

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

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DISPATCHED BY

MM Docket No. 92-122

In re Application of

CALVARY EDUCATIONAL File No. BRED-891103UA
BROADCASTING
NETWORK, INC.

For Renewal of License
of Station KOKS(FM)
Poplar Bluff, Missouri

Appearances

Joseph E. Dunne, III, Esquire, on behalf of Calvary Educational Broadcasting Network, Inc.; and *Y. Paulette Laden, Esquire*, and *James Shook, Esquire*, on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

**INITIAL DECISION OF CHIEF ADMINISTRATIVE
LAW JUDGE JOSEPH STIRMER**

Issued: July 8, 1993;

Released: July 16, 1993

PRELIMINARY STATEMENT

1. By *Hearing Designation Order (HDO)*, 7 FCC Rcd 4037 (1992), the Commission designated for hearing the application of Calvary Educational Broadcasting Network, Inc. (Calvary) for renewal of license of Station KOKS(FM) on the following issues:

1. To determine whether Calvary Educational Broadcasting Network, Inc. violated Section 73.318 of [the] Commission's Rules, 47 C.F.R. Section 73.318 (FM blanketing interference), and, if so, the nature and extent of this violation;
2. To determine whether Calvary has misrepresented facts or lacked candor in its statements to the Commission regarding the extent and success of its efforts to correct the blanketing interference problems;
3. To determine whether the licensee's management and operation of Station KOKS was so negligent, careless, or inept, or evidenced such disregard for the Commission's rules, that it cannot be relied upon to fulfill the responsibilities imposed upon it;

¹ At the time of her testimony, Nina Stewart identified Alan Teserau as a vice president and a director of the corporation, and Carl Clanahan and Dale Vermillion as directors of the corporation (Tr. 389). None of the officers or directors of Calvary identified by Nina Stewart, except Mr. and Mrs. Stewart,

4. To determine, in light of the evidence adduced pursuant to the preceding issues, whether or not grant of the subject license renewal application would serve the public interest, convenience and necessity.

2. The HDO further ordered that if the hearing record did not warrant an Order denying the license renewal application of KOKS(FM), it should also be determined if KOKS(FM) has willfully or repeatedly violated Sections 73.318 (FM blanketing), 73.1015 (submitting truthful written statements and responses to the Commission), 73.267 (determining operating power), 73.1560 (operating power requirements), 73.1213 (tower lighting and painting), and 73.3527 (public file requirements) of the Commission's Rules. If so, it should be determined if an Order of Forfeiture shall be issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, in the amount of up to \$250,000 for the willful and repeated violation of the stated rules.

3. A prehearing conference was held in this proceeding on July 16, 1992. (Tr. 1-30.) An Admissions Session was held in Washington, D.C., on November 12, 1992. (Tr. 31-140.) Hearings were held in Poplar Bluff, Missouri, on November 17, 18, 19, and 20, 1992. (Tr. 141-1126.) The record was closed by *Order*, FCC 92M-1071, released December 8, 1992.

4. Proposed Findings of Fact and Conclusions of Law were filed by Calvary and the Mass Media Bureau (Bureau) on February 5, 1993. Reply Findings were filed by the Bureau on February 25, 1993, and by Calvary on February 26, 1993.

FINDINGS OF FACT

5. Calvary is a nonprofit, non-stock corporation. (Calvary Ex. 3, p. 1.) Owning and operating KOKS is Calvary's sole function. Donald Stewart is and always has been the president and director of Calvary. His wife, Nina Stewart, is and always has been the secretary-treasurer of Calvary.

Blanketing and Misrepresentation Issues

6. On March 2, 1987, Calvary filed with the Commission a construction permit application for a new noncommercial educational FM station on Channel 208C1 at Poplar Bluff, Missouri. The application was signed by Donald Stewart, president of Calvary, and listed Calvary's board of directors as Stewart, his wife, Nina Stewart, Jim Baggett, Ken Presson, and Joseph Scobey. Stewart, Nina Stewart, and Baggett were also identified as Calvary's three officers. (Tr. 340.;¹ MMB Ex. 12, pp. 2-3, 5.)

7. After discussion, the Stewarts decided to place Calvary's transmitter and antenna tower on property where

have any daily involvement with the station, and the involvement of the other directors has been confined to attendance at yearly board meetings, a pattern that has continued since the corporation was formed in 1987 (Tr. 390-392).

the Stewarts had their personal residence.² (Calvary Ex. 3, p. 2.) The map showing the location of Calvary's proposed tower site revealed that a radio tower for KPOB-TV (Channel 15, Poplar Bluff) was located approximately one mile away. Also located less than one-half mile from Calvary's proposed site was a substation of the Missouri highway patrol, with a radio tower for two-way police communication. (MMB Ex. 12, p. 7.) Given the presence of nearby towers, the Stewarts understood from their consulting engineer, Kevin Fisher, that Calvary could easily obtain Federal Aviation Administration approval for its proposed tower. The Stewarts also believed that Calvary could build its tower quickly at the proposed site because there were no zoning restrictions on their land. Finally, the Stewarts chose to build the tower on land they already owned for reasons of economy. (Tr. 338-339, 394-395; Calvary Ex. 3, p. 2.) In this connection, Channel 15 wanted \$600 per month to locate the KOKS antenna on its existing tower. (Tr. 338.)

8. Question 24 of Section V-B of FCC Form 340 states: "If the proposed antenna location is in or near a populated area, attach Exhibit No. _____ a discussion of blanketing and the steps proposed to remedy any interference which may occur." Calvary responded, "Does not apply." (MMB Ex. 12, p. 12.) Although Stewart signed the application, the response to Question 24 was prepared by Fisher, the consulting engineer. (Calvary Ex. 14, p. 1.)

9. Fisher had prepared the engineering portion of Calvary's application. He based Calvary's response to Question 24 of Section V-B on his subjective assessment that the area surrounding the site was rural, that is, sparsely populated. (Calvary Ex. 14, pp. 1-2.) However, there is no indication that Fisher counted the number of residences within the station's blanketing contour. He did not discuss his conclusion regarding the nature of the population near the site or the potential for blanketing interference with anyone at Calvary prior to the commencement of broadcast operations. In fact, Fisher did not discuss blanketing interference with Mr. Stewart at all before the station went on the air. (Tr. 334, 353, 406; Calvary Ex. 14, p. 2.) Neither Donald nor Nina Stewart knew why Calvary responded as it did to the question about blanketing interference, and neither had any idea how many residences were located within two and one-half miles (the blanketing contour) of the proposed tower. (Tr. 340, 343-344, 399, 402.) Charles Lampe, the station's contract engineer, among others, considered the proposed tower's location to be in a residential or populated area. (Tr. 227, 969, 984, 1013.)

10. In February 1988, the truck bringing the sections of the tower pulled onto the Stewart property and began to unload. (Calvary Ex. 2, p. 1.) Very soon thereafter, Mrs. Doris Smith, the Stewarts' next door neighbor, called and asked what was going on. She was told by Stewart that a radio tower was going up. Smith stated her objection to the erection of the tower because it would "... be an eyesore and devalue our property." According to Smith, Stewart abruptly hung up the phone, but she called again and questioned Stewart regarding possible interference to her television reception. Stewart said, "It won't," and again hung up the telephone. (Tr. 902.) Smith discussed the erection of the tower with the Hillises, another neighbor.

Smith was very dissatisfied with the KOKS tower being erected in close proximity to her house because she believed it would devalue her property. (Tr. 904.)

11. On September 6, 1988, Calvary filed its license application for Station KOKS. (MMB Ex. 13.) On October 6, 1988, at about 4:00 p.m., Calvary started broadcasting on KOKS pursuant to program test authority. (MMB Ex. 14; Calvary Ex. 3, p. 3.) When the station went on the air, neither of the Stewarts had any broadcast experience. Both had been farmers and worked in an egg-laying operation. Mrs. Stewart kept the records for the egg-laying operation. (Tr. 334, 393.) Because of the Stewarts' lack of experience, they hired an experienced general manager for the station, Jim Baggett, and a part time chief engineer, Earl Abernathy. (Tr. 388-389; Calvary Ex. 2, pp. 3-4.) Mrs. Stewart was working at the station as the station's full-time secretary, limited mostly to answering the telephones and keeping the books. (Tr. 388; Calvary Ex. 3, p. 4.) Mr. Stewart came by the station almost every day, but for the first few months after the station went on the air, he was primarily involved in working on a farm owned by his son. (Tr. 769.) His station involvement was mainly limited to technical matters. (Calvary Ex. 3, p. 4.)

12. Before KOKS began broadcasting, residents of the area near the KOKS tower generally were able to watch WPSD-TV, Channel 6, Paducah, Kentucky; KAIT-TV, Channel 8, Jonesboro, Arkansas; KFVS-TV, Channel 12, Cape Girardeau, Missouri; and KPOB-TV, Channel 15, Poplar Bluff. (MMB Ex. 2, p. 1; MMB Ex. 3, pp. 1-2; MMB Ex. 4, p. 2.) Residents were also able to listen to a number of FM radio stations, including KJEZ and KKLR. Shortly after KOKS went on the air on October 6, 1988, Calvary began to receive telephone calls from persons complaining that KOKS was causing interference to their reception of television and radio. Among the persons who called the station to complain were Doris Smith, Irma Jean Hillis (hereinafter Jean Hillis), Dairrel L. Denton, Jr., Clyde Freeman, Joanne Gray, Randy Soens, and Marie Christian. (Tr. 409; Calvary Ex. 3, p. 3; MMB Ex. 3, p. 3; MMB Ex. 4, p. 3; MMB Ex. 6, p. 3; MMB Ex. 7, p. 3.) Many residents complained about severe KOKS interference to reception of Channel 6. Moreover, many of those persons were no longer able to watch Channel 8. Complainants also alleged to a lesser extent that KOKS was interfering with reception of Channels 12 and 15 and with reception of FM radio. (Tr. 409, 907, 977, 993; MMB Ex. 2, p. 2; MMB Ex. 3, pp. 2-3; MMB Ex. 4, p. 2; MMB Ex. 5, p. 2; MMB Ex. 6, p. 2; MMB Ex. 7, p. 2; MMB Ex. 8, p. 2; MMB Ex. 9, p. 2; MMB Ex. 10, p. 2; MMB Ex. 17, pp. 11-29, 33-37, 40-42, 46-48, 54; MMB Ex. 19, pp. 6-37, 59-68, 71.) Because they watched television via a satellite system, the Stewarts did not experience any change in their reception when KOKS began broadcasting. (Tr. 405; Calvary Ex. 3, p. 1.)

13. When complaints about KOKS interference began, Calvary's principals did not know what to do and no provisions, either with respect to money or personnel for dealing with blanketing interference complaints, had been made. No one at Calvary had any prior experience resolving such complaints. Calvary did not even know what its obligations were, because it did not possess a copy of the Commission's Rules. (Tr. 365, 393, 406, 413, 428, 723, 726, 731.)

² Shortly before KOKS went on the air, the Stewarts trans-

ferred this property to Calvary (Tr. 335, 400).

14. Mr. and Mrs. Stewart relied on Mr. Baggett to take care of the interference complaints received by the station. (Calvary Ex. 2, p. 3.) The Stewarts subsequently discovered that Mr. Abernathy visited a couple of the complainants' homes, Dairal Denton and Randy Soens. (Calvary Ex. 3, p. 4.) The Stewarts didn't know what Abernathy did at these homes, but, in any event, he did not satisfy either complainant. (Tr. 1039; MMB Ex. 4, pp. 3, 7; MMB Ex. 17, pp. 90-93.) Mr. Baggett resigned soon after the station went on the air during the latter part of November 1988, and Mr. Abernathy simply didn't show up for work when he was expected about 30 days thereafter. (Tr. 728.) Mr. Baggett had done nothing during his stint as general manager to deal with the interference complaints. (Calvary Ex. 2, pp. 3-4.)

15. When the complaints about interference came into the station they most often would come in at night, but fewer than 50 left their name. (Calvary Ex. 3, pp. 4-5.) Mrs. Smith called often, as did Mrs. Christian. The caller's name, telephone number, and description of the complaint were written down, and Mrs. Stewart returned the call within a few days. In late November 1988, Smith and Jean Hillis had prepared a form for those affected by KOKS to register their complaints with the Commission's Kansas City Field Operations Branch (FOB). The form called for the complainant to circle items believed to be affected by KOKS. (Tr. 916.) Shortly thereafter, Smith and Hillis modified their complaint form to show whether the complainant had a booster, and to allow the complainant to specify which television channels were affected by KOKS. From December 1988 through February 1989, Smith and Hillis circulated the form in their neighborhood and left stacks of them at area grocery stores. After collecting more than 100 signed forms, Smith and Hillis mailed copies of them to the Commission's Kansas City FOB. The Kansas City FOB received the first batch of complaints on December 19, 1988, and forwarded them to Calvary by letter dated December 22, 1988. Several days later, Smith and Hillis sent to the Kansas City FOB 50 additional complaints, which were then forwarded to Calvary. (Tr. 921-924, 1001-1004; MMB Ex. 3, p. 10; MMB Ex. 17, p. 1.) While Calvary was still in the process of investigating and responding to the complaints of KOKS blanketing interference, the Commission's Mass Media Bureau granted Calvary's license application. (MMB Ex. 16.)

16. By letter dated October 21, 1988, the Commission's Kansas City FOB sent Calvary two written complaints of blanketing interference. The Kansas City FOB instructed Calvary to contact the complainants and take appropriate action, which would depend upon the equipment affected and whether the complainants resided within the blanketing contour. The letter included an explanation of the licensee's responsibilities under the blanketing interference rule as well as articles providing guidance and suggestions for resolving blanketing interference problems.³ Specific filters were named and diagrams were provided to assist in the installation of the filters. The Kansas City FOB requested that Calvary submit a report of its investigation of the complaints to the Kansas City FOB within ten days of receipt of the October 21, 1988 letter. (Calvary Ex. 3, p. 34 (Attachment A).)

