

What followed, among other things, was Mr. Ramirez's assessment of points two and three (described above), both of which were: "Yes. Yes. Yes. Will correct with explanation."<sup>93</sup> Billing records listings from the Sanchez Law Firm indicate that, on October 6, 1997, Mr. Sanchez reviewed the facsimile sent by Mr. Ramirez and that Mr. Sanchez and Mr. Ramirez discussed and/or reviewed "potential petition to deny points" for more than two hours total during two separate telephone conversations that occurred on October 8.<sup>94</sup>

36. In his written testimony, Mr. Ramirez claimed that he did not recall whether Mr. Sanchez agreed with his assessment of the Petitioner Memo, whether he disagreed, or whether he gave any consideration to Mr. Ramirez's Memorandum. Mr. Ramirez further claimed that he relied on Mr. Sanchez to make sure that the corrections and any accompanying explanations were made to the Commission in the appropriate manner.<sup>95</sup> According to Mr. Ramirez, however, he took corrective action by making sure that supplemental ownership reports that should have been prepared and filed with the Commission in 1993 and 1995 were prepared and placed in Station KALW(FM)'s PIF.<sup>96</sup> Those two supplemental ownership reports were signed on behalf of then-Superintendent

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<sup>93</sup> *Id.* Mr. Ramirez testified that he is not certain exactly what he meant by the words "Will correct with explanation." Tr. 429. The NPR Station Manager's Handbook referenced in Mr. Ramirez's October 4 response to Mr. Sanchez appears as pages 7 and 8 of SFUSD Ex. 6.

<sup>94</sup> EB Ex. 7, p. 3 (Entry 2124, 10/6/1997, "Review fax from Mr. Ramirez and allegations by Golden Gate Public Radio," Entry 2132, 10/8/1997, "Conference with Mr. Ramirez to review potential petition to deny points," and Entry 2133, 10/8/1997, "Conference with Mr. Ramirez to discuss and review potential petition to deny points").

<sup>95</sup> SFUSD Ex. T-1, p. 18.

<sup>96</sup> *Id.*

Rojas and dated December 10, 1997.<sup>97</sup>

37. Billing records from the Sanchez Law Firm reflect that, on October 17, 1997, Mr. Ramirez sent a facsimile “with inventory of public file” to Mr. Sanchez.<sup>98</sup> Although neither Mr. Ramirez nor Mr. Helgeson recall anything about an inventory of the PIF, Mr. Ramirez testified that he is fairly certain that if anyone actually prepared such an inventory, he would have done so.<sup>99</sup> Evidence also reflects that Station KALW(FM) came to possess a “Sample Quarterly Issues/Programs List” sometime on or before October 20, 1997.<sup>100</sup>

38. GGPR filed its Petition on November 3, 1997.<sup>101</sup> A service copy of the Petition reached Mr. Sanchez sometime after November 11. Billing records of the Sanchez Law Firm indicate that Mr. Sanchez had received the Petition and discussed it with Mr. Ramirez no later than November 21.<sup>102</sup> In addition, Mr. Sanchez and Mr.

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<sup>97</sup> SFUSD Ex. 7. There is no evidence that SFUSD filed the 1993 and 1995 supplemental ownership reports with the Commission.

<sup>98</sup> EB Ex. 7, p. 3 (Entry 2151, 10/17/1997, “Review fax from Mr. Ramirez with inventory of public file”).

<sup>99</sup> Tr. 435-37 (Ramirez), 758-59 (Helgeson). SFUSD did not produce any such inventory in response to the Bureau’s requests for production of documents, which was served on SFUSD on September 14, 2004, notwithstanding the fact that the inventory fell within the scope of two of the requests. *See* EB Ex. 41, p. 5 (Requests 7 and 9).

<sup>100</sup> *See* EB Ex. 3, p. 3, n. 1 and p. 25.

<sup>101</sup> EB Ex. 5.

<sup>102</sup> EB Ex. 7, p. 4 (Entry 2233, 11/11/1997, “Review message from Mr. Ramirez; conference with Mr. Berchenko re need for service copy; conference with Mr. Ramirez; further conference with Mr. Berchenko”); Entry 2254, 11/18/1997, “Review draft Petition to Deny; call to Mr. Ramirez; fax to Mr. Palacios”); p. 5 (Entry 2270, 11/21/1997, “Conference with Mr. Ramirez re Petition to Deny; review full document and Fedex to Mr. Palacios”).

Ramirez discussed a "work plan" with regard to the Petition on December 1, 1997.<sup>103</sup>

39. In its Petition, GGPR alleged, among other things, that the Station KALW(FM) PIF was not adequately maintained by SFUSD throughout the license term. GGPR charged that supplemental ownership reports for SFUSD had not been timely prepared, filed with the Commission, or included in the PIF, and that the issues/programs lists had not been timely prepared or placed in the PIF since July 10, 1992. GGPR further contended that Station KALW(FM)'s management was aware that such documentation had not been timely prepared or placed in the PIF, yet SFUSD had certified in the Renewal Application that the ownership reports and issues/programs lists had been placed in the PIF in a timely manner.<sup>104</sup> GGPR supported the above-described allegations with affidavits from Dave Evans, Susen Hecht and Jason Lopez.<sup>105</sup>

#### **E. SFUSD'S OPPOSITION TO THE PETITION TO DENY**

40. SFUSD filed its Opposition to Petition to Deny ("Opposition") on January 20, 1998.<sup>106</sup> In its Opposition, SFUSD denied GGPR's allegations concerning the PIF, relying on two declarations by Mr. Ramirez and one by Mr. Palacios, which were included with the pleading.<sup>107</sup>

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<sup>103</sup> EB Ex. 7, p. 5 (Entry 2300, 12/1/1997, "Conference with Mr. Ramirez re work plan for Petition to Deny").

<sup>104</sup> EB Ex. 5, pp. 1-5.

<sup>105</sup> *Id.*, pp. 42-43 (Evans), 44-49 (Hecht), and 126 (Lopez). The relevant contents of these affidavits have already been set forth. *See supra* at ¶¶ 16 (Evans), 19-20 (Hecht), 32 (Lopez).

<sup>106</sup> SFUSD Ex. 4.

<sup>107</sup> *Id.*, pp. 31, 45-46, 49-51. *But see* EB Ex. 8, p. 1.

