

**Minutes of the Study Session of the Board of Trustees  
San Mateo County Community College District  
April 11, 2012  
San Mateo, CA**

**The meeting was called to order at 6:03 p.m.**

**Board Members Present:** President Dave Mandelkern, Vice President Helen Hausman, Trustees Richard Holober, Patricia Miljanich and Karen Schwarz  
Student Trustee Patiane Gladstone was absent due to illness

**Others Present:** Chancellor Ron Galatolo, Executive Vice Chancellor Kathy Blackwood, College of San Mateo President Michael Claire, Cañada College President Jim Keller and District Academic Senate President Fermin Irigoyen

**Pledge of Allegiance**

**DISCUSSION OF THE ORDER OF THE AGENDA**

None

**MINUTES**

It was moved by Trustee Schwarz and seconded by Vice President Hausman to approve the minutes of the March 28, 2012 regular meeting of the Board. President Mandelkern requested that the sentence on page 4, paragraph 5 reading "The refinancing amount at that time was \$110,000" be changed to "The refinancing amount at that time was \$110,000,000." The motion to approve the minutes as amended carried, all members voting "Aye."

It was moved by Vice President Hausman and seconded by Trustee Miljanich to approve the minutes of the March 28, 2012 special closed session of the Board. The motion carried, all members voting "Aye."

**STATEMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS**

None

**NEW BUSINESS**

**APPROVAL OF PERSONNEL ACTIONS: CHANGES IN ASSIGNMENT, COMPENSATION, PLACEMENT, LEAVES, STAFF ALLOCATIONS AND CLASSIFICATION OF ACADEMIC AND CLASSIFIED PERSONNEL (12-4-1A)**

It was moved by Trustee Holober and seconded by Trustee Schwarz to approve the actions in Board Report No. 12-4-1A. The motion carried, all members voting "Aye."

**RE-EMPLOYMENT OF CONTRACT AND REGULAR FACULTY FOR THE 2012-13 ACADEMIC YEAR (12-4-2A)**

It was moved by Trustee Holober and seconded by Vice President Hausman to approve the actions in Board Report No. 12-4-2A. The motion carried, all members voting "Aye."

**INFORMATION REPORTS**

**SPRING 2012 CENSUS REPORT (12-4-1C)**

Vice Chancellor Jing Luan asked if there were any questions or comments regarding the report. Chancellor Galatolo said there are declines in the total headcounts at all three Colleges. He said the Colleges have been planning for this to mirror the substantial reduction in workload funding from the State. A further workload funding reduction of approximately six percent is anticipated for the coming year as well. President Mandelkern noted that Skyline College continues to emerge as the largest College in the District.

### **UPDATE ON KCSM-TV (12-4-2C)**

Jan Roecks, Director of General Services, said the future of KCSM-TV was discussed at ten Board meetings between 2009 and 2011. Because of severe budget cuts, the Board was forced to choose between support for academic programs that are core to the District mission and programs that are valuable but not core to the mission. In this context, the Board made clear its intent to have KCSM-TV operate without any subsidy from the general fund. Attempts to find ways to preserve the station without a subsidy were not successful and in June 2011 the decision to sell KCSM-TV was finalized by the Board.

The Request for Proposal (RFP) process was initiated. The RFP solicited bidders to acquire the assets of KCSM-TV and to take assignment of station licenses. Because the sale of KCSM-TV is unique and complex, a team was formed to direct the Request for Proposal (RFP) process. The team consisted of:

- Jan Roecks, Director of General Services
- Eugene Whitlock, County Counsel for the District
- Marilyn Lawrence, General Manager of KCSM
- Larry Miller, attorney specializing in FCC law with the law firm Schwartz, Woods and Miller

The team began by examining how other non-commercial television station RFPs were formatted and assembling the station's asset list, including the Sutro Tower lease.

In evaluating bids, the following items were considered:

- the price offered, proven source of funding and terms of financing
- the bidder must meet FCC rules for assignment of the KCSM-TV non-commercial licenses
- the bidder must meet the FCC's requirement of local representation and educational programming; educational programming must comprise at least fifty percent of the station's programming
- If the bidder can accept the transfer of equipment under terms of the Corporation for Public Broadcasting (CPB) Digital Distribution Funds grants, the value of such savings would be factored into the price

It is important to note that programming is not listed as an item that is considered. A seller cannot have any bearing on a buyer's programming; rather, it is the FCC's rules on educational programming that must be met for assignment of the license. According to Mr. Miller, "The FCC reviews the sales contract to assure that the selling licensee has not attempted to limit the buyer with respect to how the station will run in the future."

