



Federal Communications Commission
Washington, D.C. 20554

December 5, 2022

In Reply Refer To:
1800B3-SDW

San Diego Community College District
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In re: San Diego Community College District
KSDS(FM), San Diego, CA
Facility ID No. 58818
Application File No. 0000155553

Petition for Reconsideration

Dear Licensee, Objector, and Counsel:

We have before us the Petition for Reconsideration filed by Friends of San Diego Public Radio (Friends of San Diego).¹ Friends of San Diego seeks reconsideration of the Audio Division, Media Bureau's (Bureau) February 4, 2022, decision that granted the above referenced application for renewal of license² filed by San Diego Community College District (Licensee) for Station KSDS(FM), San Diego, California (Station) and denied the Informal Objection³ to the Application filed by Friends of San Diego.⁴ Also before us is a related responsive pleading.⁵ For the reasons set forth below, we dismiss the Petition in part and otherwise deny the Petition.

¹ Pleading File No. 0000186088 (filed Mar. 7, 2022) (Petition).

² Application File No. 0000155553 (filed Aug. 2, 2021) (Application).

³ Pleading File No. 0000168318 (filed Nov. 11, 2021) (Objection).

⁴ *San Diego Community College District, KSDS(FM), San Diego, California*, Letter Order, (MB Feb. 4, 2022) (*Letter Decision*); *Broadcast Actions*, Public Notice, 2022 WL 395276, Report No. PN-2-220208-01 (MB Feb. 8, 2022).

⁵ On March 22, 2022, Licensee filed an Opposition to Petition (Opposition). Pleading File No. 0000187037. As of the date of this Letter, Friends of San Diego has not filed a reply.

Background. On August 2, 2021, Licensee filed the Application. Friends of San Diego filed its Objection on November 11, 2021, alleging that the Station failed to broadcast issue-responsive programming,⁶ and that Licensee mismanaged the Station by 1) failing to take action against a long-time employee who “had been harassing” students and staff members;⁷ 2) causing the Station to lose money, ratings, and prestige;⁸ and 3) misrepresenting its non-profit tax status.⁹ In its Opposition to the Objection, Licensee stated that the Station broadcasts arts-related programming that is responsive to its listenership.¹⁰ Licensee denied mismanaging the Station with respect to the handling of its former employee,¹¹ and stated that Friends of San Diego failed to allege a violation of any Commission rule related to the Station’s ratings or finances.¹² Finally, Licensee stated that it believed “in good faith” that it held section 501(c)(3) non-profit status, but that donations to the Station are instead tax-deductible under section 170(b)(1)(A)(ii) of the Internal Revenue Code.¹³

On February 4, 2022, the Bureau released the *Letter Decision* which denied the Objection and granted the Application. The *Letter Decision* reiterated the Commission’s long-standing policy that licensees have broad discretion to choose issue-responsive programming, and found, after reviewing the record, that Licensee had not abused such discretion.¹⁴ The *Letter Decision* found that Friends of San Diego failed to allege that Licensee engaged in any conduct that the Commission considers relevant in judging the character qualifications of broadcast licensees.¹⁵ Finally, the *Letter Decision* found that the record did not reflect that Licensee made misrepresentations to the Commission regarding its non-profit status, and that the determination of whether Licensee improperly misrepresented its tax status must be made by the Internal Revenue Service, not the Commission.¹⁶

In the Petition, Friends of San Diego states that the Bureau failed to engage in a “meaningful analysis” of the Station’s quarterly issues and programs lists and alleges that such lists are misleading and do not reflect any issue-responsive programming.¹⁷ Friends of San Diego argues that the Bureau “failed to appropriately scrutinize” Licensee’s alleged mismanagement and reiterates its argument that Licensee mismanaged the Station with regard to its handling of a former employee and its finances and ratings.¹⁸ Friends of San Diego argues again that Licensee’s actions call in to question its qualifications to remain a

⁶ Objection at 3.

⁷ *Id.* at 10-11.

⁸ *Id.* at 9.

⁹ *Id.* at 11.

¹⁰ Opposition at 3-4.

¹¹ *Id.* at 10-11.

¹² *Id.* at 10-11.

¹³ *Id.* (citing 26 U.S.C. § 170(b)(1)(A)(ii)) (relating to charitable donations to educational organizations).

