DOCKET FILE COPY ORIGINAL

RECEIVED

AUG 1 6 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In re Application of	)	MM DOCKET NO. 92-122
	)	
CALVARY EDUCATIONAL BROADCASTING NETWORK, INC.	)	File No. BRED-891103UA
	)	
For Renewal of License of Station KOKS(FM) Poplar Bluff, Missouri	)	

To: The Review Board

MASS MEDIA BUREAU'S EXCEPTIONS TO INITIAL DECISION

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau

Charles E. Dziedzic
Chief, Hearing Branch

Y. Paulette Laden

James W. Shook
Attorneys
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554
(202) 632-6402

August 16, 1993

No. of Copies rec'd 0+11
List A B C D E

Summary

1. The ID concluded that Calvary repeatedly violated the provisions of the FM blanketing rule. The ID imposed a $10,000 forfeiture, granted a short-term renewal and required Calvary to undertake additional efforts to comply with the rule. In so doing, the ID erred, for Calvary should have been disqualified. Between October, 1988 and February, 1991 Calvary willfully and repeatedly failed to satisfy complaints of blanketing interference, as required. Specifically, Calvary failed and/or refused to install filters or other equipment on complainants' televisions and radios in order to eliminate the interference. Moreover, even after receiving a direct order from the Commission, Calvary, for its own economic reasons, limited its efforts to the installation of one filter per television per household. Finally, there is no indication that Calvary will comply with the rule if given another opportunity.

2. The ID erroneously concluded that Calvary did not make misrepresentations to and/or lack candor with the Commission when reporting its compliance with the FM blanketing rule. With respect to complaints by Mary Wynn, Joanne Gray and Sandra Durbin, contrary to the conclusion reached in the ID, Calvary knew that its efforts to comply with the rule had failed when it reported otherwise to the Commission, and/or it learned as much

soon after it reported otherwise to the Commission. Yet Calvary failed to correct the errors.

3. With respect to Doris Smith's complaint as well, the ID should have concluded that Calvary was less than candid. Calvary accused Mrs. Smith of being uncooperative, when Calvary knew that the filter it had tried on Mrs. Smith's television sets did not work. Calvary also lied about the reason for its failure to visit Edward Hodgins' home, and the ID erred in crediting Calvary's version of events. The ID also erred in failing to conclude that Calvary lacked candor with the Commission when it did not disclose the continuing complaints of Mr. and Mrs. Hillis. Furthermore, the ID should have found that Calvary submitted incomplete and misleading information to the Commission by failing to report that it did not attempt to address interference to radios at all, and, in many instances, to more than one television set per household. Finally, the ID should have concluded that Calvary principal Don Stewart lied during his testimony in the instant proceeding.

Table of Contents

Page

Table of Authorities..... iv

Preliminary Statement..... 2

Statement of the Case..... 2

Questions Presented..... 4

Argument

A. Calvary's willful and repeated violations of the FM blanketing interference rule warrant disqualification..... 4

B. Calvary's misrepresentations and lack of candor warrant disqualification..... 8

Conclusion..... 20

Table of Authorities

Page(s)

Commission Decisions and Orders

Initial Decision of Chief Administrative Law Judge Joseph Stirmer, FCC 93D-15 (released July 16, 1993)..... passim

Hearing Designation Order, 7 FCC Rcd 4037 (1992)..... 2,3

Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179 (1986)..... 7

Commission Rules

Section 1.276 2

Section 73.267 3

Section 73.318 ..... passim

Section 73.1015 3

Section 73.1213 3

Section 73.1560 3

Section 73.3527 3

Mass Media Bureau's Exceptions to Initial Decision

Preliminary Statement

1. The Mass Media Bureau, by its attorneys and pursuant to Section 1.276 of the Commission's Rules, hereby respectfully submits its Exceptions to Initial Decision of Chief Administrative Law Judge Joseph Stirmer, FCC 93D-15 (released July 16, 1993) ("I.D.").

Statement of the Case

2. This proceeding involves the application of Calvary Educational Broadcasting Network, Inc. ("Calvary") for renewal of license of noncommercial educational station KOKS(FM), Poplar Bluff, Missouri. The Hearing Designation Order, 7 FCC Rcd 4037 (1992), ("HDO"), specified the following issues against Calvary:

> 1. To determine whether Calvary violated Section 73.318 of [the] Commission's Rules, 47 C.F.R. § 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;
>
> 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.

