

# Shainis & Peltzman, Chartered

Aaron P. Shainis  
aaron@s-plaw.com

Lee J. Peltzman (retired)  
lee@s-plaw.com

Counselors at Law  
Suite 240  
1850 M Street, NW  
Washington, D.C. 20036  
Tel (202) 293-0011  
Fax (202) 293-0810  
e-mail: shainispeltzman@s-plaw.com

Stephen T. Lovelady  
steve@s-plaw.com

Susan A. Marshall  
susan@s-plaw.com

September 14, 2022

**VIA EMAIL** (Robin.Fagan@fcc.gov)  
Robin Fagan  
Federal Communications Commission  
Office of the Secretary  
45 L Street NE  
Washington, DC 20554

**Re: KCPO-LP, Sioux Falls, SD  
Facility ID No. 26041  
File Nos. 0000195312 and 0000196169**

Dear Ms. Fagan:

I am responding to your email of September 2, 2022 (copy attached, Attachment A). At the outset, I want to say that your efforts are appreciated. I was hoping to be able to respond to the “formal letter” referenced in your email, but, as that has not been received, I wanted to make sure that the response to the issues you have raised are dealt with in an expeditious manner.

In Item 1 of your email, you ask questions concerning the flash-cut operation of March 31, 2021. The licensee’s then-consulting engineer, Mr. Jeremy Ruck, felt that the flash-cut submission was the only option. In this regard, if memory serves me correctly, LMS would not allow the filing of a License to Cover relating back to April of 2020. Unfortunately, Mr. Ruck has died, and, thus, I am unable to ascertain pertinent information from him.

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With respect to Item 2 of your email, again, the station began digital operations in April of 2020. Moreover, digital operation was consistent with the specifics of the flash-cut application it had filed.

With respect to Item 2(a), the samplings of station logs were for digital service.

With respect to Item 2(b), you opine that the station logs are not sufficient to demonstrate the station was on-air. I have been advised that the station logs are done contemporaneously with operation. Furthermore, you request invoices or receipts of electricity for usage at the station site and/or EAS logs. Attached is a letter from Brian Soehl, President, Vantek Communications (Attachment B). Mr. Soehl states, *inter alia*, the following:

“We value the service the KCPO-TV provides to the community because of the significant amount of religious and educational programming. Because of this and its local ownership, Vantek has been happy to donate the space as well as electricity. There has been no written lease or billing. We didn’t find that necessary when dealing with the owner of KCPO-TV.”

In addition, Mr. Soehl also states the following:

“I recall when KCPO switched to digital on April of 2020. Additional access to the equipment room was needed leading up to that cutover.”

With respect to Item 4 in your email, relative to employment records, the employees are Master Control/Traffic. Mr. Poppen also renders duties, in addition to the aforementioned matters, to keep KCPO on the air 365 days a year.

With respect to Item 5 in your email, relative to the photos, the Master Control photos were taken at 9:53 a.m. on June 16, 2022. The tower photos were taken at 8:59 a.m. on June 30, 2022. See attached Statement of Charles Poppen (Attachment C).

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With respect to Item 6 in your email, relative to the Declarations, you question compliance with § 1.16 of the Commission's rules. 47 CFR 1.16 states as follows:

"Any documents to be filed with the Federal Communications Commission, which is required by any law, rule or other regulation of the United States to be supported, evidence, established or provided by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same may be supported, evidence, established or proved by the unsworn declaration, certification, verification or statement of writing of such person, except that, such declaration shall not be used in connection with (a) a deposition, (b) an oath of office, or (c) an oath required to be taken before a specified official other than a notary public. Such declaration may be subscribed by the declarant as true under penalty of perjury..."

It is noted that in the first sentence of each of the Declarations, the declarants all state, under penalty of perjury. For convenience, the Declarations are attached herewith (Attachment D).

Ms. Fagan, I implore you to please take seriously the urgency of the situation, as I attempted to express in my August 25, 2022 email letter to you. As the Commission is aware, the station has been off the air since July 27, 2022. Since it has not been operational, there has been no revenue received by the station. I would hate to think that the strategy the Bureau is employing is one that is forcing the licensee into a drastic adverse financial situation. I would like to think that the Bureau is not that Machiavellian. Also, clearly it is in the public interest for stations to continue operation.

