

From: [Victoria McCauley](#)
To: [Robert Kelley](#)
Subject: KVOG(AM0 - silent since 10/18/19
Date: Friday, October 30, 2020 3:47:00 PM

Dear Mr. Kelley,

We have reviewed your email requesting an extension of silent authority for AM Station KVOG, Agana, Guam, licensed to Guam Power II, Inc. (Station). The Station has been silent since October 18, 2019, and at this point, the Station has remained silent for over a year. Pursuant to section 312(g) of the Communications Act of 1934, as amended (Act), [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 if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness. We will treat the filing as a request for the Commission to exercise its discretion under section 312(g) to extend or reinstate an expired license "to promote equity and fairness." Pursuant to Section 73.1740 of the Commission's Rules, you are required to clarify this matter in writing within ten days of the date of this email.

In order to proceed with an appropriate record, we require additional documentation and proof that the licensee had taken tangible steps to get the Station back on the air prior to the national emergency and a more specific explanation of what prevents them from getting the Station back on the air pursuant to a technical special temporary authority (STA) request, given that broadcast stations are deemed essential facilities.

The Commission's discretion under section 312(g) is severely limited. *See 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"). 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 Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006)(hurricane destruction); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008) (FCC and FAA records contained incorrect tower information); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007) (compliance with a court order). Conversely, 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 judgments. *See, e.g., A-O Broad.*, 23 FCC Rcd 608 (failure to complete construction at an alternate site); *ETC Communications, Inc.*, Letter, 25 FCC Rcd 10686 (MB 2010) (chose not to operate station while offering it for sale); *Kirby Young*, Letter, 23 FCC Rcd 35 (MB 2008) (not financially able to restore operations after transmitter failed). *See also Kingdom of God*, Letter, 29 FCC Rcd 11589 (MB 2014) (failure to promptly find a permanent and suitable transmitter site).

In your request, you state that since the outbreak of COVID-19, "all discussions regarding returning to the government location that was previously leased came to a full halt." You further state that the government is only dealing in "essential services," and you do not see any progress forthcoming prior to the end of the year. You further state that you have considered looking for non-government owned sites, but the owner is reluctant to give up the government site with the antenna foundation, radials and power installed. However, due to the overwhelming nature of the pandemic with the hospital over 100% full and averaging 1 death a day since August, you state that you have no idea when the government will authorize

the site so you can return to the site and set it up. We note that you have provided no explanation as to why you could not pursue a technical STA for temporary operation, as the Station has done in the past.

Your allegations in support of your inability to return to the air do not provide us enough information to make a determination at this time.

First, your email does not indicate what efforts the licensee made to resume operation prior to the COVID-19 emergency. Please provide proof of all tangible steps taken to return the Station to air prior to the state of emergency. These steps include: 1) specific efforts to secure authorization for the new site; 2) a list of the necessary equipment on hand or on order; 3) arrangements for the equipment to be installed at the new site.

Second, please outline specifically how the COVID-19 emergency prevented the Station from resuming operation with either STA facilities or permanent facilities before the license expired. This showing must include documentation of the efforts you have made to secure authorization for the site by contacting the appropriate government offices by letter or email and any responses or lack thereof. It must also show other efforts to construct such as equipment orders and any delays and any efforts made to hire installation personnel, and the results of those efforts. If you have the ability to resume operation with STA facilities, please detail the effort and timeframe this would require.

If any of these cannot be provided, please explain the reason.

Sincerely,

Victoria McCauley
Attorney/Advisor
Audio Division
Media Bureau
202 418 2136
Victoria.McCauley@fcc.gov



For FCC Official Use Only

From: Joseph Szczesny <Joseph.Szczesny@fcc.gov>
Sent: Friday, October 30, 2020 10:38 AM
To: Robert Kelley <rkelley@guamtech.com>
Cc: Jerome Manarchuck <Jerome.Manarchuck@fcc.gov>; Victoria McCauley <Victoria.McCauley@fcc.gov>; Son Nguyen <Son.Nguyen@fcc.gov>
Subject: RE: FW: KVOG(AM0 - silent since 10/18/19

Mr. Kelley:

Based upon your reply, you have confirmed that KVOG(AM) has been off the air for over a year, and that GPII failed to file and obtain a new engineering Special Temporary Authority over the past year to operate with acceptable temporary params before the one year silent date of 10/18/20. As a result, I will forward this e-mail chain on to Vicky McCauley for her review to determine if she must cancel the license immediately now, since I doubt there is any other option left at this point in time.

