





Federal Communications Commission

Docket No. 04-191 Exhibit No. 2a

Presented by & SFUSD

Disposition { Identified 5/24/01  
Received 5/24/01  
Rejected \_\_\_\_\_

Reporter Esik Stednik

Date 5/24/01

# KALW-FM

## REPORT ON LICENSE RENEWAL

TO: Dr. Arlene Ackerman  
Superintendent of Schools  
San Francisco Unified School District

FROM: Ernest T. Sanchez  
Susan M. Jenkins  
The Sanchez Law Firm

DATE: May 24, 2001

Attorney - Client Communication  
Privileged and Confidential

SFUSD-000550

## INTRODUCTION:

### The Relationship Between SFUSD and KALW

- **What is KALW?**

KALW is an FM radio station, the oldest FM west of the Mississippi, having initially gone on the air in 1939. It is a noncommercial educational ("NCE") radio broadcast station and a member station of National Public Radio ("NPR"), a national member network of NCE stations.

- **What is the relationship between KALW and SFUSD?**

KALW-FM is owned by and licensed to the San Francisco Unified School District (hereafter, "SFUSD" or "School District") by the Federal Communications Commission ("FCC"). As the licensee of the station, SFUSD is totally responsible for its operation and overall management. The School Board is considered the governing board of the station. Day-to-day operation of the station has been delegated to its general manager (G.M.). The present general manager is Nicole Sawaya.

- **What is the role of The Sanchez Law Firm?**

The Sanchez Law Firm ("Firm") has served as communications counsel for SFUSD, in its capacity as licensee of the station, for approximately 15 years. As communications counsel, we view the relationship between a licensee and its radio station as an identity of interests -- the interests of the licensee. SFUSD, not KALW, is our client, and is the entity with whom the Firm has an attorney-client relationship. We view KALW as a major asset of the School District. Accordingly, our principal concerns are issues relating to the ownership, operation, and management of the station as a School District asset, even though, as a practical matter, most contacts on a day-to-day basis are with the G.M. or other station personnel. Legal services for KALW, therefore, have been provided in our capacity as counsel for the School District, representing the interests of the School District, in close association and consultation with the District's in-house counsel.

## The License Challenge

- **What is the nature of the KALW matter currently pending at the FCC?**

Under FCC rules and regulations, broadcast licenses must be renewed periodically (the present rule requires renewal every eight years). KALW filed its most recent renewal application on August 1, 1997. A challenge to that renewal – and, therefore, a challenge to the license itself and to SFUSD's ownership of the station – was filed by a group of disgruntled station employees and volunteers in November 1997. As a result of that challenge, termed a "Petition to Deny" in FCC terminology, there has been a nearly-four year delay in the renewal of KALW's license.

- **What is the basis for the challenge?**

The employee/volunteer group, which calls itself **Golden Gate Public Radio ("GGPR")**, made several unsubstantiated allegations against KALW's then-general manager, Jeffrey Ramirez, and SFUSD's management. These allegations included employment discrimination and violation of the FCC's EEO rules, failure to observe civil service and labor union requirements in the hiring process, and failure to maintain the station's public file in accordance with FCC's rules.

- **Is there any merit to the charges?**

We do not believe so. On behalf of SFUSD, the law firm has vigorously defended against these charges, many of which are not even matters for FCC scrutiny. Specifically:

- **EEO and employment discrimination charges:** For many years, the FCC has administered an EEO program, based upon its belief that diversity of ownership and diversity among a station's staff will result in a diversity of viewpoints over the air. The FCC is also concerned about historically low levels of minority employment in the broadcasting industry. KALW, however, has a very diverse staff and fully adheres to SFUSD employment policies, including its outreach and affirmative action policies. In fact, while this license challenge was pending, KALW received a CPB award for its outstanding record of diversity among its staff members. During most of the period in question, minority group members have made up a majority of KALW's staff. GGPR's specific charges were all either untrue or concerned such insignificant matters as whether EEO notices and job openings should be posted at the station as well as at SFUSD's human resources department. One employee, Michael Johnson, who had filed an unsuccessful grievance when he did not receive a particular promotion, reiterated those charges in an affidavit directed to the FCC, but most of GGPR's charges involved civil service issues, not EEO. At the present time, the greater part of the FCC's EEO rules have been found unconstitutional by the U.S. Court of Appeals for the District of Columbia Circuit and, accordingly, have been suspended by the FCC, so they will not figure into this case unless blatant discrimination could be established -- charges for which there is no evidence whatsoever.

