

Before the
Federal Communications Commission
Washington, D.C. 20554

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

FORFEITURE ORDER

Adopted: May 31, 2023

Released: May 31, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of seven hundred fifty dollars (\$750) to G.I.G., Inc. (Licensee), licensee of low power television (LPTV) station KCPO-LP, Sioux Falls, South Dakota (KCPO or Station). We find that the Licensee willfully violated section 74.788¹ of the Commission’s rules (Rules) by failing to timely file a license to cover application for the Station, and willfully and repeatedly violated section 73.1745 of the Rules and section 301 of the Communications Act of 1934, as amended (the Act),² by engaging in unauthorized operation.

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, 2021.³ On

¹ See 47 CFR § 74.788 (2022). As noted in the NAL, effective October 24, 2022, 47 CFR § 74.788 of the Commission’s rules was eliminated and found by the Commission to be duplicative with 47 CFR § 73.3598 of the Rules. See G.I.G., Inc., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-46, 2023 WL 345357 at 1, n.2 (MB Jan. 19, 2023) (NAL); 87 FR 58200, Oct. 24, 2022; In the Matter of Amend. of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission’s Rules Related to Low Power Television and Television Translator Stations, FCC 22-58 (July 13, 2022); 47 CFR § 74.780 (bbb) (making 47 CFR § 73.3598 applicable to all TV translator and LPTV stations). At the time the violation at issue occurred, 47 CFR § 74.788 was in effect; however, to the extent necessary we also find that the Licensee violated 47 CFR § 73.3598.

² See 47 CFR § 73.1745 and 47 U.S.C. § 301.

³ 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

(continued....)

March 31, 2020, the Station filed a construction permit to flash-cut its analog operations to digital operations on its licensed analog channel 26.⁴ That application was granted on April 20, 2020. Pursuant to Commission rules, the Station was assigned a construction permit expiration date of July 13, 2021.⁵ On April 28, 2021, the Station was granted an extension of its construction permit to January 10, 2022.⁶ In the CP Extension, Licensee 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. On December 1, 2021, G.I.G. filed an application for license renewal.⁷ In that application G.I.G. certified that the Station was operational.

3. As part of an investigation by the Video Division relating to the Station's operational history, Licensee revealed that it had in fact commenced digital operations pursuant to the Digital CP on April 21, 2020.⁸ On July 11, 2022, the Licensee filed a License Application and requested waiver of all applicable rules and grant of the application.⁹ On July 29, 2022, Licensee filed a request for silent authority notifying the commission that the Station went silent on July 27, 2022 due to the loss its "site."¹⁰ 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.¹¹ The License Application, Renewal Application, Silent STA, and Engineering STA all remain pending.¹²

4. On January 19, 2023, the Video Division of the Media Bureau (Bureau) issued a *Notice of Apparent Liability for Forfeiture (NAL)* in the amount of six thousand five hundred dollars (\$6,500)¹³ finding that Licensee had failed to timely file a license to cover as required by section 74.788 of the Rules,¹⁴ and as a result of its failure to timely file a license to cover application, had engaged in unauthorized operation for over two years (April 21, 2020 through July 27, 2022), in violation of section

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).

⁴ LMS File No. 0000110806 (Digital CP).

⁵ *See* 47 CFR § 74.788(a) (2022). *See supra* note 1.

⁶ LMS File No. 0000139698.

⁷ LMS File No. 0000176044 (Renewal Application).

⁸ *See* Letter, from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to G.I.G., Inc. (May. 20, 2022); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (July 5, 2022); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (July 11, 2022); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (Sept. 14, 2022); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (Sept. 22, 2022); Letter, from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to G.I.G., Inc. (Sept. 26, 2022); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (Nov. 4, 2022). All correspondence is on file under LMS main facility page for Facility ID No. 26041.

⁹ File No. 0000194735 (License Application).

¹⁰ LMS File No. 0000196169 (Silent STA).

¹¹ LMS File No. 0000195312 (Engineering STA).

¹² In the *NAL* the Division stated that it would act on the Station's pending applications upon conclusion of the instant forfeiture proceeding. *NAL* at 6, paras. 14-15. The Division also determined that grant of the Renewal Application, when grantable, would be renewed on a short term basis for a period of two years. *Id.* at 6, paras. 13-14.

