

San Mateo Community Television Corp.

c/o The Law Office of Allen J. Capeloto

411 Borel Avenue - Suite 600

San Mateo CA 94402

February 13, 2012

Department of General Services
San Mateo Community College District
3401 CSM Drive
San Mateo, CA 94402

RE: RFP 86635 KCSM-TV Sale RFP

Dear Sir or Madam:

San Mateo Community Television Corp. is pleased to present for your consideration a total offer of \$5,800,000.00 in response to the above-referenced RFP for the Sale of KCSM-TV.

Attached, you will find specifics and supporting documents as required by the RFP instructions.

Please feel free to contact me at (917) 512-9536 with any clarifications or questions you may have.

On behalf of San Mateo Community Television Corp., I would like to thank you for your consideration of our proposal.

Very truly yours,



Kenneth Devine
Chief Operating Officer

cc: J. Schwartz

**SAN MATEO COMMUNITY TELEVISION CORP.
PROPOSAL RESPONSE TO RFP 86635 – Sale of KCSM-TV**

February 13, 2012

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I. INTRODUCTION

The central mission of **San Mateo Community Television Corp. (SMCTV)** is to preserve KCSM's non-commercial educational television broadcast license and the invaluable reserved spectrum associated with that authorization. Our goal in the long term is to develop and strengthen KCSM to insure that the station continues as a vital, independent public service media resource for the San Mateo community and the larger Bay Area.

Our operational and programming plans include establishing a new community-based identity and Board of Governance for the station. We feel this step will lead to critical funding and partnering opportunities and will enable us to introduce an expanded slate of news, information, and cultural content. It is essential to the success of a re-invented KCSM that the station be perceived and understood as serving a broad community, beyond the College and its immediate environs.

Our strategy for growing KCSM into a sustainable, vibrant public service media outlet is to follow the key tenets of the *Knight Commission on the Information Needs of Communities in a Democracy*, originally released in 2009, suggesting very clearly that in order to survive and flourish, public broadcasting needs to transform itself into multiplatform public media that is dedicated to becoming "more local, more inclusive and more interactive."

We believe that this updated mission can be implemented most effectively by continuing to operate the station in conjunction with the participation of College of San Mateo students and communications curriculum to the fullest extent possible. With the help of our founding Board members, Drummond Pike, Allen Capeloto, and Stephen Thomas (see "Appendix C: Board Member Biographies") and our Chief Development Officer, Hamilton Fish (see "Appendix D: Officer Biographies"), our hope is to establish working relationships with other media outlets, including community and investigative nonprofit news organizations such as The Bay Citizen, based in San Francisco, and the Center for Investigative Reporting, based in Berkeley. We believe that these prospective collaborations would provide unique opportunities as well for students, as they enter a vastly altered news and information provider landscape that is increasingly populated by non-profit and academic organizations.

In addition, the EBS Companies, principal funding sources for SMCTV, have a long and distinguished history of delivering non-commercial educational programming in metropolitan areas across the country. As delineated in Appendix E, the preservation and development of non-commercial public media is a key component of the funders' overall philosophy and mission.

About San Mateo Community Television Corp. (SMCTV)

SMCTV is a new non-profit public benefit corporation created by the Independent Public Media project (IPM) and its principal supporters, the non-profit organizations collectively known as the EBS Companies.

An in depth description of IPM and its relationship to the EBS Companies including their President/Founder, John B. Schwartz, is located on its public website, <http://www.independentpublicmedia.org>. We list this URL in a separate attachment, Appendix E, to this document, as an eco-friendly alternative to printing and duplicating the content of the site and request that the entirety of the site be considered an official part of this submission.

II. THE OFFER

A. Total Cash Offer and Closing

San Mateo Community Television Corp. is pleased to present a total offer of \$5,800,000.00, of which \$5,000,000.00 will be paid by wire transfer of immediately available federal funds at the closing of the transaction. The \$800,000.00 balance will be guaranteed by the EBS Companies, and will be payable in two \$400,000.00 installments, plus accrued interest pegged to a mutually acceptable index, on the first and second anniversaries of the closing. The closing details and payment details, as well as provision for a fiscal agent, if necessary, will be specified in the Asset Purchase Agreement to be executed between San Mateo Community College District and San Mateo Community Television Corp.

B. Source of Cash

The cash for this transaction will be paid chiefly from the EBS Companies' brokerage accounts. The most recent available account statements are attached as Appendix G: Financial Statements.

C. Intention to Lease District Space

We believe that our operational and development strategies can be implemented most effectively by continuing to operate KCSM with the participation of College of San Mateo students and the Communications Department to the fullest extent possible. Therefore, it is our intent to lease the space presently housing the KCSM-TV master control for the stated maximum period of one year. This would allow us to seamlessly continue broadcast operations of the station while exploring the feasibility of the continuing participation of students working within the curriculum of the Communications Department.

III. GOVERNING BOARD

San Mateo Community Television Corp. has appointed three outstanding community leaders to the company board. These distinguished individuals represent diverse interests and constituencies in the San Mateo community and the larger Bay Area – one is a pioneer in regional progressive philanthropy, another a leader in regional arts education, and the third is a leading professional from the San Mateo community itself. Each is committed to protect and strengthen the independence of public television. These initial Directors are listed below (please also see "Appendix C: Board Member Biographies" for additional information). San Mateo Community Television Corp. is currently in discussion with additional candidates and plans to name the remaining directors shortly. The first organizational meeting of the Board and adoption of bylaws will take place within the next 30 days.

Current Directors:

Drummond Pike, Director, Working Assets, Founder and former CEO, The Tides Foundation

Allen J. Capeloto, The Law Office of Allen J. Capeloto

Stephen Thomas, Executive Director. The Oxbow School

IV. "ADVERSE FINDINGS" STATEMENT

KD (initial if statement is true) There are no adverse findings with respect to violations of the law for the board members which would preclude the entity from purchasing the station.

V. DESCRIPTION OF THE ORGANIZATION

A. Structure, State of Organization, Non-Profit Status

San Mateo Community Television Corp. was incorporated on February 9, 2012 in the State of California as a non-profit public benefit corporation (please see "Appendix F: Certified Articles of Incorporation").

As stated in its Articles of Incorporation, the specific purpose of San Mateo Community Television Corp. is to qualify as, and then to perform services to the general public as the licensee of one or more noncommercial educational broadcast stations. In furtherance of this public purpose, San Mateo Community Television Corp. has adopted as its core purposes:

- Under rules and regulations of the Federal Communications Commission, in effect now or in the future, to become eligible to be the licensee of one or more noncommercial educational radio or television broadcast stations;
- As a public telecommunications entity, to disseminate public telecommunications services to the public;
- To produce and broadcast programs of intellectual integrity and cultural merit that recognize viewers' and listeners' intelligence, curiosity and interest in the world around them;
- As an independent and not-for-profit public broadcaster and producer, to provide viewers and listeners with quality, compelling non-sectarian programs that serve, challenge and elevate the local community;
- To complement broadcasting services with educational projects and web-based initiatives;
- To carry on other educational activities associated with this goal as allowed by law.

The Board will be comprised of seven directors. Four directors will be domiciled within the community of license and, additionally, will be representative of a broad cross section of community elements (please see "VI. FCC Requirements," below). The remaining three directors will represent Public TV Financing, LLC (PTVF), a subsidiary organization of the EBS Companies, and will have the power to appoint and remove all seven directors of San Mateo Community Television Corp.

B. IRS Determination

San Mateo Community Television Corp. will expedite the filing of an application with the Internal Revenue Service for recognition as a publicly supported 501 (c) (3) tax-exempt organization. San Mateo Community Television Corp. will also file for similar tax-exemption status with the State of California upon favorable determination from the IRS.

C. "Attributable Interests" Statement

Neither San Mateo Community Television Corp. nor any of its affiliated organizations has an attributable interest in any radio or television stations.

D. Audited Financial Statements

San Mateo Community Television Corp. was organized in response to the opportunity to purchase and thereafter operate KCSM-TV as a public media broadcast television station. Due to its recent formation, there are no annual audited financial statements.

VI. CONSIDERATIONS TO OFFER EMPLOYMENT TO DISPLACED KCSM EMPLOYEES

In response to Section 4) e) of the KCSM RFP, San Mateo Community Television Corp. responds "YES." It is our intention to offer employment to some of the displaced KCSM employees subject to the acceptance of our purchase offer.

VII. FCC REQUIREMENTS

Pursuant to Worksheet #2, Representative TV Governing Board (Section II, Question 3) from FCC Form 340, the San Mateo Community Television Corp. Articles of Incorporation (Article V. Governance) states that the Board of Directors shall be "... representative of a broad cross section of community elements, such as businesses, civic groups, professions, religious groups, schools, and government. At no time shall the composition of the board include less than four individuals representative, respectively, of at least four such diverse elements."

The current Directors (including city of residence and community element represented) are listed below. Please refer to "Appendix C, Board Member Biographies," for additional information.

Current Directors:

Drummond Pike Director, Working Assets,
Founder and former CEO, The Tides Foundation
Mill Valley – Charities

Allen J. Capeloto The Law Office of Allen J. Capeloto
San Mateo – Professions

Stephen Thomas Executive Director, The Oxbow School
Napa – Education

VIII. CPB QUALIFICATIONS

KD I believe we could qualify for CPB financial support.

Appendix A

BIDDER INFORMATION AND SIGNATORY PAGE

Bidder Name: San Mateo Community Television Corp.
c/o The Law Office of Allen J. Capeloto
 Business Address: 411 Borel Avenue, Suite 600, San Mateo, CA 94402
 Telephone: (917) 512-9536 Fax: (303) 756-9962
 Email: devine@personal-cto.com Web Site: www.independentpublicmedia.org
 Type of Firm: Corporation: X Proprietorship: _____
 Partnership: _____ Joint Venture: _____
 Other (please describe): _____

Business License Number: newly-formed business
 Number of years in business under firm name: newly-formed business
 Full names of firm's owners (> 5% ownership), officers and managing employees:
Please see attachment

Has the firm changed its name within the past 3 years? YES ☐ NO ☒
 If yes, provide former name(s): _____

 If yes, explain:

Have officers or principals of the firm ever had their business license suspended or
 revoked for any reason? YES ☐ NO ☒
 If yes, please explain:

Name and title of person completing responsible for submission of this Proposal and the
 responses to this questionnaire:

Signature: Kenneth Devine Date: January 10, 2012
 Name & Title: Kenneth Devine, Chief Operating Officer
 Phone: (917) 512-9536 Email: devine@personal-cto.com

ATTACHMENT TO APPENDIX A

FULL NAMES OF FIRM'S OWNERS, OFFICERS AND MANAGING EMPLOYEES

San Mateo Community Television Corp. was incorporated in the State of California on February 9. The corporation currently has three directors and two officers, listed below.

