

No mention was made of "program testing" and no explanation was given for their reason for being on the air. KAMY continued broadcasting each day until Thursday, April 20, 1989, when, at approximately 1:55 p.m., the station went off the air. At this time, the announcer came on the air and stated that the station had been "testing" and would return to the air sometime in the future.

8. During the periods in which KAMY was broadcasting from the unauthorized location, it appeared that the station was operating at more than the .64 kilowatts authorized in its construction permit. KJAK staff decided to test the strength of KAMY's signal and was able to pick up the signal in Plainview, Texas, which is approximately 45 miles north of Lubbock, Texas. By comparing KAMY's unauthorized signal with KJAK's approved 3,000-watt signal, we determined that KAMY was putting out approximately 25,000 watts, which is about what the facility's 10,000-watt transmitter would perform given the antenna gain.

9. KJAK and its principals are deeply disturbed by KAMY's unauthorized broadcasts. Due to the proximity of Slaton to Lubbock, and given the high power utilized at KAMY's unauthorized facilities, the station has been competing for listeners in an unfair and unlawful manner within our service area. Our station has been attempting to upgrade its facilities for years. (See MM Docket No. 87-381; RM-5934). To us, it is grossly unfair that Caprock has begun to operate at a site unauthorized by the Commission and at a power similarly unauthorized when Williams and other Commission permittees and applicants must and do diligently follow Commission



**EXHIBIT No. 3**

STATE OF TEXAS     )  
                          )  
COUNTY OF LUBBOCK)

AFFIDAVIT

BEFORE ME, a Notary Public, on this 25th day of April, 1989, personally  
came and appeared:

EDWARD C. DULANEY,

who, after having been first duly sworn, did hereby state and declare  
the following:

1. My name is Edward C. Dulaney. I am employed by Williams  
Broadcasting Group, licensee of KJAK(FM), Slaton, Texas, as a Board  
Operator and Assistant Director of Engineering for the station. I have  
personal knowledge of the facts recited herein.

2. In mid-February 1989, I was asked by Woody Van Dyke, General  
Manager of KJAK, to observe the unauthorized activities of Caprock Educational  
Broadcasting Foundation (Caprock) at the KJTV tower site, located at 9802  
University Avenue in Lubbock, Texas. On March 23, 1989, I went to the  
KJTV site and approached what was known by me to be the KAMY transmitter  
building. On that particular day, the door to the building was locked,  
so I could not see what was inside.

3. On March 27, 1989, I again visited the KJTV site, this time  
with a camera. I approached the building in which the KAMY transmitter  
was known to be and photographed it from the front, rear, and side.  
Copies of these photographs are appended hereto as Attachment A. As  
the photographs demonstrate, the building is small (approximately 10'  
deep and 10' wide), gray in color, with a door on the front, and has a  
small window on the top right center side. A telephone line was connected  
to the building, as were electric power lines.

4. As I approached the front of the KAMY transmitter building, I noticed that the front door partially was open, so I proceeded to examine the contents of the building. On the far right to the inside of the building was a Gates 1,000-watt transmitter. On the far left of the building was a CCA 10,000-watt transmitter, to which the Gates transmitter appeared ready to be connected. In between the transmitters was a rack of equipment which contained two STL receivers, an Orban 8000 Limiter, a Gentner remote control unit, an exciter, and other items. I photographed the building's inside contents. Copies of the photographs are appended hereto at Attachment B. I then left the building and observed the antenna.

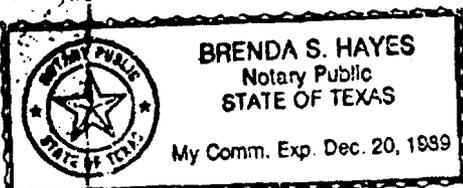
5. The antenna for KAMY was located approximately half-way up the KJTV tower. A photograph of the antenna is appended hereto as Attachment C. As it appeared in the photograph, the KAMY antenna is located approximately at the third guy from the bottom of the structure.

6. The photographs attached hereto are true and accurate, have not been retouched, and were taken at the KJTV tower and site on the days referenced above.

