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February 16, 2022

VIA FEDERAL EXPRESS & EMAIL (Robin.Fagan@fcc.gov)

Commission Secretary

Office of the Secretary

Federal Communications Commission

9050 Junction Drive

Annapolis Junction, MD 20701

Attn: Robin Fagan, Attorney-Advisor, Video Division, Media Bureau

**Re: Facility ID No. 26041
NAL/Acct. No. 202341420002
LMS File Nos. 0000176044, 0000110806,
0000196169, and 0000195312
FRN: 0005056585**

Dear Ms. Fagan:

On behalf of G.I.G., Inc. ("G.I.G."), the licensee of KCPO-LP, Sioux Falls, South Dakota, I am writing with respect to the attached Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture. The licensee is requesting a cancellation on financial reasons of that forfeiture. However, the necessary documentation is unavailable. In this regard, the past three (3) years of federal tax returns are not available, nor are the financial statements prepared pursuant to general accepted accounting principles (GAAP). The reason for this is that G.I.G.'s financial condition did not allow the retention of an accounting firm to assist in preparation of

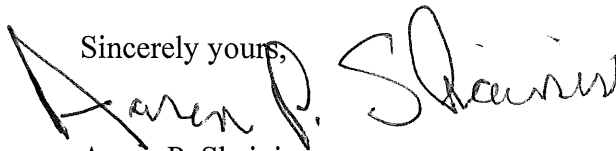
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those documents. G.I.G. has made arrangements to have the requisite documents prepared.

Counsel has been advised that the documents are now being worked upon, and, accordingly, it is requested that the current due date of February 21, 2023 be extended by two (2) weeks to March 7, 2023. If there are any questions with respect to this matter, please communicate with the undersigned.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Aaron P. Shainis". The signature is written in a cursive, flowing style with a large initial "A".

Aaron P. Shainis
Counsel for
G.I.G., Inc.

Enclosure

| | | |
|--|---|---------------------------------------|
| In the Matter of |) | |
| |) | |
| G.I.G., Inc. |) | Facility ID No. 26041 |
| |) | NAL/Acct. No. 202341420002 |
| For License to Cover, Renewal Application, and |) | LMS File Nos. 0000176044, 0000110806, |
| Special Temporary Authority |) | 0000196169, and 0000195312 |
| Low Power Television Station |) | FRN: 0005056585 |
| KCPO-LP, Sioux Falls, SD |) | |
| |) | |

Released: January 19, 2023

I. INTRODUCTION

⁴ See LMS File No. 0000176044.

II. BACKGROUND

2. KCPO-LP was a former analog low power television (LPTV) station. The Station, like all other analog stations, was required to cease analog operations by 11:59 p.m. on July 13, 2021.⁵ On March 31, 2020, the Station filed a construction permit to flash-cut its analog operations to digital operations on its licensed analog channel 26 (Digital CP).⁶ That application was granted on April 20, 2020. Pursuant to Commission rules, the Station was assigned a construction permit expiration date of July 13, 2021.⁷ On April 28, 2021, the Station was granted an extension of its construction permit to January 10, 2022 (CP Extension).⁸ In the CP Extension, G.I.G. represented that construction of the Station had not been completed and laid out a timeline for completing construction. No subsequent request for tolling was filed.

3. As discussed in further detail below, the Licensee has stated that it commenced digital operations pursuant to the Digital CP on April 21, 2020. On July 29, 2022, G.I.G. filed a request for silent authority notifying the commission that the Station went silent on July 27, 2022 due to the loss its "site."⁹ In addition, the Licensee filed a request for special temporary authority to commence operations from a new location while it finalizes a construction permit to move to the proposed site on a permanent basis.¹⁰ Both the Silent STA and Engineering STA applications remain pending.

4. Section 74.788(b) of the Commission's rules stated that: "Any construction permit for which construction has not been completed and for which an application for license or extension of time has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission."¹¹ Although G.I.G. has maintained that it completed construction and began operating its digital facility on April 21, 2020,¹² it failed to file a timely application for license to cover after completing construction. As such, the Digital CP automatically expired on its own terms on January 11, 2021.

