

UNEXEN

Golden Gate Public Radio
A Public Radio Corporation
250 Dorland Street, #3
San Francisco, CA 93114

Federal Communications Commission
1919 M Street,
Washington, D.C. 20554

EEO Allegations
Date: _____
Reporter: _____
Di position: _____
Identified: _____
Received: _____
Rejected: *(2) EEO* 11597
Exhibit No. _____
Checked No. _____
Recorded by _____
Federal Communications Commission

In Re: KALW LICENSE RENEWAL

PETITION TO DENY
APPLICATION FOR LICENSE
RENEWAL OF RADIO STATION
KALW, SAN FRANCISCO, CA.

File No. BRED-970801 YA

RECEIVED
NOV 3 1997
COMMUNICATIONS
DIVISION

INTRODUCTION

GOLDEN GATE PUBLIC RADIO (GGPR), a California public benefit corporation, located in San Francisco, California, hereby requests that the Federal Communications Commission (FCC) deny the license renewal of KALW, a public radio station owned and operated by the San Francisco Unified School District (SFUSD).

GGPR is challenging SFUSD's ownership of KALW's radio license for the reasons set forth herein.

FACTS

KALW knowingly and deliberately made multiple misrepresentations on its 1997 Application for Renewal of License (FCC Form 303-S) and Broadcast Equal Employment Opportunity Program Report (FCC Form 396) dated July 30, 1997 (see Exhibit A) as set forth hereinafter.

I.

**KALW FAILED TO ADEQUATELY MAINTAIN ITS PUBLIC INSPECTION FILE
THROUGHOUT THE TERM OF THE LICENSE.**

A. KALW failed to file supplemental ownership reports with the commission pursuant to 47 C.F.R. 73.3615.

47 C.F.R. 73.3615(f) states:

A supplemental Ownership Report on FCC Form 323-E shall be filed by each licensee or permittee within 30 days after any change occurs in the information required by the Ownership Report from that previously reported. Such report should include, without limitation: (2) Any change in officers or directors.

Since KALW's last ownership report of January 1991, SFUSD's Board changed membership three times (see Schedule of Membership Changes in Exhibit R). There is no record in KALW's public inspection file of the submission of supplemental Ownership Reports (FCC Form 323-E) for these changes.

According to the October 28, 1997 affidavit of KALW volunteer Susan Hecht (Hecht), she wrote a report on the state of the KALW public inspection file (see Hecht's aff in Exhibit D). On line four of her affidavit, Hecht says she issued a report in June 1997, entitled *License Renewals Materials - In Files at Present* (see report in Exhibit E). The report documents the absence of Ownership Reports in KALW's public inspection file.

B. KALW station manager was aware of unaccounted for ownership reports.

KALW's officials checked off the box "yes" on FCC Form 303-S, Page 3, question 1(b), which asks:

Have the following reports been filed with the commission: The applicant's Ownership Report (FCC Form 323 or 323-E) as required by 47 C.F.R. 73.3615?

Station Manager Jeffrey Ramirez (Ramirez) was aware, eleven months before license renewal, of KALW's failure to maintain proper Supplemental Ownership Reports (Form 323-E) as referred to in question 1(b) on Page 4 of Exhibit A — the Application for Renewal of License (FCC Form 303-S) — and as also required by 47 C.F.R. 73.3615(f)(2). In an August 1996 meeting with Ramirez, KALW Chief Engineer Evans

informed Ramirez that Ownership Reports were incomplete. (See line 4 of the October 28, 1997 affidavit of KALW Chief Engineer, Dave Evans Exhibit C.) No effort was made by Ramirez to correct this failure.

Ramirez was clearly aware of KALW's failure to maintain proper Supplemental Ownership Reports when he filled out the Application for Renewal of License (FCC Form 303-S) in July 1997. According to the October 28, 1997 affidavit of Hecht (Exhibit D), Ramirez asked Hecht to review KALW's public inspection file for the purposes of license renewal. On line four of her affidavit, Hecht says she issued a report to Ramirez in June 1997, entitled *License Renewals Materials - In Files at Present* (see report attached hereto as Exhibit E). The report lists material deficiencies of the public inspection file, including the absence of Ownership Reports.

C. KALW failed to adequately maintain issue/programs reports in its public inspection file pursuant to 47 C.F.R. 73.3527.

C.F.R 73.3527 states:

(a) The material to be contained in the file is as follows:

(7) For nonexempt noncommercial educational broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter. The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs should include but is not limited to, the time , date, duration, and title of each program in which the issue was treated.