Candidates for the remaining directors and officers are under review; additional nominations and appointments will be announced shortly.

The current directors are:

Drummond Pike, Director, Working Assets, Founder and former CEO, The Tides Foundation

Allen J. Capeloto, The Law Office of Allen J. Capeloto

Stephen Thomas, Executive Director, The Oxbow School

Please refer to "Appendix C: Board Member Biographies," for additional information.

The current officers are:

Hamilton Fish, Chief Development Officer

Kenneth Devine, Chief Operating Officer

Please refer to "Appendix D: Officer Biographies," for additional information.

Appendix B

NON-COLLUSION AFFIDAVIT

STATE OF CALIFORNIA

COUNTY OF San Mateo

I, Kenneth Devine, being first duly sworn, deposes and says that I am
 (Typed or Printed Name)
Chief Operating Officer of San Mateo Community Television Corp.
 Title (the Bidder).

the party submitting the foregoing Proposal. In connection with the Proposal, the undersigned declares, states and certifies that:

1. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, Bidder, association, organization or corporation.
2. The Proposal is genuine and not collusive or sham.
3. The Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or anyone else to put in a sham proposal, or to refrain from submitting a proposal.
4. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Proposal price, or that of any other Bidder, or to fix any element of the Proposal price or terms or those of any other bidder, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.
5. All statements contained in the Proposal and related documents are true.
6. The Bidder has not, directly or indirectly, submitted the Proposal price or terms or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, bidder, association, organization, Proposal depository, or to any member or agent thereof to effectuate a collusive or sham Proposal.

Executed this 10th day of January, 2012, at San Mateo, San Mateo County, CA.
 (City, County and State)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature: Kenneth Devine

Date: January 10, 2012

APPENDIX C

BOARD MEMBER BIOGRAPHIES

DRUMMOND PIKE, Board of Directors

Drummond Pike founded Tides Foundation in 1976; the Tides Center in 1996, the Advocacy Fund in 1994, Groundspring.org in 1999; Tides Inc. in 2003, Tides Shared Spaces in 2004; and the Tides Network in 2006. He served as Chief Executive of all until November, 2010. He completed his transition from Tides in the spring of 2011.

He now consults with several principals on philanthropic and financial matters and was recently named a Principal with Equilibrium Capital, a private equity Impact investing firm based in Portland, OR. He also volunteers time with Paladin Partners to support emerging progressive leaders and organizations.

In the 1990's, Tides emerged as a key provider of infrastructure to the progressive community, supporting donors and grant makers through a range of philanthropic services, working with newly forming organizations in what became the nation's largest sponsorship organization, developing low cost online donation services (Groundspring merged with Network for good in 2006), and developing multi-tenant nonprofit centers through Tides Shared Spaces. In 2008, the Advocacy Fund expanded significantly as a key sponsor of advocacy initiatives focused on immigration, climate change, and the eldercare work force. By 2010, Tides' aggregate cash flow regularly exceeded \$200 million annually and was often ranked, when aggregated, among the top 100 charitable enterprises in the US.

Drummond currently serves on the Board of Directors of Working Assets, a telecommunications company dedicated to progressive philanthropy and political activism, and was among the founders of its predecessor company. His service on non-profit Boards includes: Island Press, Environmental Working Group, Tides Canada Foundation, Democracy Alliance, JK Irwin Foundation, Livingre Foundation, and Enlyst Foundation. Drummond received a Masters of Political Science from the Eagleton Institute at Rutgers University after graduating with Honors from the University of California, Santa Cruz in 1970.

A fourth generation Californian, Drummond resides in Mill Valley, CA with his wife, Liza, founder of Resource Media, who recently launched New Media Mentors in association with Netroots Nation. He is also a licensed commercial river guide in the Grand Canyon with Arizona Raft Adventures.

ALLEN J. CAPELOTO, Board of Directors

Allen J. Capeloto is a graduate of Stanford University (A.B., Class of 1971), and the University of California, Hastings College of the Law (J.D., Class of 1976). He has worked in the area of civil law continuously since 1976. While in law school, he was an intern with the Marin County Public Defender's Office, and a law clerk for Melvin M. Belli in San Francisco. He taught for two years at Hastings College of Law, as a legal writing and research instructor. Since 2001, he has been the Small Claims Court Advisor for the San Mateo County Superior Court, and serves on the Small Claims Mediation Advisory Committee for San Mateo.

A past member of the Bar Association of San Francisco, the Lawyer's Club of San Francisco, and the California Trial Lawyers' Association, Allen currently is a member of the San Mateo County Bar Association.

STEPHEN THOMAS, Board of Directors

Stephen Thomas established The Oxbow School in the summer of 1998 with the underlying educational philosophy of encouraging students to explore their processes of thinking and creating through working together as well as challenging one another.

Prior to his innovative work at The Oxbow School, Stephen acted as Chair of the Art Department at the Urban School of San Francisco where he also taught studio art and art history from 1984 to 1998 and served as a grade-level dean. He was also instrumental in developing the Aim High summer program. In 1994, Stephen was awarded the Klingenstein Fellowship to study at Columbia University's Teachers College.

In the late 1970s, Stephen worked at Crown Point Press, printing intaglio editions for artists. He ran his own printmaking business from 1980 to 1992. Stephen is widely admired as a master printer and a leader in the community of African American artists in California and across the nation.

APPENDIX D

OFFICER BIOGRAPHIES

HAMILTON FISH, Chief Development Officer

Hamilton Fish, a graduate of Harvard University (Class of 1973), is a publisher, social entrepreneur, environmental advocate, and film producer. He is currently the President of the Public Concern Foundation and Publisher of the twice-monthly independent political periodical the *Washington Spectator*, edited by Lou Dubose.

Ham is perhaps best known for his work revitalizing *The Nation* magazine (the country's oldest political weekly) and its sister foundation, the Nation Institute. He is credited with the development of a leading journalism fellowship program for independent writers, as well as the Alfred Knobler Fellowships in support of journalists of color. In addition he initiated an investigative journalism division to fund and oversee long-form investigative projects for publication in the independent press.

As a film producer, Ham established a partnership with Marcel Ophuls (director of *The Sorrow and the Pity*, the acclaimed documentary on resistance and collaboration in Vichy, France) to complete production on *The Memory of Justice*, which was praised by film critic Vincent Canby in *The New York Times* as expanding "... the possibilities of the documentary motion picture in such a way that all future films of this sort will be compared to it." Ham's next project with Ophuls was the 1989 Academy Award winner for Best Feature Documentary, *Hotel Terminus: The Life and Times of Klaus Barbie*. Ham was also a producer on *Stealing the Fire*, a documentary that traced the development of the uranium bomb, from the labs of Nazi Germany to the eventual transfer of the technology to Pakistani and Iraqi agents.

While at Harvard University in 1971, Ham co-founded the National Movement for the Student Vote to assist prospective college-age voters whose efforts to register to vote on or near their campuses was resisted by local authorities. Ham has also run for United States Congress in New York State.

KENNETH DEVINE, Chief Operating Officer

Ken Devine has been an accomplished media executive and entrepreneur for over 30 years. He founded and operated the consulting firm Broadcast Technical Services (BTI) in New Orleans in 1979. An early project was the licensing and construction of WWOZ, New Orleans community radio. BTI provided engineering and technical management services to radio and television broadcasters, manufacturers, government agencies and non-profit organizations.

Ken and BTI worked extensively with community radio and television licensees including the Pacifica Foundation, Acorn, Radio Bilingüe and Educational Broadcast Foundation (WNET-TV) until 1995 when a lengthy consulting engagement with WNET evolved into a senior management position and relocation to New York City, where he served for over 15 years, most recently as Vice President of Media Operations and Chief Information Officer.

During his tenure at WNET, Ken was responsible for creating successful public/private partnerships with studio and post-production companies in NYC to co-operate and market the excess capacity of WNET facilities. Comedy Central's *Daily Show* originally launched from WNET's studios and Paramount Television's *Montel Williams Show* spent two seasons at WNET side-by-side with *The MacNeil Lehrer News Hour*, sharing a control room. The revenue generated from these arrangements helped to sustain WNET and its productions during a difficult period.

Ken was also responsible for creating a five-year collaborative project with PBS, WGBH and NYU to create a centralized access and preservation system for public television. The project was funded under the auspices of the Library of Congress and lead directly to the CPB American Archive project.

APPENDIX E

INDEPENDENT PUBLIC MEDIA (IPM), THE EBS COMPANIES, AND FOUNDER/PRESIDENT JOHN B. SCHWARTZ

San Mateo Community Television Corp. (SMCTV) is a new non-profit public benefit corporation created by the Independent Public Media project (IPM) and its principal supporters, the non-profit organizations collectively known as the EBS Companies.

The EBS Companies

The EBS Companies are five non-profit organizations:

- ^ Instructional Telecommunications Foundation,
- ^ Chicago Instructional Technology Foundation,
- ^ Denver Area Educational Telecommunications Consortium, Inc.,
- ^ Portland Regional Educational Telecommunications Corp., and
- ^ Twin Cities Schools Telecommunications Group.

Utilizing FCC-dedicated frequencies reserved specifically for educational purposes (Educational Broadband Service or EBS spectrum), the EBS Companies annually deliver thousands of hours of non-commercial instructional programming – completely free of charge – to schools and institutions in major metropolitan areas across the country.

In addition to these distance learning programs, a key part of the EBS Companies' vision is to preserve and develop non-commercial public media in the United States.

Over the course of their 28-year history, the EBS Companies have contributed more than \$10 million to public media organizations offering dissenting, alternative, and disruptive ideas to counter the unchallenged, empty and even reactionary points of view from traditional commercial "mediapolies." Free Speech TV, a non-profit organization and the country's leading progressive TV network, has received long-standing support from the EBS Companies.

The EBS Companies' video service provides fully non-commercial content aligned with states' established public curricula serving more than 175,000 students.

Understanding that access to information is now an essential requirement in today's world, in 2008 the EBS Companies launched wireless broadband service exclusively for schools and nonprofits. Based on an innovative operating premise, Mobile Citizen™ is able to provide high-quality mobile 4G wireless service at the nominal cost of just \$10 per month. Through this initiative, the EBS Companies provide breakthrough "21st Century" tools advancing national education, human services, and civic goals, helping communities bridge the digital divide.

