



Federal Communications Commission  
Washington, D.C. 20554

May 24, 2022

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

Re: Requests for Tolling Waivers

Dear Licensee:

This letter concerns the requests for 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.<sup>1</sup> For reasons set forth below, we grant Edge's Requests, waive all applicable rules and toll the Stations' digital construction permits to July 11, 2022.<sup>2</sup>

*Background.* Requests for additional time to construct LPTV facilities are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

*Requests.* The Stations that are the subject of this decision fall into two categories - analog LPTV stations that have yet to convert to digital and are currently silent (Analog Stations)<sup>6</sup> and digital LPTV

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<sup>1</sup> A list of the stations covered by this action (referred to herein collectively as "Stations") and the LMS file numbers of the Requests and related digital construction permits are contained in the Appendix to this letter.

<sup>2</sup> We note that the Stations' construction permits contain varying expiration dates. In furtherance of administrative convenience, and so we can better monitor the status of their construction, we extend all of the Stations' construction permits through July 11, 2022.

<sup>3</sup> See 47 CFR § 73.3598(b).

<sup>4</sup> *Id.*

<sup>5</sup> 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).

<sup>6</sup> The six Analog Stations are: K21JS, Harrison, Arkansas; W30BU, Green Bay, Wisconsin; W05CO, Sarasota, Florida; W26BB, Vicksburg, Mississippi; WTKJ-LP, Watertown, New York; and K34HZ, Cody, Wyoming.

stations whose pre-auction operating channels were displaced by the Incentive Auction and repacking process, some of which are currently silent (Displaced Digital Stations).<sup>7</sup>

The Analog Stations each possess construction permits to convert to digital on their former analog channels (Flash Cut CPs).<sup>8</sup> Because the Analog Stations were operating in analog at the time these were granted, the Flash Cut CPs were assigned an expiration date of July 13, 2021.<sup>9</sup> The Analog Stations were previously granted extensions of their Flash Cut CPs and their expiration dates were extended to January 10, 2022.<sup>10</sup>

The Displaced Digital Stations sought new channels in the Commission's displacement application filing window for LPTV stations that were displaced by the Incentive Auction and repacking

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<sup>7</sup> The eight Displaced Digital Stations are: W33AY-D, Springfield, Illinois; K41KX-D, Joplin, Missouri; W16CX-D, Panama City, Florida; K16IP-D, Bonnerdale, Arkansas; K46KW-D, Tyler, Texas; K19IR-D, Enid, Oklahoma; W48DU-D, Albany, Georgia; and WGEI-LD, Enterprise, Alabama. We note that a number of Edge's other LPTV stations were recently granted tolling waivers in a separate decision. See Letter to Edge Spectrum, Inc. from Barbara A. Kreisman, Chief, Video Division (Apr. 22, 2022), a copy of which is available at LMS File No. 0000178173. Unlike the stations there, none of the Stations that are the subject of this decision have remained silent for more than one year and therefore do not require relief under the equity and fairness provisions of section 312(g) of the Communications Act, as amended. See 47 U.S.C. § 312(g). For those Stations that are the subject of this decision that are silent, we grant their requests for special temporary authority and permit them to remain silent to July 11, 2022 – the same date of their extended construction permits. We caution Edge that any station that remains silent beyond its one-year silent anniversary will find that its license has automatically expired per the provisions of section 312(g) of the Act. Section 312(g) of 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.” *Id.* 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 (2008) (“This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited”) (*A-O Broad. Corp.*). 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). 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.” *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)

<sup>8</sup> The file numbers of the Flash Cut CPs are listed in the Appendix.

<sup>9</sup> See 47 CFR § 74.788(a). See also *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771 (MB 2021).

<sup>10</sup> See LMS File Nos. 0000139250, 0000139254, 0000139322, 0000139307, 0000139814 and 0000152262.

process.<sup>11</sup> Each of the Displaced Digital Stations were granted digital construction permits for their displacement channels (Displacement CPs)<sup>12</sup> and they were assigned three-year construction periods with various expiration dates.<sup>13</sup>

In its Requests, Edge seeks a waiver of the tolling rule and tolling of both the Flash Cut CPs and Displacement CPs. In its showing, Edge outlines its efforts to complete construction of the Stations' digital facilities and of the delays that it has encountered preventing it from doing so. Edge maintains that grant of its Requests are in the public interest as they will permit the Stations to resume operations on their digital channels and, in the case of the Analog Stations, in digital for the first time.

Edge states that it has encountered two primary delays that have prevented completion of the Stations' digital facilities. First, failed tower negotiations forced Edge to change the Stations' tower sites.<sup>14</sup> In March 2020, Edge began negotiating an agreement for Crown Castle to serve as the primary tower vendor for the Stations. In March 2021, Edge was preparing to move all of its facilities to Crown Castle sites. However, in August 2021, the commercial negotiations failed and Edge had to transition to negotiated agreements for space on American Tower sites. Edge contends that the change in tower site has also required an extensive effort on the part of its consulting engineers to prepare for transmission from the American Tower sites. Once the engineering consultants complete their engineering, Edge states that it is taking approximately three to four weeks per site to obtain the necessary approvals of the engineering plans from American Tower. These facts are supported by a letter from American Tower.

Second, Edge has been awaiting delivery of the Stations' digital transmitters, which have been delayed due to supply chain issues. As documented in correspondence from its transmitter manufacturer, manufacturing and delivery of stations' transmitters were delayed due supply chain issues. As of February 28, 2022, the manufacturer reports that all transmitters have now been manufactured and have been shipped to Edge or are being held in storage. Edge has entered into arrangements with multiple vendors to expedite the installation process once the necessary equipment is received. Edge has also acquired 250 antennas and obtained bulk coaxial cable from its antenna vendor. Edge states that it expects to be able to complete construction of all the Stations' digital facilities by September 2022.

