

**Approved Agenda
PNB Special Call-in Meeting
Open/Public session
January 4, 2018 8:30 pm ET**

Item #	Item	Time
1	Call to Order Roll Call Identify Timekeepers Excused absences	10 min
2	Agenda Approval	10 min
3	Minutes Approval 12-21-17	5 min
4	Minutes Approval 12-28-17	5 min
5	Bylaws Amendments Reducing the size of PNB to 17 Reducing the size of LSB to 16 Filling of LSB Vacancies	20 min 20 min 20 min
6	Appointment of new Trustees for 403(b)	15 min
7	Motion: Bankruptcy Authorization	15 min
8	Motion: Official Statement Policy	15 min
9	Motion: Sexual Harassment Training	15 min
10	Adjourn	

<p>KPFA: Sabrina Jacobs TM Scruggs Aki Tanaka Andrea Turner</p> <p>KPFK: Grace Aaron Jonathan Alexander Jan Goodman Mansoor Sabbagh</p>	<p>KPFT: Adriana Casenave Bill Crosier Rhonda Garner</p> <p>WBAI: Kathryn Davis Ken Laufer Cerene Roberts Alex Steinberg</p>	<p>WPFW: Jim Brown Benito Diaz Nancy Sorden Maskeelah Washington</p> <p>Affiliates: David Beaton Themba Tshibanda</p>
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Cerene Roberts notice 12/13/17

She will be introducing a motion to rescind the KPFT LSB Motion that the PNB approved at its meeting on 12/07/17.

Motion: Bankruptcy Authorization by Bill Crosier and Sabrina Jacobs

WHEREAS, on October 4, 2017, the Honorable Gerald Lebovits of the Supreme Court of the State of New York, granted summary judgment in the amount of \$1,819,687.52 with interest and reserving attorney's fees and court costs, in favor of plaintiff, in ESRT Empire State Building (Empire State) L.L.C. v. Pacifica Foundation, Inc., Case No. 656145/16, for the failure of Station WBAI to stay current on its lease payments for its broadcast antennae located on the

Empire State Building in New York, New York;

WHEREAS, on November 16, 2017, the Clerk issued Judgment (“Judgment”) in the amount of \$1,839,586.19 in ESRT Empire State Building L.L.C. v. Pacifica Foundation, Inc., reserving attorney’s fees and interest;

WHEREAS, on December 7, 2017, Empire State filed its Application for Entry of Judgment on Sister State Judgment in Los Angeles County Superior Court, Case No. BS 171750 and on December 12, 2017, personally served the same on Pacifica Foundation’s National Office, 1925 Martin Luther King Way, Berkeley, California (“National Office”);

WHEREAS, on December 7, 2017, Empire State served on the National Office and filed its Request to File Foreign Judgment in Superior Court of the District of Columbia, Case No. 17-0008138, in the amount of \$1,839,586.19 at the rate of 9% interest;

WHEREAS, on December 11, 2017, Empire State served on the National Office and filed the Notice of Filing of Foreign Judgment in the District Court of Harris County, State of Texas, Case No. 2017-80997, in the amount of \$1,839,586.19;

WHEREAS, Empire State has taken the steps necessary to start to execute its \$1,839,586.19 Judgment in the states of New York, California, Texas and Washington D.C.;

WHEREAS, Pacifica Foundation owns real property free and clear and five broadcast licenses, but does not have sufficient operating capital and reserves to pay the Judgment;

WHEREAS, Pacifica Foundation maintains real property and bank accounts in the states of New York, California, Texas and Washington D.C. which are at risk for being levied upon, liened against and seized;

WHEREAS, Empire State may execute its Judgment on bank accounts owned by Pacifica Foundation at any time;

WHEREAS, Empire State can record an Abstract of Judgment in California on Monday, January 8, 2018, which will become effective against real property in California;

WHEREAS, if Pacifica Foundation fails to file a petition for bankruptcy reorganization pursuant to Chapter 11 of the U.S. Bankruptcy Code on or before Friday, January 5, 2018, in California, and Empire State records an Abstract of Judgment on Monday, January 8, 2018, it will create a Judgment Lien which will become effective as against real property Pacifica Foundation owns and unnecessarily and unduly compromise Pacifica Foundation’s position in bankruptcy court;