Throughout its history, the EBS Companies have established unique and successful roles as active philanthropic resources for education and public media initiatives, having funded numerous organizations that promote progressive social change, civic engagement, tolerance and equal access to information. In addition, they also provide awards ranging from small grants for independent filmmakers to more substantial support of organizations using new forms of technology and the media.

Other Company grants have gone to such educational activities as a summer reading program, a youth media festival, and a number of programs to encourage young people to produce their own film and video work. The EBS Companies anticipate awards totaling approximately \$15 million over the next five years.

The EBS Companies lease their spectrum to commercial operator, Clearwire which, in concert with its principal investor, Sprint Wireless, delivers 4G broadband to major U.S. cities. In exchange for the use of this spectrum, Clearwire provides the EBS Companies with royalties which the Companies allocate to their operations and philanthropic efforts.

John B. Schwartz, President and Founder of the EBS Companies

John B. Schwartz has been an advocate for public broadcasting for nearly 40 years. This advocacy stems from his steadfast commitment to public ownership of the nation's airwaves. Early in his career, John co-founded (1974) WYEP-FM in Pittsburgh as a locally-based station, staffed and operated by community members with the mission to give a democratic "voice to the voiceless." Likewise, when a disenfranchised community was unable to find an area outlet willing to air their views on local issues and properly convey their culture, John helped found KRZA-FM, a bi-lingual station serving southern Colorado and northern New Mexico.

Convinced that the established media in Denver was "too much a part of the governing structure of this country to be able to criticize it very thoroughly," John helped found station KBDI-TV and later facilitated financial assistance for the launch of WYBE, a non-commercial television station in Philadelphia.

As TV turned to cable distribution, John helped launch The 90's Channel, an alternative network, and also spearheaded the launch of Free Speech TV (FSTV).

In 1983, John established the EBS Companies to foster the growth of American public media and encourage the presentation of critical information to the marketplace of ideas. To this end, under John's stewardship, the EBS Companies have formed Independent Public Media (IPM) and Public TV Financing, LLC to address the concerns of many that independent public TV stations are rapidly becoming an endangered species.

An in-depth description and detail of IPM and its relationship to the EBS Companies including their founder, John B. Schwartz, is located on its public website:

www.IndependentPublicMedia.org.

APPENDIX F
CERTIFIED ARTICLES OF INCORPORATION

3441380

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

FEB - 9 2012

ARTICLES OF INCORPORATION OF
SAN MATEO COMMUNITY TELEVISION CORPORATION

ARTICLE I: NAME OF CORPORATION

1. The name of the corporation is San Mateo Community Television Corporation.

ARTICLE II: PURPOSE OF CORPORATION

2. This corporation is a nonprofit public benefit corporation, and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public purposes.

3. The specific purpose of this corporation shall be to qualify as, and then to perform services to the general public as the licensee of one or more noncommercial educational broadcast stations. In furtherance of this public purpose the corporation adopts as its core purposes:

- Under rules and regulations of the Federal Communications Commission, in effect now or in the future, to become eligible to be the licensee of one or more noncommercial educational radio or television broadcast stations;
- As a public telecommunications entity, to disseminate public telecommunications services to the public;
- To produce and broadcast programs of intellectual integrity and cultural merit that recognize viewers' and listeners' intelligence, curiosity and interest in the world around them;
- As an independent and not-for-profit public broadcaster and producer, to provide viewers and listeners with quality, compelling non-sectarian programs that serve, challenge and elevate the local community;
- To complement broadcasting services with educational projects and web-based initiatives
- To carry on other educational activities associated with this goal as allowed by law.

4. This corporation is organized exclusively for educational purposes, within the meaning of Internal Revenue Code §501(c)(3) or the corresponding provision of any future United States internal revenue law. Despite any other provision in these articles, the corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that do not further the purposes of this corporation, and the corporation shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from federal income tax under Internal Revenue Code §501(c)(3) or (b) the corresponding provision of any future United States internal revenue law, or (c) a corporation, contributions to which are deductible under Internal Revenue Code §170(c) (2) or the corresponding provision of any future United States internal revenue law.

ARTICLE III: AGENT FOR SERVICE OF PROCESS

5. The name and address in the State of California of the corporation's initial agent for service of process are Michael Couzens; Law Office of Michael Couzens, 6536 Telegraph Avenue, Suite B201, Oakland, CA 94609.

ARTICLE IV: TAX-EXEMPT STATUS OF CORPORATION

6. Tax-exempt status

(a) No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise permitted by Internal Revenue Code §501(h)(9)), and this corporation shall not participate or intervene in (including publishing or distributing statements) any political campaign on behalf of any candidate for public office.

(b) All corporate property is irrevocably dedicated to the purposes set forth in Article 2. No part of the net earnings of this corporation shall inure to the benefit of any of its directors, trustees, officers, private shareholders or members, or to individuals.

(c) On the winding up and dissolution of this corporation, after paying or adequately providing for the debts, obligations, and liabilities of the corporation, the remaining assets of this corporation shall be distributed to an organization (or organizations) organized and operated exclusively for educational purposes, if the organization has established its tax-exempt status under Internal Revenue Code §501(c)(3) (or corresponding provisions of any future federal Internal Revenue Code law).

(d) The corporation will distribute its income for each tax year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Internal Revenue Code §4942 or by corresponding provisions of any later federal tax laws.

(e) The corporation will not engage in any act of self-dealing as defined in Internal Revenue Code §4941(d) or in corresponding provisions of any later federal tax laws.

(f) The corporation will not retain any excess business holdings as defined in Internal Revenue Code §4943(c) or in corresponding provisions of any later federal tax laws.

(g) The corporation will not make investments in a manner that would subject it to tax under Internal Revenue Code §4944 or under corresponding provisions of any later federal tax laws.

(h) The corporation will not make any taxable expenditures as defined in Internal Revenue Code §4945(d) or in corresponding provisions of any later federal tax laws.

ARTICLE V. GOVERNANCE

7. The ultimate oversight, control and governance of the corporation shall lie with its board of directors. Directors shall qualified and appointed in a manner that assures, at all times, that the board is representative of a broad cross section of community elements, such as businesses, civic groups, professions, religious groups, schools, and government. At no time shall the composition of the board include less than four individuals representative, respectively, of at least four such diverse elements.

8. The procedure for qualification, selection, seating and removal of board members shall be as set forth in the bylaws, provided that no board appointment shall occur in derogation of para. 7 hereof.

Date: February 7, 2012

By: _____


Michael Couzens,
Sole Incorporator



I hereby certify that the foregoing
transcript of _____ page(s),
is a full, true and correct copy of the
original record in the custody of the
California Secretary of State's Office.

FEB 11 2012

Date:

John Brown
John Brown, Secretary of State

APPENDIX G
FINANCIAL STATEMENTS

Please note that this Appendix F contains confidential financial information.

Other than providing evidence of the source of cash for this transaction, the information contained in this Appendix F has no relevance to the Proposal Response. Therefore, San Mateo Community Television Corp, the EBS Companies and Public TV Financing, LLC respectfully request that the information provided in this Appendix F be redacted from public disclosure.

The most recent available brokerage financial statement for each of the five EBS Companies (Instructional Telecommunications Foundation, Chicago Instructional Technology Foundation, Denver Area Educational Telecommunications Consortium, Inc., Portland Regional Educational Telecommunications Corp., and Twin Cities Schools Telecommunications Group) is attached hereto.

Roecks, Jan

From: Roecks, Jan
Sent: Thursday, February 23, 2012 11:22 AM
To: [REDACTED] *Ken Devine*
Subject: Follow up questions to RFP 86635 KCSM-TV

Re: San Mateo Community TV response to RFP 86635 KCSM-TV

Dear Ken Devine,

Thank you for responding to the San Mateo County Community Colleges Request for Proposal for the sale of KCSMTV. The District needs some additional information from you to fully evaluate your response.

- 1) Please respond more fully to Section 1- Request for Proposal; subsection 1- Responsible bidder proposal; "responsible bidder is a bidder that has the financial resources, personnel, facilities, integrity and overall capacity to consummate the contract successfully". Please provide specifics of an outline of your operational plans and overall capacity to run the television station.
- 2) Please clarify your proposed use of students in your organization.

Please let me know if you have any questions regarding this request. I look forward to receiving this additional information, in writing, by March 1, 2012.

Regards,
Jan Roecks

Jan Roecks
Director of General Services
San Mateo County Community College District



Please consider the environment before printing this email.

Addendum to San Mateo Community Television Corp. Response to RFP 86635, KCSM-TV

San Mateo Community Television Corp. (SMCTV) is submitting this document in response to a request we received on February 23, 2012 from the College of San Mateo for further information relating to SMCTV's bid to acquire the FCC license and certain assets currently held by KCSM-TV.

SMCTV was created by Independent Public Media (IPM), an initiative developed by a consortium of five non-profit educational organizations known as the "EBS Companies" to preserve at risk public television stations and to strengthen their independent educational mission.

The sections below address the following areas:

- Financial resources and our capacity to consummate the contract successfully
- Transitional and long term operational plans including: development and fundraising, content, personnel , distribution and facilities
- Academic partnerships and the role of students in TV operations

Financial Capacity and Resources

The funds required to consummate the purchase of the KCSM-TV license and associated assets and to offset any transitional operating deficits by the new entity will be provided by the EBS Companies, whose liquid assets exceed \$33,000,000 as documented in account statements attached as Appendix G in our RFP submission.

Operations, Mission Statement and Outline of Plan

Our plan is to establish KCSM-TV as a respected provider of high value news, information and cultural content serving the needs of the local region through multiple technologies.

Our first important step was to build a strong, engaged Board for the new company composed of public interest, professional and cultural leaders drawn from San Mateo and the larger Bay Area, together with publicly-spirited individuals who bring print and broadcast journalism backgrounds to the mix and who also have strong ties to the Bay Area. Through the efforts of our founding Board members Drummond Pike, Allen J. Capeloto, and Stephen Thomas, and Hamilton Fish, our chief development officer, it is our intent to recruit additional members who can raise money and foster partnerships with a range of

funding institutions and content providers in Northern California. Significant increases in KCSM's capabilities will require significant increases in fund-raising.