The team drafted the RFP and a draft Asset Purchase Agreement (APA), which is a contract the buyer is expected to sign after the sale is approved by the Board. The APA states that the buyer has contracted with the District to purchase the station and remains in effect until the licenses are assigned by the FCC. The team developed a comprehensive timeline incorporating the District bid process and the FCC process. They prepared the final documents, scheduled press notification, finalized distribution of the documents, scheduled a time and place for a mandatory pre-bid walk-through, and prepared the General Services website pages. The bid was released on December 7, 2011. It was legally posted in the newspaper. Twenty-six notices were sent via email to interested bidders and an additional three notices were sent via U.S. mail. Seven press agencies were made aware of the RFP and it was also posted on the General Services website.

A mandatory pre-bid meeting was held on January 10, 2012. Bidders were allowed to participate via telephone if they could not attend the meeting in person. Eight companies attended the meeting. Four District employees also attended, including a scribe who took notes of the meeting. The meeting included a walk-through of KCSM facilities – the master control room, studios and office space. All information from the meeting was posted on the General Services website after the meeting. Additional questions and answers by any bidder were posted on the website throughout the process.

The bid opening took place on February 14, 2012 and six bids were submitted. The names of the bidders were posted on the General Services website. The bidders were Community Educators of Orange County, which is affiliated with Daystar; FM Media, which is affiliated with Public Media Company; KAXT LLC in San Jose; KMTP, a television station based in San Francisco; LocusPoint Networks in Belmont; and San Mateo Community Television Corp., which is affiliated with Independent Public Media. Because some bidders were forming new

corporations to bid on KCSM-TV, they bid under new names and, as a result, it was unclear to some people who the bidders actually were.

The team conducted an analysis of the bids to ascertain whether they appeared to meet FCC rules for assignment of a license for a non-commercial television station and whether they met the local programming and educational programming requirements of the FCC. They looked at the price offered, source of funding and terms of financing. On March 12, Ms. Roecks issued a letter to the two top bidders, FM Media and San Mateo Community Television Corp. (whose affiliates are both headquartered in Colorado), asking them clarifying questions and asking them to submit their "best and final" offer by March 26. Ms. Roecks let the other four bidders know that they were not finalists but would be kept in mind in case neither of the other bids was successful. President Mandelkern asked what elevated these two bidders above the others. Ms. Roecks said the team considered factors such as where the companies are located, who the board members are (they must meet requirements for regional representation), pricing and funding sources. For instance, one of the companies submitted a high bid but did not have a funding source and, therefore, did not meet what the District is looking for.

Ms. Lawrence said that on March 13, the FCC issued a letter clarifying its non-commercial station ownership and programming requirements. The District extended the due date for final proposals to April 6 so that finalists could review and respond to the FCC letter in their proposals. President Mandelkern asked if the two finalists appear to meet the FCC requirements. Ms. Roecks said Mr. Miller has reviewed the bids and is confident that they both meet the FCC requirements.

The team is currently in the process of analyzing and negotiating details of the best and final offers and hopes to have this completed by the end of this week or early next week. After the negotiations are complete, they will bring a recommendation of the best offer to the Board; it is anticipated that the recommendation will be brought to the April 25 Board meeting. After Board approval, the team will begin drafting FCC documents to sell the station assets and transfer the licenses. The finalist will sign the APA and will put a deposit into an escrow account. Required documents will be submitted to the FCC and a public notice of the license assignment application submission will be broadcast on KCSM-TV on four different days. The FCC will issue a public notice setting a 30-day period for formal petitions to deny assignment of the licenses. The FCC will also conduct a full review of the proposed sale.

If the Board approves the sale on April 25, FCC approval will probably not occur before July. The licenses could be transferred as early as late August or early September. During this time, the team will continue to work with the finalist to make plans for the transfer. The RFP and APA allow the District to abandon the bid process if the FCC does not grant reassignment by January 2013.

Trustee Schwarz asked if there is history showing examples of the types of petitions that are submitted during the FCC's 30-day period. Ms. Lawrence said the FCC considers petitions which give reasons that the buyer is not qualified, e.g. the requirements for regional representation and educational programming.

Trustee Holober asked if the two finalists are non-profit, if they established separate corporations with boards in anticipation of bidding on KCSM-TV, and if the local corporations are controlled by the affiliates in Colorado. Ms. Roecks said both of the finalists are non-profit. They established local corporations which are affiliated with the parent companies but not controlled by them.

Trustee Holober said that, in addition to FCC regulations, there might be State laws regarding the bidding process. He said written legal advice in addition to that provided by the FCC attorney might be needed to make sure there are no conflicts and that the District did not miss any requirements. Ms. Roecks said that she has been working with Mr. Miller and County Counsel Eugene Whitlock since the beginning of the process and has also sought advice from Miguel Márquez, County Counsel for Santa Clara County. All three attorneys have expressed confidence that the District has done everything required. President Mandelkern said the issue of further legal advice will be addressed by the Board during its discussion after comments from the public.