3. The HDO also stated that if it were determined that the record did not warrant denial of Calvary's license renewal application, it should be determined whether a forfeiture should be imposed in the event Calvary willfully or repeatedly violated Sections 73.318, 73.1015, 73.267, 73.1560, 73.1213 and/or 73.3527 of the Commission's Rules. The HDO placed the burden of proof with respect to all issues upon Calvary.

4. The I.D. concluded that Calvary repeatedly violated the provisions of the FM blanketing interference rule (Section 73.318 of the Commission's Rules).[1] However, the I.D. also concluded that, while Calvary's reports regarding its efforts to correct blanketing interference problems contained errors, Calvary had not deliberately or willfully misrepresented facts or lacked candor.[2] Accordingly, the I.D. did not deny Calvary's license renewal application. Instead, the I.D. imposed a $10,000 forfeiture and required Calvary, within 120 days, to undertake additional efforts to restore service to certain residences affected by KOKS(FM) blanketing interference and to submit a report detailing the work performed. Finally, the I.D. renewed Calvary's license for only one year.

---

[1] A licensee's obligations with respect to the blanketing rule are set forth in the I.D. at paras. 98-99.

[2] The I.D. also resolved Issue 3 in Calvary's favor. The Bureau does not except to this conclusion.

5. The Bureau submits that Calvary should not receive another chance to fulfill its responsibilities as set forth in the Commission's FM blanketing interference rule. Rather, Calvary should have been disqualified for its willful and repeated violations of the rule. In addition, the Bureau submits that the errors in Calvary's reports to the Commission were not innocent and cannot be excused as the product of an over-burdened and under-funded staff. Rather, Calvary meant to have the Commission believe that it had complied with the blanketing interference rule even though it knew that it had not resolved a substantial number of blanketing interference complaints. Accordingly, Calvary should also have been disqualified for willful misrepresentation and lack of candor.

Questions Presented

Whether the I.D. erred by not disqualifying Calvary for its willful and repeated violations of the Commission's blanketing interference rule.

Whether the I.D. erred in concluding that Calvary had not misrepresented facts or lacked candor in reports of its efforts to resolve blanketing interference complaints.

Argument

A. Calvary's Willful and Repeated Violations of the FM Blanketing Interference Rule Warrant Disqualification

6. The I.D., at paras. 103 and 104, correctly concludes that Calvary repeatedly violated the FM blanketing interference rule. Specifically, between October, 1988, and February, 1991,

Calvary repeatedly failed to satisfy complainants by refusing and/or failing to install necessary filters and other equipment needed to eliminate KOKS(FM) interference to television and radio receivers. These failures occurred despite Calvary's receipt of materials which named specific filters and provided diagrams to assist in the installation of the filters. (I.D. at paras. 16 and 102.) Moreover, even after Calvary received a direct order from the Commission in October, 1990, to cure blanketing interference complaints (I.D. at para. 57), Calvary failed to comply. Rather, Calvary generally limited its efforts to the installation of one filter per television per complainant household and ignored complainants whose problems had been previously reported as cured. (I.D. at para. 65.) Finally, the I.D., at para. 103, correctly concludes that Calvary's failures to satisfy complainants occurred largely because Calvary was unwilling[3] to buy necessary equipment and use experienced

---

[3] In one instance, the I.D., at para. 103, states: "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." Later in the same paragraph, the I.D. states: "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." Other findings show that Calvary was unwilling to spend funds to satisfy complaints. It refused to reimburse Leatha Piper for work performed for her by KOKS(FM) engineer Lampe. (I.D. at para. 46.) Mr. Stewart told Michael Beckham and the Hillises that they would have to purchase additional filters. (I.D. at para. 63.) It advised complainants who opted not to have a home visit from Calvary that they could buy filters from Lampe rather than obtain them from the station. (MMB Ex. 26, pp. 60-73; MMB Ex. 27, pp. 59, 61-69, 73, 76-77, 79-84, and 88-90.) Finally, Calvary refused to assist complainants who had not received a home visit in February, 1991. (I.D. at para. 49.)

personnel to address complainants' problems.

