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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re	)	MB Docket No. 04-191
	)	
San Francisco Unified School District	)	
	)	
For Renewal of License for Station KALW(FM), San Francisco	)	Facility ID No. 58830 File No. BRED-19970801YA

To: Chief Administrative Law Judge
Richard L. Sippel

ENFORCEMENT BUREAU'S
MOTION TO RULE ON OBJECTIONS AND DENIALS TO ADMISSION REQUESTS

1. On or about August 19, 2004, the Enforcement Bureau (the "Bureau") served a Request for Admission of Facts upon the San Francisco Unified School District ("SFUSD"). On September 7, following an extension of time, SFUSD served its Objections and Responses thereto. To the best of the Bureau's knowledge, the Presiding Administrative Law Judge has not ruled on the general or specific objections interposed by SFUSD, although he is permitted to do so without further pleadings pursuant to section 1.246(d) of the Commission's rules. Consequently, the Bureau hereby now requests that he rule on some of the objections interposed by SFUSD. In addition, the Bureau requests a ruling that the denials made by SFUSD have no force and effect whatsoever, as they were not supported by a sworn statement as required by section 1.246(b) of the Commission's rules. In support of its Motion, the Bureau submits the following.

2. Bureau Admission Request 4 directed SFUSD to admit or deny: "Mr. Ramirez intended that SFUSD should respond 'yes' to question 2 of page 3 of Attachment A, which asks: 'Has the applicant placed in its public inspection file at the appropriate times the documentation required by 47 C.F.R. Section 73.3526 and 73.3527?'" In response thereto, SFUSD stated:

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"SFUSD objects to this Request to the extent that the word 'intended' as used in the Request is vague and ambiguous. Subject to and without waiving the foregoing objections or the General Objections, SFUSD admits that Mr. Ramirez responded 'yes' to question 2 of page 3 of Attachment A to the Request." The Bureau believes that the objection is without merit. There is nothing vague or ambiguous about the word "intended" in the context of the Request: either Mr. Ramirez knew that he was answering "yes" and intended to do so, or he checked the "yes" box in error. SFUSD's general objections are similarly frivolous and without merit, as the information sought is relevant and not privileged. SFUSD's objections should be overruled, and the Request should be deemed admitted.

3. Bureau Admission Request 18 directed SFUSD to admit or deny: "On or about the date Mr. Ramirez transmitted the original of Attachment A to a representative of SFUSD for signature, the KALW public inspection file did not include the original or a copy of all the quarterly issues/programs lists required by 47 C.F.R. Section 73.3527." In response thereto, SFUSD stated:

> SFUSD objects to this Request to the extent that it calls for a legal conclusion rather than an admission of fact. SFUSD further objects that the phrase "all of the quarterly issues/programs lists required by 47 C.F.R. Section 73.3527" as used in this Request is vague and ambiguous. Subject to and without waiving the foregoing objections or the General Objections, SFUSD denies the Request and states that it believes that documents sufficient to satisfy the issues/programs list requirements of 47 S.F.R. Section 73.3527 were in the public inspection file as of the time that Mr. Ramirez transmitted the license renewal application for KALW to the SFUSD for signature in July 1997, with the possible exception of issues/programs lists for programming aired from December 1, 1990 to to December 31, 1991 — a period of time during which KALW operated from a temporary location after being displaced as a result of the Loma Prieta earthquake in October 1989 — and states that SFUSD lacks sufficient information to admit or deny whether issues/programs lists for such time period were included in the public inspection file at the time that Mr. Ramirez transmitted the license renewal application for KALW to the SFUSD for signature in July 1997. For the time period from January 1, 1992 until the second quarter of 1997 (the last quarter before the 1997 renewal application was filed), as well as up until the present, SFUSD believes that the NPR issues/programs lists, as supplemented for the time

> of broadcast by the quarterly KALW Radio Program Schedules, meet the requirements of 47 C.F.R. Section 73.3527. As confirmed by the Commission, Section 73.3527 "draws no distinction between locally produced and nationally syndicated programming." *In The Matter of San Francisco Unified School District For Renewal of License for Station KALW(FM), San Francisco, California, Hearing Designation Order and Notice of Apparent Liability for Forfeiture*, FCC 04-114 at ¶ 12 (rel. July 16, 2004) (the "*HDO*"). Consequently, licensees may rely solely on nationally syndicated programming to meet their issues/programs lists obligation. The NPR issues/programs lists in the KALW public inspection file set forth in rows the program title, date, duration and brief description of each topic covered by such program. Notably, in the first column of each row, under the caption "Key," the NPR issues/programs lists specify (by abbreviations — ACQU for Acquired Immune Deficiency Syndrome; AGRI for Agriculture; BUSI for Business, *etc.*) which of the issues of interest were addressed by each specific program. Thus, with all due respect to the Commission, *cf. HDO* at ¶ 10, SFUSD believes that the NPR issues/programs lists do in fact specify which program(s) specifically addressed the listed topics. Given the national scope, over several time zones, of NPR programming, the NPR issues/programs lists do not provide the times of broadcast — such times of broadcast by KALW are set forth in the quarterly KALW Radio Program Schedules also placed in the KALW public inspection file. It is SFUSD's belief that these documents set forth the information required by, and thereby satisfy, Section 73.3527.

