0000199513 | 0000199456 | 0000194449 |