7. Notwithstanding the foregoing, the I.D. concludes at para. 117, that Calvary should be given another chance to remedy remaining blanketing problems. This is error. The record evidence, particularly Calvary's refusal to comply with the Commission's Order of October 30, 1990, conclusively demonstrates that Calvary is not likely to comply with the responsibilities imposed by the Commission's FM blanketing interference rule. Therefore, the I.D. should have disqualified Calvary.

8. Calvary's immediate neighbors have been subjected to interference from KOKS(FM) for "an extended period," which is now nearly five years. (I.D. at n. 24.) During that period, Calvary has assiduously avoided taking necessary steps to resolve the interference problems it has caused. Instead, Calvary has misinformed or ignored complainants. (I.D. at paras. 32, 33, 63 and 65.) It failed to follow advice provided by the Commission. (I.D. at para. 16.) Calvary grossly understated the number of complainants who were entitled to receive satisfaction of their problems.[4] It has blamed interference on the local State highway

[4] For example, Calvary concluded in its September 22, 1989, report to the Commission that only 89 complainants resided within the blanketing contour and that, of those, only eight were receiving blanketing interference to channels other than Channel 6. (I.D. at paras. 43-44.) By comparison, the Commission later found 220 persons whose service should have been restored. (I.D. at para. 57.)

patrol or on co-channel interference. (See KOKS Ex. 1, pp. 2-4.) Calvary has sought to charge complainants for filters which it was required to provide free of charge. (E.g., MMB Ex. 27, pp. 61-69.) It failed to reimburse complainants who paid for attempted cures of KOKS(FM) interference. (E.g., I.D. at para. 46.) Finally, in response to a question from the Presiding Judge, Calvary principal Nina Stewart basically stated that if Calvary were granted renewal, it would take the same steps it had previously in order to remedy KOKS(FM) blanketing interference to Channel 6. (Tr. 586-88.) As recited in the I.D. at para. 65, Calvary's prior efforts had not lead to a resolution of blanketing problems. In short, Calvary's failures to comply with the FM blanketing interference rule have not only been repeated, they have been willful. Given Calvary's sorry track record, there is no reason to believe that Calvary will make amends and do now what it should have done years ago.

9. In Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1189-90, 1209 (1986) ("Character Policy Statement"), the Commission reiterated that reliability is a necessary character trait for licenseeship. A measure of reliability is an applicant's propensity to comply with the Commission's Rules. Here, the evidence shows that Calvary has repeatedly violated the FM blanketing interference rule, that the violations have been willful, and that they are recent in time. See Character Policy Statement, 102 FCC 2d at

1227, para. 102. Finally, the Commission has no assurance that Calvary will mend its ways. It must therefore be concluded that Calvary is not reliable. Accordingly, the I.D. should have denied Calvary's license renewal application for its failures to comply with the Commission's FM blanketing interference rule.

B. Calvary's Misrepresentations and Lack of Candor Warrant Disqualification

10. The I.D., at para. 112, concludes that Calvary did not make misrepresentions or lack candor with regard to the status of the Mary Wynn, Joanne (Mrs. William T.) Gray and Sandra Durbin complaints. The I.D. reaches this conclusion because Calvary informed the Commission that Mrs. Wynn was still dissatisfied because of the poor quality of reception of Channel 6;[5] Calvary had not claimed that it had cured blanketing interference to Channel 6 for Mrs. Gray; and Calvary merely reported improving Ms. Durbin's reception of Channels 8 and 12. The Bureau submits the I.D. is in error.