Between January 1, 1991 and April 10, 1997 KALW should have filed twenty-five issues/programs reports in its public inspection file. KALW did not.

Between January 1, 1991 and July 10, 1992, KALW filed six quarterly issues/programs reports in a timely manner as required by C.F.R 73.3527(a)(7). According to Hecht's report, *License Renewals Materials - In Files at Present* (Exhibit E), written in June of 1997 on the state of KALW's public inspection file, no other quarterly issues/programs reports were filed after July 1, 1992.

On July 23, 1997, thirteen days after the due date, pursuant to 47 C.F.R. 73.3527(a)(7), KALW submitted into its public information file a list of topics of an unidentified program attached hereto as Exhibit O (see also Lopez Aff., lines 1 - 3, Exhibit Y). The list does not conform to the format required in 47 C.F.R. 73.3527(a)(7) of "a brief narrative describing what issues were given significant treatment and the programming that provided this treatment.

D. KALW station was aware of unaccounted for issues/programs reports.

KALW's officials checked off the box "yes" on FCC Form 303-S, page 3, question 2, (Exhibit A, page 4) which asks:

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

Station Manager Ramirez was aware, eleven months before license renewal, of KALW's failure to maintain quarterly issues/programs reports as referred to in question 2 on Page 3 of the Application for Renewal of License (FCC Form 303-S), and required by 47 C.F.R. 73.3527(a)(7). On line three of Evans affidavit, Evans says he met with Ramirez and informed Ramirez that the public file was a problem and required immediate attention. On line four of his affidavit, Evans says that in this meeting he informed Ramirez that quarterly issues/programs reports were incomplete.

It is clear that Ramirez was aware of KALW's failure to file quarterly issues/programs reports when he filled out the Application for Renewal of License (FCC Form 303-S) in July 1997. According to lines three and four of Hecht's affidavit (Exhibit D), she found the public inspection file in disarray and issued a report to Ramirez in June 1997, entitled *License Renewals Materials - In Files at Present* (Exhibit E). The report lists

material deficiencies of the public inspection file, including incomplete issues/programs reports.

E. KALW failed to adequately maintain donor lists in its public inspection file pursuant to 47 C.F.R. 73.3527.

C.F.R 73.3527 states:

(a) The material to be contained in the file is as follows:

(8)The lists of donors supporting specific programs.

47 C.F.R. 73.3527, paragraph (e), requires donor lists to be retained for two years.

KALW failed to file donor lists for the past two years (see *License Renewal Materials - In Files at Present* in Exhibit E). This is inconsistent with the amount of revenue KALW received in the form of donations from businesses and listeners. According to KALW's FY1992-1996 Corporation for Public Broadcasting audits (see Exhibit G), KALW received an annual average of \$488,354 in individual donations, and business and foundation support.

F. KALW was aware of unaccounted for donor lists.

KALW's officials checked off the box "yes" on form 303-S, page 3, question 2 (Exhibit A, page 4) which states:

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

Station Manager Ramirez was aware, eleven months before license renewal, of KALW's failure to maintain its public inspection file as referred to in question 2 on Page 3 (Exhibit A, page 4) of the Application for Renewal of License (FCC Form 303-S), and as also required by 47 C.F.R. 73.3527(a)(8). Evans states he met with Ramirez in August 1996 and informed Ramirez that the public file was a problem and required

immediate attention (Evans Aff. Line 3, Exhibit C). No effort was made by Ramirez to correct this failure.

Clearly, Ramirez was also aware of KALW's failure to file donor lists when he filled out the Application for Renewal of License (FCC Form 303-S) in July 1997. A month earlier in June 1997, Ramirez asked Hecht to review the public inspection files (Hecht Aff. lines two and three, Exhibit D). Hecht did so and informed Ramirez of the state of the public inspection file in her report, *License Renewals Materials - In Files at Present* (Exhibit E). The report lists material deficiencies of the public inspection file, including the absence of donor lists.

II.

KALW FAILED TO FOLLOW EQUAL OPPORTUNITY EMPLOYMENT HIRING PRACTICES PURSUANT TO 47 C.F.R. 73.2080.

A. KALW failed to post equal employment opportunity notices pursuant to 47 C.F.R. 73.2080(c)(1)(i).

47 C.F.R. 73.2080 requires that stations carry out an EEO program which shall:

(c)(1) Disseminate its equal opportunity program to job applicants and employees. For example, this requirement may be met by:

(i) Posting notices in the station's office and other places of employment, informing employees, and applicants for employment, of their equal employment opportunity rights. Where it is appropriate, such equal employment opportunity notices should be posted in languages other than English.