41. For his part, Mr. Ramirez addressed GGPR's allegations regarding the PIF in the more detailed of his two declarations at paragraphs 9 -12 (the "January 17, 1998 Declaration"). In responding to Mr. Evans's Affidavit, Mr. Ramirez contended that, when Mr. Evans brought up the subject of the PIF in August 1996, shortly after Mr. Ramirez had become Station KALW(FM)'s General Manager, Mr. Evans was "rather confrontational" and "refused to be specific as to how the public file might be deficient...."<sup>108</sup> Mr. Ramirez then represented:

I nevertheless attempted to follow up on this conversation by seeking to determine what was in the files already and what needed to be added to make them complete and in conformity with the Commission's requirements. Review and updating of the file has been and is an ongoing process.<sup>109</sup>

As noted above, however, Mr. Ramirez testified that he did not do anything with the PIF at the time Mr. Evans raised the matter of the PIF. Indeed, Mr. Ramirez admitted that he did not focus any attention on the PIF until after the Renewal Application Materials had arrived in May 1997, nearly nine months after his conversation with Mr. Evans about the PIF.<sup>110</sup>

42. In responding to Ms. Hecht's Affidavit, Mr. Ramirez represented to the Commission in his January 17, 1998 Declaration:

[I]n June 1997, as a part of this file review and update process, I assigned Ms. Hecht the task of reviewing the file. I do not consider the list she produced ... to be accurate and, in fact, it appears that she may have misunderstood my directions when she worked on this assignment. I made no further use of that list.<sup>111</sup>

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<sup>108</sup> SFUSD Ex. 4, p. 49.

<sup>109</sup> *Id.*, pp. 49-50.

<sup>110</sup> See ¶¶ 16, 18, *supra*. See also SFUSD Ex. T-1, p. 12; Tr. 280, 283, 354, 368; SFUSD Ex. 1, pp. 32-33.

<sup>111</sup> SFUSD Ex. 4, p. 50.

As related above, Mr. Ramirez asserted in his direct written testimony that Ms. Hecht did not do what he asked her to do but instead gave him a document that did not look like “professional, reliable work.” Mr. Ramirez also claimed to have scanned Ms. Hecht’s work but deemed it difficult to review and poorly organized. Nevertheless, Mr. Ramirez understood that Ms. Hecht’s document appeared to be her own assessment of what was missing from the PIF. He then declared that he never read Ms. Hecht’s document closely or gave it much consideration; rather, he conducted and relied upon his own review of the PIF.<sup>112</sup> At the hearing, Mr. Ramirez asserted that, by the time he had received Ms. Hecht’s report, he had already started looking at the PIF himself. He testified that he spent two or three seconds flipping through Ms. Hecht’s report, set it aside, and did not look at it closely again.<sup>113</sup>

43. In his January 17, 1998 Declaration, Mr. Ramirez went on to relate that the Renewal Application was his first, that his understanding of what information was required to be provided and certified was not complete, and that he may have misunderstood what was required. With respect to ownership reports, Mr. Ramirez noted that SFUSD had submitted its current Ownership Report with the station’s Renewal Application; however, he said nothing about the 1993 and 1995 Supplemental Ownership Reports that had been prepared and signed on behalf of then-SFUSD Superintendent Rojas in December 1997.<sup>114</sup>

44. As discussed above, Section III, Question 2 of the license renewal application

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<sup>112</sup> SFUSD Ex. T-1, pp. 12-13. *See also* ¶ 21, *supra*.

<sup>113</sup> Tr. 376-77.

<sup>114</sup> *See* SFUSD Ex. 4, p. 50.

form asked:

Has the applicant placed in its public inspection file at the appropriate times the documentation required by Section 73.3526 and 73.3527?

If No, attach as an Exhibit a complete statement of explanation.<sup>115</sup>

With regard to SFUSD's response of "Yes" to that question, in Mr. Ramirez's January 17, 1998 Declaration, he claimed that he conferred with communications counsel as to what was required to be in the public files. Mr. Ramirez then asserted that, in responding "Yes" to the question, he had relied upon his understanding of counsel's advice (without describing in any way what that advice was), an NAB counsel memorandum on "this subject," and his knowledge of the PIF. Mr. Ramirez then claimed that he had believed that Ms. Hecht's "assessment" of the PIF was inaccurate and confused and that he did not recall his above-described conversation with Mr. Evans.<sup>116</sup> Mr. Ramirez then asserted:

I also believed that I had fully accounted for all public issues/programs during my tenure as General Manager in the document which Petitioner has labeled Exhibit O, which is what I believed was called for by the question and the rule. Therefore, I believed I was responding honestly and accurately to this and all questions in Section III, and so reported to Mr. Palacios when I transmitted the completed form to him....<sup>117</sup>

At his deposition, however, Mr. Ramirez testified that he thought that he was responsible for making sure that the PIF contained issues/programs lists for the entire license term, rather than only during his tenure as General Manager.<sup>118</sup> Billing records from the

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<sup>115</sup> See SFUSD Ex. 5, p. 4.

<sup>116</sup> SFUSD Ex. 4, p. 50.

<sup>117</sup> SFUSD Ex. 4, pp. 50-51. As discussed above, however, Exhibit O covered *City Visions* programs only for the period June 5, 1995 to July 7, 1997. See EB Ex. 5, pp. 70-72.

<sup>118</sup> SFUSD Ex. 1, p. 81 (dep. p. 80).