17. Calvary received the Kansas City FOB's October 21, 1988, letter sometime in late October. It was discovered by Mr. Stewart when he and his wife were going through Baggett's file at the station after he had left. (Tr. 724.) The complaints referenced were from Denton and Soens. (Tr. 414; MMB Ex. 4, p. 7.) Calvary ultimately reported to the Kansas City FOB by letter dated December 6, 1988, that both Denton and Soens had boosters and were therefore excluded from protection from blanketing interference. (Tr. 359-361, 412-414; 724-726; MMB Ex. 15, p. 1.) However, Denton had two television sets that were adversely affected by KOKS interference which were not connected to the booster. (MMB Ex. 4, p. 2.)

18. Shortly after Calvary received the October 21, 1988, letter, the Kansas City FOB sent some 30 to 35 additional complaints of blanketing interference to Calvary. Neither Mr. nor Mrs. Stewart knew anything about blanketing interference, and their station engineer, Earl Abernathy, was not helpful. (Calvary Ex. 3, p. 4.) Mr. Stewart spoke to Calvary's consulting engineer, Kevin Fisher, concerning the blanketing complaints and how they might be cured. (Tr. 419.) Mr. Fisher suggested that Calvary try the installation of "string filters" -- antenna lead wire cut to specific length to correspond to the frequency of the signal which was to be suppressed. (Tr. 432.) These type filters were designed by Mr. Abernathy. (Tr. 456.) Donald Stewart took string filters to the homes of Smith and Thomas Crutchfield. Neither Smith nor Crutchfield was satisfied with the string filter that Stewart installed. (Tr. 727-728, 736-737, 911-912, 916-919; Calvary Ex. 2, p. 3; MMB Ex. 2, pp. 3, 12.) Calvary also telephoned a number of complainants, but did nothing to resolve their problems after learning that their principal complaints concerned reception of Channel 6.⁴ (MMB Ex. 17, pp. 84-85.)

19. Calvary relied on the information sent to the station by Mrs. Raines of the Federal Communications Commission's Kansas City FOB concerning blanketing interference and the station's obligations to cure blanketing interference. Mrs. Stewart understood the station's obligations to include curing any problems of blanketing interference within the blanketing area at no expense to the person and providing technical advice to those experiencing blanketing interference outside the blanketing contour. A table in Mrs. Raines' information indicated that for KOKS the blanketing contour was about 2.45 miles from the antenna site. Mrs. Stewart also understood from the information provided by the FCC that the station was not responsible for curing any problems experienced by people with boosters and preamplifiers, which were (and are) popular in the area, but that Calvary was responsible for curing interference to radios. (Calvary Ex. 3, pp. 5-6.) KOKS was also not responsible for curing interference to non-RF devices such as VCRs, telephones, etc. The information Calvary received from the FCC's Kansas City FOB also noted that the station was not responsible for curing problems to audio or video tape players or phonographs, and problems caused by "malfunctioning or mistuned receivers" or "improperly installed antenna systems." (Calvary Ex. 3, p. 36 (Attachment A).)

³ The attachment incorrectly stated that "portable receivers" are exempt from the FM blanketing interference rule. The rule contains no such exemption. See, Section 73.318 of the Commis-

sion's Rules.

⁴ The Stewarts were of the view that the station had no obligation to correct reception of Channel 6.

20. Mr. and Mrs. Stewart were also told that the station was not required to cure interference to Channel 6, WPSD-TV, Paducah, Kentucky, because the station is located so far away that the station's grade B contour is not close to Poplar Bluff. (Calvary Ex. 3, p. 6.) Mrs. Stewart was told this by Calvary's consulting engineer, Kevin Fisher, and by the station's communications counsel, Joseph Dunne. (Tr. 433, 580.) Mrs. Stewart in several telephone conversations with Mrs. Raines mentioned that certain complaints received by the station only dealt with the reception of Channel 6 which the station did not have any responsibility for curing, and Mrs. Raines did not contradict her. Several of Calvary's written submissions to the FCC made the point that Poplar Bluff was far outside Channel 6's protected contour, that the station was not obligated to correct this interference, and no information to the contrary was given by the FCC. (MMB Ex. 15, p. 2; Calvary Ex. 3, p. 7.) Mrs. Stewart mentioned to Mr. Moffitt, an FCC engineer, during his May 1989 inspection of KOKS, that the station wasn't responsible for curing interference to Channel 6, and Moffitt did not state otherwise. (Tr. 596.) Finally, Mrs. Stewart believed that KOKS had no obligation to cure interference to Channel 6 based on a letter which she received from the management of WPSD-TV (Channel 6). (Calvary Ex. 3, p. 7; Calvary Ex. 3, p. 44 (Attachment B).)

21. Mrs. Stewart began making calls to complainants in November of 1988, asking them to describe the problem and making appointments to visit the home to attempt to correct the problem. Mrs. Stewart and one volunteer made all the calls to complainants because the station was short of staff. (Calvary Ex. 3, pp. 7, 9.) Mrs. Stewart estimated that approximately 60 percent of the calls she received complaining of interference referred solely to interference to Channel 6 alone. (Tr. 573.) Mrs. Stewart also asked if the person had a booster or preamplifier, and if the person was experiencing interference to other channels. If the person complained only of Channel 6 interference, or had a booster or preamplifier, Mrs. Stewart advised the person of an FM notch filter, an 0-75, that often reduced interference, whatever the cause. Mrs. Stewart did not believe that the station was responsible for curing interference to Channel 6, or to someone with a booster. (Calvary Ex. 3, pp. 7, 9.) Mrs. Stewart did not ask about the number of TV sets in a home or if the complainant had a TV which was not hooked up to a booster, nor did she ask about radio reception. (Tr. 431.)

22. On December 6, 1988, Calvary submitted its first report of its activities regarding blanketing interference complaints to the Kansas City FOB. Calvary stated that most of the complaints did not warrant further action on its part, either because the complaint had been withdrawn, the complainant had a booster, or the only channel affected by KOKS was Channel 6 from Paducah. In Calvary's view, it had no obligation to eliminate interference to Channel 6 because Poplar Bluff is located outside Channel 6's grade B contour. Calvary acknowledged that six complaints had not yet been resolved. The six complainants included Paul and Doris Smith, Paul D. Summer, Mary Wynn, Betty Anderson, Randall Felts (Filo), and William (Bill) Hillis, Jean Hillis' husband. (MMB Ex. 15.)

23. With respect to the Smiths, Calvary reported that they had complained about interference to Channels 6 and 12; that Calvary had provided a filter to the Smiths; and that, after the Smiths continued to complain, Calvary offered to install a filter on their outside antenna. According to Calvary, Smith had refused to give Calvary permission to walk on the roof of her home. Pointing to Smith's October 5, 1988, letter to the Commission and her efforts to generate additional complaints relative to KOKS interference, Calvary suggested that Smith was not cooperative, and that she would not be satisfied until KOKS' tower was dismantled. (MMB Ex. 15, pp. 2-3; MMB Ex. 2, pp. 7-8.)

24. According to Mrs. Stewart, almost no one, in a telephone call or in a subsequent home visit, mentioned interference to anything other than a television, including a radio. (Calvary Ex. 3, p. 7.) Mrs. Stewart noted that the Hillises mentioned interference to their tape player and radio during a home visit in 1989, although nothing was done to correct either.⁵ Mrs. Stewart recalled that Mrs. Mary Wynn complained about interference to her radio, and a choke filter was installed on her radio which Mrs. Stewart thought cured the problem. (Calvary Ex. 3, pp. 7-8.) However, according to Mrs. Wynn, the installation of a choke filter did nothing to restore radio reception or cure the interference, and that the filter Mrs. Stewart installed did not improve reception. (Tr. 651.) Mrs. Betty Anderson was also a person who complained to Mrs. Stewart about her radio reception during a home visit, and a filter was installed on both her television and radio set. Mrs. Joanne Gray also complained about problems with her radio when Mrs. Stewart visited her house. (Calvary Ex. 3, p. 8.) According to Mrs. Gray, KOKS interference came in across the FM radio dial, and that nothing could be heard on the AM band but a loud buzz. (Tr. 980.) Mrs. Gray turned on the radio when Mrs. Stewart was there so she could hear the buzz, and Mrs. Stewart told her that there was nothing that she could do about that. (Tr. 980, 983; Calvary Ex. 3, p. 8.) According to Mr. Lampe, KOKS' contract engineer, he visited over 105 homes as a representative of KOKS, and no one asked him about their radio reception. (Tr. 321.) However, Lampe was only concerned with taking care of the television problem and did not ask whether radios were subject to KOKS interference. (Tr. 321.)

25. Mrs. Stewart knew that the blanketing contour was about 2.5 miles from the station and determined whether a complainant was within the blanketing contour using that person's estimate of the distance of their home from the antenna site or guessing the distance to their home from the directions they gave over the telephone. (Calvary Ex. 3, p. 8.) Because the area is largely rural, there were no handy street references, and Mrs. Stewart's guesses were sometimes wrong concerning who was within and without the blanketing contour. The Ellises, for example, lived within the blanketing contour, but Mrs. Stewart believed they lived outside the contour from their directions. From his directions, Mrs. Stewart believed that Edward Hodgins lived beyond the blanketing contour. (Tr. 1080.) A map of the blanketing contour wasn't prepared until the FCC ordered it, and it was submitted to the FCC in September 1989. (MMB Ex. 20, p. 2; Calvary Ex. 3, p. 9.)

⁵ The station is not required by the FCC Rules to cure interference to an audio tape player. See, Section 73.318(b) of

the Commission's Rules. See, also, Calvary Ex. 3, p. 36 (Attachment A).

26. With only a few exceptions, Mrs. Stewart did all the work of responding to the interference complaints. (Tr. 568.) Mrs. Stewart went to the homes of those within the blanketing contour to install string filters. (Calvary Ex. 3, p. 10.) These filters, according to Mrs. Stewart, generally worked to improve reception of Channel 8 but did nothing regarding Channel 6. After visiting a few homes, Mrs. Stewart discovered that the 0-75 filter was more successful, in many instances, of curing interference to Channels 6 and 8. Mrs. Stewart had a number of complaints to resolve and did not believe that the station's resources were such that it could hire Mr. Lampe to do the job. Mrs. Stewart estimated that she visited between 135-150 homes, some more than once, attempting to resolve complaints concerning KOKS interference. (Tr. 597-598.) Many persons required more than one call before they were reached, and Mrs. Stewart estimated that she spent an average of 30 hours per week between November 1988 and June 1989 calling people and visiting homes in response to blanketing interference complaints. (Tr. 570.)

27. According to Mrs. Stewart, responding to the complaints was made difficult not only because of their number, but also because they were handwritten and difficult to read. (Calvary Ex. 3, p. 11.) Sometimes different people with the same surnames (such as Clara, Clyde and Mary Freeman) called the station or submitted complaints, adding to the confusion. (Tr. 541.) At times, one member of the household would make the complaint, and Mrs. Stewart would speak to another member of the household. (Calvary Ex. 10, p. 1.) At times, complaints would overlap, in that a second complaint would be submitted to the FCC, and Mrs. Stewart would be uncertain if the person submitted the complaint before or after her visit to the home. (Tr. 614.) When she went to a person's home, even if it were in response to a written complaint to the FCC, she did not bring that person's complaint along. (Tr. 571.)

28. In January 1989, the Smiths, Randy Soens, and Thomas Crutchfield filed suit against Calvary in local court, in which the Hillises later joined, claiming that KOKS was depriving the complainants of their broadcast rights and seeking unspecified monetary damages. (MMB Ex. 17, pp. 90-93.) The case was dismissed and later appealed to the Missouri Court where it was not finally dismissed until the latter part of 1989. (Tr. 599-602.) Calvary's local counsel advised the Stewarts against speaking with any of the plaintiffs in the suit, if possible, while it was pending. The Stewarts tried to comply with this advice consistent with its obligation of responding to the FCC requirements. (Tr. 602.)

29. By letter dated January 24, 1989, Calvary submitted a report to the Kansas City FOB office regarding the first group of December complaints. Calvary reported that it had resolved nine complaints, including those of Leatha Piper and Mary J. Wynn; that it had made filters available to 13 complainants, including Denton, who employed boosters; and that six complainants, including Crutchfield, had not cooperated with KOKS personnel. With respect to 18 persons whose only complaint was the loss of Channel 6, Calvary stated it had recommended a filter which would allow Channel 6 to be received. In a section entitled "Miscellaneous Responses," Calvary stated that complaints of Clara Freeman and Jean Hillis had not yet been resolved

due to the unavailability of necessary filters; that Nina Stewart had been unable to contact Smith; and that Sandra Durbin's complaint was based on Channel 6. Finally, Calvary reported that Smith and her husband, Soens and Crutchfield had filed a civil lawsuit against Calvary because of alleged KOKS interference. (MMB Ex. 17, p. 3.)

30. By letter dated February 10, 1989, Calvary submitted a supplemental response to its January 24, 1989, letter. Among other things, Calvary reported that it had resolved the complaint of Clara Freeman by the installation of a filter; that it could not arrange a convenient appointment time with Edward Hodgins; and that Durbin had failed to keep her appointment. Calvary also informed the Commission that it had gone to the home of William Hillis (Jean Hillis' husband) with Charles Lampe, the station's contract engineer. (MMB Ex. 18, pp. 2-4.)

31. By letter dated February 24, 1989, Calvary submitted its report relative to the second group of December complaints that had been forwarded to it by the Kansas City FOB. Once again, Calvary reported that a number of complainants had problems only with Channel 6 and that for those complainants Calvary had recommended a filter to cure the problem. Likewise, Calvary stated that it had suggested a filter for those complainants who used a booster. Calvary also informed the Commission that it was able to cure the interference problems of the following individuals with the installation of a filter: Clyde/Clara Freeman, Mrs. William T. (Joanne) Gray, Leona Gunter, Sandra Durbin, Cathy Kearbey, G. Wayne Kearbey, John Parker, and Elaine "Libes."⁶ Calvary's report said nothing about the complaints of Smith and the Hillises. (MMB Ex. 19, p. 2.)