Detailed plans regarding personnel, staffing and facilities will be refined further subsequent to a thorough discussion and exploration with the College as to whether it has the capacity and interest in continuing to house the KCSM-TV operations. To be clear, we envision the legal and financial relationship between the two entities as entirely separate and distinct. Our financial projections are calculated on a hard cost, cash basis for facilities rental, occupancy and any support services which SMCTV may obtain from the College. If SMCTV were to utilize College resources beyond a brief transition period, it is our intent to pay fair market value for them.

In the event that we are unable to house our operations at the College, we will arrange to procure and relocate appropriate replacement facilities within San Mateo County. In either scenario, we plan to staff and operate KCSM-TV in a manner that will comply with CPB's requirements for Community Service Grant qualification including differentiated, non-duplicative broadcast content consistent with our independent educational mission.

SMCTV is able to call on the expertise of IPM's chief executive, John Schwartz, who was instrumental in establishing two new public television stations, KBDI-TV, Denver, and WYBE-TV, Philadelphia, as well as numerous Educational Broadband Service stations across the country.

IPM's chief operating officer, Ken Devine, is an engineer and long-time executive at WNET-TV, New York. He will design and lead our operational efforts while serving as interim station leader in San Mateo during the transition period.

SMCTV plans to develop innovative collaborations with content providers and educational institutions based in Bay Area. We intend to supply programs that are local and inclusive, utilizing not only conventional broadcast distribution, but also online digital platforms.

New technologies have made television production, operations, and distribution more efficient. They also allow television stations to expand their services beyond the confines of traditional broadcasting. In addition to conventional broadcasting, we will implement low cost workflows and build infrastructure that supports deployment of engaging and informative websites, mobile delivery, and social media integration. We are fortunate that San Mateo is located near the epicenter of the innovations that are transforming all electronic media, and we plan to recruit experts to help us guide the station's evolution into a multi-media organization.

We hope to develop active collaborations with other innovative local stations across the country, both exporting and importing program material.

The Role of Students in KCSM –TV Operations

Although we have yet not had the opportunity to discuss the prospect of student involvement in the new incarnation of KCSM-TV with officials at the College of San Mateo, we bring considerable experience with the integration of students in print and broadcast media to this project and it is our hope that together we will be able to develop one or more models which will enable students at the college to participate in the operations of the station on a mutually beneficial basis.

The logical starting point would be to explore the development of an intern program that ideally would provide college credits. We would work with the college's Digital Media Department to develop an intern curriculum that would complement their courses. As journalism evolves, we are especially committed to developing the natural synergies between traditional broadcast television and the new digital platforms – and from reading the CSM catalogue it is clear that this emphasis is shared by the administration and faculty. We feel this is a particularly promising direction for the collaboration between the college, the students and the new station – the station would be helping to fulfill the college's goal of providing the kind of "hands-on career training" in broadcast and electronic media and journalism that only comes from direct engagement.

Roecks, Jan

From: Roecks, Jan
Sent: Monday, March 12, 2012 12:41 PM
To: [REDACTED] Ken Devine
Subject: KCSM TV RFP 86635

Importance: High

Dear Mr. Devine:

At Section 7 of the above-referenced Request for Proposal, the District reserved the right to negotiate with and/or request best and final offers from selected bidder(s), as the District may deem appropriate in its sole and absolute discretion. We are pleased to inform you that based upon our review of the six bids submitted we have determined that your bid is one of two closely competitive bids that are in contention for selection. We are therefore requesting some additional information. Your response should include your best and final financial offer.

With respect to Section II.A. of your proposal, "Total Cash Offer and Closing", your offer includes deferred payments of \$800,000 of the proposed purchase price in two installments, guaranteed by the EBS Companies. What forms of security (such as letters of credit, commitment letters, or liens) would be provided to assure that the payments would be made? If the sole security is to be guarantees by the EBS Companies, will they segregate assets to provide dedicated funds for those payments?

With respect to Section II.C. of your proposal, "Intention to Lease District Space", please indicate an offering price or range of prices that you are prepared to pay for the use of the master control space. After reviewing your proposal to integrate our students in your operations to some extent, we would consider leasing you space beyond the one-year maximum that was specified in the RFP. Please indicate whether you would be interested in leasing master control space for longer than one year, and, if so, for how much longer.

With respect to Section V.A. of your proposal, "Structure, State of Organization, Non-Profit Status", you state as follows:

The Board will be comprised of seven directors. Four directors will be domiciled within the community of license and, additionally, will be representative of a broad cross section of community elements (please see "VI. FCC Requirements," below). The remaining three directors will represent Public TV Financing LLC (PTVF), a subsidiary organization of the EBS Companies, and will have the power to appoint and remove all seven directors of San Mateo Community Television Corp.

Based on that statement and the information set forth in your Appendix E, we would like further information as to the ultimate control over the bidder.

It appears that three directors, who may or may not be otherwise associated with the San Mateo area, will control the Board by virtue of their power to appoint and remove themselves and the four local directors. Further, those three controlling directors will apparently serve at the pleasure of PTVF, which in turn is controlled by the EBS Companies. We have reviewed the Independent Public Media website as you requested. The review of your proposal and the information on that website leaves us with some questions as to governance and control. You characterize PTVF as a subsidiary of the EBS Companies. Through what mechanism do the EBS Companies control PTVF? Is PTVF a nonprofit or a for-profit entity? Do you consider the EBS Companies to be the ultimate controlling party of San Mateo Community Television Corporation? What is the ownership of and who governs the EBS Companies? Would the three controlling directors of the proposed licensee, who apparently would ultimately be responsible to the EBS Companies, be required to assure that any vacancies among the four local and non-controlling directors be filled promptly to assure continued representativeness of the San Mateo community?

- Has your ownership and governance model been approved by the FCC in any other transaction? If not, do you have any assurance or indication from FCC staff that the model is acceptable? If not, do you have an opinion of your FCC counsel that the model falls within the FCC's noncommercial educational ownership rules and policies?

Please keep in mind that a form of Asset Purchase Agreement is part of the RFP, so we assume that you and others submitting proposals are prepared to enter into an agreement that closely tracks that form. Please respond to this request in writing no later than Monday, March 26, 2012 with the requested information and your best and final financial offer. If you have any questions concerning this letter, please address them to Jan Roecks by Wednesday, March 21, 2012 at roecksj@smccd.edu, with a copy to Marilyn Lawrence at marilyn@kcsn.net.

The content of this email will be forthcoming to you in a certified letter sent to you today.

Regards,
Jan

Jan Roecks
Director of General Services
San Mateo County Community College District
(650) 358-6879 - Office



Please consider the environment before printing this email.

Roecks, Jan

From: Roecks, Jan
Sent: Wednesday, March 21, 2012 4:55 PM
To: [REDACTED] Ken Denine
Subject: Due date extended for SMCCCD KCSM TV best and final
Attachments: CEO CTEW Information Request.pdf

Importance: High

Dear Ken,

On March 13th the Chief of the FCC's Video Division issued a letter addressing a number of questions concerning the Commission's noncommercial educational broadcasting rules, Letter to Robert L. Olender from Barbara A. Kreisman, Chief, with respect to Stations WMFE-TV and KDYW(TV). The letter is attached for your information. The San Mateo County Community College District is therefore extending the due date for the bidders response to the best and final request from March 26th to April 6th, 2012 at 2pm in order for the bidder to review the most recent FCC ruling regarding noncommercial education broadcasting rules.

The request for a response "in writing" can be met by submitting a signed PDF document electronically via email by 2:00PM PST on April 6th, 2012. The email should be sent to Jan Roecks at roecksj@smccd.edu.

Please confirm that you have received this email.

Regards,
Jan

Jan Roecks
Director of General Services
San Mateo County Community College District

San Mateo Community Television Corp.

c/o The Law Office of Allen J. Capeloto

411 Borel Avenue - Suite 600

San Mateo CA 94402

By E-mail Delivery in .pdf Format

April 5, 2012

Ms. Jan Roecks

Director of General Services

San Mateo County Community College District

3401 CSM Drive

San Mateo, California 94402-3699

Re: RFP 86635 KCSM-TV Sale

Dear Ms. Roecks:

On behalf of San Mateo Community Television Corporation, I am pleased to submit this reply to your letter of March 12, 2012.

Best and Final Financial Offer

San Mateo Community Television Corp. ("San Mateo" or "SMCTV") hereby amends its financial offer to San Mateo Community College District ("the District"), as follows.

San Mateo continues to propose a total offer of \$5,800,000 with a \$5,000,000 payment at closing, as described in our original proposal.

In addition, San Mateo proposes to make a \$10,000 non-refundable payment to the District monthly, beginning with the seventh month following the filing of the FCC assignment application and continuing for such period as such application remains pending before the FCC. The amount of such non-refundable payments shall be deducted from the \$800,000 balance of the purchase price.

In consideration of San Mateo's making such payments, we request that paragraph 9.1(c) of the Asset Purchase Agreement allow twenty-four (24) months for the FCC to grant the requested transfer from the date the assignment of license application is accepted for filing rather than nine (9) months.

Supplement to Section II.A of Proposal

Your letter poses questions concerning the security that would be available for the \$800,000 in deferred payments. Those payments (i.e., \$800,000, less any credits resulting from the non-refundable payments described above) would be secured by guaranty agreements entered into directly between the District and those EBS Companies which provide guaranties. (The EBS Companies are described in our original submission, and are further described below.) The funds needed to satisfy these guaranties are already incorporated in the guaranteeing companies'

respective endowment funds, and they will continue to be so incorporated. The guaranty agreements will specify that sufficient funds will remain in those endowments to satisfy each guaranteeing EBS Company's respective share of SMCTV's obligation to pay the remaining purchase amount until the required payments are made. Combined guaranties will amount to \$800,000, or such lesser amounts as are required under the Asset Purchase Agreement between SMCTV and the District.

Supplement to Section II.C of Proposal

SMCTV will commit \$25 - \$35 per square foot per year to lease the KCSM-TV master control space. Our research indicates that this range of costs is consistent with market rates for equivalent rental properties within San Mateo County. An exact per-square-foot rate is dependent on how expenses are handled for such items as utilities, heat, janitorial services, occupancy, and other conventional charges and services generally provided in "four wall" facility rental agreements.

SMCTV is interested in negotiating a long-term lease arrangement for this space structured as a two-year lease with three two-year tenant renewal options for a maximum of eight years.

