



Federal Communications Commission
Washington, D.C. 20554

June 28, 2011

DA 11-1128
In Reply Refer to:
1800B3-MFW

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

The University of San Francisco
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Classical Public Radio Networks, LLC
c/o Lawrence Bernstein, Esq.
3510 Springland Lane, N.W.
Washington, DC 20008

Re: KUSF(FM), San Francisco, California
Facility ID No. 69143
File No. BALED-20110125ACE

Dear Applicants:

We have before us the referenced application (the "Application") seeking Commission consent to the assignment of Station KUSF(FM), San Francisco, California (the "Station") from the University of San Francisco ("Licensee") to Classical Public Radio Networks, LLC ("CPRN").¹ As part of the transaction, Licensee and CPRN negotiated and executed a "Public Service Operating Agreement" ("PSOA") pursuant to which CPRN provides programming to be broadcast on the Station prior to approval and consummation of the assignment. The terms of the PSOA present issues involving the parties' compliance with Commission rules and policies concerning the operation and control of the Station. Accordingly, we direct Licensee and CPRN, jointly or separately, pursuant to sections 4(i), 4(j), 308(b) and 403 of the Communications Act of 1934, as amended (the "Act"),² to provide responses to the following inquiries, within thirty (30) calendar days from the date of this letter. The Licensee may supplement its responses with additional relevant information pursuant to Sections 1.17 and 1.88 of the Commission's Rules (the "Rules").³

Background. Under the terms of the PSOA, executed on January 12, 2011, the Licensee agreed to make the Station's facilities available to air programming supplied by CPRN "for up to 24 hours a day,

¹ On February 28, 2011, the Friends of KUSF filed a Petition to Deny the Application, and we have also received pleadings styled "Petition to Deny" or "Informal Objection" from the individuals listed in the Appendix to this letter.

² 47 U.S.C. §§ 154(i), 154(j), 308(b), and 403.

³ 47 C.F.R. §§ 1.17, 1.88.

seven days per week” for the term of the agreement.⁴ Additionally, the PSOA provides that: (1) the Station transmitter and broadcast equipment owned by Licensee will remain under Licensee’s control at all times;⁵ (2) Licensee will retain responsibility for the Station’s compliance with Commission Rules and policies⁶ and will employ, at its sole expense, a full-time employee to oversee day-to-day station operations, retain complete control over the Station’s programming (including the right to preempt CPRN programs),⁷ retain responsibility for financial control over the operating and capital expenses of the Station, and ensure that the Station complies with the Commission’s main studio rules and policies.⁸ Additionally, the PSOA indicates that CPRN will deliver to the Licensee such information as is required to be placed in the Station’s public inspection file by Section 73.3527 of the Rules,⁹ will not support or oppose any candidate for political office, and will not broadcast an “advertisement” as defined in Section 399B of the Act.¹⁰

In consideration for making Station airtime available to CPRN, the PSOA provides that CPRN will reimburse Licensee for any expenses incurred in connection with delivering and broadcasting CPRN programming, including the cost of broadband or other circuit used for delivery and reception of the programming, electrical power to the transmitter site, regulatory fees, insurance rider, and telephone expenses incurred at the transmitter site.¹¹ Additionally, CPRN will pay to the Licensee: (1) \$5,000 per month for the first 120 days during which the PSOA is in effect; and (2) \$7,000 per month for the remainder of the first year of the PSOA term.¹² CPRN will retain all listener contributions, underwriting revenue, and other support for the Station during the PSOA term.¹³

⁴ The agreement is to begin upon a date agreed to by the parties (the “Effective Date”) and terminate upon the earlier of: (1) consummation of the assignment; (2) 30 days following termination of the Asset Purchase Agreement; (3) the fifth anniversary of the Effective Date (subject to certain renewability provisions); (4) on April 1, 2011, if the Effective Date had not occurred; or (5) the termination of the PSOA upon a specified default of either party.

⁵ PSOA, Section 2. CPRN agrees to reimburse the Licensee for any expenditures required to comply with the Rules regarding main studio operation.

⁶ PSOA, Section 3. CPRN agrees to air the station identification announcements required by 47 C.F.R. § 73.1201 during the time when it is programming the station.

⁷ PSOA, Section 3. The Licensee may reject or refuse any CPRN program that it believes to be unsuitable, contrary to the public interest, or contrary to station policy, or it may substitute a program which it believes is of greater local or national importance. *Id.* and Exhibit A.

⁸ PSOA, Section 3.

⁹ 47 C.F.R. § 73.3527. *See* PSOA, Section 3. The Licensee will not be required to receive or address correspondence concerning CPRN programming but will forward such correspondence directly to CPRN. *Id.*

¹⁰ 47 U.S.C. § 399B.

¹¹ PSOA, Exhibit C.