WHEREAS, the recordation of an Abstract of Judgment in California will trigger the creation of a Judgment Lien that will entitle Empire State to add interest and attorney’s fees to its Judgment Lien and otherwise improve its position and damage Pacifica’s assets;

WHEREAS, for close to six months Pacifica Foundation has requested Empire State to sign a Forbearance Agreement in writing whereby Empire State would promise for a time certain not to execute its judgment and otherwise increase its legal advantage over the Pacifica Foundation by promising not to record an Abstract of Judgment or take any other steps to perfect a Judgment Lien or enforce the Judgment for the forbearance period, and Empire State has refused and continues to refuse to do so;

WHEREAS, Pacifica Foundation has failed to make any further monthly antennae lease payments to Empire State since May 2017 and will continue such failure into the foreseeable future;

WHEREAS, as of December 1, 2017, Pacifica Foundation's monthly payment to Empire State is \$60,991.16 and will continue to increase in amount every month thereafter until the lease expires in 2020;

WHEREAS, Pacifica Foundation cannot afford to make the ongoing and continuing monthly Empire State lease payments for the location of the WBAI broadcast antennae;

WHEREAS, Pacifica Foundation has failed to fund the retirement plan for its employees since FY2015 and owes said plan approximately \$750,000

WHEREAS, due to Pacifica Foundation's lack of compliance in funding its retirement plan for its employees, on December 12, 2017, the Newport Group, Inc., the manager of the plan "disengaged" effective immediately;

WHEREAS, Pacifica Foundation has mismanaged its fiscal responsibilities for a period of many years that has resulted in the accumulation of millions of dollars of debt;

WHEREAS, Pacifica's Foundation's credit rating is damaged, flawed and poor such that it can become eligible for cash loans only on the riskiest and most harsh terms for which it has no articulated plan for repayment and which necessarily would be secured by real property that Pacifica owns;

WHEREAS, the Pacifica Foundation has an ongoing duty to submit yearly independent financial audits to the California Attorney General Charitable Trusts Division on a timely basis;

WHEREAS, the failure of Pacifica Foundation to timely submit yearly independent financial audits to the California Attorney General Charitable Trusts Division will result in the revocation of its tax-exempt status;

WHEREAS, the Pacifica Foundation cannot operate without remaining a non-profit corporation with a valid tax-exemption in good standing in the State of California;

WHEREAS, on May 22, 2017, the California Franchise Tax Board revoked the Pacifica Foundation's tax exemption for failing to timely submit yearly independent financial audits, which status was subsequently reinstated when Pacifica Foundation submitted its independent financial audit for FY2015 to the California Attorney General Charitable Trusts Division in August 2017;

WHEREAS, Pacifica Foundation has a fiduciary duty to protect its assets, not to expose its assets to undue and unnecessary risk and to exercise sound fiscal management looking into the future;

WHEREAS, the Pacifica Foundation has no other present means by which to protect its assets from imminent levy, lien and seizure;

WHEREAS, the most effective way for the Pacifica Foundation to effectively protect its assets is by filing a petition for bankruptcy reorganization pursuant to Chapter 11 of the U.S. Bankruptcy Code on or before Friday, January 5, 2018;

WHEREAS, in order to file a petition in bankruptcy and to successfully do the work that is necessary to a successful use of bankruptcy protection, the National Office in Berkeley, California must gather information from the member radio stations in New York, Washington D.C., Texas and California;

WHEREAS, the National Office and bankruptcy counsel will have to work in close and continuing cooperation and that physical proximity best facilitates such ongoing cooperation;

WHEREAS, bankruptcy specialists, Reno F.R. Fernandez III, Philip E. Strok, and Pacifica General Counsel Ford Greene continue to advise and recommend Pacifica Foundation to file a petition for bankruptcy reorganization pursuant to Chapter 11 of the U.S. Bankruptcy Code on or before Friday, January 5, 2018;