Supplement to Appendix E

The EBS Companies and Their Relationship to SMCTV. As explained in the initial response to the request for proposals, a newly-formed California nonprofit public benefit corporation, SMCTV is the proposed assignee of the KCSM-TV license. The EBS Companies have formed a Colorado limited liability company, Public TV Financing, LLC (PTVF)¹. At the time of this response, based on relative capital contributions, ITF owns 63.6% of PTVF and each of the remaining EBS Companies owns 9.1%, though these relative percentages may change according to how much each EBS Company contributes to the total purchase price of KCSM-TV, as well as to other PTVF-related expenses.

The day-to-day operations in San Mateo will be controlled by SMCTV, which has recruited four distinguished Bay Area citizens, serving as a majority of its seven member board of directors. We have submitted the biographies of three of these local individuals in a prior filing. The biography of the fourth, Deidre English, is attached hereto. These individuals represent four different elements of the community served by KCSM-TV, as called for by FCC policy. Under Article III, Section 2 of the SMCTV Bylaws, "Four of the directors shall, at all times, be representative, respectively, of at least four such diverse elements. These directors are referred to in these Bylaws as the 'Community Directors.'" This mandatory condition must be satisfied contemporaneously with the resignation or removal of one or more of the incumbent directors, assuring continuing and substantial local knowledge and diversity among the majority of the Board. See Article III, Section 4 of the SMCTV Bylaws, a copy of which is attached.

¹ Under Colorado law, no distinction is made between for-profit and non-profit LLCs. Since SMCTV and all of the EBS Companies are non-profit entities, we believe the fact that PTVF, as an intervening entity owned entirely by the EBS Companies, has an undesignated status under applicable state law is immaterial to the overall non-profit nature of the applicant. However, as PTVF serves merely as a convenient means for the EBS Companies to finance the purchase of public TV stations on a joint basis, the EBS Companies can—and, if the District requests, will—establish an expressly non-profit LLC to take the place of PTVF in the structure of SMCC and funding the purchase of KCSM, utilizing the laws of a state like Delaware that makes express provision for non-profit LLCs.

The EBS Companies are in ultimate control of SMCTV through their ability to appoint and remove three of SMCTV's directors, and the power of those three directors to appoint and remove any of the four Community Directors. See Article III, Section 6 of the SMCTV Bylaws. The EBS Companies have designated three of their board members to serve as their representatives on the SMCTV board. They are: Nancy Sanders, John Schwartz, and Howard Shapiro. Their biographies are attached.

The EBS Companies will also exercise influence over SMCTV through their exclusive funding of SMCTV's purchase of the KCSM-TV assets. They may also contribute funding for the continuing operating expenses following FCC approval of the assignment to SMCTV of the KCSM-TV license.

The EBS Companies are all non-profit, non-stock corporations. All are exempt from federal income taxation under Section 501(c)(4) of the Internal Revenue Code. Among other benefits, this tax status requires them to file tax returns annually which include important financial and operational disclosures. These returns are made public. Tax-exempt status also invokes IRS oversight guarding against inurement, self-dealing, and other forms of financial abuse.

All of the EBS Companies hold one or more licenses in the FCC's Educational Broadband Service (EBS). EBS (formerly known as the Instructional Television Fixed Service (ITFS)) is a non-commercial service that the FCC has recognized as bearing significant characteristics in common with public TV stations, as well as certain differences.² The EBS Companies have built an exemplary record as non-profit educational FCC licensees over decades. The EBS Companies have derived significant revenue from contracts which allows for the commercial use of certain capacity of the EBS systems, and, as shown in a prior submission to the District, the EBS Companies have substantial financial endowments as a result. These funds will provide both short-term and long term financial sustainability to the operation of KCSM-TV.

The EBS Companies are:

| <u>Company Name</u> | <u>State of Incorporation</u> | <u>FCC Federal Registration Number (FRN)</u> |
|---|-------------------------------|--|
| Chicago Instructional Technology Foundation (CITF) | Illinois | 0006671903 |
| Denver Area Educational Telecommunications Corp. (DAETC) | Colorado | 0006672000 |
| Instructional Telecommunications Foundation, Inc. (ITF) | Colorado | 0006672034 |
| Portland Regional Educational Telecommunications Corp. (PRETC) | Oregon | 0006672109 |

² See, for instance, the discussion at paragraph 46 of In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants, 15 FCC Rcd 7386, 7406 (Commission 2000).

The EBS Companies are governed by their respective boards of directors. Because they are non-profit, non-stock entities, they have no "owners."

The EBS Companies both operate independently – with respect to governance of their EBS operations, for instance –and conduct joint activities, such as in acquiring EBS systems and, more recently, in their efforts to preserve endangered public TV stations. When they work together, the EBS Companies frequently form a jointly-owned entity to pursue a project. As an example, they have purchased several EBS systems through subsidiaries of their wholly-owned entity, Independent Spectrum, LLC (which, like PTVF, is a Colorado limited liability company).

The Value of Non-profit, Tax Exempt Status. We stress that PTVF is 100% owned by non-profit, tax-exempt entities. Though we are not privy to specific information, it is possible that one or more of the competing applicants for the purchase of KCSM-TV intends to rely on funds provided by for-profit entities. If this is the case, it will raise significant regulatory issues, both before the FCC (where the details of such arrangements must be disclosed pursuant to the instructions of the assignment application on Forms 314/340),³ and, if the entity plans to maintain a tax exemption, the Internal Revenue Service.

FCC Rules and Policies as Applied to San Mateo's Proposed Purchase of KCSM-TV. The legal aspects of this topic are addressed by the attached opinion letter of counsel to Public TV Financing, LLC, Brian Madden of the Washington law firm Lerman & Senter.

Instructional Telecommunications Foundation, Inc. ("ITF"), currently the majority owner of PTVF, has a successful track record in rescuing an endangered noncommercial educational TV station. ITF acquired control of public TV station WYBE-TV, Philadelphia, through a "long form" transfer of control application which the FCC approved in the late 1980s. At that time, WYBE-TV had been authorized by the FCC, but remained unbuilt. WYBE-TV's authorization was held by Independence Media of Philadelphia, Inc. ("Independence"), a Pennsylvania non-profit, non-stock corporation, which remains WYBE-TV's license holder to the present day. In the pertinent license transfer application, Independence proposed to alter the composition of its board of directors such that after the transfer it would be composed of four ITF directors and one local director who was not an ITF director. Significantly, none of the ITF directors then lived in the WYBE-TV service area. The FCC granted this transfer of control application. Under ITF's control, WYBE-TV completed construction of its facilities and commenced operation. The station remains in on the air, though ITF no longer has any ownership involvement. WYBE-TV has always been an independent public TV station (never a PBS member).

³ Id., paragraph 79. Under 47 C.F.R. §73.3555, Note 2(i), any entity is deemed to be an attributable owner of KCSM if it provides in excess of 33% of the total asset value (the combined amount of all equity and all debt) of the KCSM-TV assignee and either has a recognized ownership interest in a broadcast station, cable system, or newspaper in the San Mateo market or provides over 15% of the station's programming.

From a practical perspective, SMCTV believes that, if local control were a *sine qua non* of eligibility to hold a non-commercial educational (NCE) television license, over-the-air public television stations in many communities would face inevitable extinction in the relatively near term. The notion of mandatory local control contemplates a universe of separately-owned stations struggling to survive in an extraordinarily difficult economic environment. To succeed, each station must attract and maintain a solid audience base. Historically, that process has been grounded in the provision of unquestionably attractive programming, *i.e.*, PBS programming. To the extent that such programming has drawn audiences and, therefore, revenue sources to individual NCE stations, those stations have been able to afford higher quality *local* productions, thereby fulfilling the goal of local educational service.

Unfortunately but undeniably, the cost of PBS programming is fast becoming prohibitive, which in turn makes it difficult for local NCE stations to afford the production of their own local programming. The result has been a downward spiral forcing licensees such as the District to contemplate selling their stations rather than continue to sustain losses. But who is going to buy stations that are already spiraling downward? If the current licensee is unwilling or unable to continue to operate in these difficult economic straits, we believe that few stand-alone, purely local applicants are likely to volunteer to take the helm of a sinking ship.

The approach developed by the EBS Companies and implemented here, through SMCTV, provides a way out of the downward spiral. By using both the resources which they have amassed through decades of providing educational programming over their EBS licenses and the programming expertise they have acquired in so doing, the EBS Companies are now seeking to reinvigorate NCE broadcasting by the formation of separate, locally-oriented entities, such as SMCTV, through which struggling NCE stations may be acquired and nurtured. If that approach were barred by the Commission – and, we emphasize, no such prohibition in fact now exists – the FCC would be consigning NCE

sources such as the EBS Companies. SMCTV submits that, if the FCC's expressions of concern and support for NCE television are honest, then the Commission cannot in good conscience erect any such barrier between the NCE TV industry and the capital and expertise necessary for its survival.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "K. Devine".

Kenneth Devine
Chief Operating Officer

Attachments

San Mateo Community Television Corporation Bylaws

BYLAWS
of
SAN MATEO COMMUNITY TELEVISION CORPORATION

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**BYLAWS
of
SAN MATEO COMMUNITY TELEVISION CORPORATION**

**ARTICLE I
PRINCIPAL OFFICE**

The principal office of this corporation shall be located in the county of San Mateo, California.

**ARTICLE II
MEMBERSHIP**

This corporation shall have no voting members, but the Board of Directors may, by resolution, establish one or more classes of nonvoting members and provide for eligibility requirements for membership and rights and duties of members, including the obligation to pay dues.

**ARTICLE III
BOARD OF DIRECTORS**

Section 1. Powers. This corporation shall have powers to the full extent allowed by law. All powers and activities of this corporation shall be exercised and managed by the Board of Directors of this corporation directly or, if delegated, under the ultimate direction of the Board.

Section 2. Number of Directors and Qualification. The authorized number of directors shall be 7. The directors shall be representative of a broad cross section of community elements, such as business, civic groups, professions, religious groups, schools and government. Four of the directors shall, at all times, be representative, respectively, of at least four such diverse elements. These directors are referred to in these Bylaws as the "Community Directors." The other three directors shall be representatives of Public TV Financing, LLC ("PTVF"), a Colorado limited liability company comprised of nonprofit members who help fund this corporation. These directors are referred to in the Bylaws as the "PTVF Directors."

