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

Federal Communications Commission
Office of Secretary

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

To: Office of the Secretary, to forward to:
Chief Administrative Law Judge Richard L. Sippel

**SAN FRANCISCO UNIFIED SCHOOL DISTRICT'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

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October 14, 2005

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**SAN FRANCISCO UNIFIED SCHOOL DISTRICT'S PROPOSED ULTIMATE
CONCLUSIONS**

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SUMMARY

The core question presented in this proceeding is whether a noncommercial educational radio licensee that incorrectly certified in 1997 that the station's public inspection file ("PIF") was maintained in accordance with Federal Communications Commission rules— and upon being informed of the error months later explained the mistake to the Commission — is entitled to grant of its renewal application.

Section 309(k) of the Communications Act of 1934, as amended, provides that if, upon consideration of a renewal application and related record, the Commission finds that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no violations that, taken together, show a pattern of abuse, the Commission will grant the renewal application. Here, the record overwhelming warrants grant of the Station's renewal.

There is no dispute that the application filed on August 1, 1997 (the "License Renewal Application") by the San Francisco Unified School District ("SFUSD" or the "District") to renew its license for noncommercial FM station KALW, San Francisco, California (the "Station") contained an inaccurate response to Question 2 of Section III with respect to the maintenance of the Station's PIF in accordance with Section 73.3527 of the Commission's Rules. That is, from the period of 1991 through 1997, the Station did not timely place in its PIF the required issues/programs lists on a quarterly basis, nor the requisite supplemental ownership reports in 1993 and 1995. PIF rule violations such as this have never been considered by the

Commission to be so serious or to constitute a pattern of abuse to warrant denial of renewal; instead forfeitures for those with the ability to pay has been the maximum sanction.

Given that the PIF violation itself does not warrant denial of renewal, the next issue to be determined in this proceeding is whether SFUSD deliberately and with fraudulent intent sought to deceive the Commission. The clear evidence is that former General Manager (“GM”) Jeffery Ramirez made an innocent mistake in preparing the License Renewal Application. He made the mistake of a new, inexperienced GM who had never before been called upon to complete the lengthy and complex license renewal application process. When Mr. Ramirez prepared the License Renewal Application for submission to the Commission on August 1, 1997, he believed – based upon his review of the renewal instructions, applicable regulations, authoritative guides and consultation with outside communications counsel – that he had completed the application responses accurately. When he learned that there was an error in the PIF certification, Mr. Ramirez investigated the allegation of error and acknowledged to communications counsel that a mistake was made. Within months of the initial error, Mr. Ramirez took remedial measures, including submitting a declaration to the Commission in January 1998 acknowledging that he had misunderstood the Commission’s PIF requirements. Thus, the PIF certification, while incorrect, was made in good faith, and was not a knowingly “false” certification.

Thereafter, in response to a February 2001 letter of inquiry (“LOI”) from the Audio Services Division, District officials and Station employees who had no personal knowledge of the contents of the Station’s PIF as of August 1, 1997, relied on long-time outside communications counsel to draft a response (the “April 2001 Response”) that accurately

reflected the facts that Mr. Ramirez relayed to such counsel in 1997 and 1998. However, the April 2001 Response was inconsistent with Mr. Ramirez's October 1997 memorandum to outside counsel admitting to PIF errors and was inconsistent with Mr. Ramirez's January 1998 declaration admitting such errors to the Commission. SFUSD also relied on outside counsel to accurately communicate the information that Station employees provided to such counsel regarding the contents of the PIF in 2001, and the efforts in 2001 to update the PIF.

Unfortunately, the April 2001 Response drafted by counsel failed to fully explain the recent efforts to place required materials into the PIF, instead stating that there was no reason to doubt that such materials were in the PIF in 1997. In fact, Station employee William Helgeson had placed those additional materials in the file in 2001 under the direction of counsel. Mr. Helgeson failed to carefully review the April 2001 Response, thereby missing the opportunity to correct the inaccurate statements. The record is undisputed that SFUSD employees did not back-date newly-added documents or otherwise intend to deceive the Commission as to the efforts to bring the PIF up-to-date in 2001. Thus, while the April 2001 Response contained errors, there was no intentional misrepresentation or lack of candor by SFUSD.

