the transmitter or antenna had been installed on the tower (fdgs. ¶ 7). These episodes did not add credibility to Mrs. Smith's later complaints.

106. Mrs. Smith's and Mrs. Hillis' efforts generated a mountain of complaints, over 1,200 in all, a vast majority of which were from people outside, sometimes far outside, the KOKS blanketing contour. The sheer volume of the complaints practically ensured that there would be mistakes made in locating persons inside or outside the blanketing contour and in keeping track of complainants, and the task was not made easier by the fact that the complaints often had handwritten names and addresses which were hard to read and often had no phone numbers (fdgs. ¶ 19). Often two complaints were filed per household (sometimes conflicting), causing confusion and added work. Many of the complaints overlapped, in that they were sent in close proximity to one another, and there was evidence that some of the complaints were not real, or were altered after the complainant signed (fdgs. ¶ 19).

107. The constant community agitation, the telephone calls, lawsuits, letters to congressmen, etc., ensured that there were a number of people who were uncooperative or distrustful no matter what the station did. See, for example, the description of the visit to the Garrisons (fdgs. ¶ 54). Calvary certainly has to be the first noncommercial licensee who was required to solve blanketing complaints while at the same time defending a lawsuit

filed by some of the complainants which requested unspecified money damages (fdgs. ¶ 22).

108. The record shows that Calvary was attempting to cure these blanketing complaints under the most daunting of technical circumstances. No other noncommercial licensee has ever been required to cure blanketing interference to the reception of a television station outside that station's grade B contour (fdgs. ¶ 14). Moreover, of the four most desired television stations in Poplar Bluff, Channels 6, 8, 12, and 15, one, channel 6, is located roughly 90 miles from Poplar Bluff, and the community is far beyond the station's grade B contour. Two other stations, 8 and 12, only put a grade B signal over the community, and when Mr. Poole measured the station's signal strength on the ground in Poplar Bluff only one station, channel 15, had a grade B signal in Poplar Bluff (fdgs. ¶ 25). Two of the most popular signals, channels 6 and 12, are located in opposite directions, making antenna orientation and reception difficult. Reception of all the stations is so tenuous that it degrades noticeably in poor weather, and both channels 6 and 8 are subject to co-channel interference (fdgs. ¶).

109. To further add to Calvary's technical conundrum many of the homes in the blanketing contour are located close to a highway patrol station whose own transmissions create interference that looks a great deal like blanketing interference, but also, because of the relationship between the highway patrol frequency and KOKS frequency, the mixture of the two frequencies creates interference to the IF beat frequency of a television. All of these technical

considerations impact on television reception, and lead to extraordinarily poor television reception in the blanketing area. The record is replete with references to the poor television reception. Mr. Poole, for example, noted that the television signals received in the complainants homes were "substandard" (fdgs. ¶ 25). Mr. Lampe testified extensively on the poor television reception in the area. Both Mr. Lampe and Mr. Ramage noted that the herringbone pattern that is distinctive or characteristic of FM blanketing interference was missing from the receivers that they viewed in complainant's homes (fdgs. ¶ 72). And, while Mr. Ramage testified that there was still blanketing interference affecting the picture because their was a slight difference in signal quality when the KOKS transmitter was turned on, blanketing interference is indistinguishable from other sorts of interference only in the presence of an extremely weak signal where the picture, before the addition of blanketing interference, would be very poor, on the nature of a TASO 4-6 (fdgs. ¶ 72).

110. Calvary is also subject to a totally subjective and inherently unreasonable standard in resolving blanketing complaints. Calvary is being held to a standard of restoring reception to how it was before KOKS went on the air, a standard impossible to meet because, as Mr. Ramage noted, it is impossible to determine the quality of television reception that the complainants received before KOKS came on the air (fdgs. ¶ 69). Now KOKS must satisfy complainants with the only standard to apply, apparently, is the memory of complainants of signals they received

four years ago. And which memories does Calvary credit, since many complainants testified that even before KOKS came on the air reception of various TV signals varied depending on the time and weather? The memories of the signals coming in at the best times, or when it was raining? In addition to the "golden glow" that memory puts on everything, there is no incentive for complainants to give Calvary, especially in view of the agitation surrounding this case, the benefit of the doubt.

