



Federal Communications Commission
Washington, D.C. 20554

January 22, 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
K40MT-D, Bonners Ferry, ID
Facility ID No. 130171
LMS File Nos. 0000217444,
0000217445, and 0000234740

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 (K40MT-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 construction permit. We also grant the Station's application for license to cover that was filed during the pendency of the Requests.

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

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

Order, GN Docket No. 12-268 et al., 29 FCC Rcd 6567, 6806-07, para. 585 (2014) (*Incentive Auction R&O*).

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).

Requests. As part of the Incentive Auction and repacking process, the Station's pre-auction operating channel, channel 40, was displaced and Edge filed a displacement application for channel 31 in the Commission's displacement application filing window for LPTV stations.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 July 1, 2023.¹¹ 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 July 1, 2023, pursuant to the equity and fairness provision of section 312(g) of the Act.¹³

In its Requests, Edge notes that the Station remained silent and construction of its displacement facility was not complete as of July 1, 2023. Edge outlines the efforts it was taking 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 were resolved and the equipment needed to construct the Station was either delivered to the transmission site. Edge states that it has received all zoning and permitting approvals, and achieved the necessary approvals to proceed with installation of the Station's displacement facilities. In December 2023, Edge amended its Requests stating that the only remaining work at that time was to replace a faulty cable within the ground equipment. Edge stated that the cable had been ordered and would be installed promptly once delivered. On January 3, 2024, during the pendency of the Requests, Edge filed an application for license to cover indicating that the cable had been fixed, construction was completed, and the Station was ready to resume operations.¹⁴

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.

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) of the Act 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 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 were hindered by equipment manufacturing, zoning and permitting delays. Most recently, the Station was prevented from completing construction of its facility due to a faulty cable which as of the date of this letter has been resolved. 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.

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. 0000042866 modified by LMS File No. 0000197640.

¹¹ See LMS File No. 0000199452.

¹² See LMS File No. 0000118802.

¹³ See LMS File No. 0000199453.

¹⁴ LMS File No. 0000234740.

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**,¹⁵ and the license of the above captioned LPTV station **IS REINSTATED AND EXTENDED**. In addition, based on the same circumstances, we find that the request for waiver of the tolling rules **IS GRANTED**, the expiration date of the Station's construction permit (LMS File No. 0000197640) **IS TOLLED** and the application for license to cover (LMS File No. 0000234740) **IS GRANTED**. Further, grant of the Requests does not extend Edge's deadline for submitting final expense documentation for reimbursement for the Station.¹⁶

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

¹⁵ 47 CFR §§ 74.15(f) and 74.763(c).

¹⁶ The Station's invoice submission deadline was 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, para. 12 (IATF/MB 2020) (setting filing deadlines for submission of repack invoices).