WHEREAS, in order to accomplish the continuing work that submitting yearly independent financial audits requires, to continue to exercise accountable fiscal responsibility across the Pacifica Foundation's radio network and to gather the foundational documents, records and financial data that maintaining a bankruptcy filing will require, Pacifica Foundation must authorize the hiring of additional employees to assist CFO Sam Agarwal;

NOW THEREFORE, it is hereby moved that the Pacifica National Board authorize its Executive Director William G. Crosier and/or Chief Financial Officer Sam Agarwal to employ the law firm of MacDonald Fernandez LLP to file a petition for bankruptcy reorganization pursuant to Chapter 11 of the U.S. Bankruptcy Code on or before Friday, January 5, 2018;

NOW THEREFORE, it is hereby moved that the Pacifica National Board authorizes Chief Financial Officer Sam Agarwal to employ two contractors to assist in discharging the tasks set forth hereinabove.

Motion: Official Statement Policy by Grace Aaron

All managers, employees and board members of Pacifica must state clearly that any comments they make to media (including Pacifica programs) about the current Pacifica situation regarding the ESRT summary judgment are not made in their official capacity but only as their personal opinion. Official statements can only be made after they are approved by the PNB. The people who spoke to the WSJ reporters regarding the information reported Jan 3, 2018 in the WSJ were not speaking in an official capacity as the board had not approved their speaking to any reporters.

Motion: Sexual Harassment Training by Grace Aaron

Whereas, discrimination and sexual harassment lawsuits have cost the Pacifica Foundation hundreds of thousands of dollars in the past,

And, Whereas, it is the law in California that sexual harassment training needs to be done every 2 years by supervisory personnel and within 6 months for any person newly hired,

And, Whereas, almost every staff member, both paid and unpaid, has some supervisor responsibilities,

Be it Resolved that all staff of Pacifica complete online sexual harassment training within 3 months if they have not completed such training in the last 2 years.

Bylaws Amendments

**2017 Proposed Pacifica Bylaws Amendment
Reduce the size of the PNB to 17 (from 22):**

Summary of Amendment:

This amendment would reduce the size of the PNB, to help make the telephone meetings more manageable and to reduce the cost of both telephone and in-person meetings. (The cost of each is proportional to the number of

participants.) Each station's Delegate assembly would elect 3 (rather than 4) Directors to the PNB, with one of them continuing to be a staff member. The PNB would continue to elect the two affiliate Directors, so that the majority faction on the PNB could not elect the only affiliate Director. This would give $5 \times 3 + 2 = 17$ Directors.

At-large Directors (of which there are none) would be removed from the Bylaws.

Actual amendment text:

Change Article Five, Section 1, subsection C (Number on PNB) from:

"There shall be a minimum of twenty-two (22) and a maximum for twenty-three (23) Directors of the Foundation. The Board of Directors shall fix by resolution, from time to time, the exact number of Directors within the minimum and maximum numbers permitted herein. The Board shall have equal representation from each of the Foundation's five radio stations. The Delegates from the five Foundation radio stations shall each elect four (4) Directors: three (3) of whom shall be Listener-Sponsor Delegates and one (1) of whom shall be a Staff Delegate – for a total of twenty (20) "Station Representative" Directors, as set forth in Section 3 of this Article of the Bylaws. In addition, the Board shall elect two (2) "Affiliate Representative" Directors from nominees submitted as set forth in Section 4 of this Article of the Bylaws. If the Board, by resolution, fixes the number of Directors at 23, then one additional Director shall be nominated and elected as an "At-large" Director as set forth in Section 5 of this Article of the Bylaws."

to the following (deleted language in brackets [] and strikethrough-text, added language in bold italics):