It should be particularly noted that, with no income being generated, Mr. Poppen, the owner of G.I.G., Inc., is facing extraordinary financial distress. Furthermore, as cited in the July 5, 2022 response, it would appear that the instant situation would mandate a result similar to that

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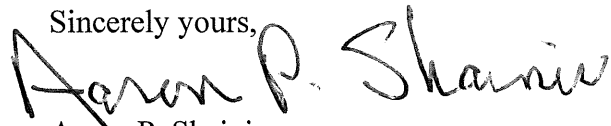
which occurred in *Methow Valley Communications District*, DA 22-627, released June 10, 2022.

Once again, it is urgent that the Commission grant the relief requested by G.I.G.

On a final note, there has never been an explanation as to why the Commission couldn't grant the STA without prejudice to its investigation relating to station operation since April 2020. Once again, it is shocking that the Bureau is employing tactics which would lend credence to the hypothesis that the Bureau's dilatoriness is done by design. Say it ain't so.

If you have any questions, I ask that you please contact me as soon as possible.

Sincerely yours,

A handwritten signature in black ink that reads "Aaron P. Shainis". The signature is written in a cursive, flowing style.

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

Enclosures

cc w/ encl (via e-mail): Barbara Kreisman  
Shaun Maher  
Evan Morris  
Dana Leavitt  
Mark Colombo  
Chuck Poppen

# ATTACHMENT A

## Aaron Shainis

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**From:** Robin Fagan <Robin.Fagan@fcc.gov>  
**Sent:** Friday, September 02, 2022 9:54 AM  
**To:** Aaron Shainis; Shainis & Peltzman, Chartered  
**Cc:** Barbara Kreisman; Shaun Maher; Evan Morris; Dana Leavitt; Mark Colombo; 'Charles Poppen (cpoppen@kcpo.tv)'; Robin Fagan  
**Subject:** RE: [EXTERNAL]: RE: KCPO-LP, Sioux Falls, SD (Facility ID No. 26041) - File Nos. 0000195132 and 0000196169

Dear Mr. Shainis,

We are unable to grant any new authorizations for the station to operate at this time as there is an open investigation relating to the validity of the station's license and legality of its operations since April 2020. Please refer to our May 20, 2022 Letter of Inquiry to which we are evaluating G.I.G.'s reply and supplement we received in July. We understand your client's situation and are working as expeditiously as possible to resolve this matter. As we noted on a recent telephone call, the licensee's response was insufficient and in some cases conflicts with other evidence in the record. We will send a formal letter with within the next week or so, but in order to expedite the process we direct your attention to additional information we seek, as described below. Please note we cannot guarantee this is all the information we will ask for in our letter, but hopefully this will give your client a head start so we can act on the engineering STA as quickly as possible.

1. Licensee states the station commenced operation in April 2020, but it failed to file a timely license to cover. If this is the case, why did the licensee file a CP extension to construct its digital facility, which we granted in April 2022 based on the statements and certifications made by the licensee (See LMS File No. 0000139698). The station's filings for a flash cut on March 31, 2021, and the extension of the digital construction permit, seem to contradict its statement that it had operated continuously in digital since April 2020.
2. We requested a detailed operational history from April 2020, but received a general statement that the station was operational. Licensee should state whether the operation was digital or analog on which dates, specifically the date the station began digital operations, location, effective radiated power and antenna height above ground level for all periods of operation.
  - a. The samplings of station logs (Attach. I in the original response and Attach. F in supplement) do not state whether the samplings are for analog or digital service.
  - b. Further, while the station logs are not sufficient to demonstrate the station was on air. As requested in the Inquiry Letter the station needs to provide invoices or

receipts for electricity that would be billed for usage at a station site and/or EAS logs.

