

Before the
Federal Communications Commission
Washington, DC 20554

<i>In re Application of</i>)	
)	
SAN DIEGO COMMUNITY COLLEGE DISTRICT)	LMS File No. 0000155553
)	Facility No. 58818
<i>Station KSDS(FM), San Diego, California</i>)	
<i>For Renewal of License</i>)	
)	
Filed with: Office of the Secretary)	
Directed to: Audio Division, Media Bureau)	

PETITION FOR RECONSIDERATION

Friends of San Diego Public Radio (“FOSDPR”), by its attorney, hereby submits its Petition seeking reconsideration of the Bureau’s recent grant of the application for renewal of license filed by San Diego Community College District (“SDCCD”) with regard to Station KSDS(FM), San Diego, California. As stated previously, FOSDPR earnestly believes that SDCCD has totally failed in its obligations to serve the public in a meaningful fashion with operation and management of Station KSDS, and as a result, the Bureau’s decision issued on February 4, 2022 (“*Letter Decision*”) failed to appropriately scrutinize the depth and seriousness of SDCCD’s shortcomings with respect to its management of Station KSDS(FM). Therefore, the Bureau’s *Letter Decision* should be reconsidered. With respect thereto, the following is stated.

As stated previously, Station KSDS(FM) is a non-commercial FM radio station service the important San Diego radio market in the Number 16 Radio market. As a part of its duties as a licensee of a non-commercial radio station, Station KSDS(FM) is obligated to serve the community in the public interest. In assessing whether a station has served the public interest, the Bureau is obligated to assess a variety of factors, including information concerning the renewal applicant’s programming, whether the renewal applicant has engaged in serious violations of the

FCC's rules and policies, and whether generally a grant of its renewal applicant's renewal application would serve the public interest. 47 U.S.C. § 309(k). Moreover, under Commission precedent, a license shall not be renewed in instances where the licensee's operation "was conducted in an exceedingly careless, inept, and negligent manner and the licensee is either incapable or unwilling to correct operating deficiencies." *Heart of Black Hills Stations*, 32 F.C.C.2d 196, 198 ¶ 6 (1992).

In this instance, FOSSDR contends that Station KSDS(FM)'s has failed in three major respects.

First of all, FOSSDR again contends that the failure of Station KSDS(FM) to serve the needs and interests of the community is egregious, and the Bureau's approval of the minimal issue-responsive programming sets bad precedent which should be reversed on reconsideration.

As noted previously, pursuant to Section 73.3527 of the Commission's Rules:

Issues/Programs lists. For nonexempt noncommercial educational broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October-December, April 10 for the quarter January-March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

47 C.F.R. § 73.3527(e)(8). In order to review whether the uploaded lists even marginally could comply with the Commission's requirements, attached for illustrative purposes to the Informal Objection were copies of the filings of the KSDS lists for the past three years. The lists uploaded on behalf of Station KSDS(FM) pertained entirely to programming on a program called "Inside Art."

With respect to this issue, the Bureau stated:

We reject Friends of San Diego's argument that the Station has failed to broadcast adequate issue-responsive programming. The Commission has long held that licensees have broad discretion to choose, in good faith, the issues the licensee believes to be of concern to the community and the best way to address those issues. This is particularly true with regard to the programming decisions of noncommercial educational stations. The Commission has made clear that it will intervene in programming matters only if a licensee abuses its discretion, i.e., if it is unreasonable or discriminatory in its selection of issues or offers such nominal levels of issue-responsive programming as to have effectively defaulted on its obligation. Licensee has provided several examples of broadcast programming that it deems to be responsive to issues facing its community, and we find no evidence that Licensee abused the broad discretion conferred upon it. We thus find this argument without merit.

Letter Decision at 4 (footnotes omitted).

The Bureau should not have credited SDCCD's attempts to demonstrate responsive programming, and the fact of the matter is that SDCCD engaged in numerous misrepresentations in its Showing to the Bureau.

For example, in its Opposition, SDCCD claimed that on January 12, 2019, its programming addressed the "issue of how actors should best portray issues of African immigrants and how their families fit into American life." Opposition at 9. What the program *actually* dealt with was:

Director Edward Torres, previously on "Inside Art" for the comedy Native Gardens and Water By The Spoonful, provided a background about the story and characters of the play and how he works with the actors to best interpret Gurira's contemporary text, African language and themes to the audience.

This was a discussion of a play, not of local "issues."

For the January 19, 2019, program, SDCCD claims it dealt with the "issue of being an artist and a single mother." What the program *actually* dealt with was "jazz Master Sheila Jordan:

She also spoke of her well-chronicled absence from full-time jazz singing during her 20s and 30s, opting instead for a more stable professional life in order to raise her daughter as a single mother. She shared the basis for her long-held preference for singing in a duet format with acoustic bassists, particularly Cameron Brown, who would be sharing the stage in her La Jolla Athenaeum jazz series concert.

For the July 20, 2019 program, SCDDC claimed the program dealt with “issues and experiences of African immigrants and their impact on an artist and her art.” What the program *actually* dealt with was:

Olatuja described her upbringing in St. Louis and her early interest in singing as a child. As the daughter of an educator, she was determined to study classical music and voice techniques in college in an effort to learn how to properly utilize her voice and to avoid the injuries she saw among her peers who avoided formal training. Olatuja talked about her newest record, which focuses on her experiences following the lives and cultures of African immigrants in New York City. She recounted her extended stay in Nigeria a few years ago and the work she was able to create as a result of her experience as both a musician and activist. Also, she shared her memories of performing at the inauguration of President Barack Obama with the Brooklyn Tabernacle Choir and how that performance helped to launch her fledgling career. Olatuja also previewed her upcoming performance at the Museum of Making Music in Carlsbad.