32. With respect to Doris Smith, Calvary essentially claimed that despite repeated attempts to resolve her problems, she would not cooperate. (MMB Ex. 15, pp. 2-3.) Nevertheless, Mr. Stewart installed a filter on Smith's television, but it did not work. (Tr. 737.) Further, when Calvary reported in its January 24, 1989, letter to the Commission's Kansas City FOB that it had been unable to contact Smith, its own notes show that Nina Stewart had contacted Smith on January 15, 1989, and told her that filters necessary to resolve Smith's complaints were unavailable, and that Smith would be called as soon as Calvary obtained the filters. (MMB Ex. 17, pp. 3, 84.)⁷ However, Calvary never contacted Smith again until the Commission forced it to do so in late 1990. (Tr. 515-516; MMB Ex. 2, pp. 3-4, 7-8; MMB Ex. 17, p. 3; MMB Ex. 25.)

33. With respect to William and Jean Hillis, Calvary twice reported that their complaints had not yet been resolved, the second time because a necessary filter was unavailable. (MMB Ex. 15, pp. 4-5.) When Calvary finally visited the Hillis residence in the company of its engineer, Charles Lampe, it reported that KOKS was not interfering with the Hillis' main television and that a second television had a short. In addition, because of the supposedly confusing nature of Mr. Hillis' complaints, Calvary indicated it would do no work on the Hillis' equipment until Mr. Hillis reduced his complaints to writing. (MMB Ex. 18, pp. 3-4.) It was Lampe's view that when someone had that many complaints, if they are not required to write them down and quantify them, then it would not be possible to satisfy that individual. (Calvary Ex. 1, p. 6.) However, the

⁶ Mrs. "Libes" was Mrs. Elaine Libla. (Tr. 539.)

⁷ These notes also reflect that Stewart tried to reach Smith on

five other occasions between January 6 and 13, 1989, without success. (MMB Ex. 17, p. 84.)

Hillises had already reduced their complaints to writing and Jean Hillis had spoken to Nina Stewart on at least two prior occasions about KOKS interference to her television. (Tr. 518; MMB Ex. 3, p. 3; MMB Ex. 17, p. 85; MMB Ex. 21, pp. 175-177.) In addition, Calvary never showed the Hillis' written complaints to Lampe. (Tr. 232; Calvary Ex. 1, p. 6.) Moreover, Nina Stewart acknowledged that she heard KOKS audio on Channel 6 when she was at the Hillis residence in 1989, and three visits by the Commission's Kansas City FOB to the Hillis residence confirm that KOKS had adversely affected the quality of reception of three television channels at the Hillis residence. (Tr. 530; Calvary Ex. 6, p. 7; MMB Ex. 1, p. 31.) Finally, despite the fact that Jean Hillis ultimately submitted specified detailed complaints in her December 1989 "Petition to Deny," Calvary made no effort to contact the Hillises to review their television reception problems until forced to do so by the Commission in late 1990. Calvary sought to excuse its failure for not contacting the Hillises on Mr. Hillis' failure to send Calvary a written list of his complaints. (Tr. 522-528; MMB Ex. 23, pp. 2-3.)

34. With respect to Sandra Durbin, Calvary variously reported that her only complaint concerned Channel 6, that she failed to keep an appointment with KOKS personnel, and that her interference problems were addressed with the installation of a filter. (MMB Ex. 15, p. 2; MMB Ex. 17, p. 3; MMB Ex. 18, p. 3; MMB Ex. 19, p. 2; MMB Ex. 21, p. 9.) However, contrary to Calvary's report to the Commission, it appears that Durbin complained about interference to channels other than Channel 6; that Calvary had cancelled its first appointment with her; and that Durbin called Nina Stewart and later complained repeatedly in writing that the filter Calvary installed did not work. Nevertheless, Calvary never returned to Durbin's residence or offered further assistance. (Tr. 554; MMB Ex. 5, pp. 3-4, 11-12, 17.)

35. With respect to Edward Hodgins, Calvary excused its failure to resolve his complaints by reporting that it could not arrange a convenient time for an appointment. (MMB Ex. 18, p. 2.) However, according to Hodgins, Calvary failed to keep three appointments which were made. (MMB Ex. 8, p. 1.) Moreover, Calvary never contacted Hodgins again until the Commission forced it to do so in 1991. (MMB Ex. 8.)

36. Calvary reported in its January 24, 1989, letter that the complaint of Mary Wynn has "apparently been resolved by the installation" of a filter. (MMB Ex. 17, p. 2.) However, Wynn disputed Calvary's statement in complaints dated January 19, 1989, February 24, 1989, and June 9, 1989. (MMB Ex. 10, pp. 9, 11-12, 14.) Finally, Calvary reported in a September 22, 1989, letter to the Commission that only the reception of Channel 6 was affected by blanketing on Wynn's television set, and that a filter was installed, but that Wynn was dissatisfied with the result. (MMB Ex. 21, p. 19.) Calvary reported in its February 24, 1989, letter that it had resolved Joanne (Mrs. William T.) Gray's complaint with the installation of a filter. However, Gray disagreed with this assessment in a complaint dated February 23, 1989, two days after Calvary's visit to her home, and repeated her complaint on June 7, 1989. (MMB Ex. 7, pp. 9-10, 12; MMB Ex. 19, p. 2.)

37. Calvary almost never resolved complaints of KOKS blanketing interference to radios. Thus, although Denton's December 7, 1988, complaint alleges KOKS interference to radios, Calvary reported that Denton had a booster, while its notes concerning Denton reflect that Calvary had made

a filter available only for his television. (MMB Ex. 4, p. 9; MMB Ex. 17, pp. 2, 37.) Similarly, Calvary never resolved alleged KOKS interference to the radios of Cindy Dief, Willard Garrison, Karen McCullen, Fred Dicker, Tammy Earls, Dorothy Robbins, Scott Lundstrom, Charles Sisk, and Georgia Young, who were among the first group of December 1988 complainants; nor did it address alleged KOKS interference to the radios of Ted Smith, Richard Starling, Denise Mabry, Frieda Paris, Peggy Beckham, George Wisdom, Sandra Durbin, and Kathy Kearbey, who were among the second group of December complainants. (MMB Ex. 17, pp. 12, 16, 20-22, 33, 35-36, 40; MMB Ex. 19, pp. 8, 21-22, 31, 34, 37, 62-63.) Finally, Calvary never addressed alleged KOKS interference to the radios of Doris Smith and Jean Hillis. (Tr. 515-516; MMB Ex. 2, pp. 7-8, 10, 14, 16, 19; MMB Ex. 3, p. 7; Calvary Ex. 6, p. 6.)

38. Calvary reported that it installed or provided "filters" to complainants of KOKS interference. Initially, Calvary used inexpensive string filters, most of which were installed by Nina Stewart. Sometime between December 1988 and February 1989, Calvary generally stopped installing string filters and began to install more expensive Archer FM trap (0-75) filters which it purchased from Radio Shack for approximately \$4.00 each. (Tr. 252, 457-458.) The information provided to Calvary by the Kansas City FOB indicates that Archer filters, although apparently more effective than the string filters, were not designed to address the severe interference caused by KOKS to residents located near the station's tower. (Tr. 252-254, 258; Calvary Ex. 3, p. 39 (Attachment A).) Nevertheless, Calvary continued to install and/or recommend the Archer filters even after it began installing the more expensive FM notch filters which it purchased from the Microwave Filter Company. (MMB Ex. 27, p. 63; MMB Ex. 32, pp. 1-5.)

39. Blanketing complaints were not the only problem facing the station. Specifically, KOKS had a number of technical problems with its antenna, beginning with a fire in the antenna just two weeks after the station went on the air. (Calvary Ex. 3, p. 11.) This required the station to operate at one-third to one-half power until mid-December 1988. (Calvary Ex. 8, p. 1.) The damaged antenna had to be sent to the factory for repairs. (Calvary Ex. 3, p. 12.) On December 23, 1988, someone shot the station's coaxial cable, requiring the station to reduce power. (Calvary Ex. 9, p. 1.) In May 1989, there was another fire in the antenna. Also, a lightning strike on May 30, 1989, shorted out the antenna and a stand-by antenna was used. The stand-by antenna was replaced by an entirely new antenna, but this antenna continued to have arcs, especially during rainy weather and heavy fog and caught fire in the spring of 1990. Arcing was a common problem, and the station reduced its power, within legal limits, in wet weather. Finally, the antenna manufacturer replaced the antenna with an entirely new 7-bay antenna. Because the antenna has exactly the same directionality as the 4-bay antenna that it replaced, the antenna manufacturer, Shively, informed Calvary that the proof of performance for the 7-bay antenna was the same as for the 4-bay antenna. (Calvary Ex. 3, pp. 12-13.)

40. On March 15, 1989, the Commission's Kansas City FOB referred the KOKS blanketing matter to the Mass Media Bureau. By letter dated March 29, 1989, the Chief, FM Branch sent to Calvary copies of 698 complaints of KOKS blanketing interference. The Chief explained the requirements of the blanketing interference rule (Section 73.318 of the Commission's Rules) and informed Calvary

that the blanketing contour for its station extended "2.45 miles in the major lobe." Calvary was instructed that, with respect to each complaint, it was to identify the type of interference; whether or not the interference was in the blanketing area; the dates and description of the assistance provided by KOKS; and whether or not the interference had been resolved. Finally, Calvary was directed to include with its report a map which showed the KOKS transmitter site, the blanketing contour, and the homes of all complainants. The Commission gave Calvary 45 days to submit its report. (MMB Ex. 20.)

41. In May of 1989, before KOKS submitted the requested report to the Commission, the station was inspected by Mr. Clark Poole, an FCC engineer. Mr. Poole cited the station for failing to keep an issues/programs list in the public file and for violations concerning the EBS rules. Mr. Poole also asked about the list of donors which were required to be in the public file. He explained to Mrs. Stewart what an issues/problems list was and when the list of donors should be inserted in the public file. (Calvary Ex. 3, p. 13.)

42. Mr. Poole prepared a report dated June 5, 1989, concerning his inspection of KOKS and the blanketing complaints. The report reveals that Doris Smith could not receive either Channel 6 or 8 and that the picture of Channels 12 and 15 was degraded by heavy snow. KOKS audio was in the background of all four channels. At the Hillis residence, the FOB inspector found that Channels 6 and 8 were unviewable, while Channels 12 and 15 had good picture and sound. When KOKS went off the air, the Hillises could receive Channel 6, but Channel 8 "remained bad." The report further indicates that Poole made measurements of the signals of Channels 6, 8, and 12 in areas around town, and none of the station's signals made the grade B signal levels defined in Commission Rules. The report notes that Poole advised the Smiths and Hillises that "the Commission could not require correction of blanketing problems for signals which did not make the Class B contour." Mr. Poole also reported that litigation had been initiated in local court, and that Mr. Stewart had been advised by his local counsel not to do anything further until the court case was resolved. Mr. Poole identified the main problem with KOKS as follows: "that they exist close to complainants who have received substandard television signals with good results for many years." (Calvary Ex. 5, pp. 2-4.)

43. Calvary responded to the Commission's March 29, 1989, letter on September 22, 1989. At the outset, Calvary noted that it had already responded to many of the complaints in its prior letters to the Commission's Kansas City FOB. Nonetheless, Calvary also contended that its responses to complaints had been delayed by technical difficulties and by limited financial resources. It also stated that lack of funds prevented the preparation of a map, and further stated that it was "practically impossible" to submit a map showing the blanketing contour and all the complainants marked on it, because there were in excess of 700 complaints. However, it was believed that less than ten percent of the complainants were within the blanketing contour. From the information submitted by Calvary, it appears that the last contact with a complainant was May 9, 1989, more than four months before Calvary's report of September 22, 1989, was submitted to the Commission.

Calvary, in its report, estimated that only 89 of the complainants resided within the blanketing contour. Calvary stated that unless the complainant was personally known by station personnel, it determined whether or not the complainant resided within the blanketing contour based on the estimate provided by the complainant as to how far the complainant lived from the KOKS tower. (MMB Ex. 21, pp. 1-4.)

44. With respect to the 89 complainants found to be within the blanketing contour, Calvary reported that only eight had experienced blanketing interference. Calvary further reported that the complaints of all eight had been resolved. Calvary excluded from consideration those who complained only of KOKS interference to reception of Channel 6, Paducah, Kentucky; those who possessed a booster; those who would not cooperate with station personnel; and those who possessed satellite dishes. Calvary also reported that it had resolved non-blanketing interference problems for 17 of the 89 complainants within the blanketing contour. (MMB Ex. 21, pp. 3-4.)

45. Calvary's report reflects that the eight complainants deemed to have experienced blanketing interference included Durbin and Gray. With respect to Durbin, Calvary's notes show that a filter put on her television on February 21, 1989, "improved reception very much." (MMB Ex. 21, p. 43.) However, Durbin complained again on June 7, 1989, of continued KOKS interference to both her television and her radio. (Tr. 552-555; MMB Ex. 5, pp. 11-12.) As for Gray, Calvary's report did not state when Calvary had supposedly cured Gray's blanketing interference; however, the report reveals only one visit to Gray. With respect to that visit, Calvary stated that it cured blanketing interference to Channel 8. (MMB Ex. 21, p. 12.) Gray, nevertheless, complained on February 23, 1989, that Calvary's visit of February 21, 1989, had not improved reception on Channels 6, 8, and 12. Gray repeated her complaint on June 7, 1989. Moreover, both of Gray's complaints stated that Calvary had not resolved interference to her radio. (Tr. 446-450, 653-655, 984-985; MMB Ex. 7, pp. 9-10, 12.) Calvary had received and read both the Durbin and Gray complaints before it submitted its September 22, 1989, report. (Tr. 450, 553.)