Sanchez Law Firm reflect that Mr. Ramirez participated in conferences or discussions with counsel about the Petition or Opposition on January 1, 9, 12, 13, 17 and 19, 1998.<sup>119</sup>

45. In an "Activity Report" prepared less than two weeks later, Mr. Ramirez identified several local programs aired over the station during his tenure as General Manager, which he believed to be significant, including *Open Air*, *Tangents*, *Work with Marty Nemko* and *Making the Grade*.<sup>120</sup> In addition, in connection with the meritorious programming issue in this proceeding, SFUSD identified some of those programs, as well as twelve others, which it claims to demonstrate Station KALW(FM)'s commitment to serve the interests and needs of its community during the year preceding the filing of the Renewal Application.<sup>121</sup>

46. On January 13, 1998, Mr. Helgeson sent an e-mail to Mr. Covell. In that e-mail, Mr. Helgeson thanked Mr. Covell for sending the 4<sup>th</sup> quarter 1997 list of *City*

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<sup>119</sup> EB Ex. 7, pp. 5-9 (Entry 2364, 1/1/1998, "Conference with Mr. Ramirez re Opposition to Golden Gate Petition to Deny and planned filing," Entry 2397, 1/9/1998, "Conference with Mr. Ramirez re work on Opposition to Golden Gate Petition to Deny," Entry 2605, 1/9/1998, "Conference with Mr. Ramirez and Mr. Sanchez re opposition to petition to deny; arrange further discussion for 1/12," Entry 2607, 1/12/1998, "Prepare ...; conference call with Mr. Ramirez and Mr. Sanchez to go over memo and points for declaration," Entry 2407, 1/12/1998, "Conference ... with Mr. Ramirez," Entry 2608, 1/13/1998, "... conferences with Mr. Palacios and Mr. Ramirez," Entry 2730, 1/17/1998, "... conference with Mr. Ramirez re death of Mr. Evans and content of his declaration," Entry 2732, 1/19/1998, "Edit and fax final draft of Opposition to Mr. Ramirez and conference with Mr. Ramirez"). See also EB Ex. 9.

<sup>120</sup> SFUSD Ex. 8, p. 2.

<sup>121</sup> SFUSD Ex. 49, pp. 1-5 (*Book Talk*), 11 (*My Favorite Things*), 13-16 (*Performing Arts Profile*), 16 (*Performing Arts Special*), 22-31 (*Open Air*); SFUSD Ex. 50 (Meetings of the Board of Education); SFUSD Exs. 51 and 52 (*City Visions*); SFUSD Ex. 53 (*The Commonwealth Club of California*); SFUSD Ex. 54, p. 3 (*Work With Marty Nemko*); SFUSD Ex. 55, pp. 2-38 (*Your Legal Rights*); SFUSD Ex. 56, pp. 2-4 (*Folk Music and Beyond*); SFUSD Ex. 57 (*Kumpo Beat*); SFUSD Ex. 58 (*Mark Naftalin's Blues Power Hour*); SFUSD Ex. 59 (*A Patchwork Quilt*); SFUSD Ex. 60 (*Tangents*); SFUSD Ex. 69 (*Bluegrass Signal*), pp. 2-4.

*Visions* programs, and asked him to prepare such a list in the future on a quarterly basis to keep “our records up to date from now on.”<sup>122</sup> Three days after this e-mail, Mr. Helgeson executed a Declaration that was submitted with the Opposition in connection with SFUSD’s arguments that it maintained Station KALW(FM)’s PIF as required by the Commission. In his Declaration, dated January 16, 1998, Mr. Helgeson averred:

3. I have responsibility for maintaining a four-drawer file cabinet in my work area, located near my desk, at KALW’s office. The third drawer of that file cabinet contains KALW’s public file....

4. I am aware of, and have assisted with, an ongoing affirmative effort since the arrival of Jeffrey Ramirez as General Manager of KALW, to update and maintain the station’s public inspection file in accordance with the rules of the Federal Communications Commission.<sup>123</sup>

47. In Mr. Helgeson’s direct testimony, in response to the question:

What did you mean when you said in your 1998 declaration that you were responsible for maintaining the file cabinet in which the public inspection file was kept?

Mr. Helgeson answered:

I can’t say now so many years later exactly what I meant at the time.... While the choice of words “responsible for maintaining” were not mine, I did not object to them. I understood it to refer to the file cabinet itself – not to a specific drawer – and I assumed it related to my statement that I had not given GGPR permission to take or copy documents from the file cabinet in my area. I certainly did not mean to imply ... that I was or had ever been responsible for keeping the PIF up-to-date....”<sup>124</sup>

48. In responding to a question about the “ongoing affirmative effort” referenced in his Declaration, Mr. Helgeson testified that he was

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<sup>122</sup> EB Ex. 3, pp. 2-3, 18-21.

<sup>123</sup> SFUSD Ex. 4, p. 74. From conversations with Mr. Ramirez, Mr. Helgeson understood that one of GGPR’s claims was that the PIF did not have required documents, contrary to Mr. Ramirez’s certification. Tr. 750.

<sup>124</sup> SFUSD Ex. T-2, p. 9.

much more aware of his [Mr. Ramirez's] actions regarding the public file ... once he was ... preparing the documents for the license renewal application.<sup>125</sup>

Indeed, when cross-examined, Mr. Helgeson could not remember anything specific that Mr. Ramirez had done with respect to the PIF before the Renewal Application had arrived.<sup>126</sup> Moreover, in response to extensive questioning by the Presiding Judge, Mr. Helgeson conceded that he did not know what the Commission's rules required with respect to a public file and that he had no personal knowledge of having claimed or suggested that the PIF had been updated and maintained in accordance with those rules.<sup>127</sup> Instead, Mr. Helgeson admitted that he agreed to the representation about the PIF being updated and maintained because he "assumed that that's what Jeff was doing."<sup>128</sup> Billing records from the Sanchez Law Firm reflect that, after the GGPR Petition was filed, Mr. Helgeson had a brief conversation with Mr. Sanchez on January 2, 1998, and, apparently, a more extensive one with Ms. Jenkins on January 14, in connection with the preparation of his Declaration.<sup>129</sup>

49. Mr. Ramirez resigned as General Manager of Station KALW(FM) at the end

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<sup>125</sup> Tr. 814-15.

<sup>126</sup> Tr. 815-17.

<sup>127</sup> Tr. 821-25. *See also* Tr. 753-54.

<sup>128</sup> Tr. 819.

