

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In re Application of	)	
	)	
SAN DIEGO COMMUNITY COLLEGE DISTRICT	)	LMS File No. 0000155553
	)	
For Renewal of the License for NCE FM Station	)	
KSDS, Facility ID No. 58818, San Diego, California	)	

Filed with:   Office of the Secretary through Licensing and Management System  
                  Directed to:   Chief, Audio Division, Media Bureau

**OPPOSITION TO INFORMAL OBJECTION**

SAN DIEGO COMMUNITY COLLEGE DISTRICT,  
Licensee of KSDS, San Diego, California

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December 13, 2021

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## **SUMMARY**

San Diego Community College District (“SDCCD”), licensee of noncommercial educational (“NCE”) FM broadcast station KSDS, Facility Identification Number 58818, San Diego, California, by its attorneys, herein opposes the Informal Objection to its application for renewal of license submitted by Friends of San Diego Public Radio (“Objector”) on November 11, 2021. Objector’s primary claims are that KSDS has failed to provide issue-responsive and other non-entertainment programming and that KSDS has been managed negligently by SDCCD. Objector is incorrect on both counts.

With regard to issue-responsive programming, Objector is simply attempting to substitute his own judgment for that of the licensee, and his claims about KSDS’s issues/programs lists are simply incorrect. The fact that Objector does not approve of SDCCD’s choice of issues to cover has no significance. It is the station licensee which has the discretion and the responsibility to choose the manner in which it serves the public interest. To allow interference with that function from an outside party would be to abdicate licensee control.

As for the competence of management, Objector does not even claim that the cited instances of so-called negligent management have resulted in violation of any Commission rules or policies. The matters he has raised are simply irrelevant to license renewal, and his claims are largely inaccurate.

In light of the lack of any merit to the Informal Objection, it must be dismissed at once, and the application for renewal of KSDS’s license must be granted immediately.

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San Diego Community College District (“SDCCD”), licensee of noncommercial educational (“NCE”) FM broadcast station KSDS, Facility Identification Number 58818, San Diego, California, by its attorneys, hereby submits its Opposition to the Informal Objection to its application for renewal of license submitted by Friends of San Diego Public Radio (“Objector”) on November 11, 2021. With respect thereto, the following is submitted:

I. Introduction

Objector, which appears to have no corporate existence but is simply an alter-ego for Michael Halloran, has objected to the application for renewal of the license for KSDS based essentially upon his findings that the station licensee, SDCCD, has not operated the station in a manner that meets his personal expectations and his conclusion that renewal of license is therefore not warranted. As an initial matter, it should be noted that the pleading in question had to be filed as an informal objection because it was submitted some ten days after the petition to deny deadline. While the Commission’s rules provide that an objection may still be filed, the

tardiness of this filing, from a person who admittedly has been monitoring the station for quite some time, calls into question just how sincere Objector's stated concerns are. Indeed, Objector's most significant complaints appear to be that SDCCD did not immediately provide him with information to which he was not entitled under any FCC rule or policy and did not follow his gratuitous advice. More importantly, the facts which Objector alleges in an attempt to interest the Commission in his own personal pique are either irrelevant or inaccurate. Therefore, the Informal Objection should be dismissed forthwith and the KSDS license renewal granted.

Objector's primary claims are that KSDS has been managed negligently by SDCCD and that KSDS has failed to provide issue-responsive and other non-entertainment programming. Objector, however, does not even claim that the cited instances of so-called negligent or careless management have resulted in violation of any Commission rules or policies. Objector's claims that KSDS has somehow been mismanaged rest upon the further claims that KSDS has been losing money and failed to handle a personnel matter involving its chief engineer as Objector would have done. These matters are irrelevant to license renewal, as no Commission rule or policy requires NCE stations to be profitable, nor does the Commission generally involve itself in a licensee's personnel employment matters. With regard to issue-responsive programming, not only is Objector simply attempting to substitute his own judgment for that of the licensee, but his claims about KSDS's issues/programs lists are simply incorrect. The fact that SDCCD chose to air programming that addressed issues different from those Objector would have chosen has no significance. It is the station licensee which has the discretion and the responsibility to choose the manner in which it serves the public interest, and it is not the place of any outside party, even one who designates himself as the arbiter of all things radio, to dictate how KSDS operates. Indeed, to allow such interference would be to abdicate licensee control.