46. In Calvary's September 22, 1989, report, Clyde and Mary Freeman, Leatha Piper, and Mary Wynn were among the 17 whom Calvary reported to have experienced non-blanketing interference. With respect to all of them, Calvary reported that installation of filters had improved their reception. (MMB Ex. 21, pp. 11, 16, 19, 48, 62, 81.) However, it was reported by Calvary that Clyde and Mary Freeman had removed the filter before the KOKS representative had left the home. (MMB Ex. 21, p. 11.)⁸ Clara Freeman subsequently stated that the filter placed on the Freemans' television was "no help." (MMB Ex. 6, p. 6.) Moreover, Wynn and Piper both complained in June 1989 of continued interference, and Calvary made no attempt to address Piper's complaints of interference to her radio. (Tr. 437, 440, 463-465; MMB Ex. 10, p. 14; MMB Ex. 29, pp. 5-6.) Finally, Calvary's suggestion that it owed no further duty to Piper because she had installed a booster, failed to disclose that the repairs to Piper's television reception, which included the installation of a booster, had been made by Charles Lampe, KOKS' engineer; that Piper had

⁸ Calvary does not explain why the Freemans removed the

filter if it, in fact, improved reception as claimed by Calvary.

paid Lampe in his individual capacity;⁹ and that Calvary had refused Piper's request to reimburse her for her payment to Lampe. (Tr. 631-632; MMB Ex. 29, p. 6.)

47. In addition, Calvary's reports failed to correctly note the situations regarding Hodgins, Smith, and Jean Hillis. Thus, although Hodgins had complained that Calvary failed to keep three appointments with him, Calvary's report is silent as to Hodgins. (MMB Ex. 8, pp. 5-6.) Likewise, although Smith had complained repeatedly about KOKS interference to her televisions and radio, the report's only reference to her was that a lawsuit initiated by her and three others had been dismissed. Finally, with respect to Jean Hillis, Calvary acknowledged her complaints, but suggested that it need not do anything because she was a party to Smith's lawsuit. (MMB Ex. 2, pp. 7-17; MMB Ex. 21, p. 26.)

48. The factual representations in Calvary's letter were verified by Nina Stewart. (MMB Ex. 21, p. 183.) All of the information submitted by Calvary in its letters of December 6, 1988, January 24, 1989, February 24, 1989, to the Commission's Kansas City FOB, and its letter of September 22, 1989, to the Chief, FM branch, was transmitted by Nina Stewart to counsel. (Tr. 449, 510-511, 522, 553.) She was the person who received many of the complainants' telephone calls, arranged for home visits, and installed Calvary's filters. Nina Stewart established and maintained complainants' files, and she read each complaint Calvary received from the Commission. (Tr. 424, 458, 469.) However, she did not review a complainant's file before going to that person's residence. (Tr. 495.) Mrs. Stewart explained that she had reason to suspect the accuracy of the written petition complaints which she received from the FCC. In some instances, the petition did not seem to reflect the actual complaint, and, in some instances, the complaints were altered. In this regard, several complainants told her that their problem was with Channel 6, but the petitions had more channels marked as being affected by blanketing. One woman told her that she really had no complaint, but signed one to satisfy Mrs. Smith and Mrs. Hillis. Mrs. Stewart could not explain the disparities between her statements to the Commission and those of some complainants' regarding Calvary's resolution of their complaints. (Tr. 464, 552-553, 556-557.)

49. On December 12 and 13, 1989, the Commission's Kansas City FOB conducted a second inspection of Station KOKS and visited the homes of various complainants of blanketing interference. This inspection was conducted by Mrs. Karen Raines, a Public Affairs Specialist, and Mr. Michael Moffitt, an engineer. The homes of the following individuals were visited: Mrs. Ted Adams; Mrs. William Gray; Mr. and Mrs. Jim Farley; Mr. and Mrs. Pat Smittle; Mr. and Mrs. Wayne Kearbey; Mrs. Doris Smith; and Mr. and Mrs. Bill Hillis. (Calvary Ex. 6, p. 2.) At each residence, reception was observed with KOKS on and off the air. The report noted that some complainants complained of ghosting on Channel 15. This ghosting was not the result of KOKS transmissions, but may have resulted from construction of the KOKS tower. (Calvary Ex. 6, p. 3.) The report also noted that several complainants experienced intermittent interference on some channels, described as a

"herringbone pattern" characteristic of two-way radio interference. The report noted that a highway patrol station is located nearby and is authorized to operate KAA270 on 42 MHz, and that operation in this band is a source of intermittent interference to the television IF frequency.

50. The report, prepared following this inspection, described television reception when KOKS was both on and off the air, and the television equipment of each complainant. With regard to the Smith's, with KOKS on the air Channel 6 was blank; Channel 8 was a TASO 5,¹⁰ with the picture described as very snowy because "... there is not enough signal for the television to tune to electronically..."; Channels 12 and 15 are described as a TASO 3 picture, with KOKS audio faintly in the background. With KOKS off the air, Channel 6 is described as a TASO 5, with "no picture, extremely snowy;" Channel 8 as a TASO 4, with "extremely snowy, unwatchable picture;" and Channels 12 and 15 as a TASO 3, with Channel 12 showing a "slight improvement" and Channel 15 with the same description of the picture without the KOKS audio interference. The Smiths also complained of KOKS interference to their radio set. In the report, it was noted that the Smiths had filed a lawsuit against KOKS, and that Mrs. Smith wanted a "qualified engineer" to put a filter on her system -- not Mr. or Mrs. Stewart. (Calvary Ex. 6, pp. 5-6.)

51. At the Hillis home, when KOKS was on the air, no picture was received on Channels 6 and 8, and Channels 12 and 15 had a TASO 3 and a TASO 4 picture, respectively. Channel 12 was described as "decent but grainy picture" while Channel 15 "color fades in and out, extreme ghosting." With KOKS off the air, Channel 6 was described as a TASO 3, with a "snowy picture, no color;" Channel 8 as a TASO 4, with a "very snowy picture;" and Channels 12 and 15 as a TASO 3 and a TASO 4, respectively, with notations of "little if any improvement" and "slightly better, extreme ghosting," respectively. The Hillises believed that the station had not gone off the air because the stereo light had not gone off on their stereo set, but this was attributed to a malfunction in their stereo receiver. The Hillises also received KOKS interference on their stereo radio. (Calvary Ex. p. 7.)

52. The report on the visit to Mrs. Ted Adams noted that two-way radio interference from the highway patrol station across the street was observed on all channels. Moreover, the TASO readings and notes on interference were the same when KOKS was on and off the air, with the exception of Channel 6, which was not received at all when KOKS was operating and which was received with a TASO 3 picture when KOKS was off the air. (Calvary Ex. 6, p. 9.) The Farleys did not receive Channel 6 at all with KOKS on the air but received a TASO 3, described as a "fair picture," with KOKS off the air. Channel 12 reception improved from a TASO 3 to a TASO 2 with KOKS off the air. The reception of Channels 8 and 15 improved from a TASO 3 to a TASO 2, described as a "good picture," with the installation of an FM trap filter. (Calvary Ex. 6, p. 11.) Mrs. Gray reported interference from KOKS on the lower portion of her FM band, but her main concern was the buzz on her AM band, which was present with KOKS off the air. On Mrs. Gray's television set, with KOKS off the

⁹ In addition to being the contract engineer for KOKS and KJEZ-FM, Poplar Bluff, Lampe owns and operates a television repair business in Poplar Bluff known as Charlie's TV Repair. (Calvary Ex. 1, p. 1.)

¹⁰ TASO numbers are generally used to describe the quality of television reception. The lower the number, the better quality reception. The scale is from 1 through 6.

air, she received a TASSO 3 signal on Channel 6, noted as only a "slight improvement" from when KOKS was on the air, and an improvement from a TASSO 4 to a TASSO 3 on Channel 8, when KOKS was off the air. The Smittles had exactly the same TASSO readings when KOKS was off the air and when it was on, and noted only that the TASSO 3 picture went from no color to color when KOKS went off the air. Mr. and Mrs. Kearbey were noted as having a set in poor repair, and the reception of most channels with KOKS on or off the air was noted as no better than a TASSO 3. Only one channel improved with KOKS off the air, and that was Channel 12 which went from a TASSO 3 with a notation of "grainy" to a TASSO 2 with a notation of "good picture." The Penningtons did not receive Channel 6 at all with KOKS either on or off the air and went from a TASSO 4 to a TASSO 3 on Channels 8 and 12 with KOKS off the air. (Calvary Ex. 6, pp. 13-16.)

53. The report characterized the operation of KOKS as the source of "some interference to television reception," but it also noted that "there are additional reasons for poor reception." The report further noted that the KOKS interference was most pronounced on Channel 6, and that while the station had made no attempt to resolve interference to FM receivers, this "was not a major concern of the complainants." (Calvary Ex. 6, pp. 17-18.)

54. On November 3, 1989, Calvary filed its application for renewal of license for Station KOKS. On December 18, 1989, petitions to deny the application were filed by Smith and Jean Hillis. In addition, informal objections to Calvary's renewal application were filed by various persons including Denton, Durbin, Clara Freeman, William T. Gray (Joanne Gray's husband), Wynn, and Piper. The petitions and informal objections generally alleged that Calvary had not resolved KOKS interference to televisions and radios. Piper also alleged that she had spent more than \$100 in attempting to restore her reception.¹¹ Finally, Smith and Clara Freeman charged that Calvary had lied to the Commission about its efforts to resolve their complaints. (MMB Ex. 2, pp. 19-21; MMB Ex. 3, pp. 7-10; MMB Ex. 4, pp. 11-12; MMB Ex. 5, p. 17; MMB Ex. 6, p. 6; MMB Ex. 7, p. 17; MMB Ex. 10, p. 16; MMB Ex. 29, pp. 7-8.)

55. In responding to the Smith and Jean Hillis petitions, Calvary submitted, on January 30, 1990, a Verified Statement of Lampe. Therein, Lampe acknowledged his employment as Calvary's contract engineer, and that he had discussed Smith's situation with her on many occasions. Lampe related that because Smith wanted her reception restored to what it was before KOKS began broadcasting, he believed there was little reason to attempt to resolve her complaints. With respect to Jean Hillis, he acknowledged being at her home but suggested that Calvary had not corrected her complaints because her husband had not submitted his complaints in writing to the station. (MMB Ex. 23.)

56. By letter dated April 27, 1990, the Chief, Audio Services Division of the Mass Media Bureau requested Calvary and petitioners Smith and Jean Hillis to plot on enclosed maps the locations of persons who complained of interference during the initial year of KOKS' broadcast operations. The purpose of the maps was to determine which of the complainants resided within KOKS' blanket-

ing contour. The parties were directed to return the maps within 45 days of the date of the letter. The letter further stated that, "We have, as yet, made no final determination in this case concerning the types of service interruptions that fall within the ambit of the Commission's blanketing rule, 47 C.F.R. Section 73.318." (MMB Ex. 24.)

57. On October 30, 1990, the Chief, Audio Services Division released an *Order* in which the interference complaints were grouped into three categories. Specifically, it was determined that Calvary may not have satisfied the complaints of as many as 220 persons found to be residing within the KOKS blanketing contour and who complained within one year. Accordingly, the Chief ordered that Calvary restore service at no cost to those complainants within 120 days. The Chief informed Calvary that it need not take further action with respect to 13 complainants whose problems, according to Calvary, had been resolved. Among those complainants were Sandra Durbin, the Freemans, Mrs. William T. (Joanne) Gray, Leatha Piper, and Mary Wynn. (MMB Ex. 25, p. 3, n.5.) Further, with respect to complainants found to be residing outside the blanketing contour, the Chief ordered that Calvary provide technical information and assistance on how to resolve their problems. Finally, with respect to complainants who filed beyond the initial one year period, Calvary was to provide technical assistance. Calvary was ordered to submit progress reports every 30 days. (MMB Ex. 25.)

58. To determine which complainants desired further assistance, Calvary prepared a questionnaire and sent one to all persons whose service was to be restored. The questionnaire asked whether the complainant was receiving blanketing interference on Channels 8, 12, 15, and 39; whether the complainant was receiving blanketing interference to satellite reception; whether the complainant had a booster; and whether the complainant was receiving interference from the highway patrol. Finally, the questionnaire informed complainants that Calvary was not responsible for interference caused to Channel 6. The questionnaire did not ask for the number of television sets owned by the complainant or whether any radios were affected by KOKS interference. Also, the questionnaire did not inquire, with respect to those persons who had a booster, whether any television sets were not connected to the booster. Calvary sent out its questionnaire in the first week of December 1990. (Tr. 484-488; MMB Ex. 27, p. 1; MMB Ex. 31.)

59. Calvary did not send a questionnaire to those persons whose problems it had reportedly cured. Moreover, Calvary did not look at the files it maintained to determine whether any of those persons had complained subsequent to the visit during which their problems had supposedly been resolved. (Tr. 496.) Mrs. Stewart was aware that Mrs. Durbin and Mrs. Piper had filed other complaints since she reported their complaints cured, but Mrs. Stewart thought they were satisfied when she reported that to the FCC. Mrs. Stewart "just missed additional complaints." (Tr. 539, 553.) Mrs. Stewart said that, "[I]t had been a hard year in 1989, and some of these (complaints) I just missed picking up." (Tr. 554.)