3. Rent records provided (Attach. E in supplemental response) are for the station's studio or office space. Please provide records pertaining to the station's tower, including copies of tower lease payments and a copy of the tower lease.
4. Employment records (Attach. D in supplemental response) do not provide details, such as state what positions the individuals held.
5. Photos of a station and an antenna (Attachs. B and C in supplemental response) are not dated, do not have addresses.
  - a. Further these exhibits were not accompanied by declarations from individuals with knowledge of the matter explaining what the photos show and their significance, in compliance with 47 CFR § 1.16.
6. We further note that the declarations the station provided from viewers and partners thanking it for being on the air (Attach. G-H original response) did not comply with § 1.16.

Thank you for your attention to these issues.

Robin Fagan  
Attorney Advisor  
Federal Communications Commission  
Media Bureau Video Division

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**From:** Aaron Shainis <aaron@s-plaw.com>  
**Sent:** Thursday, September 1, 2022 11:06 AM  
**To:** Shainis & Peltzman, Chartered <General@s-plaw.com>; Robin Fagan <Robin.Fagan@fcc.gov>  
**Cc:** Barbara Kreisman <Barbara.Kreisman@fcc.gov>; Shaun Maher <Shaun.Maher@fcc.gov>; Evan Morris <Evan.Morris@fcc.gov>; Dana Leavitt <Dana.Leavitt@fcc.gov>; Mark Colombo <Mark.Colombo@fcc.gov>; 'Charles Poppen (cpoppen@kcpo.tv)' <cpoppen@kcpo.tv>  
**Subject:** [EXTERNAL]: RE: KCPO-LP, Sioux Falls, SD (Facility ID No. 26041) - File Nos. 0000195132 and 0000196169

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Robin, it has been a week since my letter to you . The response has been deafening. The problem is that the station is still dark and my client would like to go back on the air consistent with what I have outlined in my letter. I assume at the time you mentioned that the Co. would proceed with alacrity was sincere. I wait word. Aaron

**From:** Shainis & Peltzman, Chartered <[General@s-plaw.com](mailto:General@s-plaw.com)>

**Sent:** Thursday, August 25, 2022 1:03 PM

**To:** 'Robin Fagan' <[Robin.Fagan@fcc.gov](mailto:Robin.Fagan@fcc.gov)>

**Cc:** Aaron Shainis <[aaron@s-plaw.com](mailto:aaron@s-plaw.com)>; Barbara Kreisman ([barbara.kreisman@fcc.gov](mailto:barbara.kreisman@fcc.gov)) <[barbara.kreisman@fcc.gov](mailto:barbara.kreisman@fcc.gov)>;

'Shaun Maher' <[shaun.maher@fcc.gov](mailto:shaun.maher@fcc.gov)>; 'Evan Morris' <[evan.morris@fcc.gov](mailto:evan.morris@fcc.gov)>; 'Dana Leavitt' <[dana.leavitt@fcc.gov](mailto:dana.leavitt@fcc.gov)>;

'Mark Colombo' <[Mark.Colombo@fcc.gov](mailto:Mark.Colombo@fcc.gov)>; 'Charles Poppen' ([cpoppen@kcpc.tv](mailto:cpoppen@kcpc.tv))' <[cpoppen@kcpc.tv](mailto:cpoppen@kcpc.tv)>

**Subject:** KCPO-LP, Sioux Falls, SD (Facility ID No. 26041) - File Nos. 0000195132 and 0000196169

**Importance:** High

FYI

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SHAINIS & PELTZMAN, CHARTERED

1850 M Street NW, Suite 240

Washington, DC 20036

(ph) 202-293-0011

(fax) 202-293-0810



## ATTACHMENT B



**VANTEK**  
COMMUNICATIONS, INC.

221 S. Jessica Ave.  
Sioux Falls, SD 57103  
(605) 332-4144  
1-800-456-1746  
Fax (605) 331-6943

September 2<sup>nd</sup>, 2022

To whom it may concern,

Vantek Communications is a two-way radio sales and service provider serving the Sioux Falls area and large portions of eastern South Dakota, parts of Southwest Minnesota, Northwestern Iowa and Northeastern Nebraska. We own or lease approximately 45 antenna support structures such as buildings, grain silos and towers. Including, until recently, a tower on the campus of the University of Sioux Falls where we donated antenna space on the tower and rack space for KCPO TV's broadcast equipment for several years.

