



United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

December 15, 1977

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Memorandum

To: Director of Territorial Affairs
From: Assistant Solicitor, Territories
Subject: Leasing KJQR, Saipan, to a Private Operator

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permission in writing.

This responds to the Resident Commissioner's request concerning the above subject. The physical assets of KJQR belong to the TTPI government unless they have been transferred to the Northern Marianas pursuant to Part VII of Secretarial Order No. 2989. The frequency over which the station transmits is assigned to the Secretary who in turn has sub-assigned it to the High Commissioner. Accordingly, although the Resident Commissioner probably could lease the physical properties of KJQR to a private operator if they have been transferred to the Northern Mariana Islands, he would have to apply to the Secretary for a reassignment of the KJQR frequency to the new operator. Before the Secretary could even begin to reassign the frequency to a private operator, he would have to be assured of the readiness, fitness and ability of the proposed lessee as well as the terms of the lease and the justification for the action. As a matter of policy the FCC frowns on leases of radio stations. They prefer to have owner operators with whom they can deal directly with regard to any problems that might arise in connection with uses of the air waves. A few years ago we had a similar problem with regard to the leasing of WVUV, Samoa, which is under FCC jurisdiction. It took almost two years before the FCC finally approved the lease. A copy of the Samoa News Bulletin for February 27, 1975, which recounts some of the problems, is attached for your information.

In regard to the proposal being advanced by the Resident Commissioner, there are in addition ~~additional~~ questions that should be addressed before the Secretary is asked to reassign the frequency. For example: Should KJQR be retained as a public broadcasting facility? Is there a sufficient market to support 3 commercial stations on Saipan? Is this a negotiated transaction or are there competitors for the operation of the facility? Have the applicable procurement procedures been complied with?

Finally, Mr. William A. Baker, ADP, in meetings with the FCC over transitional problems connected with the impending acquisition of jurisdiction in the Northern Marianas has been informally requested not to take any actions regarding assignment of frequencies at this

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late date without review and acquiescence by the FCC.

In summary, therefore, although the Resident Commissioner probably could legally effect the lease, all other things equal, he asks too late in the game. The request should have been made at least a year ago. The paper work could not possibly be completed before the FCC acquires jurisdiction on January 9, 1977. Moreover, even assuming the paper work could be completed, in light of Mr. Baker's understanding with the FCC, it is extremely doubtful that the transaction could be completed in time.

/s/

C. Brewster Chapman, Jr.

Enclosure

cc:
Mr. William Baker, ADP

cc:
Subj File
Reading File
CBChapmanJr.

SOL:GL-T:CBChapmanJr:vph:12/15/77:5216

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NEWS BULLETIN

Mr. Holman
Rm. 6929
fm
WINDES

THURSDAY, FEBRUARY 27, 1975

PUBLISHED BY THE OFFICE OF SAMOAN INFORMATION PAGO PAGO, AMERICAN SAMOA

WVUV LEASE APPROVED

The Government of American Samoa has been advised that the Federal Communications Commission has granted the application of Radio Samoa, Ltd., for authority to operate the facilities of Radio Station WVUV. The standard broadcast station has been operated by the U.S. Department of the Interior.

The FCC approval came last Thursday and was announced Monday. The commission denied a petition opposing the application by the Legislature of American Samoa and the Office of the Delegate-at-Large.

Radio Samoa's officers include Lawrence S. Berger, major stock holder in KWH, Inc., in Honolulu; Robert M. Newgard, a motion picture distributor from Los Angeles; Ronald E. Pritchard, partner in Air Samoa Ground Services and the only native American Samoa officer; and O. Vincent Esposito, a Honolulu attorney.

Berger arrived from Honolulu early yesterday to join Pritchard in making preliminary plans for assuming operation of WVUV. They met with members of the Fono and other interested groups yesterday to smooth out any possible difficulties.

The lease agreement was drawn up in April of 1973 and has been under consideration by the FCC for nearly two years. Basically, it provides that Radio Samoa will operate the station for a term of 30 years, with the rental rate of \$10,000 per year for the first 18 years, with appropriate adjustments from that time on.

Radio Samoa also has an option to purchase the station for a price of \$200,000 from the fourth to 13th year of the contract. GAS will purchase \$30,000 worth of commercial time during the first year, \$20,000 worth during the second year, and \$10,000 worth during the third year of the contract. It now costs GAS about \$65,000 a year to operate WVUV.

At the same time, Radio Samoa must bring the station up to FCC specifications and maintain it there.

The FCC announcement granting Radio Samoa's application said:

"In their opposition to the application, the Fono and the Delegate-at-Large contended that the land on which WVUV was located could not be used for a private purpose; that the proposed transfer of the government station to private operation would be inconsistent with the Charter of the United Nations; that the lease agreement violated conflict-of-interest regulations and that granting Radio Samoa's application would not be in the public interest.

"The Commission said that prior to receiving the formal petition, it was made aware of the Fono's dissatisfaction with proposed operation of the station by Radio Samoa.