KALW states that it makes effective efforts towards the following practice on FCC Form 396, page 3, under Policy Dissemination, part one, which states:

Notices are posted informing applicants and employees that the station is an Equal Opportunity Employer and that they have a right to notify an

appropriate State or Federal agency if they believe they have been the victims of discrimination.

KALW failed to post a notice informing applicants and employees that KALW is an Equal Opportunity Employer, and that they have the right to notify an appropriate State or Federal agency if they believe they have been the victims of discrimination. from April 1991 to September 1997, this notice was never posted at KALW, according to lines 5 - 7 of the October 29, 1997 affidavit of KALW employee, Joann Mar (see Exhibit H).

From April 1991 to October 29, 1997, KALW also failed to post notices informing applicants and employees that they have the right to notify an appropriate State or Federal agency if they believe they have been the victims of discrimination. This notice is not currently posted. On September 10, 1997, a notice was posted which states that the SFUSD is an Equal Opportunity Employer, according to lines 1 - 3 of the October 29, 1997 affidavit of KALW employee Joe Hughes (Hughes) (See Exhibit I). However, the notice does not inform applicants and employees of their right to notify an appropriate State or Federal agency if they believe they have been the victims of discrimination (Hughes Aff. Line 4 - 6).

B. KALW failed to disseminate its EEO policy to prospective employees pursuant TO 47 C.F.R. 73.2080(c)(1)(ii).

47 C.F.R. 73.2080 requires that stations carry out an EEO program which shall:

(c)(1) Disseminate its equal opportunity program to job applicants and employees. For example, this requirement may be met by:

(ii) Placing a notice in bold type in the employment application informing prospective employs that discrimination because of race, color, religion, national origin, or sex is prohibited.

KALW states that it makes effective efforts towards the following practice on FCC Form 396, page 3, under Policy Dissemination, part two, which states:

Our station's employment application form contains a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, State or Federal agency if they believe they have been the victims of discrimination.

KALW did not provide an EEO notice to prospective employees who applied for the position of Station Manager in May 1996. The advertisement for the position in the May 15, 1996 edition of *Education Week* did not contain an EEO policy statement (see advertisement attached hereto as J). Prospective employees for this position received a confirmation letter from Enrique Palacios, Special Assistant to the Superintendent. However, the confirmation letter did not contain a notice of KALW's EEO policy statement (see confirmation letter attached hereto as Exhibit K).

C. KALW failed to seek the cooperation of its employees' union to help implement the KALW EEO program pursuant to 47 C.F.R. 73.2080(c)(1)(iii).

47 C.F.R. 73.2080 requires that stations carry out an EEO program which shall:

(c)(1) Disseminate its equal opportunity program to job applicants and employees. For example, this requirement may be met by:

(iii) Seeking the cooperation of labor unions, if represented at the station, in the implementation of its EEO program and the inclusion of non-discrimination provisions in union contracts;

KALW states that it makes effective efforts towards the following practice on FCC Form 396, page 3, under Policy Dissemination, part three, which states:

We seek the cooperation of unions represented at the station to help implement our EEO program and all union contracts contain a nondiscrimination clause.

KALW employees are represented by the Service Employees International Union Local 790 (SEIU). The SEIU/SFUSD agreement is governed by Civil Service Commission rules on EEO, hiring practices, and other employment procedures. Under the Civil Service process, a test is periodically announced and administered for a specific job, e.g. Program Manager. The passing test-takers become *eligibles* who are placed on a ranked list of candidates to fill future vacancies for the position. When a vacancy occurs, KALW's Station Manager interviews the top three eligibles for the position. The hired eligible is known as a Certified Permanent employee.

Civil Service rules allow the KALW Station Manager to appoint temporary personnel as Provisional appointees in the following cases: emergencies in which a list of eligibles has been exhausted, circumstances in which a new position has been created but a test has yet to be administered, or periods in which workloads require a short-term increase in personnel. The Provisional appointment is a six-month position. Provisional appointees may be hired at the pleasure of the Station Manager without a recruitment process. The Provisional appointee is employed until KALW calls for a test to restock the list of eligibles, when KALW and Civil Service devise and administer a test for a new position, or when the short-term need for personnel is over (see Civil Service employment status in Exhibit L; see example of Provisional agreement in Exhibit M).

KALW Station Managers failed to cooperate with SEIU by their refusal to follow Civil Service hiring procedures. In August 1992, KALW Station Manager Jerry Jacob (Jacob) appointed William Helgeson (Helgeson), formerly a Clerk/Typist, to Operations Manager. The position title was informally changed to Operations Manager by Jacob, but is technically recognized as Program Manager by Civil Service. Helgeson has occupied the position as a Provisional appointee for nine consecutive six-month appointments (see lines 3 - 5 of affidavit of Mel Baker attached hereto as Exhibit F).

