

the inauguration of new Board members, as required by then 47 C.F.R. Section 73.3615.

(SFUSD Exh. 21 at 3.)

249. The Draft Response further stated that “SFUSD stands by Mr. Ramirez’s certification but it unable to prove today, nearly four years later, whether the supplemental ownership report for 1995, bearing the correct January 1995 date, was in fact in the PIF as of August 1, 1997 (as Mr. Ramirez certified.)” (SFUSD Exh. 21 at 3.) By way of summary, the Draft Response concludes: “All that can be stated for certain at this time, many years later, is that the 1995 supplemental report that is in the file today bears the date December 10, 1997.”

(SFUSD Exh. 21 at 3.) The explanation provided in the Draft Response accurately described the late-completion of the 1995 supplemental Ownership Report in December 1997. <sup>5/</sup>

250. However, the statement that “there was no basis to doubt Mr. Ramirez’s August 1, 1997 certification,” was not supported by the information then known to the Sanchez Law Firm. Materials previously submitted to the Sanchez Law Firm should have led that Firm to understand that the August 1, 1997 License Renewal Application certification regarding requisite ownership

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<sup>5/</sup> The Draft Response noted that there was a need for, and the presence in the Station’s PIF, of a supplemental ownership report for 1993. (SFUSD Exh. 21 at 3.) Neither the Draft Response nor the Final April 2001 Response addressed Ms. Sawaya’s March 8 Memo notation that the 1993 Ownership Report was placed in the file on December 10, 1997, nor Mr. Ramirez’s admission in his October 1997 Memo that the 1993 Ownership Report, as well as the 1995 report, was not in then in the PIF. (Cf. SFUSD Exh. 21 at 3 and EB Exh. 34 at 3 with SFUSD Exh. 21 and SFUSD Exh. 6 at 1.) The Final April 2001 Response submitted to the Commission included a copy of the 1993 Ownership Report, with a signature page dated July 30, 1997 (EB Exh. 34 at 22-25), apparently the same signature page as attached to the 1997 Ownership Report (SFUSD Exh. 5 at 13-14). No explanation was provided for the 1997 signature associated with the 1993 report. SFUSD explained in its Admissions to the Bureau that it assumed that there were errors in the collation process causing disassociation and remixing of pages among the ownership reports. (SFUSD Exh.17 at 7.) The three pages that SFUSD believes constitutes the 1993 Ownership Report executed on December 10, 1997, were submitted with its Admissions. (SFUSD Exh. 5 at 21-23.)

reports was incorrect, and that the answer in response to LOI Question No. 1 should be “No,” rather than “Yes.” (SFUSD Exh. 6 at 1.)

251. Specifically, in October 1997, Attorney Sanchez directed Mr. Ramirez to re-examine the PIF following receipt of the Berchenko Letter and received Mr. Ramirez’s October 1997 Memo. (SFUSD Exh. 6 at 1.) The October 1997 Memo clearly affirms that the Ownership Reports for 1993 and 1995 were missing from the PIF. There is nothing in the October 1997 Memo to indicate that Mr. Ramirez believed the PIF was complete on August 1, 1997 but that documents had been removed by the time he re-examined the PIF in October 1997. The opposite, in fact, is true. Mr. Ramirez’s January 1998 Declaration, which was drafted by the Sanchez Law Firm, admits that Mr. Ramirez “may have misunderstood” the requirements of Section 73.3537 when he originally prepared the License Renewal Application. (SFUSD Exh. 4 at 50.)

252. With respect to LOI Question No.2, regarding whether issues/programs lists were completed and timely placed in the PIF as of August 1, 1997, the Draft Response prepared by the Sanchez Law Firm stated: “Yes. SFUSD and the present management of KALW believe that its public inspection files, as of August 1, 1997, contained all of the issues/program lists for the entire period in question.” (SFUSD Exh. 21 at 4.)

253. The explanation that follows relies on the accuracy of the August 1, 1997 certification on the License Renewal Application and states that “neither KALW’s present management nor SFUSD has any reason to disbelieve that certification.” (SFUSD Exh. 21 at 4.) The Draft Response further explains that “according to information in the files of KALW’s

counsel, KALW station management again reviewed the public information files in January 1998 and reported to counsel, at that time, that the files were in order [.]” (SFUSD Exh. 21 at 4.)

254. The explanation drafted by the Sanchez Law Firm does not disclose, however, that Mr. Ramirez advised Attorney Sanchez in October 1997 that the PIF was not complete or timely maintained in regards to issues/programs and that the certification on the August 1, 1997 License Renewal Application was incorrect.

255. The Draft Response also failed to address the January 1998 Declaration that the firm prepared for Mr. Ramirez and which ultimately accompanied SFUSD’s Opposition wherein Mr. Ramirez acknowledged that his August 1, 1997 certification was based solely on the “City Visions” list of programs prepared by Mr. Covell and his misunderstanding the PIF requirements. (SFUSD Exh. 4 at 50.) Clearly, the “City Visions” listing alone – which did not cover the entire license term – was not sufficient to meet the requirements of Section 73.3527, so that the “Yes” response to LOI Question No. 2 was inconsistent with Mr. Ramirez’s January 1998 Declaration. (SFUSD Exh. 4 at 50.)