¹³ *Id.* at 4-5, paras 9-11.

¹⁴ *See* 47 CFR § 74.788(a) (2022).

73.1745 of the Rules¹⁵ and section 301 of the Act.¹⁶ The *NAL* gave Licensee thirty days to pay the full amount of the proposed forfeiture or file a written statement seeking reduction or cancellation of the proposed forfeiture.¹⁷

5. On March 7, 2023, Licensee filed a response in which it did not dispute that it had violated the Rules and the Act, but requested that we reduce or cancel the proposed forfeiture based on Licensee's claimed inability to pay it.¹⁸ The Response included copies of Licensee's federal tax returns for 2020, 2021, and 2022, in support of this request.¹⁹

III. DISCUSSION

6. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Act,²⁰ section 1.80 of the Rules,²¹ and the Commission's *Forfeiture Policy Statement*,²² which establish a base forfeiture amount of \$3,000 for failure to file a required form,²³ and a base forfeiture amount of \$10,000 for construction and operation without an instrument of authorization for the service.²⁴ In assessing forfeitures, section 503(b)(2)(E) of the Act requires that we take into account 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.²⁵

7. As noted in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to claimed 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; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.²⁶ Any claim of inability to pay must specifically identify the basis for the claim

¹⁵ 47 CFR § 73.1745 (prohibiting unauthorized operation).

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

¹⁷ *NAL* at 5, para. 17.

¹⁸ Request for Cancellation or Reduction of Forfeiture, from G.I.G., Inc., to FCC Staff, Video Division, Media Bureau, at 1-2 (dated Mar. 7, 2023) (Response).

¹⁹ In its response, Licensee requested that all financial documentation be kept confidential. Response at 2. See 47 CFR § 0.459(a)(1) (procedure applicable to filing in non-electronic proceedings); 47 CFR § 0.457d(1)(i) (listing financial reports submitted by radio or television licensees as materials not routinely made available for public inspection). Licensee did not file a redacted version for the public record. Licensee is directed to file a redacted version within ten (10) business days of the date this Forfeiture Order is issued, or to file an explanation as to why that is not possible. Failure to do so will result in the versions currently in the possession of the Division being placed into the public record.

²⁰ 47 U.S.C. § 503(b).

²¹ 47 CFR § 1.80.

²² 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, 15 FCC Rcd 303 (1999).

²³ *Id.*; 47 CFR § 1.80(b)(10) n.2. See also *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7157, para 11 (2011) ("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.").

²⁴ A person, as defined by the Act, must have an authorization from the Commission to operate a broadcast station. See 47 U.S.C. § 301.

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

²⁶ See *NAL* at 6, para. 21.

by reference to the financial documentation submitted.²⁷ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.²⁸ If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.²⁹

8. Licensee has provided federal tax return schedules for the years 2020, 2021, and 2022.³⁰ While these returns show the station did have gross revenues, we find the forfeiture in this case (\$6,500), would constitute an excessive percentage of the Station's gross revenue. In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the violator's gross annual income and have not exceeded eight percent thereof,³¹ although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.³² In 2021 and 2022 the financial information provided also showed that the Station operated at a significant loss, one that was multiple times its gross revenue in those years. Nevertheless, ability to pay is just one of the factors considered when determining whether to reduce a forfeiture.³³ Here, Licensee's violations occurred over an extended period of time. Its failure to timely file a license to cover application upon completion of construction of the Station in April 2020 resulted in the Station engaging in unauthorized operation for over two years, in violation of section 73.1745 of the Rules³⁴ and 301 of the Act.³⁵ Licensee also engaged in a pattern of failing to fully reply to the Division's inquiries.³⁶ This resulted in an extensive delay in resolving the Division's investigation³⁷ that not only

²⁷ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

²⁸ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

²⁹ *Id.*; but see *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018) (inability to pay is only one of several factors considered, and we have discretion to not reduce or cancel the forfeiture if other prongs of section § 503(b)(2)(E) support that result).

³⁰ Licensee also provided its profit and loss statements for years 2020, 2021, and 2022. However, we consider Licensee's tax returns as the most reliable financial information. See *Coleman Enterprises, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389 (2000) (considering tax returns to be the most reliable financial information provided by licensee, as compared to unaudited cash flow statements and bank summaries).

