

1 MR. MILLER: That's two questions.

2 MR. NEELY: What's the question pending?

3 MR. WARD: -- there was only two questions there.

4 JUDGE FRYSIAK: She was nodding her head. She was
5 shaking her head, so I guess it's a no response to both
6 questions.

7 MR. WARD: He, he's never offered you either a

1 Q From KCSI. Does he sign your, your payroll checks?

2 JUDGE FRYSIAK: Who?

3 BY MR. WARD:

4 Q Bruce Linder?

5 A At times.

6 Q Now, you, you first got together with him on the
7 subject of, of Eldon after you saw this newspaper article. Is
8 that is that correct?

1 lunch concerning Eldon?

2 A Yes, I did.

3 Q And what did you say?

4 A I asked him if he knew anything about it. About the
5 allocation.

6 Q And did he, did he indicate that he knew about it?

7 A It seemed like he had heard about it.

8 Q And then what? I mean, what, what did you --

9 A I, I was curious. I asked him some questions to see
10 if he would be interested in looking into it more. And I
11 wanted to see if there was any hope, I guess, that he would
12 even consider working jointly with me in pursuing perhaps
13 something. At that. at that stage. it was just. it was just a

1 Q And I take it you did --

2 A Yes, we did.

3 Q -- talk again. How -- was that -- was the next
4 conversation face-to-face or was that handled by phone?

1 on the subject of a possible loan application?

2 A Yes, I think I was in contact with, with Miller and
3 Miller.

4 MR. WARD: Your Honor, I'd like to identify some,
5 some exhibits here that I previously exchanged.

6 JUDGE FRYSIAK: All right.

7 MR. WARD: Starting with Exhibit 6.

8 JUDGE FRYSIAK: Okay.

9 MR. WARD: Ms. Sample-Day -- Rivertown Exhibit 6,
10 Your Honor, I'd like to have marked, consists of, of a July
11 30, 1991, letter from Owl Engineering to Mark McVey, attached
12 to which are, are two maps each -- they, they're almost
13 identical. The difference is that one of them has an arrow
14 pointing to a sector of a circle. And that sector has been
15 shaded, marked area to locate.

16 BY MR. WARD:

17 Q Have you seen this particular letter and enclosure
18 before?

19 A Yes, I have.

20 Q And when did you -- I'm sorry. Okay. Let's go with
21 that. When did you first see this? Do you know? Did Mr.
22 McVey share it with you?

23 A Yeah, I believe he did.

24 Q Okay.

25 MR. WARD: The next exhibit I'd like to have

1 identified, Your Honor, is, is Rivertown Exhibit 7, a letter
2 from Owl Engineering to -- also to Mark McVey, dated August 8,
3 1991, attached to which are two additional -- two other maps,
4 which are identical. One of, one of them has a smaller shaded
5 area, marked area to locate. Do, do you recognize this? Have
6 you seen this exhibit before? This letter?

7 WITNESS: Yes, I have.

8 MR. WARD: Did you also receive a copy of that from
9 Mr. McVey at some point?

10 MR. NEELY: Wait a minute. Als-- also receive? I
11 don't think she also -- she never testified that she received
12 anything else.

13 MR. WARD: I thought --

14 MR. NEELY: She said she saw a copy of No. 7. She
15 didn't say she received it from anybody.

16 BY MR. WARD:

17 Q That's a subtle distinction that may be valid. Did,
18 did Mr. McVey show you a copy of this August 8 letter?
19 Rivertown Exhibit 7?

20 A Yes, he did.

21 Q Did he give you a copy? If you recall?

22 A I think he did.

23 Q Okay. Do you recall when he, when he showed it to
24 you? Did he show the -- show both letters to you at the same
25 time?

1 A I think so. I think he did.

2 Q All right. The -- did he explain to you -- when he
3 showed them to you, did he explain to you the difference
4 between the two maps?