● **Union and civil service charges.** The FCC has no jurisdiction over such issues and will not take cognizance of them.

● **Public file charges.** FCC rules require broadcast licensees to maintain a public file, containing certain types of documents, available during business hours for inspection by members of the public and FCC inspectors. GGPR and its allies claimed that KALW's file at the time of renewal lacked full sets of certain categories of such documents. The then-general manager certified that all documents in all required categories were, in fact, present. He had, in fact, worked for some months to update the files. The challengers claim, however, that Mr. Ramirez made a false certification and that this false certification was ratified by SFUSD management. It is impossible today, four years later, to determine exactly what was or was not in the public file at the time of renewal. The position we have taken in defense of these charges is that, first, Mr. Ramirez told the truth to the extent of his understanding of the rules in question; and second, if documents might at any time have been missing, many other persons, including the challengers, have had access to this file and could well have removed items from it.

● **Is there any risk to KALW?**

No station in recent years has lost its license for failure to maintain its public file in strict accordance with the rules. The penalty for file discrepancies is a fine, seldom more than \$ 10,000. If the FCC were to determine that KALW had deliberately discriminated, or that Mr. Ramirez deliberately lied, and that SFUSD management knew and approved of it, more serious consequences of this challenge could result. The facts are, Mr. Ramirez told the truth based upon his knowledge and belief and so did SFUSD officials and KALW has not discriminated in hiring practices. In any event, however, the license itself is almost certainly not at risk. The principal negative consequences for KALW and SFUSD have been embarrassment, negative publicity, a drain upon resources in terms of time and money spent defending against these charges, and a spiraling lack of control over employees and volunteers at the station, with some risk of a relatively small fine. However, since KALW's budget is tight, even a small fine will have an impact. Also, as discussed in footnote 1, below, license challenges can have highly unpleasant consequences and can result in victories of sorts for the challengers.

● **Where do things stand at present?**

After many years, during which time we directed a number of inquiries about the delay to the FCC staff, it was learned that FCC staff had misplaced the KALW license renewal file for a period of time, but had eventually found it. Then, in February 2001, the FCC Audio Services Division (which regulates radio stations) directed several follow-up questions to KALW. These questions all related to the contents of its public files in August 1997 and at present, not to any EEO issues. On behalf of SFUSD and in cooperation with the new G.M. and loyal staff members, we responded fully and frankly to these questions. GGPR, however, filed comments that attempted to raise doubts about our response. We have determined that those comments should not be dignified by any reply from SFUSD. We are still awaiting notification of FCC staff action on the license renewal, however. None of these problems, or the attendant expenses, would have occurred but for 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.

## Events leading up to the license challenge

These are some of the major points in the history behind this challenge:

- **Re-evaluation of public broadcasting role by institutional licensees.** Many of the licensees of public radio and TV stations, like SFUSD, are educational institutions, whether school boards or institutions of higher learning. With the cutback in federal support for public broadcasting in recent years and the general belt-tightening that resulted, some of these institutional licensees began to re-evaluate their role as broadcast station licensees. Most, however, have chosen to retain their broadcasting assets, and an association of university licensees has recently been formed to explore common issues.
- **SFUSD and the Kutik Report.** SFUSD in recent years has also engaged in some re-evaluation of its role as licensee of KALW. In the years prior to license renewal, KALW had become something of a problem for the School District. The difficulties facing station management and SFUSD administrators included labor unrest, the poor fit between the staffing needs of a radio station and the constraints of a civil service system, high management turnover, and the lack of sufficient outside funding (which caused a continuing drain on the District's budget). In August 1995, two years prior to license renewal, as part of its ongoing evaluation of its relationship with KALW, the Board passed a resolution which resulted in the creation of a special task force to examine the mission of KALW and to make recommendations to the Superintendent and Board about the station. Specifically, the task force was charged "to suggest a management structure that will ensure the Station remains community based, financially stable and actively engaged in the education of our students." (Board Resolution No. 56-27A6). The resulting KALW Task Force, chaired by public broadcasting consultant Alexandra Kutik, was made up of representatives from KALW, SFUSD administration and faculty, independent producers, the corporate (underwriting) community, and other key groups with a stake in KALW. In March 18, 1986, the so-called Kutik Report (Attachment A) was delivered. It contained several nearly-unanimous recommendations, including the option of finding or creating a separate non-profit entity to operate the station under a type of leasing arrangement called an LMA. The only dissenter was the representative of KALW's staff, JoAnn Mar, who is also the union shop steward for station employees. None of the Kutik Report's recommendations have been implemented.
- **Staff dissension.** Public radio employees and volunteers can sometimes be difficult to manage, partly because they develop an "ownership" or entitlement attitude toward the station, and partly because of the natural affinity of some staff members for political activism (recent occurrences involving the Pacifica station group and its dissident employees provide a good example of both factors). In June 1996, after an extensive nationwide search, Jeff Ramirez was hired as KALW's new GM. In part because he was not hired through regular civil service channels, he encountered immediate and constant hostility and opposition from several KALW employees and volunteers. These staff members included:

- **JoAnn Mar**, previously mentioned union shop steward, who also has close ties to at least one Board member. Ms. Mar hosts a folk music program with a very small but loyal following. She graduated from law school but does not actively practice law.

- **Jason Lopez**, part-time announcer

- **Deirdre Kennedy**, producer and on-air reporter (no longer works at KALW, except for availability on free-lance basis)

- **Dave Evans**, station engineer (since deceased)

- **Mel Baker**, part-time "as needed" announcer and producer

**Several other employees or volunteers**, including **Susan Hecht, Michael Johnson, Joseph Hughes, JoAnn Mar, Hedy Jacobowitz and Kevin Vance**, cooperated with this core group in the challenge to KALW's license.

● **Golden Gate Public Radio** In June 1997, several of the above-identified employees, who had formed a non-profit entity which they named Golden Gate Public Radio ("GGPR"), submitted a proposal to the School Board under the terms of which they proposed to take over governance and management of the station (see Attachment B, corporate documents of GGPR). Essentially, GGPR demanded that the Board simply turn the station over to them without any payment whatsoever for this valuable asset. The organizers of GGPR were the same group of dissident employees who constantly opposed management and were responsible for the labor unrest that had helped to de-stabilize the station. The Board did not respond to the proposal.

It was against this backdrop that SFUSD filed for the renewal of KALW's license on August 1, 1997. The renewal form used at that time elicited responses regarding such matters as station ownership, employment statistics regarding racial, ethnic, and gender makeup of employees, and certification by management and the licensee regarding studio location and maintenance of the required public inspection files. Mr. Ramirez completed and certified the form, which was also signed by a School District representative. The renewal form was filed with the FCC, where it was available for public inspection, and a copy was placed in the public file at the station, where GGPR's members and allies had an ample opportunity to review and copy it.

## Actions of GGPR Members and ITS Allies

In a rather single-minded attempt to do whatever they consider necessary to take the station over from the School District and to embarrass the Board and station management, the members of GGPR and their allies (other KALW employees and volunteers) have colluded with each other and have taken various actions which are harmful to the interests of their employer, SFUSD. Some of these actions violated federal and/or state laws, and infringed on the privacy and other rights of third parties, including fellow employees and contributors to the station.

These actions include:

- **Attempted extortion.** On October 1, Mr. Sanchez was contacted by an attorney, Jeffrey A. Berchenko, on behalf of GGPR. Berchenko threatened that, unless "good faith substantive negotiations aimed at transfer of management of the station" from the School Board to GGPR began by October 10, GGPR would challenge the renewal of KALW's license (see Attachment C). In consultation with SFUSD, Mr. Sanchez rejected GGPR's demands which, we believed, amounted to attempted extortion. Making baseless threats of a license challenge in order to force a beneficial settlement is itself a violation of FCC regulations. On November 3, 1997, GGPR filed (but failed to serve on SFUSD or its counsel) a Petition to Deny KALW's application to renew its license.<sup>1</sup>

The pleadings filed in this case are fairly extensive, so they have not been attached. Copies are readily available from Mr. Campos or Ms. Sawaya. Selected excerpts have been provided in Attachment H.

- **Electronic crimes and other offenses.** The Petition, and other pleadings filed by GGPR over the next few months, revealed that GGPR's members and supporters were willing to go to great extremes to achieve their goals. These included:

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<sup>1</sup>Under FCC regulations, certain parties (if they have standing to do so) may file a "petition to deny" broadcast license renewal applications. If challenged in this manner, the licensee of a radio station must defend its continued entitlement to hold the license for the station. If a licensee is found guilty of violations of communication law or regulations, penalties may range from a minor "hand slap" to official reprimands to fines and, ultimately, to loss of license -- although the latter penalty is extremely rare. For many licensees, particularly public broadcasters, the embarrassment and negative public relations of such challenges (such as an accusation, however untrue, of employment discrimination or of misrepresentation) can be just as unwelcome as the threat of prolonged, expensive legal battles. For example, the licensee of KQED-TV nearly lost its license (and was forced to give up its license for its second television station) some years ago after a group of dissident employees and listeners challenged its license on allegations that the station had made false financial reports to the FCC. In another example, KUSC, an FM public radio station licensed to the University of Southern California, was fined many thousands of dollars when it was unable to refute allegations of employment discrimination.