Throughout the deposition and hearing process, SFUSD employees provided candid, forthright, and consistent testimony. SFUSD witnesses were asked to recall specific dates, documents and actions from years ago. Nonetheless, the record is clear and undisputed that there was no misrepresentation or lack of candor by SFUSD employees.

SFUSD has acted in good faith in its dealings with the Commission throughout this process by consulting with counsel (including the hiring of new counsel), taking remedial measures and instituting compliance procedures. Even assuming *arguendo* that there was a

finding of misrepresentation and/or lack of candor, the sanction of non-renewal would not be justified considering the factors in SFUSD's favor: a stellar record of meritorious programming, a history of overall compliance and lack of prior violations, the institution of procedures to ensure future compliance and the deterrent effect of a sanction less than denial of renewal.

While the base forfeiture for violations of the PIF rule such as those admitted by the District is \$10,000, the District has established its inability to pay based on its current and anticipated budget deficits. The District, which has the obligation to provide public education through grade 12 for its residents, is facing reductions in special programs, special education, transportation, child development and student nutrition programs, the elimination of central office positions, furloughs and school closures. The burden of this eight-year proceeding, culminating in a five-day hearing has, in and of itself, served as adequate admonishment and deterrent against future infractions by the licensee.

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PROCEDURAL BACKGROUND / HEARING DESIGNATION ORDER

2. On July 16, 2004, the Commission released a *Hearing Designation Order and Notice of Apparent Liability for Forfeiture*, FCC 04-114 (“HDO”). In the HDO, the Commission dismissed the majority of claims asserted by a group of disgruntled employees and volunteers, acting as GGPR,, who had filed a “Petition to Deny Application for License Renewal of Radio Station KALW, San Francisco, CA” on November 3, 1997 (the “Petition to Deny”). Moreover, the Commission agreed with SFUSD that GGPR had not complied with the Commission’s procedures for filing a petition to deny and that GGPR lacked standing to file its petition. HDO at ¶ 4. ^{1/} While the Commission rejected many of GGPR’s allegations, such as the claims

^{1/} While GGPR was made a party in this proceeding pursuant to the HDO, GGPR did not file an appearance before the Presiding Judge. By *Memorandum Opinion and Order*, FCC 04M-

concerning the Station's alleged noncompliance with equal employment opportunity ("EEO") requirements and maintenance of donor's lists, *see id.* at ¶¶ 18-23, the Commission concluded that an evidentiary hearing was warranted on the following issues:

- (1) To determine whether San Francisco Unified School District falsely certified its application with respect to completeness of the KALW(FM) public inspection file and the effect thereof on its qualifications to be a Commission licensee.
- (2) To determine whether San Francisco Unified School District made misrepresentations of fact or was lacking in candor and/or violated Section 73.1015 of the Commission's Rules with regard to its certification in the subject license renewal application that it had placed in the KALW(FM) public inspection file at the appropriate times the documentation required by Section 73.3527, and the effect thereof on its qualifications to be a Commission licensee.
- (3) To determine, in light of the evidence adduced pursuant to the specified issues, if the captioned application for renewal of license for station KALW(FM) should be granted.

HDO at ¶ 24.

3. The Commission further held in the *HDO* that the burden of proceeding with respect to issues (1) and (2) were on SFUSD and the burden of proof with respect to all three issues were on SFUSD. In addition, the *HDO* set for determination whether an order of forfeiture in an amount not to exceed \$300,000 should be issued against SFUSD for willful and/or repeated violations of Sections 73.1015, 73.3527 and/or 73.3613 of the Commission's Rules which occurred or continued within the applicable statute of limitations. *HDO* at ¶ 25.

4. On September 7, 2004, SFUSD filed a Motion to Enlarge Issues requesting the addition of an issue at hearing as to whether KALW provided meritorious service during the

27 (released October 1, 2004), the Presiding Judge dismissed GGPR as a party in this proceeding, with prejudice.

license term justifying renewal of SFUSD's license. SFUSD argued that a meritorious service issue (1) is relevant to consideration of the merits of renewal and/or (2) would provide mitigating evidence relevant to some or all of the issues set in the *HDO*. By Order dated October 8, 2004, the Presiding Judge granted the Motion, in part, concluding that SFUSD would be permitted to introduce evidence on meritorious service but such evidence would be limited in scope to one year of programming prior to the filing of the petition to deny and one year of programming prior to release of the *HDO*. *Memorandum Opinion and Order*, FCC 04M-31 (rel. October 8, 2004).

