

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of:)
)
THE ASSOCIATION FOR) File No. BMPFT-990818TC
COMMUNITY EDUCATION, INC.)
)
For Modification of Construction Permit)
BMPFT-980916TA)
For K211DK, Santa Ana, CA)

To: Chief, Audio Services Division
Mass Media Bureau

REPLY

Santa Monica Community College District ("SMCCD"), pursuant to Section 73.3587 of the Commission's rules, hereby replies to the "Reply to Informal Complaint" dated October 28, 1999, ("October 28, 1999 Response") filed by The Association For Community Education, Inc. ("ACE"). In support, SMCCD shows as follows:

1. SMCCD holds the license for KCRW(FM), Santa Monica, California, a non-commercial educational FM radio station that operates on Channel 210 (89.9 MHz) – the first adjacent channel to ACE's proposed operation. In its October 13, 1999, Informal Objection, SMCCD requested that the Mass Media Bureau ("Bureau") dismiss the ACE application, because the proposed operation would be likely to interfere with the reception of KCRW.¹

2. In its Informal Objection, SMCCD noted that on August 26, 1998, the Bureau granted ACE's original application, as amended (File No. BPFT-970218TE).

Letter of Daniel Fontaine, Supervisory Engineer, Audio Services Division, to The Association

¹ 47 CFR §74.1204(f); *Amendment of Part 74 of the FM Commission's Rules Concerning Translator Stations*, 5 FCC Rcd. 7212, 7230 (1990).

For Community Education, Inc., Lewis J. Paper, Esq. and Christopher D. Imlay, Esq., Ref. No. 1800B3 (MMB Aug. 26, 1998) (hereafter "*Denial*"). On September 25, 1998, SMCCD filed a Petition for Reconsideration of the *Denial*, which is still pending. SMCCD stated in its Informal Objection that ACE did not oppose the Petition for Reconsideration. Informal Objection, p. 2. ACE takes exception to that statement, by pointing to its December 1, 1998 "Response to Petition for Reconsideration" ("December 1 Response").

3. ACE's December 1 Response was filed almost two-months after the deadline set forth in Section 1.106(g) of the rules, for opposing SMCCD's September 25, 1998, petition for reconsideration. SMCCD filed a "Motion to Strike ACE Response to Petition for Reconsideration," dated December 11, 1998, based on the lateness of the December 1 Response. ACE did not oppose SMCCD's motion to strike. Because the December 1 Response was late-filed and because ACE did not oppose SMCCD's motion to strike, SMCCD maintains that the December 1 Response is not entitled to any consideration under Section 1.106(g) of the Commission's rules. Therefore, one can conclude, as a matter of law, that SMCCD's September 25, 1998, petition for reconsideration is unopposed.

4. ACE takes exception to SMCCD's statement of fact and law in the Informal Objection that neither of the Bureau's grants of August 26, 1998, or of October 22, 1998, have become final orders, even though ACE admits that SMCCD has "asked the FCC to reconsider its decision." October 28, 1999 Response, p. 2. SMCCD has never suggested that the filing of a petition for reconsideration would "overrule" or "set . . . aside" an FCC grant of an application under Section 1.106 of the rules. However, it is black letter law that the timely filing of a petition for reconsideration prevents that grant from becoming a final agency action, until the Commission or its staff acts on the petition

for reconsideration and the time for seeking further administrative or judicial review and for the Commission to act on its own motion has passed, without any further action.

5. It is true that the postmark date on the envelope in which ACE received its service copy of the SMCCD Informal Objection was not October 13,² but the fact of the matter is that a copy of the Informal Objection was served upon and received by ACE, as required by the FCC's rules, including the *ex parte* rules. By contrast, ACE failed to serve SMCCD with a copy of its latest application for modification of construction permit,³ just as ACE had failed to serve SMCCD with copies of both its earlier application (File No. BMPFT-980916TA) for modification of construction permit and the October 13, 1998, amendment to that application.