5. On December 1, 2021, G.I.G. filed an application for license renewal (Renewal Application). In that application G.I.G. certified that the Station was operational. As part of Video

⁵ See 47 CFR § 74.788(a) (2022); *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 LPTV digital transition date and all valid digital construction permit expiration dates for analog stations until 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 analog stations' digital construction permits were set as July 13, 2021. 47 CFR § 74.731. See e.g., *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).

⁶ LMS File No. 0000110806.

⁷ See 47 CFR § 74.788(a) (2022). See *supra* n. 2.

⁸ LMS File No. 0000139698.

⁹ LMS File No. 0000196169 (Silent STA).

¹⁰ LMS File No. 0000195312 (Engineering STA).

¹¹ 47 CFR § 74.788(b) (2022). See *supra* n. 2.

¹² See Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff, at 1 (July 5, 2022) (on file under LMS main facility page for Facility ID No. 26041) (July 5, 2022 Response).

Division staff review of the Renewal Application it was discovered that G.I.G. had failed to file an application for license to cover (License Application) its Digital CP. As a result, on May 20, 2022, the Division sent G.I.G. a letter inquiring as to the Station's operational history.¹³ On July 5 and 11, 2022 the Licensee filed two separate responses to the Division's inquiry letter asserting that G.I.G. in fact completed construction of its digital facility in April 2020 (July Responses).¹⁴ In addition, on July 11, 2022, the Licensee filed a License Application and requested waiver of all applicable rules and grant of the application.¹⁵ Following a series of phone calls in August 2022 between Division staff and legal counsel for G.I.G., on September 14 and September 22, 2022 G.I.G. submitted another series of responses to the Bureau attempting to demonstrate that the Station was constructed and had been operating since April 2020.¹⁶ Included with its July and September Responses were declarations from viewers, program logs, certain financial information related to the operation of the station, a declaration from the Station's tower owner, and photographs of the facility.¹⁷

6. Upon review of G.I.G.'s July and September Responses, Division staff determined that the information G.I.G. submitted was still incomplete. Therefore, on September 26, 2022, the Division sent an inquiry letter to G.I.G. providing it one final time to provide documentation and information necessary to determine that the Station had been constructed and that grant of the Station's late-filed license to cover is warranted.¹⁸ In its response filed on November 4, 2022, G.I.G. provided the additional documents requested by the Division. It also reiterated that its failure to file a timely license to cover was inadvertent and that its request for additional time to construct filed in March 2021 was at the advice of its consulting engineer and it appears to have been in error.¹⁹

¹³ Letter, from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to G.I.G., Inc. (May. 20, 2022) (on file under LMS main facility page for Facility ID No. 26041) (Inquiry Letter). We note that because the construction permit had not yet been canceled in LMS, the Station was able to file a license to cover application against its expired construction permit. Cancellation of a station's construction permit and deletion of its call sign by Media Bureau (Bureau) staff in the Licensing and Management System (LMS) is an administrative function and does not constitute an official Commission action nor require any affirmative cancellation by the Commission. See 47 CFR §74.788(b) (2022) and *supra* note 2); *Media Bureau Reminds Remaining Low Power Television and Television Translator Stations that the July 13, 2021 Digital Transition Date and Other Important Deadlines are One Week Away*, Public Notice, 36 FCC Rcd 10364 (MB 2021). As a result, failure by Bureau staff to cancel a construction permit in LMS does not result in an expired construction permit remaining valid.

¹⁴ See July 5, 2022 Response at 1, *supra* n. 10; and Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff, at 1 (July 11, 2022) (on file under LMS main facility page for Facility ID No. 26041) (July 11, 2022 Response).

¹⁵ File No. 0000194735.

¹⁶ Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (September 14, 2022) (on file under LMS main facility page for Facility ID No. 26041) (Sept. 14, 2022 Response); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (September 22, 2022) (on file under LMS main facility page for Facility ID No. 26041) (Sept. 22, 2022 Supplement).

¹⁷ *Id.*

¹⁸ Letter, from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to G.I.G., Inc. at 3 (September 26, 2022) (on file under LMS main facility page for Facility ID No. 26041) (Follow-Up Letter).

¹⁹ Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff, at 2 (November 4, 2022) (on file under LMS main facility page for Facility ID No. 26041). G.I.G. states that because the Station's consulting engineer is now deceased, G.I.G. is unable to ascertain specific information related to the filing and its substance. (Sept. 14, 2022 Response at 1).