256. The Sanchez Law Firm’s Draft Response to Question No. 2 further states that when present management of KALW reviewed the PIF in response to the LOI, “they did not find any such [issues/programs] lists.” In fact, even the copy of the “City Visions” programs was missing from the PIF. Attorney Sanchez retained a copy of that list, however, and proposed to include it with the District’s response to the LOI. The Draft Response concludes that “KALW’s present management and SFUSD are unable to explain what may have happened to the missing [issues/programs] lists.” (SFUSD Exh. 21 at 5.)

257. While the statement regarding present management's failure to find issues/programs lists in the PIF was accurate based on Ms. Sawaya's March 8 Memo and Mr. Helgeson's conversations with the Sanchez Law Firm (EB Exh 21, SFUSD Exh. T2 at 12, Tr. 1086-87), the Draft Response went on to say that present management "found instead . . . for each quarter of the period in question, . . . a copy of KALW's quarterly program guide." (SFUSD Exh. 21 at 5.) The Draft Response further stated that "[a]lso included in this file, for each quarter in the period, are lists of issues of public importance that received significant treatment in programs provided to KALW by National Public Radio. SFUSD believes that all these materials were also present in the file on August 1, 1997 . . ." (SFUSD Exh. 21 at 5.)

258. The statement that present management found Program Guides for every quarter in the PIF is not consistent with the information provided to Attorney Sanchez by Mr. Helgeson in his conversations regarding his efforts to update the PIF pursuant to the instructions of Attorneys Sanchez and Jenkins. (SFUSD Exh. T2 at 12, EB Exh. 25, Tr. 690, 1086-87.) Similarly, Ms. Sawaya's March 8 Memo did not mention the discovery of program guides for every quarter. (EB Exh. 21.)

259. The statement that NPR lists were in the PIF in 1997 is also inconsistent with the information provided to Attorney Sanchez by Mr. Ramirez in his October 1997 Memo, and in the January 1998 Declaration drafted by the Sanchez Law Firm. As noted above, the January 1998 Declaration indicated that Mr. Ramirez mistakenly believed that the City Visions list alone satisfied the issues/programs list requirement. (SFUSD Exh. 4 at 50.) These documents give no indication that Mr. Ramirez had found or placed Program Guides or NPR lists in the file in 1997. (SFUSD Exh. 4; SFUSD Exh. 6.)

260. It is not clear whether the vague statement that NPR lists are “included in the file” was meant to suggest that they were found in the PIF by present management, or whether they were added as part of the effort to update the PIF to current compliance, as discussed in Question 4 of the Draft Response. However, Ms. Sawaya’s March 8 Memo to Attorney Sanchez did not mention the discovery of NPR lists, and Mr. Helgeson, in his communications with the Sanchez Law Firm did not state that the NPR lists were in the PIF when he first reviewed the PIF in February 2001. (SFUSD Exh. T2 at 12; Tr. 1086-87.)

**B. Mr. Helgeson Was Not Aware That Mr. Ramirez Acknowledged Mistakes Related to His 1997 Renewal Application Certifications and Did Not Review the Draft Response Closely Enough To Identify Information Contrary To What He Had Told The Sanchez Law Firm**

261. No one at SFUSD or the Station in March 2001 knew what Mr. Ramirez told Attorney Sanchez in 1997. (SFUSD Exh. T2 at 15-16; Tr. 979-980, 1186-87, 1197.) While Mr. Helgeson was employed at the Station in 1997, he was not privy to Mr. Ramirez’s discovery that the License Renewal Application certification was inaccurate relating to the ownership reports. (SFUSD Exh. T2 at 15-16; Tr. 770-771.) Mr. Helgeson could confirm assisting Mr. Ramirez to complete the 1993 and 1995 Supplemental Ownership reports in December 1997. (SFUSD Exh. T2 at 8.) But Mr. Helgeson was never told, and did not learn on his own, the purpose of completing the supplemental reports and was not otherwise advised that there had been a mistake in the August 1, 1997 certification. Mr. Helgeson also had not personally inventoried the contents of the PIF, including the programs/issues lists, Program Guides, or NPR lists, in 1997. (SFUSD Exh. T2 at 15.)

262. Mr. Helgeson knew only that GGPR had extracted private and confidential files at the Station. (SFUSD Exh. 4 at 74-75.)

263. Additionally, Mr. Helgeson gave only a cursory review to the Draft Response. (Tr. 1012) (“I don’t recall that I read it thoroughly at that time when it came in. I would have come from the conclusion that Ernie would only have been putting in things regarding – with information that he had – regarding public file matters – questions regarding public file – which he knew already or – and what he had – information he’d gotten from me and from Nicole.”)

264. The Draft Response was directed to Mr. Campos, whereas Ms. Sawaya and Mr. Helgeson were merely copied. (SFUSD Exh. 21 at 1.) This was significant to Mr. Helgeson because he believed that review by another lawyer would provide important feedback. (Tr. 1181) (“[I]t was addressed basically to Mr. Campos. It was then cc’ed to – was cc’ed to me, but it was also cc’ed to two of my superiors, Jackie Wright and Nicole Sawaya .. and so that I made sense to me that if somebody was going to carefully – really, really carefully review it, it probably would have been an attorney. And – and I couldn’t imagine at the time that anything would be in there that I would have had information that would – that would have been provided by me to Ernie Sanchez or Susan Jenkins that wouldn’t be accurate....”)