Sincerely,

Joe Szczesny, FCC

From: Robert Kelley <rkelley@guamtech.com>
Sent: Friday, October 30, 2020 1:46 AM
To: Joseph Szczesny <Joseph.Szczesny@fcc.gov>
Cc: Jerome Manarchuck <Jerome.Manarchuck@fcc.gov>
Subject: Re: FW: KVOG(AM) - silent since 10/18/19

Mr. Szczesny,

You are correct, The station has not returned to operation. All discussions regarding returning to the government location that was previously leased came to a full halt in March. As long as the government is only dealing in "essential services" I do not see any progress. I cannot give any dates.

I have offered the owner to look for a new location on non government land but he is reluctant to give up a site with the antenna foundation, radials and power installed. I have kept hoping we would have some normality soon. However this week our hospital is over 100% full and we are averaging 1 death a day since August. I have no idea when we can be authorized to return to the site and set it up.

Honestly there is little hope before the end of the year.

I am hope you understand the difficulty the pandemic is causing on the islands to provide support and to get government attention on issues not pandemic or economic related,

Regards!

Bob

On Fri, Oct 30, 2020 at 1:30 AM Joseph Szczesny <Joseph.Szczesny@fcc.gov> wrote:

Dear Mr. Kelley:

CDBS does not show that GPII filed a new tech STA earlier this month to obtain official written permission to go back on the air with temporary facilities before 10/18/20 to avoid the automatic

license cancellation.

In addition, CDBS does not show that GPII filed an electronic resumption notice before 10/18/20 to certify that the station was able to resume licensed operations per the last license BL-20081017AHV before 10/18/20.

As a result, please send me a brief e-mail response tomorrow/Monday to confirm that the station has been off the air for over a year, and then I will forward that reply on to staff attorney Vicky McCauley, since she handles these silent station matters.

Sincerely,

Joe Szczesny, FCC

From: Joseph Szczesny
Sent: Wednesday, September 23, 2020 9:19 AM
To: Robert Kelley <rkelley@guamtech.com>
Cc: Jerome Manarchuck <Jerome.Manarchuck@fcc.gov>
Subject: KVOG(AM0 - silent since 10/18/19

Mr. Kelley:

Based upon your reply, we recommend that GPII file a new acceptable engineering STA before 10/2/20 to specify a temporary operation.

This should allow our staff enough time to review and grant the request in case an amendment is needed, then GPII can file an electronic resumption notice in CDBS before 10/18/20 to avoid automatic cancellation of the license.

Sincerely,

Joe Szczesny, FCC

PS: Waiting longer to file the new engineering STA may not leave our staff enough time to try and help GPII avoid the automatic license cancellation next month.

From: Robert Kelley <rkelley@guamtech.com>
Sent: Wednesday, September 23, 2020 4:05 AM
To: Joseph Szczesny <Joseph.Szczesny@fcc.gov>
Subject: Re: silent station KVOG

Mr Szczesny,

Guam is in its 3rd series of lock downs this year. Our current one began over 4 weeks ago. Non essential government offices have been closed more than open.

I will provide an answer as soon as possible. If we have a funding commitment we might be able to negotiate a short term lease (2 years) at the original site and return to the air.

Funding will be predicated on a positive response from the government to return to the former site and resume and the FCC giving a short time to return to the air. The alternative will be to find a suitable alternative site in the next few months and file a 301 and an STA to get back on the air.

Regards!

Robert Kelley

On Wed, Sep 9, 2020 at 7:21 AM Joseph Szczesny <Joseph.Szczesny@fcc.gov> wrote:

Dear Mr. Kelley:

It has come to our attention that Guam Power II, Inc. (GPII) has not been able to resume operations for almost one year now.

As a result, please confirm if:

1. GPII has already decided to abandon the idea of filing the required FCC Form 301 application to propose a new facility elsewhere;
2. GPII has no plans to file a new acceptable technical STA request within the next few weeks to get back on the air with a temporary facility;
3. GPII would like our staff to cancel the license now rather than waiting until after the 10/18/20 deadline mentioned in the attached letter.

Sincerely,

Joe Szczesny, FCC

--

Mr. Robert F. Kelley, Jr., RCDD/DCDC/OSPNTS/WD" rkelly@guamtech.com"

Principal Consultant

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