● **"Hacking" into the School District's e-mail system.** GGPR's Petition to Deny contained many numbered "exhibits" apparently intended to support GGPR's allegations. Among these were several printouts of private e-mail messages between Mr. Ramirez (the GM) and a job applicant. These were unauthorized intrusions into the SFUSD e-mail system and, as such, violated various federal and state criminal laws (see Attachments D and E). As Attachment E indicates, the San Francisco District Attorney's Office was poised three years ago to evaluate possible criminal prosecution against GGPR members. It cannot be determined at this time whether that would still be the case, but we will assist Mr. Campos if you wish to explore this option.

● **Stealing private documents from SFUSD's personnel files.** GGPR members and/or supporters made unauthorized raids on the personnel files of fellow and former employees in order to copy (and make public) various contracts and other documents that were maintained in those files and that are protected under federal and state privacy laws.

● **Making public confidential contributor information.** Following KALW's February 1998 on-air pledge drive, GGPR made public the names, addresses, telephone numbers, and credit card numbers (and expiration dates) of several persons who had pledged donations to the station. This information, in the form of pledge slips, was attached as an exhibit to a brief filed by GGPR with the FCC in March 1998. All documents filed with the FCC, however, are placed in a publicly-accessible file. Thus, highly sensitive personal and financial information that had been provided in confidence to KALW by its listeners was made public by KALW employees and volunteers to achieve their own ends. GGPR showed no regard for the risk of loss to which it exposed those listeners, nor to the risk of liability to which it exposed SFUSD (see Attachment F and G-1). In February 2001, the FCC granted our March 1998 motion to place those documents under seal (see Attachment G-2).

● **False and baseless allegations and false affidavits.** Attachment H contains copies of some of the affidavits and other documents provided by GGPR members and supporters which were designed to support the challenge to SFUSD's license.

● **Personal threats of violence.** During this period, Mr. Ramirez received several anonymous written threats (see, e.g., Attachment I), which GGPR never disavowed.

● **Menacing and uncooperative attitude toward station management.** Ms. Sawaya and Mr. Helgeson regularly report that GGPR members and supporters have a negative and uncooperative attitude toward management. This attitude has existed for at least the past 8 years. GGPR members and supporters cannot be trusted. For example, all communications to Ms. Sawaya by fax must be preceded by notification so she can be present to receive the fax. Likewise, we are unable to use e-mail to transmit any communications to KALW management for fear of interception.

- **Willingness to harm and embarrass the School District.** Local San Francisco newspapers as well as national public broadcasting journals carried extensive stories, planted by GGPR and its supporters, for several months before and after the petition was filed (see Attachment J). The San Francisco press continues to express a negative attitude toward the School District's ownership of KALW, left over from the untrue but embarrassing allegations made by GGPR four years ago. As recently as May 4, 2001, GGPR and its supporters again demonstrated their willingness to expose SFUSD's problems to the FCC (see Attachment K).

- **Motivation.** It must be kept in mind that GGPR and its supporters took these actions, not for any high-minded "cause" but for personal gain – in order to force the School District to hand over to them a multi-million dollar asset. With the KQED example only a few years in the past, they had reason to believe that the threat of bringing charges of FCC rule violations and misrepresentation by station management to the attention of the FCC might be a credible threat that would intimidate the Board into turning over the station to GGPR, either outright or through a lease. And, even though GGPR was nominally a non-profit entity and the station is noncommercial, GGPR members and supporters could anticipate obtaining better-paying management jobs and power, as well as gaining national recognition to advance their careers. For personal reasons of vindictiveness or for personal gain, GGPR members and supporters were willing to say, swear, or do whatever they believed necessary to prevail against SFUSD, whether through threats, through false press reports, or through false allegations to the FCC.

### Employees and volunteers involved and what they did

- **Lopez, Kennedy, Evans and Baker:** established GGPR; made initial unsuccessful threats to force SFUSD to turn over station; provided and signed affidavits that contained false or baseless allegations against SFUSD and KALW (see Attachment H).