**C. Ms. Sawaya Did Not Second-Guess Statements In The Draft Response Regarding Matters That Occurred Before She Arrived, and Her cursory Review of the Draft Response did not Reveal Areas Where the Draft Response Differed from her March 8 Memo**

265. Attorney Sanchez’s explanation in the Draft Response were generally consistent with what Ms. Sawaya reported in her March 8<sup>th</sup> memo. As noted above, the Draft Response acknowledged that the 1995 Ownership Report was dated in 1997, and that present management

*was unable to locate any programs/issues lists for the 1997 renewal period. Neither Ms. Sawaya nor others at the District had a basis to doubt Attorney Sanchez's recitation of what transpired prior to her arrival. (SFUSD Exh. 21; SFUSD Exh. T3 at 7-8.)*

266. Although Ms. Sawaya's preliminary notes to Attorney Sanchez observed that the PIF was still being "cleaned up" as of March 8, 2001, she did not review the Draft Response with the degree of scrutiny necessary to note that the answers in the draft response differed from her own assessment of the PIF. For example, she failed to identify the Draft Response misstatement that the Program Guide and NPR lists were in the PIF for each quarter, and that the Draft Response failed to mention that the 1993 Ownership Report was not filed in 1997 (Tr. 1424) (Q: Ms. Sawaya, had you read through SFUSD Exhibit 21, the [April 3, 2001] draft response that Mr. Sanchez prepared? A: I have racked my brain as to how closely I read this, and I probably felt that it was in such good hands that I gave it a cursory read.)

267. Like many at SFUSD and KALW, Ms. Sawaya was greatly impressed with Attorney Sanchez's background and experience and therefore exhibited great deference to his judgment on all matters legal and FCC related. (Tr. 1435) ("If Mr. Sanchez decided that my answers were not accurate, that was up to him. He was general counsel taking a leadership role on this.")

268. Thus, even had she noticed that the Draft Response prepared by the Sanchez Law Firm differed from her March 8 Memo, she was too new to the Station to question Attorney Sanchez's knowledge of the facts predating her tenure, nor on equal footing to question Attorney Sanchez's legal judgments. (Tr. 1436) (Judge Sippel: Whether you were right or wrong is irrelevant to you. It's the fact that he was the – he was the attorney on this case, on this matter,

and that he had decided that yes was the right answer. A: I had just arrived ... I wasn't going to arm wrestle him about it ... and probably perhaps I should have. Had I noted it and it jumped out – but I was in the minority with regard to even knowledge base. For all I knew, perhaps other members of present management believed that Mr. Ramirez's certification was correct at the time, along with Mr. Sanchez and Ms. Susan Jenkins.”)

269. The Draft Response arrived during Ms. Sawaya's fifth week at the job and she was dutifully involved in learning about the Station and taking on the many responsibilities of a new GM. Confident that experienced communications counsel were handling the response, Ms. Sawaya was satisfied that the response was timely and appeared comprehensive. She was not asked to provide a declaration or otherwise provide comments on the response. (SFUSD Exh. T3 at 7-8.) As explained by Ms. Sawaya: "I had been on the job for approximately one month, I had never gone through one of these regulatory filings before, and there were experienced communications counsel involved as well as individuals with significant personal understanding of the present situation. Not only was I grateful to defer to other qualified people, it was the only appropriate course." (SFUSD Exh. T3 at 15.)

270. Mr. Campos provided several non-substantive edits but, like Ms. Sawaya, was new to Station matters and lacked the historical narrative or factual basis to question the Sanchez Law Firm's recitation or conclusions. (SFUSD Exh. 10.)

271. Among the recipients of the April 3 Draft Response, there was no person who had a factual basis grounded on personal knowledge of the state of the PIF as of August 1, 1997 that would have led them to question the Sanchez Law Firm's answers and explanations regarding the status of the PIF in 1997.

**D. The Final LOI Response Was Filed With Changes That Were Not Circulated To KALW or SFUSD**

272. No further drafts of the Sanchez Law Firm response to the LOI were circulated to Station management or SFUSD prior to filing with the Commission. (SFUSD Exh. T3 at 14.) The final response was sent to the Commission by Attorney Sanchez on April 5, 2001 and received on April 6, 2001 (the "Final Response"). (EB Exh. 34.)

273. While the Final Response shared many similarities with the Draft Response, it contained significant changes. For example, in response to LOI Question No. 2, the Draft Response stated that "when KALW's present management reviewed the issues/program file for the period in question in connection with this inquiry by the Bureau, they did not find any such lists in that file." (SFUSD Exh. 21 at 5.)

274. However, in response to the same LOI Question No. 2, the Final Response specifically states that present management found NPR program lists in the file. (EB Exh. 34 at 6.) ("when KALW's present management reviewed the issues/program lists file for the period in question, in connection making its response to the Bureau's inquiry letter, they did not find, for each and every quarter during that period, specifically-prepared lists with respect to all locally-produced programs, but only the nationally-produced NPR issues/program lists.")

275. The Final Response also added a detailed discussion of "Exhibit O" to the GGPR Petition to Deny, and states that this document was missing from the PIF notwithstanding the fact that Jason Lopez signed an affidavit asserting that the document was present in the PIF in 1997. The Final Response concludes that "SFUSD finds it curious and disturbing that this and

other documents seem to be missing at the present time from its public inspection file and cannot account for these strange discrepancies.” (EB Exh. 34 at 6.)