11. Contrary to the conclusion reached in the I.D., Calvary first reported to the Commission in its letter of January 24, 1989, that Mrs. Wynn's complaint had been resolved. (MMB Ex. 17, pp. 2, 54.) In its September 22, 1989, letter to the Commission, Calvary reaffirmed its earlier report and claimed that it had

[5] Calvary was then of the belief that it was not required to restore reception of Channel 6. (I.D. at para. 66.)

made a second trip to Mrs. Wynn's house, at which time it installed a filter resulting in "very good reception" on Channels 8, 12 and 15. (MMB Ex. 21, pp. 19, 81.) As a result of Calvary's reports, the Chief, Audio Services Division, initially concluded that Calvary owed no further duty to Mrs. Wynn. (MMB Ex. 25, p. 3 n. 5.) However, shortly after Calvary's first report to the Commission and before its second report, Mrs. Wynn complained repeatedly that Calvary's filters did not work. (MMB Ex. 10, pp. 3, 9, 11-12 and 14.) Moreover, shortly after Calvary's second letter, Mrs. Wynn submitted an informal objection to the renewal application for KOKS(FM). (MMB Ex. 10, p. 16.) Despite having received and read these complaints and the informal objection, Calvary never corrected its reports to the Commission. (Tr. 436-39.) Finally, Calvary remained silent even after Mrs. Wynn complained in March, 1991, that Calvary had not come to her house in February, 1991, and that Calvary's only visit to her house in January, 1989, did not solve her reception problems. (MMB Ex. 10, pp. 18-19.) Mrs. Wynn ultimately paid a television repairman to install a filter.[6] (MMB Ex. 10, p. 4.)

12. Contrary to the conclusion in the I.D., Calvary first reported to the Commission in its letter of February 24, 1989, that Mrs. Gray's complaint had been cured. (MMB Ex. 19, pp. 2,

---

[6] When Mrs. Wynn unsuccessfully sought reimbursement from Calvary, Mrs. Stewart came to Mrs. Wynn's home to install an antenna connector to her main television and a filter to her second television. However, neither action improved Mrs. Wynn's reception. (MMB Ex. 10, p. 4.)

66.) In its September 22, 1989, letter to the Commission, Calvary cited one visit to Mrs. Gray and claimed that it had cured blanketing interference on Channel 8. (MMB Ex. 21, p. 12.) Relying on Calvary's reports, the Chief, Audio Services Division, initially concluded that Calvary owed no further duty to Mrs. Gray. (MMB Ex. 25, p. 3 n. 5.) However, two days after Calvary's only visit to her home, Mrs. Gray complained and specifically disputed Calvary's version of the efficacy of its filter. (MMB Ex. 7, pp. 9-10.) Again, in June, 1989, Mrs. Gray complained. As she had in her previous complaint, Mrs. Gray noted that nothing had been done for her radio and that the filter placed on her television did not cure the interference. (MMB Ex. 7, p. 12.) Calvary received and read Mrs. Gray's February and June complaints before submitting its September 22, 1989, report to the Commission. (Tr. 446-47.) Nevertheless, Calvary continued to insist it had cured Mrs. Gray's interference problems. (MMB Ex. 21, p. 12.) Finally, Calvary remained silent even after Mrs. Gray complained in March, 1991, that Calvary did not come to her house in February, 1991, and that Calvary's only visit to her house in February, 1989, did not solve her reception problems. (MMB Ex. 7, pp. 14-15.) The I.D. correctly determined at paras. 52 and 78 that two different FCC inspection teams found that Mrs. Gray's television reception improved when KOKS(FM) went off the air.

13. Calvary initially suggested it owed no duty to Ms.

Durbin because her only complaint was about interference to Channel 6. (MMB Ex. 15, p. 2; MMB Ex. 17, pp. 3, 84.) Subsequently, on February 10, 1989, Calvary reported that Ms. Durbin failed to keep an appointment with KOKS(FM) personnel. (MMB Ex. 18, p. 3.) Calvary then informed the Commission in its letter of February 24, 1989, that Ms. Durbin's complaint had been cured. (MMB Ex. 19, pp. 2, 62.) In its September 22, 1989, letter to the Commission, Calvary cited its one visit to Ms. Durbin and reported that a filter was installed to improve reception with respect to observed blanketing interference on Channels 8 and 12. (MMB Ex. 21, pp. 9, 43.) Relying on Calvary's reports, the Chief, Audio Services Division, initially concluded that Calvary owed no further duty to Ms. Durbin. (MMB Ex. 25, p. 3 n. 5.) However, contrary to the knowledge of the Chief, Ms. Durbin had called Calvary to inform it that she removed its filter because it appeared to make reception worse, and she followed up this call with a complaint in June, 1989. (MMB Ex. 5, pp. 3, 11-12.) Calvary received and read Ms. Durbin's June complaint before submitting its September 22, 1989, report to the Commission. (Tr. 552.) Nevertheless, Calvary suggested that it owed no further duty to Ms. Durbin and, subsequently, failed to change its September, 1989, report despite also receiving Ms. Durbin's December, 1989, informal objection. (MMB Ex. 21, p. 9; MMB Ex. 5, p. 17; Tr. 556.) Finally, Calvary remained silent even after Ms. Durbin complained in March, 1991. (MMB Ex. 5, pp. 15-16.) The I.D. correctly