Ms. Roecks said there is a public records request concerning the bids and the three attorneys have concurred that as soon as negotiations are final and there is no jeopardy of interfering with the negotiating process, the District

will release the requested information. Ms. Roecks is hoping the information will be available at the end of this week. Trustee Schwarz said it is important to emphasize that records should not be made public until the negotiations are complete because doing so could adversely affect the District's interests. Trustee Holober asked if the bidders will be disallowed from altering their bids after the bids are made public. Ms. Roecks said this is the case; however, they could withdraw their bids.

Vice President Hausman asked what will happen if something goes wrong with the bids of the two finalists. Ms. Roecks said that, in the worst case scenario, the District would begin the process anew. However, the District has tried to mitigate that possibility by working closely with the attorneys throughout the process. Trustee Schwarz complimented Ms. Roecks for working with the attorneys. She asked when the decision was made to consult Mr. Márquez. Ms. Roecks said he was consulted when the issue of having a 30-day public comment period at the District level was raised by a member of the public. Both County Counsels, without discussion with each other, provided the opinion that this is not required.

Tracy Rosenberg, Executive Director of Media Alliance, said she is concerned about the future of the assets and the broadcast licenses and in making sure the best possible outcome is achieved. She said it has been difficult to ascertain who the bidders actually are as they have formed new companies. She said she believes the District could have been more forthcoming with information. She said she is pleased that the request for information on the two top bidders will be honored. Ms. Rosenberg said she believes the public would be interested in the nature of the operational plans of the bidders, how local representation will be manifested, and what type of educational programming they will pursue. She said that after the bids are disclosed, she hopes the public will be given time to read the bids and provide meaningful input. She said there is a difference between meaningful input and the FCC's 30-day period to deny, as one is meant to allow conversation within the community and the other is a legal activity. Ms. Rosenberg said that Public Media Company is a successful broker on behalf of public television. However, the University of San Francisco tried to sell its radio station to this company and it has not gotten through the FCC after one year. She said that, while there are reasons for this and it cannot be assumed that the same thing would happen in another transaction, it is worth paying attention to what went wrong.

Fred Baer said he is involved in sports productions and has a very long history with community colleges and the District. He said he understands the District's financial concerns and educational priorities. However, he is concerned as a taxpayer about the millions of dollars invested in new high definition equipment and the new digital media center. Mr. Baer said he does not believe the District has explored all of the options for partnerships and leasing opportunities. These potential opportunities include the San Mateo Office of Education, the San Mateo County/Silicon Valley Convention and Visitors Bureau, Oracle, the West Coast Conference, EA Sports and Franklin Templeton. Mr. Baer said he believes the District should fully explore other options before selling KCSM-TV.

Victor Moore said he was educated at KCSM which has provided hands-on television studio production education for many students. He said the FCC requirement that fifty percent of the programming be educational is essential because corporations are not concerned with public service. Mr. Moore said the archives contain items that, if merchandised, might allow KCSM-TV to become a separate entity and buy itself out. He urged the Board to try to preserve the station or to make sure it goes to "clean hands."

President Mandelkern thanked the public speakers for their comments.

President Mandelkern said the Board will address whether any more detailed information is needed, the Board's timeline for making a decision, and whether an advice letter is needed from another attorney.

Trustee Holober said the sale of KCSM-TV is a unique situation and new for everyone. He said some members of the public have expressed concerns about the process and he would feel more certain if there was legal advice in writing regarding the procedures. He said the written advice would be important in case there is future litigation. Trustee Miljanich said she believes the opinions of these three attorneys, if secured in writing, would provide sufficient legal advice. She added that the threat of litigation should not force the Board to do something they should not do. After further discussion, the Board agreed that Ms. Roecks should request the opinions of Mr.

Miller, Mr. Whitlock and Mr. Márquez in writing. Ms. Roecks will ask the attorneys whether they believe the opinions they have expressed via email are sufficient or whether they should submit more formal written opinions. Trustee Miljanich said the public has a right to comment and should do so. However, during any bidding process, it is important to understand that the Board makes the final decisions and considers a myriad of critical factors. Trustee Miljanich said the Board must feel confident in the process itself and in the people in the District who shepherd the process. She said members of the public have expressed a variety of opinions, some of which are concerning to her, e.g. don't sell to particular types of stations. She said the Board needs to be clear that, even though this sale is complex, processes that are in place for all bidding are being followed.

