



Federal Communications Commission
Washington, D.C. 20554

May 23, 2022

Edge Spectrum, Inc.
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P.O. Box 54025
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randy@crosstalk.org
(sent 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., FideliTV, LLC and EICB-TV East, LLC (collectively ARK or Licensees) licensee of the low power television (LPTV) stations listed in the attached Appendices.¹ For reasons set forth below, we grant ARK's Requests, waive all applicable rules, and toll the Stations' digital construction permits to September 6, 2022.

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.² 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.³ 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

¹ The licensee's parent company is ARK Multicasting, Inc. A list of the applications 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 Appendices to this letter.

² See 47 CFR § 73.3598(b).

³ *Id.*

demonstrate that “rare and exceptional circumstances” prevented construction by the station’s construction permit expiration date.⁴

Requests. The Stations are unbuilt new LPTV stations. The construction permits (Station CPs) were originally granted 2011 to 2012 and had expiration dates of July 13, 2021.⁵ ARK’s extension applications were granted on and the Station CPs were extended to January 10, 2022.⁶

In its Requests, ARK seeks a waiver of the tolling rule and tolling of the Station CPs. In its showing, ARK outlines its efforts to complete construction of the Stations’ facilities and of the delays that it has encountered preventing it from doing so. ARK maintains that grant of its Requests is in the public interest as it will permit the Stations to begin operations and begin providing service to their viewers.

Since the grant of the extensions in July 2021, ARK states that it has encountered two primary delays that have prevented completion of the Stations displacement facilities. First, failed tower negotiations forced ARK to change the Stations’ tower sites.⁷ In March 2020, ARK began negotiating an agreement for Crown Castle to serve as the primary tower vendor for the Stations. In March 2021, ARK was preparing to move all of its facilities to Crown Castle sites. However, in August 2021, the commercial negotiations failed and ARK had to transition to negotiated agreements for space on American Tower sites. ARK 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, ARK 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.

ARK states that it 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

⁴ 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).

⁵ See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14932-33, para. 9 (2015). In that decision, the Commission extended the expiration date of valid construction permits for new digital low power television stations to the LPTV digital transition date which is set as 12 months following the completion of the 39-month post-Incentive Auction transition period or 51 months from the completion of the Incentive Auction and the release of the *Closing and Channel Reassignment Public Notice*. *Id.* See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (IATF and MB 2018) (*Closing and Channel Reassignment Public Notice*). Given the April 13, 2017 release date of the *Closing and Channel Reassignment Public Notice*, the LPTV digital transition date and expiration date of all valid construction permits for new digital LPTV stations were set as July 13, 2021.

⁶ The file numbers of the extension applications are listed in the Appendices.

⁷ Counsel for ARK 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 ARK is ready to proceed with final construction.

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 ARK or are being held in storage. ARK has entered into arrangements with multiple vendors to expedite the installation process once the necessary equipment is received. ARK has also acquired 250 antennas and obtained bulk coaxial cable from Dielectric. ARK states that it expects to be able to complete construction of all the Stations' digital facilities by September 2022.

ARK has also committed in the Requests that this will be its final tolling request for the Stations stating that:

“[T]he Licensee hereby commits that this will be its final request for additional time to complete construction for the Station. The Licensee will not seek tolling or other extensions of the Station's construction permit beyond September 6, 2022. In the unlikely event that construction of the Station is not completed by September 6, 2022, the Licensee agrees to relinquish its construction permit for the Station and understands that any further request for tolling or an extension as to the Station will be dismissed no matter the circumstances. Furthermore, to the extent that during the extended construction period it becomes clear prior to September 6, 2022 that construction will not be complete by the deadline, the Licensee will promptly relinquish the Station's construction permit.”

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules⁸ and toll the expiration dates of the Station CPs to September 6, 2022, subject to the condition below. ARK's efforts to construct these new station facilities were hindered by documented equipment manufacturing and shipping delays. Grant of ARK's requests will permit the Stations to begin serving their viewers.