³¹ *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302, 5304 (MB 2019).

³² See *Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of \$75,167, \$90,106, and \$69,330, but finding amount would pose a financial hardship where licensee lost \$345,000 during the same period).

³³ See *Direct TV, LLC et al*, Forfeiture Order, 36 FCC Rcd 12078, 12096, para. 41 (2021) citing 47 U.S.C. § 503(b)(2)(E) (noting that a party's ability to pay is only one factor in the Commission's forfeiture calculation and is not dispositive).

³⁴ 47 CFR § 73.1745.

³⁵ 47 U.S.C. § 301.

³⁶ See *supra* note 7; *NAL* at paras. 5-6.

³⁷ Licensee also requested extensions of time to respond, which resulted in delays. Email, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (June 17, 2022) (requesting two-week extension of time to respond until July 5, 2022), only partial response sent by July 5, with supplemental response sent on July 11, 2022; Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (October 25, 2022) (requesting one-week extension of time to respond until November 4, 2022); Letter, from Aaron P. Shainis, Shainis & Peltzman, Chartered, Counsel for G.I.G., Inc. to FCC Staff (February 16, 2023) (requesting two-week extension of time to respond until March 7, 2023). All correspondence is on file under LMS main facility page for Facility ID No. 26041.

created an undue burden on Division staff and resources, but ultimately deprived the public of the service when the Station went silent and its pending applications were not actionable as a result of the investigation and the underlying questions related to the validity of the Station's underlying license.³⁸ Based on the facts discussed above, we are unwilling to cancel the forfeiture altogether, but find that a reduction in the total forfeiture amount to seven hundred fifty dollars (\$750), is appropriate.³⁹

9. We have considered Licensee's Response and the record of this case in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully⁴⁰ violated section 74.788 of the Rules and willfully and repeatedly⁴¹ violated of section 73.1745 of the Rules and section 301 of the Act.⁴² For the reasons set forth above, we find that reducing the forfeiture to seven hundred fifty dollars (\$750) is appropriate. We also take this opportunity to warn Licensee that future forfeitures—regardless of its financial circumstances—may not be so significantly reduced if the forfeiture imposed here does not serve as a sufficient deterrent or if future violations evidence a pattern of deliberate disregard for the Act or the Commission's rules.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.283 and 1.80 of the Commission's rules,⁴³ that G.I.G., Inc. **SHALL FORFEIT** to the United States the sum of seven hundred fifty dollars (\$750) for willfully violating section 74.788 of the Commission's rules and willfully and repeatedly violating of section 73.1745 of the Commission's rules and section 301 of the Communications Act of 1934, as amended.⁴⁴

11. 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

³⁸ See *NAL* at 6, para. 13.

³⁹ See *Hawkins Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 12519, 12521 (MB 2010) (reducing a forfeiture amount from \$7,000 to \$4,000 where the proposed forfeiture amount would have constituted approximately 7% of the licensee's average gross revenues and licensee operated with significant loss), citing *CARE Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 1411 (MB 2010) (reducing forfeiture amount from \$14,000 to \$3,400 where the proposed forfeiture would have constituted approximately 11% of the licensee's average gross revenues); cf. *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, paras. 8-9 (2019) (declining to reduce a forfeiture based on a documented inability to pay because the individual "provide[d] no evidence to refute that his conduct was egregious"). We take this opportunity to warn Licensee that future violations—regardless of its financial circumstances—may not be so significantly reduced if the forfeiture imposed here does not serve as a sufficient deterrent or if future violations evidence a pattern of deliberate disregard for the Act or the Commission's rules.

⁴⁰ 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. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the section 503(b) context. See *Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991) (*Southern California*).

⁴¹ Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to sections 312 and 503(b) of the Act).

⁴² 47 CFR § 74.788 (2022); 47 CFR § 73.1745; and 47 U.S.C. § 301.

⁴³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

⁴⁴ 47 CFR § 74.788 (2022); 47 CFR § 73.1745; and 47 U.S.C. § 301.

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

transfer. Payments by check or money order to pay a forfeiture are no longer accepted. 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.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* 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.,

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>.

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

Barbara A. Kreisman
Chief, Video Division
Media Bureau