## II. KSDS Issue-Responsive Programming

Objector begins his Informal Objection by reciting the standards for license renewal and launching into a history of issues/programs lists and the deregulatory approach that led to their adoption as a requirement for broadcast stations in general and NCE stations in particular. While this trip down memory lane through a review of dusty, decades-old decisions is of some interest in understanding ongoing requirements, Objector seems to have missed key points. In particular, Objector dismisses any discussion of issues that might be presented in a program covering the arts. Apparently, Objector believes that only the issues which he finds to be of importance to the overall community can count, and that those issues must be examined in a program of some particular format. This rather arrogant approach is contrary to the Commission's philosophy when it adopted its current requirement for stations to address community issues.

While Objector has correctly pointed to the 1981 origin of issues/programs lists and the related emphasis on stations' addressing issues of importance to their communities, Objector has apparently missed the point that the Commission's goal in making this change in rules and policies was to expand licensee discretion as it eliminated quantitative requirements for certain programming types. *Deregulation of Radio*, 84 F.C.C.2d 968 (1981). For example, the Commission stated that as a result of the change in policy, stations no longer "will be forced into a rigid mold, and we will not endeavor to dictate the types of programs that must be used to respond to community issues...." *Id.* at 979. Thus, in order to be issue-responsive, a program need not fit into Objector's apparent, cookie-cutter model, and there is no reason why a program related to the arts that discusses issues raised by or connected with artistic works or artists, or

issues of importance to the artistic community cannot be considered issue-responsive.<sup>1</sup> The Commission specifically stated that the flexibility the change in rules offered would “allow radio broadcasters to address issues by virtually any means.” *Id.* at 982.

Moreover, the issues that a licensee chooses to address “may focus upon those of concern to the station’s listenership as opposed to the community as a whole.” *Id.* at 971. Likewise, “in determining which issues to cover, commercial radio broadcasters may take into account their listenership and its interests, and the services provided by other radio station in the community to groups other than its own listenership.” *Id.* at 978. As Objector himself pointed out, San Diego is a large Urbanized Area and is ranked as the 16<sup>th</sup> radio market in the nation. Informal Objection at 2. Clearly, therefore, there is a plethora of broadcast services in the market, and not every station needs to focus on only general issues of the area as a whole. Indeed, the Commission noted that its “new regulatory thrust is to attempt to permit ... stations currently in operation ... to each serve their own audience in the appropriate circumstances.” *Id.* at 988.

While the requirements for issues/programs lists, as Objector has noted, did evolve a bit due to report frequency and evidentiary issues raised by the U.S. Court of Appeals for the D.C. Circuit, this flexibility recognized for broadcasters did not change. Similarly, when the Commission decided to apply the same approach to NCE broadcasters, it emphasized that one of the purposes of making the change was to expand licensee discretion. *Issues/Programs Lists for Public Broadcast Licensees*, 3 FCC Rcd 1032, 1033 (1988).

The basic requirement for an NCE station’s issues/programs lists as set forth in the Commission’s rules is that a licensee list the programs “that have provided the station's most

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<sup>1</sup> Indeed, artistic works such as novels, plays, movies, or documentaries, whether fictional or nonfictional, can themselves be issue-responsive. Historically, some of these works, *e.g.*, *To Kill a Mockingbird*, *Twelve Angry Men*, etc. have been most effective in changing societal views and evoking discussion and changes in attitudes.

significant treatment of community issues....” 47 C.F.R. §73.3527(e)(8). Objector has argued that because KSDS did not consider itself to have provided sufficiently significant treatment of certain issues favored by Objector to include them in the KSDS issues/programs lists, the station covered no issues. Obviously, however, SDCCD, as a licensee, is not required to cover the issues that Objector would choose if he were a licensee, nor is SDCCD required to provide treatment of only issues that are of interest or importance to the entire San Diego community. Even if it were, Objector has not even attempted to demonstrate that issues of the arts in the community are of no importance to the community at large, nor is such a demonstration likely to be possible. SDCCD has, in fact, made the decision, in its discretion as a licensee, to focus KSDS’s coverage of community issues on issues of importance to the San Diego arts community, which is a subset of the overall San Diego community.

Objector has asserted that KSDS’s quarterly reports demonstrate that the station has covered no community issues whatsoever, and that none of its quarterly reports lists any issues covered. Objector has helpfully attached the voluminous copies of KSDS quarterly reports from 2019 and after but does not appear to have taken the time necessary to read those reports. While the issues/programs lists for much of the license term generally do not contain explicit statements in the form, “the issue(s) covered is/are...,” the reports and program descriptions from the second quarter of 2021 forward do contain such language. Objector’s claim is therefore at least partially inaccurate. Moreover, the prior reports provided by Objector contain program-descriptive texts that are sufficiently detailed to make clear the issues covered.