60. Upon return of the questionnaires, Calvary determined that approximately 105 persons desired home visits. Charlie Lampe was requested by Calvary to assist in the resolution of these complaints by making home visits. (Cal-

¹¹ Piper had employed and paid Lampe, KOKS' contract engineer. When she inquired about reimbursement from Calvary,

Donald Stewart told her the station had no money. (MMB Ex. 29, p. 6.)

vary Ex. 3, p. 14.) Mr. Lampe had been KOKS' contract engineer since early February 1989, responsible for routine and special maintenance of the station's equipment, but not for any problems relating to blanketing interference. (Calvary Ex. 1, p. 19 (Attachment A).) Mr. Lampe owns and operates "Charlie's TV Repair," selling TV sets and satellite systems and servicing and repairing television and radio sets, two-way radio receivers and satellite systems, for over 13 years. Mr. Lampe was, however, an independent businessman. He performed services for people in the blanketing contour. Mr. Lampe had worked for A-1 Electronics for approximately five years and as the Assistant Service Manager of Montgomery Ward for another two years before opening his own business. Mr. Lampe served as a contract engineer for KJEZ-FM for approximately ten years before becoming the contract engineer for KOKS and does engineering work for Hunt Broadcasting, the licensee of an AM-FM combination in Piedmont, Missouri. (Calvary Ex. 1, p. 1.)

61. According to Mr. Lampe, TV reception, generally, is poor in the Poplar Bluff area, and he was often asked to install special equipment such as boosters, special antennas, and filters on TV sets in the area to improve reception. According to Lampe, because Channel 6 is located far away and the station doesn't put a grade B signal into Poplar Bluff, reception of that signal is marginal. Also, according to Lampe, Channel 12 also puts a weak signal over Poplar Bluff. (Calvary Ex. 1, p. 2.)

62. All home visits were made by Calvary in February, 1991. (Calvary Ex. 3, p. 15.) Mrs. Stewart called and made an appointment to visit each house, and, in most instances, three people made the visit, Mr. and Mrs. Stewart and Mr. Lampe.¹² Mr. Lampe did all the work after Mrs. Stewart introduced the group, and Mr. Stewart served mostly as an observer. Mrs. Stewart was not aware of any limitation on the number of filters to be installed or on a limit of sets to be repaired. However, Mr. Stewart told Mr. Lampe to use only one filter per home, because he didn't know if there were enough filters to go around, and he was under an FCC deadline to eliminate interference. (Calvary Ex. 2, p. 9.) Nevertheless, more than one filter was used per set at a number of homes, including the Adams' and the Ellis'. Mr. Stewart also told Mr. Lampe not to install filters on portable sets, defined as "anything with rabbit ears or a handle." (Tr. 260.) Mr. Stewart believed portable sets were "mobile receivers" and were thus excluded, but he never asked his counsel for a definition of "mobile receiver." (Tr. 260-261, 757-758.) Mr. Lampe did, however, perform work on some portable sets. (Tr. 261.) Moreover, for a few complainants, Calvary, in order to improve reception, changed the wiring which connected a complainant's antenna and television set. The work Calvary performed was done at no cost to the complainants. (Tr. 260, 742; MMB Ex. 26, p. 1; MMB Ex. 27, p. 1; Calvary Ex. 2, p. 9.) According to Calvary, it did not refuse to repair any radio receivers when the complainant noted problems with their radio during the home visit, but complainants generally did not mention problems with their radio.

63. During the home visits, Calvary personnel told Smith, Jean Hillis, and Michael Beckham, operator of the Whispering Oaks Boarding Home, that Calvary was obligated to fix only one television set per residence. Further, Donald Stewart told Beckham that if Beckham wanted a

filter for the second television he was planning to buy for the boarding home, he would have to pay \$50.00 for the filter. Calvary also refused to attempt restoration of service to the radios of both Smith and Jean Hillis. The Hillises were told that if they wanted filters, they could buy them. (Tr. 957-959; MMB Ex. 2, pp. 4, 27; MMB Ex. 3, p. 4; MMB Ex. 9, pp. 4, 6-7.) Consistent with its questionnaire and its response to Smith, Jean Hillis and Beckham, Calvary did not inquire of other complainants whom it visited whether they had more than one television set or a radio subject to interference, nor did Calvary check its files to review prior complaints before going to the complainant's residence. (Tr. 516-517, 532-533, 571.)

64. Calvary submitted reports to the Commission dated February 12 and February 25, 1991, of its visits to the residences of complainants. Calvary stated that the Microwave filter it had used and installed, the FAS-Trap 5K FM-89.5, eliminated FM blanketing interference caused by KOKS. Calvary also claimed that it went beyond the Commission's requirements by eliminating FM blanketing interference to Channel 6. Finally, Calvary stated that the average cost per home visit was \$65.00. The reports were silent as to the number of television sets per residence it had serviced and as to whether any filters had been installed on complainants' radios. (MMB Ex. 26, p. 1; MMB Ex. 27, p. 1.)

65. The reports submitted to the Commission by Calvary were furnished to some of the complainants and Smith, Jean Hillis, Beckham, and Fred and Marie Ellis, among others, specifically disputed Calvary's claims that their service had been restored. (MMB Ex. 2, pp. 27-28; MMB Ex. 3, pp. 4-5; MMB Ex. 9, pp. 6-7; MMB Ex. 30, pp. 5-6.) In addition, Sandra Durbin, Clara Freeman, Joanne Gray, Mary Wynn, and Leatha Piper pointed out that their complaints had not even been addressed by Calvary during the licensee's 1991 visits to restore service. (MMB Ex. 5, pp. 14-15; MMB Ex. 6, pp. 8-9; MMB Ex. 7, pp. 14-15; MMB Ex. 10, pp. 18-19; MMB Ex. 29, pp. 9-10.) Finally, Marie Christian complained that, although she had three television sets, Calvary installed a filter on only one set. (MMB Ex. 1, p. 49.) Except with respect to Wynn, Calvary does not appear to have responded to the complaints noted above or that it attempted any further repairs. (Tr. 536-537.)

66. During its home visits, Calvary never turned the KOKS transmitter off to compare television reception with KOKS on and off the air. In addition, Calvary's personnel almost never discussed with complainants what their reception looked like before KOKS came on the air or how their reception with Calvary's filters compared with their reception prior to the advent of KOKS. Thus, Calvary's reports that an interference complaint had been resolved was based almost entirely on its own assessment of its repair efforts. (Tr. 427-428, 462, 507, 517, 574, 588-589.) According to Mrs. Stewart, when she reported a complaint "resolved," she believed that the complaint was resolved even if the complainant was dissatisfied with reception of Channel 6, because she did not believe Calvary was responsible for restoring reception of Channel 6. (Tr. 614.) Mrs. Stewart acknowledged that there might have been errors or misunderstandings when she believed a complainant was satisfied when they were not, but Mrs. Stewart was also dealing with almost a thousand complaints. Mrs. Stewart

¹² Mr. Stewart suffered a stroke during this process and did

not make visits after that. (Tr. 376-377.)

conceded that some mistakes were made in determining who might be within and without the blanketing contour, such as the Ellises.

67. After reviewing Calvary's reports and the responses of various complainants, the Mass Media Bureau requested that the Kansas City FOB investigate the continued complaints of KOKS blanketing interference. From February 10 through February 14, 1992, the Kansas City FOB engineers, Ronald Ramage and Mike Gusick, visited the residences of 14 complainants, including Doris Smith, Jean Hillis, Joanne Gray, Clara Freeman, Sandra Durbin, Leatha Piper, Mary Wynn, and Fred and Marie Ellis. While at each residence, Ramage had Calvary turn off the KOKS transmitter so that he and Gusick could observe the differences, if any, to television reception. (Tr. 890-891; MMB Ex. 1, pp. 9, 11, 28.) Ramage prepared a report on the KOKS blanketing interference under the date of February 21, 1992. (MMB Ex. 1, p. 5.)

68. Mr. Ramage's report noted that it was now impossible to determine the quality of reception the complainants received prior to KOKS going on the air because of the elapse of time, the various new television and radio stations on the air, and changes in the complainants' receiving equipment. Ramage also noted that the complainants were attempting to receive stations that were 68-86 miles distant and separated by up to 174 degrees, resulting in a very low signal reaching the television receiver to begin with. (MMB Ex. 1, p. 9.) WPSD-TV, Paducah (Channel 6) is 86 miles distant from the KOKS tower on a bearing of 68 degrees; KAIT-TV (Channel 8) is 69 miles distant on a bearing of 199 degrees; and KFVS-TV (Channel 12) is 68 miles distant on a bearing of 47 degrees. (MMB Ex. 1, p. 58.) Ramage reported that the installation of filters, coax cable, and other equipment leads to a loss in the signal reaching the television set, so that all complainants told him that they received better reception prior to KOKS going on the air than they now receive when KOKS stopped transmissions. (Tr. 872.) Ramage also reported that many of the complainants indicated that the KOKS filters quit working after a few weeks. According to Ramage, it was not common, in his experience, for filters to fail, and the filters that he knew of which did fail were tunable filters, not filters like those used here. (Tr. 847, 849.) Mr. Ramage found it unreasonable to assume that the station would increase power for the purpose of making the filters fail. (MMB Ex. 1, pp. 10-11.)

69. Some of the complainants were not convinced that KOKS had gone off the air for testing, and asked Ramage to check this and a certain activity by the station at the transmitter site. Ramage found that the station was off the air during testing, and the activity at the site consisted of removing the old 4-bay antenna from the shed for shipping to the manufacturer. Ramage further reported that some complainants were disappointed when their reception did not clear up when KOKS went off the air. (MMB Ex. 1, p. 12.) Mr. Ramage identified Mrs. Smith and Mrs. Hillis as among those disappointed when there was not much change in their television reception when KOKS went off the air. (Tr. 865.)

70. Mr. Ramage's report included information on each visit to a complainant's residence using observations of the picture received on each set using the TASO system. The TASO system is a system adopted in the early 1950's which labels picture quality. (Tr. 811.) There is no standard for a TASO picture quality, and the result is somewhat subjective. (Tr. 811, 813-814.) Mr. Ramage reviewed a tape pro-

duced by the FCC's training center in Norfolk, Virginia, before he went to Poplar Bluff which showed what a different level TASO signal looked like, but he does not believe that Mr. Poole did this before his visit to Poplar Bluff. (Tr. 811-812.) The difference in the quality of a picture between one TASO reading and the one right below or above it was not very significant. (Tr. 863.)

71. According to Ramage, in an instance of a very weak signal, blanketing interference would be just snow and indistinguishable from other interference, although generally snow on a screen is usually the result of a weak signal. (Tr. 824, 894.) When blanketing interference would be indistinguishable from other interference, however, the picture would have to be very poor, in the range of a TASO 4 to a TASO 6 picture. (Tr. 896.) Mr. Ramage described a TASO 4 as ". . . has quite a bit of interference in the background"; a TASO 5 as ". . . severe interference, but you can still see a picture"; and a TASO 6 is no picture at all. (Tr. 812.) Because the TASO scale is subjective, only a TASO 6, which is no picture at all, is considered unwatchable. (Tr. 814.) When Ramage reported that KOKS had failed to restore reception, he was relying primarily on the statements of the complainants themselves, as well as the change in reception when KOKS went off the air. (Tr. 862.)

72. In reporting on his visit to the Smith home, Mr. Ramage noted that KOKS failed to restore reception. This was based primarily on the reports of Mrs. Smith, because the difference between Mrs. Smith's reception with KOKS on and off the air was not significant, a fact that "disappointed" Mrs. Smith. (Tr. 862, 865.) Mr. Ramage reported that Mrs. Smith wouldn't believe that KOKS was off the air even when confirmed by the use of a spectrum analyzer because the red light on her stereo remained lit. (MMB Ex. 1, p. 29.) Mr. Ramage's report noted that only one television set, a portable, showed a "fairly slight improvement" when KOKS was not transmitting. (Tr. 867.) The improvement noted was a change from a TASO 6 to a TASO 5-6 on Channel 8, and a change from a TASO 4 to a TASO 3 on Channel 12. Mr. Ramage noted KOKS audio in all sets at the Smith residence, and also at the Hillis' residence, but at none of the other homes he visited. (Tr. 877, 879, 882.)

73. At the Hillis residence, Mr. Ramage noted only a very slight difference between television reception with KOKS on and off the air, a result that disappointed Mrs. Hillis. (Tr. 865, 868.) The observed differences in signal with KOKS on and off the air were a change from a TASO 5 to a TASO 4 on Channel 6 on one television; from a TASO 6 to a TASO 5 on Channel 6 on the other television set; from a TASO 6 to a TASO 5 on Channel 8 on one set, and a TASO 6 to a TASO 6 on Channel 8 on the other television set; from a TASO 3 to a TASO 3 on Channel 12 on one set, and a TASO 4 to a TASO 4 on Channel 12 on the other set. (MMB Ex. 1, p. 31.) Mr. Ramage did not observe the distinctive herringbone pattern that is indicative of blanketing interference at the residence. (Tr. 868.)

74. At the Diel residence, Mr. Ramage noted that the station had not restored reception at the time the complaint was filed. However, the observed reception on three different televisions showed that only one channel, Channel 15, was affected by KOKS being on the air, and only the slight difference between a TASO 5 and a TASO 4 picture. (Tr. 871; MMB Ex. 1, p. 33.) The report noted that since lodging the complaint, Diel installed a new antenna and coax cable. As a general matter, the use of coax cable

rather than twin lead wires reduces the signal strength to the television set, and the already weak television signals are not strong enough to produce a good picture. Also, the use of a filter reduces the signal strength. (Tr. 811-873.) No herringbone lines of blanketing interference were observed at the Diel home. (Tr. 871.)

75. Ramage reported that at the Wynn residence, KOKS installed filters on two television sets (MMB Ex. 1, p. 35); that the installation of a notch filter by Calvary "improved but did not completely restore quality of television reception"; that the filter quit working after a couple weeks"; and that the quality of the picture with KOKS off the air improved to a TASO 4 from a TASO 6 for Channel 6, and to a TASO 4-5 from a TASO 5 for Channel 8. The picture quality decreased from a TASO 2 to a TASO 3 for Channel 15 with KOKS off the air. (MMB Ex. 1, p. 35.)