6. The recent amendments to the Commission's rules have no relevancy to the facts of this case. Those facts are that: (a) ACE initially tendered an application for a new station; (b) ACE amended that application such that the FCC had to assign a new file number; (c) the FCC granted that amended application; (d) before SMCCD could petition for reconsideration of that grant, ACE filed on September 16, 1998, an application for a major change of that construction permit; (e) ACE amended that major change application on October 13, 1998, to transform it into a minor change application and to avoid the consequences of filing for a major change; (f) the Bureau granted the amended application before giving Public Notice of the tender of the amendment; (g) SMCCD petitioned for reconsideration of the grant of the amended application, and (h) ACE now attempts to

² The service copy of the Informal Objection was originally sent on October 13 to ACE at "2301 Ponderosa Drive, Suite 28" but returned by the Post Office with a notation that no such suite number existed at that address. It was determined that the correct street address is "2310 Ponderosa Drive." The envelope was correctly addressed, mailed to ACE and obviously received.

³ On November 25, 1998, SMCCD filed its "Motion to Treat Informal Objection as Petition for Reconsideration." Thus, SMCCD has requested reconsideration of the October 22, 1998, grant of the construction permit that ACE now seeks to modify.

dramatically increase those facilities by filing an application against which a petition to deny does not lie – the result it avoided by filing the October 13, 1998, amendment. SMCCD has simply asserted that the FCC is entitled to look at the entire film, and not the single frame that ACE has presented for viewing, to determine how the public interest is best served.

7. ACE has chosen to ignore SMCCD's technical presentation that interference will result and to focus instead on two ZIP Codes – 92667 and 92602.

8. To determine which ZIP Codes were within the translator's proposed 60 dBu contour, SMCCD's engineering consultant, John Davis, plotted the contour on the Thomas Brothers ZIP Code Directory for Orange County, 1999 Edition. A copy of this map is attached. Effective July 1, 1996, the Postal Service realigned various ZIP Codes, because of population growth in the proposed coverage area:

(a) *92602 ZIP Code:* The 92602 ZIP Code was originally part of the 92720 ZIP Code. Effective July 1, 1996, the 92720 ZIP Code was split into the 92602 and 92620 ZIP Codes because of population growth. The 92602 ZIP Code is identified with the community of Irvine, as ACE notes. The northeast section of the 92602 ZIP Code territory is within the plotted 60 dBu contour of ACE's proposed operation.

(b) *92667 ZIP Code:* The Western Economic ZIP Code Map shows a 92667 ZIP Code. However, effective July 1, 1996, the Postal Service discontinued use of the ZIP Code 92667 and established the new ZIP Code 92867 for the Main Office station for this delivery area.⁴

⁴ The ZIP Code for the Villa Park station was changed from 92667 to 92861 at the same time.

Information from the Postal Service concerning these changes in ZIP Codes is also attached for the Commission's reference.

9. While this clarification of the realignment of ZIP Codes by the Postal Service, may reduce slightly the number of KCRW subscribers within the proposed coverage area, it does not eliminate entirely those subscribers⁵ or the fact that the proposed operation would be likely to interfere with the operation of KCRW. Moreover, the fact that a letter from a subscriber may be "15 months old" does not negate its evidentiary value for this proceeding. It is not relevant to this proceeding whether or not that particular person remains a KCRW subscriber. The relevant issue is whether or not the KCRW signal is received in the proposed coverage area and therefore would likely experience interference. In the intervening 15 months, nothing has changed with regard to the KCRW signal to alter the fact that it can be received in that area, evidenced by the letter.

10. SMCCD has shown that within the translator's proposed 60 dBu contour, the translator signal strength exceeds the level which will subject KCRW to interference by 12 to 17 dB. Even taking into account the statistical nature of the Commission's propagation curves set forth in Section 73.333 (Figures 1 and 1a) of the rules, the reception of the KCRW will be likely to be impaired by the translator's proposed signal everywhere within the translator's proposed 60 dBu contour.

11. The statement by ACE that "the translator, K211DK, has operated (in accordance with its Construction Permit) continuously since June 1999, without one complaint of interference,"⁶ has no bearing on the merits of this particular application because ACE has proposed to abandon that mode of operation and to dramatically increase

⁵ Mr. Davis has confirmed that at least 76 of the subscribers in KCRW database reside in the proposed coverage area assuming even population distribution.