Throughout Helgeson's appointment as Operations Manager, KALW station managers, Jacob, Rose Levinson (Levinson), and Ramirez, did not call for a test to

restock the Program Manager list with eligibles. That fact is underscored by a May 16, 1996 letter (see also Exhibit P) from Joann Mar, KALW/SEIU Shop Steward, to Josie Mooney, SEIU Local 790 representative (Exhibit P). That letter states:

KALW has no Civil Service lists in effect for any permanent positions (i.e. station manager, program manager, chief engineer, and announcer/operator). Currently, the station manager, the program manager, and one announcer/operator position are vacant. These positions are currently being filled by temporaries and consultants. We have asked Ms. Levinson to request Civil Service to proceed with an examination for the 3535 announcer/operator position, but she refuses to cooperate. She has stated that it is counter-productive for the station to have Civil Service positions and that she will not allow the current announcer vacancy to be filled on a permanent basis so long as she is General Manager.

KALW/SEIU Shop Steward Mar also wrote in a July 15, 1996 memo (see Exhibit Q attached) to KALW employees:

Several disputes that arose during this past year remain unresolved and to that end, Local 790 has recently filed a grievance on our behalf. Among the issues in dispute are KALW management's failure to have Civil Service give exams and establish hiring lists for KALW job classifications 3532, 3533, 3535, and 7374.

On May 29, 1996, SEIU filed a grievance, authored by SEIU representative Patti Tamura, against Enrique Palacios, Special Assistant to Superintendent of SFUSD and supervisor to the KALW Station Manager. The grievance charged that Palacios misused authority to discipline employees Michael Johnson (Johnson) and Joann Mar (Mar). In a SFUSD hearing it was found that the actions of Palacios had no merit and were unwarranted (see Baker Aff., Exhibit F, lines 7 -12).

1. **KALW failed to cooperate with SEIU, pursuant to 47 C.F.R. 73.2080(c)(1)(iii), by misusing its power to appoint Provisional personnel instead of hiring certified employees.**

During the term of the license, KALW often appointed Provisional personnel in place of regular employees. KALW station managers failed to follow recruitment and EEO procedures in the appointments of Provisional appointees. Specifically, in August 1992 Jacob hired Helgeson to the position of Operations Manager without posting or advertising the position. (See lines 6 and 7 of the October 29, 1997 affidavit of KALW employee Michael Johnson attached hereto as Exhibit B; and according to lines 8 and 9 of the October 29, 1997 affidavit of Mar attached hereto asH).

The position of Youth Program Manager is recognized as Program Manager by Civil Service. In October 1996, Ramirez and Palacios appointed Ana Perez (Perez) as a Provisional appointee to the position of Youth Program Manager (see Perez's Provisional appointee agreement attached hereto as Exhibit M). Perez is currently in her third consecutive Provisional appointment (see Baker's Aff. Line 5, Exhibit F). Notices were never posted for the position of Youth Program Manager (Johnson Aff., lines 6 - 9, Exhibit B; and Mar Aff., lines 8 and 11, Exhibit H). There was no evidence that advertising had been placed for the position (Mar Aff., lines 8 and 11).

An example of KALW hiring procedures, in contradiction to Civil Service hiring procedures, occurred on July 30, 1997. In an e-mail communication between Ramirez and Michael Moon (Moon) Ramirez promised Moon a job before the opening had been announced (attached hereto as Exhibit S). Ramirez writes:

The timeline for the classified position now has a "placement" date of Sept. 1, which means the goal is to place you here at KALW by Sept. 1 (i.e.- a job offer will be made by that date). We are working backward from that date. The time between now and then will be used to post the job for 10 days and spend a week at most interviewing; the remaining time is Civil Service paperwork processing and job description and duties and approval which is subject to however much time they take, dammit. Enrique and I are working the system to get you here. Of course, this is

all just eating up time to the fall fund-raiser. My preference is to hire you in classified position rather than do all that "as needed" or "consultant" business to get you here as soon as possible. It, of course, will all seem trivial down the road.

Moon withdrew from consideration on September 23, 1997.