276. Moreover, while the Draft Response to the second part of LOI Question No. 2 stated that present management “cannot presently account for the missing [programs/issues] lists” (SFUSD Exh. 21 at 5), the Final Response to this same question modified this language, instead stating that present management “cannot presently account for a limited number of lists of significant issues that were treated in locally-produced programs.” (EB Exh. 34 at 6.)

277. Section 2(a) of the Draft Response stated that present management “was unable to find discrete specifically-prepared program lists, such as the attached list for the last quarter of 1997 . . . What they found instead, however, for each and every quarter of the period in question, was a copy of the KALW’s quarterly program guide.” (SFUSD Exh. 21 at 5) In contrast, Section 2(a) of the Final Response does not specifically state that present management found Program Guides, but includes a general statement that “each quarter of the period in question, the file contains, at a minimum, a copy of KALW’s quarterly program guide.” (EB Exh. 34 at 7.)

278. The Draft Response to Question No. 2(a) also included a general statement that “Also included in this file, for each quarter in the period, are lists of issues of public importance that received significant treatment in programs provided by KALW by National Public Radio. SFUSD believes that all these materials were also present in the file on August 1, 1997 and that they constitute another basis for recognizing compliance with the requirements of then-Section 73.3527.” (SFUSD Exh. 21 at 5) Unlike the Final Response, the Draft Response does not specifically state that present management found the NPR lists in their review of the PIF, but generally states that the NPR lists are “included in th[e] file.”

279. The Final Response to 2(a) also added a new statement that “Likewise, KALW broadcasts a number of National Public Radio (NPR) and Public Radio International (PRI) programs which, although nationally-produced and distributed, treat numerous issues that are of great significance to the people of San Francisco. Lists and other material regarding both categories of programs are placed and maintained in KALW’s public file.” The Final Response also adds a statement that the PIF “contains (and did contain on August 1, 2001) the documentation required by the rule and by Form 303’s certification.” (EB Exh. 34 at 7.)

280. The next paragraph of the Final Response states that the PIF contained NPR lists for every quarter, and adds a new statement that “SFUSD believes and avers that these materials were present in the file on August 1, 1997. The NPR lists would *in and of themselves* be sufficient to satisfy the rule even without the extensive programming regarding issues of public importance that was produced by KALW between 1991 and 1997.” The Final Response continues with a new detailed discussion regarding the examples of materials that exist in the PIF. (EB Exh. 34 at 7.)

281. The April 2001 Final Response submitted by the Sanchez Law Firm was not circulated to the District for approval, despite the fact that several significant edits were made from the April 3, 2001 draft. (SFUSD Exh. T3 at 14.)

**E. Mr. Helgeson Was Not Provided A Copy of the Final Response Prior To Being Asked To Sign His Declaration**

282. The April 2001 Final Response attached a declaration signed by Mr. Helgeson (the “Helgeson 2001 Declaration”). The Helgeson 2001 Declaration was prepared by Attorney Jenkins and sent to Mr. Helgeson via e-mail on the evening of April 4, 2001, along with

instructions for Mr. Helgeson to sign and return the declaration promptly. (EB Exhibit 30.)

Mr. Helgeson did as instructed and returned the signed declaration to Attorney Jenkins on April 5, 2001. (SFUSD Exh. 10; SFUSD Exh. 11.)

283. Mr. Helgeson did not receive a copy of the final April 5, 2001 LOI response from Attorney Sanchez prior to being instructed to sign his 2001 Declaration. (Tr. 1187.)

284. The Sanchez Law Firm was also aware that Mr. Helgeson had not reviewed their additional edits at the time he was directed to execute his declaration on April 4, 2001. (Tr. 1187). They did not ask him to wait to sign the declaration until he had seen precisely what he was attesting to. (Tr. 1187) (“We were on something of a very tight time line. Ernie really needed – Ernie and Susan were I think still working on the final when I had the declaration in front of me to sign.”); (Tr. 1071) (“I don’t recall seeing this document before it was filed with the FCC ... I don’t recall being – send a copy of it or reviewing a copy of it.”).

285. Mr. Helgeson did not know that Attorneys Jenkins and Sanchez were continuing to revise and edit the April 2001 Response even after he executed his declaration. (Tr. 1113.) Indeed, the Sanchez Law Firm slip listings reflect that Attorney Jenkins billed SFUSD for 13.25 hours of work on April 5, 2001 and 2.55 hours of work on April 6, 2001. (EB Exh. No. 35 at 2.)

286. Mr. Helgeson believed that SFUSD’s Final Response and his declaration affirmed the status of the PIF as of April 5, 2001 as he had reported it to Attorneys Sanchez and Jenkins. (SFUSD Exh. T2 at 15.) Mr. Helgeson also understood the April 2001 Response to affirm the certification made by Mr. Ramirez as to the completeness of the PIF as it existed on August 1, 1997. (SFUSD Exh. T2 at 15-16.)