⁶ October 28, 1999 Response, p. 6.

the coverage area of the translator station. SMCCD has conclusively demonstrated that it has listeners who reside within the ZIP Codes that would be served by the proposed translator operation. Those KCRW listeners would likely experience interference from ACE's proposed operation.

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that Chief dismiss ACE's application.

Respectfully submitted,

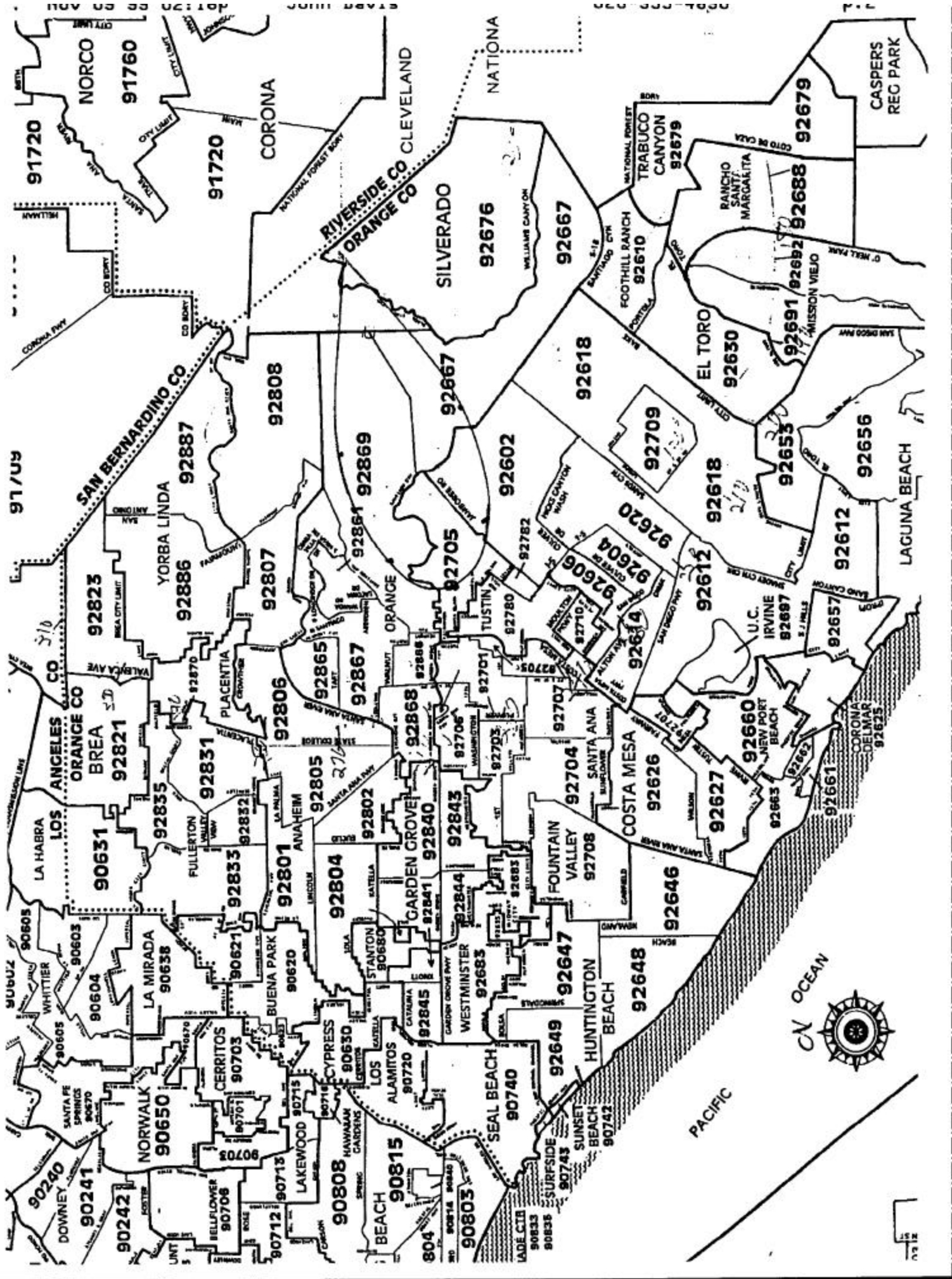
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Harold K. McCombs, Jr.

