



Federal Communications Commission
Washington, D.C. 20554

May 19, 2022

Edge Spectrum, Inc.
Randy Weiss
P.O. Box 54025
Hurst, TX 76054
randy@crosstalk.org
(via electronic mail)

Re: Request for Reinstatement and
Extension of License and Silent
Authority Under Section 312(g) and
Waiver of Tolling Rules
W24CP-D, Durham, NC
Fac ID No. 70098
LMS File Nos. 0000159257 and
0000190492

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 low power television (LPTV) station W24CP-D, Durham, North Carolina (W24CP-D or Station). For 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 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 process and whether, in light of the facts presented, equity and fairness dictate a license extension or

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).

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 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.”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 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

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.*

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. W24CP-D's digital channel 24 was displaced by full power television stations that were assigned new channels as a result of the Incentive Auction and repacking process. W24CP-D has been silent as a result since November 1, 2020.⁹ Edge timely filed a displacement application for the Station for channel 36 and that application was granted and assigned an expiration date of September 28, 2021 (Displacement CP).¹⁰ In its showing, Edge outlines its efforts to complete construction of the Displacement CPs and of the delays that it has encountered preventing the Station from resuming operation on its digital displacement channel. Edge maintains that grant of its Request is in the public interest as it will permit the Station to resume operations.

Edge states that it has encountered two primary delays that have prevented completion of the Station's displacement facilities. First, failed tower negotiations forced Edge to change the Station's tower site.¹¹ In March 2020, Edge began negotiating an agreement for Crown Castle to serve as the primary tower vendor for the Station. In March 2021, Edge was preparing to move the Station's facilities to a Crown Castle site. However, in August 2021, the commercial negotiations failed and Edge had to transition to a negotiated agreement for space on an American Tower site. 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 site. Once the engineering consultants complete their engineering, Edge states that it is taking approximately three to four weeks 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 Station's digital transmitter, which has been delayed due to supply chain issues. As documented in correspondence from its transmitter manufacturer, manufacturing and delivery of the Station's transmitters was delayed due supply chain issues. As of February 28, 2022, the manufacturer reports that the transmitter has now been manufactured and has been shipped to Edge or is being held in storage. Edge has entered into an arrangement with multiple vendors to expedite the installation process once the necessary equipment is received. Edge has also acquired the Station's antenna and coaxial cable from Dielectric. Edge states that it expects to be able to complete construction of the Station's displacement facilities by September 2022.

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) as described in the *Incentive Auction R&O*, the *Post-Incentive Auction Procedures PN*, and the *Special Displacement Window PN* and is, 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 displacement facilities were hindered by documented tower siting and equipment manufacturing and installation 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 Station to once again serve their viewers, some for the first time in digital.

⁹ See LMS File No. 0000190492.

¹⁰ See LMS File No. 0000052041.

¹¹ Counsel for Edge has informed Media Bureau staff that it is in the process of preparing a minor modification application as engineering work on the new tower site is completed and once Edge is ready to proceed with final construction.

We remind Edge that, pursuant to the Reimbursement Expansion Act, the Station has been found eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs reasonably incurred as a result of the reorganization of broadcast television spectrum.¹² 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 the Station is September 6, 2022.¹³ **We caution 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, 2023.¹⁴ 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, we find that in order to promote fairness and equity, the requests filed by Edge Spectrum, Inc., **ARE HEREBY GRANTED**, the applicable Commission rules **ARE WAIVED**,¹⁵ and the license of low power television station W24CP-D, Durham, NC **IS REINSTATED AND EXTENDED** to September 6, 2022. In addition, the requests for waiver of the tolling rules **IS GRANTED** and the expiration date of the construction permit **IS TOLLED** to September 6, 2022.

We also require that on July 15, 2022, Edge provide Media Bureau staff with a written status update relating to the construction of the Station. The status update should indicate which stations have been completed, the target completion date the Station is still unbuilt, work that remains if the Station is unbuilt, and an explanation as to any delays encountered if Edge does not anticipate the Station will be

¹² 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).

¹³ 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).

¹⁴ See *id.* at 11277-78, para 13.

¹⁵ 47 CFR §§ 74.15(f) and 74.763(c).

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.

Finally, we note that additional requests for extension of any of the Station's license under section 312(g)¹⁶ or tolling of the Station's construction permit under section 73.3598(b) of the Commission's rules¹⁷ 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. 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.

¹⁶ 47 U.S.C. § 312(g).

¹⁷ 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.