- **Lopez and Kennedy:** by signing the various briefs to the FCC, they are responsible for obtaining and making use of documents that were acquired by means of electronic crimes and thefts from SFUSD files, as well as the illegal invasion of the privacy of KALW contributors. By signing a brief, they take responsibility for everything it contains and everything attached.

- **JoAnn Mar:** signed several affidavits making false allegations against SFUSD and KALW; as a lawyer, she may have written GGPR's briefs, since GGPR did not have counsel of record for the license challenge.

- **Michael Johnson:** signed affidavits accusing SFUSD and KALW of employment discrimination (see Attachment H).

- **Mel Baker:** signed affidavits containing baseless and speculative allegations implying that SFUSD and KALW management violated FCC rules and made misrepresentations to the FCC (see Attachment H).

- **Hedy Jacobowitz:** part-time "as needed" announcer; signed affidavits containing baseless and speculative allegations against SFUSD and KALW management (see Attachment H).

- **All GGPR-allied employees and volunteers:** we are not experts in California criminal law, but it would appear that, to the extent that GGPR and its allies agreed with each other to employ the above-listed tactics to extort the station from SFUSD and, later, to convince the FCC to cancel SFUSD's license for this valuable asset, a credible case for conspiracy might exist against everyone who acted on behalf of, or in concert with, GGPR.

- **Appointment of Mr. Johnson as Acting GM of KALW.** Mr. Ramirez resigned as KALW's general manager in March 1998, unable or unwilling to put up with daily harassment, defiance, and threats from his staff and volunteers. William Helgeson, who has remained loyal to SFUSD throughout this period, acted as Operations Manager, in a GM capacity, for several months thereafter. Mr. Johnson, who had signed two anti-SFUSD affidavits on behalf of GGPR, was appointed acting GM in July 1999.

- **Present Circumstances at KALW:** The present GM of the station, Nicole Sawaya, reports to us that those GGPR members and allies who are still employees and volunteers at the station (including Mr. Lopez, Ms. Mar, and some of the others mentioned above) are uncooperative, defiant, and disrespectful to her as general manager. Mr. Lopez has hinted to her that he might be willing to drop GGPR's challenge if she were to allow him to produce his latest program idea, an offer she rightly ignored. She is greatly concerned that, without having been disciplined for their actions - - actions which, at the very least, are contrary to the interests of their employer and, at worst, are criminal - - GGPR and its allies believe they are untouchable. As recently as May 4, 2001, in comments on SFUSD's response to the FCC's February 2001 letter of inquiry, Mr. Lopez continues to demonstrate a malicious willingness to raise irrelevant issues in order to embarrass SFUSD and KALW's management (See Attachment K). Ms. Sawaya has requested guidance on how these employees should be handled. This Report was prepared in order to bring the extent of this problem, past and present, to the attention of the Superintendent as representative of the licensee.

## Conclusion

Ms. Jackie Wright, Ms. Nicole Sawaya, and Mr. Campos of the legal office have requested that we prepare this report to provide you with an overview of the events and issues relating to the delay in KALW's license renewal, and the role of GGPR-affiliated employees and volunteers in bringing about this extended delay. Whether viewed as a basis for referral for criminal investigation, or as a matter for internal discipline, it is believed that a basis exists for taking action against those employees and volunteers who have conspired and actively worked against SFUSD's interests. These persons are not unselfish, "whistle blowers" but, rather, are acting to serve their own financial and/or political ends. Their intent from the beginning has been to force the School District to give up or lose this valuable asset, KALW, which they have done for their own private gain. These employees and volunteers, according to Ms. Sawaya, continue to be a disruptive, uncooperative, and intimidating presence at KALW's office and studio, and she seeks guidance as to what can be done.

We will, of course, provide whatever further information and assistance that SFUSD and KALW's management may request.

## REPORT ON LICENSE RENEWAL: ATTACHMENTS

- A. Kutik Report dated March 18, 1996
- B. GGPR Corporate Documents
- C. Letter From GGPR's Attorney dated October 1, 1997
- D. Letter to San Francisco District Attorneys Office dated March 10, 1998
- E. Letter from San Francisco District Attorneys Office dated May 22, 1998
- F. Memorandum to SFUSD regarding theft and disclosure pledge forms dated March 4, 1998
- G-1 SFUSD's Motion to Place Under Seal dated March 18, 1998
- G-2 FCC Opinion dated February 5, 2001
- H. Affidavits and other documents provided to FCC by GGPR members and allies.
- I. Threat to Mr. Ramirez
- J. Newspaper Articles
- K. Letter from GGPR to the FCC dated May 4, 2001

SFUSD-000561

ATTACHMENT

A

SFUSD-000562

ALEXANDRA L. KUTIK

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127 Bretano Way  
Greenbrae, California 94904  
415-461-3146

March 18, 1996

Waldemar Rojas, Superintendent  
San Francisco Unified School District  
135 Van Ness Avenue  
San Francisco, California 94102

Dear Superintendent Rojas:

Enclosed please find the Task Force report on the mission of KALW Radio and recommendations for its governance structure.