5. In addition, on February 15, 2005, the Enforcement Bureau ("EB" or the "Bureau") filed a Motion to Enlarge Issues seeking "to determine whether San Francisco Unified School District made misrepresentations of fact and/or lacked candor during discovery." By Order released April 1, 2005, the Presiding Judge granted the Motion, in part, and denied the Motion, in part. *Order*, FCC 05M-17 (rel. April 1, 2005). The added issue, as revised by the Presiding Officer's *Addendum*, FCC 05M-20 (rel. April 5, 2005), is: "To determine whether the San Francisco Unified School District, through its agents made misrepresentations of fact and/or lacked candor before the Commission, during or in connection with, the discovery testimony taken by the Enforcement Bureau on September 28, 2004." The burden of proof and the burden of proceeding on the added issue were assigned to the Commission. *Order*, FCC 05M-17 (rel. April 1, 2005.)

6. A hearing in this matter was conducted in Washington, D.C. from June 6 through 10, 2005.

BACKGROUND & OVERVIEW

I. Relationship Between SFUSD and KALW(FM)

7. KALW is an FM radio station licensed to the community of San Francisco, California, broadcasting on 91.7 MHz. It is the oldest FM station west of the Mississippi, having initially gone on the air in 1941. It is a non-commercial educational ("NCE") radio broadcast station and a member station of National Public Radio ("NPR"). (SFUSD Exh. 22 at 2.)

8. SFUSD is the licensee of KALW. SFUSD includes more than 160 pre-school, elementary, middle and high schools and employs over 8,000 principals, teachers, educators and administrative and staff members. (SFUSD Exh.T4 at 2.)

9. As the licensee of the Station, SFUSD is solely responsible for its operation and overall management. Subject to the oversight of the Board of Education, which is composed of seven members elected at large to serve four-year terms, the Superintendent of SFUSD has overall responsibility for the District's operations. Day-to-day operation of the Station has been delegated to its GM. (SFUSD Exh.T4 at 2.)

II. Physical Disruption Following the Loma Prieta Earthquake of 1989

10. Prior to October 1989, the Station's office and broadcast facilities were located on the fifth floor of the John O'Connell High School, a public high school operated by the District at 2905 21st Street in San Francisco. (SFUSD Exh. T2 at 5.)

11. Those facilities were severely damaged on October 17, 1989 by the Loma Prieta earthquake. Within days of the earthquake, emergency officials condemned the building as unsafe and ordered KALW to vacate. (SFUSD Exh. T2 at 5.)

12. The Station's offices were quickly packed into available boxes and moved to the girls locker room of a nearby abandoned high school gymnasium. The on-air studios were permitted to relocate on a temporary basis to the transmittal site of another local radio station. (SFUSD Exh. T2 at 5.)

13. The Station later moved its broadcast studios to the abandoned gymnasium of the John O'Connell High School (the nearby gymnasium had not been condemned) and assembled studios and offices for KALW on the gymnasium floor. The Station began broadcasting from these facilities in the Spring of 1991. (SFUSD Exh. T2 at 5.)

14. When the Station received notice that the John O'Connell High School gymnasium was slated for demolition at the end of 1996, plans were put in place for the construction of new broadcast facilities at Burton High School, another public high school operated by the District in San Francisco. (SFUSD Exh. T2 at 5.)

15. The Station's relocation to new facilities at Burton High School was made in early 1997 and the Station has operated from that location since. (Tr. 669.)

III. Station Personnel and Management (1991-1997)

16. Between 1991 and mid-1996, there were a series of GMs at the Station. (EB Exh. 40 at 4-5.)

17. In August of 1996, SFUSD hired Mr. Jeffrey Ramirez to serve as the new, permanent, GM. (SFUSD Exh. T1 at 4.)

18. Mr. Ramirez began his career in noncommercial, public radio in 1988 while earning a bachelor's degree in mass communications at San Diego State University where he worked at KPBS-FM, San Diego, California, which is housed on the campus of, and is licensed

to, the State of California through San Diego State University. (this sentence is a run-on)(SFUSD Exh. T1 at 1.)