287. As noted above, Mr. Helgeson did not receive Mr. Ramirez's October 1997 Memo that acknowledged mistakes made in the License Renewal Application certification, nor was he involved in discussions between Mr. Ramirez and Attorney Sanchez in the Fall of 1997 that acknowledged those errors. (SFUSD Exh. T2 at 15-16; Tr. 979-80, 1186-87, 1197.) Also, at the time of the response to the LOI, Mr. Ramirez was not employed by SFUSD, and was not consulted to review the responses to the LOI. (SFUSD Exh. T1 at 19; Tr. 1021, 1077.) Mr. Helgeson was aware of the GGPR infiltration of the Station's files and of the directions he received from Attorney Sanchez to "clean-up" the PIF in January 1998. (Tr. 966-67, 1163-64.) But Mr. Helgeson had no reason to believe or suspect that the certification submitted on August 1, 1997 was inaccurate. (SFUSD Exh. T2 at 15-16; Tr. 770-71.)

288. That Mr. Helgeson did not have an opportunity to review the April 2001 Final Response is important because there were significant changes from the April 3, 2001 draft to which Mr. Helgeson would not have agreed. (Tr. 1112.) Mr. Helgeson testified at hearing that in light of what was stated in the April 2001 Response submitted by the Sanchez Law Firm his declaration was no longer completely accurate. (Tr. 1107.)

289. For example, the April 2001 Final Response stated that "when KALW's present management reviewed the issues/programs list file for the period in question in connection with making its response to the Bureau's inquiry letter, they did not find for each and every quarter during that period specifically prepared lists with respect to all locally produced programs, but only nationally produced NPR issues programs, program lists." (EB Exh. 34 at 5.) This statement that present management specifically found NPR lists in the PIF was not included in

the April 3, 2001 draft circulated to Mr. Helgeson, Ms. Sawaya and District administrators for review. (SFUSD Exh. 21.)

290. Mr. Helgeson first downloaded and placed the NPR lists into the PIF in March 2001, meaning that they were not present prior to that time. (Tr. 1099.) The date of download (3/14/01) is plainly visible on the NPR quarterly programs lists placed in March 2001 in the PIF, as well as on the sample list filed with the April 2001 Response. (*See, e.g.*, EB Exh. 34 at 71-82). Mr. Helgeson acknowledged that the statement in the April 2001 Final Response that the NPR lists were believed to be in the PIF on August 1, 1997 was inaccurate and that “[i]f I had received a copy [of the final submission] and been able to review it, I believe I would have caught that mistake. I certainly at no time told our attorneys that that’s what I found in the file when I initially looked in it, the NRP [sic] programs list. The NPR programs lists were in there because I know that as part of the work I was doing in February and March, I mean we – we went and collected that data and put it in as well as we could to bring the file up to date now, which is what the attorneys had requested that I do.” (Tr. 1086-87; *see also* Tr. 1096.)

291. Moreover, to the extent that the April 2001 Final Response refers to the August 1, 1997 License Renewal Application, by signing his 2001 Declaration, Mr. Helgeson did not intend to state or affirm the condition of the PIF in 1997. Mr. Helgeson had not reviewed the PIF in 1997 and would not have been in a position to verify its contents. He understood his 2001 Declaration to be attesting to only the present condition of the PIF. (Tr. 1112.)

## KALW BETWEEN APRIL 2001 and JULY 2004

### I. The Preparation of the May 24, 2001 Historical Summary

292. The uncertainty of the license renewal challenge was a matter of great concern that continued to cast a cloud over the Station following the response to the LOI. (SFUSD Exh. T3 at 16.) In the weeks leading up to the filing of the April 2001 Response to the LOI, Ms. Sawaya commissioned the Sanchez Law Firm to prepare a report on the status of the license renewal challenge and welcomed a meeting in San Francisco with counsel. (SFUSD Exh. 20.) Like Ms. Sawaya, Superintendent Ackerman was also new to the District and was not present during the time of the renewal period (1991-1997), the certification of the License Renewal Application, or the license challenge. Ms. Wright and Mr. Campos were similarly new to their posts and had little first-hand knowledge of the Station's legal issues. (SFUSD Exh. 20.)

293. On May 24, 2001, the Sanchez Law Firm presented to the Superintendent's office a report entitled "Report on License Renewal." (SFUSD Exh. 22.) The Report on License Renewal presented a historical narrative of the Station, the creation of GGPR and the license renewal challenge. The Report on License Renewal concluded that there was no merit to the GGPR challenge and that while a modest penalty was possible, "the license itself is almost certainly not at risk." (SFUSD Exh. 22 at 4.) The report characterized the GGPR Petition to Deny as "the spiteful and disloyal actions of this group of disgruntled employees and volunteers, GGPR and its allies, who should not be regarded as 'whistleblowers,' but rather as attempted profiteers at SFUSD's expense." (SFUSD Exh. 22 at 4.) Attorney Sanchez advised in the Report

on License Renewal that resolution of the license challenge was forthcoming and that he would monitor the situation at the Commission. (SFUSD Exh. 22 at 4, 11.)

## **II. Ms. Sawaya's Repeated Overtures to Attorney Sanchez**

294. Following delivery of the Report on License Renewal, Ms. Sawaya regularly e-mailed or called Attorney Sanchez for an update on the status of the Station renewal and to encourage him to make this matter a priority. SFUSD Exhibits 23-38 constitute sixteen e-mails sent from Ms. Sawaya to Attorney Sanchez between April 5, 2001 and June 2004, which are representative of Ms. Sawaya's efforts to encourage Attorney Sanchez to take appropriate steps to bring the license renewal challenge to a close.