Ten of the Task Force's eleven members approved this final report. These stakeholders - community and corporate representatives, producers and on-air talent, other SFUSD representatives and broadcast professionals - all strongly stand behind this document.

The one opposing vote was cast by KALW's staff announcer/union shop steward. It is possible that staff dissatisfaction, particularly with regard to recommendations for governance, may result in other opposition.

It is our belief that, on balance, the case for adopting the Task Force governance recommendations is both compelling and in the long-term best interest of all KALW stakeholders.

We have met with most of the Commissioners, either in committee or individual meetings, and have found many of them to be quite open to our recommendations. The Task Force requests the opportunity to meet with you to discuss in greater detail particular aspects of our findings and to explore ways in which individual members may be helpful to you in implementing these recommendations.

Finally, we are including some individual comments from one member of the Task Force on the issue of programming format. Since it was not in the purview of the Task Force to examine programming questions, we, as a group, did not do so. However, one member wished to make a statement in this area.

The Task Force is honored to have had the opportunity of serving you and the District. We look forward to talking with you in the near future.

Sincerely,



Alexandra L. Kutik  
Consultant, KALW Task Force

SFUSD-000563

**REPORT OF THE  
KALW-FM TASK FORCE**

March 18, 1996

REPORT OF THE KALW TASK FORCE

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APPENDICES

- A. Resolution No. 56-27A6, Board of Education,  
San Francisco Unified School District, 8/8/95
- B. Comparison of Options - Governance of KALW

SFUSD-000565

March 18, 1995

REPORT OF THE KALW TASK FORCE

I. INTRODUCTION

These recommendations are from a Task Force appointed by Superintendent Rojas to respond to Board Resolution No. 56-27A6. The resolution, passed August 8, 1995, called for

- "involvement of ... students in all aspects of KALW programming and broadcasting"
- "dissolution of the KALW Advisory Board"
- "...the Superintendent to develop a vision statement and suggest a management structure that will ensure the Station remains community based, financially stable and actively engaged in the education of our students"

\* \* \* \* \*

Superintendent Rojas convened a broadly based, eleven-person Task Force representing key groups with a stake in KALW:

. KALW management and staff (Rose Levinson, General Manager; JoAnn Mar, Staff Announcer)

. SFUSD administration and faculty (Fredna Howell, Principal of Burton High School; Hoover Lidell, SFUSD Consultant; Sam McClelland, SFUSD Video Consultant)

. the corporate community which financially supports the station (Tom Donahoe, Manager, Corporate Communications, USL Capital)

. independent radio producers (Sedge Thomson, host and producer, West Coast Live)

. the national association representing community and minority broadcasters (Lynn Chadwick, President, National Federation of Community Broadcasters)

. radio broadcasting faculty from the Community College district (Marcos Gutierrez)

. Friends of KALW, a 501(c)3 which acts on occasion as a fiscal agent for KALW (Louis Loewenstein, Peter Mezey)

The work of the group was aided by a professional public broadcasting consultant, Alexandra Kutik.

## II. SUMMARY OF RECOMMENDATIONS

Resolution No. 56-27A6 of the Board of Education of the San Francisco Unified School District requested that the Superintendent "...develop a vision statement and suggest a management structure that will ensure the Station remains community based, financially stable and actively engaged in the education of our students..."

In response to this Resolution, the KALW Task Force recommends the following:

### 1. MISSION OF KALW

The Board of Education reaffirms its commitment to the dual mission of KALW and adopts the following:

"KALW is dedicated to supporting the mission and goals of the SFUSD by:

- providing quality programming and broadcasting services which inform, educate and enlarge the world of the community;
- actively involving and educating students, while enhancing teaching and learning;
- assuring financial stability, while improving the quality and breadth of services, through the creation of alliances among KALW, SFUSD, and the community."