"~~[There shall be a minimum of twenty two (22) and a maximum for twenty three (23) Directors of the Foundation. The Board of Directors shall fix by resolution, from time to time, the exact number of Directors within the minimum and maximum numbers permitted herein.]~~The Board shall have equal representation from each of the Foundation's five radio stations. *Starting with the 2018 Director elections*, ~~[the Delegates from the five Foundation radio stations shall each elect [four (4)]~~ *three* Directors: ~~[three (3)]~~ *two (2)* of whom shall be Listener-Sponsor Delegates and one (1) of whom shall be a Staff Delegate – for a total of ~~[twenty (20)]~~ *fifteen* "Station Representative" Directors, as set forth in Section 3 of this Article of the Bylaws. In addition, the Board shall elect two (2) "Affiliate Representative" Directors from nominees submitted as set forth in Section 4 of this Article of the Bylaws."

and: Change Article Five, Section 3B (Election) from:

"The Delegates for each radio station shall meet annually in early January to elect four Directors to represent that radio station on the Board. The Delegates of both classes of Members, voting together, shall elect three Listener-Sponsor Directors using the Single Transferable Voting method, and shall elect one Staff Director using the Instant Runoff Voting method, to represent that radio station on the Board. The Staff Director must be a Staff Delegate. The Listener-Sponsor Directors must be Listener-Sponsor Delegates."

to the following (deleted language in brackets [] and strikethrough-text, added language in bold italics):

"The Delegates for each radio station shall meet annually in early January to elect ~~[four]~~ *three* Directors to represent that radio station on the Board. The Delegates of both classes of Members, voting together, shall elect ~~[three]~~ *two* Listener-Sponsor Directors using the Single Transferable Voting method, and shall elect one Staff Director using the Instant Runoff Voting method, to represent that radio station on the Board. The Staff Director must be a Staff Delegate. The Listener-Sponsor Directors must be Listener-Sponsor Delegates."

and: Remove Article Five, Section 5 (Nomination and Election of At Large Directors):

~~[SECTION 5. NOMINATION AND ELECTION OF AT-LARGE DIRECTOR~~

~~A. NOMINATION~~

~~In the event that the Board resolves that there shall be twenty three (23) Foundation Directors (the maximum number of Directors permitted under these bylaws) then there shall be one "At Large" Director elected each~~

year. Candidates for election as an "At Large" Director shall be nominated by majority vote of the Delegates from a minimum of three radio stations, with the Delegates from each station voting separately by station area. Nominations shall close on February 15th each year and shall be submitted in writing by that date to the Foundation Secretary together the nominee's resume and a statement of his/her interest in serving as a Director of the Foundation. The Foundation Secretary shall forward to all Directors all materials submitted supporting each nominee not later than March 1st

B. ELECTION

As the second order of business at the Board meeting in March each year in which an At large director is to be elected, the Directors present and voting (excluding any then current Affiliate Representative or At Large Directors from the vote) shall elect one (1) At Large Director from the nominees submitted by the Delegates, using the Instant Runoff Voting method. The At Large Director shall serve for a one year term which shall commence immediately upon his/her election.]

The revised language would then read:

Article Five, Section 1, subsection C (Number on PNB):

"The Board shall have equal representation from each of the Foundation's five radio stations. Starting with the 2018 Director elections, the Delegates from the five Foundation radio stations shall each elect three Directors: two (2) of whom shall be Listener-Sponsor Delegates and one (1) of whom shall be a Staff Delegate – for a total of fifteen "Station Representative" Directors, as set forth in Section 3 of this Article of the Bylaws. In addition, the Board shall elect two (2) "Affiliate Representative" Directors from nominees submitted as set forth in Section 4 of this Article of the Bylaws."

Article Five, Section 3B (Election):

""The Delegates for each radio station shall meet annually in early January to elect three Directors to represent that radio station on the Board. The Delegates of both classes of Members, voting together, shall elect two Listener-Sponsor Directors using the Single Transferable Voting method, and shall elect one Staff Director using the Instant Runoff Voting method, to represent that radio station on the Board. The Staff Director must be a Staff Delegate. The Listener-Sponsor Directors must be Listener-Sponsor Delegates."