7. G.I.G. maintains that grant of its License Application is “clearly in the public interest for stations to continue operation.”²⁰ G.I.G. also argues that “that the appropriate penalty in this case should not be the draconian cancellation of the permit, but, rather, the imposition of a forfeiture.”²¹

III. DISCUSSION

8. Pursuant to section 503(b)(1)(B) of the Act,²² a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²³ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.²⁴ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,²⁵ and the Commission has so interpreted the term in the section 503(b) context.²⁶ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”²⁷

9. *Apparent Violation.* The facts recited above appear to demonstrate that G.I.G. willfully violated section 74.788(a) of the Rules by failing to file a timely license to cover application upon completion of construction of the Station in April 2020.²⁸ G.I.G. stated that its failure to timely file for a license to cover was inadvertent and its actions (or lack thereof) were taken at the advice of its engineering consultant. However, it is well settled precedent that licensees are responsible for compliance with the Commission’s rules and that inadvertence does not excuse a violation or non-compliance.²⁹ Furthermore, applicants and licensees are responsible for the errors of their staff.³⁰ Even though the Station is currently silent, as a result of its failure to file a timely license to cover, G.I.G. also engaged in unauthorized operation for over two years (April 21, 2020 through July 27, 2022) in violation

²⁰ Sept. 14, 2022 Response at 3.

²¹ Nov. 4, 2022 Response at 26, Sept. 14, 2022 Response at 4 (both citing *Methow Valley Communications District*, DA 22-627 (June 10, 2022)).

²² 47 U.S.C. § 503(b)(1)(B).

²³ *Id.* See also 47 CFR § 1.80(a)(1).

²⁴ 47 U.S.C. § 312(f)(1).

²⁵ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁶ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

²⁷ 47 U.S.C. § 312(f)(2).

²⁸ See 47 CFR § 74.788(a) (2022). See *supra* n. 2 and para. 3.

²⁹ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”) (internal cite omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB 2020) (“It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.”) (internal cites omitted).

³⁰ See, e.g., *Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee's engineer was to blame for station's unauthorized operations).

of section 73.1745 of the Rules³¹ and 301 of the Act.³² We therefore find that G.I.G. has apparently violated the Rules and Act and is apparently liable for forfeiture.

10. *Proposed Forfeiture Amount.* The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.³³ The guidelines also specify a base forfeiture amount of \$10,000 for construction and operation without an instrument of authorization for the service.³⁴ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”³⁵

11. In this case, G.I.G. failed to timely-file for a license to cover and engaged in unauthorized operation of the Station for over two years. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to \$6,500 because, as a low power station, KPCO-LP is providing a secondary service.³⁶ While in other cases we have fined other low power television and TV translator licensees \$3,500 for similar violations,³⁷ we believe an increased amount is warranted here given the lengthy period of time (over two years) the Station engaged in unauthorized operation compared to those other cases (four to six months). Stations are only permitted to commence operation pursuant to a valid instrument of authorization and we find that G.I.G.’s failure represents extreme disregard of Commission’s licensing processes and the Act itself.

12. *Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.³⁸ That Section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal

³¹ 47 CFR § 73.1745 (prohibiting unauthorized operation).

³² 47 U.S.C. § 301 (requiring an authorization to transmit a broadcast signal).

³³ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), note to paragraph (b)(10), Section I. See also *Clear Channel*, 26 FCC Rcd at 7157 (“We note that the staff may also issue Notices of Apparent Liability for ‘failure to file a required form’ as authorized by Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the ‘Act’) and Section 1.80 of the Rules, for such violations of covering license application filing deadlines or take other enforcement action.”).

³⁴ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

³⁵ 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(10).

³⁶ See e.g., *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-1616 (rel. Dec. 21, 2021) (proposing \$3,500 forfeiture for late filed application for license to cover and four months unauthorized operations) (paid Jan. 20, 2022); *KAZT, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 21-1386 (rel. Nov. 5, 2021) (proposing \$3,500 forfeiture for late filed application for license to cover and six months unauthorized operations) (paid Nov. 30, 2021); *The Estate of Ettie Clark*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 22-327 (rel. Mar. 28, 2022) (finding that although the station is secondary, a forfeiture in the amount of \$6,500 was warranted given the lengthy period of time (over three years) the station engaged in unauthorized operation) (paid Apr. 19, 2022).