Section 3. Limitations on Interested Persons. At all times, not more than 49% of the directors of this corporation may be interested persons. An interested person means either:

(a) any person currently being compensated by this corporation for services rendered to it within the previous twelve months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director in his or her capacity as director; or

(b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

Section 4. Election and Term of Office of Directors. The initial directors shall be named by the incorporator to serve terms of either one or two years so that the terms of directors shall be staggered. Thereafter, the PTVF Directors shall be appointed by PTVF, and the Community Directors shall be appointed by a majority vote of the PTVF Directors then in office. Each director shall be appointed for a term of 2 years. Each director shall hold office until a successor has been appointed. Directors may be appointed for any number of successive terms.

Section 5. Vacancies. A vacancy shall be deemed to exist on the Board in the event that the actual number of directors is less than the authorized number for any reason. Vacancies may be filled by the PTVF Directors for the unexpired portion of the term.

Section 6. Resignation and Removal. Resignations shall be effective upon receipt in writing by the Chair, the Secretary, or the Board of Directors of this corporation, unless a later effective date is specified in the resignation. PTVF may remove a PTVF Director at any time with or without cause, and the PTVF Directors may remove a Community Director at any time, with or without cause.

Section 7. Annual Meetings. A meeting of the Board of Directors shall be held at least once a year. Annual meetings shall be called by the Chair or any two directors, and noticed in accordance with Section 9.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the Chair or any two directors, and noticed in accordance with Section 9.

Section 9. Notice. Notice of the annual meeting and any special meetings of the Board of Directors shall state the date, place, and time of the meeting and shall be given to each director at least four days before any such meeting if given by first-class mail or forty-eight hours before any such meeting if given personally or by telephone, including a voice messaging system, or by other electronic transmission such as e-mail, in compliance with Article VIII, Section 3 of these Bylaws.

Section 10. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed and wherever held, shall be valid as though taken at a meeting duly held after proper call and notice, if a quorum is present, and if, either before or after the meeting, each of the directors not present provides a waiver of notice, a consent to holding the meeting, or an approval of the minutes in writing. The waiver of notice or consent need not specify the purpose of the meeting. All waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting the lack of adequate notice before the meeting or at its commencement.

Section 11. Quorum. A majority of the total number of directors then in office shall constitute a quorum, provided that in no event shall the required quorum be less than one-fifth of the authorized number of directors or two directors, whichever is larger. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, except as otherwise provided in Article III, Sections 5 (filling board

vacancies), 6 (removing directors) and 12 (taking action without a meeting); Article IV, Section 1 (appointing Board Committees); Article VI, Section 3 (approving self-dealing transactions); Article VII, Section 2 (approving indemnification); and Article VIII, Section 4 (amending Bylaws), of these Bylaws or in the California Nonprofit Public Benefit Corporation Law. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 12. Action Without a Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board shall individually or collectively consent to such action in writing. Such written consents shall be filed with the minutes of the proceedings of the Board, and shall have the same force and effect as the unanimous vote of such directors.

Section 13. Telephone and Electronic Meetings. Directors may participate in a meeting through use of conference telephone, electronic video screen communication, or other electronic transmission in compliance with Article VIII, Section 3 of these Bylaws so long as each director participating in the meeting can communicate with all of the other directors concurrently.

Section 14. Investments. Except with respect to assets held for use or used directly in carrying out this corporation's public or charitable activities, in investing, reinvesting, purchasing or acquiring, exchanging, selling, and managing this corporation's investments, the Board shall adhere to the standards set forth in the preceding paragraph, and shall: (a) consider the charitable purposes of this corporation; (b) avoid speculation, looking to the permanent disposition of the funds, considering the probable income as well as the probable safety of this corporation's capital; and (c) consider:

- (1) General economic conditions;
- (2) The possible effect of inflation or deflation;
- (3) The expected tax consequences, if any, of investment decisions or strategies;
- (4) The role that each investment or course of action plays within the overall portfolio;
- (5) The expected total return from income and appreciation of investments;
- (6) This corporation's other resources;
- (7) The needs of this corporation to make distributions and to preserve capital;
- (8) An asset's special relationship or special value, if any, to the charitable purposes of this corporation.

Board decisions about an individual investment shall be made not in isolation but rather in the context of this corporation's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to this corporation.

Notwithstanding the above, no investment violates this section where it conforms to: (a) the intent of the donor as expressed in a gift instrument; or (b) provisions authorizing such investment contained in an instrument or agreement pursuant to which the assets were contributed to this corporation.

Section 15. Inspection. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents, and to inspect the physical properties of this corporation.

Section 16. Director Compensation. The Board of Directors may authorize, by resolution, the payment to a director of reasonable compensation for services as a director. The Board may authorize the advance or reimbursement to a director of actual reasonable expenses incurred in carrying out his or her duties as a director, such as for attending meetings of the Board and Board Committees.

Section 17. Executive Compensation Review. The Board of Directors (or a Board Committee) shall review any compensation packages (including all benefits) of the Chair or the chief executive officer and the Treasurer or chief financial officer, regardless of job title, and shall approve such compensation only after determining that the compensation is just and reasonable. This review and approval shall occur when such officer is hired, when the term of employment of such officer is renewed or extended, and when the compensation of such officer is modified, unless the modification applies to substantially all of the employees of this corporation.

ARTICLE IV COMMITTEES

Section 1. Board Committees. The Board of Directors may, by resolution adopted by a majority of the directors then in office, create any number of Board Committees, each consisting of two or more directors, and only of directors, to serve at the pleasure of the Board. Appointments to any Board Committee shall be by a majority vote of the directors then in office. Board Committees may be given all the authority of the Board, except for the powers to:

- (a) set the number of directors within a range specified in these Bylaws;
- (b) elect directors or remove directors without cause;
- (c) fill vacancies on the Board of Directors or on any Board Committee;
- (d) fix compensation of directors for serving on the Board or any Board Committee;

- (e) amend or repeal these Bylaws or adopt new Bylaws;
- (f) adopt amendments to the Articles of Incorporation of this corporation;
- (g) amend or repeal any resolution of the Board of Directors;
- (h) create any other Board Committees or appoint the members of any Board Committees; or
- (i) approve any merger, reorganization, voluntary dissolution, or disposition of substantially all of the assets of this corporation.

Section 2. Advisory Committees. The Board of Directors may establish one or more Advisory Committees to the Board. The members of any Advisory Committee may consist of directors or non-directors and may be appointed as the Board determines. Advisory committees may not exercise the authority of the Board to make decisions on behalf of this corporation, but shall be restricted to making recommendations to the Board or Board Committees.

Section 3. Committee Supervision and Reliance. If a committee is composed and appointed as required by Section 1 above (concerning Board Committees), it may act with the authority of the Board to the extent and with the scope provided by the Board. Otherwise, the Board of Directors shall remain responsible for oversight and supervision of the committee as an Advisory Committee.

Section 4. Audit Committee. For any tax year in which this corporation has gross revenues of \$2 million or more, this corporation shall have an Audit Committee whose members shall be appointed by the Board of Directors, and who may include both directors and non-directors, subject to the following limitations: (a) members of the finance committee, if any, shall constitute less than one-half of the membership of the Audit Committee; (b) the chair of the Audit Committee may not be a member of the Finance Committee, if any; (c) the Audit Committee may not include any member of the staff, including the Chair or chief executive officer and Treasurer or chief financial officer; (d) the Audit Committee may not include any person who has a material financial interest in any entity doing business with this corporation; and (e) Audit Committee members who are not directors may not receive compensation greater than the compensation paid to directors for their Board service.

The Audit Committee shall: (1) recommend to the full Board of Directors for approval the retention and, when appropriate, the termination of an independent certified public accountant to serve as auditor, (2) subject to approval of the full Board, negotiate the compensation of the auditor on behalf of the Board, (3) confer with the auditor to satisfy the Audit Committee members that the financial affairs of this corporation are in order, (4) review and determine whether to accept the audit, and (5) approve performance of any non-audit services provided to this corporation by the auditor's firm.

Section 5. Meetings.

A. Of Board Committees. Meetings and actions of Board Committees shall be governed by and held and taken in accordance with the provisions of Article III of these Bylaws concerning meetings and actions of the Board of Directors, with such changes in the content of those Bylaws as are necessary to substitute the Board Committee and its members for the Board of Directors and its members. Minutes shall be kept of each meeting of any Board Committee and shall be filed with the corporate records.

B. Of Advisory Committees. Subject to the authority of the Board of Directors, Advisory Committees may determine their own meeting rules and whether minutes shall be kept.

The Board of Directors may adopt rules for the governance of any Board or Advisory Committee not inconsistent with the provisions of these Bylaws.

**ARTICLE V
OFFICERS**

Section 1. Officers. The officers of this corporation shall be a Chair, a Secretary, and a Treasurer. The corporation may also have, at the discretion of the directors, such other officers as may be appointed by the Board of Directors. Any number of offices may be held by the same person, except that the Secretary, the Treasurer, or the Chief Financial Officer, if any, may not serve concurrently as the Chair.

Section 2. Election. Except for the initial officers appointed by the incorporator, the officers of this corporation shall be elected annually by the Board of Directors, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

Section 3. Removal. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the Board of Directors.

Section 4. Resignation. Any officer may resign at any time by giving written notice to this corporation. Any resignation shall take effect on receipt of that notice by any other officer than the person resigning or at any later time specified by that notice and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.

Section 5. Vacancies. A vacancy in any office for any reason shall be filled in the same manner as these Bylaws provide for election to that office.

Section 6. Chair. The Chair shall preside at all meetings of the Board of Directors. The Chair shall have the general powers and duties usually vested in the office of

president of the corporation and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 7. Secretary. The Secretary shall supervise the keeping of a full and complete record of the proceedings of the Board of Directors and its committees, shall supervise the giving of such notices as may be proper or necessary, shall supervise the keeping of the minute books of this corporation, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 8. Treasurer. The Treasurer shall be the chief financial officer of this corporation and shall supervise the charge and custody of all funds of this corporation, the deposit of such funds in the manner prescribed by the Board of Directors, and the keeping and maintaining of adequate and correct accounts of this corporation's properties and business transactions, shall render reports and accountings as required, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

ARTICLE VI CERTAIN TRANSACTIONS

Section 1. Loans. Except as permitted by Section 5236 of the California Nonprofit Public Benefit Corporation Law, this corporation shall not make any loan of money or property to, or guarantee the obligation of, any director or officer; provided, however, that this corporation may advance money to a director or officer of this corporation or any subsidiary for expenses reasonably anticipated to be incurred in performance of the duties of such director or officer so long as such individual would be entitled to be reimbursed for such expenses absent that advance.