(and Article Five, Section 5 (Nomination and Election of At Large Directors) would be removed)

2017 Proposed Pacifica Bylaws Amendment

Reduce the size of LSBs / Number of Delegates to 16 (from 24, a reduction of 1/3)

Summary of Amendment:

This amendment would reduce the size of the LSBs by 1/3, while keeping the proportions of staff vs listener representatives the same, by electing 6 listener reps and 2 staff reps in each delegate election (instead of 9 listeners and 3 staff in each election). Current Delegates/LSB members would continue in their terms as this amendment only changes the number who are *elected*.

Note: This will allow the number of Delegates, and therefore the number of LSB members, to decrease over the next two Delegate elections.

Actual amendment text:

a. Change Article Four, Section 3 (Election of Delegates) from:

"All elections for Delegates shall be by written ballot, provided, however, that the elections supervisor shall also have the option of providing a secure electronic means of voting via the internet. Members shall only have the right to vote for Delegates for the Foundation radio station with which the Member is affiliated. Members shall vote in classes: Listener-Sponsor Members shall elect 18 Delegates for each radio station and Staff Members shall elect 6 Delegates for each radio station, for a total of twenty-four (24) Delegates for each Foundation radio station. Elections of Delegates shall be staggered over a 3-year period with elections for 3 Staff Delegates and 9 Listener-Sponsor Delegates held in the first year, elections for 3 Staff Delegates and 9 Listener-Sponsor Delegates held in the second year and no elections in the third year. The ballots shall be counted by the Single Transferable Voting method. All ballots

related to the election, and the removal, of any and all Delegates shall be filed with the Foundation Secretary and maintained with the corporate records for a period of three (3) years."

to the following (deleted language in brackets [] and strikethrough text, added language in bold italics):

"All elections for Delegates shall be by written ballot, provided, however, that the elections supervisor shall also have the option of providing a secure electronic means of voting via the Internet. Members shall only have the right to vote for Delegates for the Foundation radio station with which the Member is affiliated.

Members shall vote in classes: Listener-Sponsor Members shall elect [~~48~~] **12** Delegates for each radio station and Staff Members shall elect [~~6~~] **4** Delegates for each radio station [~~, for a total of twenty-four (24) Delegates for each Foundation radio station~~]. Elections of Delegates shall be staggered over a 3-year period with elections for [~~3~~] **2** Staff Delegates and [~~9~~] **6** Listener-Sponsor Delegates held in the first year, elections for [~~3~~] **2** Staff Delegates and [~~9~~] **6** Listener-Sponsor Delegates held in the second year. The ballots shall be counted by the Single Transferable Voting method. All ballots related to the election, and the removal, of any and all Delegates shall be filed with the Foundation Secretary and maintained with the corporate records for a period of three (3) years.

and:

b. Change Article Seven, Section 2 (Composition of the Local Station Boards), paragraph 1, from:

"Each LSB shall consist of the 24 Delegates elected by the Members for that radio station -18 Listener-Sponsor Delegates and 6 Staff Delegates. (Four of the Delegates for each radio station shall also concurrently serve as Directors of the Foundation, as set provided in Section 3 of Article 5 of the Bylaws.)"

to the following (deleted language in brackets [] and strikethrough text, added language in bold italics):

"Each LSB shall consist of the [~~24~~] Delegates elected by the Members for that radio station [~~-including 18 Listener-Sponsor Delegates and 6 Staff Delegates~~]. (~~Four~~) **Some** of the Delegates for each radio station shall also concurrently serve as Directors of the Foundation, as provided in Section 3 of Article 5 of the Bylaws.)"

The revised language would then read:

Article Four, Section 3 (Election of Delegates)

"All elections for Delegates shall be by written ballot, provided, however, that the elections supervisor shall also have the option of providing a secure electronic means of voting via the Internet. Members shall only have the right to vote for Delegates for the Foundation radio station with which the Member is affiliated.