111. Finally, in responding to these complaints Calvary has been laboring under an apparent profound misunderstanding of its obligations under the Commission's Rules, and that concerns its obligation to cure complaints to the reception of channel 6. At the outset, it was clear that the primary problem of which complainants sought relief was interference to channel 6, the only NBC affiliate then received in Poplar Bluff. Mrs. Stewart estimated that 60 percent of the conversations she had with complainants concerned interference to channel 6 alone (fdgs. ¶ 15). Calvary had been advised both by its attorney and by its consulting engineer that it was not required to cure interference to channel 6 (fdgs. ¶ 13). Over a three year period Calvary filed a number of reports and responses to Commission inquiries and in every one made reference to the fact, either explicitly or unmistakenly if implicitly, that it was not responsible for curing interference complaints to channel 6 reception. The Commission, even though it gave Calvary guidance concerning whether it was required to cure interference to baby monitors or electrical

musical instruments, never once contradicted Calvary's assertions or indicated that its interpretation was erroneous (fdgs. ¶ 13). Calvary likewise made similar representations to FCC employees like Karen Raines and Mr. Poole, and these assertions were not contradicted (fdgs. ¶ 13). This belief was reasonable, since it was shared not only by FCC employees, but also by Calvary's chief adversaries as well as the management of channel 6 (fdgs. ¶). Given this history, Calvary's repeated assertions, and the Commission's many opportunities to offer Calvary guidance during the three year period this investigation has been ongoing, the Commission's action in designating this case for hearing based, at least in part, on its failure to restore reception to channel 6 is unconscionable. The Commission seemingly is playing "gotcha" with a licensee which, under any view of the facts, has expended a substantial amount of its time and treasure attempting to comply with the Commission's rules.[8]/

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[8]/While the Commission's Hearing Designation Order has conclusively established Calvary's obligation to restore reception to channel 6 within the blanketing area, the Commission's action, given the history of this case and Calvary's repeated assertions, raises substantial issues concerning the fundamental fairness of the process. Moreover, the Commission's action directing KOKS to resolve interference to channel 6 so far outside its grade B contour, without any explanation, seemingly runs directly contrary to rule section 73.525 and the Commission's adopted policies and rules concerning noncommercial educational FM stations protection of channel 6 adopted in its Third Report and Order in MM Docket No. 20735 (TV Channel 6 Protection), FCC 84-345, 57 Rad. Reg. 2d (P&F) 107 (1984). In the Third Report and Order the Commission mandated that noncommercial FM stations resolve at no expense interference to the signal of channel 6 within the channel 6 grade B contour, and that it provide technical advice to those receiving interference to channel 6 living outside the grade B contour.

112. Similarly, Calvary denies that it has failed to comply with the blanketing rule by failing to restore radio reception. Calvary did not do so because complainants, with less than a handful of exceptions, failed to request such assistance. Mr. Lampe went to 105 homes and never heard a complaint about radio reception (fdgs. ¶). Once again, this allegation is, seemingly, another manifestation of the "gotcha" mentality applied to the licensee. Calvary never went to a home without an appointment, never limited what it was going to do in a home to the television set, installed, in some instances, multiple filters on a television set or sets, heard less than five complaints about radio reception voiced to it directly, and yet is held responsible for curing complaints which the alleged complainants never voiced in Calvary's presence.

113. Turning to specific instances of blanketing complaints[9]/ Calvary notes that no one seems to know who or how the list of people that Mr. Ramage visited was compiled (fdgs. ¶). It includes a not very wide sample of those whom Calvary has visited. For example, the list includes two women who were the driving force behind the Commission's investigation as well as the third of the four plaintiffs who sued Calvary (fdgs. ¶). It includes two

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[9]/. Surprisingly, the advance of cable technology may make KOKS signal irrelevant to the reception of television signals in the blanketing area. Calvary has learned that not one but two cable systems are now running cable by homes in the area by the KOKS transmitter site, Including the Smith residence, the Hillis residence, and the Camelot Trailer Park, owned by the Hillis'. Instar Cable will run lines above ground on utility poles, and a competing system, Boycom Cablevision, will run its lines underground.

people, Mrs. Durbin and Mrs. Freeman, who KOKS admittedly missed in responding to complaints. It included Mr. Garrison, who, based on the report submitted by Calvary, was neither pleased nor reasonable concerning its efforts to cure the interference. What the list did not include was anyone like Joe Harrison, who testified that KOKS personnel came out to his house, asked what was wrong, installed two filters on his sets, and cleared up the problem (fdgs. ¶ 32).

114. Of the complainants that Mr. Ramage visited Mr. Crutchfield had a booster to which all his TV equipment was attached (fdgs. ¶), which Mr. Ramage's notes indicate Mr. Crutchfield bought after KOKS came on the air. There is no direct testimony for that fact, however, and Mr. Ramage, as will be noted hereafter, included at least one other note erroneously reporting when a booster was installed. Moreover, Mr. Crutchfield was one of the earliest complainants and was noted in Calvary's first response to the Commission (Ex. 15, p. 1) as having a booster. He clearly never told Calvary that he had purchased a booster <u>after</u> the station went on the air. Under section 73.318 Mr. Crutchfield, as the owner of a booster, is exempt.