We value the service that KCPO TV provides to the community because of the significant amount of religious and educational programming. Because of this and its local ownership Vantek has been happy to donate the space as well as electricity. There has been no written lease or billing. We didn't find that necessary when dealing with the owner of KCPO TV.

I recall when KCPO switched to digital in April of 2020. Additional access to the equipment room was needed leading up to that cut-over.

After 41 years of hosting a Vantek tower, this summer the University of Sioux Falls decided that it no longer wanted to have a tower on campus and we needed to remove that tower. This decision forced Vantek to dismantle the tower the last week of July 2022. This caused many problems for Vantek, KCPO and their respective customers/viewers.

Sincerely,

Brian Soehl  
President  
Vantek Communications

# ATTACHMENT C

### DECLARATION

Charles Poppen hereby states, under penalty of perjury, the following:

The flash-cut application filed relative to KCPO was done at the suggestion of my then-engineer, Jeremy Ruck. Mr. Ruck advised me that, because of problems relative to filings, the way to possibly correct matters concerning the inadvertent failure to file the license to cover was to file a flash-cut application.

The station's logs that have been submitted to prove operation were done contemporaneously with the operation of the station, and they were for digital service.

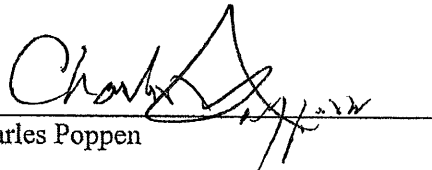
KCPO's tower site and power usage are done at no charge, based on the cooperation and generosity of Vantek Communications, Inc.

The station has two employees, who operate Master Control/Traffic. The other duties, including assisting on Master Control/Traffic, are handled by me. I have not received a paycheck. The photos of Master Control and tower photos were of the KCPO digital operation, and they were taken on June 16, 2022 and June 30, 2022, respectively.

The failure of the Commission to grant the STA to allow the station to move has had severe financial consequences to G.I.G., Inc. I respectfully urge that the Commission allow the station to immediately resume operation.

The attached response to the items raised in the September 2, 2022 email of Robin Fagan are true and correct.

September 14, 2022

  
Charles Poppen

# ATTACHMENT D

**DECLARATION**

My name is David Ryan. I hereby state, under penalty of perjury, the following:

Since April of 2020, I have watched KCPO TV digital channel 26 regularly on my television set located at 619 North Walts Avenue, Sioux Falls, South Dakota, 57104.

With an antenna I receive most of the off air channels, in particular KCPO TV.

David Ryan

Name:

Dated: 5-26-22

# DECLARATION

My name is John Small. I hereby state, under penalty of perjury, the following:  
Since April of 2020, My wife and I have often watched KCPO TV digital channel 26 on  
our television set located at 6116 W. Sioux K Court, Sioux Falls, South Dakota, 57106.

With an antenna I receive most of the off air channels, in particular KCPO TV.

As a business owner who has advertised on KCPO TV I can tell you I  
wouldn't have had the response I experienced if KCPO wasn't broadcasting.

Name:

John Small

Dated:

6/16/2022

**DECLARATION**

My name is Gary Dykstra. I hereby state, under penalty of perjury, the following:

Since late April of 2020, I have watched KCPO TV digital channel 26 often on my television set located at 922 South Duluth Avenue, Sioux Falls, South Dakota, 57104.

With an antenna I receive most of the off air channels, in particular KCPO TV. KCPO TV delivers programming I cannot get anywhere else. I appreciate it very much.

Gary Dykstra

Name:

Dated: 6-1-2022



DECLARATION

My name is Richard C. Hookie. I hereby state, under penalty of perjury, the following:

Since April of 2020, I have enjoyed watching KCPO TV digital channel 26 regularly on my television sets located at 609 West 1<sup>st</sup> Street, Sioux Falls, South Dakota, 57104.

With an antenna I receive most of the off air channels, in particular KCPO TV.

A handwritten signature in black ink, appearing to read 'R. Hookie', is written over a horizontal line.

Name:

Dated: 5/26/2022