Section 2. Self-Dealing Transactions. Except as provided in Section 3 below, the Board of Directors shall not approve, or permit the corporation to engage in, any self-dealing transaction. A self-dealing transaction is a transaction to which this corporation is a party and in which one or more of its directors has a material financial interest, unless the transaction comes within California Corporations Code Section 5233(b).

Section 3. Approval. This corporation may engage in a self-dealing transaction if the transaction is approved by a court or by the Attorney General. This corporation may also engage in a self-dealing transaction if the Board determines, before the transaction, that (a) this corporation is entering into the transaction for its own benefit; (b) the transaction is fair and reasonable to this corporation at the time; and (c) after reasonable investigation, the Board determines that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances. Such determinations must be made by the Board in good faith, with knowledge of the material facts concerning the transaction and the director's interest in the transaction, and by a vote of a majority of the directors then in office, without counting the vote of the interested director or directors.

Where it is not reasonably practicable to obtain approval of the Board before entering into a self-dealing transaction, a Board Committee may approve such transaction in a manner consistent with the requirements above; provided that, at its next meeting, the full Board

determines in good faith that the Board Committee's approval of the transaction was consistent with the requirements above and that it was not reasonably practical to obtain advance approval by the full Board, and ratifies the transaction by a majority of the directors then in office without the vote of any interested director.

ARTICLE VII INDEMNIFICATION AND INSURANCE

Section 1. Right of Indemnity. To the fullest extent allowed by Section 5238 of the California Nonprofit Public Benefit Corporation Law, this corporation shall indemnify its agents, in connection with any proceeding, and in accordance with Section 5238. For purposes of this Article, "agent" shall have the same meaning as in Section 5238(a), including directors, officers, employees, other agents, and persons formerly occupying such positions; "proceeding" shall have the same meaning as in Section 5238(a), including any threatened action or investigation under Section 5233 or brought by the Attorney General; and "expenses" shall have the same meaning as in Section 5238(a), including reasonable attorneys' fees.

Section 2. Approval of Indemnity. On written request to the Board of Directors in each specific case by any agent seeking indemnification, to the extent that the agent has been successful on the merits, the Board shall promptly authorize indemnification in accordance with Section 5238(d). Otherwise, the Board shall promptly determine, by a majority vote of a quorum consisting of directors who are not parties to the proceeding, whether, in the specific case, the agent has met the applicable standard of conduct stated in Section 5238(b) or Section 5238(c), and, if so, shall authorize indemnification to the extent permitted thereby.

Section 3. Advancing Expenses. The Board of Directors may authorize the advance of expenses incurred by or on behalf of an agent of this corporation in defending any proceeding prior to final disposition, if the Board finds that:

(a) the requested advances are reasonable in amount under the circumstances;
and

(b) before any advance is made, the agent will submit a written undertaking satisfactory to the Board to repay the advance unless it is ultimately determined that the agent is entitled to indemnification for the expenses under this Article.

The Board shall determine whether the undertaking must be secured, and whether interest shall accrue on the obligation created thereby.

Section 4. Insurance. The Board of Directors may adopt a resolution authorizing the purchase of insurance on behalf of any agent against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, and such insurance may provide for coverage against liabilities beyond this corporation's power to indemnify the agent under law.

ARTICLE VIII MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of this corporation shall end each year on December 31.

Section 2. Required Financial Audits. This corporation shall obtain a financial audit for any tax year in which it receives or accrues gross revenue of \$2 million or more, excluding grant or contract income from any governmental entity for which the governmental entity requires an accounting. Whether or not they are required by law, any audited financial statements obtained by this corporation shall be made available for inspection by the Attorney General and the general public within nine months after the close of the fiscal year to which the statements relate, and shall remain available for three years (1) by making them available at this corporation's principal, regional, and district offices during regular business hours and (2) either by mailing a copy to any person who so requests in person or in writing or by posting them on this corporation's website.

Section 3. Electronic Transmissions. Unless otherwise provided in these Bylaws, and subject to any guidelines and procedures that the Board of Directors may adopt from time to time, the terms "written" and "in writing" as used in these Bylaws include any form of recorded message in the English language capable of comprehension by ordinary visual means, and may include electronic transmissions, such as facsimile or email, provided (i) for electronic transmissions from the corporation, the corporation has obtained an unrevoked written consent from the recipient to the use of such means of communication; (ii) for electronic transmissions to the corporation, the corporation has in effect reasonable measures to verify that the sender is the individual purporting to have sent such transmission; and (iii) the transmission creates a record that can be retained, retrieved, reviewed, and rendered into clearly legible tangible form.

Section 4. Amendments. Proposed amendments to these Bylaws shall be submitted in writing to the directors at least one week in advance of any Board meeting at which they will be considered for adoption. The vote of a majority of the directors then in office or the unanimous written consent of the directors shall be required to adopt a bylaw amendment. Any Bylaws amendment must be approved in writing by PTVF.

Section 5. Governing Law. In all matters not specified in these Bylaws, or in the event these Bylaws shall not comply with applicable law, the California Nonprofit Public Benefit Corporation Law as then in effect shall apply.

CERTIFICATE OF SECRETARY

I, the undersigned, certify that I am presently the duly elected and acting Secretary of San Mateo Community Television Corporation, a California nonprofit public benefit corporation, and that the above Bylaws, consisting of 9 pages, are the Bylaws of this corporation as adopted by Action of Sole Incorporator, on March 12, 2012.

DATED: March 13, 2012

Secretary

San Mateo Community Television Corporation

Additional Biographies of Board Members

Deirdre English

Deirdre English has written and edited work on a wide array of journalistic subjects. She has contributed articles, commentaries and reviews to Mother Jones magazine, the Nation, and The New York Times Book Review, among other publications, and to public radio and television. She is the former Editor-in-Chief of Mother Jones magazine where she worked for eight years, ending in 1986. She has taught American Studies and magazine writing and production at the College of Old Westbury at the State University of New York and has been a lecturer at City College of New York and the University of California at Santa Cruz. Her most current work includes a revision of *For Her Own Good: Two Centuries of the Experts' Advice to Women* (Anchor), co-authored with Barbara Ehrenreich and published with a new Afterword in 2004, and an essay on the work of photographer Susan Meiselas, published in *Carnival Strippers*, Whitney Museum of American Art, 2003. She has taught at the journalism school at the University of California, Berkeley, since 1988, and directed the Felker Magazine course for several years. She edits Brink, an online general interest publication produced by students, which won an award as best student magazine from the Society of Professional Journalists (www.brinkmag.org). In addition, her class has won numerous regional and national Mark of Excellence awards from the Society of Professional Journalists, including Best Feature Article of 2009. She lives in San Francisco.

Community Element: Other (journalism)

Nancy Sanders

Nancy is a retired telecommunications professional and now works as a volunteer for non-profit community organizations. In addition to serving on the board of San Mateo Community Television, she is the in-coming Board President of the Emergency Family Assistance Association, a Boulder County (Colorado) group which has been providing food, financial assistance and housing to families at risk of homelessness for over 90 years. She is a director and past board President of CDR, Collaborative Decision Resources, a global mediation company which pioneered the field almost 40 years ago. In addition, she is the Vice President and a director of Denver Area Educational Telecommunications Consortium, the Denver/Boulder based EBS telecommunications company working in educational services for schools, social justice and progressive media.

Nancy has broad expertise in marketing and sales which was developed by working in radio, advertising and cable television and included starting the first media buying service in Denver, Co. in the 70's. She spent 25 years with Time Warner Cable in a variety of executive roles. For most of those years, she was the Vice President of Marketing for the National Division, one of its largest and most diverse operations, which included all sales channels from consumer to advertising and business-to-business. In addition, she was a Group Vice President of Operations for 15 years and managed a changing portfolio of up to 20 cable TV systems. In that role, she was responsible for the strategic direction, franchising strategy, financial performance and execution of operations for all functional areas of the business.

Nancy lives in Boulder, CO with her partner and their dog and cat. When she is not traveling the world, she enjoys all of the outdoor recreation the state has to offer with regular skiing, hiking and cycling. She also practices Qigong, yoga and meditation and loves to cook and read.

John Schwartz

In 1974 John co-founded WYEP-FM in Pittsburgh, a locally-based station, staffed and operated by community members. The station's mission was to give a democratic "voice to the voiceless," and to this end, the station would host guests with divergent viewpoints to air opinions, news and music that could not be found elsewhere.

John also helped found KRZA-FM, a bi-lingual station serving southern Colorado and northern New Mexico. The station was started by community members who could not find other area outlets willing to air their views on local issues and properly convey their culture. John helped the KRZA board secure its FCC license, and he trained personnel in the technical aspects of radio operations.

John applied his concept of alternative media to television with the founding of KBDI-TV in the Denver, CO area in 1980, saying, "The established media are too much a part of the governing structure of this country to be able to criticize it very thoroughly." KBDI-TV's programming was an effort to change that. The station would sometimes dedicate a whole evening's (or even a week's) programming to one important topic of the time, such as nuclear war, the wars in Central America, or the "new poor" of the early 1980s. Programming Director Ted Krichels summarized it when stating, "We don't play it safe."

Later, John facilitated financial assistance for the launch of WYBE, a noncommercial educational television station in Philadelphia, and served on the station's board. WYBE aired international news, documentaries and unique segments on a variety of topics of concern to the Philadelphia community.

As TV turned to cable distribution, John helped launch The 90's Channel in 1989, an alternative network, for which he received a "Media Hero" award for being "the most resourceful secret weapon in the struggle to win access to the airwaves."

John also spearheaded the launch of Free Speech TV (FSTV), expanding the model of developing quality, sustainable television by adding Internet program outreach through the channel's website, other media sharing sites, and utilizing the emerging social web. Today FSTV reaches an over-the-air audience of 30 million households nation-wide including mainstream broadcast positions on DISH Network, Direct TV and numerous cable carriers serving key markets across the country.

In 1983, John founded the EBS Companies, five non-profit organizations that obtained licenses in what is now the Educational Broadband Service (EBS) band. Utilizing the Companies' spectrum, commercial operator Clearwire, (in concert with its principal investor, Sprint Wireless) delivers 4G broadband to many major U.S. cities. In exchange for the use of this spectrum, Clearwire provides the EBS Companies with royalties which the Companies allocate to their operations and philanthropic efforts.