295. Throughout this period, Attorney Sanchez repeatedly assured Station management and the District that resolution of the license renewal challenge was forthcoming and that any finding of a violation was remote and even if a sanction were imposed, it would be minimal. (SFUSD Exh. 24) ("Presumably, [the FCC staff] have dealt with this renewal as not very important because of their intention not to take any major action against the station.... Because I am confident that the renewal itself will be granted, I have felt that it was most prudent to try and make ourselves as small a target as possible when it comes to a potential fine."); (SFUSD Exh. 25) ("I heard from the head of Audio Services at the FCC this morning. He said that we are only a few days away from FCC issuance of the KALW renewal decision.") (SFUSD Exh. 29) ("There is still no indication of any major problem—like a nonrenewal. I continue to think there will be a slap on the wrist related to record keeping and the public file along with a related fine. I do not think the fine will exceed \$10k . . .").

296. As the matter continued into 2003 without resolution, Ms. Sawaya expressed increasing frustration with Attorney Sanchez. With increased experience and confidence, Ms. Sawaya also recognized that SFUSD and KALW should demand more from their counsel rather than be told what to say and what to do – and to have their requests ignored or placated. (Tr. 1439) (Judge Sippel: Certainly, you have to respect judgment. You have to respect advice ... But the relationship between the client and the attorney is – you seem to be – you seem to have things reversed the way I’m hearing you. A: [...] I think that finally dawned on me, that I was in the driver’s seat, not me, but SFUSD, the listeners of the city and county of San Francisco who give us our budget, and KALW was actually in the driver’s seat here. Judge Sippel: The dynamics started to shift a little bit. A: Exactly. Yes.)

297. This “change” was evident in Ms. Sawaya’s e-mail and oral correspondence with Attorney Sanchez in 2002 and 2003. SFUSD Exh. 28 contains two e-mails, one of which is an e-mail dated Jun 20, 2003 from Attorney Sanchez to Ms. Sawaya in which Attorney Sanchez provides an update on the license renewal. Because of the inability to resolve the matter, the Sanchez Law Firm offered to write-off the District’s legal bill for the last six months of the fiscal year. In the e-mail, Attorney Sanchez wrote: “I think it is appropriate for us to acknowledge the hardship that the FCC delays have caused you ... I hope to be in touch with you soon with news on the pending renewal.” (SFUSD Exh. 28.) The second e-mail included in SFUSD Exh. 28 is Ms. Sawaya’s response to Attorney Sanchez’s e-mail, in which she accepted Attorney Sanchez’s offer and urged him to continue pursuing renewal. (SFUSD Exh. 28.)

### **III. Maintenance of the PIF Since Ms. Sawaya's Arrival as GM in March 2001**

298. Following her arrival in March 2001, Ms. Sawaya implemented several changes to the procedures to ensure that issues/programs lists were prepared and maintained in the Station's PIF. First, Ms. Sawaya moved the PIF to a locked file cabinet in her office and limited access to working hours when someone reviewing the file could be observed. Mr. Helgeson was placed in charge of collecting the required programming information on a quarterly basis and placing it in appropriate folders in the PIF. (SFUSD Exh. T3 at 19.)

299. Ms. Sawaya routinely reminded Mr. Helgeson that issues/programs lists were to be filed within 10 days after each calendar quarter or directed him to place specific documents in the file. Ms. Sawaya also circulated periodic reminders to Mr. Helgeson and others, including program producers, regarding procedures to update and maintain the PIF. (SFUSD Exh. T3 at 19.)

300. In October 2004, Ms. Sawaya took personal control of maintaining the PIF. Ms. Sawaya notified Station personnel and program producers of the change and also advised the appropriate District officers and the Station's new outside counsel. (SFUSD Exh. T3 at 19-20.)

### **IV. Other Improvements at KALW Since 2001**

301. In Ms. Sawaya's tenure as GM at KALW, the Station has witnessed several significant improvements. The Station is presently raising over one million dollars directly from listeners and from a small but growing business fundraising strategy. (SFUSD Exh. T3 at 20.) The Station's budget has increased modestly each year since 2001 and for the fiscal year July 2003 through July 2004, the Station's operating budget was approximately \$1.3 million. In early 2001, the Station had approximately 8,000 members/donors. It now boasts approximately

12,000 members/donors throughout the Bay Area. (SFUSD Exh. T3 at 20.) In the Spring of 2001, KALW's audience was measured at 99,000 weekly average audience. In 2004, the Station's audience was measured at between 134,000 to 145,000 weekly average audience, not counting on-line listening. (SFUSD Exh. T3 at 20-21.)

302. KALW has provided unique programming by collaborating with a plethora of local individuals and organizations to produce programming both on a one-time and on-going basis. KALW has brought in new talent and has received more awards in the past three years than in the Station's entire history. A partial list of KALW's programming collaborators from July 16, 2003 through July 16, 2004 include: New California Media (a consortium of over 400 ethnic news organizations); YO! Youth Outlook; Pacific News Service; Working Assets, Inc.; Berkeley Symphony; SFUSD Back to School Rally; Global Exchange; Youth Speaks; Ben Manilla Productions; Stanford University; Science Interchange; A Clean Well-Lighted Place for Books; Stern Grove Festival; the Jewish Community Center and the Osher Center for Lifelong Learning at SFSU; British Broadcasting Corporation; Mechanics Institute Library; Code Pink; The Commonwealth Club of California; San Francisco Planning and Urban Research; LitQuake; 856 Valencia Street; Other Minds Festival, UCSF; Vote for Change; Lavender Youth Recreation and Information Center; Z Space Collective; BRAVA! Center for the Arts, and a host of independent producers. (SFUSD Exh T3 at 21-22.)