5 A No, I don't recall that he did.

6 Q Did you ask him whether -- do you recall asking him.

7 A No, I don't recall asking him.

8 Q In your testimony you testify in your written
9 exhibit that at, at your request --

10 MR. NEELY: Could I ask Mr. Ward just to, just to
11 step down instead of hovering over the witness?

12 MR. WARD: I'm sorry.

13 MR. NEELY: Thank you.

14 BY MR. WARD:

15 Q You state in your, in your written testimony and I,
16 and I quote, "At my request Owl Engineering sent me an area --
17 sent me a map showing the area to locate." Do you recall that
18 testimony or do you want me to dig it out here?

19 A Yeah. I'd like to see it if possible.

20 MR. NEELY: Are you referring to Exhibit 2, page 4,
21 Don?

22 BY MR. WARD:

23 Q Yeah, I just spread out -- spread too far out. Yes,
24 right in the middle of page 4. "At my request, Owl
25 Engineering sent a map to me showing the permissible area for

1 a transmitter site."
2 A Yeah, I see that.
3 Q And that's, that's not -- that test -- in that
4 testimony you're not referring to what Mr. McVey may have
5 shown you?
6 A No.
7 Q Okay.
8 A Two separate things.
9 Q Did you keep -- was this a large map or a small map.
10 Was it similar to what I just showed you?
11 A It was similar to what you just showed me.
12 Q Did it have a covering letter or was it just a map?
13 A I can't remember.
14 Q We were talking about the, the map that you were
15 sent by Owl Engineering at your request, which you discuss on
16 page 4 of your, of your Exhibit 2.
17 A Excuse me. I, I'm reading it.
18 JUDGE FRYSIK: You want to read that paragraph --
19 WITNESS: No, I'm looking at it is where I'm at.
20 BY MR. WARD:
21 Q Okay. The -- do you still have a copy of that map?
22 A Of the what? The area to locate map that Owl
23 Engineering sent me?
24 Q Um-hum.
25 A No, I don't.

1 Q Do you know what happened to it?

2 A I have no idea. I've been looking for it, heaven
3 and earth --

4 Q The reason I ask, and I'm sure counsel was aware of
5 this, it was not among the, the documents that were produced
6 by, by Sample during the discovery phases here and there's
7 never been, never been any earlier reference to it. So far as
8 you're aware, the document has just disappeared. Right?

9 A I can't find it.

10 Q Have, have you made any request of Owl Engineering
11 to send you a duplicate copy for your files?

1 JUDGE FRYSIAK: Yes, 6.

2 MR. NEELY: 6? Okay. Thank you.

3 BY MR. WARD:

4 Q Rivertown 6 is about three times the size of the
5 area to locate as depicted in the attachment to Rivertown
6 Exhibit 7. Do, do you notice those differences?

7 A Yes, I do.

8 Q Can you recall from memory which of -- whether --
9 which of these two, if either, the, the area to locate map
10 referred to at page 4 of your testimony was most like?

11 A No, I can't remember. Either one of them.

12 MR. WARD: Your Honor, I, I'm -- the manner of site
13 selection and the, the, the protection of the -- avoidance of
14 70 dBu -- overlap with KKIS -- KCSI in site selection for the
15 Eldon thing has been a matter of some significance to this
16 enlarged issue. And I really think it's important to that to
17 know what it was that she requested and received -- indeed
18 when she received it, from Owl that, that led to her site
19 selection here. And I would like you to direct Sample's
20 counsel to contact their engineer and get a copy of that
21 particular document and, and pass it on to us. It may be
22 identical to any one of these. We may be able to reach some,
23 some post-hearing stipulation about it, but I -- it does seem
24 to me to be a, a piece of missing evidence that shouldn't be
25 missing.

1 JUDGE FRYSIAK: Well, why didn't you request this
2 before?

3 MR. WARD: Why didn't I request -- I -- it was --
4 it's, it's required to be produced.

5 JUDGE FRYSIAK: I know -- you've had this since May
6 4.

7 MR. WARD: Well, I, I guess I had, I had always
8 assumed that what she was talking about was the documents that
9 had been passed on to me. The ones that -- because Mr., Mr.
10 McVey had talked about using these with her.