  
EDWARD C. DULANEY

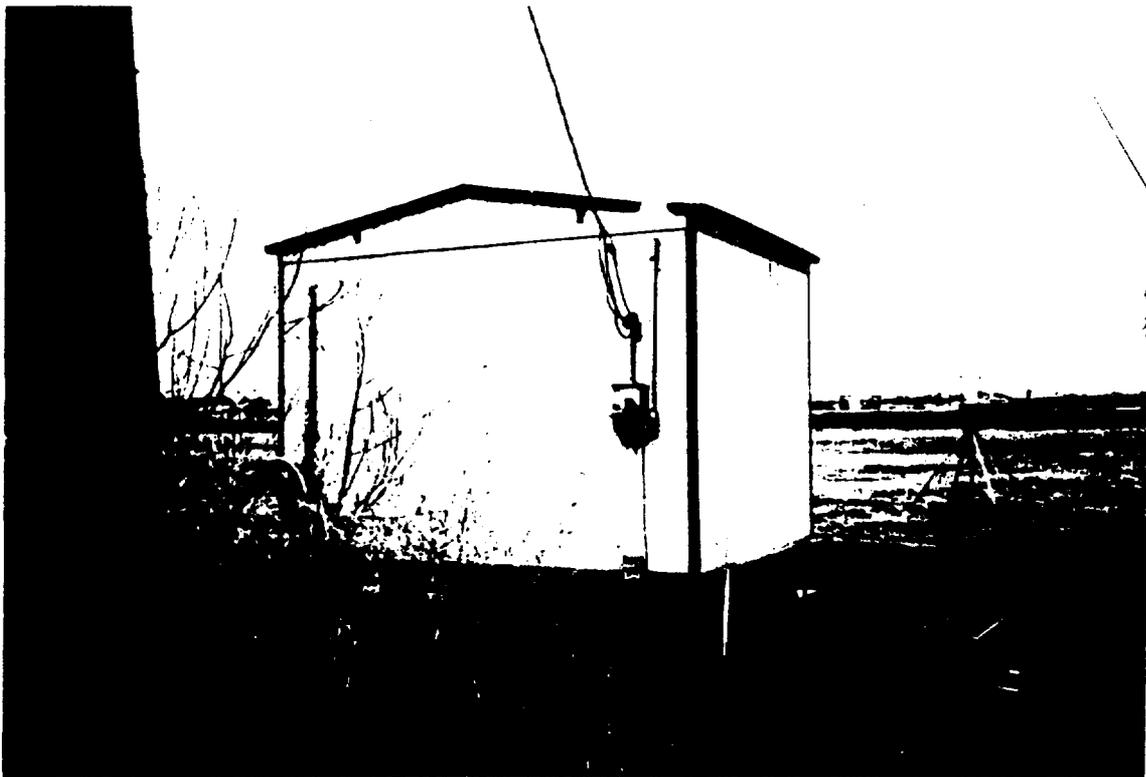
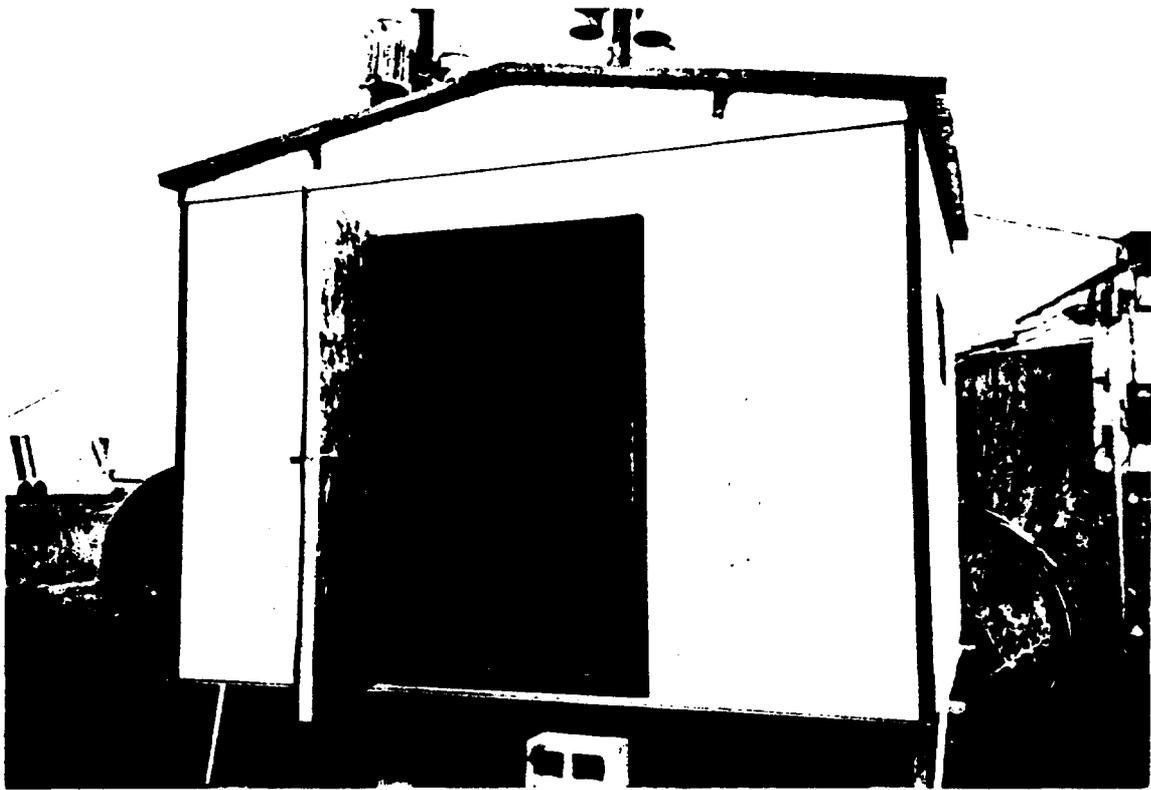
STATE OF TEXAS     )  
                              )  
COUNTY OF LUBBOCK)