*Discussion.* Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration dates of the Station CPs to July 11, 2022.<sup>15</sup> The Stations were displaced by the Incentive Auction and repacking process. Edge's efforts to construct the displacement facilities were hindered by documented tower siting and equipment manufacturing and installation delays. Grant of Edge's requests will permit the Stations to once again serve their viewers, some for the first time in digital. Although Edge requests tolling until September 2022, we find that

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<sup>11</sup> 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).

<sup>12</sup> The file numbers of the Displacement CPs are listed in the Appendix.

<sup>13</sup> See 47 CFR § 74.788(a).

<sup>14</sup> Counsel for Edge has informed Media Bureau staff that it is in the process of preparing minor modification applications as engineering work on the new tower sites is completed and once Edge is ready to proceed with final construction.

<sup>15</sup> 47 CFR § 73.3598(b).

tolling through July 11, 2022, is appropriate based on the record and so that the Commission can continue to monitor the Stations' construction progress.

We remind Edge that, pursuant to the Reimbursement Expansion Act, K41KX-D is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs reasonably incurred as a result of the reorganization of broadcast television spectrum.<sup>16</sup> Please note, however, that additional expenses incurred, such as those resulting from changes in a Station's plans to construct its displacement facilities that are unrelated to the displacement, may not be eligible for reimbursement from the Fund.

We further remind Edge of the deadline for submitting final expense documentation for reimbursement for K41KX-D is September 6, 2022.<sup>17</sup> **We caution the Edge that we do not anticipate allowing extensions of the final September 6, 2022 invoice filing deadline. A station's failure to complete any remaining construction in a timely manner and to make final submissions by the assigned invoice filing assignment deadline could preclude that station from receiving full reimbursement.** Unobligated amounts in the Fund must be rescinded to Treasury and the Commission staff (with the support of the Fund Administrator) must have sufficient time to fully process all reimbursement requests and complete close-out procedures prior to July 3, 2023.<sup>18</sup> The Fund Administrator will initiate close out procedures for any entity that has failed to initiate interim close-out procedures by the September 6, 2022 invoice filing deadline. Any unused allocations made to that entity's account will be returned to the Fund and made available for allocation to other program participants or rescinded to Treasury. Thus, we strongly encourage Edge to diligently pursue satisfaction of the current deadlines and we encourage Edge to submit eligible invoices as soon as practicable.

Accordingly, the requests filed by Edge Spectrum, Inc. and listed in the Appendix, **ARE HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,<sup>19</sup> and the expiration date of the construction permits **ARE TOLLED** to July 11, 2022. Further, the requests for extension of silent authority listed in the Appendix, **ARE HEREBY GRANTED** and the Stations authority to remain silent **ARE EXTENDED** to July 11, 2022. We note that additional requests for tolling of the Stations' construction permits under section 73.3598(b) of the Commission's rules<sup>20</sup> will not be favorably viewed unless accompanied by a showing that completion of the station's digital facilities was prevented by

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<sup>16</sup> See *Consolidated Appropriations Act, 2018*, Pub. L. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)). See also 47 CFR § 73.3701 (Reimbursement Under the Reimbursement Expansion Act); *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 34 FCC Rcd 1690 (2019); and *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking and Order, 33 FCC Rcd 7855 (2018).

<sup>17</sup> See *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 three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 6, 2022).

<sup>18</sup> See *id.* at 11277-78, para 13.

<sup>19</sup> 47 CFR §§ 73.3598(b).

<sup>20</sup> *Id.* 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.

additional compelling circumstances. Edge must also include with any such request(s) a detailed plan for completing construction.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division

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

**APPENDIX**

<b>Call Sign</b>	<b>FAC Id</b>	<b>City</b>	<b>ST</b>	<b>Silent STA LMS File No.</b>	<b>Tolling Waiver LMS File No.</b>	<b>Construction Permit File No.</b>
K21JS	11133	HARRISON	AR	0000179184	0000179185	BDFCDTL-20091204AEC
K16IP-D	183664	BONNERDALE	AR	0000179920	0000179881	0000051750
K19IR-D	184019	ENID	OK	0000184278	0000177331	0000052042
K34HZ	129088	CODY	WY	0000179202	0000179195	BDFCDTL-20110609AAM
K41KX-D	131115	JOPLIN	MO	0000184412	0000159401	0000058756
K46KW-D	183924	TYLER	TX	0000180575	0000177335	0000051815
W05CO	66995	SARASOTA	FL	0000179181	0000179182	0000071756
W16CX-D	182839	PANAMA CITY	FL	n/a <sup>21</sup>	0000159273	0000164428
W26BB	67006	VICKSBURG	MS	0000179188	0000179187	BDFCDTL-20090818ABI
W30BU	66981	GREEN BAY	WI	0000179209	0000179208	0000072177
W33AY-D	49183	SPRINGFIELD	IL	0000184413	0000177336	0000051745
W48DU-D	184035	ALBANY	GA	0000180572	0000177328	0000052013
WGEI-LD	187828	ENTERPRISE	AL	0000177327	0000177330	0000054046
WTKJ-LP	128834	WATERTOWN	NY	0000179345	0000179198	BDFCDTL-20090616ACF

<sup>21</sup> The station's license to cover is pending, as such, a silent STA extension was not filed. See LMS File No. 0000180097.