115. Likewise, Dairel Denton owned a booster and a preamplifier when he submitted his complaint in October, 1988. The rule does not require Calvary to resolve interference complaints to those with boosters, only to offer technical assistance. That assistance was given, and Calvary provided a filter for Mr. Denton (fdgs. ¶). Apparently Mr. Denton had two portable sets when the station went on the air, but Mr. Denton never told Calvary that he

had two other sets not connected to a booster (fdgs. ¶). When Calvary tried to visit Mr. Denton's home in February, 1991 it was under a deadline, the 120 days imposed by the Commission were about to expire, and Mr. Denton waited until KOKS representatives got to his house to remember that he couldn't keep his appointment. Although Mrs. Denton was home, KOKS representatives were not allowed in the house.[10]/ When KOKS wrote Mr. Denton a letter noting that he had a booster, Mr. Denton didn't respond (fdgs. ¶). Likewise, while Mr. Ramage noted that Mrs. Christian had a booster on her television set, Mr. Ramage concluded that KOKS did not resolve the interference and that Mrs. Christian installed a booster later. In fact, Mrs. Christian was reported in Calvary's very first response to the Commission as having a booster (Ex. 15, p. 1). Mrs. Christian never told KOKS about her other TV sets. Moreover, given her expressed intention to remodel and run all her television sets off of one line from her booster,[11]/ it was not unreasonable not to give her more filters than were necessary to implement her plans.

116. Ramage concluded that KOKS had not resolved the interference complaint at the Kearbys' household, even though the

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[10]/. Mr. Denton's written testimony is that KOKS representatives came to his house and didn't take care of any TV sets which were not attached to an outside antenna. Mr. Denton noted that his wife was home at the time. What Mr. Denton did not relate until cross-examination is that no portable sets were fixed because Mrs. Denton wouldn't let anyone in the house. KOKS representatives had to wait on the porch while Mrs. Denton called Mr. Denton, who was instructed to deny them admittance.

[11]/. Mrs. Christian did as Mr. Lampe advised. See the wiring diagram included in MMB Ex. 1, p.50)

complaint the Kearbys filed concerned a different residence and when the television which the Kearbys presently own showed absolutely no change in reception when KOKS went off the air (fdgs. ¶ 76). Mrs. Freeman had two sets one of which had a booster. Reception of the set without a booster was practically unaffected by the operation of the KOKS transmitter (only one channel, channel 15, went from a TASO 4 to TASO 3). The operation of the set with the booster was more dramatic. However, a booster's function is too amplify a signal, including the offending FM signal--that is why booster's are exempt. The operation of a set with a booster hardly proves that Calvary contributed to a blanketing problem.

117. One fact that is of real significance is that both Mr. Lampe and Mr. Ramage agreed that blanketing interference has a distinctive visual pattern on a TV set. Both testified, Mr. Lampe with respect to the 105 homes he visited in 1991, and Mr. Ramage with the 14 homes he visited in 1992, that neither observed the tell-tale herringbone pattern that is indicative of blanketing interference (fdgs. ¶). And, while Mr. Ramage testified that blanketing interference could be indistinguishable from snow or other interference, it would be indistinguishable only in the presence of an extremely weak signal with a very poor picture (fdgs. ¶).

118. Mr. Ramage reported that both the Smith's and the Hillis' were "disappointed" when there was not a more significant change in their reception when KOKS went off the air. In fact, the change was so slight that Mrs. Smith wouldn't believe the station was off the

air even when he showed her a spectrum analyzer (fdgs. ¶ 73). In point of fact, Ramage's opinion that KOKS did not restore reception primarily on Mrs. Smith's statements, because the difference in reception when KOKS was off the air was almost unnoticeable (fdgs. ¶ 73). On one set there was no difference in reception at all, and on another set the difference was a "fairly slight" improvement from a TASO 6 to a TASO 5-6 on channel 8, and a TASO 4 to a TASO 3 on channel 12. It should be noted that a TASO 5 or 6 signal is a terrible signal. Ramage also noted that the tuner in the Smith TV set was bad, and would result in intermittent reception of channel 8. This comment follows Mr. Moffit's comments about the tuner on the set in 1989 (fdgs. ¶ 28). It is also instructive to note that Mr. Moffit noted that Mrs. Smith was not receiving channel 8 "because there is not enough signal for the television to tune manually..." (fdgs. ¶ 28). If, as Mr. Ramage testified, the difference in observed reception can only be attributed to KOKS interference, Mr. Ramage's own observations of the Smith reception indicate that, at worst, KOKS interference is minimal and effects a TV picture that is so weak that it is of doubtful value. Mr. Poole's observations of the Smith's TV reception, taken so close to when KOKS went on the air, also gives lie to Mrs. Smith's testimony about how well the Smith's reception once was alleged (or is it imagined) to have been. Mr. Poole took field strength measurements that indicated that the signals received in Poplar Bluff were extremely weak.