- 2. KALW failed to cooperate with SEIU, pursuant to 47 C.F.R. 73.2080(c)(1)(iii), by misusing its power to select independent contractors instead of hiring certified employees.**

During the term of the license, KALW often hired independent contractors in place of certified employees. The procedures for selecting independent contractors are not governed by Civil Service rules and do not require recruitment or EEO procedures. From August 11, 1992 to June 30, 1995, the full-time position of KALW Station Manager was filled by Jerry Jacob who served as an independent contractor to KALW (see contract hereto attached as Exhibit T). In May of 1995, Jacob was investigated on allegations of sexual harassment. (See Exhibit CC, Affidavit of Hedy Jacobowitz). In June of 1995, SFUSD announced that it had appointed Rose Levinson (Levinson) to the position of KALW General Manager. Levinson had served from July 1, 1994 to June 30, 1995 as Public Service and Development Director, in the capacity of an independent contractor to KALW (see contract hereto attached as Exhibit U).

From July 1, 1995 to June 30, 1996, Levinson served as KALW General Manager in an independent contractor capacity (see contract attached hereto as Exhibit Z). On October 15, 1996, the regularly scheduled position of Underwriting Coordinator was filled by Lynne Nerenbaum who is currently serving as an independent contractor (see contract hereto attached as Exhibit W; and Baker Aff., lines 2 - 6, Exhibit F). Nerenbaum's selection was made by Station Manager Ramirez (see Consultant Request hereto attached as Exhibit AA). On September 23, 1997, KALW presented to the SFUSD the contract of independent contractor Michael Moon (see contract in Exhibit X). Moon's selection was also made by Station Manager Ramirez.

In each of the above instances, KALW violated the Internal Revenue Code which forbids the hiring of independent contractors as employees. In addition, in each of the

instances cited in the preceding paragraph, KALW failed to post or advertise the openings of positions filled by Jacob, Levinson, Nerenbaum, and Moon (see Johnson Aff., lines 5-10, Exhibit B; and Mar Aff., lines 8-13, Exhibit H).

In addition to the above IRS violation, KALW failed to file appropriate documentation to the FCC regarding independent contractors, as required by 47 C.F.R. 73.3613, which states:

Each licensee or permittee of a commercial or noncommercial AM, FM, TV or International broadcast station shall file with the FCC copies of the following contracts, instruments, and documents together with amendments, supplements, and cancellations (with the substance of oral contracts reported in writing), within 30 days of execution thereof:

(c)Personnel: (1) Management consultant agreements with independent contractors; contracts relating to the utilization in a management capacity of any person other than an officer, director, or regular employee of the licensee or permittee.

KALW failed to file the contracts of Jacob, Levinson, and Nerenbaum in its public inspection file. See Exhibit C for a list of KALW public inspection file contents. It is believed KALW also failed to file these with the FCC. Moreover, contracts for three other independent contractors — Carol Pierson, Claire Green, and Michael Wallace — who performed management duties for short periods of time have not been filed (Baker Aff., lines 13-15, Exhibit F).

D. KALW STATION MANAGER RAMIREZ WAS AWARE THAT KALW FAILED TO PRACTICE EQUAL EMPLOYMENT OPPORTUNITY HIRING.

Ramirez was clearly aware of KALW's EEO problems. Evans met with Ramirez in August 1996 and informed Ramirez that KALW's EEO program was obsolete (Evans Aff., lines 1-6, Exhibit C). No corrective action was taken by Ramirez. Ramirez was aware that the hiring of Perez in October 1996 had not been conducted properly (Johnson Aff., lines 14-19, Exhibit B).

Although Ramirez was aware of recruiting problems, he continued to engage in the practice of neglecting recruiting procedures by appointing Perez as a Provisional appointee in October 1996, and by selecting independent contractors such as Nerenbaum as Underwriting Coordinator in October 1996 and Moon as Fundraising Coordinator in September 1997.

Ramirez was also aware of Civil Service procedures. On the same day he completed KALW's Application for License Renewal, July 30, 1997, he wrote to Moon in an e-mail (see Exhibit S):

...the remaining time is for Civil Service paperwork processing and job description and duties approval... My preference is to hire you in the classified position rather than do all that "as needed" or "consultant" business...

E. KALW station manager was aware that KALW did not practice recruitment pursuant TO 47 C.F.R. 73.2080(c)(1)(iv).

KALW indicates that it practices the following recruitment measures on FCC Form 396, Page 3, under Recruitment, part one, which states:

When we place employment advertisements with media some of such advertisements are placed with media which have significant circulation or viewership, or are of particular interest to minority and/or women in the recruitment area. Examples of media utilized during the past 12 months and the number of minority and/or women referrals are:

In the space provided on the form, KALW entered:

KALW General Manager/Current Newspaper, 7 minority, 6 women

KALW completed the license renewal on July 30, 1997. The advertising for the position in question, General Manager ("Station Manager" as actually advertised)

occurred 14 months prior to the completion of the renewal application (see Station Manager job advertisement attached hereto as Exhibit J).