For the March 7, 2020 program, SDCCD misleadingly claims the program included a “discussion of gun violence.” In actuality, the program is described as follows:

The second segment previewed The Roustabouts Theatre Company’s gUnTOPIA, a biting, dark comedy that takes aim at gun violence. This world premier satire by Will Cooper introduces audiences to a Leave It to Beaver-style America where gun ownership is universal and shooting deaths are no more bothersome than a parking ticket. Accompanying gUnTOPIA at Moxie Theatre, Roustabouts is presenting talkbacks and panel discussions with artists, experts and community leaders on the societal impact of gun violence in America. Company Co-Founder and actor Phil Johnson talked about the show and how he hoped it would generate discussion in the community, as well as the overall 2020 season of plays presented by The Roustabouts.

For the October 4, 2020, program, SDCCD makes the claim that there was a discussion of the “issue of overcoming racial tensions to bring a famous artist to a high school audience.” In actuality, the program merely included the following:

Danny Scher recounted the story of his early exploits in concert promotion while in high school, bringing popular jazz artists Cal Tjader and Vince Guaraldi to Palo Alto High. Eventually, the 16 year-old jazz fan and budding concert impresario dared to book Thelonious Monk and the timing and conditions were agreeable to the legendary pianist. Scher described the challenges he overcame to bring the show to the stage amidst serious racial tensions in neighboring East Palo Alto, where many of the concert audience would come from.

In short, the program “Inside Art,” which is the *only* program claimed by SDCCD to contain public-affairs programming, is a programming covering the San Diego Arts and cultural scene, and more often than not, simply is a vehicle to promote local plays, books being published about the Arts, etc. That themes and topics of plays, books, or experiences that are mentioned in the course of that promotion should not allow the program to be raised to the level of legitimate “issue-responsive” programming. The program is nothing more than programming pertaining to artistic previews, reviews, and interviews, and is not in any manner geared toward the important community issues that the FCC expects to be identified and addressed by local radio and television stations during their license terms.

From all appearances, the Bureau engaged in no meaningful analysis of the KSDS issues/programs lists. For this reason alone, reconsideration of the Bureau’s decision is appropriate.

As to the operation of the Station itself and as shown previously, evidence provided herein shows that the station has been operated in a careless, inept, and negligent manner which reflects poorly on its qualifications to remain a Commission licensee. Based upon persistent and substantial research concerning the operation of the station, it has been discovered that: (i) for the past several years, the current Board has been operating the station in a manner that has caused the station to lose public money on an ongoing basis; and (ii) the Station has lost ratings and prestige in the San Diego Market, and (iii) there is evidence of incidents involving its former long-time engineer Larry Quick, and the Board’s total inability to take action until criminal charges ultimately were brought against Mr. Quick. FOSDR maintains that all of this action and inaction also reflects negatively on SDCCD’s qualifications to remain a Commission licensee.

Once again, despite the seriousness of these matters, the Bureau chose to improperly essentially ignore this malfeasance on the part of current management, stating:

We also reject Friends of San Diego's argument that Licensee's conduct related to its employee calls into question its qualifications to be a licensee. The Commission has previously made clear that it will not consider non-FCC conduct (i.e., conduct which is not specifically proscribed by the Act or the rules) in its evaluation of character unless such conduct has been adjudicated by an appropriate court or agency and concerns either (1) fraudulent statements to government agencies; (2) felony convictions; or (3) mass media related violations of anti-competitive and antitrust statutes. Friends of San Diego does not allege that Licensee violated any Commission rule related to the handling of its employee, nor does it allege that Licensee engaged in any conduct that the Commission considers relevant in judging the character qualifications of broadcast licensees.

Letter Decision at 4 (footnotes omitted). This lack of meaningful analysis and bad precedent also should be reviewed on reconsideration, and reversed following that revisiting of the issues.

Finally, as the documentation attached to the Informal Objection demonstrated, for years SDCCD misrepresented its tax status to the public, and presumably to the FCC, that it was a qualified 501(c)(3) organization. The Bureau brushed this showing aside, as well, stating simply that because no misrepresentations were made "in its dealings with the Commission" regarding its legal status (*Letter Decision* at 5), SDCCD's misconduct should be excused. The Bureau's determination in this respect should also be reconsidered. In this case, SDCCD admitted its failure to properly represent itself as a non-501(c)(3) organization. While it is true that the "determination of tax status is made by the Internal Revenue Service, and not the Commission" (*Letter Decision* at 5), here, there is no dispute, and there is no "determination," to make by the Bureau. SDCCD has admitted its wrongdoing, and the Bureau should have acted accordingly.

In short, SDCCD has failed totally in its duty to serve the public in the public interest. This application should have been designated for hearing, and upon proper confirmation of the facts contained herein, SDCCD's license should be revoked. It is respectfully requested that the Bureau's decision be reconsidered.

WHEREFORE, it is requested that this Petition for Reconsideration be granted.

Respectfully submitted,

**FRIENDS OF SAN DIEGO
PUBLIC RADIO**

By: ____/Dan J. Alpert/_____
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CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that a copy of the foregoing “Petition for Reconsideration” is being provided by First Class Mail to the following:

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