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

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

ORDER

Issued: October 14, 2004

Released: October 15, 2004

On August 24, 2004, the Enforcement Bureau (“Bureau”) filed Request for Admission of Facts and Genuineness of Documents wherein the Bureau asked for 25 admissions of fact. On September 7, 2004, San Francisco Unified School District (“SFUSD”) filed Objections and Responses, wherein it responded to **all but four** of the Bureau’s requests to admit. On September 24, 2004, the Bureau filed a Motion to Rule on Objections and Denials to Admission Requests (“Motion”). On October 12, 2004, SFUSD filed its Opposition. Also on October 12, 2004, SFUSD filed Revised Objections and Responses to the Enforcement Bureau’s Request for Admission of Facts and Genuineness of Documents, and a Declaration of Nicole Sawaya.¹ This is a ruling on the Bureau’s Motion and SFUSD’s Opposition and Responses.

Request No. 4.

The Bureau requested 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 filed at the appropriate times the documentation required by 47 C.F.R. Sections 73.3526 and 73.25567?” [Emphasis added.]

¹ Nicole Sawaya is the current General Manager of Station KALW(FM). She states: “To the extent that SFUSD states in its Response that SFUSD lacks information sufficient to admit or deny any fact relevant to the Enforcement Bureau’s request for admission, the reason for the inability to respond with certainty is the passage of time and change in personnel.”

SFUSD answered:

SFUSD objects to this Request to the extent the word "intended" as used in the Request is vague and ambiguous. Subject to and without waiving the foregoing objections on the General Objections, SFUSD admits that Mr. Ramirez responded "yes" to question 2 of page 3 of Attachment A to this request. [Emphasis added.]

SFUSD revised its answer:

SFUSD previously objected ---. Based on this explanation of the meaning "intended" in the context of this admission request, SFUSD admits that "Mr. Ramirez knew that he was answering 'yes' and he intended to do so" with respect to question 2 of page 3 of SFUSD's 1997 renewal application. [Emphasis added.]

It appears that SFUSD has now satisfactorily responded to the Bureau's Request No. 4 with its revised answer "yes".

Report No. 18

The Bureau requested SFUSD to admit or deny:

On or about the date Mr. Ramirez transmitted the original of [SFUSD's renewal application] 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. [Emphasis added.]

In its revised response, SFUSD responded:

SFUSD admits that at the time that Mr. Ramirez transmitted KALW's renewal application to a representative of SFUSD for signature, the station's public inspection file did not contain issues/programs lists for the entire license period, as required by 47 C.F.R. Section 73.3527. [Emphasis added.]

It appears that SFUSD has now sufficiently answered Request No. 18 with its revised responses, admitting that the inspection file was incomplete.

Request No. 19

The Bureau requested SFUSD to admit or deny:

On or about the date that Mr. Ramirez transmitted the original of [SFUSD's renewal application] 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. [Emphasis added.]

SFUSD responded:

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 --- is vague and ambiguous." -- SFUSD denies the Request and states that it believes that documents sufficient to satisfy the issues/programs list requirement --- were in the public inspection file as of the time that Mr. Ramirez transmitted the license renewal application --- for signature in July 1997 ---. [Emphasis added.]

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 or as a result of the Loma Prieta earthquake in October 1989 ---. [Emphasis added.]

[SFUSD states that it] lacks sufficient information to admit or deny whether issues/programs lists for such time were included in the public inspection file at the time that Mr. Ramirez transmitted the license renewal application --- for signature in 1997, or whether Mr. Ramirez was aware of the presence or absence of that list in the public inspection file at that time. [Emphasis added.]

The responses of SFUSD do not establish that the issues/programs files were complete. The responses actually admit a period of incompleteness as an aftermath of an earthquake and a related relocation to another site. Also, due in part to the passage of seven years time, SFUSD may lack knowledge (recollection) of the condition of the station's public inspection file in 1997, and cannot state the extent of Mr. Ramirez's knowledge in 1997. In view of this statement of having a lack of knowledge (or loss of recollection) caused by passage of

time, there is no basis at this time to require SFUSD to revisit or revise its response to Request No. 19, or to require that SFUSD provide more specificity since SFUSD admits that it has insufficient information to be more specific in its response.²

Request No. 23

The Bureau requests 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 ---. [Emphasis added.]

SFUSD responds that these are conclusions of law concerning the universe of document required to be included in an issues/programs file, and that the passage of time makes it difficult to accurately reconstitute the state of the file. For the same reasoning stated in ruling on Request No. 19 above, SFUSD will not be required to supplement its responses to Request No. 23, as there is no basis shown to assume that SFUSD has more information or recollection than that already disclosed. However, the subject may be pursued in deposition set for November 9, 2004. *See* fn. 2, *supra*.

Conclusion

The Bureau's Motion to Rule on Objections and Denials to Admission Requests has been addressed *seriatim*, in the above rulings. The rulings conclude that SFUSD has responded to the Bureau's admission requests and has explained why it cannot admit or deny.

But the deposition of Mr. Ramirez is set to be taken by the Bureau (and possibly by SFUSD) on November 9, 2004. Therefore, the parties will have ample opportunity to further discover and/or clarify relevant information on the subjects of the Bureau's Requests Nos. 18, 19 and 23.

² The Bureau, and possibly SFUSD, will depose Mr. Ramirez on November 9, 2004, and questions of knowledge and recollection of the contents of Station KALW(FM) files would then be appropriate.

Order

Accordingly, IT IS ORDERED that the Enforcement Bureau's Motion to Rule on Objections and Denials to Admission Requests, as considered above, IS HEREBY RULED ON.

FEDERAL COMMUNICATIONS COMMISSION³



Richard L. Sippel
Chief Administrative Law Judge

³ Courtesy copies of this *Order* were transmitted to counsel for each of the parties by e-mail on the date of issuance.