119. Mrs. Hillis was also "disappointed" with the observed impact of KOKS going off the air, and that he observed a "very slight" difference in TV reception (fdgs. ¶ 74). Most of the differences involved only a change in TASO 5 and 6 to TASO 4 and 5 on channels 6 and 8 on one TV. The distinctive herringbone pattern of blanketing interference was not seen on the set.

120. While Mr. Ramage noted that KOKS had not restored reception despite the fact that on three TVs only one channel on one set showed <u>any</u> difference with KOKS off the air, the "very slight" difference of a TASO 5 to a TASO 4 on channel 15 (fdgs. ¶ 75).

121. To summarize, the homes which Mr. Ramage visited are hardly a fair sample of the complainants, but a deck stacked against KOKS. Ramage concluded that Calvary owed some obligation to restore reception to three homes which had boosters or preamplifiers despite the fact that all three were named at the very outset in Calvary's FCC filings as having booster amplifiers. There is no evidence presented that Calvary knew or should have known of other television sets which were not connected to boosters, as was the case with Mr. Denton. In one home Mr. Ramage concluded that KOKS had not restored reception, despite the fact that the home to which the complainants referred was their previous residence, and Mr. Ramage had absolutely no empirical data to support that conclusion because at their present residence in the blanketing area there was no discernible difference in reception with KOKS operating. In one home, Mr. Ramage noticed a discernible

difference in reception only on a set with a booster. In three homes the difference in reception when KOKS was off the air was, at best, very slight, and in almost every instance was a reduction of no more than 1 TASO reading from a totally unwatchable signal to extremely unlikely to be watchable signal (TASO 6 to TASO 5). In one instance only one out of three sets on one channel for one TASO grade. In no set was the interference bad enough, or the signal strong enough, for blanketing interference to be distinguishable.

122. To state the obvious, Calvary's license and its service to the community of Poplar Bluff is at stake. As the Hearing Designation Order notes (see, HDO, fn. 1), several hundred people have expressed an interest in Calvary's broadcast service. The Commission has never disqualified a licensee for failure to cure blanketing complaints, as it has never required a licensee to cure complaints to the reception of a signal 90 miles away, and obligation of which Calvary was innocent for three and one-half years. After all time spent, the organized vendetta, the myriad complaints, the constant visits, is the public interest served by sacrificing Calvary's broadcast service because KOKS' signal reduces Mrs. Smith's signal on two channels very slightly, almost undiscernibly from absolutely unwatchable to most likely unwatchable. The public interest argues otherwise.

D. Ultimate Conclusion

123. Calvary cannot be held to be an inept licensee, or that it has indulged in intentional misrepresentations. Given the atmosphere in which it worked, the number of complaints, the public

scrutiny--even hostility, the uncertainty concerning its obligations, Calvary has substantially complied with the blanketing rule and with restoring reception to most of the complainants within the blanketing area which have received interference. In some instances, through mistake or otherwise, Calvary has not fully complied with its obligation to restore reception. Calvary believes that the most equitable and fair result would be to adopt Mr. Ramage's suggestion and grant Calvary's license application, which still pends, and begin another year for the resolution of blanketing complaints. Calvary believes that Mr. Ramage's suggestion concerning a hotline, or special number for such complaints has merit, and will attempt to address any new complaints with the help of Mr. Lampe and new professionals who have no present connection with the station.

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February 5, 1993

CERTIFICATE OF SERVICE

I, Glinda M. Corbin, a paralegal in the offices of May & Dunne, Chartered, hereby certify that I have on this 5th day of February 1993, caused the foregoing "FINDINGS OF FACT AND CONCLUSIONS OF LAW" to be hand-delivered to the following:

The Honorable Joseph Stirmer
Administrative Law Judge
Federal Communications Commission
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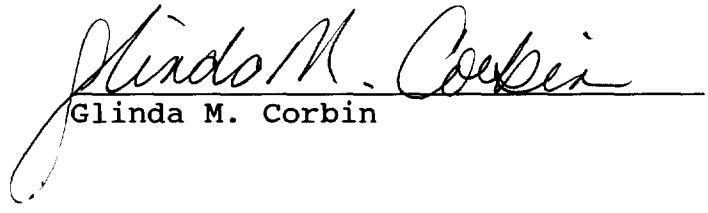

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