<sup>129</sup> *Id.*, p. 5 (Entry 2366, 1/2/1998, "Conference with Mr. Helgeson re item in San Francisco newspaper re Golden Gate Petition to Deny"); p. 7 (Entry 2609, 1/14/1998, "Conferences with witnesses and prepare declarations for Ramirez, Palacios, Perez, Helgeson, and Moon... ; followup telephone conversations on contents of declarations, documents and strategy").

of January 1998.<sup>130</sup> From that point and during the next several months, Mr. Helgeson operated the station as interim General Manager.<sup>131</sup> During that period, Mr. Helgeson served as Mr. Sanchez's point of contact at Station KALW(FM) with respect to GGPR's Petition, as well as Commission requirements regarding the PIF. In that role, Mr. Helgeson reported to Mr. Sanchez about a "clean up" of the PIF on January 30, 1998,<sup>132</sup> and he received facsimile transmissions from Mr. Sanchez about an "NAB Public File Memo"<sup>133</sup> and a "Model Program Issue List Example" in March 1998.<sup>134</sup>

**F. MASS MEDIA BUREAU LETTER OF INQUIRY/SFUSD'S HIRING OF MS. SAWAYA**

50. On February 5, 2001, nearly three years after the last pleading was filed in connection with GGPR's Petition, the then-Mass Media Bureau ("MMB") sent a letter of inquiry to Mr. Sanchez (the "LOI") that requested additional information responsive to some of the allegations raised in the Petition.<sup>135</sup> Specifically, the LOI posed five-numbered questions and various follow-up inquiries, the bulk of which sought to determine whether, on August 1, 1997, the PIF had contained the supplemental ownership reports, quarterly issues/programs lists, and donor lists required by the

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<sup>130</sup> SFUSD Ex. T-1, p. 19. During the next seven years, Mr. Ramirez worked for the Corporation for Public Broadcasting ("CPB"). *Id.*, pp. 19-20.

<sup>131</sup> SFUSD Ex. T-2, p. 10. *See also* EB Ex. 7, p. 11 (Item 2522, 1/30/1998, Conference with Mr. Helgeson re status of Golden Gate matter and discussion of public file requirements.); EB Ex. 40, p. 4.

<sup>132</sup> EB Ex. 10. *See also* Tr. 831-45.

<sup>133</sup> EB Ex. 11; EB Ex. 11A. *See also* Tr. 848-56.

<sup>134</sup> EB Ex. 12; EB Ex. 12A. *See also* Tr. 856-59.

<sup>135</sup> EB Ex. 13. The LOI also granted an uncontested motion that SFUSD had filed on March 18, 1998.

Commission's rules.<sup>136</sup> The LOI directed SFUSD to limit its responses to answering the specific questions and warned that extraneous matter would not be considered. The LOI also advised that action on SFUSD's Renewal Application would be withheld for 30 days to allow SFUSD time to submit a response, which should be supported by an affidavit of a Station KALW(FM) principal or management-level employee with personal knowledge of the facts reported.<sup>137</sup>

51. Ms. Jenkins transmitted the LOI to Mr. Helgeson on February 8, 2001, with a request that he call the Sanchez Law Firm after he had reviewed the LOI.<sup>138</sup> At the time, Mr. Helgeson was – and had been for the past four months – serving as Station KALW(FM)'s General Manager.<sup>139</sup> Billing records of the Sanchez Law Firm reflect that Ms. Jenkins and Mr. Sanchez reviewed and discussed the LOI on February 13 and 19, 2001, and that Ms. Jenkins spoke to Mr. Helgeson about the LOI on February 19.<sup>140</sup> In addition, Ms. Jenkins sent Mr. Helgeson a memo and documents, which covered “the basic rules governing radio station public files.”<sup>141</sup>

52. After a February 19, 2001 telephone conversation with Ms. Jenkins, Mr.

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<sup>136</sup> *Id.*, pp. 2-3.

<sup>137</sup> *Id.*, p. 3.

<sup>138</sup> EB Ex. 14. *See also* Tr. 884-85.

<sup>139</sup> EB Ex. 40, p. 4.

<sup>140</sup> EB Ex. 35, p. 1 (02/13/2001, SMJ “Reviewed letter from FCC’s MMB re renewal and public file issues; discussed with Mr. Sanchez.” ETS “Review FCC letter requesting public file information for KALW dated February 5, 2001.” 02/19/2001, ETS “Discussion with Ms. Jenkins re FCC letter and follow up.” SMJ “Phone call to Mr. Helgeson re memo and FCC letter; discussion with Mr. Sanchez.”). *See also* Tr. 887-90.

<sup>141</sup> *Id.*; EB Ex. 15.

Helgeson commenced review of the PIF. According to Mr. Helgeson's direct testimony in this proceeding, the PIF "was a complete mess."<sup>142</sup> Although he did not make a record of what he did and did not find in the PIF, he acknowledged in his direct testimony that the PIF was "missing a lot of the required records of quarterly issues/programs lists and a couple of recent ownership reports."<sup>143</sup> With the assistance of a station volunteer, Mr. Helgeson began to update the PIF. Among other things, they created folders for each quarter, made copies of Station KALW(FM) Program Guides from those personally saved by Mr. Helgeson, and downloaded issues/programs lists from NPR. Mr. Helgeson also prepared supplemental ownership reports for January 1999, July 2000 and January 2001.<sup>144</sup>

53. Contemporaneous with the receipt and initial review of the LOI and PIF, SFUSD was completing the process of hiring a new General Manager for Station KALW(FM) – a process begun the previous summer.<sup>145</sup> In mid-February 2001, SFUSD offered the position to Margaret Ann (Nicole) Sawaya.<sup>146</sup> Ms. Sawaya's background included time as Station Manager of Station KZYX(FM), Philo, and General Manager of Station KPFA(FM), Berkeley, both in California.<sup>147</sup> Ms. Sawaya started as Station

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<sup>142</sup> SFUSD Ex. T-2, p. 12.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*, pp. 12-13.

<sup>145</sup> Tr. 869-72. SFUSD Ex. T-3, p. 5.

<sup>146</sup> *Id.* See also EB Ex. 46.

<sup>147</sup> SFUSD Ex. T-3, pp. 3-4.

KALW(FM)'s General Manager on March 1, 2001.<sup>148</sup>

54. According to Ms. Sawaya, Mr. Helgeson alerted her to the availability of the job at Station KALW(FM) as a result of a recommendation of her that he had received from Mr. Ramirez.<sup>149</sup> Ms. Sawaya testified that, notwithstanding her friendship with Mr. Ramirez and her contacts with Mr. Helgeson, she did not know about the Petition and did not learn about the LOI until after she had started as the Station KALW(FM) General Manager.<sup>150</sup> Ms. Sawaya testified that she learned about the Petition from Mr. Helgeson and the LOI from Mr. Sanchez within her first day or two of work.<sup>151</sup> Upon learning about the Petition, Ms. Sawaya stated: "My first reaction was shock...."<sup>152</sup>

55. By letter to the Commission dated March 6, 2001, SFUSD, by Mr. Sanchez, requested a 30-day extension to respond to the LOI, until April 6, 2001. Therein, Mr. Sanchez represented that Station KALW(FM) had a small staff, that it had recently hired a new General Manager, and that it wished to involve that new General Manager in all matters related to the Renewal Application, including responding to the LOI.<sup>153</sup>

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<sup>148</sup> *Id.*, p. 1.