There were two positions at KALW that were filled within the 12 month period: Youth Program Manager filled by Perez on October 4, 1996, and Underwriting Coordinator filled by Nerenbaum on October 15, 1996. According to Johnson and Mar, KALW failed to post or advertise both openings (Johnson Aff., Exhibit B, lines 5-10; and Mar Aff., Exhibit H, lines 8-12). Ramirez was also aware that the hiring of Perez was conducted improperly (Exhibit B, lines 14-19).

F. KALW failed to promote individuals on a nondiscriminatory basis pursuant to 47 C.F.R. 73.2080(c)(4).

On FCC Form 396, page 4, under Promotions, it is stated:

A broadcast station must promote individuals on a nondiscriminatory basis. Further, to assure that qualified minorities and women are given due consideration for promotional opportunities, it must make efforts to encourage them to qualify and apply for advancement.

KALW did not inform its employees, many of them qualified minorities and women, of job openings throughout the term of the license. Johnson, who is African-American, states in his affidavit that since 1992 KALW failed to inform him of jobs to which he could have been promoted (Exhibit B, lines 10-13). Mar, an Asian-American female, also states on her affidavit that since 1992 KALW did not inform her of jobs to which she could have been promoted (Exhibit H, lines 14-15).

G. KALW'S licensee failed to respond to notification of station EEO Violations.

On September 16, 1997, Golden Gate Public Radio (GGPR) met with Dan Kelly (Kelly), a member of the Board of Education of the San Francisco Unified School

District, the licensee of KALW. At that meeting, Kelly was notified of KALW's EEO problems. A list of problems was submitted to Kelly, but was returned to GGPR and is attached hereto as Exhibit BB. No corrective action was taken.

ANALYSIS

Based upon KALW's failure to comply with FCC regulations and KALW's inconsistencies in its responses to the Commission on Forms 303-S and 396 (Exhibit A), the petitioners contend that KALW's acts are egregious and warrant the denial of the station license pursuant to law. The reasons for that assertion follow.

1. FCC CONTROLS THE RENEWAL OF THE LICENSE.

The demands of public interest are prime considerations for the Commission in granting and renewing broadcasting licenses. Brandywine-Main Line Radio, Inc. v. F.C.C., 1972, 473 F.2d 16, 153 U.S.App. D.C. 305, certiorari denied 93 S.Ct. 2731, 412 U.S. 922, 37 L.Ed.2d 149. Golden Gate Public Radio petitions the Commission on the basis of facts which are sufficient enough to show that a grant of KALW's license renewal application "would be prima facie inconsistent with [the public interest, convenience, and necessity]." 47 U.S.C. § 309(d)(1).

2. FCC CAN REFUSE TO RENEW LICENSE FOR LYING AND WILLFUL MISCONDUCT.

Misrepresentation itself casts serious doubt on KALW's truthfulness and reliability in its dealings with the Commission. The most insignificant misrepresentations may be treated as disqualifying. FCC v. WOKO, 329 U.S. 223, 227 (1946). The Commission may refuse to renew a broadcast license where there has been willful and knowing misrepresentation or lack of candor on the part of licensee in dealing with the Commission. Leflore Broadcasting Co., Inc. v. F.C.C., 1980, 636 F.2d 454, 204 U.S. App. D.C. 182.

3. THE FCC CAN DENY A LICENSE WITHOUT CONSIDERATION OF MITIGATING CIRCUMSTANCES IF A STATION HAS DEMONSTRATED WILLFUL FAILURE AND REFUSAL TO COMPLY WITH COMMISSION RULES.

The commission need not consider public service rendered by a radio station where the licensee is disqualified from renewal of its license based on its attempts to deceive the Commission. Immaculate Conception Church of Los Angeles v. F.C.C. 1963, 320 F.2d 795, 116 U.S.App.D.C. 73, certiorari denied 84 S.Ct.196, 375, U.S. 904, 11 L.Ed 2d 145. Continental Broadcasting Inc. v. F.C.C. 1971, 439 F.2d 580, 142 U.S.App. D.C. 70, certiorari denied 91 S.Ct. 2207, 403 U.S. 905, 29 L.Ed. 2d 681.