11 JUDGE FRYSIAK: All right. I will direct Sample to
12 produce, if available, the duplicates from Owl Engineering
13 that were mailed to Sample or Mrs. -- Ms. Sample, reference to
14 which is made on page 4 of the -- Exhibit 2.

15 MR. NEELY: I'll, I'll check with Owl Engineering,
16 Your Honor, and determine whether or not they have such
17 document available.

18 JUDGE FRYSIAK: All right. What about that second
19 map, U.S. geological survey? Have you got that?

20 WITNESS: Not with me.

21 MR. NEELY: Those, those maps were exchanged with
22 counsel. The U.S.G.F. 7 1/2 minute maps.

23 MR. WARD: Yeah. I have those over here, I think,
24 Your Honor. I at some point today or tomorrow I want to
25 return these to Mr. Neely, but they are --

1 JUDGE FRYSIAK: All right. You may continue.

2 BY MR. WARD:

3 Q Is it, is it your testimony here that, that the
4 first time you really discussed with Mr. McVey any aspect of
5 the -- of your Eldon application, the first time you had any
6 discussion with him on that subject was in the context of
7 helping you to understand the maps and, and to help you in
8 locating a site?

9 A Could you repeat that question, please?

10 Q Unlikely, but I'll try. What, what was the first
11 point at which, based on your, your call, that you, that you
12 spoke to Mark McVey about your -- about the potential that you
13 and Bruce Linder would be putting together an application for
14 Eldon?

15 A Can I refer to any --

16 Q Anything you'd like.

17 (Pause.)

18 A I believe I talked about it with Mark McVey, just in
19 passing, before the application, but I never did discuss it
20 with him. After the application -- no, it wasn't after the
21 application. I can't remember the precise date, but I did ask
22 him to assist me with the engineering.

23 Q Did you ask him to assist you with anything else?

24 A With cost of equipment.

25 Q Was that before or after the application was filed?

1 A That was before.

2 Q Was, was he aware that you and, you and Bruce Linder
3 were engaged in this series of 6 or 12 meetings in August when
4 you were exploring but hadn't quite decided to file the
5 application. Was that, was that very -- was that just a
6 secret between you and Bruce Linder?

7 A I think -- I don't know if I can say it was a
8 secret, but we tried to keep it as private as possible. It
9 was nobody else's business.

10 Q Was that, was that at your suggestion or his? Bruce
11 Linder's, that is. Did Bruce Linder suggest that you just
12 keep it quiet between you?

13 A No, he didn't. Not that I remember. I, I wouldn't
14 have spoke about it with anyone anyway.

15 Q So to the best of your knowledge, best of your
16 knowledge then there would have been no reason for McVey --
17 Mr. McVey to have any awareness of this -- of these plans
18 until you actually approached him or helped him in assisting
19 with site selection or budget or staff or whatever it was you
20 first approached him with?

21 A I would assume so unless somebody else told him, but
22 as far as -- I never told him any -- gave him any ideas or --

23 Q Did, did Mr. Linder encourage you to, to seek out
24 Mr. McVey's assistance in, in preparing your budget or staff
25 or equipment proposals or in selecting a site? Or was that

1 your own idea?

2 A I think it was my own -- my idea to select Mark
3 McVey to assist me.

4 Q Did Mr. Bruce Linder ever discourage you from using
5 Mr. McVey or from having -- discourage you from having any
6 other reliance on the, on the assets or facilities of, of
7 KKSI?

8 A Could you simplify that, that question a little bit?

9 Q Did, did he, did he appear to discourage you from
10 using whatever resources KKSI had to offer to you in putting
11 together an application?