Accordingly, the requests filed by Edge Spectrum, Inc., FidelityTV, LLC, and EICB-TV East, LLC and listed in the Appendices, **ARE HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,⁹ and the expiration date of the construction permits **ARE TOLLED** to September 6, 2022. Grant of the requests is subject to the following condition:

The Licensees agree that no further requests for tolling of the construction permits listed in the attached Appendices shall be requested. The Licensees understand that any further requests for tolling that are filed shall be promptly dismissed. To the extent that it becomes clear that construction of any Station will not be completed by September 6, 2022, the Licensees agree to promptly relinquish the Station's construction permit. Furthermore, in the event a construction permit is not relinquished, construction is not completed by September 6, 2022, and the Station's construction permit is automatically forfeited (*see* 47 CFR § 74.788(b)), the Licensees agree not to seek reinstatement of the expired construction permit. The Licensees agree that an application for license to cover (FCC Form 2100, Schedule D) will be filed within 10 days following completion of construction. Therefore, any Station that does not

⁸ 47 CFR § 73.3598(b).

⁹ *Id.*

ultimately have an application for license to cover of file by September 16, 2022, shall have its construction permit cancelled and call sign deleted in LMS.

We also require that on July 15, 2022, ARK provide Media Bureau staff with a written status update relating to the construction of the Stations. The status update should indicate which stations have been completed, the target completion date for any remaining unbuilt stations, work that remains for any unbuilt stations, and an explanation as to any delays encountered if ARK does not anticipate a station will be complete by September 6, 2022. The status update should be sent via electronic e-mail to Evan Morris at evan.morris@fcc.gov and Shaun Maher at shaun.maher@fcc.gov.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division

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

APPENDIX A
Edge Spectrum, Inc. Requests

Call Sign	Fac ID	City	ST	Tolling Waiver LMS File No.	Construction Permit File No.	Extension Application LMS File No.
K05MX-D	130528	NEPHI	UT	0000178674	0000170460	0000139329
K09AAA-D	182227	CARSON CITY	NV	0000178698	0000072946	0000139256
K09AAC-D	184060	FARGO	ND	0000178716	0000072736	0000139259
K10RQ-D	184061	FARGO	ND	0000178718	0000073133	0000139261
K13AAU-D	185440	CARSON CITY	NV	0000178699	0000074672	0000139266
K13AAV-D	183976	RENO	NV	0000178708	0000074673	0000139319
K14NX-D	184050	PITTSBURG	KS	0000178882	BNPDTL- 20100106AGD	0000139337
K14OK-D	185813	EL DORADO	AR	0000178687	BNPDTL- 20100428ACK	0000139235
K14PQ-D	188054	SAINT JOSEPH	MO	0000178822	BNPDTL- 20100902ABK	0000139347
K14SX-D	184558	LAWTON	OK	0000178738	0000072052	0000139275
K15IJ-D	184051	PITTSBURG	KS	0000178884	BNPDTL- 20100106AGE	0000139338
K15IS-D	186252	WILLMAR	MN	0000178693	0000068778	0000139357
K16IS-D	184052	PITTSBURG	KS	0000178886	BNPDTL- 20100106AGF	0000139339
K16NO-D	184306	BEATRICE / FAIRBURY	NE	0000178908	0000071827	0000139210
K17LH-D	130654	HURRICANE	UT	0000178804	BMPDTL- 20141106ACD	0000139216
K18NM-D	184096	TEXARKANA	AR	0000178721	0000071802	0000139316
K19MS-D	184186	ALEXANDRA	MN	0000178900	0000072314	0000139148
K19MT-D	184556	SPRINGDALE	AR	0000178736	0000071784	0000139299
K21ME-D	186470	TWIN FALLS	ID	0000178705	0000163620	0000139358
K22KA-D	185558	ROLLA	MO	0000178677	0000071816	0000139354
K22KD-D	184088	SIOUX FALLS	SD	0000178897	BNPDTL- 20100111AFI	0000139340
K22LJ-D	187857	MASON CITY	IA	0000178809	BNPDTL- 20100723AQR	0000139367
K22OD-D	184625	PONCA CITY	OK	0000178921	0000071812	0000139348
K23LE-D	185332	SEDALIA	MO	0000178935	BNPDTL- 20100319AEZ	0000139353
K24LJ-D	186716	ALEXANDRIA	LA	0000178747	BNPDTL- 20100511ABM	0000139156
K24NW-D	184142	COLLEGE STATION	TX	0000178725	0000072100	0000139195
K26PE-D	184624	PONCA CITY	OK	0000178918	0000071808	0000139346
K28QJ-D	187827	DULUTH	MN	0000178792	0000071788	0000139272