4. KALW'S WILLFUL FAILURE TO AND REFUSAL TO COMPLY WITH COMMISSION RULES WARRANTS DENIAL OF THE RENEWAL.

- (a) KALW failed to comply with requirements to maintain its ownership reports and public inspection file pursuant to 47 C.F.R. 73.3615 and 73.3527 and misrepresented that fact on its license renewal (Form 303-S).**

The rules which govern the submission of Ownership Reports, issues/programs reports, and donor lists are as follows:

47 C.F.R. 73.3615(f):

A supplemental Ownership Report on FCC Form 323-E shall be filed by each licensee or permittee within 30 days after any change occurs in the information required by the Ownership Report from that previously reported. Such report should include, without limitation: (2) Any change in officers or directors.

47 C.F.R. 73.3527 states that:

- (a) The material to be contained in the file is as follows:*

(7) For nonexempt noncommercial educational broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter. The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs should include but is not limited to, the time , date, duration, and title of each program in which the issue was treated.

(8)The lists of donors supporting specific programs.

Since the spring of 1992, KALW failed to maintain Ownership Reports and failed to maintain its public inspection as required under C.F.R 73.3527. KALW's June 1997 report, *License Renewals Materials — In Files at Present* (see Exhibit E), documents this failure.

Eleven months prior to license renewal, Chief Engineer Evans informed Station Manager Ramirez of the significantly deficient condition of the public inspection file, including deficiencies in KALW's Ownership Reports, issues/programs reports, and donor lists covered by questions 1(b) and 2 on— FCC Form 303-S. (Exhibit A, page 4) On this form the Commission asks the following:

1. (b) Have the following reports been filed with the commission: The applicant's Ownership Report (FCC Form 323 or 323-E) as required by 47 C.F.R. 73.3615?

2. Has the applicant placed in its public inspection file at the appropriate time the documentation required by 73.3527?

In June 1997, Ramirez requested specific information on the state of the public file from KALW volunteer Hecht so that he could address questions on the FCC renewal application (Exhibit D, lines 2-6). Hecht's report, *License Renewal Materials — In Files at Present*, submitted to Ramirez in June 1997, was in Ramirez's possession at least a full month before the July 30, 1997, completion date of the renewal application (Exhibit

E). Hecht's report reiterated what Ramirez already knew: Ownership Reports, issues/programs reports, and donor lists in the public inspection file were significantly deficient.

(b) KALW failed to comply with EEO requirements as stated in 47 C.F.R 73.2080, and misrepresented that fact on its license renewal (Form 396).

Since 1992, KALW did not comply with EEO requirements as stated in 47 C.F.R. 73.2080, which provides:

(b) Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of station employment policy and practice.

(c) EEO program requirements. A broadcast station's equal employment opportunity program should reasonably address itself to the specific areas set forth below, to the extent possible, and to the extent that they are appropriate in terms of the station's size, location, etc. :

(1) Disseminate its equal opportunity program to job applicants and employees. For example, this requirement may be met by:

(I) Posting notices in the station's office and other places of employment, informing employees, and applicants for employment, of their equal employment opportunity rights. Where it is appropriate, such equal employment opportunity notices should be posted in languages other than English;

As noted above, Ramirez was informed by Evans that the EEO program at KALW was deficient in August 1996. No notices of KALW's EEO policy were posted at that time nor at any time prior to submission of the license renewal application on July 30, 1997. Yet, Ramirez affirmed that such notices were posted when he checked off the box on FCC Form 396, Page 3, under Policy Dissemination, part one:

Notices are posted informing applicants and employees that the station is an Equal Opportunity Employer and that they have a right to notify an appropriate State or Federal agency if they believe they have been the victims of discrimination.

(i) KALW Failed to follow EEO regulations pursuant to 47 C.F.R. 73.2080, and misrepresented that fact on its license renewal (Form 396).

47 C.F.R. 73.2080 states that stations can disseminate EEO information by:

(ii) Placing a notice in bold type in the employment application informing prospective employees that discrimination because of race, color, religion, national origin, or sex is prohibited;

Here, there is no evidence that KALW sent EEO policy statements to applicants for the May 1996 Station Manager opening. It was the only full-time job opening at KALW, since 1992, that was advertised or posted. Other employees such as Jacob, Helgeson, Levinson, Nerenbaum, and Perez also did not receive EEO notices at the time of their hires because they were appointed to their positions. There were simply no other candidates.

Despite KALW's policy of appointments without adhering to EEO requirements, KALW affirmed on FCC Form 396, Page 3, Policy Dissemination, part two that:

Our station's employment application form contains a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, State or Federal agency if they believe they have been the victims of discrimination.

Station Manager Ramirez was aware of the deficient condition of KALW's EEO program. Though he did not conduct an open hire at KALW, he willfully and intentionally engaged in the practice of appointing personnel without following equal opportunity recruitment procedures. Ramirez was aware that the hiring of Perez as Youth Program Manager was not conducted properly (Exhibit B, lines 14-19).