found at para. 83 that the 1992 FCC inspection team found that Ms. Durbin's television reception improved when KOKS(FM) went off the air.

14. With respect to Mrs. Wynn, Mrs. Gray and Ms. Durbin, Calvary misrepresented facts to and/or lacked candor with the Commission on at least two occasions by claiming that it had taken care of their complaints to the extent required by the FM blanketing interference rule. Indeed, the I.D. finds, at para. 44, that Calvary reported in its September 22, 1989, letter to the Commission that complaints, which included those of Mrs. Wynn, Mrs. Gray and Ms. Durbin, had been resolved. It is plain from the testimony of the complainants that Calvary's efforts either did not improve reception or failed shortly thereafter. Thus, especially in the case of Mrs. Gray, Calvary's initial reports were knowingly false. However, even if Calvary were given the benefit of the doubt with respect to its initial reports that each problem had been cured, it is beyond question that the complainants plainly and repeatedly informed Calvary that KOKS(FM) was still interfering with their television and radio reception. Thus, by the time of its September 22, 1989, letter, Calvary had no basis in fact for reporting that the problems of Mrs. Wynn, Mrs. Gray and Ms. Durbin had been resolved. Nevertheless, Calvary willfully misrepresented to the Commission that it had resolved the complaints of Mrs. Wynn, Mrs. Gray and Ms. Durbin and never bothered to correctly inform the

Commission despite receipt of additional complaints from each of them.[7] Calvary, at least for a time, persuaded the Commission that it had cured the interference problems of Mrs. Wynn, Mrs. Gray and Ms. Durbin, when, in fact, it had effected no such cure.

15. The I.D., at para. 113, concludes that Calvary did not lack candor with respect to Doris Smith because Calvary's stated reason for not curing Mrs. Smith's blanketing interference -- her lack of cooperation -- was a matter of opinion and not fact. The point is that Calvary deliberately did not tell the Commission the full story; namely, that the one type of filter it had tried on Mrs. Smith's television sets did not work. (I.D. at para. 32. Also, compare MMB Ex. 2, p. 12 and Tr. 911-12 with MMB Ex. 15, pp. 2-3 and Tr. 737.) Rather than tell the Commission about the failure of its filter, Calvary opted to blame Mrs. Smith for its inability to resolve her complaints. (E.g., MMB Ex. 17, p. 3; MMB Ex. 21, p. 2.) Thus, Calvary's message to the Commission was that Mrs. Smith was at fault, and there was nothing further it could do. At the same time Calvary was telling the Commission Mrs. Smith would not cooperate, Calvary was telling Mrs. Smith that it would call her when a suitable filter arrived. However,

---

[7] The I.D., at n. 22, gives credence to Mrs. Stewart's claim that she "just missed" Ms. Durbin's other complaints and goes on to excuse this failure because of the volume of complaints received by the station. However, the last complaints that should have been overlooked were ones from persons such as Ms. Durbin who even Calvary admitted had experienced blanketing interference from Station KOKS(FM).

no such call was ever made.[8] (MMB Ex. 17, p. 84; MMB Ex. 2, p. 17.) The plain fact is that, absent the October, 1990, order from the Chief, Audio Services Division, Calvary would not even have attempted any further repairs to Mrs. Smith's televisions or radios. Moreover, as discussed infra at para. 20, Calvary's efforts in response to the Chief's order were inadequate, and its reports were misleading.