³⁷ See *id.*

³⁸ 47 U.S.C. § 309(k).

application.³⁹ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under Section 309(e) of the Act—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁴⁰

13. In this case, we find G.I.G.’s unauthorized operation of the Station, coupled with its lack of diligence and knowledge with regards to the Commission’s rules does not warrant routine license renewal. Not only did G.I.G. fail to file the required license application, but this error was compounded by the filing of its construction permit extension that proved to be unnecessary and contain inaccurate information. The Licensee also engaged in a pattern of failing to fully reply to the Division’s inquiries, resulting in an extensive delay in resolving the Division’s investigation and ultimately depriving the public of the service being provided by the Station.

14. Despite this, we find that designation for evidentiary hearing is not warranted here. Instead, in addition to the proposed forfeiture, we put in place additional measures to ensure that the Station complies with the Act and the Rules in the future. Specifically, pursuant to Section 309(k)(2) of the Act, upon resolution of the forfeiture proceeding commenced herein and so long as there are no other issues that would preclude grant, we will renew the Station’s license for a term of two years. This short-term renewal will afford the Commission an opportunity to review the Station’s compliance with the Act and the Rules and to take whatever corrective actions, if any, that may be warranted at that time.

15. *Other Pending Matters.* In light of the facts and circumstances discussed above, and our findings that forfeiture and a short term renewal are sufficient sanction for G.I.G.’s apparent violations, we will grant G.I.G.’s request for waiver of section 74.788 of the Rules and reinstate the construction permit.⁴¹ We will act on KCPO-LP’s Silent STA, Engineering STA, and License Application under separate action upon conclusion of this forfeiture proceeding.

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission’s rules,⁴² G.I.G. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand, five hundred dollars (\$6,500) for its apparent willful violation of section 74.788 of the Commission’s rules and apparent willful and repeated violations of section 73.1745 of the Commission’s rules and section 301 of the Communications Act of 1934, as amended.⁴³

17. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission’s rules,⁴⁴ that, within thirty (30) days of the release date of this *NAL*, G.I.G. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

18. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission’s online payment system),⁴⁵ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Notification that

³⁹ 47 U.S.C. § 309(k)(1).

⁴⁰ 47 U.S.C. § 309(k)(2), (k)(3).

⁴¹ 47 CFR § 74.788(a) (2022); *see supra* n. 2.

⁴² 47 U.S.C. § 503(b); 47 CFR § 1.80.

⁴³ 47 CFR § 74.788 (2022); 47 CFR § 73.1745; and 47 U.S.C. § 301. *See supra* note 2.

⁴⁴ 47 CFR § 1.80.

⁴⁵ Payments made using CORES do not require the submission of an FCC Form 159.

payment has been made must be sent on the day of payment to Robin.Fagan@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:⁴⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).⁴⁷ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

19. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554.⁴⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

20. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules.⁴⁹ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554,

⁴⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

⁴⁷ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

⁴⁸ See 47 CFR § 1.1914.

⁴⁹ 47 CFR §§ 1.16 and 1.80(g)(3).

ATTN: Robin Fagan, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.⁵⁰ A courtesy copy should also be emailed to Robin.Fagan@fcc.gov to assist in processing the response.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

21. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section § 503(b)(2)(E) of the Communications Act of 1934, as amended, support that result.⁵¹

22. **IT IS FURTHER ORDERED** that copies of this NAL shall be sent by First Class and Certified Mail, Return Receipt Requested, to Charles Poppen, G.I.G., Inc., P.O. Box 88336, Sioux Falls, South Dakota, 57109, as well as e-mailed to cpoppen@kcpo.tv, and to their counsel: Aaron Shainis, Esq., Shainis & Peltzman, Chartered, 850 M Street, N.W., Suite 240, Washington, DC 20036, as well as e-mailed to aaron@s-plaw.com.

FEDERAL COMMUNICATIONS COMMISSION

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁵⁰ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

⁵¹ See 47 U.S.C. 503(b)(2)(E); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).