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

Federal Communications Commission  
 Office of the Secretary

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

To: Chief Administrative Law Judge  
 Richard L. Sippel

**ENFORCEMENT BUREAU'S REPLY BRIEF**

1. On October 27, 2004, both the Enforcement Bureau (the "Bureau") and the San Francisco Unified School District ("SFUSD") filed briefs on the appropriate termination dates for evidence regarding the issues designated in this proceeding. Pursuant to the Presiding Administrative Law Judge's *Order*, FCC 04M-36 (rel. Oct. 21, 2004), the Bureau hereby files its Reply Brief to the SFUSD Brief.

2. In its Brief, the Bureau pointed out that it was unnecessary to establish a firm overall termination date, in view of the varying relevant periods for the designated issues. After reviewing SFUSD's Brief, the Bureau continues to believe that its initial position was correct. Nonetheless, the Bureau will briefly address SFUSD's contentions.

3. In paragraph 4 of its Brief, SFUSD posits that August 1, 1997, is the appropriate termination date for evidence concerning issue 2, which concerns its possible misrepresentations or lack of candor "with regard to its certification in the subject license renewal application...." The *Hearing Designation Order and Notice of Apparent Liability for Forfeiture*, FCC 04-114 (rel. July 16, 2004) ("*HDO*"), especially paragraphs 17, 19-20, as well as the accompanying footnotes, makes clear that the Commission was

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concerned not only about SFUSD's certification in its renewal application that it had placed all required documentation in the Station KALW(FM) public inspection file at the appropriate times, but also about the truthfulness of SFUSD's April 2001 responses to the staff's February 5, 2001, inquiry letter, which specifically asked SFUSD whether certain categories of documents were in Station KALW(FM)'s public inspection file on August 1, 1997. Consequently, the second designated issue contemplates consideration of representations made by SFUSD in 2001, in addition to other, similar representations made by SFUSD, whenever made. Accordingly, the Bureau disagrees with SFUSD that the proper termination date for inquiry under issue 2 is August 1, 1997. Rather, the termination date for issue 2 should be the date of the last such representation made by SFUSD regarding the completeness of the Station KALW(FM) public inspection file.

4. With respect to the possible imposition of forfeitures, the *HDO* focused on apparent violations of three Commission rules. The first involves possible violations of 47 C.F.R. § 73.1015, which essentially requires licensees to provide truthful written submissions to the Commission. As noted above, there are at least two bases for liability which were discussed at length in the *HDO*, the renewal application certification and SFUSD's subsequent response to a staff inquiry.<sup>1</sup> In addition, there may be other representations by SFUSD, which similarly were deceitful. With regard to these matters, the Bureau has already submitted that it is not yet possible to set a termination date for evidence relevant to all possible deceitful representations.

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<sup>1</sup> For the purpose of a possible forfeiture, both submissions occurred during the license term under consideration, since that term continues by operation of law. *See* 47 U.S.C. § 503(b)(6) ("A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of license."). The evidence ultimately adduced may well result in findings that additional misrepresentations occurred within the applicable statute of limitations.

5. The second and third bases for a possible forfeiture concern SFUSD's apparent failure to place two kinds of documents in the KALW(FM) public inspection file. In this regard, the *HDO* at paragraphs 9-11 plainly gave notice to SFUSD that the apparent violations to be considered in this proceeding involved SFUSD's failure to place issues/programs lists and supplemental ownership reports in the Station KALW(FM) public inspection file at the times specified by 47 C.F.R. §§ 73.3527 and 73.3615(g).<sup>2</sup> Consequently, the relevant periods for those possible violations would continue until such time as SFUSD began to place such lists and reports in the station's public inspection file at the times and in the manner prescribed by the rules. Conceivably, notwithstanding SFUSD's April 5, 2001, assurance to the Commission to the contrary, its possible violations continued up to the date of release of the *HDO*. In any event, as the Bureau pointed out in its Brief, evidence relevant to an appropriate forfeiture in this proceeding will likely involve not only the licensee's current financial situation but also whatever qualifies as its meritorious service, subject to the time restrictions previously imposed by the Presiding Administrative Law Judge's *Memorandum Opinion and Order*, FCC 04M-31 (rel. Oct. 8, 2004). Evidence of the former will likely post date the *HDO*, while evidence of the latter has already been set.

6. Accordingly, for the reasons noted by the Bureau in its Brief and herein, there

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<sup>2</sup> The Bureau recognizes that the *HDO*, at paragraph 25 and footnote 62, erroneously specify Section 73.3613 of the Commission's rules as a rule that SFUSD may have violated. However, paragraph 9 of the *HDO* makes plain that the relevant rule that SFUSD apparently violated was Section 73.3615, not Section 73.3613 (which relates to the filing of contracts by licensees), and that the violation apparently occurred because SFUSD had not placed supplemental ownership reports in the KALW(FM) public inspection file at the times required by that rule. Given the authority that the Presiding Administrative Law Judge possesses pursuant to *Atlantic Broadcasting Co.*, 5 FCC 2d 717, 720-21 (1966) and its progeny to correct obvious mistakes, the Bureau submits that correction of this inadvertent error may take place absent a formal motion that he do so.

is no reason to set a firm "termination date" with respect to the relevant period for consideration in this proceeding. Rather, the Presiding Administrative Law Judge should base admissibility rulings on the relevance of the evidence, which, with respect to the time period involved, will vary, as discussed above, according to the issue being addressed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James W. Shook". The signature is fluid and cursive, with a long horizontal stroke at the end.

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November 2, 2004

**Certificate of Service**

James W. Shook, special counsel in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has, on this 2<sup>nd</sup> day of November, 2004, sent by first class United States mail, electronic mail ("email") or delivered by hand, copies of the foregoing "Enforcement Bureau's Brief" to:

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