Considering the consistent nature of KALW's closed hiring processes and the fact that KALW never had an EEO notice posted within the station, it is doubtful that Ramirez was unaware of the fact that KALW never distributed its EEO policy statement to prospective employees.

(ii) KALW failed to seek the cooperation of its employees' union in the implementation of its EEO program as pursuant to 47 C.F.R. 73.2080, and misrepresented that fact on its license renewal (Form 396).

47 C.F.R. 73.2080 states that stations can disseminate EEO information by:

(iii) Seeking the cooperation of labor unions, if represented at the station, in the implementation of its EEO program and the inclusion of non-discrimination provisions in union contracts;

Here, Ramirez was aware that KALW had no EEO program to implement. In fact, KALW engaged in hiring practices which circumvented the effectiveness of SEIU's agreement with SFUSD. By May 1996, union representatives made known to KALW that these hiring practices were not in keeping with Civil Service, the foundation of employment matters of the SEIU/SFUSD agreement (Exhibits P & Q).

Certainly Ramirez was aware that his own hiring practices were contrary to the statement on FFC Form 396, Page 3, under Policy Dissemination, part three, which states:

We seek the cooperation of the unions represented at the station to help implement our EEO program and all union contracts contain a nondiscrimination clause.

Both Ramirez and Palacios were aware of Civil Service rules. However, both were aware of how to manipulate Provisional appointments and independent contracts to their own ends. In a revealing message, Ramirez wrote to Moon, "The goal is to place you here at KALW by Sept. 1...Enrique and I are working the system." (Exhibit S).

V.

47 C.F.R. 73.2080, paragraph (c)(4) states that stations should:

Undertake to offer promotions of qualified minorities and women in a nondiscriminatory fashion to positions of greater responsibility.

KALW had the opportunity to promote qualified minority and women employees on six occasions. Yet KALW failed to inform its minority and women employees of openings for the following positions:

- | | |
|---|------|
| 1. Station Manager | 1992 |
| 2. Operations Manager | 1992 |
| 3. Public Service
& Development Director | 1994 |
| 4. Station Manager | 1995 |
| 5. Underwriting Coordinator | 1996 |
| 6. Youth Program Manager | 1996 |

Minority and female employees at KALW were not informed of these openings.

CONCLUSION

KALW's failure to adhere to EEO guidelines and KALW's willingness to lie to the Commission on its license renewal application is indicative of the serious problems this station faces.

At issue is whether KALW is qualified to operate in the public interest. In view of the fact that the Commission relies on the trustworthiness of licensees, misrepresentation casts serious doubts on KALW's truthfulness and reliability. Essentially, KALW misrepresented the facts concerning the maintenance of documentation in its public inspection files, and misrepresented the facts concerning its compliance with Equal Employment Opportunity program requirements.

These misrepresentations disqualify KALW for a number of reasons.

- (1) KALW's misrepresentations are numerous. On the renewal application, FCC Forms 303-S and 396, there are only 12 affirmations or questions requested of KALW by the Commission. KALW responded falsely on six (50%).
- (2) not merely not comply with 47 C.F.R. 73.2080, it stood in opposition to the spirit of equal employment opportunity in its hiring practices.
- (3) KALW's misrepresentations concerning its EEO program are egregious. KALW did not merely not comply with C.F.R. 73.2080, it stood in opposition to the spirit of equal employment opportunity as intended by the Commission.
- (4) Even when KALW's licensee was made aware of its failure to maintain its public inspection file and properly conduct an EEO program, the licensee failed to carry out corrective action.

FOR THESE REASONS, Golden Gate Public Radio asks the Federal Communications Commission to deny the license renewal of radio station KALW.

Oct 31, 1997
Dated

Oct 31, 1997
Dated

Jason Lopez
Jason Lopez, Director, GGPR

D. Kennedy
Deirdre Kennedy, Director, GGPR

91.7

KALW

information radio

July 30, 1997

Federal Communication Commission
Office of the Secretary
1919 M Street, NW
Washington, D.C. 20554

Dear Secretary,

Please find enclosed the completed FCC application for renewal of license for noncommercial educational radio station KALW-FM, licensed to the San Francisco Unified School District Board of Education.

You will find FCC form 303-S with one attached exhibit and one attached explanation ; FCC form 396; FCC form 323-E with governing board information attachment; and FCC form 5072 for change in mailing address.

If you should need further or additional information as supplement to this license renewal application, please contact me directly at 415-841-4121 x3008.

Sincerely,



Jeffrey Ramirez
KALW General Manager