<sup>149</sup> *Id.*, p. 5; Tr. 1285-86. *See also* Tr. 881-82. Mr. Ramirez and Ms. Sawaya had known each other for years following time together in a CPB program called the "Next Generation Project." According to Ms. Sawaya, their paths have crossed many times since. SFUSD Ex. T-3, p. 5. *See also* Tr. 1262.

<sup>150</sup> *Id.*, p. 5; Tr. 1298-1300. *See also* Tr. 491-95, 552-54, 868-70, 875-77, 879-80. In this regard, the Bureau also notes that Dr. Arlene Ackerman, SFUSD's Superintendent, testified that she learned of the license challenge shortly after becoming Superintendent in August 2000 and that she interviewed Ms. Sawaya. SFUSD Ex. T-4, pp. 1-3.

<sup>151</sup> Tr. 1306-07; SFUSD Ex. T-3, p. 7. *But see* EB Ex. 51.

<sup>152</sup> SFUSD Ex. T-3, p. 7. *See also* Tr. 1309.

<sup>153</sup> EB Ex. 16.

## G. SFUSD'S RESPONSE TO THE LOI

56. Billing records of the Sanchez Law Firm reflect that on March 6, 2001, the day of the extension request, Mr. Sanchez spoke with both Mr. Helgeson and Ms. Sawaya about SFUSD's response to the LOI.<sup>154</sup> That same day, Mr. Sanchez informed Ms. Jenkins that "Nicole and Bill ... will be sending draft answers by the end of the week."<sup>155</sup> The following day, Mr. Sanchez sent Mr. Helgeson an e-mail that included a then-current version of Section 73.3527, the Commission's public file rule for noncommercial educational broadcast stations.<sup>156</sup>

57. On March 8, 2001, Ms. Sawaya sent two memos to Mr. Sanchez.<sup>157</sup> In the first, she stated:

I really hope we can put this license challenge to bed very soon....

... Anything that can be done to argue the fact that the place was in physical and management chaos, and anything that can be done to assuage the FCC's fears that that is not still the case, please do....<sup>158</sup>

In the second, Ms. Sawaya provided draft responses to the LOI's questions.<sup>159</sup>

58. LOI question 1 asked:

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<sup>154</sup> EB Ex. 35, p. 1 (03/06/2001, ETS "Conference with Mr. Helgeson and Ms. Sawaya re work on responses to recent letter from FCC mass media bureau; review request for extension of time to Commission.").

<sup>155</sup> EB Ex. 17.

<sup>156</sup> EB Ex. 18; EB Ex. 19. *See also* EB Ex. 35, p. 1 (03/07/2001, ETS "Prepare e-mail to Mr. Helgeson with current FCC public inspection file requirements.").

<sup>157</sup> The two March 8, 2001 memos prepared by Ms. Sawaya were provided to the Bureau on February 2, 2005, following the Bureau's Third Document Request.

<sup>158</sup> EB Ex. 20.

<sup>159</sup> EB Ex. 21; Tr. 1338; SFUSD Ex. T-3, p. 9.

On August 1, 1997, when the subject license renewal application was filed, did the KALW(FM) public inspection file contain all of the ownership and supplemental ownership reports required to be kept in the file by the Section 73.3527?

a) If the answer is "no," detail any omission or deficiency. If the answer is "yes," please include a copy of each such report with the response to this inquiry letter.<sup>160</sup>

Ms. Sawaya's memo proposed the following response to the Commission:

1) No. Missing was: ownership report January 31, 1993 – was put in file December 10, 1997. Missing was ownership report January 31, 1995 – was put in file December 10, 1997. (see enclosed copies) ....<sup>161</sup>

59. LOI question 2 asked:

On August 1, 1997, did the KALW(FM) public inspection file contain all of the issues/programs lists required by the Section 73.3527? Did any lists that were in the file contain the information required by Section 73.3527?

a) If the answer is "no" to either inquiry, detail any omission or deficiency. If the answer is "yes," include a copy of each issues/programs list with the response to this letter.<sup>162</sup>

Ms. Sawaya's memo proposed the following response to the Commission:

1) No. The premises of KALW, fm [sic] were almost entirely destroyed during the Loma Prieta earthquake in the Fall of 1989 in San Francisco. Until the beginning of 1997, when KALW moved to its current location (Philip & Sala Burton High School), the station was moved several times to temporary facilities. During this period, KALW was operating out of a variety of abandoned school gyms. Many day-to-day operations did not happen during this period, and the record-keeping ability of the station was severely hampered by the constant changing of locations. Most files and paperwork were kept in boxes, some of which were lost as moves kept occurring. Unfortunately, the public file of issues/programs was susceptible to the physical chaos at the station.<sup>163</sup>

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<sup>160</sup> See EB Ex. 13, p. 2.

<sup>161</sup> EB Ex. 21; Tr. 1339-41.

<sup>162</sup> See EB Ex. 13, p. 2.

<sup>163</sup> EB Ex. 21. Mr. Helgeson acknowledged that Ms. Sawaya's knowledge of Station KALW(FM)'s history probably came from him. Tr. 974-77. See also Tr. 1356.

60. LOI question 4 read:

If the answer to any of the above questions is "no," detail when and precisely what steps were instituted to correct any problems and ensure that the public inspection file contained all requisite materials?<sup>164</sup>

Ms. Sawaya's memo proposed the following response to the Commission

KALW did ownership reports for 1993 & 1995, and we have brought all ownership reports up to date, with the most recent being January 31, 2001. KALW's reports were spottily corrected during the late 1990's. However, all reports were corrected in the Fall of 1997 when matters came to the attention of then general manager, Jeff Ramirez.<sup>165</sup>

61. Finally, LOI question 5 asked:

As of the date of this letter, is the KALW(FM) public inspection file now complete?

a) If the answer to any of the questions 1-3 above is "no" and presuming that the public inspection file is now complete and current, give the date on which the KALW(FM) public inspection file contained all required materials.<sup>166</sup>

Ms. Sawaya's memo proposed the following response to the Commission:

Ownership reports are now completed and current. Donor support for specific programs is non-applicable. Issues and program listings are current, and back listings are in the process of being completed to the best of our ability.<sup>167</sup>

62. Once she completed the memos, Ms. Sawaya mailed them to Mr. Sanchez.<sup>168</sup>

Notwithstanding the draft answers that appeared in Ms. Sawaya's memos, her written

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<sup>164</sup> EB Ex. 13, p. 2.