Call Sign	Fac ID	City	ST	Tolling Waiver LMS File No.	Construction Permit File No.	Extension Application LMS File No.
K29JU-D	184072	GARDEN CITY	KS	0000178891	BNPDTL-20100108ADI	0000139234
K29NY-D	184223	ALEXANDRA	MN	0000178727	0000073085	0000139324
K30LK-D	185666	SALINA	KS	0000178681	BNPDTL-20100419ACL	0000139355
K30NE-D	188072	CAPE GIRARDEAU	MO	0000178871	0000071795	0000139204
K31LN-D	185269	ROCHESTER	MN	0000178932	BNPDTL-20100309AAW	0000139351
K31PP-D	184513	SIOUX CITY	IA	0000177334	0000073028	0000139312
K32KG-D	184557	LAWTON	OK	0000178916	0000071525	0000139198
K33QJ-D	184099	TEXARKANA	AR	0000178723	0000072734	0000139314
K34LO-D	184224	BISMARCK	ND	0000178902	BNPDTL-20100127ABT	0000139323
K34ML-D	186712	MC ALESTER	OK	0000178737	BNPDTL-20100511ABJ	0000139360
K34QO-D	184602	SPRINGDALE	AR	0000178740	0000072731	0000139301
K35PA-D	187859	MASON CITY	IA	0000178818	0000071817	0000139297
K36LD-D	184141	COLLEGE STATION	TX	0000178898	0000163190	0000139201
K36MO-D	186718	LINCOLN	NE	0000178751	BNPDTL-20100511ABR	0000139361
K39LD-D	184097	TEXARKANA	AR	0000178722	0000071810	0000139315
W12DP-D	187247	ELMIRA	NY	0000178789	0000074532	0000139237
W17DV-D	186834	STARKVILLE	MS	0000178870	0000071826	0000139362
W18EY-D	184285	CANTON	OH	0000178729	0000072053	0000139265
W19DP-D	185729	LA CROSS	WI	0000178673	BNPDTL-20100422ABU	0000139208
W19EU-D	183857	WILMINGTON	NC	0000178825	0000072250	0000139334
W20DL-D	184481	MACON	GA	0000178914	BNPDTL-20100205ACG	0000139344
W20EO-D	184458	SALISBURY	MD	0000178730	0000072872	0000139313
W21EC-D	186842	TUPELO	MS	0000178786	0000072181	0000139311
W22EC-D	184263	LA GRANGE	GA	0000178906	BMPDTL-20110721ABG	0000139238
W22EP-D	186835	STARKVILLE	MS	0000178770	BNPDTL-20100512AIH	0000139363
W22FD-D	183778	DODGE CENTER	MN	0000178703	0000071791	0000139221
W22FE-D	184069	AUGUSTA	ME	0000178719	0000071813	0000139262
W23ED-D	184457	SALISBURY	MD	0000178910	0000068887	0000139342
W23FD-D	186836	STARKVILLE	MS	0000178778	0000071801	0000139364
W25EM-D	181997	COLUMBUS	GA	0000178816	BNPDTL-20090825AXS	0000139202

Call Sign	Fac ID	City	ST	Tolling Waiver LMS File No.	Construction Permit File No.	Extension Application LMS File No.
W26FF-D	186839	TUPELO	MS	0000178784	0000071787	0000139365