16. The I.D. concludes, at para. 114, that Calvary did not misrepresent facts when it reported that it did not resolve the complaints of Edward Hodgins because a convenient time for a visit could not be arranged. Mr. Hodgins had alleged that Calvary failed to keep three appointments. The I.D. accepts Calvary's version because "this appears to be the only instance where KOKS failed to keep an appointment"[9] and because Calvary had made "countless appointments and home visits." In reporting that it could not arrange a convenient time to meet with Mr. Hodgins, Calvary also claimed that it told him the proper filter to install.[10] (MMB Ex. 18, p. 2.) By comparison, Mr. Hodgins'

---

[8] There would have been no reason for Calvary to discuss placement of a different filter on Mrs. Smith's television sets unless the filter it first used had not worked.

[9] Calvary had also failed to keep an appointment with Ms. Durbin. (MMB Ex. 5, p. 9.)

[10] At the hearing, Mrs. Stewart testified it was her belief that, from the directions he gave, Mr. Hodgins lived outside the blanketing contour. (I.D. at para. 25.) Perhaps this is the real reason why Mrs. Stewart did not visit Mr. Hodgins until ordered to do so. However, it was not the reason Calvary gave to the Commission.

February 26, 1989, complaint not only alleges KOKS(FM) interference on four television channels and his radio, but also accuses Calvary of not showing up and says nothing about Calvary's claimed advice concerning a filter. (MMB Ex. 8, p. 6.) In addition, Calvary apparently had no difficulty in arranging a visit to Mr. Hodgins' house on February 12, 1991, when it was under much greater time pressure to effect repairs to complainants' television sets. (MMB Ex. 8, p. 2; MMB Ex. 27, p. 21.) In view of the foregoing, the Bureau submits that Mr. Hodgins is more believable than Calvary[11] and that, as with Mrs. Smith and the Hillises (see para. 17, infra), Calvary simply chose to blame the complainant rather than cure the interference. The I.D. should have concluded that Calvary falsely reported the Hodgins' situation.

17. The I.D. errs by failing to address whether Calvary lacked candor in its reports to the Commission regarding Mr. William (Bill) Hillis and Mrs. Jean Hillis. The I.D. finds at para. 33 that Calvary informed the Commission that KOKS(FM) was not interfering with the Hillises' main television and that it would do no work for the Hillises until Mr. Hillis reduced his complaints to writing. Later in the same paragraph, however, the I.D. finds that, during Calvary's visit to Mrs. Hillis' home,

---

[11] Calvary chose not to cross-examine Mr. Hodgins, as well as Ms. Durbin. (Tr. 897-98.)

Mrs. Stewart acknowledged hearing KOKS(FM) on Channel 6,[12] and further finds that the Hillises had repeatedly complained both orally and in writing to Calvary about their radio and television reception. In view of the findings by different FCC inspection teams, spanning a period of more than two years, that KOKS(FM) was interfering with televisions at the Hillis residence (I.D. at paras. 42, 51 and 73), it must be concluded that Calvary misrepresented facts when it claimed that it was not causing interference. Further, it must be concluded that Calvary lacked candor by suggesting that all of the Hillises' complaints merited no further action by Calvary either because of the civil lawsuit which the Hillises joined or because the Hillises complained about KOKS(FM) interference to their businesses in addition to their home. (See MMB Ex. 21, pp. 2, 26, 175-77.) Calvary simply had no intention of resolving Mrs. Hillis' complaints and would not have done so absent a direct Commission order.[13]

18. At para. 115, the I.D. concludes that Calvary did not submit incomplete and misleading information when it claimed in its 1989 letters that it resolved complaints although it virtually never addressed complaints of KOKS(FM) interference to radios. However, it is plain that numerous complainants alleged

---

[12] Compare MMB Ex. 3, p. 3, where Mrs. Hillis alleges KOKS(FM) audio on Channels 6, 12 and 15.

[13] One could reasonably infer from Calvary's actions with respect to Mrs. Smith and Mrs. Hillis that Calvary was punishing them for their roles in organizing opposition to KOKS(FM).

interference to their radios (I.D. at para. 37); that Calvary knew that radios were protected (I.D. at paras. 16 and 19); and that Calvary did not attempt, except in a few instances, to address such complaints. (I.D. at para. 37.) In light of the foregoing, Calvary misrepresented to the Commission that complaints were resolved. (MMB Ex. 15; MMB Ex. 17; MMB Ex. 19; MMB Ex. 21.)