<sup>165</sup> EB Ex. 21. Ms. Sawaya testified that she could not remember how she knew what Mr. Ramirez had done with respect to ownership reports but she presumes that she was so told by Mr. Helgeson. SFUSD Ex. T-3, p. 11.

<sup>166</sup> See EB Ex. 13, p. 2.

<sup>167</sup> EB Ex. 21.

<sup>168</sup> Tr. 1367.

testimony states that:

while I had a general understanding of what the LOI asked, I had no specific understanding as to how those questions should be analyzed and answered.”<sup>169</sup>

With respect to the station’s efforts to make current its “back listings” in the PIF, as noted in the draft response to LOI question 5, Mr. Helgeson downloaded from NPR’s website its issues/programs lists on March 14, 2001, and placed them in the PIF on or about that date.<sup>170</sup> Sanchez Law Firm billing records reflect that Ms. Jenkins reviewed materials for the SFUSD LOI response from Ms. Sawaya and Mr. Helgeson on March 15 and spoke with Ms. Sawaya on March 16, 2001.<sup>171</sup> However, Ms. Sawaya testified that she had no recollection of ever discussing her March 8 memos with anyone.<sup>172</sup>

63. Station records reflect that nothing further relative to the LOI occurred until March 26, 2001. On that date, Ms. Sawaya sent an e-mail to Mr. Sanchez, with copies to Mr. Helgeson, Jackie Wright and David Campos, inquiring whether the “reply to the FCC ha[d] been written.”<sup>173</sup> Mr. Sanchez responded two days later, informing Ms. Sawaya,

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<sup>169</sup> SFUSD Ex. T-3, p. 8. *But see* EB Ex. 48.

<sup>170</sup> Tr. 1086; SFUSD Ex. T-2, p. 13; EB Ex. 34, pp. 71-82 (3/14/01 date appearing in upper-right hand corner of NPR list). *See also* EB Ex. 44, pp. 26-44, 73-74, 82-83, 91-92, 100-01, 111-12, 125-26, 141-42, 155-56, 171-72, 184-85, 197-98, 210-11, 224-25, 237-38, 250-51, 262-63, 273-74, 285-86, 295-97, 306-08, 317-19.

<sup>171</sup> EB Ex. 35, pp. 1-2 (3/15/2001, SMJ “Reviewed memo and attachment from Ms. Sawaya and Mr. Helgeson for response to FCC re public file.” 3/16/2001, SMJ “Telephone conference with Ms. Sawaya.”). According to Ms. Sawaya, the only memos that she had sent the Sanchez Law Firm were her March 8 memos (EB Exs. 20 and 21). Tr. 1396.

<sup>172</sup> SFUSD Ex. T-3, p. 15.

<sup>173</sup> SFUSD Ex. 19. Ms. Sawaya had previously identified Ms. Wright as her “immediate boss” at SFUSD (*see* EB Ex. 22), while she identified Mr. Campos as a Deputy City Attorney in SFUSD’s Legal Office. EB Ex. 23. *See also* EB Ex. 49.

Mr. Helgeson, Ms. Wright and Mr. Campos that he expected to have a “draft reply ready by Monday” [April 2, 2001].<sup>174</sup> Sanchez Law Firm records show that on March 26, 2001, Ms. Jenkins started to research and work “in preparation” for the SFUSD response to the Commission.<sup>175</sup> Additional work “in preparation” occurred the following day,<sup>176</sup> while work on the actual response apparently began on March 28, 2001 and continued through March 30.<sup>177</sup> However, the bulk of the work apparently occurred on April 2 and 3, when Ms. Jenkins billed SFUSD for 17 hours of her time.<sup>178</sup> As background for the LOI response, Mr. Helgeson provided a summary of Station KALW(FM)’s “facilities movements” since 1989.<sup>179</sup>

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<sup>174</sup> EB Ex. 24. Mr. Helgeson read Mr. Sanchez’s e-mail and understood that he was going to be reading a draft response shortly. Tr. 996.

<sup>175</sup> EB Ex. 35, p. 2 (03/26/2001, SMJ, Research and other work in preparation of response to FCC.).

<sup>176</sup> *Id.* (03/27/2001, SMJ “Reviewed files and other research in preparation for response to FCC.”).

<sup>177</sup> *Id.* (03/28/2001, SMJ “Work on preparation of response to FCC; reviewed e-mails among Mr. Sanchez, Ms. Sawaya, Mr. Helgeson; reviewed documents provided by client.”); (03/29/2001, SMJ “Work on preparation of response to FCC and on letter to Mr. Campos; confer with Mr. Sanchez.”); (03/30/2001, SMJ “Work on preparation of response to FCC; research re rules on public files.” ETS “Work with Ms. Jenkins on response to FCC; review commission ownership report rules and KALW public file materials; FCC research.”).

<sup>178</sup> *Id.* (04/02/2001, SMJ “Work on response to FCC letter, including numerous telephone conversations with Mr. Helgeson and Ms. Sawaya.”); (04/03/2001, SMJ “Work on response to FCC letter, including work on exhibits.”).

Consistent with Ms. Jenkins’ April 2 description of her services, Mr. Helgeson sent Ms. Sawaya an e-mail on April 3 relating that, on the day before, he had had an approximately one-hour telephone call with Mr. Sanchez and Ms. Jenkins relating “to what documents were (or should be) in KALW’s public file...ownership reports, quarterly issue reports and donor lists.” EB Ex. 27. *See also* Tr. 1003.

<sup>179</sup> SFUSD Ex. 9.

