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Friends of KUSF calls for FCC hearing in proposed 90.3FM sale

SAN FRANCISCO -- August 16, 2011 -- Attorneys for Friends of KUSF filed documents with the Federal Communications Commission last week showing that the University of San Francisco and Classical Public Radio Network (CPRN) seriously misled the commission when they claimed the University could still originate programming from campus. The documents included sworn declarations and photographic evidence. As a result, the attorneys are calling on the FCC to designate the proposed sale of the KUSF 90.3 FM broadcast license for an oral, evidentiary hearing.

The University of San Francisco announced on January 18 that it was proposing to sell beloved radio station KUSF 90.3 FM to Classical Public Radio Network (CPRN). Since the announcement of the proposed sale, 90.3 FM has been rebroadcasting the formerly commercial programming heard on KDFC 102.1 FM.

KUSF 90.3 FM is an award-winning non-commercial educational station, broadcasting for over 33 years. KUSF 90.3 FM is world renowned for broadcasting groundbreaking music as well as cultural programs aimed at the diverse San Francisco community. Since the shutdown, San Francisco has been without those programs.

The proposed sale furthers a national trend of treating non-commercial educational licenses as commodities, part of a systemic crisis endangering the left side of the dial, which has traditionally stood for localism and the representation of diverse viewpoints. Several colleges and universities have put their licenses up for sale over the past few years, including KTRU (Rice University, Houston), WRVU (Vanderbilt University, Nashville, Tenn.) and WDUQ (Duquesne University, Pittsburgh).

“The web of lies and blatant FCC violations by USF and CPRN have become so clear and evident,” said Irwin Swirnoff, spokesperson for Save KUSF, a group of DJs, station volunteers and community members fighting the proposed sale. “It’s now time for public hearings, as this shady deal that robs our community of so many vital voices, needs to be investigated in a public forum. Our city leaders and the community at large have spoken loud and clear – we won’t allow this attack on the left side of the dial go

undefended.”

Last week's filing was in response to documents filed July 29 by USF and CPRN. Those documents came in response to an FCC Letter of Inquiry, filed June 28. That letter demanded responses to 15 points raised by the FCC regarding the proposed sale.

Attorneys Alan Korn and Peter Franck cited the following reasons in calling for a hearing on the proposed sale:

- To determine whether or not the Licensee (USF) made an unauthorized or premature transfer of control of Station KUSF.
- To determine whether or not the Public Service Operating Agreement (PSOA), on paper and in practice here, complies with Commission rules and policies regarding underwriting, underwriter announcements and third-party solicitation.
- To determine whether or not the Parties have misrepresented facts or lacked candor in their application or in their responses to the Letter of Inquiry.
- Whether or not the Licensee remains fully qualified to remain a Commission licensee.
- Whether or not the proposed Assignee (CPRN) is qualified to become a noncommercial educational licensee.

Friends of KUSF attorneys argued that, “the Licensee has abandoned any and all origination of programming,” pointing out that USF has not interrupted CPRN's programming since the proposed sale was announced on January 18. In the joint response to the Letter of Inquiry by USF and CPRN, it was claimed that USF has maintained the ability to originate programming from on campus, either from the old Phelan Hall studio (dismantled in May), the KUSF transmitter room in Phelan Hall or the media studies lab in Cowell Hall. However, declarations and photographs included with the Friends of KUSF filing show that the University does not have the ability to originate programming from campus. Korn and Franck wrote, “USF's repeated claims to the contrary at best show willful ignorance of the facts sworn to, at worst constitute perjury in light of this photographic evidence.”

Friends of KUSF attorneys also disputed the claim by USF and CPRN that on-air fundraising by CPRN since January 18 is legal. Commission rules bar third-party fundraising on the air.

“The parties have produced no documents, declarations or other evidence suggesting that any on-air fundraising on or after January 18, 2011 was to benefit USF, the Licensee.”

Finally, Korn and Franck pointed out that USF and CPRN did not produce all the documents called for in the Letter of Inquiry. On some points, USF and CPRN claimed “privilege,” however, the parties did not produce a privilege log, required to show the nature of the documents being withheld. USF and CPRN also requested a modification of the original Letter, asking that only documents regarding the sale to and from University President Father Stephen Privett be supplied, rather than those to and from other USF officials including USF attorney Donna Davis and USF Vice President of Business/Finance Charlie Cross, as the FCC originally requested.

The FCC granted the request. However, Privett, in his sworn declaration, claimed that he was not heavily involved in the negotiations and that he deletes all of his emails.

“Father Privett's preposterous claim that no Documents exist concerning his role in the proposed sale of KUSF, the PSOA or communications (with) CPRN is implausible,” attorneys for Friends of KUSF wrote. “His narrowly tailored response ignores the Commission's Instructions concerning production of Documents, including Documents that are 'computer-stored' or that constitute 'computer material.’”

Korn and Franck concluded their filing by noting the proposed sale exemplifies “a pattern of college and other non-commercial stations being absorbed into a national program streaming service.”

“The acquisitive strategy behind this assignment, if permitted, will mark a sea change for public radio, notably among other things, as a stinging defeat for localism,” the attorneys wrote.

Since being taken off the air, former KUSF DJs and volunteers as well as members of the community have worked to stop the sale of the license. Partnerships have been established, both locally and nationally, including with WFMU (91.1 Jersey City, N.J./90.1 Hudson Valley, N.Y.), which has been providing an Internet stream, called KUSF in Exile, since March (www.wfmu.org/kusf.pls).

Community members have weighed in against the sale, including the San Francisco Board of Supervisors, San Francisco mayoral candidate Leland Yee and Supervisor and sheriff candidate Ross Mirkarimi. For more information, go to www.savekusf.org.

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