19. The I.D. also concludes at para. 115 that Calvary did not submit misleading information by reporting complaints to be resolved when, in fact, they were not resolved. This conclusion is at odds, however, with the weight of the evidence. Complainant after complainant testified that their complaints were not resolved and that Mrs. Stewart either agreed with them or that they quickly informed her of their dissatisfaction.[14] (MMB Ex. 5, pp. 3-4, 11-12; MMB Ex. 6, pp. 3, 6; MMB Ex. 7, pp. 3, 9-10, 17; MMB Ex. 9, p. 3; MMB Ex. 10, pp. 3, 9; MMB Ex. 29, pp. 2, 4-8.) For Calvary to claim that it believed it had resolved complainants' blanketing interference problems in 1989 is simply incredible.

20. The I.D., at para. 115, further concludes that Calvary did not submit incomplete or misleading information when it told

[14] The examples introduced into evidence by the Bureau were meant to be a representative sample. As noted in the I.D. at para. 60, 105 persons desired visits from Calvary in 1991, more than two years after Calvary began broadcasting, to correct interference caused by KOKS(FM).

the Commission in its February, 1991, reports that its filters eliminated FM blanketing interference caused by KOKS(FM). However, absent further complaints from Mrs. Smith, Mrs. Hillis, Mr. Beckham, and Mr. and Mrs. Ellis, among others (see I.D. at para. 65), the Commission never would have known that Calvary had generally installed only one filter on one television per household and that Calvary did nothing for any of the complainants' radios. In short, Calvary's reports were designed to persuade the Commission that it had fulfilled the order issued by the Chief, Audio Services Division, when, in fact, it had not done so.

21. Finally, at n. 23, the I.D. states as to Mr. Stewart: "Quite frankly, the Presiding Judge found Mr. Stewart to be an unpersuasive witness."[15] This observation followed a discussion about allegations that the station had operated in excess of its authorized power. The allegations were made by Craig Meador, who had been to the Stewart residence on several occasions to service a satellite system for receiving television signals. At the hearing, there was a direct conflict between Mr. Meador's testimony and Mr. (and Mrs.) Stewart's testimony as to when Mr.

---

[15] The I.D. attributed some of Mr. Stewart's difficulties to a stroke and resultant medical problems. (See also, I.D. at n. 12.) However, the record is devoid of competent evidence that Mr. Stewart suffered a stroke or that his medical problems, whatever they may be, had an impact on his testimony. (Tr. 371-73, 376-77.) Indeed, Mr. Stewart works an on-air shift seven days a week at Station KOKS(FM) and has done so since late 1988. (Tr. 374-75.)

Meador had made repairs and what occurred while he was on the premises. (Compare MMB Ex. 11, p. 2; Tr. 1020-21, 1025-27, 1034, with Tr. 1108, 1111, 1114.) The I.D., at n. 23, apparently resolves this conflict by finding that Mr. Meador did observe the over-power operation. What the I.D. also should have found was that Mr. Stewart lied about the incident.

22. In sum, the record is replete with examples of Calvary's intentional misstatements and/or materially incomplete representations which were made to the Commission over nearly a two and one half year period. Moreover, Calvary president Donald Stewart lied at the hearing about operating KOKS(FM) in excess of authorized power. Consequently, the I.D. should have disqualified Calvary for willful misrepresentations and lack of candor.

Conclusion

23. Because of Calvary's willful and repeated failures to comply with Section 73.318 of the Commission's Rules (FM blanketing interference) and its misrepresentations to and lack of candor with the Commission, the I.D. should have denied Calvary's application for renewal of license for Station KOKS(FM).

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau

Charles E. Dziedzic
Chief, Hearing Branch

Y. Paulette Laden

James W. Shook
Attorneys
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554
(202) 632-6402

August 16, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, secretary of the Hearing Branch, Mass Media Bureau, certifies that she has on this 16th day of August, 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Exceptions to Initial Decision"** to:

Joseph E. Dunne, III, Esq.
May & Dunne, Chartered
1000 Thomas Jefferson Street, N.W.
Suite 520
Washington, D.C. 20007

Michelle C. Mebane
Michelle C. Mebane