19. Following graduation, Mr. Ramirez assumed a leadership role in KPBS-FM's local news and information programming and was elevated to the position of producer. In his varied positions at KPBS-FM, Mr. Ramirez was involved in many aspects of the Station's operations. He was heavily involved in the Station's fund drives, both as a producer and as an on-air host. He also worked with and supervised a number of student volunteers and employees. (SFUSD Exh. T1 at 2.)

20. Mr. Ramirez was also selected to participate in an innovative new program, the Next Generation Project, the purpose of which was to identify, train and develop the "next generation" of leaders in public radio. (SFUSD Exh. 8 at 2; Tr. 226-227.) This program was funded and organized by the Center for Public Broadcasting and included classroom instruction, working groups, assignments and a mentoring and networking and outreach program through which Mr. Ramirez developed numerous important resources and contacts throughout the public broadcasting community. (SFUSD Exh. 8 at 2; Tr. 226-227.)

21. Through Mr. Ramirez's hiring, SFUSD brought programming experience, creativity and positive youthful energy to KALW. As an outsider, Mr. Ramirez could make objective, informed decisions about how to improve delivery of the Station's services to the listening community. (SFUSD Exh. T1 at 3-4.)

IV. Mr. Ramirez's Tenure as General Manager

22. Mr. Ramirez's hiring coincided with the ongoing construction of the Station's new facilities at the Burton Academic High School, and subsequent relocation from its temporary facilities at the O'Connell High School gymnasium. (SFUSD Exh. T1 at 4.)

23. From the outset of his tenure, Mr. Ramirez was responsible for managing the construction project at Burton High School and coordinating the transfer to these new facilities. This required frequent trips between the two locations and managing not only an ongoing broadcast station, but also a significant construction project. (SFUSD Exh. T1 at 4; Tr. 270-71.)

24. In addition, Mr. Ramirez was committed to the Station's other significant challenge – improving programming and fundraising. Like many in public radio, Mr. Ramirez understood that programming and fundraising were closely intertwined – better, more responsive programming would lead to improved fundraising from listeners and access to more grants. (SFUSD Exh. T1 at 5-6.)

25. Prior to Mr. Ramirez's arrival at the Station, programming decisions were based primarily on the personal preferences of the Station's staff and listeners. Mr. Ramirez, on the other hand, chose to use professional broadcast research as part of his evaluation as to how the Station's programming could best meet the needs and interests of the community. One aspect of this research was to order reports from two private organizations that produce station-specific performance research based primarily on Arbitron diaries. These audience research reports provided valuable insight and feedback as to how various KALW programs serve the listening public. (SFUSD Exh. T1 at 6.)

26. From these audience research reports, Mr. Ramirez learned that several of the many long-running KALW programs, some of which were very popular among the Station's employees and volunteers, were underperforming with the local community. (SFUSD Exh. T1 at 6.)

27. Mr. Ramirez also concluded that certain locally-produced original programming was being underutilized by the Station. Mr. Ramirez reorganized several time-slots, expanded the length of certain shows and encouraged the development of new programming that research indicated was needed in the community. This included the addition of rush-hour traffic reports and weather reports. While many volunteers felt that this programming was too reminiscent of commercial stations, Mr. Ramirez made the changes to better serve the needs of the community. In so doing, Mr. Ramirez cut programs that were popular with several of the Station's most vocal staff and volunteers, but underperforming with respect to listeners. (SFUSD Exh. T1 at 6-7.)

28. In addition, Mr. Ramirez designed and implemented a new underwriting program for the Station that raised considerable sums of grant money for KALW in the program's first year. (SFUSD Exh. T1 at 7.)

V. Changes at the Station Triggers Staff Dissension and the Creation of GGPR

29. Not all of Mr. Ramirez's programming changes were welcomed by certain long-serving staff and volunteers at the Station. Some were very angry. (SFUSD Exh. T1 at 8.) Indeed, virtually every programming change that Mr. Ramirez implemented was met with strong resistance among a core group of station volunteers. (SFUSD Exh. T1 at 8; SFUSD Exh. 22 at 4.)