November 12, 1999



917/U9

PACIFIC OCEAN



912

ZIP ALERT

Vol. 5, No. 4

Special Edition 1996

Major ZIP Code Realignment:

California, Florida and Northern Virginia

On July 1, 1996, wide-ranging ZIP Code changes are scheduled to take place in Orange County California, Southwest Florida, and Northern Virginia.

With the activation of ZIP Code span 341, combined with the realignment of the ZIP Code spans 338, 339, and 346 in Southwest Florida, approximately 338,000 addresses will be affected.

In Orange County California, realignments in ZIP Code spans 926, 927, and 928 will affect approximately 318,000 addresses.

Approximately 181,000 addresses will be affected by the realignment of ZIP Code spans 201, 220 and 221 in Northern Virginia.

These realignments will ensure sufficient ZIP Codes are available to accommodate accelerated population growth, additional distribution facilities, and effective, efficient service to customers in these areas.

These realignments can be categorized as follows:

1. A transfer of a ZIP Code to one or more new ZIP Codes in a newly established three-digit service area.
2. A split of one ZIP Code into two ZIP Codes within the same post office.
3. Establishment of a new ZIP Code for post office boxes.
4. A change of delivery territory from one post office to another (e.g., Irvine to Tustin, CA).

Appropriate information regarding the attached listing of ZIP Codes will be included in all June monthly and July quarterly AIS subscription products, including: ZIP+4, Z4Change, ZIPMove, Line of Travel (LOT), Carrier Route Information System (CRIS), Delivery Statistics, Five-Digit ZIP Code and City State.

If you have questions or need additional assistance ordering Address Information System products, call the Customer Service Department at the National

Customer Support Center in Memphis TN, at 800-238-3150. If you have specific questions concerning these realignments, contact the Address Management System offices listed below:

Suncoast District
Address Management
System
(813) 889-3900

Santa Ana District
Address Management
System
(714) 662-6330

Northern Virginia District
Address Management
System
(703) 934-2630

In This Issue...

- ▶ 2 Post Office Changes

Post Office Changes (continued)