Even a casual review of the issues/programs lists attached to the Informal Objection at Attachment 2 shows a wide variety of issues addressed by KSDS programming. These issues include both matters of specific interest to the San Diego artistic community and matters that would be of wider interest in the community. For example, the following, randomly selected



descriptions of KSDS programming included in the reports, listed by air date, illustrate the breadth of issues addressed:

- 1) January 12, 2019 - issue of how actors should best portray issues of African immigrants and how their families fit into American life;
- 2) January 19, 2019 – issue of being an artist and a single mother;
- 3) March 2, 2019 – perspectives on the drug war;
- 4) June 1, 2019, and October 19, 2019 – local community events and ethnic culture in San Diego;
- 5) June 8, 2019 – issues of Harriet Tubman on the \$20 bill and how fictional storytelling can allow a writer to be more free in conveying ideas;
- 6) July 20, 2019 – issues and experiences of African immigrants and their impact on an artist and her art;
- 7) March 7, 2020 – discussion of gun violence;
- 8) March 21, 2020 – first Poet Laureate of San Diego, issues he wants to discuss, and meaning of the position of Poet Laureate;
- 9) March 28, 2020 – issue of how to deal with the absence of arts due to COVID-19;
- 10) June 28, 2020 – issues of homelessness and the positive impact of groups such as The Homeless Choir;
- 11) August 23, 2020 – issue of importance of preserving historic documentary films that depict a past era;
- 12) October 4, 2020 – issue of overcoming racial tensions to bring a famous artist to a high school audience;
- 13) October 11, 2020 – controversy of adding native artifacts to a museum;
- 14) February 14, 2021 – possibilities for residents to enjoy community treasures despite COVID-19; and
- 15) May 2, 2021 – issue of United States DACA policies as reflected in the stories of young playwrights.

These examples are just a small smattering of what is reflected in the portion of KSDS's online issues/programs lists presented by Objector. That portion does not even include the reports that date from 2014 through 2018, which are similar in nature and also form a part of licensee's record. Clearly, therefore, Objector is entirely incorrect in stating the KSDS has addressed no community issues during the past license term. The fact that the issue-responsive programming that the station aired was primarily directed toward the needs and interests of a portion of the San Diego community in whom Objector may not be interested is of no relevance or significance but only represents a licensee's legitimate choice in its discretion.

Likewise, the fact that the quarterly reports do not have the specific title "Issues/Programs List" typed on them is irrelevant. They were uploaded to the issues/programs list section of the online public file, and the title at the top of the page does not change the content of the document. It has never been a requirement for renewal of license that public file documents must necessarily have exact, specific titles in order for their content to be considered.

Further, Objector has claimed that KSDS did not air any news programming during the license term. That claim is false. In point of fact, KSDS broadcast news every morning from February of 2016 until March 2020, when the campus where the studio is located closed due to COVID-19, and the plan is for this news programming to begin again in January of 2022. Such programming would not have been included in the KSDS issues/programs lists because this type of news programming is not correctly listed in these reports. The Commission clarified on reconsideration of its adoption of issues/programs lists that news coverage *per se*, such as relatively brief coverage of breaking or current news events, is not considered to be issue-responsive programming appropriate for inclusion in issues/programs lists. *Deregulation of Radio*, 97 F.C.C.2d 797, 807, n.10 (1981). Additional news coverage has been broadcast on the student-operated KSDS D2 programming stream, with a monthly half-hour program titled "City

Stories,” which has a local news magazine format. While this program has been on hiatus for a few months, it is scheduled to begin again with the start of the new semester in January. Also, KSDS D2 currently airs each Monday at 5:00 p.m. a student-produced weekly program called “Knightlife,” which is a talk show concerning San Diego area issues and news. Thus, the statement that KSDS airs no news programming is simply incorrect.

Additionally, in order to address matters of importance to its audience, KSDS produces and broadcasts special programming during Black History Month, Women’s History Month, and Hispanic Heritage Month. KSDS also has produced and aired programs with the campus LGBTQ organization and the campus World Cultures Organization and has co-presented several community events in addition to its on-air efforts. KSDS D2’s programs, which tend to vary from semester to semester as a function of student operation, have included a number of talk shows with guests that deal with community issues.