SWORN AND SUBSCRIBED before me this 25th day of April, 1989.



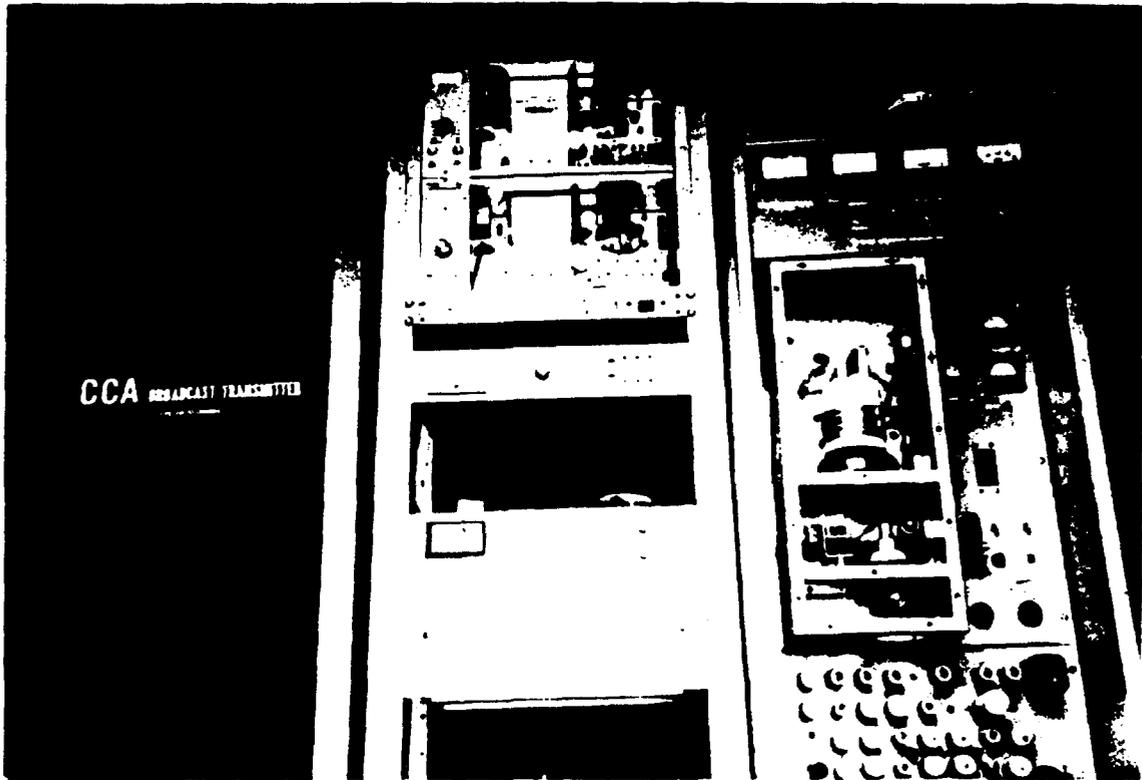
  