Howard Shapiro

After a 25 year career in advertising, marketing, and broadcasting, Howard began to serve on the boards of local and national non-profit organizations. In addition to San Mateo Community Television, he currently serves on the boards of Oregon Public Broadcasting; Albina Community Bank; Portland Planning Commission; Portland Regional Educational Telecommunications Corporation (an EBS Company); The Nation Institute; Portland Center Stage; and Caldera, an arts organization for children. He lives in Portland, Oregon.

Opinion Letter of Brian Madden, Communications Counsel to SMCTV



WASHINGTON, DC

BRIAN M. MADDEN
202.416.6770
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March 29, 2012

San Mateo Community Television Corporation
c/o Law Office of Allen J. Capeloto
411 Borel Avenue, Suite 600
San Mateo, CA 94402

Ladies and Gentlemen:

Recent correspondence from the San Mateo Community College District poses questions concerning whether the “ownership and governance model” of SMCTV has previously been approved by or is otherwise acceptable to the FCC. You have asked me, as communications counsel to SMCTV, to advise you about the SMCTV response to those questions.

The Communications Act of 1934, as amended, defines a “noncommercial educational [television] broadcast station” as a television station which “(A) under the rules and regulations of the [Federal Communications] Commission ... is eligible to be licensed by the Commission as a noncommercial educational ... television station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or (B) is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes.” 47 U.S.C. §397(7). No other specific conditions or limitations on eligibility are set out in the Act. SMCTV is a nonprofit corporation, as are the EBS Companies, which exercise ultimate control over SMCTV. SMCTV therefore satisfies the only eligibility criterion set out in the statute with regard to noncommercial educational (NCE) stations not owned by a public agency or a municipality.

The Commission’s rules similarly specify that NCE stations “will be licensed only to nonprofit educational organizations upon a showing that the proposed stations will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service.” 47 C.F.R. §73.621(a). SMCTV also satisfies the sole eligibility criterion set out in the Commission’s rules.

The core processing standards employed by the Commission in the review of the qualifications of an applicant for a license for a reserved noncommercial educational facility were first publicly released as Appendix A to the Notice of Inquiry released in 1978, *Eligibility for Noncommercial Educational FM and TV Broadcast Stations Licenses* (BC Docket No. 78-164), 43 Fed. Reg. 30842 (1978). Those standards provide that:



“Institutional” applicants (*i.e.*, those which operate a bona fide fulltime school) may qualify for FM stations only in those communities where they operate a bona fide fulltime school. ... Organizational applicants [“non-profit educational organizations that are neither schools nor government entities” in the terms used by the current version of the application, FCC Form 340, required to apply for authority to construct a new NCE station] may qualify in any community. But, they must demonstrate that they have an educational goal and are committed to the advancement of an educational program.

Id., 43 Fed. Reg. 30844–45.¹

The instructions for Section III, Item 2(c) of FCC Form 314, the application for consent to the assignment of a broadcast license, specify that the proposed assignee of an NCE station “must provide an exhibit showing that it has an educational objective and that the station will be used for the advancement of an education program that will further that objective in accordance with 47 C.F.R. Sections [sic] 73.503.”² As established by SMCTV’s articles of incorporation, SMCTV has an educational objective. SMCTV satisfies the eligibility criterion expressly set out in the relevant FCC application form.

The Video Division of the FCC’s Media Bureau routinely requires proposed assignees and transferees of NCE television stations to include in their assignment/transfer applications (*i.e.*, FCC Form 314 or 315) information responsive to questions relating to NCE eligibility that appear in FCC Form 340. FCC Form 340 provides that, to be eligible to hold an NCE license, a proposed assignee/transferee that is neither a nonprofit educational institution nor a government entity must be “broadly representative of the educational, cultural, and civic segments of the principal community to be served.” See Form 340, Section II, Question 3 and Worksheet 2. The application form’s instructions relating to the referenced question indicate that, “for a governing board to be considered representative, the applicant must have at least four different elements of the community among its leadership,” as explained in footnote 1 of this letter. SMCTV satisfies this requirement as well. SMCTV’s Bylaws expressly require that its four Community Directors will “at all times” “be representative of a broad cross section of community elements,” including specifically business, civic groups, professions, religious groups and government, all of which

¹ The Commission terminated the proceeding begun by the Notice of Inquiry by *Order* released in 1990, *Amendment of the Commission’s Rules Governing the Eligibility for Noncommercial Educational FM and TV Broadcast Station Licenses*, 5 FCC Rcd. 394 (Commission 1990), without adopting further specific standards. However, at footnote 1 to the *Order*, the Commission noted that the staff processing standards attached to the Notice of Inquiry had been employed on an *ad hoc* basis to process applications for noncommercial educational FM and TV station licenses during the pendency of the proceeding and explained that the Commission “will continue to utilize them to determine the eligibility of applicants for noncommercial educational facilities.” *Id.*, n.1. These standards remain in effect today, augmented, in the case of applicants for noncommercial educational television stations which are not government agencies or schools, by the applicant’s showing that members of its governing board are representative of at least four of the categories of diverse “community elements” as were defined by the *Community Leader Checklist, Ascertainment of Community Problems by Broadcast Applicants*, 41 Fed. Reg. 1372, 1384 (January 7, 1976). See *Board of Educators of Jefferson County, Kentucky*, 80 FCC 2d 280, 281 (1980).

² Section 73.503 relates to the eligibility requirements for NCE *radio* licensees, as opposed to *television* licensees. The radio requirements generally conform to those for NCE TV licensees described above as set out in Section 73.621(a).

are among the identified "community elements," and that this mandate shall be satisfied "at all times." The Video Division has very recently acknowledged that a proposed assignee of an NCE TV station met this "'broadly representative' requirement" with a six-member board, four of whose members were local individuals representing "government," "professions," "religion," and "business." See *Letter to Robert L. Olender, Esq., from Barbara A. Kreisman, Chief, Video Division* (File Nos. BALEDT-20110401ACW, *et al.*), dated March 13, 2012 (the "*Olender Letter*") at 5. The four Community Directors identified by SMCTV satisfy this requirement.

We acknowledge that, in the *Olender Letter*, the Video Division raised questions about the eligibility of both of the proposed assignees. The Division's concerns appear to have arisen in two distinct areas: (a) the nature of the programming proposed; and (b) the extent to which, notwithstanding contrary indications in the application, control of the station would apparently have been wielded exclusively by a single individual and/or an entity controlled by that individual.

With respect to SMCTV programming proposal, you have advised us that SMCTV will demonstrate in detail that its proposed programming will primarily serve the educational needs of San Mateo (and the rest of the area served by the station), will advance educational programs, and will furnish a nonprofit and noncommercial television broadcast service, as required by Section 73.621(a) of the FCC rules. SMCTV's presentation of such a proposal contrasts significantly with the situation presented in the applications addressed by the *Olender Letter*. There, the proposed assignees provided a sample weekly program schedule of 157 hours of programming produced by a religious broadcasting network associated with certain principals of the assignees, but no explanation as to how this programming would satisfy the applicable Commission rule. SMCTV will demonstrate in the assignment application at the time it is initially filed that the programming proposal will satisfy the requirements of Section 73.621(a) of the FCC rules.

With respect to matters pertaining to the locus of control of the proposed assignees, the *Olender Letter* suggests that the assignees may not have been completely candid with the Commission regarding how and by whom the assignees would be controlled. Documents brought to the attention of the Division's staff seemed to indicate that, contrary to representations in the applications, the proposed assignee would in actuality be controlled by a separate entity not identified in the application as a "party" to the assignee. When, as in that instance, an applicant appears to be withholding important information from the Commission, serious doubts may legitimately be raised with respect to the applicant's honesty and reliability.

In contrast, you have assured us that SMCTV will set out in its portion of the assignment application when filed all of the details of its ownership, including the organizational structure and principals of SMCTV, Public TV Financing, LLC, and the EBS Companies. As discussed above, that structure comports with the NCE eligibility criteria imposed by the Communications Act and the Commission's rules.



The *Olender Letter* might be read to suggest that an NCE licensee must be controlled by parties local to the community of license – a condition that SMCTV, which is ultimately controlled by the EBS Companies, would not satisfy. Contrary to the suggestion in the *Olender Letter*, however, no such regulatory requirement in fact exists. The full Commission has made clear that non-local entities are eligible to be NCE television licensees.

As cited above, the eligibility standards announced in 1978 by the Commission for noncommercial educational applicants that are not government entities or schools “may qualify in any community ...” provided that they “demonstrate that they have an educational goal and are committed to the advancement of an educational program.” 43 Fed. Reg. 30844–45. More recently, the Commission established policies that award a “credit” for “truly local applicants” in resolving comparisons of conflicting applications for noncommercial educational facilities, explaining that:

[W]e adopt a straightforward credit, with minimal eligibility requirements only as necessary to ensure that the credit is reserved for truly local applicants and thus fosters participation by local entities in noncommercial educational broadcasting. ... *Significantly, that credit is not tied to ownership or a promise to work a minimum number of hours each week at the station, and does not endorse a particular type of business structure or practice.* Its premise, moreover, is not simply area familiarity or uniquely responsive programming but the recognition that education historically is a local undertaking, as evidenced by the historical importance of localism in noncommercial educational broadcasting.

Reexamination of the Comparative Standards for Noncommercial Educational Applicants, 15 FCC Rcd. 7386, 7407-08 (Commission 2000) (emphasis supplied). While local control may be preferable and may, therefore, warrant a comparative advantage as between competing applicants, *id.*, the FCC has not held that a non-local applicant is *per se* disqualified from becoming an NCE television licensee.

Furthermore, as a matter of statutory mandate, the context of an assignment application precludes any consideration of competing applications. 47 U.S.C. §310(d) (in acting on an assignment application, “the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee”). As a result, it is immaterial whether or not there might exist some other hypothetical applicant who might be “more local” and, therefore, preferable to SMCTV: if SMCTV is the proposed assignee, the Commission is statutorily prohibited from considering any such hypothetical competing applicant.

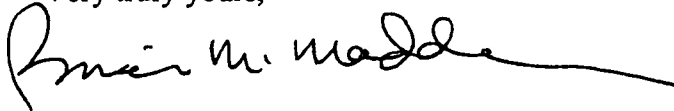
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Thus, while the *Olender Letter* might be read to suggest a prohibition against non-local NCE licensees, no such prohibition exists; to the contrary, the Commission has made clear that entities which are not locally-controlled can be eligible to hold NCE television licenses.

Please let me know if you need any further information concerning the principles addressed above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian M. Madden", with a long horizontal flourish extending to the right.

Brian M. Madden