Call Sign	Fac ID	City	ST	Tolling Waiver LMS File No.	Construction Permit File No.	Extension Application LMS File No.
W26FG-D	186476	EAU CLAIRE	WI	0000178711	0000072223	0000139227
W27DK-D	182885	COLUMBUS	GA	0000178820	BNPDTL-20090825BYF	0000139199
W28EB-D	184761	EFFINGHAM	IL	0000178925	BMPDTL-20111006ACQ	0000139229
W29DZ-D	184054	AUGUSTA	ME	0000178890	BNPDTL-20100107AEF	0000139232
W29FJ-D	185667	DOTHAN	AL	0000178702	0000071839	0000139223
W30EL-D	185076	MONTGOMERY	AL	0000178742	0000071793	0000139303
W32FJ-D	185194	MONTGOMERY	AL	0000178744	0000073393	0000139304
W33DJ-D	184036	DESTIN	FL	0000178880	0000168364	0000139226
W35DA-D	185270	MACON	GA	0000178933	BNPDTL-20100309ACC	0000139352
W35DF-D	184459	SALISBURY	MD	0000178912	BNPDTL-20100204AAW	0000139343
W36EI-D	186472	WAUSAU	WI	0000178707	BNPDTL-20100507ACQ	0000139359
W36EK-D	184018	ERIE	PA	0000178877	BNPDTL-20091231ABU	0000139369
W36FI-D	184059	VALDOSTA	GA	0000178715	0000071818	0000139317
W44DD-D	184058	VALDOSTA	GA	0000178710	0000071821	0000139318
W45DZ-D	187245	ELMIRA	NY	0000178868	0000074531	0000139371
W50ES-D	186865	ELMIRA	NY	0000178867	0000071860	0000139271
WEDK-LD	184762	EFFINGHAM	IL	0000178928	0000071856	0000139233

APPENDIX B
FideliTV, LLC Requests

Call Sign	Fac ID	City	ST	Tolling Waiver LMS File No.	Construction Permit File No.	Extension Application LMS File No.
K18NP-D	188580	FARGO	ND	0000179002	0000072030	0000151385
K20KW-D	184638	SAINT CLOUD	MN	0000178917	0000178371	00000139617
K23OZ-D	187831	MONROE	LA	0000178924	0000178374	0000151400
K33MS-D	187830	MONROE	LA	0000178923	0000178373	0000151398
KQKT-LD	182587	TYLER	TX	0000178894	0000072035	0000139642
W07DU-D	187939	PENSACOLA	FL	0000178987	0000149782	0000149773
W12DQ-D	187938	OCALA	FL	0000178985	0000149794	0000149834
W18EV-D	184553	NEW BERN	NC	0000178913	0000178487	0000151388
W19EE-D	188750	JACKSONVILLE	IL	0000179009	0000178429	0000139743
W19EF-D	188784	GREENVILLE	MS	0000179039	0000178381	0000151390
W20EM-D	184532	NEW BERN	NC	0000178911	0000178470	0000151387
W21ED-D	188747	MOUNT VERNON	IL	0000179008	0000071888	0000139645
W22FC-D	187911	GREENVILLE	NC	0000178984	0000178375	0000149835
W25ED-D	181481	ALBANY	GA	0000178893	0000012039	0000139690
W25EN-D	187782	TALLAHASSEE	FL	0000179569	0000147139	0000150328
W25ER-D	187849	VERO BEACH	FL	0000178926	BNPDTL- 20100723AHA	0000149836
W26FI-D	187850	OKEECHOBEE	FL	0000178929	0000071804	0000149837
WEEL-LD	188702	TUSCALOOSA	AL	0000179004	0000178484	0000139683
WUDC-LD	183645	MONTGOMERY	AL	0000178899	BNPDTL- 20091026ABC	0000139686

APPENDIX C

EICB-TV East, LLC Requests

Call Sign	Fac ID	City	ST	Tolling Waiver LMS File No.	Construction Permit File No.	Extension Application LMS File No.
K14QM-D	181617	DULUTH	MN	0000178874	0000068777	0000139185
K28NP-D	181775	RENO	NV	000178876	0000071521	0000139196
K49EP-D	182884	EVANSVILLE	IN	0000178881	0000071777	00000139186
W07DW-D	181533	TALLAHASSEE	FL	0000178887	0000072471	0000139189
W30ES-D	186467	COLUMBUS	MS	0000178885	BNPDTL- 20100507ACM	0000139817