Notary Public, State of Texas

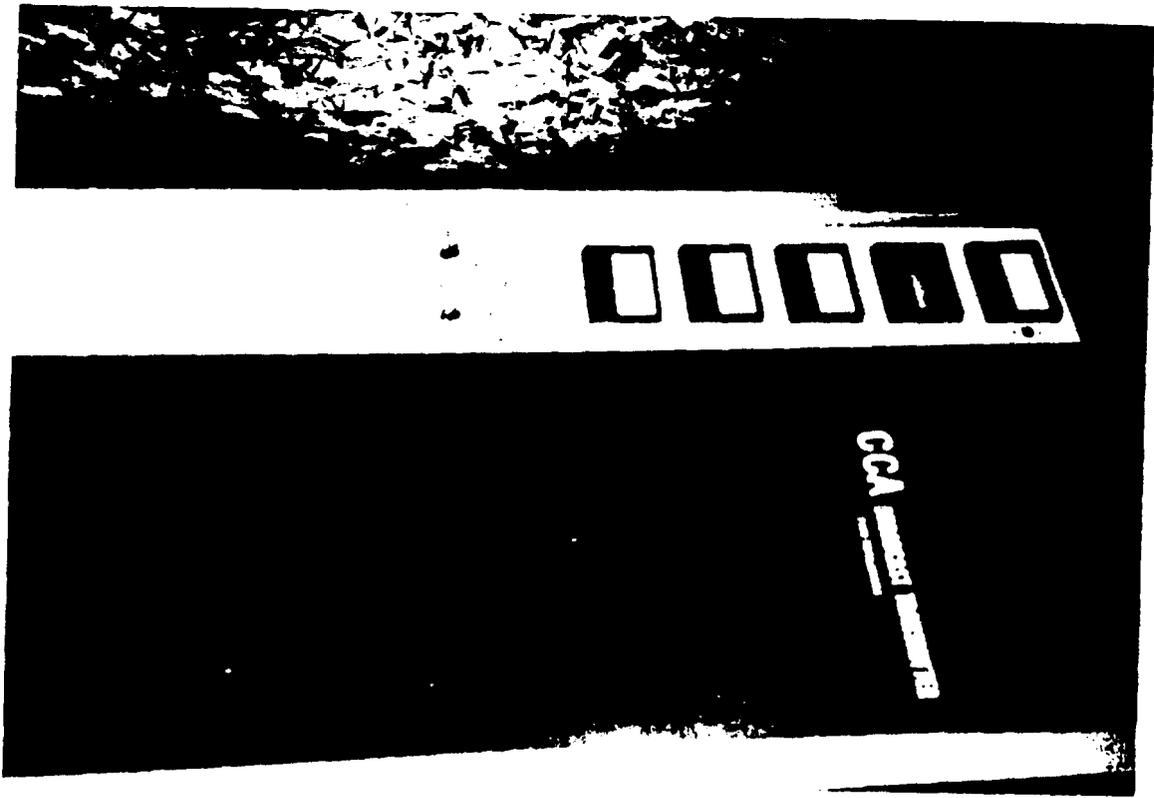
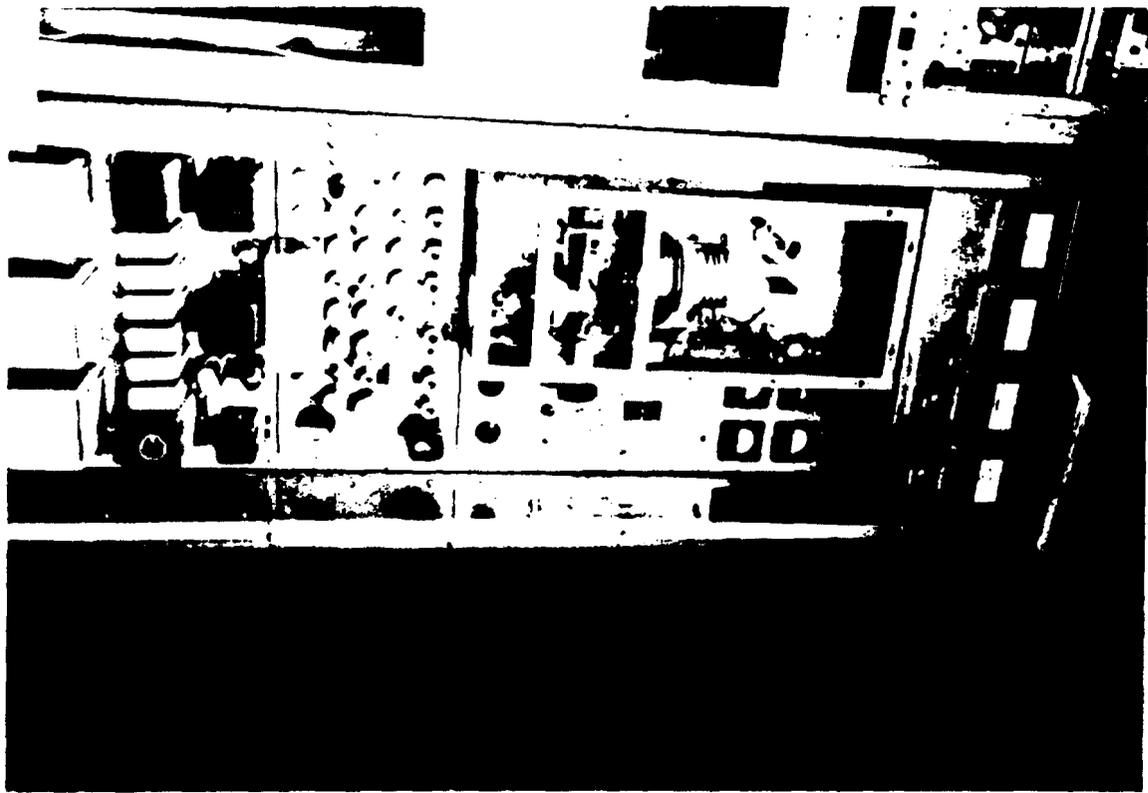
ATTACHMENT A