303. KALW has also conceived and launched many new programs, including: UpFront; Dispatches From the New Majorities; Out in the Bay; Invisible Ink; The Human Chorus; Philosophy Talk; Writer's Voice Radio; Working Assets Radio – now "Your Call;"

Then and Now; and many one-time broadcasts, such the annual Superintendent's State of the Schools Address. (SFUSD Exh. T3 at 22.)

304. A recent accomplishment of KALW is the debut of KALW News. With grant support, and after many months of preparation, the Station launched this service in the Fall of 2004. Once a week, KALW News airs a half-hour of local news features. Several KALW News pieces – about wealth and poverty – have been aired on NPR's Morning Edition. (SFUSD Exh. T3 at 22.)

305. The Station has also emphasized its unique education mission through new programming and in direct involvement with students. KALW News, NPR's Next Generation Project and Radio & TV News Directors' Association (RTDNA) undertook a student training program in March 2005 with five students from the District's Burton High School. Through this program, NPR journalists worked for a week with the students and KALW's news director to train the next generation of public radio journalists. The training took place at KALW and the end product was a short documentary entitled "My Neighborhood: Visitation Valley." This outstanding program is illustrative of the productive relationship between the District and KALW. (SFUSD Exh. T3 at 22.)

306. KALW is also committed to ascertaining and responding to the needs and interests of the community. At least once or twice per quarter Ms. Sawaya hosts a one hour program called "Manager's Report to the Listener" where callers express their opinions on-air about existing programming and ideas for new programming. The Station also responds to listener e-mails and letters and Ms. Sawaya routinely meets with and communicates with programming collaborators such as New California Media and visit different journalism outlets

in the community to determine what is going on in their area and to identify subject areas that are being underreported that KALW is equipped to cover. The Station also maintains an open phone line where callers can leave their thoughts or suggestions. The information gathered through these channels is evaluated by the Station and its program producers as part of its review of existing programming and the identification of new programming. (SFUSD Exh. T3 at 22-23.)

307. On the technological front, KALW recently switched over to a new digital transmitter. This is of tremendous value to the Station, the District and the public because it ensures that the Station's service will continue to be available in the digital age. (SFUSD Exh. T3 at 23.)

308. The Station's outstanding programming since 2001 has been widely recognized not only by the San Francisco community, but also by many national organizations. Awards received by the Station for work reflecting the period from July 2003 through July 2004 include five Golden Reel Awards, five Silver Reel Awards, and one Special Merit Award from the National Federation of Community Broadcasters, and awards from local publication San Francisco Bay Guardian and SFGate, an online information source. KALW was also recently selected as one of four stations nationwide to participate in the "Tomorrow Radio Project," a collaboration between NPR, CPB and the Harris Corporation to test and model next generation high-definition radio. (SFUSD Exh. T3 at 24-25.)

309. With respect to Commission filings and reports, on September 27, 2004, Superintendent Ackerman issued a memorandum directing that all FCC regulatory matters and

filings must be coordinated with and cleared through outside communications counsel. <sup>6/</sup> Moreover, the Superintendent directed that the Station manager, with the assistance of outside communications counsel and the District's legal office, provide the Superintendent with a report at the start of each calendar year, reporting on the status of regulatory compliance matters involving the Station, including reports and applications that are expected to be filed with the FCC in the upcoming year. (SFUSD Exh. 48.) The State of the Station Report -2004 dated December 21, 2004, complied with the Superintendent's directive for 2005. (SFUSD Exh. 46.) Under "2005 FCC Filings and Reports," the State of the Station Report listed the ownership report due August 1, 2005, and the quarterly issues/programs lists due by the 10<sup>th</sup> day following each calendar quarter as among upcoming filings in 2005. (SFUSD Exh. 46 at 4.)

310. At present, as directed by Superintendent Ackerman, two of the Superintendent's cabinet members, Lorna Ho, Special Assistant to the Superintendent, Office of Public Engagement and Information, and Myong Leigh, Chief of Policy and Planning, jointly serve as the District's liaison to the Station. (EB Exh. 40 at 5.)

### **MERITORIOUS SERVICE**

311. On September 7, 2004, SFUSD filed a Motion to Enlarge Issues to determine whether KALW had provided meritorious service during the license period justifying renewal of SFUSD's license. SFUSD argued that a meritorious service issue (1) is relevant to consideration

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<sup>6/</sup> Attorney Sanchez withdrew his appearance as counsel to SFUSD on September 16, 2004. (Withdrawal of Appearance (Sep. 16, 2004).) Remaining outside counsel for SFUSD are Hogan & Hartson L.L.P. and Renne Sloan Holtzman & Sakai, LLP. (Notice of Appearance (Aug. 8, 2004.))

of the merits of renewal and/or (2) would provide mitigating evidence relevant to some or all of the issues set in the *HDO*.

312. 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.

313. By *Order*, FCC 04M-31 (rel. Oct. 8, 2004), the Presiding Judge granted in part and denied in part the Motion to Enlarge Issues submitted by SFUSD to add the following issue: "To determine whether station KALW(FM) has provided meritorious service during the license period justifying renewal of SFUSD's license."