Members shall vote in classes: Listener-Sponsor Members shall elect 12 Delegates for each radio station and Staff Members shall elect 4 Delegates for each radio station. Elections of Delegates shall be staggered over a 3-year period with elections for 2 Staff Delegates and 6 Listener-Sponsor Delegates held in the first year, elections for 2 Staff Delegates and 6 Listener-Sponsor Delegates held in the second year. The ballots shall be counted by the Single Transferable Voting method. All ballots related to the election, and the removal, of any and all Delegates shall be filed with the Foundation Secretary and maintained with the corporate records for a period of three (3) years.

and:

Article Seven, Section 2 (Composition of the Local Station Boards), paragraph 1

"Each LSB shall consist of the Delegates elected by the Members for that radio station. (Some of the Delegates for each radio station shall also concurrently serve as Directors of the Foundation, as provided in Section 3 of Article 5 of the Bylaws.)"

rev. Oct. 15, 2017

Proposed Bylaws Amendment – Local Station Boards and Delegates – size and handling of vacancies

Justification: This bylaws amendment allows Local Station Boards to be composed of a variable number of members to facilitate smaller boards via natural attrition and to ensure local station board members earn election to local station boards by gaining sufficient support from the station's members in an election, and thus are representatives who the membership want. This amendment also removes some redundant language regarding how many Delegates/LSB members are to be elected.

Amendment – Part A:

Original Text:

Article Four, Delegates, Section 10: Filling of Vacancies

If a Delegate position becomes vacant mid-term, that Delegate shall be replaced for the remainder of his/her term by the highest ranked candidate from the last election of Delegates for that Class of Members for that station who was not elected and who is available and continues to meet the Delegate eligibility requirements as set forth in Section 2(A) or 2(B) of this Article of these Bylaws. In the event that no eligible and available candidate from the last election is found, then the Delegates for that radio station shall appoint a Member of the appropriate class to serve as Delegate and fill the seat for the remainder of the term.

Revised Text:

Article Four, Delegates, Section 10: Filling of Vacancies

If a Delegate position becomes vacant mid-term, that Delegate position shall remain vacant until the next membership election unless the vacancy causes the total number of Delegates for that station to fall below a minimum of 3/4 of the number of Delegates elected in accordance with Article Four, Section 3. If the vacancy causes the Delegates to fall below that minimum number, then the Delegates for that radio station shall appoint a Member of the appropriate class to serve as Delegate and to fill the seat for the remainder of the term.

Amendment – Part B:

Original Text:

Article Seven, Local Station Boards, Section 2: Composition of Local Station Boards

Each LSB shall consist of the 24 Delegates elected by the Members for that radio station - 18 Listener-Sponsor Delegates and 6 Staff Delegates. (Four of the Delegates for each radio station shall also concurrently serve as Directors of the Foundation, as set provided in Section 3 of Article 5 of the Bylaws.)

In addition, an "associate station," if any, as that term is defined in Section 8 of this Article, may appoint one representative to the LSB of the radio station with which it is associated. Associate station representatives shall be voting members of the LSB; provided, however, that no associate station representative shall have the right to vote for the election or removal of any Foundation Director or Delegate nor may s/he be eligible for election by the Delegates to the office of Director. No LSB shall have more than a total of three (3) associate station representatives (and no more than one (1) from any one associate station) at any given time. The term of office of an associate station representative shall be three years, with a maximum of two consecutive three-year terms of service on an LSB.

The station's General Manager shall serve as a non-voting member of the station's LSB.

Revised Text:

Article Seven, Local Station Boards, Section 2: Composition of Local Station Boards

Each LSB shall consist of the Delegates elected by the Members for that radio station. (Some of the Delegates for each radio station shall also concurrently serve as Directors of the Foundation, as set provided in Section 3 of Article 5 of the Bylaws.)

In addition, an "associate station," if any, as that term is defined in Section 8 of this Article, may appoint one representative to the LSB of the radio station with which it is associated. Associate station representatives shall be voting members of the LSB; provided, however, that no associate station representative shall have the right to vote for the election or removal of any Foundation Director or Delegate nor may s/he be eligible for election by the Delegates to the office of Director. No LSB shall have more than a total of three (3) associate station representatives (and no more than one (1) from any one associate station) at any given time. The term of office of an associate station representative shall be three years, with a maximum of two consecutive three-year terms of service on an LSB.

The station's General Manager shall serve as a non-voting member of the station's LSB.