¹² PSOA, Section 6. The payment will increase for each ensuing year to a monthly amount equal to \$7,000 plus the greater of: 1) 5 %; and 2) the Consumer Price Index plus 2%. *Id.* CPRN also will receive a *pro rata* credit against the compensation due for any portion of the time during which the Licensee does not broadcast CPRN’s programming. *Id.*

¹³ PSOA, Section 7.

Instructions. If either party requests that any information or Documents, as defined herein, responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and Documents, a statement in accordance with Section 0.459 of the Commission's Rules.¹⁴ Requests for confidential treatment must comply with the requirements of Section 0.459, including the standards of specificity mandated by Section 0.459(b). Accordingly, "blanket" requests for confidentiality of a large set of documents are unacceptable. Pursuant to Section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of Section 0.459.

If either party withholds any information or Documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item, the numbered inquiry to which each item responds and the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

Each requested Document, as defined herein, shall be submitted in its entirety, even if only a portion of that Document is responsive to an inquiry made herein, unless the Document is a recording or transcript, in which case it should be provided only for the period of time of the broadcast specified in the pertinent inquiry herein. This means that the Document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. All written materials necessary to understand any Document responsive to these inquiries must also be submitted.

If a Document responsive to any inquiry made herein existed but is no longer available, or if either party is unable for any reason to produce a Document responsive to any inquiry, identify each such Document by author, recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why the party is otherwise unable to produce it.

With respect only to Documents responsive to the specific inquiries made herein and any other Documents relevant to those inquiries, both parties are directed to retain the originals of those Documents for twelve (12) months from the date of this letter unless the Licensee is directed or informed by the Media Bureau in writing to retain such Documents for some shorter or longer period of time.

The specific inquiries made herein are continuing in nature. Each party is required to produce in the future any and all Documents and information that are responsive to the inquiries made herein but not initially produced at the time, date and place specified herein. In this regard, each party must supplement its responses (a) if the party learns that, in some material respect, the Documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive Documents or information are acquired by or become known to the party after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless either party is directed or informed by the Media Bureau in writing that the party's obligation to update the record will continue for some shorter or longer period of time.

For each Document or statement submitted in response to the inquiries below, indicate, by number, to which inquiry it is responsive and identify the person(s) from whose files the Document was retrieved. If any Document is not dated, state the date on which it was prepared. If any Document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). Each party must identify with reasonable specificity all Documents provided in response to these inquiries.

¹⁴ 47 C.F.R. § 0.459.

Unless otherwise indicated, the period of time covered by these inquiries is the Effective Date of the PSOA to the present.

Definitions. For purposes of this letter, the following definitions apply:

“Any” shall be construed to include the word “all,” and the word “all” shall be construed to include the word “any.” Additionally, the word “or” shall be construed to include the word “and,” and the word “and” shall be construed to include the word “or.” The word “each” shall be construed to include the word “every,” and the word “every” shall be construed to include the word “each.”

“Broadcast,” when used as a noun, shall mean any images or audible sounds or language transmitted or disseminated over a station during the course of a television broadcast.

“Broadcast,” when used as a verb, shall mean the transmission or dissemination of radio communications intended to be received by the public. The verb “broadcast” may be used interchangeably with the verb “air.”

“Document” shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any broadcast, radio or television program, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minutes, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tapes, disks and such codes or instructions as will transform such computer materials into easily understandable form).

“Licensee” shall mean the University of San Francisco, and any predecessor-in-interest, affiliate, wholly or partially owned subsidiary, other affiliated entity or business, and all owners, including but not limited to, partners or principals, and all directors, officers, members of the Board of Trustees, employees, or agents, including consultants and any other persons working for or on behalf of the foregoing at any time during the period covered by this letter.

Inquiries.

- 1) Have the Licensee and CPRN implemented the PSOA? If so, what is the Effective Date as specified in the PSOA?
- 2) On a weekly basis, from the Effective Date until the date of response to this inquiry letter (the “Response Date”), specify how many hours each week the Station broadcast programming supplied by CPRN, and where and when, specifically, that programming was produced.
 - a. Also, specify any dates and times when the Licensee preempted or rejected any CPRN programming.
 - b. Describe the ability of the Licensee (including availability of necessary personnel and equipment) to originate programming at the Station’s main studio location from the Effective date until the Response Date.