314. In support of this issue, the following SFUSD exhibits were admitted into the record of this proceeding: SFUSD Exh. 1T [Direct Testimony of Jeffrey P. Ramirez]; SFUSD Exh. 3T [Direct Testimony of Margaret Ann "Nicole" Sawaya]; SFUSD Exh. 5T [Direct Testimony of Alan Farley]; SFUSD Exh. 6T [Direct Testimony of Lorna Ho]; SFUSD Exh. 3 [KALW Program Guides from 11/3/96 to 11/3/97]; SFUSD Exh. 49 [List of programs produced or co-produced by Alan Farley]; SFUSD Exh. 50 [Declaration of Esther Casco re: Board Meetings program]; SFUSD Exh. 51 [Declaration of John Covell re: City Visions program]; SFUSD Exh. 52 [Declaration of Rose Levinson re: City Visions program]; SFUSD Exh. 53 [Declaration of Ricardo Esway re: Commonwealth Club program]; SFUSD Exh. 54 [Declaration of Martin Nemko re: School & Career Talk With Marty Nemko program]; SFUSD Exh. 55 [Declaration of Chuck Finney re: Your Legal Rights program]; SFUSD Exh. 56 [Declaration of Joann Mar re: Folk Music & Beyond program]; SFUSD Exh. 57 [Declaration of Henri-Pierre

Koubaka re: Kumpo Beat program]; SFUSD Exh. 58 [Declaration of Mark Naftalin re: Mark Naftalin's Blues Power Hour program]; SFUSD Exh. 59 [Declaration of Kevin Vance re: Patchwork Quilt program]; SFUSD Exh. 60 [Declaration of Dore Steinberg re: Tangents program]; SFUSD Exh. 61 [Declaration of Paul Linde re Health, Mind & Body program]; SFUSD Exh. 62 [Declaration of Jonathan Heuer re: The Human Chorus program]; SFUSD Exh. 63 [Declaration of Roman Mars re: Invisible Ink program]; SFUSD Exh. 64 [Declaration of Dana Rodriguez re: Minds Over Matter program and The Blues program]; SFUSD Exh. 65 [Declaration of Ben Manilla re: Philosophy Talk program]; SFUSD Exh. 66 [Declaration of Holly Kernan re: Up Front program]; SFUSD Exh. 67 [Declaration of Neal Sofman re: Writer's Voice Radio program]; SFUSD Exh. 68 [Declaration of Matthew Martin re: Your Call program]; SFUSD Exh. 69 [Declaration of Peter Thompson re: Bluegrass Signal program]; SFUSD Exh. 70 [Declaration of Sarah Cahill re: Then & Now program]; SFUSD Exh. 71 [Public Witness Testimony]; SFUSD Exh. 72 [Board of Education's Resolution No. 54-26A11 Adopted 4/26/05 titled Commending the Informational and Educational Broadcast Service provided by KALW(FM)]; and SFUSD Exh. 73 [Letters and E-mails from Listeners].

315. In addition, the Presiding ALJ provided that public comments submitted directly to the FCC relating to KALW's meritorious service may be offered into the record as admissible evidence. *Order*, FCC 04M-31 (rel. October 8, 2004).

316. The EB forwarded to counsel for SFUSD comments received by the FCC that can be described as extolling the programming of KALW and the station's contribution to the San Francisco community, and/or which urge the Commission to renew the KALW license. SFUSD proffered the public comments in support of KALW as SFUSD Proposed Exhibit No. 79.

317. In an effort to limit the presentation of voluminous evidence in the final record of this matter, SFUSD and EB submitted a proposed stipulation with respect to the meritorious service provided by KALW during the periods of November 3, 1996 to November 3, 1997 and July 16, 2003 to July 16, 2004.

318. By order of the Presiding Judge, on September 16, 2005, the following stipulations were admitted into the record of this matter:

(1) SFUSD and the Enforcement Bureau stipulate that SFUSD Proposed Exhibit No. 79 contains several hundred public comments extolling the programming of KALW and the station's contribution to the San Francisco community, and/or which urge the Commission to renew the KALW license. EB and SFUSD stipulate that those portions of SFUSD Proposed Exhibit No. 79 which identify the commenting individual or entity, which relate to the meritorious service issue in this proceeding, which are not duplicative, which were received by the Commission on or before June 30, 2005, and which meet the standards set forth in the Presiding Judge's Order, FCC 05M-30 (rel. June 17, 2005), shall be received into evidence in this proceeding.

(2) SFUSD and EB stipulate that the evidence in the record of this proceeding (with or without all portions of SFUSD Proposed Exhibit No. 79) establishes that KALW provided meritorious service during the periods of November 3, 1996 to November 3, 1997 and July 16, 2003 to July 16, 2004.

319.

**DISCOVERY AND THE ENFORCEMENT BUREAU'S MOTION TO ENLARGE  
ISSUES TO INCLUDE ALLEGATIONS OF MISREPRESENTATION**

320. As set forth above, in response to the Enforcement Bureau's Motion to Enlarge Issues, the Presiding Judge ordered that the following issue be added "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." *Order*, FCC 05M-17 (rel. April 1, 2005); *Addendum*, FCC 05M-20 (rel. April 5, 2005).