The crux of the Request is that SFUSD admit or deny that its public inspection file contained the quarterly issues/programs lists required by the rules. There is nothing vague or ambiguous about this Request: either the file did or did not contain the lists.[1] Moreover, the rule clearly spells out in detail what should appear on the lists, as well as when the lists should first be placed in the file. Finally, inasmuch as SFUSD's denial is not supported by anyone's sworn statement, it should be viewed as a nullity. Accordingly, the Request should be deemed admitted.

4. Bureau Admission Request 19 directed SFUSD to admit or deny: "On or about the date that Mr. Ramirez transmitted the original of Attachment A to a representative of SFUSD for signature, Mr. Ramirez knew that the KALW public inspection file did not include the original or a copy of all of the quarterly issues/programs lists required by 47 C.F.R. Section 73.3527." In response thereto, SFUSD stated:

> SFUSD objects to this Request to the extent that it calls for a legal conclusion rather than an admission of fact. SFUSD further objects that the phrase "all of the quarterly issues/programs lists required by 47 C.F.R. Section 73.3527" as used in this Request is vague and ambiguous. Subject to and without waiving the foregoing objections or the General Objections, SFUSD denies the Request and states that it believes that documents sufficient to satisfy the issues/programs list requirements of 47 C.F.R. Section 73.3527 were in the public inspection file as of the time that Mr. Ramirez transmitted the license renewal application for KALW to the SFUSD for signature in July 1997, with the possible exception of the issues/programs lists covering the first thirteen months of the license term, as explained in the answer to Request No. 18. SFUSD further states that it has been unable to locate issues/programs lists for programming aired from December 1, 1990 to December 31, 1991 —a period of time during which KALW operated from a temporary location after being displaced as a result of the Loma Prieta earthquake in October 1989—and states that SFUSD lacks sufficient information to admit or deny whether issues/programs lists for such time period were included in the public inspection file at the time that Mr. Ramirez transmitted the license renewal application for KALW to SFUSD for signature in July 1997 or whether Mr. Ramirez was aware of the presence or absence of that list in the public inspection file at that time.

For the same reasons set forth above in connection with Bureau Request 18, there is nothing vague, ambiguous or objectionable about Bureau Request 19: either Mr. Ramirez knew that the KALW public inspection file contained all of the required issues/programs lists or that one or more of such lists were not in the file; the Request does not call for a legal conclusion. Moreover, because SFUSD's denial is unsupported by a sworn statement, it is a nullity. Accordingly, the Request should be deemed admitted.

5. Finally, Bureau Admission Request 23 directed SFUSD to admit or deny: "On or about July 30, 1997, Mr. Ramirez knew that SFUSD had not placed in the KALW public inspection file at the appropriate times the documentation required by 47 C.F.R. Section 73.3527." In response thereto SFUSD stated:

> SFUSD objects to this Request to the extent it calls for a legal conclusion rather than an admission of fact. SFUSD further objects that the phrases "appropriate times" and "documentation required by 47 C.F.R. Section 73.3527" as used in this

[1] *See* 47 C.F.R. § 73.3527(e)(8) (formerly, 47 C.F.R. § 73.3527(a)(7)).

> Request are vague and ambiguous. SFUSD further objects that the word "knew" as used in this Request is vague and ambiguous. Subject to and without waiving the foregoing objections or the General Objections, SFUSD denies this Request. SFUSD further responds that on or about July 30, 1997, Mr. Ramirez believed that the public inspection file contained the documentation required by 47 C.F.R. Section 73.3527, as he understood that regulation.

For the reasons noted above, SFUSD's objections are without merit. The rule clearly spells out what SFUSD had to place in the KALW public inspection file and when it had to do so. There is nothing vague, ambiguous or otherwise objectionable about the Bureau's Request, nor does it call for a legal conclusion. Moreover, regarding the substance of the Request, the Bureau notes that Ms. Hecht's report to Mr. Ramirez (the subject of Bureau Requests 8-11) alerted Mr. Ramirez to possible public inspection file deficiencies. If the appropriate documents had been created and timely placed in the public inspection file but happened not to be in the file at the time of Ms. Hecht's review, SFUSD could have so stated. It did not. Instead, SFUSD denied the Request, and based its denial on Mr. Ramirez's supposed belief as to what the rule required, without providing a sworn statement to that effect in support of its denial as required by the rules. Consequently, again, SFUSD's denial is a nullity. Bureau Request 23 should be deemed admitted.

6. For the reasons provided, the Bureau's Motion should be granted and its Admission

Requests 4, 18, 19 and 23 should be deemed admitted without qualification.

Respectfully submitted,

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September 24, 2004

Certificate of Service

Moris Martinez, a clerk in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has, on this 24th day of September, 2004, sent by first class United States mail, electronic mail ("email") or delivered by hand, copies of the foregoing "Enforcement Bureau's Motion to Rule on Objections and Denials to Admission Requests" to:

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