64. On April 3, 2001, at 7:37 p.m. local time, Mr. Sanchez sent a draft response to the LOI to Mr. Campos, with copies to Ms. Wright, Mr. Helgeson and Ms. Sawaya.<sup>180</sup> Mr. Helgeson testified that he received and read the draft either that afternoon or the next morning.<sup>181</sup> Ms. Sawaya testified to have done the same.<sup>182</sup> According to Mr. Helgeson, he did not speak with Ms. Sawaya about the draft response.<sup>183</sup> In their direct testimony, neither Mr. Helgeson nor Ms. Sawaya recalled reviewing the draft.<sup>184</sup> During cross-examination, both indicated that their respective readings were cursory at best.<sup>185</sup>

65. Among other things, the draft response asserted, contrary to the second of Ms. Sawaya's March 8, 2001 memos, that the answers to LOI questions 1 and 2, which inquired about ownership reports and issues/programs lists in the PIF as of August 1, 1997, should be "Yes" rather than "No."<sup>186</sup> With respect to ownership reports, the draft acknowledged that the 1995 (but not 1993) supplemental ownership report was dated December 1997. Nonetheless, the draft asserted that "present management" believed that all supplemental ownership reports were present in the PIF on August 1, 1997.<sup>187</sup> With respect to issues/programs lists, the draft declared that "present management" believed

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<sup>180</sup> SFUSD Ex. 21.

<sup>181</sup> Tr. 1010-12.

<sup>182</sup> Tr. 1422.

<sup>183</sup> Tr. 1021-22.

<sup>184</sup> SFUSD Ex. T-2, p. 14; SFUSD Ex. T-3, p. 14.

<sup>185</sup> Tr. 1012 (Helgeson); Tr. 1424 (Sawaya). *But see* SFUSD Ex. 18, dep. pp. 370, 375, 377-79.

<sup>186</sup> SFUSD Ex. 21, pp. 2, 4.

<sup>187</sup> *Id.*, pp. 2-3.

that all issues/programs lists for the entire period in question were in the PIF as of August 1, 1997.<sup>188</sup> Nonetheless, the draft then acknowledged that SFUSD did not find any such lists in the PIF. Instead, according to the draft, “present management” found, “for each quarter of the period in question,” a copy of Station KALW(FM)’s Program Guide and “lists of issues of public importance that received significant treatment in programs provided to KALW by National Public Radio.”<sup>189</sup> The draft response went on to claim that the present station General Manager and its Operations Manager had completely reviewed the PIF and made sure that it contained all required documents, reports and information.<sup>190</sup>

66. During his hearing testimony, Mr. Helgeson could not clarify whether he was the source for the statements concerning present management’s beliefs regarding the contents of the PIF in 1997. In this regard, he testified that he did not tell Mr. Sanchez or Ms. Jenkins that he [Mr. Helgeson] believed that all required supplemental ownership reports had been present in the PIF on August 1, 1997.<sup>191</sup> Mr. Helgeson also testified that he was not certain whether he was the source of the draft’s claim about “present management’s” belief that all issues/programs lists had been present in the PIF on August 1, 1997.<sup>192</sup> Mr. Helgeson repeatedly suggested that the only basis for such so-called beliefs about the PIF’s contents was that, because Mr. Ramirez had certified that

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<sup>188</sup> *Id.* p. 4.

<sup>189</sup> *Id.* p. 5.

<sup>190</sup> *Id.* p. 6.

<sup>191</sup> Tr. 1023-24.

<sup>192</sup> Tr. 1032-34.

materials were present, they must have been there.<sup>193</sup> Mr. Ramirez, however, earlier testified during his deposition that the answers to LOI questions 1 and 2 should have been “No.”<sup>194</sup>

67. Ms. Sawaya understood that the draft response’s references to “present management” included her.<sup>195</sup> However, she claimed not to have read the references,<sup>196</sup> and also that her role in the process of responding to the LOI was only:

to keep things moving, to get everybody briefed in a much bigger detail about what had been going on for the past many years. I was taking my directives from Mr. Sanchez.... He was in a leadership role here, truly, with Ms. Jenkins. I was there to facilitate, to get something that had dawdled for a while, moving. I felt that was my ultimate goal and responsibility as a newcomer.<sup>197</sup>

Notwithstanding her claimed subordinate role to Mr. Sanchez, Ms. Sawaya reported to her immediate superior, Ms. Wright, in August 2001:

KALW still has a license challenge against it on the FCC’s (Federal Communications Commission) table. The challenge was brought against the station and licensee (SFUSD) by Golden Gate Public Radio, most of who were insiders at the station. The challenge was languishing with no movement on the part of the FCC or station management to try to bring it to closure. Upon becoming station manager I immediately tackled this issue. I know the station’s FCC lawyer from previous experience. I contacted him and asked him to turn up the fire on the challenge. In brief: ... Mr. Sanchez has written another legal brief to the FCC ... and continues to keep KALW on the front burner because I’m relentless. It is imperative that we put the challenge “to bed” as soon as possible. This has been very costly for the station over time, and we may end up getting

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<sup>193</sup> Tr. 1023-24, 1026, 1031, 1033-35.

<sup>194</sup> SFUSD Ex. 1, pp. 106-07 (dep. pp. 105-06).

<sup>195</sup> Tr. 1428.

<sup>196</sup> Tr. 1427, 1432-35. According to Ms. Sawaya, “It’s what Mr. Sanchez believed.... If Mr. Sanchez decided that my answers [the March 8 memo] were not accurate, that was up to him.” Tr. 1434-35.

<sup>197</sup> Tr. 1437-38.

fined. Mr. Sanchez has assured me that the fine would be minimal.<sup>198</sup>

68. Mr. Helgeson acknowledged that he did not speak with Mr. Ramirez about the Renewal Application certification or the contents or completeness of the PIF as of August 1, 1997.<sup>199</sup> In addition, Mr. Helgeson testified that he did not know whether Mr. Sanchez or Ms. Jenkins had contacted Mr. Ramirez about the LOI or SFUSD's response.<sup>200</sup> Mr. Ramirez testified that he was not aware in 2001 that SFUSD had received the LOI inquiring about the contents of the PIF at the time the Renewal Application was filed, and that he had not talked to anyone connected with SFUSD in 2001 about the condition of the PIF in 1997.<sup>201</sup> Mr. Helgeson conceded that he had not checked Mr. Ramirez's January 17, 1998 Declaration to determine what it was that Mr. Ramirez supposedly thought his certification had covered, nor was he aware that anyone else had done so.<sup>202</sup> Finally, Mr. Helgeson acknowledged that the draft response's claims that Station KALW(FM) Program Guides and NPR issues/programs materials were present in the PIF in 1997 were inaccurate.<sup>203</sup>

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<sup>198</sup> EB Ex. 51. *See also* SFUSD Ex. 23; EB Ex. 53, pp. 3-4.