### 2. GOVERNANCE OF KALW

The Board of Education shall retain the license to KALW. It delegates governance functions to a board of directors of a nonprofit 501(c)3 agency created by the Board of Education. Fifty-one percent of this board is comprised of Board of Education appointed members. Such delegation is to be based upon an agreement between the new agency and the Board of Education as to the management and operations of the station and the scope of services to be provided to SFUSD by KALW.

### 3. IMPLEMENTATION

The Board of Education requests that the Superintendent prepare and present plans and agreements for approval to the Board in order to have in place a functioning KALW board of directors of the 501(c)3 by May 30, 1996.

### III. HISTORY OF KALW

KALW was founded 55 years ago; its license has been held by SFUSD from the beginning. In the early 1970's it became part of the public broadcasting system which made it eligible for federal funds via the Corporation for Public Broadcasting.

Currently there are more than 600 public radio and 350 public television stations with a variety of governance arrangements. Most stations are either community based or affiliated with an educational institution.

As educational budgets have eroded, many college and school districts have sought creative solutions to the problem of supporting their radio station. Until the mid-1970's KALW was completely financed by SFUSD. After the passage of Proposition 13 and with the advent of CPB, there was a shift in the source of funding away from the District and towards listener support.

This shift was completed when Superintendent Rojas arrived in 1992 and made it clear that SFUSD could no longer afford to make direct financial contributions to the station's budget. The District continues to provide in-kind services such as a site, janitorial services and administrative support, but the station must raise all of its operating funds.

Over the years as the duties of overseeing the SFUSD system have become more complex, the Board of Education has been left with little of the time and energy needed to govern KALW. As a result, no matter how well meaning and conscientious the commissioners of the Board are, they have neither the time nor the expertise to ensure that the educational and public broadcasting missions of KALW become reality.

#### IV. MISSION OF KALW

Historically, SFUSD's policy statements regarding KALW have defined a dual mission:

1. providing quality, non-commercial, community-based radio programming and broadcast services; and
2. involving and educating students.

The former is threatened by significant changes in the external environment (local broadcasting competition, federal funding cutbacks and possible total elimination, and the state of the economy), while the latter has lacked the commitment, framework and resources to be realized.

As a first step to a renewed commitment to KALW, the Task Force recommends the reaffirmation of the mission of KALW by the adoption of the following statement:

"KALW is dedicated to supporting the mission and goals of the SFUSD by:

- providing quality programming and broadcasting services which inform, educate and enlarge the world of the community;
- actively involving and educating students, while enhancing teaching and learning;
- assuring financial stability, while improving the quality and breadth of services, through the creation of alliances among KALW, SFUSD, and the community."

This mission statement is a reiteration of previous ones. It is important to note that from the very beginning, this has been the purpose the station and the District were charged to carry out. The inability to do so, the Task Force believes, is directly related to an inadequate governance structure.

Therefore, to insure that KALW fulfills its mission, a governance structure must be put in place which provides accountability, facilitates cooperation within the SFUSD, and insures community based service and involvement.

V. GOVERNANCE OF KALW

*The Need for Active Governance*

An organization cannot achieve its mission without a governance structure that provides stable and consistent oversight, management accountability, strategic and financial direction, and productive linkages with its stakeholders. KALW struggles financially to carry out its public broadcasting mission, living on the edge of financial instability. It has clearly failed over its 55 years to come to grips with its educational mission. These conditions prompted the Task Force to examine the governance structure of the station.

The ability of SFUSD administration to manage the station - never very strong - has weakened over time. The District's responsibilities have increased, while resources and personnel have thinned. In addition, District personnel are not broadcasters, and KALW personnel are not educators. In the relationship between the station and the District, there has never been in place a management structure which has the responsibility and the personnel to create synergy between the broadcasting and educational missions of the station.

Consequently, KALW has essentially managed itself. Because of its bare-bones staff, its expertise in broadcasting rather than education, and its growing dependence on federal funds and listener financial support, KALW has understandably concentrated its limited resources on public broadcasting.

*The Need for Community Involvement*

As a public broadcaster, KALW operates in a very professional manner. It was recently named Station of the Year by the Bay Area-based Coalition for Eclectic Radio. The station is limited, however, in its ability to develop and improve its public broadcasting mission by several factors:

1. no mechanism for substantive community or stakeholder involvement;
2. no active governing body which has insisted upon the development and implementation of a strategic plan for KALW's public broadcasting and educational missions; and
3. limited broadcasting power with consequent limitations to audience and subscriber development.