30. Some of the Station's volunteers and certain staff objected to Mr. Ramirez's reliance on empirical data when making programming decisions. Several Station employees and

volunteers formed a non-profit entity which they named Golden Gate Public Radio (“GGPR”). The purported goal of GGPR was to take over governance and management of the Station. Essentially, GGPR demanded that the School Board simply turn over operation of the Station. (SFUSD Exh. 22 at 6; SFUSD Exh. 4 at 79-80.)

31. A principal actor behind GGPR was Jason Lopez, then an “as-needed” on-air announcer at the Station. Mr. Lopez frequently complained to Mr. Ramirez and expressed his displeasure with Mr. Ramirez’s programming decisions. (Tr. 570) (“It was...Lopez who regularly communicated his displeasure with the use of station research”); (Tr. 571) (“He always had a problem [with what I was doing].”)

32. Another participant of GGPR was Dave Evans, the Station’s Chief Engineer. Mr. Evans was similarly hostile towards Mr. Ramirez. According to Mr. Ramirez, “most of the time [Mr. Evans] seemed to be impatient with me ... hostile ... angry[.]” (Tr. 273.) Mr. Evan’s demeanor around Mr. Ramirez was described as generally “upset.” (Tr. 273) (Q: Was he just an angry man as far as you could tell? A: As far as I could tell, he just seemed to be upset all the time.)

33. Although several members of GGPR did not personally lose air time as a result of Mr. Ramirez’s programming changes, they believed that Mr. Ramirez should not base his programming changes on research reports. (“[A] number of those people [Messrs. Lopez, Evans and Hecht] did not like the fact that I was forming my programming decisions with research. That upset them, they didn’t like using research.”) (Tr. 562.)

34. These members of GGPR were upset with Mr. Ramirez because they believed that public radio should not utilize standards used by commercial stations to determine listener

needs. (Tr. 563) (Judge Sippel: Can you explain to me why they would object, what was, why would they object? What reason? A: [.] There's a number of people in the public radio industry who disagree with public radio programmers using ARBITRON based audience testing to determine what the stations [sic] listenership is, because those same estimates are used by commercial radio stations. Judge Sippel: I see, so they – there's a school of thought that thinks – in your experience – there's a school of thought that thinks that you shouldn't use the same standards that are used to measure commercial to measure non-commercial. A: Correct.) As General Manager, Mr. Ramirez knew that increasing listenership was critical to maintaining grant funding for the Station. (SFUSD Exh. T1 at 5.)

35. Mr. Ramirez also understood that the volunteers at KALW were passionate about the Station, about public radio and about the programming that KALW provided. (SFUSD Exh. T1 at 8.) Their volunteer work was critical to the success of the Station. Mr. Ramirez attempted to be receptive to their concerns and repeatedly sought the cooperation and counsel of others, such as producers and hosts, in making changes at KALW. (Tr. 564-65.) (Q: Did you involve others in this decision making process? A: Yes. Yes I would.) Ultimately, however, he was the GM and the final arbiter. Several unpopular decisions, even when made in the best interest of the Station and the listening public, were met with hostility and resentment. (Tr. 566) (“I could not make everyone happy.”)

36. In June 1997, GGPR submitted a proposal to the District that the Station's license be “transferred” to GGPR – at the time, a small faction of disgruntled employees. These GGPR organizers were the same group of dissident employees who constantly opposed management

and were responsible for much of the unrest and discontent that sought to de-stabilize the Station. (SFUSD Exh. 22 at 3.) The Board did not respond to GGPR's proposal. (SFUSD Exh. 22 at 6.)

THE LICENSE RENEWAL APPLICATION

I. Receipt of the License Renewal Application

37. Against this backdrop of staff discontent and the challenge of relocating station facilities, SFUSD received its license renewal application in late May or June 1997. (Tr. 357, 522.) As GM, Mr. Ramirez was responsible for preparing the license renewal application submission. (SFUSD Exh. T1 at 9.)

38. The renewal application consisted of several parts including: FCC Form 303-S (renewal of license); FCC Form 396 (equal employment opportunity program); and FCC Form 323-E (noncommercial station ownership report) (collectively, the "License Renewal Application"). (SFUSD Exh. 5.)