| Old/ New | Finance Number | ZIP Code | ST | PO Name | County/ Parish | Station/ Branch/Unit | Unit Type | Effective Date | Comments |
|-------------|-------------------|-------------|----|---------|-------------------|-------------------------|----------------|-------------------|--|
| old | 053710 | 92713 | CA | Irvine | Orange | Harvest Sta | Classified Sta | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for post office boxes. Use Irvine CA 92623 as last line of address for post office boxes previously in ZIP Code 92713. |
| new | 053710 | 92623 | CA | Irvine | Orange | Harvest Sta | Classified Sta | 7/1/98 | |
| old | 053710 | 92714 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92604 as last line of address for a portion of the deliveries previously in ZIP Code 92714. |
| new | 053710 | 92604 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | |
| old | 053710 | 92714 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92606 as last line of address for a portion of the deliveries previously in ZIP Code 92714. |
| new | 053710 | 92606 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | |
| old | 053710 | 92714 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92814 as last line of address for a portion of the deliveries previously in ZIP Code 92714. |
| new | 053710 | 92814 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | |
| old | 053710 | 92714 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92814 as last line of address for a portion of the deliveries previously in ZIP Code 92714. |
| new | 053710 | 92814 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | |
| old | 053710 | 92715 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92782 as last line of address for a portion of the deliveries previously in ZIP Code 92715. |
| new | 053710 | 92782 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | |
| old | 053710 | 92715 | CA | Irvine | Orange | Harvest Sta | Classified Sta | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92812 as last line of address for deliveries previously in ZIP Code 92715. |
| new | 053710 | 92812 | CA | Irvine | Orange | Harvest Sta | Classified Sta | 7/1/98 | |
| old | 053710 | 92715 | CA | Irvine | Orange | University Sta | Classified Sta | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for post office boxes. Use Irvine CA 92815 as last line of address for post office boxes previously in ZIP Code 92715. |
| new | 053710 | 92815 | CA | Irvine | Orange | University Sta | Classified Sta | 7/1/98 | |
| old | 053710 | 92718 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92603 as last line of address for a portion of the deliveries previously in ZIP Code 92718. |
| new | 053710 | 92603 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | |
| old | 053710 | 92718 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92818 as last line of address for a portion of the deliveries previously in ZIP Code 92718. |
| new | 053710 | 92818 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | |
| old | 053710 | 92720 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92802 as last line of address for a portion of the deliveries previously in ZIP Code 92720. |
| new | 053710 | 92802 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | |
| old | 053710 | 92720 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Irvine CA 92820 as last line of address for a portion of the deliveries previously in ZIP Code 92720. |
| new | 053710 | 92820 | CA | Irvine | Orange | Main Office | Post Office | 7/1/98 | |
| old | 055664 | 92863 | CA | Orange | Orange | Main Office | Post Office | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for post office boxes. Use Orange CA 92864 as last line of address for post office boxes previously in ZIP Code 92863. |
| new | 055664 | 92864 | CA | Orange | Orange | Main Office | Post Office | 7/1/98 | |
| old | 055664 | 92864 | CA | Orange | Orange | The City | Classified Sta | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for post office boxes. Use Orange CA 92865 as last line of address for post office boxes previously in ZIP Code 92864. |
| new | 055664 | 92865 | CA | Orange | Orange | The City | Classified Sta | 7/1/98 | |
| old | 055664 | 92865 | CA | Orange | Orange | Olive Sta | Classified Sta | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for post office boxes. Use Orange CA 92867 as last line of address for post office boxes previously in ZIP Code 92865. |
| new | 055664 | 92867 | CA | Orange | Orange | Olive Sta | Classified Sta | 7/1/98 | |
| old | 055664 | 92865 | CA | Orange | Orange | Olive Sta | Classified Sta | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Orange CA 92865 as last line of address for deliveries previously in ZIP Code 92865. |
| new | 055664 | 92865 | CA | Orange | Orange | Olive Sta | Classified Sta | 7/1/98 | |
| old | 055664 | 92866 | CA | Orange | Orange | Plaza Sta | Classified Sta | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for post office boxes. Use Orange CA 92866 as last line of address for post office boxes previously in ZIP Code 92866. |
| new | 055664 | 92866 | CA | Orange | Orange | Plaza Sta | Classified Sta | 7/1/98 | |
| old | 055664 | 92866 | CA | Orange | Orange | Plaza Sta | Classified Sta | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Orange CA 92866 as last line of address for deliveries previously in ZIP Code 92866. |
| new | 055664 | 92866 | CA | Orange | Orange | Plaza Sta | Classified Sta | 7/1/98 | |
| old | 055664 | 92867 | CA | Orange | Orange | Villa Park | Place Name | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Orange CA 92867 as last line of address for a portion of the deliveries previously in ZIP Code 92867. |
| new | 055664 | 92867 | CA | Orange | Orange | Villa Park | Place Name | 7/1/98 | |
| old | 055664 | 92867 | CA | Orange | Orange | Main Office | Post Office | 7/1/98 | ZIP Code discontinued. Establish a new ZIP Code for delivery area. Use Orange CA 92867 as last line of address for deliveries previously in ZIP Code 92867. |
| new | 055664 | 92867 | CA | Orange | Orange | Main Office | Post Office | 7/1/98 | |