¹⁴ *Letter Decision* at 3-4.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 4-5 (citing *Educational Media Foundation*, Letter Order, 36 FCC Rcd 7045, 7048 (MB 2022)).

¹⁷ Petition at 5.

¹⁸ *Id.* at 5-6.

Commission licensee,”¹⁹ and that Licensee also misrepresented its non-profit tax status.²⁰

In its Opposition, Licensee repeats its denial of each allegation and argues that the Petition should be dismissed because it presents the same claims previously presented in the Objection.²¹

Discussion. The Commission will consider a petition for reconsideration when a petitioner shows either a material error in the Commission’s original order, or raises additional facts, not known or existing at the time of the petitioner’s last opportunity to present such matters.²² A petition that fails to introduce relevant new facts or changed circumstances may be dismissed as repetitious.

The Petition in part relies on a new argument, specifically that Licensee made “misrepresentations” about the Station’s quarterly issues and programs lists in its Opposition to Friends of San Diego’s Objection.²³ This argument was not previously raised with the Division and relies neither on changed circumstances nor on facts and arguments previously unknown to Petitioner through ordinary due diligence.²⁴ Friends of San Diego could have raised this argument in a Reply to the Opposition, but failed to file a Reply. Moreover, the staff reviewed the record, including the Station’s quarterly issues and programs lists and concluded in the *Letter Decision* that Licensee had not abused its discretion to choose appropriate issue-responsive programming.²⁵ Friends of San Diego does not produce any evidence indicating that staff erred in reaching its conclusion. We accordingly dismiss the Petition to the extent it relies on this new argument.²⁶

Additionally, it is settled Commission policy that a petition for reconsideration is not to be used to reargue points already argued and rejected.²⁷ Friends of San Diego’s arguments related to the Station’s issue-responsive programming, Licensee’s tax status, and its management of the Station with respect to its handling of a former employee and its finances and ratings were all previously considered and rejected in the *Letter Decision*, and the Petition merely repeats arguments raised in the Objection. Friends of San Diego may not use a petition for reconsideration to reargue points already argued and rejected.²⁸ Accordingly, we dismiss the Petition to the extent that it repeats arguments considered and

¹⁹ *Id.* at 5.

²⁰ *Id.* at 6.

²¹ Opposition at 1.

²² 47 CFR § 1.106. *See WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 397 U.S. 967 (1966); *Davis & Elkins Coll.*, Memorandum and Order, 26 FCC Rcd 15555, 15556, para. 5 (MB 2011).

²³ Petition at 3-5. *See also* Pleading File No. 0000187037 (filed Mar. 22, 2022) (Objection Opposition).

²⁴ *See* 47 CFR § 1.106 (c) (citing 47 CFR § 1.106(b)(2)).

²⁵ *Letter Decision* at 3-4.

²⁶ *See, e.g., Lake City Lighthouse, Inc.*, Letter Order, 28 FCC Rcd 411 (MB 2013) (dismissing pursuant to section 1.06(c) petition for reconsideration that raised arguments which could have been raised earlier); *CCBL Broadcasting Licenses*, Letter Order, 23 FCC Rcd 4526 (MB 2008) (same).

²⁷ *See Notices of Apparent Liability for Forfeitures of Emery Telephone*, Memorandum Opinion and Order, 15 FCC Rcd 7181, 7184, para. 5 (1999). *See also, e.g., California Ass’n for Research & Educ., Inc. et al.*, Order on Reconsideration, 30 FCC Rcd 14915-16, para. 4 (2015); *Saiir, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15967, 15975, para. 16 (2003)

²⁸ *See Infinity Broad. Operations, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4216, para. 2 (2004).

rejected in the *Letter Decision*.²⁹ Finally, the Petition fails to show a material error or omission in the original decision, and we affirm our finding in the *Letter Decision* for the reasons stated therein and deny the Petition.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED**, that the Petition for Reconsideration filed by Friends of San Diego Public Radio on March 7, 2022, **IS DISMISSED** to the extent indicated above and **IS OTHERWISE DENIED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁹ *Inca Communications, Inc.*, Letter Order, 31 FCC Rcd 7087, 7089 (MB 2016) (Bureau dismisses a petition for reconsideration in part as repetitious).