76. Mr. Ramage's report on Mrs. Piper noted that she purchased and had installed coax cable and two Archer FM traps by Mr. Lampe, KOKS' contract engineer. The quality of her reception was unaffected by the operation of the KOKS transmitter. (MMB Ex. 1, p. 37.) At Mrs. Libla's home, Mr. Ramage noted that there was no apparent change in picture quality when KOKS stopped transmitting, and that Mrs. Libla had installed a satellite dish. If there was any change in picture quality with the KOKS transmitter operating, it was only on Channel 6, which improved from a TASO 6 to a TASO 5 with KOKS off the air. No herringbone pattern indicative of blanketing interference was observed on the Libla set. (Tr. 875-876; MMB Ex. 1, p. 39.)

77. Mr. Ramage reported that KOKS did not restore reception for the Kearbeys at the time the complaint was filed, but this was based solely on what the Kearbeys told him. (Tr. 874.) The quality of the Kearbeys' reception was the same whether KOKS was operating or not. (MMB Ex. 1, p. 41.) Mr. Ramage did not see any herringbone patterns in the Kearbey set. (Tr. 876.)¹³

78. In his report, Ramage stated that KOKS failed to restore the quality of the television and radio reception at Mrs. Gray's residence at the time she made her complaint. Since then, Mrs. Gray has purchased a new television receiver and a satellite receiving system. When viewing off the air signals, the quality of the picture improved when KOKS discontinued transmissions. Specifically, Channels 6, 8, and 15 improved on one set from a TASO 6, 6, and 3 to a TASO 4-5, 5, and 2 with KOKS off the air. On a second set, there was improvement on Channel 8 from a TASO 6 to a TASO 5-6, and on Channel 15 from a TASO 3 to a TASO 2 when KOKS was off the air. (MMB Ex. 1, p. 43.)

79. Ramage reported that KOKS failed to restore the quality of the picture reception at the Freeman's residence at the time the complaint was filed. Since then, the complainant's twin lead wire had broken loose from the directional antenna resulting in poor reception on an Emerson television set.¹⁴ On the other set, which uses a booster amplifier, the quality of the picture when KOKS stopped transmitting greatly improved. Specifically, on this set reception of Channels 6 and 8 improved from a TASO 6 and 5, respectively, to a TASO 4 and 4, respectively, when KOKS was off the air. Reception of Channels 12 and 15 was unchanged with KOKS off the air. (MMB Ex. 1, p. 45.)

80. The Ramage report states that KOKS installed a notch filter on a VCR and on one television, but refused to install a filter on the downstairs television set at the Ellis' residence. Mrs. Ellis then purchased a notch filter which was installed on an Emerson television set. Approximately one week before the visit by Ramage in February 1992, the Ellises paid Lampe, the KOKS engineer, to install a channel master amplifier which the Ellises said greatly improved the quality of reception. The report indicates that reception on Channel 8 improved from a TASO 4 to a TASO 3 with KOKS off the air. Otherwise, the quality of reception was unchanged with KOKS off the air. (MMB Ex. 1, p. 47.)

81. KOKS did not restore reception at the Christian residence at the time the complaint was filed. It only installed one filter on a television set in Mrs. Christian's residence and would not provide more than one filter. The reception on the set with the filter when viewed by Ramage was indistinguishable whether or not KOKS was on the air. There was improvement in the quality of reception on other sets with KOKS off the air with TASO quality generally improving a notch, *i.e.*, from 4 to 3, or 5 to 4 on two channels. The Christians are reported to have remodeled their residence adding several TV outlets, a booster amplifier, a notch filter, and a rotor. (MMB Ex. 1, p. 49.) According to Mrs. Stewart, Mrs. Christian called shortly after KOKS went on the air, and she had a booster and a preamplifier at that time. (Calvary Ex. 3, p. 24; MMB Ex. 17, p. 32.)

82. At the residence of Mr. Garrison, Ramage noted that the only improvement in reception quality with KOKS off the air was with Channel 6 which went from a TASO 6 to a TASO 4 with KOKS off the air. It was also reported that KOKS failed to restore the quality of picture reception; that KOKS tried one filter on the television and that when it did not work, it was removed. (MMB Ex. 1, p. 51.) The reception at the Crutchfield residence improved on one television set when KOKS was off the air. Specifically, the quality of reception of Channel 6 improved from a TASO 4 to a TASO 3 when KOKS was off the air. Reception on two other television sets was the same with or without KOKS on the air. Crutchfield, on his own, installed a notch filter and booster to improve reception. (MMB Ex. 1, p. 53.)

83. Ramage reported that KOKS did not restore the quality of picture reception at the residence of Sandra Durbin. While KOKS installed a filter, Durbin removed it because reception was better without it. The quality of reception improved with KOKS off the air. Specifically, Channels 6 and 8 went from a TASO 6 with KOKS on the air to a TASO 4 and 5-6, respectively, with KOKS off the air. Also, Channels 12 and 15 went from a TASO 4 and 4, respectively, to a TASO 3 and 2, respectively, when KOKS was off the air. (MMB Ex. 1, p. 55.)

84. To summarize, Ramage concluded that Calvary had not restored television or radio reception to the level enjoyed by the complainants prior to the commencement of operations by KOKS. Ramage based his conclusion on the following factors: the licensee generally placed one filter on only one television set per residence; the licensee did not address problems with portable television receivers and

¹³ The Kearbeys changed residences from the time of their first complaint to the time of the Ramage visit. Both residences were within the blanketing contour of KOKS. (MMB Ex. 1, p. 41.)

¹⁴ The only improvement with KOKS off the air on this set was with respect to Channel 15 which went from a TASO 4 to a TASO 3.

radio receivers; the licensee did not compensate for the fact that the steps taken to eliminate KOKS interference reduced the level of desired signals reaching the television receiver; there were observed differences in the quality of television pictures received by some of the complainants with KOKS on and off the air; the licensee failed to reimburse complainants who undertook to restore their television reception at their own expense; and that complainants asserted that their picture quality was better before KOKS began broadcasting in 1988 than it was in 1992 with KOKS off the air. (Tr. 861-862, 871-873, 884-888; MMB Ex. 1, pp. 9-10, 13, 29, 31, 33, 35, 37, 39, 43, 45, 47, 49, 51, 53, 55.) Ramage also found that the licensee did not take the steps viewed by its own engineer as necessary to restore television reception. (MMB Ex. 1, p. 11.)¹⁵

85. In the *HDO*, the Commission stated that Calvary's obligation to restore reception of Channel 6 was no different from its obligation to restore service to other channels viewed by complainants before KOKS began operations. However, Calvary has taken no additional steps to restore reception of Channel 6, nor has it informed those within the blanketing contour of its obligation to do so. (Tr. 585-586, 760.)

86. Prior to the release of the *HDO*, Calvary believed it had no obligation to restore Channel 6 service. Indeed, Mrs. Raines of the FCC Kansas City FOB was also of this view, because she told that to Mrs. Smith and Mrs. Hillis. (Tr. 937, 1007.) Mr. Clark Poole, an FCC inspector who conducted an investigation of the blanketing interference and inspected the station in May of 1989, did not believe Calvary had to cure interference to Channel 6 because Channel 6 did not put a grade B signal over Poplar Bluff. (Calvary Ex. 5, p. 3.) Poole told Charles Lampe, Calvary's contract engineer, during the station inspection that the station "didn't need to worry about Channel 6." (Calvary Ex. 1, p. 8.) Mrs. Smith and Mrs. Hillis were told the same thing. (Tr. 929-930, 1010.) Mrs. Smith and Mrs. Hillis made reference to the fact that "Channel 6 is not an authorized station for this area . . ." in one of the petitions they distributed. This view was based on Mr. Poole's and Mrs. Raines' comments. Mr. Ramage was not aware of any instance in which the FCC required a station to resolve complaints of blanketing interference to the reception of a station beyond the station's grade B contour. (Tr. 856.) Channel 6 itself did not believe that it had the legal right to complain of KOKS interference to its signal in Poplar Bluff. (Calvary Ex. 3, p. 44 (Attachment B).)

Ineptness Issue

87. In specifying an ineptness issue against Calvary, the Commission noted four apparent violations from the Ramage report concerning his inspection of Station KOKS which warranted consideration in this proceeding. These matters concerned the station's operating power, the station's antenna, the lighting of the station's tower, and the station's public file. (*HDO*, 7 FCC Rcd (1992) at 4040-4041.) The Bureau reached a stipulation with Calvary, which was filed on September 18, 1992, that Calvary's change from a 4-bay to a 7-bay antenna did not violate Section 73.1690(b) of the Commission's Rules. In addition, the Bureau and Calvary reached a stipulation, which was

entered into the record on November 17, 1992, that the placement of Calvary's tower lights did not constitute a violation of the Commission's Rules. (Tr. 144.)

Transmitter Power

88. During the February 10, 1992, inspection of Station KOKS, the Kansas City FOB engineers Ramage and Gusick observed transmitter readings for plate voltage and plate current which indicated that the station's transmitter was operating at 64 percent of authorized power. At the same time, however, the transmitter also showed a digital power reading of 95.1 percent of authorized power. (Tr. 700; MMB Ex. 1, p. 6.) The station's logs showed a similar pattern in the readings dating back to at least January 1, 1991. (MMB Ex. 1, pp. 18-26.) Thus, it was unclear whether the station had been operating within the limitations prescribed by Section 73.1560(b) of the Commission's Rules, which states, in pertinent part, that "[T]he transmitter output power . . . must be maintained as near as practicable to the authorized transmitter output power and may not be less than 90 percent nor more than 105 percent of the authorized power."

89. Ramage informed Donald Stewart and station engineer Lampe that there was a significant unexplained discrepancy between the two means for measuring transmitter output power. Neither Stewart nor Lampe had been aware that there was such a discrepancy until Ramage brought it to their attention. Mr. Lampe told Mr. Ramage that there was a warning in the Harris transmitter manual that the plate current meter reading could be incorrect if there was damage to the system by, perhaps, a lightning strike, as there had been many at KOKS. Lampe thereupon called the transmitter manufacturer who informed him that either the plate current reading or the percentage of power indication was incorrect. Subsequently, Lampe ascertained that the plate current reading was faulty. On February 28, 1992, Lampe corrected the problem by replacing a diode, and the meter reading returned to normal. Thereafter, there have been no discrepancies between the two means for measuring transmitter output power. On March 25, 1992, Calvary informed the Commission that the noted repairs had been made. (Tr. 706-708; MMB Ex. 1, p. 7; MMB Ex. 28; Calvary Ex. 1, p. 16.) Ramage described the station's response as "satisfactory." (Tr. 713.)

90. For various reasons, Calvary periodically operated its transmitter at less than 90 percent of its authorized power. During those periods when Calvary was so operating, it eventually notified the Commission. Specifically, by letter dated November 3, 1988, Calvary informed the Commission that, following an antenna fire, KOKS was operating at one-third of the station's authorized effective radiated power. Moreover, by letter dated December 27, 1988, Calvary stated that, from late October until the last week in November, it had been operating at roughly 50 percent of authorized power to assist in the resolution of complaints of blanketing interference. Because of the pending complaints as well as damage caused by gunshots to its coaxial cable, Calvary requested that it be allowed to operate marginally below 90 percent of authorized power pending repair of the cable and resolution of the blanketing complaints. Additionally, in the summer of 1989, Calvary obtained special temporary authority to operate KOKS at

¹⁵ Lampe, when asked how he would restore reception, told Ramage that he recommended a very high gain antenna, coax

cabling, rotor, and high quality filter or filters. (MMB Ex. 1, p. 11.)

55 percent of authorized power following an apparent lightning strike to its antenna. (Calvary Ex. 3, pp. 12-13; Calvary Ex. 8; Calvary Ex. 9.)

91. The record reflects at least one instance where Calvary operated outside the parameters prescribed in its license. Specifically, according to Craig Meador, in the winter of 1989, before Lampe became the station's engineer, Donald Stewart showed Meador the KOKS transmitter which, at the time, was operating in excess of 110 percent of authorized power. Stewart told Meador, who was on the Stewarts' property to repair their satellite system, that he was trying to reach Memphis with the KOKS signal. (Tr. 1020-1021, 1025-1027, 1034; MMB Ex. 11, p. 2.) Although Stewart acknowledged that Meador was at the Stewart's residence, he said Meador was there in the summer of 1988 before KOKS began broadcasting and not in the winter of 1989. Stewart first denied that Meador had been in the transmitter building with him, then said that he had, but quickly recanted such testimony. (Tr. 1108, 1111, 1114.)

Public File

92. From the time Calvary obtained its construction permit for KOKS until the first Commission inspection of KOKS in May 1989, Calvary did not maintain a complete public file. Specifically, Calvary did not have in its public file a copy of "The Public and Broadcasting: Revised Edition," as required by Section 73.3527(a)(6) of the Commission's Rules, nor did it have quarterly lists of programs which dealt with community issues, as required by Section 73.3527(a)(8) of the Commission's Rules. (Calvary Ex. 5, p. 5.) However, once the matter was brought to its attention during Mr. Poole's inspection in 1989, Calvary took steps to have a complete public file. By the time of the second Commission inspection in December 1989, Calvary apparently had all the documentation required by the Commission's public file rules. (Calvary Ex. 3, pp. 30-31; Calvary Ex. 6, p. 22.)

93. During the February 1992 inspection of Station KOKS, Mr. Ramage, of the FCC Kansas City office, asked Nina Stewart to produce the KOKS public file for his review. Among other things, Ramage asked to see the station's lists of programs which dealt with significant community issues. In response, Nina Stewart produced a three-ring binder which contained the station's issues/programs lists. After reviewing one of the lists, Ramage told Mrs. Stewart that the list needed the date it was placed in the public file. Beginning with the list for the first quarter of 1992, Calvary has noted the date when the list was placed in the station's public file. (Tr. 800-801, 1083-1087; Calvary Ex. 3, p. 30; Calvary Ex. 13.)