12 A Did he dis -- I guess I still don't understand the
13 question. Did he discourage me?

14 Q He didn't say you -- apropos the concept that you
15 weren't -- you didn't want to advertise this fact broadly, did
16 he ever say well, don't, don't be going around, don't, don't
17 be asking anybody at the station what, what it costs to run
18 the station. I want you to figure that out on your own. Did
19 he give you any other directions about how to, how -- about
20 involvement or noninvolvement of KKSI itself in the
21 application?

22 A He -- from my recollection, he never really gave me
23 any conditions who I should or shouldn't talk to.

24 Q Okay. Did he, did he know -- did you tell him that
25 you were talking to or going to talk to Mark McVey about site

1 selection or --

2 A Did I tell him?

3 Q Did you tell Bruce Linder?

4 A I told him before or after the fact. I can't
5 remember when, but --

6 Q You kept him apprised of what you were doing in the,
7 in the application preparation process?

8 A That is correct.

9 Q Right? And he needed to know that.

10 A Yes.

11 MR. NEELY: Who needed to know that?

12 MR. WARD: Bruce, Bruce Linder needed to know that.

13 MR. NEELY: Bruce Linder?

14 JUDGE FRYSIAK: Well, she ought to know because she
15 mentions that in, in Exhibit 2.

16 MR. NEELY: What page are you referring to, Your
17 Honor?

18 JUDGE FRYSIAK: Exhibit 2. Are you in the dark who
19 Mr. Bruce Linder is?

20 MR. NEELY: No. No, sir. I, I didn't know who he
21 -- he made a pronoun reference. I didn't know who he was
22 referring to.

23 BY MR. WARD:

1 at potential transmitter sites? Is that correct?

2 A Yes, that is correct.

3 Q How many, how many such trips did you and Mr. McVey
4 make to, to look at sites?

5 JUDGE FRYSIAK: Together or --

6 BY MR. WARD:

7 Q Together.

8 A To look --

9 Q At --

10 A To look at sites?

11 Q At possible transmitter sites?

12 A The search was actually just one trip, but we went
13 twice to that area for the purpose of, of getting more
14 information.

15 Q And he, he accompanied you each time?

16 A Yes, he did.

17 Q Did you, did you make any trips by yourself,
18 unaccompanied by Mr. McVey into that area looking for a site?

19 A In that time period?

20 Q Yes, in the, in the time period from, from early
21 August '91 until the application was, was filed in October.

22 A I don't know -- I remember driving out there on my
23 own, but not necessarily to look for sites. I could have been
24 looking for high, higher land. But not necessarily to, to
25 choose a site, because I don't have -- I don't know all that,

1 that is involved in finding a good, a proper site.

2 Q How -- do you know roughly how far your proposed
3 transmitter site is from Eldon?

4 MR. NEELY: May the witness look at her coverage
5 map?

6 MR. WARD: Certainly.

7 BY MR. WARD:

8 Q Well, just -- is the, is the answer -- does your
9 silence denote that, that you don't really know without
10 looking at the coverage map how far it is? I'm happy to show
11 you the coverage map, but --

12 A I've traveled it so many times, but yet I, I
13 couldn't tell -- I couldn't give a precise figure.

14 Q More than 10 miles. More like 15, isn't it? As the
15 crow flies? I'm showing the witness what I believe to be a
16 coverage map. Are you, are you having trouble finding Eldon?

17 A No, I found -- Eldon's right here.

18 Q Yeah.

19 A And, and I'm thinking it's --

20 Q You're looking for your --

21 A -- it's in the -- area --

22 Q You're having trouble finding your transmitter site?
23 Is that the problem?

24 A Well, I know that it's, it's about two miles south
25 of Leander (phonetic sp.). Leander's about a mile from Douds.

1 Q You're, you're -- what you're saying -- I'm showing
2 the witness a, a coverage map which has a 60 dBu rural-grade
3 and a 70 dBu city-grade contours marked on them. And a --
4 roughly in the middle of the map a, a circle and -- with 7 --
5 or 8 radials running emanating from that circle in all 8

1 MR. WARD: She says about -- it's about 12 miles
2 from Eldon? Is that your --

3 WITNESS: It's --

4 JUDGE FRYSIAK: I didn't hear you. You said 12? Is
5 that it?

6 WITNESS: Yes, that's correct.

7 BY MR. WARD:

8 Q In this map -- one more -- one other thing. The
9 largest -- what, what is the largest community within your,
10 your outer -- your 60 dBu rural-grade service area?