39. Insofar as the prior license renewal application, FCC File No. BRED-19900726YA, which, according to the FCC database, had been granted on December 31, 1990, the license term covered by the License Renewal Application began on January 1, 1991. Under then Section 73.1020 of the Commission's Rules, the Station license was set to expire on December 1, 1997. Consequently, pursuant to Section 73.3539(a) of the Commission's Rules, the application for renewal of the license of the Station was due no later than August 1, 1997.

40. Prior to receipt of the renewal application, Mr. Ramirez was generally familiar with the FCC requirements of a noncommercial broadcast station but did not consider himself an expert on FCC regulations. (Tr. 279) (Q: When you became the General Manager of Station

KALW, did you have any understanding as to what the FCC's rules were regarding a public inspection file? A: No, I didn't. I mean, I generally had some awareness of the station's, or any station's relationship with the FCC, but with respect to the regulatory matters, no, I didn't). Mr. Ramirez did know that the renewal application was extremely important and he endeavored to complete it accurately. (SFUSD Exh. T1 at 9-10; Tr. 279.)

41. When the License Renewal Application was received at the Station, Mr. Ramirez had never before had experience in preparing or assisting in the preparation of a renewal application. (Tr. 586.)

42. The License Renewal Application included instructions, which Mr. Ramirez reviewed. (Tr. 246.)

43. There were several aspects of the License Renewal Application that required Mr. Ramirez to investigate underlying facts before completing the stated question. For example, Form 303-S, Section II, Question 6 required a certification and explanation as to why the grant of the renewal application would not have a significant environmental impact, including exposure to radio frequency radiation. For that answer and explanation, Mr. Ramirez attached a copy of a memorandum prepared by the Station's chief engineer that explained that upon consultation with KALW's consulting engineers, there was no significant environmental impact. (SFUSD Exh. 5 at 3, 7.)

44. Several parts of the License Renewal Application, including certifications regarding internal matters of the licensee, were made in coordination with SFUSD's legal counsel. (SFUSD Exh. T1 at 13; Tr. 522-24.)

II. Mr. Ramirez's Initial Efforts to Complete Questions Related to the Public Inspection File

45. The remaining sections of the License Renewal Application were completed by Mr. Ramirez with the guidance of the Station's communications counsel, Ernest Sanchez, of the Sanchez Law Firm. (SFUSD Exh. T1 at 13; EB Exh.7 at 1-2.)

46. FCC Form 303-S, Section III, Question 2 asked whether the applicant had "placed in its public inspection file at the appropriate times the documentation required by 47 C.F.R. Section 75.3526 and 75.3527." (SFUSD Exh. 5 at 4.)

47. The Station's PIF filled an entire file cabinet drawer and was located, within the new, permanent KALW facility, in an open office space accessible by any staff member or volunteer, at any time. (SFUSD Exh. T1 at 12; SFUSD Exh. T2 at 6.) The PIF was also accessible, of course, to the public. (SFUSD Exh. 22 at 4.)

48. Prior to the Station's relocation in early 1997, the PIF was located in the same four-drawer file cabinet. At the old facilities in the high school gymnasium, the cabinet was kept in a large open space and was accessible at all times to all visitors and volunteers. (Tr. 421) ("The drawer that held the public file was in a filing cabinet that was located in an open area . . . everything was an open office space. There was an area that was even more open than the parts that had temporary walls, which was kind of like of the operations area. The filing cabinet was in that location.")

49. Prior to receipt of the License Renewal Application, Mr. Ramirez had not examined the Station's PIF. (SFUSD Exh. T1 at 12.) During his first few months at the Station, Mr. Ramirez was told by Dave Evans, the Station's chief engineer, that he should inspect the PIF. (SFUSD Exh. T1 at 11.)

50. Mr. Ramirez was not familiar with a PIF and was confused as to why the Station's engineer, whose job responsibilities did not relate to the PIF, would present him with this information. (SFUSD Exh. T1 at 11.)

51. Mr. Ramirez testified that he "relied heavily on Dave [Evan's] engineering background," and that his interactions with Mr. Evans concerned mostly engineering matters. (Tr. 273, 275.)