President Mandelkern said the Board has a responsibility to the bidders and to the public to have a fair and transparent process. He said the Board also has a responsibility to San Mateo County residents to maximize the return on the sale of any asset. Ms. Roecks said details of the bids will be included in the recommendation and will include economic factors. She said the most important criterion is whether the FCC requirements are met. President Mandelkern asked if the Board can get information on the track record of the bidders in getting FCC approval. Ms. Roecks said she will ask Mr. Miller if this is permissible.

Trustee Miljanich said Ms. Roecks did a good job of letting the Board know what they can and cannot do. While the Board represents the constituents of the County and would like to please the public, they have legal limitations. Trustee Miljanich said she has heard a smattering of input from the public that she considers bigoted, e.g. comments about what they do not want to have on the station. She said she wants to make it clear that the Board does not have the legal right to select certain aspects of the purchase. Trustee Miljanich said her experience is that the Board works hard to be responsive to the public and to be professional and aggressive about knowing as much as they can before making decisions. President Mandelkern agreed, stating that the Board listens to public input and considers that input carefully, but ultimately makes decisions they feel are best for the District. Vice President Hausman said this is a sensitive and emotional decision and the Board is very cognizant of the concerns of the community and those in the District who have been intimately involved with KCSM-TV for many years.

President Mandelkern said that, although there is strong sentiment regarding not selling KCSM-TV, the Board has spent several years looking at alternatives, none of which have turned out to be feasible. There are now two options: (1) stop funding the station and shut it down, which would result in forfeiture of the licenses, and (2) transfer the licenses to another entity and get a return on the investment that has been made over nearly 50 years.

Trustee Holober said that three years ago, the Board made a decision requiring KCSM-TV to operate in the black or there would be no choice but to sell it. He said there was a time when money was more plentiful and financial support of the station did not seem to interfere with the mission of the District. However, as the direction of the State budget became evident and it was clear that the District would be forced to turn away more and more students, the Board understood the importance of looking at what the District's mission is. That mission is educating students first and foremost. The station is not essential for the broadcast program, which will continue. Trustee Holober said unfortunate choices must be made and it would be hard to tell taxpayers that the District will turn away more students in order to maintain the station.

Trustee Holober said his interest in getting legal advice is to make sure the Board understands not only the things they are required to do, but the things they are prohibited from doing. He said he is comfortable with examining the written advice of the three attorneys mentioned above to see if they provide enough information. Ms. Roecks said she will ask Mr. Miller to include a description of items that cannot be considered or entertained.

President Mandelkern said there are a number of fine District employees who may or may not have jobs after the sale of KCSM-TV. He asked if this can be considered in the bids. Ms. Roecks said the RFP asked bidders if they would consider employing the District's employees. Both of the top bidders responded that they would consider this.

Following discussion among Board members about the Board's timeline, all Board members agreed that the recommendation for the sale of KCSM-TV should be brought to the April 25 meeting as an action item. The Board noted that they can delay voting on the recommendation if they determine that more time is needed to get more information or to hear further public comments. This concluded the discussion on KCSM-TV.

Trustee Holober said he was shocked to hear of another episode, at Santa Monica Community College, in which college police pepper sprayed students who wanted to be heard at a Board meeting. He was disturbed at the attempt to severely limit the number of students permitted into the board room. He said he is glad that this Board would not operate in that manner. President Mandelkern said he agrees and was assured by Brian Tupper, Chief Public Safety Officer at College of San Mateo, that the District's Public Safety Department has a very different view on the use of pepper spray. Chancellor Galatolo said he has a very different view as well. Trustee Miljanich said it is her understanding that San Monica Community College has other larger venues that could have been opened. A brief discussion ensued about the Santa Monica Community College's proposed two-tier tuition system, which is the issue the students wished to address at the board meeting.

**RECESS TO CLOSED SESSION**

President Mandelkern said that during Closed Session, the Board will hold a conference with Agency Labor Negotiator Harry Joel; the employee organizations are AFSCME, AFT and CSEA. The Board will also hold a conference with legal counsel regarding two cases of existing litigation as listed on the printed agenda.

The Board recessed to Closed Session at 8:10 p.m.  
The Board reconvened to Open Session at 9:15 p.m.

**CLOSED SESSION ACTIONS TAKEN**

President Mandelkern reported that at the Closed Session just concluded, the Board took no action.

**ADJOURNMENT**

It was moved by Trustee Schwarz and seconded by Trustee Miljanich to adjourn the meeting. The motion carried, all members voting "Aye." The meeting was adjourned at 9:20 p.m.

Submitted by

Ron Galatolo  
Secretary

Approved and entered into the proceedings of the April 25, 2012 meeting.

Helen Hausman  
Vice President-Clerk