11 A Ottumwa.

12 Q Um-hum. And your proposed city-grade contour does
13 not include Ottumwa, does it?

14 A No.

15 Q No. And was that a conscious decision on, on your
16 part not to, not to include Ottumwa in your, in your city-
17 grade contour?

18 A Yes, it was.

19 Q And what was the reason for that decision?

20 A Ottumwa, as you called it before, is over-radioed.
21 It has many stations. I didn't want to overdo it.

22 Q How many stations has it?

23 A Just in its home it has two AM/FM outfits and, and
24 has, you know, now KKSI, which before, you know, KKSI even
25 though it was in Oskaloosa, one of its main markets was

1 Ottumwa. And it gets a lot of signals from other areas as
2 well.

3 Q And where do you, where do you see then as your
4 natural market if it's not Ottumwa?

5 A Well, it would be Ottumwa, Fairfield, Bloomfield,
6 and part of the Van Buren County area.

7 Q Fairfield has stations too, does it not?

8 A Yes, it does. It has one station.

9 Q Both AM and FM?

10 A That's correct.

11 Q Bloomfield has a station?

12 A That is correct.

13 Q How, how large is Bloomfield?

14 A In population?

15 Q Um-hum.

16 A I don't know. I'm not -- not for sure, but it's
17 smaller than Ottumwa.

18 Q How large is Eldon?

19 A Population?

20 Q Yes.

21 A I can't recall. I don't even know if I know the
22 exact figure, but it's a lot smaller than Ottumwa. Smaller
23 than Bloomfield, smaller than Fairfield.

24 Q Well, is it bigger than a breadbox? Can you put
25 some -- can you put a number to it? Is it, is it more than,

1 is it more than 5,000? Is it less than 300?

2 MR. MILLER: Your Honor, what's the purpose of, of
3 this question?

4 MR. WARD: Well, I --

5 MR. MILLER: I mean if we need a figure, we can cite
6 to the census figures. I don't know if we're testing the
7 witness here or, or --

8 MR. WARD: Well, I think that the witness who
9 proposes to be the general manager of a new station in Eldon
10 and proposes to move there ought to, ought to have some
11 familiarity with the community.

12 MR. MILLER: Well --

13 MR. WARD: I was just trying to find out what, what,
14 what's the --

15 MR. MILLER: We don't have an ascertainment
16 requirement anymore, Your Honor. I don't think this is
17 proper, has any relevance to the comparative case.

18 JUDGE FRYSIAK: Well, there is some question as to
19 motivation on the part of others -- sufficient about Ottumwa
20 being eliminated or avoided in this -- there is some
21 relevance. And if nothing else, it tests the witness
22 awareness of her own application. So I'll overrule your
23 objection.

24 WITNESS: What was the question?

25 BY MR. WARD:

1 Q Could, could you -- I recognize -- I don't -- I'm
2 not asking you to put a precise number on it, but can you give
3 me an approximation of the population of Eldon as you, as you
4 know it?

5 A I really can't. I get Eldon and Eddyville very
6 confused. Eddyville being the city license of KKSI and I, I
7 can't recall right -- I can't remember. I know that I've
8 worked with these figures before, but -- with recent
9 interviews that I've done, but I cannot recall. I get them
10 mixed up. And I would rather not guess.

11 Q Is Eddyville roughly the same size as, as, as Eldon?
12 You were, you were very good a making comparisons a few
13 minutes ago, so which, which is the larger? Eddyville or
14 Eldon?