Sheet1

| SANTA ANA ZIP CODE REALIGNMENT | | | | |
|---------------------------------------|--------------|--------------------|---------------|-----------------|
| EFFECTIVE JULY 1, 1996 | | | | |
| Revised Sept 86 | | | | |
| OLD | | | | |
| CURRENT ZIP CODE | POST OFFICE | STATION BRANCH | TYPE DELIVERY | NEW ZIP CODE |
| 92601 | Atwood | Main Office | PO Boxes | 92811 |
| 92621 | Brea | Main Office | City Delivery | 92821, 92823* |
| 92822 | Brea | Main Office | PO Boxes | 92822 |
| 92831 | Fullerton | Main Office | City Delivery | 92831 |
| 92832 | Fullerton | Commonwealth Sta | City Delivery | 92832 |
| 92832 | Fullerton | Commonwealth Sta | PO Boxes | 92838 |
| 92633 | Fullerton | Orangehurst Sta | City Delivery | 92833 |
| 92633 | Fullerton | Orangehurst Sta | PO Boxes | 92837 |
| 92634 | Fullerton | Main Office | PO Boxes | 92834 |
| 92835 | Fullerton | Sunnyhills Sta | City Delivery | 92835 |
| 92835 | Fullerton | Sunnyhills Sta | PO Boxes | 92838 |
| 92840 | Garden Grove | Main Office | City Delivery | 92840 |
| 92841 | Garden Grove | Main Office | City Delivery | 92841 |
| 92842 | Garden Grove | Main Office | PO Boxes | 92842 |
| 92843 | Garden Grove | Main Office | City Delivery | 92843 |
| 92844 | Garden Grove | Main Office | City Delivery | 92844 |
| 92645 | Garden Grove | W Garden Grove Sta | City Delivery | 92845 |
| 92845 | Garden Grove | W Garden Grove Sta | PO Boxes | 92846 |
| 92813 | Orange | Main Office | PO Boxes | 92863 |
| 92864 | Orange | The City | PO Boxes | 92864 |
| 92865 | Orange | Olive Station | City Delivery | 92865 |
| 92865 | Orange | Olive Station | PO Boxes | 92857 |
| 92866 | Orange | Plaza Station | City Delivery | 92866 |
| 92866 | Orange | Plaza Station | PO Boxes | 92858 |
| 92867 | Orange | Main Office | City Delivery | 92867 |
| 92867 | Orange | Villa Park | City Delivery | 92861 |
| 92868 | Orange | W Orange Station | City Delivery | 92868 |
| 92868 | Orange | W Orange Station | PO Boxes | 92856 |
| 92668 | Orange | El Modena Station | City Delivery | 92862, 92869* |
| 92869 | Orange | El Modena Station | PO Boxes | 92859 |
| 92670 | Picoctia | Main Office | City Delivery | 92870 |
| 92670 | Picoctia | Main Office | PO Boxes | 92871 |
| 92886 | Yorba Linda | Main Office | City Delivery | 92888 |
| 92886 | Yorba Linda | Main Office | PO Boxes | 92885 |
| 92887 | Yorba Linda | Main Office | City Delivery | 92887 |

Sheet1

| ZIP CODE REALIGNMENT | | | | |
|--|--------|------------------------------|---------------|--------------|
| Page 2 of 2 | | | | |
| 92619 | Irvine | Main Office | PO Boxes | 92619 |
| 92713 | Irvine | Harvest Station | PO Boxes | 92623 |
| 92714 | Irvine | Main Office | City Delivery | 92604 |
| | | Harvest Station | City Delivery | 92606,92614* |
| 92715 | Irvine | Main Office | City Delivery | 92612 |
| 92716 | Irvine | University Station | PO Boxes | 92616 |
| 92718 | Irvine | Main Office | City Delivery | 92618,92603* |
| 92720 | Irvine | Main Office | City Delivery | 92620,92602* |
| 92717 | Irvine | University of Calif - Irvine | Firm Unique | 92697 |
| 92730 | Irvine | Fluor Corp | Firm Unique | 92698 |
| 92680 | Tustin | Main Office | City Delivery | 92760,92782* |
| 92681 | Tustin | Main Office | PO Boxes | 92761 |
| | | | | |
| | | | | |
| <p>*TO VERIFY YOUR FIVE (5) DIGIT ZIP CODE AND GET THE + PLUS 4 CODE PLEASE CALL: 1-800-276-8777 24 Hours a day, 7 Days a week.</p> | | | | |
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| nvzj06 | | | | rvsd698 |

CERTIFICATE OF SERVICE

I, Kimberly Dunmire, do hereby certify that on November 12, 1999, a copy of the foregoing "Reply" was served by mail, First Class Postage Prepaid, to the following persons:

Philip C. Guthrie, President
The Association for Community Education, Inc.
Suite 28
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Camarillo, California 93010

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Kimberly Dunmire