94. Ramage also asked Nina Stewart to produce a list of donors which support specific programs. Nina Stewart responded that the station did not have such a list and explained that the station's donors supported all of KOKS' programs. Apparently, however, Calvary did have a list of general donors, which included entities that contributed money to Calvary in conjunction with the broadcast of that entity's program on KOKS. According to Nina Stewart, this list was in existence and in the files of the station since Poole's visit in 1989 when she was told about the rule

which required it. Nina Stewart did not answer Ramage's question correctly or show Ramage the station's list of donors because she was "flustered." (Tr. 799, 803, 1088-1089; MMB Ex. 1, p. 8; Calvary Ex. 3, pp. 30-31; Calvary Ex. 12.)

95. Finally, Ramage asked Nina Stewart for the station's file which contained requests for time from political candidates. Mrs. Stewart told Ramage that Calvary had no such file. According to Ramage, Nina Stewart acknowledged that the station had received a few requests for time from state or local office candidates, but none from candidates for national office. It was her understanding that the station only had to retain requests for time from national office seekers. (Tr. 805-807; MMB Ex. 1, pp. 7-8; Calvary Ex. 3, p. 31.) However, according to Stewart, no political file was maintained because prior to Ramage's visit, no request for time was made by a political candidate. (Calvary Ex. 3, p. 31.)

ULTIMATE FINDINGS AND CONCLUSIONS OF LAW

96. This proceeding involves the application of Calvary Educational Broadcasting Network, Inc., for renewal of license of Station KOKS(FM) in Poplar Bluff, Missouri. The application was designated for hearing primarily because of repeated complaints by residents of the station's failure to remedy blanketing interference caused by KOKS. Among the issues designated for hearing, other than alleged violations of Section 73.318 of the Commission's rules (FM blanketing interference), were alleged misrepresentations or a lack of candor regarding the extent and success of the station's efforts to correct the blanketing interference; and whether the licensee's operation of the station was so negligent, careless, or inept or evidenced such disregard for the Commission's rules that it cannot be relied upon to fulfill its responsibilities. Moreover, the *Hearing Designation Order (HDO)*, alternatively, also provided for the possible imposition of a forfeiture for violations of Sections 73.318 (FM Blanketing), 73.1015 (submitting truthful written statements and responses to the Commission), 73.267 (determining operating power), 73.1560 (operating power requirements), 73.1213 (tower lighting and painting), and 73.3527 (public file requirements). These alleged violations were detected during the course of a Commission inspection of the station, and the ineptness issue is predicated on these alleged violations.

97. By far, the most important issues deal with the violation of the Commission's blanketing rule and the licensee's alleged misrepresentation or lack of candor regarding the extent and success of its efforts to correct the blanketing interference. Indeed, by stipulation the parties agreed that there was no violation of Section 73.1213 regarding tower lighting and painting.¹⁶ Furthermore, it is well settled that ineptness by an applicant will not be deemed disqualifying unless the conduct in question concerns relevant matters of major significance, and where the conduct has disclosed a pattern of carelessness and inadvertence. *Edward G. Atsinger, III*, 29 FCC 2d 443, 449 (1971); *Folkways Broadcasting Co., Inc.*, 26 FCC 2d 175, 179 (1970). The shortcomings and derelictions noted by the FCC engineers during the inspection in February 1992,

¹⁶ The parties also stipulated that there was no violation of Section 73.1690(c) regarding the change from a four-bay direc-

tional antenna to a seven-bay directional antenna. See, paragraph 8 of the *HDO*.

were neither major or indicative of a pattern of conduct sufficient to justify the disqualification of the licensee on the ineptness issue.

98. Section 73.318(b) of the Commission's Rules places a duty on new stations causing FM blanketing interference to "satisfy all complaints of blanketing interference which are received by the station during a one year period" beginning with the commencement of program tests and which are received from complainants who reside within the station's 115 dBu blanketing contour. Resolution of complaints shall be at no cost to the complainant.¹⁷ In addition, pursuant to Section 73.318(d), the station must provide complainants filing after the one year cutoff point, as well as complainants residing outside the blanketing contour, with "technical information or assistance" in solving the problem. While mobile receivers and high gain antennas or antenna booster amplifiers are excluded from the provisions of Section 73.318, a station's duty to complainants residing within the 115 dBu, who filed timely complaints, is to repair all radio and television receivers.

99. It is thus clear that an FM broadcaster has certain obligations with respect to complainants of blanketing interference. These obligations vary according to the location of the complainant, the equipment affected, and the timing of the complaint. Thus, for persons who reside within the blanketing contour and who first complain during the initial year of an FM station's operations, the broadcaster has a duty to restore service to protected equipment, namely, televisions, radios and satellite dish antennae without cost to the complainant. For persons whose initial complaint occurs after the station's first year of operation or who reside outside the blanketing contour, the broadcaster must provide information or assistance to complainants on remedies for blanketing interference.

100. The purpose of the rule is to protect those living near an FM radio tower from the adverse effects that a new or more powerful FM radio station can cause to television and radio receivers. These effects can vary from complete blockage of desired signals to a reduction in receiver sensitivity. *Notice of Proposed Rulemaking in BC Docket No. 82-186*, 47 Fed. Reg. 28936, published May 3, 1982. Thus, a broadcaster should carefully select a transmitter site to minimize disruption to the reception of existing television and radio stations and correct blanketing interference problems caused to television and radio receivers of individuals within the blanketing contour who complain within one year.

101. The Stewarts decided to locate the antenna for KOKS in their own backyard, there being no zoning restrictions preventing the erection of a radio tower. This, as it turned out, was a terrible mistake. First, the Stewarts lived in an area that while not heavily populated, was nevertheless sufficiently populated in that there were some 220 persons residing within the station's blanketing contour. Not only was the advent of blanketing interference a distinct possibility, but in addition thereto the erection of a radio tower in a residential neighborhood was considered an eyesore to the Stewarts' neighbors and perceived to depreciate property values. Under these circumstances, the deluge of blanketing complaints when KOKS first went on the air was not unpredictable.¹⁸ Unfortunately, the Stewarts

were farmers, not broadcasters, and the danger of blanketing interference was never explained to them by their consulting engineer. They did not know what it was or how to correct it.

102. Shortly after KOKS began broadcasting, blanketing interference complaints were filed with the station, and the Kansas City office of the FCC. In response, the Kansas City office notified KOKS of the station's obligations under the Commission's rules and possible ways to correct blanketing interference complaints. Unfortunately, the Stewarts did not respond fully, aggressively, or effectively in resolving the numerous blanketing complaints submitted to the station and reported to the FCC.

103. The licensee and the Bureau disagree on the nature and extent of the violations of Section 73.318, the Commission's blanketing rule. But it is clear from the record that the station did not comply with the requirements of the rule in dealing with the blanketing complaints. Specifically, when blanketing complaints were first received shortly after KOKS commenced operations, the station first attempted to solve the problems by installing "string filters," but they did not work and failed to satisfy the complainants. (See, paragraph 18 of Findings.) Moreover, the station generally would not satisfy complainants with boosters even if some of the complainants' television sets were not connected to the booster. (See, paragraphs 17 and 21 of Findings.) Furthermore, the station did not initially retain any engineering personnel to assist in the process of addressing the blanketing complaints. The task of dealing with the problem was assumed by Mrs. Stewart who, with the aid of a volunteer, made home visits commencing in November 1988. Being inexperienced and untrained in eliminating blanketing interference and being either unwilling or unable to expend the necessary funds, Mrs. Stewart did not satisfy many of the complainants' blanketing problems. Specifically, the following individuals, among others, who lived within the blanketing contour and timely complained of blanketing interference to television reception, were not satisfied by the efforts of the station: Doris Smith, William and Jean Hillis, Mary Wynn, Mrs. Joanne Gray, and Dairrel Denton, Jr. On some of the television sets of these individuals, KOKS audio was in the background of one or more channels, a clear sign of blanketing interference. KOKS' failure to satisfactorily address the television blanketing interference complaints of these individuals constituted violations of Section 73.318 of the Commission's rules. Equally important, the station generally installed only one filter in each home. Thus, even if a home had three television sets impacted by KOKS' blanketing interference, the station would only install one filter on one of the sets. The others remained unattended. While there were some exceptions to this policy, and more than one filter was installed in some of the homes, the president of the licensee, Mr. Stewart, for economical reasons, *inter alia*, told Mr. Lampe to use only one filter per home. (See, paragraph 62 of Findings.) Also, Mr. Stewart instructed Lampe not to install filters on portable sets, which Stewart defined as "anything with rabbit ears or a handle," because he believed these were "mobile receivers" not included within the purview of the blanketing rule. Lampe, nevertheless, performed work on some portable sets. These limi-

¹⁷ These requirements specifically do not include interference complaints resulting from malfunctioning or mistuned receivers or improperly installed antenna systems. Section 73.318(b).

¹⁸ As will be discussed later, Poplar Bluff is in an area where television reception was considered poor at best. Indeed, the Stewarts had a satellite dish to obtain television reception.

tations on the effort of KOKS to satisfy blanketing complainants were simply not in keeping with the requirements of the Commission's blanketing rule.

104. Moreover, the station failed to satisfy complaints regarding blanketing interference to radio reception. While these complaints were not as great as complaints regarding television blanketing, the station, nevertheless, generally did not address them. Thus, while Joanne Gray, Mrs. Wynn, Durbin, Denton, Cindy Diel, Willard Garrison, Karen McCullen, among others, complained about blanketing interference to their radios, KOKS failed to satisfy those complaints. (See, paragraphs 24, 37, and 45 of the Findings.) Nor did KOKS satisfy the complaints of Hillis and Smith regarding blanketing interference to their radios. These failures constitute additional violations of Section 73.318 of the Commission's rules.

105. This is not to suggest that the station did nothing regarding the blanketing interference. Mrs. Stewart made many home visits, some repeated, and different type filters were installed in an effort to cure the television blanketing interference. However, those efforts were, for the most part, ineffectual and failed to satisfy many of the individuals who complained of blanketing interference.¹⁹

106. The task of satisfying the individuals who complained of blanketing interference was complicated and made more difficult because the television reception in the Poplar Bluff area is generally poor. In this connection, the residents of Poplar Bluff generally watch television signals which emanate from distant and varied locations. Specifically, Channel 6 (WPSD-TV) is located in Paducah, Kentucky, 86 miles from Poplar Bluff on a bearing of 68 degrees; Channel 8 (KAIT-TV) is 69 miles distant on a bearing of 199 degrees; and Channel 12 (KFVS-TV) is 68 miles distant on a bearing of 47 degrees. The signal strength of these television signals were weak in Poplar Bluff and Mr. Poole, the first Commission engineer to investigate the blanketing complaints, reported that the main problem with KOKS was that "they exist close to complainants who have received substandard television signals with good results for many years." Moreover, it appears that the quality of television reception varied depending, in part, on atmospheric conditions.

107. The ability of KOKS to satisfy some complainants was further diminished because the utilization of filters, coax cable and other equipment installed to correct the blanketing interference led to a loss of signal strength reaching the television set thereby further reducing the strength of television signals that were weak to begin with. Thus, the reception of television sets with filters was not as good as before KOKS went on the air. Because the reception of the television signals improved only slightly when KOKS was off the air during tests conducted by FCC engineers, some complainants questioned whether KOKS was, in fact, off the air. Indeed, in the tests conducted by FCC engineers to determine the difference in the quality of television reception with KOKS both on and off the air, the improvement witnessed was only slight or negligible

when KOKS was off the air. Stated simply, there was not a significant improvement in the quality of television reception with KOKS off the air.

108. The station estimated that about 60 percent of the blanketing complaints related to Channel 6. This is a station which fails to place a Grade B contour over Poplar Bluff and KOKS reasonably believed it had no obligation to cure the blanketing interference to the station. Such belief was based on advice the station received from its engineer and legal counsel. Additionally, the station, in its reports to the FCC, stated that it had no obligation with respect to Channel 6 because it did not place a Grade B signal into Poplar Bluff and was not advised otherwise by the FCC. In this connection, an FCC representative informed Smith and Hillis that the Commission could not require correction of blanketing problems for signals that did not make the Grade B contour. Indeed, as late as the Commission's letter of April 27, 1990, KOKS was advised that the Commission has as yet made "no final determination in this case concerning the types of service interruptions that fall within the ambit of the Commission's blanketing rule, 47 C.F.R. 73.318." Finally, in the *HDO* in this proceeding, the Commission told KOKS that the "FM blanketing rule does not limit a licensee's responsibility to complainants residing within the Grade B contour of television stations." This was the first time the licensee was advised that it had a responsibility to correct blanketing interference to Channel 6. Under these circumstances, KOKS cannot be faulted for its failure to correct blanketing problems affecting Channel 6.²⁰

109. The second issue seeks to determine whether Calvary "misrepresented facts or lacked candor in its statements to the Commission regarding the extent and success of its efforts to correct blanketing interference problems. Misrepresentation involves false statements of fact made with an intent to deceive. Lack of candor involves concealment, evasion and other failures to be fully forthcoming. Both represent deceit, differing only in form. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983).

110. The Commission expects absolute candor on the part of Commission licensees and applicants. *Catocin Broadcasting Corp. of New York*, 2 FCC Rcd 2126 (1987), *affirmed in pertinent part*, 4 FCC Rcd 2553 (1989), *reconsideration denied*, 4 FCC Rcd 6312 (1989); *Mid-Ohio Communications, Inc.*, 104 FCC 2d 572 (1986), *review denied*, 5 FCC Rcd 940 (1990), *reconsideration dismissed in part, denied in part*, 5 FCC Rcd 4596 (1990). Indeed, ". . . the trait of 'truthfulness' is one of two key elements of character necessary to operate a broadcast station in the public interest." *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1210 (1986). Because of the Commission's limited resources, its system of regulatory control must, of necessity, routinely rely upon the representations of its licensees. *Tri-State Broadcasting Co., Inc.*, 5 FCC Rcd 1156, 1173 (1990), *reconsideration denied*, 5 FCC Rcd 3727, 3729 (1990), *review denied*, 6 FCC Rcd 2604, 2605 (1991).