"The Fono apparently feared that the operation by outsiders would not serve the interests of Samoa. Members of the Fono also apparently were offended by some aspects of the way the lease arrangement was negotiated between the lessor, the Government of American Samoa, John M. Haydon, the former Governor, and the lessee, Radio Samoa. Governor Haydon resigned his post last October.

"The Commission said resolutions adopted by the Fono suggested that WVUV was regarded as relevant to the issue of self-determination of the Samoan people, and that the lease as proposed was inequitable and unfair to the island's government and people. The Fono said it wanted the Samoan government to continue to operate WVUV until such time, in the indefinite future, that Samoans could take over.

"On their contention that the land could not be used for a private purpose, the petitioners cited the deed of cession of the Island of Tutuila to the United States. The deed provides that the government may takeland for government use on the payment of fair consideration.

"The petitioners said the U.S. Congress had provided that, until it granted self-government to Samoa, governmental powers would remain vested in the President of the U.S. These powers have been delegated to the Secretary of the Interior and to the governor. The petitioners said the 'clear limitation implicit' in this situation was that Federal authorities could not acquire Samoan lands and turn them over to private interests.

"Also involved was a local court decision that resolved boundary disputes over the land on which WVUV is located. The petitioners submitted documents indicating the land was taken by the government through condemnation proceedings in 1964 for the express purpose of constructing a public high school. The petitioners argued that, as a result, title to the site might revert to the original grantors.

"The Commission held there was illegality in the transfer, saying Haydon had the authority to lease the property to a private corporation.

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WVUV LEASE APPROVED

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"The petitioners also argued that granting Radio Samoa's application would not be consistent with Article 73 of the U.N. Charter. That article states that 'the interests of the inhabitants of...territories are paramount,' and encourages the development of self-government.

"What is involved,' the petitioners said, was 'the unilateral determination of a single official (Governor Haydon), avowedly prompted by considerations of personal ideology ('free enterprise'), to transfer a public Territorial radio station into the hands of outside private interests, in willful disregard of the unanimous opposition twice expressed by the Fono and the opposition registered by the Delegate-at-Large.'

"The Commission said it was difficult to discern the logic in the argument that the proposal would flout treaty obligations.

"Realistically,' the FCC noted, 'what is involved here is not simply a unilateral determination of former Governor Haydon as the petitioners charge, but rather an affirmative step by the United States Government, reasonably expected to provide for the responsible operation of a broadcast station and to relieve the government of the responsibility of station operation.

"The Commission pointed out that there was no shortage of standard broadcast frequencies on which other stations could operate in Samoa and that it was ready to consider any proposals for additional stations.

"As for the conflict-of-interest issue, the petitioners accused Haydon of violating Interior Department regulations that prohibited using public office for private gain and giving preferential treatment to any person."

"The Commission said this bare accusation, without factual support, did not rebut its presumption that employees of the Department of the Interior performed their duties consistent with their own regulations. It concluded there had been no factual submission to support the petitioners speculation that there was preferential dealing.

"As their final point--that a grant to Radio Samoa would not be in the public interest--the petitioners asserted that the general public of American Samoa opposed the application and that Federal policy respecting Territorial matters compelled a denial of the application in the public interest.

"The FCC said the petitioners had failed to make any factual allegations to support this contention. The Commission said it could not see how a denial of the only pending application for a commercial radio operation in American Samoa could serve any aspect of the public interest.

"It noted that the petitioners had not challenged the legal, technical or financial qualifications of the applicant, nor had they shown that the proposed programing would not serve the needs and interests of the islanders.

"If an applicant's unpopularity, without more, were grounds for denial, this Commission would possess a potential for arbitrariness which the Communications and Administrative Procedure Acts were designed to preclude, the FCC said.

"It concluded that there was nothing, to prevent other qualified parties from applying for construction permits for a station or stations that would operate concurrently with that proposed by Radio Samoa, Ltd."

IT'S UNOFFICIAL, BUT ENJOY!

March 3 is not normally a holiday in American Samoa, but Acting Governor Frank C. Mockler has declared an "unofficial half-day holiday" so GAS employees can attend the afternoon inauguration of Governor Earl Ruth, who arrives here early tomorrow morning. The Legislature and the Office of Samoan Affairs will hold a colorful ceremony in honor of the new governor, following the inauguration. All offices, except those involved in essential services, will be closed Monday afternoon. Monday morning? It's work, as usual.

HELPFUL REMINDER

Manager Tupuaga Pele of the Department of Public Works' Building Branch today issued a time-saving reminder to potential builders in American Samoa.

Any individual, firm or corporation planning to buy any type of prefab building, or to buy house plans from abroad, for construction in American Samoa, must request the company involved to provide the following items:

- Two sets of complete drawing, legible and fully dimensioned.
- If required, a complete, legible, and fully dimensioned plan for the electrical, plumbing, or mechanical (air conditioning, heating, and ventilating equipment).
- Sufficient details in the drawing.
- Calculations of windloads, etc.

The Code of American Samoa says these requirements must be submitted with the application for a building permit. The absence of one or some of the requirements could result in failure to receive a building permit.

To avoid any inconvenience, consult the Building Branch before placing an order. Additional information may also be obtained at the Building Office, PWD, Utulei.

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