As a part of its service to the community, in addition to its broadcast efforts, KSDS is involved in a variety of educational initiatives. For several years during the license term, KSDS hosted the College Music Educational Association event, as well as a Jazz in the Schools program that presented programs in the local elementary and middle schools. KSDS also conducts a Music Matters initiative which collects donated musical instruments that are distributed to under-served students and communities. Thus, KSDS’s service to the community of San Diego consists not only of its issue-responsive and news programming but also goes beyond programming to provide educational and charitable service to the community. In all of these ways, KSDS is serving the public interest, convenience, and necessity and thus is deserving of license renewal.

### III. Inaccurate and Irrelevant Claims of Poor Operation

Objector's other line of attack is that a station should not be granted license renewal application if it is operated "in an exceedingly careless, inept, and negligent manner, and the licensee is either incapable or unwilling to correct operating deficiencies." Informal Objection at 2, quoting *Heart of Black Hills Stations*, 32 F.C.C.2d 196, 198. What Objector leaves out, however, is that this conclusion is predicated on a "long, 10-year history of repeated serious violations of the Commission's Rules and Regulations." *Id.* Here, Objector has not even alleged that the allegedly incompetent management of KSDS resulted in any Commission rule or policy violation, much less a long history of such violations. Instead, Objector bases his conclusions on only his own subjective standards of how SDCCD and KSDS should have operated and responded to him. The fact remains, however, that it is SDCCD that is the KSDS licensee, and it is not required to accept or even respond to the advice of an officious intermeddler, no matter how expert in radio matters he may or may not be.

The true source of Objector's displeasure with KSDS, lack of attention to him, is made clear by his own Declaration, found at Attachment 1 to the Informal Objection, as the Declaration focuses on matters related to his requests or his opinions as to matters related to KSDS. As an aside, this Declaration has little to no evidentiary weight, since it is based primarily upon unidentified, second-hand accounts, as well as "the internet and published articles" (Attachment 1 at 1), and not on first-hand knowledge. For example, Objector recounts how he was "made aware of" the feelings and actions of the then-President of San Diego City College, which Objector falsely states is the licensee of KSDS, and of the actions of the college President and his staff with attempting to engage a broker. Major problems with this account are that Objector gives no indication of the source of his so-called knowledge or that source's

reliability, nor does he acknowledge that, in point of fact, KSDS is licensed to the San Diego Community College District, over which the President of City College is not in command.

Another of Objector's claims is that KSDS has been operated in a manner that has caused the station to lose money and ratings and to be in debt to its own licensee. Objector's fundamental complaint is that KSDS did not immediately hand over its financial records to him in response to his demands. What Objector apparently misses, however, is that no Commission rule or policy would entitle him to any financial information whatsoever from KSDS.<sup>2</sup> Thus, any dispute about obtaining such records or a claimed inability to read them is irrelevant.

Once Objector obtained the records he had demanded, he then misread them. While Objector claims that KSDS operations have been losing money each year, he was informed to the contrary by KSDS, as income has exceeded expenses for several years. Informal Objection, Attachment 1 at Exhibit A. In fact, a review of the financial statements attached to the Informal Objection at Attachment 1, Exhibit B, do show that while there appears to be some, unspecified debt from KSDS to its licensee, cash flow has been positive for the majority of recent years. In any event, such a "debt" appears to be an accounting matter, as one would expect a licensee to provide financial support to and investments in its own station.

Similarly, while Objector appears to be concerned because he learned from unspecified, third party sources that KSDS had ceased subscribing to Nielsen ratings, the same letter from KSDS's licensee that pointed out the errors in Objector's financial assertions also noted that KSDS had ceased subscribing to Nielsen in order to save money and because the information provided was not useful to KSDS. Informal Objection at Attachment 1, Exhibit A. In fact,

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<sup>2</sup> Even if there are some applicable open records requirements imposed by California law or the Corporation for Public Broadcasting, those provisions are not enforced by the Commission or under its jurisdiction.

further contradicting Objector's assertions concerning ratings, he was informed that "[i]n the last five years [KSDS's] membership has increased dramatically and continues to increase each fiscal year." *Id.*

Even if all of Objector's dubious claims regarding finances and ratings were accepted at face value, however, the correct response would be a big "ho-hum." No matter how much Objector may believe he should have been allowed to assist KSDS, it is simply not a requirement for license renewal that a station must be profitable or highly rated. Nor is a failure to make money a violation of any Commission rule or policy, especially for an NCE station. Indeed, if either financial prosperity or high ratings were a *sine qua non* for license renewal, there would be many radio and television stations, both commercial and noncommercial, that would be in serious jeopardy of losing their licenses.