¹⁹ KOKS did not deal with the blanketing complaints aggressively when they were first reported. Indeed, the assistance of a qualified television repairman was not obtained until after the Commission's October 1990 letter.

²⁰ KOKS made no effort to correct the problem after the

release of the *HDO* explaining that the case was in litigation, the complainants would be likely witnesses and hostile to its efforts, and that it was unreasonable to expect the station to undertake an expensive and extensive effort to correct Channel 6 problems while engaging in a renewal hearing.

111. The Bureau argues that in addition to willfully and repeatedly violating the blanketing interference rule, Calvary misrepresented facts to the Commission regarding its efforts to resolve blanketing interference and lacked candor in failing to report to the Commission that particular complaints reported as having been resolved were later found to be unresolved. Specifically, the Bureau argues that Calvary lied when it reported in its September 22, 1989, letter that the complaints of Durbin, Gray, and Wynn were resolved; that it lacked candor when it stated in its letters of December 6, 1988, and June 24, 1989, that Smith's blanketing problems were not solved because she would not cooperate; and that Calvary provided incomplete and misleading information in response to Commission inquiries regarding blanketing complaints.

112. The September 22, 1989, letter submitted by Calvary to the Commission stated with respect to Sandra Durbin that "on a visit to Ms. Durbin's home, blanketing interference was observed on Channels 8 and 12. A filter was installed to improve reception." (MMB Ex. 21, p. 9.) With respect to Gray, the letter stated that "[B]lanketing interference was observed on Channels 6 and 8. A filter was installed that cured the blanketing interference on Channel 8." Regarding Wynn, the letter indicated that:

Mrs. Wynn complained of interference on Channels 6, 8, 12, and 15. KOKS personnel visited the home in January and did not see any evidence of any blanketing or other interference on any channel except Channel 6. A filter was installed on Mrs. Wynn's set in January and improved reception on all channels except Channel 6. Mrs. Wynn was dissatisfied with this result. KOKS personnel visited Mrs. Wynn's home again in April and installed a 750 Hm FM trap. Reception on Channels 8, 12, and 15 was very good. Channel 6 still did not come in, and Mrs. Wynn remained unsatisfied.

Thus, contrary to the Bureau's argument, Calvary did not report that it had cured or resolved Wynn's problem. Indeed, it clearly reported that Wynn was dissatisfied. Moreover, with regard to Gray, there was no claim that the blanketing interference to Channel 6 was satisfactorily resolved. Finally, with respect to Durbin,²¹ it was merely reported that a filter was installed to improve reception to Channels 8 and 12. These representations cannot be viewed as deliberate misrepresentations of fact designed to mislead the Commission.

113. Moreover, whether or not Mrs. Smith cooperated in efforts of KOKS to cure blanketing interference was a matter of opinion, not fact. In this connection, Calvary believed that Smith was not cooperative because she refused to allow them to install a filter on her outside antenna stating first, that she was going to replace the antenna, and second, she did not want Calvary personnel on her roof. Also, Smith filed suit against Calvary seeking unspecified damages, and she was one of the prime movers

in organizing a petition campaign against the station. Under these circumstances, it was not unreasonable for Calvary to reach the opinion that Smith was uncooperative. While this assessment may not have been accurate, nevertheless, the statement by Calvary that Smith was uncooperative was a statement of opinion, rather than fact, and not a sound or sufficient basis for concluding that Calvary lacked candor.

114. The Bureau further argues that Calvary falsely stated that Edward Hodgins' complaints were unresolved because a convenient time could not be arranged for an appointment. Hodgins, on the other hand, testified that the station made three appointments to address the blanketing interference, but it failed to keep the appointments. Significantly, this appears to be the only instance where KOKS failed to keep an appointment. Having regard for the fact that KOKS made countless appointments and home visits, it does not seem reasonable that with respect to Hodgins the station deliberately failed to keep appointments with him and, thereafter, knowingly misrepresented facts that a convenient time for an appointment could not be arranged.

115. The Bureau argues that the licensee submitted incomplete and misleading information to the Commission regarding the extent and success of its efforts to correct blanketing interference. This argument is apparently based on the fact that KOKS did not reveal in its reports to the Commission that it generally installed only one filter per household, did not correct interference to radios, and reported that interference was cured or resolved or reception improved when that was not the case. The licensee argues that it attempted to address radio interference when mentioned in telephone complaints or during a home visit and Mrs. Stewart, who performed the work in addressing blanketing complaints during home visits, did install more than one filter per household. Nevertheless, it appears that KOKS did not aggressively seek to determine during the home visits whether radio reception was affected by blanketing interference and, as a general matter, only one filter was installed on televisions in each home visited. While these matters, as previously noted, constitute violations of the blanketing rule, the failure of KOKS to report these matters to the Commission does not in the judgment of the Presiding Officer constitute the submission of incomplete information. KOKS reported the complainants visited and what was done in an effort to address the blanketing interference. When a blanketing complaint was reported as cured or resolved, or reception improved, Mrs. Stewart believed that she was accurately reporting the results of her efforts. In so doing, she excluded Channel 6 because she believed KOKS had no responsibility to restore reception of Channel 6, a station that did not place a Grade B signal over Poplar Bluff. In any event, whether television reception was improved or blanketing interference was cured or resolved, in many instances constituted a matter of judgment based on subjective perceptions.²² This is particularly true in this case because of the poor quality of the television signals to begin with.

²¹ Earlier, in its February 24, 1989, letter to the Commission, Calvary reported that it cured Durbin's interference by the installation of a filter. In this regard, Mrs. Stewart acknowledged that she "just missed" Durbin's other complaints. In view of the volume of complaints received by KOKS, it is understandable that some complaints were missed by Mrs. Stewart.

²² The licensee's submissions to the Commission were quite

voluminous and included the contemporaneous notes made during the home visits arranged to address the blanketing interference. Included with its February 12, 1991, and February 25, 1991, letters were the contemporaneous notes of the licensee made during the course of the home visits reporting the work done and the nature of the television reception. (MMB Ex. 26 and 27.) The complainants signed the contemporaneous notes.

116. To summarize, the licensee has violated the provisions of Section 73.318 of the Commission's rules, but has not deliberately or willfully misrepresented facts or lacked candor regarding the nature and extent of its efforts to correct the blanketing interference problems. While mistakes were made by KOKS in that some complaints were overlooked or the satisfaction of a complainant mistakenly reported, these errors appear more attributable to the volume of complaints resulting from the petition drive and the station's limited funds and staff resources, than the product of a deliberate intent to mislead and deceive the Commission. Thus, denial of renewal is not warranted.

117. Nevertheless, the repeated violations of Section 73.318 require the imposition of a forfeiture in the amount of \$10,000.²³ Although the Commission's Policy Statement for *Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991) does not have a separate listing for blanketing violations, the Presiding Judge believes the \$10,000 forfeiture imposed here is the amount of forfeiture liability listed for similar type violations.²⁴ Moreover, the licensee will be required to comply with the requirements of Section 73.318 of the rules and KOKS will be given another opportunity to remedy the remaining blanketing problems. In this connection, because KOKS believed it had no responsibility for Channel 6, no genuine effort was made to cure blanketing interference to that channel. The Commission, in the *Hearing Designation Order*, held that the blanketing rule does not limit a licensee's responsibility to complainants residing within the Grade B contour of television stations. Thus, KOKS is responsible for curing the blanket-

ing interference to Channel 6 notwithstanding that the station does not place a Grade B signal over Poplar Bluff. In addition, KOKS must comply with the requirements of the *Order* released October 30, 1990, which is Mass Media Bureau Ex. 25. This includes satisfying all individuals KOKS inaccurately reported as having had their blanketing problems resolved.²⁵ The additional efforts to be undertaken by the licensee to eliminate blanketing interference to Channel 6, and the requirements set forth in the October 30, 1990, *Order*, shall include taking all reasonable and necessary steps, including the installation of antennas, coax cabling, rotors, boosters, and high quality filters, or any combination thereof, by a qualified repairman, at no cost to the home owner.²⁶ This work shall be accomplished by the licensee within 120 days to radios and television sets in each household that desires such work.²⁷ A complete report shall be submitted to the Mass Media Bureau within 20 days after the repairs have been completed setting forth in detail the nature of the work done, the equipment installed, and the results of the effort. This report shall be verified by the licensee and the repairman who performed the work. The home owner shall be requested to sign the report and acknowledge, in writing, whether they are satisfied and if not, why not.²⁸ In the meantime, the license for KOKS will be renewed for a period of only one year to provide KOKS with one last opportunity to comply with the Commission's blanketing rule.²⁹

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party, or it is reviewed by the Commission on its own motion in accor-

²³ The other rule violations, as previously indicated, are not sufficient to establish that the licensee is inept and should be denied renewal of license on that score. Moreover, the individual alleged violations, other than the blanketing rule violations, do not warrant the imposition of a forfeiture. In this connection, while the licensee may not have accurately reported the results of its efforts to resolve blanketing complaints, its representations were not intentionally false in violation of Section 73.1015. Moreover, the alleged violation of Section 73.267 (determining operating power) was explained by the licensee and appears to be attributable to a defective diode which resulted in false readings. The Commission's engineer found the station's explanation to be satisfactory. While it appears that KOKS, on at least one occasion, may have operated in excess of authorized power when Mr. Meador viewed the transmitter in 1989, this was only an isolated instance. In this connection, the testimony of Meador was refuted by both Mr. and Mrs. Stewart. Mr. Stewart first denied being in the transmitter building with Meador, then appeared to admit it, and finally again denied the incident about which Meador testified. Quite frankly, the Presiding Judge found Mr. Stewart to be an unpersuasive witness. His testimony at times was incoherent; it was at times disjointed; and he had a tendency at times to inject irrelevant matter. The stroke he suffered several years ago and his resulting medical problems may account for some of his testimony. In any event, the alleged overpower operation does not, on the basis of the evidence presented, warrant the imposition of a forfeiture.

With respect to the alleged violation of Section 73.1213 (tower lighting and painting), the parties have stipulated that no violation was committed by the licensee and this provides no basis for the imposition of a forfeiture. Finally, the findings reflect substantial compliance with Section 73.3527 (public file requirements), the alleged deficiencies have been explained, but in any event are not of a willful or repeated nature warranting the assessment of a forfeiture.

²⁴ Because the violations continued for an extended period of

time and caused harm to residents within the blanketing contour in that they were deprived of unhindered television and radio reception, the Presiding Judge would ordinarily increase the amount of the forfeiture in accordance with the Commission's Policy Statement. However, because it is anticipated and expected that the licensee will incur significant expense in addressing and remedying the remaining blanketing problems, the amount of forfeiture will not be increased.

²⁵ See, Footnote 5 of MMB Ex. 25. Also, KOKS shall reimburse home owners, such as Leatha Piper, for the expenses they incurred to eliminate blanketing interference which was caused by KOKS. In the case of Piper, she retained Lampe and spent more than \$100 to restore her reception. As part of the report KOKS will be required to submit, it shall list the identity of each home owner who has been reimbursed and the amount of reimbursement.

²⁶ It is noted that the report prepared by Moffitt and Raines, KOKS Ex. 6, describes the system in use by Mr. and Mrs. Jim Farley, a retired television repairman, as "a model system for receiving weak signals in a high RF field." Perhaps KOKS may find it useful to copy this system in treating the blanketing interference problems. Also, Mr. Lampe, the station's engineer, recommended a very high gain antenna, coax cabling, rotor, and high quality filters to restore reception.

²⁷ Section 73.318 provides, *inter alia*, that a licensee has the obligation to satisfy blanketing complaints received by the station within one year after a station replaces its antenna. Because KOKS has applied to replace its 4-bay antenna with a 7-bay antenna, such change, when approved, would again commence KOKS' obligation to satisfy blanketing complaints.

²⁸ If the home owner refuses to sign the report, the licensee shall report this together with a statement explaining why the home owner was not satisfied.

²⁹ In the event KOKS takes all the steps necessary to eliminate the blanketing interference as outlined above, including the installation of antennas, rotors, coax cabling, etc., and the home owner is still not satisfied because the signal strength of the television signals are too weak to permit good reception, then it

dance with Section 1.276 of the rules, the application of Calvary Educational Broadcasting Network, Inc. (File No. BRED-891103UA) for renewal of license of Station KOKS in Poplar Bluff, Missouri, IS GRANTED for a term of one year commencing from the date of release of this Initial Decision;

IT IS FURTHER ORDERED that the licensee of Station KOKS SHALL COMPLY with the provisions of Section 73.318 of the Commission's Rules, as set forth in paragraph 117, within 120 days;

IT IS FURTHER ORDERED that the licensee of Station KOKS SHALL SUBMIT the report required in paragraph 117 of this Decision within 20 days after the completion of the licensee's further efforts to eliminate the remaining blanketing interference;

IT IS FURTHER ORDERED that this Initial Decision SHALL CONSTITUTE an Order of Forfeiture in the amount of \$10,000. Such payment SHALL BE SENT TO THE FOLLOWING ADDRESS:

FEDERAL COMMUNICATIONS COMMISSION
POST OFFICE BOX 73482
CHICAGO, ILLINOIS 60673-7482

This payment should identify the payor and reference the control number of the Notice of Apparent Liability (NAL) and the Notice of Forfeiture (NOF). In this instance, the NAL control number is FCC 92-238, and the control number of the NOF is FCC 93D-15. These references SHALL BE PLACED directly on the check. A separate piece of paper is not required.³⁰

FEDERAL COMMUNICATIONS COMMISSION

Joseph Stirmer
Chief Administrative Law Judge

would seem that the licensee has met its obligation under the blanketing rule. That rule requires the elimination of blanketing interference. It does not require KOKS to improve the signal strength of television or radio signals in Poplar Bluff.

³⁰ In the event exceptions are not filed within 30 days after the

release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).