52. It is unclear exactly what Mr. Evans said to Mr. Ramirez regarding the PIF. Mr. Ramirez testified that he does not recall the specifics of Mr. Evan's statement. (Tr. 282) ("I do remember that he said something about the public inspection file, and wanted to bring it to my attention, but I just don't -- I can't remember what it is he told me.") Mr. Ramirez testified, however, that Mr. Evans had not stated anything with respect to ownership reports or quarterly issues reports. (Tr. 283.)

53. Mr. Evans never again raised the subject of the PIF with Mr. Ramirez. (Tr. 283.)

54. For all of these reasons, Mr. Ramirez did not immediately act upon Mr. Evans's comments about the PIF. (SFUSD Exh. T1 at 11; Tr. 280) ("[Mr. Evans] had tried to bring my attention to the public inspection file, but because back then I just didn't know the significance of the public inspection file, understand the purpose of it, and because it just wasn't part of what I expected Dave, in my working relationship with him, to call to my attention, I didn't do anything with it at the time.")

55. At the time that Mr. Evans made the remarks, the Station was in the process of making a complicated physical relocation and Mr. Ramirez was busily attempting to improve the Station's programming, increase fundraising, raise staff morale, and all of the other

responsibilities associated with balancing the myriad obligations of being the new GM of a public radio station. (SFUSD Exh. T1 at 4-5.)

III. The Limited Role of Ms. Hecht in Organizing the PIF

56. When he first examined the PIF in early June 1997, Mr. Ramirez found that the PIF was disorganized and he quickly surmised that even if he fully understood the Station's PIF requirements, he would not be able to easily identify whether the file was in compliance. (SFUSD Exh. T1 at 12.)

57. Accordingly, Mr. Ramirez asked one of the station volunteers, Susen Hecht, to provide assistance. Although he cannot recall precisely what instructions he gave her, Mr. Ramirez remembers directing Ms. Hecht to put the PIF in order so that he could then review it for completeness. (Tr. 372-73) ("I don't remember asking her to arrange it in any particular fashion. I don't remember exactly what I asked her to do. I do remember what I expected her to do, which to my mind would've been consistent with what I would've expected of a volunteer who comes in once or twice a week for two or three hours a day to help us answer the phones. That was to seeing how it was messy to put it in some kind of - straighten it up or do something to make it easier for me to go through it.")

58. At the time, Ms. Hecht volunteered at the Station perhaps one day per week. Ms. Hecht's regular duties at the Station included answering the reception phone, welcoming visitors and stuffing envelopes for fundraising. (Tr. 382) ("[Ms. Hecht] would usually sit at the front desk, answering the telephone, letting guests in the front door, providing a lunch break to Teresa or James, who would ordinarily have been the paid staff at the front desk. While there

she might have also been stuffing envelopes, fulfilling the membership incentives, the premiums. If we had a program guest waiting in the waiting area, she might help them to a cup of coffee [.]”)

59. Mr. Ramirez did not provide Ms. Hecht with, nor direct Ms. Hecht to consult with, the License Renewal Application, the FCC regulations pertaining to the requirements for the PIF, nor any other authoritative guide or manual as part of the project to organize the PIF. (SFUSD Exh. T1 at 12-13.) Mr. Ramirez understood that entrusting a volunteer with such an important analysis would be completely improper. (Tr. 527) (“I took it upon myself to take responsibility for filling out the license renewal application. This certainly isn’t something that I would have left to a volunteer to do for me.”)

60. There is no evidence that Ms. Hecht reviewed any guidance materials in conjunction with organizing the PIF. Ms. Hecht did not have a background in communications law or FCC compliance matters. (Tr. 1213-18.)

61. After some time had passed, Mr. Ramirez had not heard from Ms. Hecht, and when he inspected the PIF again in mid-June, the PIF appeared exactly as he had seen it before – cluttered and disorganized. (Tr. 395-96) (Judge Sippel: Did you make a determination one way or the other as to whether or not she had done anything to straighten out the file as you had asked her? A: [...] By the time I started looking at the file myself [in mid-June] I don’t remember it being any more organized or less messy than I remember it being before I asked Susen Hecht to start straightening it up for me. Judge Sippel: Essentially the same? A: Yes.)

62. Mindful of the approaching deadline to complete the License Renewal Application, Mr. Ramirez personally conducted a review of the contents of the PIF. (SFUSD Exh. T1 at 13.)