Under new CPB guidelines soon to take effect, KALW will barely qualify for continued federal funding. Any reduction in the size of KALW's audience or listener support will jeopardize its federal funds. No matter how well it continues to perform on air, KALW needs to embark on a major community involvement effort in order simply to remain qualified for federal funding (CPB funds pay for National Public Radio programs; federal funding cuts will

affect programming).

The effort to find new funding sources is not one that the Board of Education, the District administration, or station management can collectively or individually carry out without active and substantive community involvement.

The vision for KALW should be that of a teaching radio station, analogous to a teaching hospital. The better a teaching hospital performs its mission as a hospital, the better it can carry out its teaching function, as demonstrated by the effectiveness of Stanford Hospital and UCSF, both as hospitals and as educational institutions. Similarly, the more successful KALW becomes in carrying out its public broadcasting mission, the better it will be able to fulfill the educational mission and objectives of the Board of Education and SFUSD.

Without an active governing body, an organization concentrates on day-to-day and survival issues. A governing body insists on, and participates in, the development of a strategic plan and holds management accountable for its implementation. A governing body for KALW must be able to provide strategic leadership in both aspects of its dual mission, which means that both the Board of Education and KALW's public membership should be represented within the governance structure.

## VI. OPTIONS FOR GOVERNANCE

Options for the governance of KALW range across a spectrum from no change in the current structure to a complete divestiture of all responsibilities by the Board of Education, including a transfer of the license. Within this spectrum, the Task Force concentrated on a governance model in which the Board of Education retains the license, and the station receives the active, continuous governance it needs. The Task Force's recommendation is presented as Option B. No change in the current structure is presented as Option A, and other license holder models are presented as Option C.

### *Option A - No Change*

This option assumes no change in the current structure, with the Board of Education providing governance oversight to the best of its ability and the District administration providing management oversight.

The Task Force does not consider Option A to be a viable choice, for reasons previously indicated and summarized as follows:

1. Neither the Board of Education nor the District Administration have the time, expertise, or resources to provide active governance or management oversight.
2. KALW does not have the staff or the expertise to carry out the station's educational mission on its own.
3. The station's community stakeholders, who are vital to KALW's financial stability and its public broadcasting mission, are not included in the governance process.

A public Advisory Board is not a substitute for a governing body. An Advisory Board is not empowered to govern or to manage and cannot act as a surrogate governing body. Even advice and counsel are not the primary purposes of most advisory boards. They are generally composed of people who are able to provide an organization with access to influential members of the community and potential contributors. At the present time, the station isn't sufficiently staffed to take advantage of even that function.

In the short term, under Option A, KALW can be expected to continue its struggle to remain financially viable, investing most of its management energies in this effort. With the move to Burton High School and the development of an educational component, KALW may for the first time become involved in the education of students. In the longer term, however, without an active governance process, the growth, or even the continuance, of the educational component will be impacted by changes in

District personnel and priorities. But, more importantly, KALW, at best, can expect to continue as a marginal operation, unable to develop and improve either of its missions. In fact, the survival of the station itself will be in considerable jeopardy as historical sources of funding decrease or disappear, competition for new funding intensifies, and operating costs increase.

Remaining without an active governance structure is the worst possible scenario for the future of KALW.

#### Option B - A Nonprofit Governing Board

This option is recommended by the Task Force to the Board of Education. It is intended to respond to the following circumstances:

1. The Board of Education wishes to retain the license for KALW and to make the station more responsive to the educational interests of the District, the Board, and the students of SFUSD.
2. Over the past 55 years, KALW's inability to carry out its educational mission and to rise above its perpetually precarious financial status are directly related to its inherently weak governance and management structure.
3. Because KALW is largely dependent on financial support from the public, its community stakeholders need to be included in the governance process. The ability of KALW to achieve either of its missions depends on achieving financial stability which in turn depends on substantial community involvement.

Under this option, the Board of Education would delegate most of the governance functions of KALW to the board of directors of a nonprofit 501(c)3 agency that is created by the Board of Education for this purpose. The delegation of the governance functions would be based on an agreement between the 501(c)3 agency and the Board of Education as to the management and operations of the station, as well as the scope of services to be provided to SFUSD by KALW (e.g., broadcasting courses for students, broadcasting of school board meetings, programming of education issues and information).

The School Board would retain the station's license and would establish the manner in which members of the 501(c)3 board are elected or appointed. As the license holder, the Board of Education must retain the authority to overturn any action of the board. The status of current KALW employees with respect to civil service and the union would not be affected by the formation of a 501(c)3 agency.