15 A They're about the same.

16 Q About the same. Okay. Then, so, if they're about
17 the same, then why are we confused to say it? If they're
18 about the same 3,000 or about the same 500?

19 A Can I look at a document, because I do recall in my
20 deposition that I -- that you asked me about the population in
21 Eddyville and I responded to that, because I had just spoken
22 to the city clerk. Can I refer to that document?

23 Q Why don't you do that at the next break and we'll
24 come back to it some other time. It's not that, not that
25 crucial.

1 MR. WARD: Your Honor, I'm not going to offer
2 Exhibits 6 and 7 through this witness because I -- we're going
3 to have Mr. McVey and he's the -- more --

4 JUDGE FRYSIAK: All right.

5 MR. WARD: -- more knowledgeable person, but I did
6 want to see to what extent they might have been seen by this
7 witness. The next exhibit we would like to have marked for
8 identification is Rivertown Exhibit 8 --

9 JUDGE FRYSIAK: Okay.

10 (Whereupon, the document referred to
11 as Rivertown Exhibit No. 8 was marked
12 for identification.)

13 BY MR. WARD:

14 Q -- a one-page statement to -- addressed to you,
15 dated September 23, 1991, from Owl Engineering. You recognize
16 that?

17 A Yes, I do recognize it.

18 Q And you received that from Owl Engineering?

19 A Yes, I did.

20 Q And I, I assumed that you paid that bill?

21 A Yes, I did.

22 Q You paid it in the full amount? \$2,089.40?

23 A Yes, I did.

24 Q Did you ask them any questions about the bill before
25 you paid it? Do you recall -- did you, did you ask Diane

- 1 Lysiak or, or Mr. Lysiak, who performed the work for you?
- 2 A Did I ever discuss this bill with them?
- 3 Q Um-hum. Before paying it.
- 4 A I don't think so.
- 5 Q Okay. There's a reference there to, to a September
- 6 13, '91, 70 dBu overlap study.
- 7 A That is correct.
- 8 Q Do you know what that was?
- 9 A Do I know now? Or did I know then?
- 10 Q Take them one at a time.
- 11 A Okay.
- 12 Q What did you know, what did you know when you
- 13 received this bill as to what that was?
- 14 A I just assumed that it was part of what I had asked
- 15 for. Everything that was to be included after I discussed it
- 16 with them.
- 17 Q And what do you know now?
- 18 A I know that they overcharged me for something I
- 19 didn't ask for.
- 20 Q All right. Was it -- is it possible that that is
- 21 the -- that September 13, '91, 70 dBu overlap study, that's
- 22 not the same date as the 70 dBu overlap study which was shown
- 23 to you a few minutes ago, Rivertown Exhibit 7. The August 8
- 24 letter from Mr. Lysiak to Mark McVey contains 70 dBu overlap
- 25 study, but that's not the, that's not the same date, is it?

1 A No, it's not the same date.

2 Q Is, is that possibly the date of the, of the map
3 that he sent to you that you're referring to in your -- page 4
4 of your Exhibit 2?

5 A I don't know.

6 MR. MILLER: Objection, again, to the form of the
7 question, the use of the word possibly.

8 BY MR. WARD:

9 Q You don't know, you don't know that. You don't know
10 if that's what you -- you don't think you -- you think you
11 received that map that late?

12 A Which map?

13 Q The map that you're referring to on page 4 of your
14 Exhibit 2?

15 A The area to locate map?

16 Q Um-hum.

17 A Whether I received it on 7/30 of '91 or 9/13/91?

18 Q No. As late, as late as September 13, '91?

19 A I received that map before September.

20 Q Okay. So -- well, in fact this refers to an overlap
21 study as opposed to an overlap map, doesn't it?

22 MR. MILLER: Objection, Your Honor. This witness is
23 not qualified to interpret what, what's on this -- from the
24 engineer.

25 MR. WARD: I guess what I -- did you ever --