



Federal Communications Commission
Washington, D.C. 20554

August 22, 2022

Edge Spectrum, Inc.
Randy Weiss
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(via electronic mail)

Re: Request for Extension of License
and Silent Authority Under
Section 312(g) and Application
for Tolling Waiver
W33AY-D, Springfield, IL
LMS File Nos. 0000194807 and
0000194808
Facility ID No. 49183

Dear Licensee:

This letter concerns the requests to extend license and silent authority, and provide waiver of the tolling rules, as amended (Requests), filed by Edge Spectrum, Inc. (Edge) licensee of low power television (LPTV) station W33AY-D, Springfield, Illinois (W33AY-D or Station). For reasons set forth below, we grant Edge's Requests, waive all applicable rules, extend the Station's license and silent authority, and toll the Station's digital construction permit to September 6, 2022.

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."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), "tak[ing] into account the extent to which a station has been involuntarily forced to remain dark as a result of the repacking

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).

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 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 silence is the result of compelling reasons beyond the stations’ 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 an 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.”⁵

Requests for additional time to construct LPTV facilities are subject to the Commission’s tolling provisions of section 73.3598(b) of the 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

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*).

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.* 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).

⁶ See 47 CFR § 73.3598(b).

⁷ *Id.*

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, W33AY’s W07BJ’s digital channel 33 was displaced by full power television station WAOE-D, Peoria, Illinois, that was repacked to channel 33. W33AY-D subsequently went silent on August 25, 2021, and currently remains silent.⁹ W33AY-D’s displacement application for channel 31¹⁰ was granted on June 20, 2018 with an expiration date of June 20, 2021 (Displacement CP). The Station’s was twice granted waivers of the tolling rules and the Displacement CP was most recently tolled to July 11, 2022.¹¹

Edge states that, although the previous issues preventing construction have been resolved, it is still waiting for permission and a Notice to Proceed from American Tower to allow the Licensee to install its facilities at the site. Edge states that it had a crew ready to complete the installation, but the crew cannot complete its work until the permission is granted. Edge provides an email from American Tower to support these claims. Edge also has pending a minor modification application to match the approved tower specifications.¹² Edge notes that American Tower did grant permission for ESI to deliver all the necessary equipment for the construction of the station. This has been completed and Edge is awaiting permission to go forward with installation and resume serving the public. Edge expects to receive permission from American Tower shortly and does not anticipate any issues completing construction by September 6, 2022.

Discussion. Upon review of the facts and circumstances presented, we find that Edge’s Request for extension of the W33AY-D 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 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. W33AY-D was displaced by the Incentive Auction and repacking process. Edge’s efforts to construct the displacement facilities were hindered by documented tower siting delays. 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 its viewers.

Accordingly, we find that in order to promote fairness and equity the request filed Edge Spectrum, LLC **IS HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹³ and the

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).

⁹ See LMS File No. 0000184413.

¹⁰ See LMS File No. 0000051745.

¹¹ See LMS File No. 0000149716 and 0000177336.

¹² See LMS File No. 0000194995.

¹³ 47 CFR §§ 74.15(f) and 74.763(c).

license and silent authority for W33AY-D, Springfield, Illinois, **ARE EXTENDED** to September 6, 2022. In addition, the request for waiver of the tolling rules of Edge Spectrum, LLC **IS GRANTED** and the expiration date of the construction permit (LMS File No. 000051745) for W33AY-D, Springfield, Illinois **IS TOLLED** to September 6, 2022. While we anticipate this will be the Station's final request for tolling and section 312(g) relief, we note that another request for extension of the Station's license under the equity and fairness provision of section 312(g)¹⁴ and/or tolling of a Station's construction permit under section 73.3598(b) of the Commission's rules¹⁵ will not be viewed favorably unless accompanied by a showing that completion of the Station's displacement facilities was prevented by additional compelling circumstances. Edge must also include with any such request(s) a detailed plan for completing construction and returning the Station to operation.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division

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

¹⁴ 47 U.S.C. § 312(g).

¹⁵ 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.