<sup>199</sup> SFUSD Ex. T-2, p. 16; Tr. 1032, 1077-78.

<sup>200</sup> Tr. 1032.

<sup>201</sup> Tr. 490. Ms. Sawaya testified that she did not speak with Mr. Ramirez about the LOI or SFUSD's response thereto. Tr. 1247.

<sup>202</sup> Tr. 1035.

<sup>203</sup> Tr. 1041-46.

69. Billing records of the Sanchez Law Firm reflect that, on April 4, 2001, both Mr. Sanchez and Ms. Jenkins continued to work on SFUSD's response to the LOI.<sup>204</sup> In connection therewith, Ms. Jenkins drafted a declaration for Mr. Helgeson, which she transmitted to him that day. In addition to requesting that he review and, if necessary, correct the draft declaration, Ms. Jenkins requested that Mr. Helgeson send to her by facsimile a copy of Station KALW(FM)'s Program Guide for any period between 1995 through August 1997, as well as an NPR issues/program list from that same period.<sup>205</sup> Mr. Helgeson understood that the purpose of his declaration was to certify that he was agreeing with the LOI response that was being sent to the Commission.<sup>206</sup>

70. On the morning of April 5, 2001, Mr. Helgeson informed Ms. Jenkins that he would be sending by facsimile later that morning the Station KALW(FM) Spring 1997 Program Guide, the NPR quarterly issues report for spring 1997, the quarterly issues report for the programs *City Visions* and *AIDS Update* for spring 1997, and his signed Declaration. Mr. Helgeson also related that he would send the originals of these documents by Federal Express overnight service (and he, in fact, did so).<sup>207</sup> Billing records of the Sanchez Law Firm reflect that Mr. Sanchez and Ms. Jenkins continued to work on SFUSD's response to the Commission, and that Mr. Sanchez held one or more

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<sup>204</sup> EB Ex. 35, p. 2 (04/04/2001, SMJ "Further work on response to FCC letter, exhibits, and Mr. Helgeson's declaration; conference with Mr. Sanchez." ETS "Work on FCC response letter; conference with Ms. Jenkins.").

<sup>205</sup> EB Ex. 30.

<sup>206</sup> Tr.1064.

<sup>207</sup> SFUSD Ex. 10, SFUSD Ex. 11; Tr. 1066-67. *See also* EB Ex. 31; Tr. 1065.

telephone conferences with Ms. Sawaya and Mr. Helgeson about the response on April 5, 2001.<sup>208</sup>

71. SFUSD, by Mr. Sanchez, filed its response to the LOI on the extended filing deadline of April 6, 2001.<sup>209</sup> The only declaration supporting the Final LOI Response was that signed by Mr. Helgeson.<sup>210</sup> Therein, he stated that his official position at the station was Program Manager but that he was viewed as the station's Operations Manager and had served as its Acting Station Manager. Mr. Helgeson's Declaration further stated that he had been an employee of SFUSD at the radio station since 1987.<sup>211</sup> Notwithstanding SFUSD's previously-expressed desire to involve its new General Manager in the LOI process,<sup>212</sup> the Final LOI Response did not include a declaration from Ms. Sawaya, a decision which she apparently accepted with relief.<sup>213</sup> According to Ms. Sawaya, she might not have even read the Final LOI Response, but simply put it in a file after she had received a copy from Mr. Sanchez.<sup>214</sup>

72. At the outset, in its Final LOI Response, SFUSD represented that Station KALW(FM) was without permanent quarters from October 1989 until December 1996,

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<sup>208</sup> EB Ex. 35, p. 2 (04/05/2001, SMJ "Revisions to letter to FCC...." ETS "Work on summary legal report for Mr. Campos; conference with Ms. Sawaya; work on response to FCC; numerous conferences with Mr. Helgeson.").

<sup>209</sup> See EB Ex. 34, p. 1 (hereafter referred to as the "Final LOI Response").

<sup>210</sup> *Id.*, p. 11.

<sup>211</sup> EB Ex. 34, p. 11.

<sup>212</sup> See EB Ex. 16.

<sup>213</sup> See SFUSD Ex. 18, dep. pp. 389-90.

<sup>214</sup> Tr. 1441-42.

when:

KALW's management attempted to ascertain what was missing from the files and to restore them to the appropriate condition in compliance with the Commission's rules.<sup>215</sup>

The Final LOI Response then observed that the PIF was, until recently, located in an unlocked file cabinet in a publicly-accessible location in its offices and was never locked.<sup>216</sup> In the Final LOI Response, SFUSD next attacked GGPR, speculating, *inter alia*, that:

GGPR seemingly believes that it stands to benefit from any Commission sanction against SFUSD and thus, as a matter of fundamental evidentiary principles, must be recognized as having a strong incentive to remove documents from KALW's public inspection files.

It is hardly beyond the realm of possibility that GGPR might do so....<sup>217</sup>

73. In responding to LOI question 1, which, as noted above, asked whether required ownership reports were in the PIF as of August 1, 1997, SFUSD represented to the Commission in the Final LOI Response:

**Response:** Yes. On August 1, 1997, the KALW(FM) public inspection file contained all of the ownership reports. SFUSD and the present management of KALW(FM) also believe that all required supplemental ownership reports were, in fact, present in the public inspection file on August 1, 1997. However, KALW is unable to prove that one particular supplemental report, which is believed to have been placed in the file in January 1995, was in fact present in the file on August 1, 1997.

**a) Explanation. ...**

At the time of KALW's 1997 renewal, Mr. Jeff Ramirez, the then-general manager of the station, certified that all required supplemental reports were present in the file. SFUSD and KALW's present management have no reason to disbelieve Mr. Ramirez' certification. When the present management reviewed the public inspection file in order to respond to this inquiry, it found supplemental

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<sup>215</sup> EB Ex. 34, p. 2.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*