Another issue raised by Objector is that SDCCD did not immediately fire a 38-year employee based upon complaints made by a professor and a handful of students. This employee was both the chief engineer for KSDS and an engineer employed in other capacities at SDCCD. Objector's information appears to have been taken entirely from news coverage and other second-hand sources that recounted primarily their own perceptions of the employee's behavior and condition rather than objective, demonstrable facts. This employee did, in fact, resign in 2016, over five years ago. Objector nonetheless appears to oppose SDCCD's desire to handle this delicate personnel matter privately and gives no consideration to the possibility that there might be another side to the long-term employee's story, or that those complaining about him might have ulterior motives. In any event, all of these allegations are irrelevant. There is no claim that issues with the engineer led to any technical problems with the operation of KSDS or rule violations by the station. No FCC rules or policies prohibit a broadcast station from employing a person with a difficult personality, personal problems, or even a misdemeanor

conviction as a broadcast engineer. Once again, if failure to quickly terminate a long-term employee who has become difficult could disqualify a licensee from obtaining renewal of its license, there would be many station licenses not renewed.

Finally, Objector claims that KSDS has previously stated to listeners that it is a Section 501(c)(3) entity, that donors have given to KSDS in reliance on that statement, and that this has created harm to listeners. It is correct that KSDS, in the past, has in good faith stated that it is a Section 501(c)(3) organization, and that these statements made in the belief that they were accurate turned out not to be correct. It is incorrect that these statements have caused any harm to listeners because donations to KSDS are, in fact, generally tax deductible for donors. *See*, 26 U.S.C. § 170(b)(1)(A)(ii). KSDS's prior failure to understand precisely which provision of the tax code makes donations to its operations tax deductible is hardly a major failure or any indication of an inability to comply with Commission rules. Rather, Objector has attempted to take advantage of a meaningless error to embarrass KSDS with nothing more serious than a lack of perfect familiarity with the U.S. tax code. The basic fact of tax deductibility was and is accurate, and detailed understanding of the tax code is not essential to daily operation of a broadcast station. Therefore, this complaint is clearly irrelevant to the matter of the KSDS license renewal.

#### IV. Conclusion

In sum, while Objector has submitted a huge stack of paper in opposition to the KSDS license renewal, he has not demonstrated that there is any support for denial of the requested license renewal. Instead, Objector has shown only that he is disgruntled by KSDS's lack of interest in his officious intermeddling, and that he is not as familiar with the Commission's requirements for demonstrating that a station has provided issue-responsive programming as he believes he is. Specifically, Objector faults KSDS for not covering the issues that he believes it

should have covered, but the Commission has clearly stated that radio stations may choose to cover only those issues of importance to its audience, and KSDS has made that choice.

Likewise, the Commission has also stated that issue-responsive programming need not all fit the same rigid mold but may cover issues in a wide variety of ways. KSDS has posted quarterly reports in its issues/programs list files that demonstrate that it has aired substantial programming that has, in fact, addressed issues of importance to its community. Finally, while Objector has attempted to raise issues related to finances, personnel, and the tax code, he has not even alleged any associated violations of FCC rules or policies. Therefore, these issues are as utterly irrelevant to SDCCD's qualifications to be and to remain the licensee of KSDS as is the station's decision not to follow Objector's command. In light of the lack of any merit to the Informal Objection, it must be dismissed at once, and the application for renewal of KSDS's license must be granted immediately.

Respectfully submitted,  
SAN DIEGO COMMUNITY COLLEGE DISTRICT

By:           /s/ Anne Goodwin Crump            
Anne Goodwin Crump

Its Counsel

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December 13, 2021



**DECLARATION OF KEN POSTON**

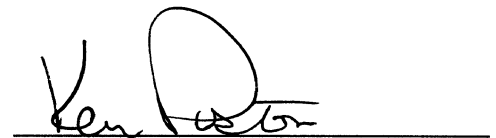
I, Ken Poston, hereby declare and state as follows:

I am the General Manager of KSDS(FM), San Diego, California, and, as such, an employee of the San Diego Community College District. I have held this position since 2015 and am familiar with the operations of KSDS.

I have read the foregoing "Opposition to Informal Objection." The facts contained therein are true and correct to the best of my knowledge and belief.

I hereby declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

Dated as of this 13<sup>th</sup> Day of December, 2021.

A handwritten signature of Ken Poston in black ink, written over a horizontal line. The signature is stylized, with a large 'K' and 'P'.

Ken Poston

## CERTIFICATE OF SERVICE

I, Anne Goodwin Crump, hereby certify that, on this 13<sup>th</sup> day of December, 2021, I caused a copy of the foregoing “Opposition to Informal Objection” to be sent by electronic mail to the following:

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