



Federal Communications Commission
Washington, D.C. 20554

June 2, 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

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 July 1, 2023.

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. Some of the Stations were operating in analog mode at the time and some had already transitioned to digital facilities. Each of the Stations filed a displacement application requesting a new digital channel in the Commission's displacement application filing window

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).

for LPTV 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). The expiration dates of the Displacement CPs were previously extended or tolled in July 2021 to January 3, 2022.¹¹ In addition, in preparation for moving to their displacement channels, the Stations all went silent on July 3, 2020.¹² The Stations' licenses were previously reinstated and their licenses 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 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. These challenges have included equipment delivery, zoning and permitting delays. Since grant of its last tolling and license extension requests, Edge states that "all of the 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 the Licensee's request." Edge has included with its Requests an e-mail from its tower owner confirming both Edge and the tower owner are working closely, including weekly meetings, to obtain all necessary zoning and permitting approvals as quickly as possible in order to proceed with installation. Edge goes on to state that it has secured a tower to complete the installation, work that will be scheduled once all permits and zoning has cleared and the tower company provides a Notice to Proceed. Based on the remaining steps Edge outlines in its Requests to complete construction, as well as subsequent information provided to Media Bureau staff after the Requests were filed, Edge anticipates that all construction should be complete by July 1, 2023.

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 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 construct the displacement facilities have been hindered by equipment manufacturing, zoning and permitting 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 their viewers, some for the first time in digital.

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

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 See Letter to Edge Spectrum, Inc. from Barbara A. Kreisman, Chief, Video Division (Apr. 22, 2022) available at LMS File No. 0000178164, et. al.

¹² *Id.*

¹³ *Id.*

rules **ARE WAIVED**,¹⁴ and the licenses of the low power television stations set forth in the Appendix **ARE REINSTATED AND EXTENDED** to July 1, 2023. 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 July 1, 2023.

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)¹⁵ or tolling of the Stations' construction permits under section 73.3598(b) of the Commission's rules¹⁶ will not be favorably viewed unless accompanied by a showing that completion of the station's permanent displacement facilities was prevented by additional compelling circumstances. These showings must be station specific and provide a precise description of all work that has been completed since grant of the Requests and a detailed plan for completing construction and returning the station to operation. 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.

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.

APPENDIX

Facility ID Number	Call Sign	City	State	Silent STA Extension LMS File No.	Tolling LMS File No.
33955	WFYW-LP	WATERVILLE	ME	0000199443	0000199349
57592	W39CV-D	MINOCQUA	WI	0000199436	0000199326
67015	W22EY-D	ASHEVILLE	NC	0000199416	0000199307
74379	W24DL-D	SAGINAW	MI	0000199440	0000199365
130171	K40MT-D	BONNERS FERRY	ID	0000199453	0000199452
130174	K47JK-D	POCATELLO	ID	0000199448	0000199449
130175	K18HQ-D	SANDPOINT	ID	0000199450	0000199451
167526	K42IM-D	MINOT	ND	0000199517	0000199327
167489	K39JC-D	BUTTE	MT	0000199419	0000199310
131348	K43JQ-D	BISMARCK	ND	0000199418	0000199312
130940	KHVM-LD	MINNEAPOLIS	MN	0000199433	0000199324
130215	K43MH-D	VESTA	MN	0000199442	0000199348
130213	K47JE-D	OLIVA	MN	0000199473	0000199472
130199	K48KJ-D	GENEVA	MN	0000199475	0000199474
130185	K44GH-D	ALEXANDRIA	MN	0000199466	0000199465