- c. Describe the process by which and identify the individuals through whom the Licensee reviews and evaluates the programming supplied by CPRN for broadcast on the Station.
- 3) Identify by name, title or position, dates of employment, and specified tour of duty hours, all employees retained and paid by the Licensee at the Station from the Effective Date until the Response Date.
- 4) Identify by name, title or position, dates of employment, and specified tour of duty hours, all employees retained and paid by CPRN at the Station from the Effective Date until the Response Date.
- 5) Provide a copy of all documents (such as contracts, invoices, bills, checks written or received, credit card charges/receipts, receipts for electronic fund transfers, etc.), collated and submitted separately, from the Effective Date until the Response Date, related to the following:
 - a. rent payments for studio and office space;
 - b. rent payments for the transmitter site/building and lease of tower space for the Station's antenna;
 - c. payment of salaries for any employees retained and paid by the Licensee at the Station;
 - d. payment of salaries for any employees retained and paid by CPRN at the Station;
 - e. payment of any utilities for the Station's studio and transmission facilities;
 - f. payment for the acquisition or production of any programming aired by the station..
- 6) Provide a copy of all Documents regarding any request for reimbursement for Station operating expenses by the Licensee to CPRN.
- 7) Provide a copy of all documents related to publicity and/or promotion of the Station from the Effective Date until the Response Date.
- 8) Provide a copy of all Documents regarding any reimbursement for Station operating expenses by CPRN to the Licensee.
- 9) Provide a copy of all Documents from June 1, 2010, to the present, to or from Rev. Stephen Privett, Mr. Charles Cross, Donna Davis, Esq., and/or Mr. Stephen Runyon concerning the proposed sale of the Station, the PSOA or CPRN.
- 10) Provide a copy of all Documents from June 1, 2010, to the present, presented to, prepared for, or issued by the Licensee's Board of Trustees concerning the proposed sale of the Station, the PSOA or CPRN.
- 11) Explain and provide the legal basis for the response to Section II, Item 3c and Section III, Item 3b of the Application that the Agreements involved in the transaction, including the PSOA, "comply fully with the Commission's rules and policies."
 - a. In connection with the response to Question 5, please address specifically how the airing of CPRN programming over the Station furthers the Licensee's obligation to use the Station for the advancement of an educational program, as required by Section 73.503(a) of the Rules.
 - b. In connection with the response to Question 5, please address specifically how the monthly compensation described in Section 7 of the PSOA complies with the limits on consideration to NCE licensees contained in Section 73.503(c) of the Rules.
 - c. In connection with the response to Question 5, please address specifically how the PSOA does not violate the prohibition on third-party fundraising,¹⁵ given that the PSOA permits CPRN to be the Station's sole programmer and to retain all donations, underwriting receipts, and other Station support during the PSOA term.

¹⁵ See 47 C.F.R. § 73.503, Note; *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Memorandum Opinion and Order, 90 FCC 2d 895, 907 (1982).

- 12) Provide an itemized accounting (listing donor, date received, and exact amount) for all donations, underwriting receipts, or “other support” (as specified in Section 7 of the PSOA) received by the Licensee from the Effective Date until the Response date. Provide documentation to support the entries to the extent available.
- 13) Provide an itemized accounting (listing donor, date received, and exact amount) for all donations, underwriting receipts, or “other support” (as specified in Section 7 of the PSOA) received by CPRN from the Effective Date until the Response date. Provide documentation to support the entries to the extent available.
- 14) Provide a list, and unredacted copies, of any agreement regarding the provision of programming to any other station, however titled, to which the Licensee, CPRN, or any party to the Application (including but not limited to Licensee and CPRN principals), is involved in any way.
- 15) Provide any Documents relating to agreements other than the PSOA between the Licensee and CPRN concerning the Station.

The response should be organized to respond *seriatim* to each of the listed questions, and it should be indexed according to the number of the question for which each response is formulated. We also direct the respondents to support their responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the respondents with personal knowledge of the representations provided in the response, verifying the truth and accuracy of the information therein and that all of the information and/or recordings requested by this letter which are in the respondent’s possession, custody, control or knowledge have been produced. If multiple employees contribute to the response, in addition to such general affidavit or declaration of the authorized officer of the respondent noted above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual, rather than his or her own knowledge, provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with Section 1.16 of the Rules,¹⁶ and be substantially in the form set forth therein. To knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment.¹⁷ Failure to respond appropriately to this Media Bureau letter of inquiry may constitute a violation of the Act and our Rules,¹⁸ and failure to respond within the specified time frame may result in the dismissal of the application for failure to respond to official correspondence¹⁹ and the institution of further enforcement proceedings.

The respondents shall direct their responses to Tom Hutton, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-A262, Washington, D.C. 20554; and to Michael Wagner, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-A523, Washington, D.C. 20554. Additionally, copies must be served by U.S. Mail on the petitioners and objectors listed in the attached Appendix. The petitioners and objectors will then have 10 days from the receipt of the response requested herein to comment on the response; counsel for

¹⁶ 47 C.F.R. § 1.16.

¹⁷ See 18 U.S.C. § 1001; *see also* 47 C.F.R. § 1.17.

¹⁸ See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898 n.36 (2003); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003).

¹⁹ See 47 C.F.R. § 73.3568(a)(1).

the Licensee and CPRN must be served with any such comments. No other correspondence from any party, petitioner, or objector in connection with this inquiry letter is anticipated or authorized.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Alan Korn, Esq. (Counsel for Friends of KUSF)
Peter Franck, Esq.
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Loren Dobson
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APPENDIX

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