ATTACHMENT B





ATTACHMENT C



**EXHIBIT No. 4**



Commission. Pursuant to the complete examination of each issue of the Lubbock Avalanche Journal from the date of February 1, 1988 to February 22, 1989, no record of public notice was found relative to filings by Caprock Educational Broadcasting Foundation, or any other entity, bearing relevance to any filing for a Noncommercial Educational Broadcasting Station on Channel 211A in Lubbock, Texas.

  
J. Douglas Williams

  
James A. Turvaville

=====

Subscribed and sworn to before me this 10th day of April, 1989, by the above named J. Douglas Williams, affiant, known by me to be the person named as the affiant in the above affidavit.

Further, the affiants sayeth not.

  
Notary Public

(SEAL)  
My Commission expires 12/07/90

=====

Subscribed and sworn to before me this 10th day of April, 1989, by the above named James A. Turvaville, affiant, known by me to be the person named as the affiant in the above affidavit.

  
Notary Public

(SEAL)  
My Commission expires 12/07/90

=====

**EXHIBIT No. 5**



# PENNY PINCHER

- Non-Commercial Only
- Limited to General Merchandise, Lost and Found, Recreation and Transportation.

Call A-J Classifieds

NEW MOR Christian Radio Station  
Is Looking For Dedicated Announc-  
ers That Are More Interested In A  
Christian Ministry Instead Of  
WFO. Send Resume And Audition  
Tape To: KAMY, PO Box 6907,  
Lubbock, Tx. 79493.

CERTIFICATE OF SERVICE

I, Mary Ellen Sera, do hereby certify that I have caused to be sent via First Class U.S. Mail (postage prepaid) today, April 25, 1989, a copy of the foregoing PETITION TO DENY to the following:

James L. Oyster, Esquire  
Law Offices of James L. Oyster  
8315 Tobin Road  
Annandale, Virginia 22003

  
Mary Ellen Sera  
Mary Ellen Sera

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

RECEIVED  
MAY 31 1989  
Federal Communications Commission  
Office of the Secretary

In re Application of )  
)  
CAPROCK EDUCATIONAL BROADCASTING ) File No. BMPED-880328MM  
FOUNDATION )  
)  
For Modification of )  
Construction Permit )  
Lubbock, Texas )

To: The Chief, Mass Media Bureau

REPLY TO OPPOSITION TO PETITION TO DENY

Williams Broadcast Group (Williams), licensee of Station KJAK(FM), at Slaton, Texas, by its attorneys and pursuant to Section 1.45(b) of the Commission's Rules, hereby submits its Reply to the Opposition to Petition to Deny (Opposition), filed by Caprock Educational Broadcasting Foundation (Caprock), on May 9, 1989.<sup>1</sup> In support whereof, the following is shown.

Misery loves company, and, through its Opposition, Caprock characteristically desires to share the blame for its

---

<sup>1</sup>On May 22, 1989, Williams filed with the Commission a Request for Extension of Time, seeking leave to file the instant pleading on Friday, May 26, 1989. On May 26, 1989, Williams filed a Further Request for Extension of Time, setting May 31, 1989, as the date for filing its responsive pleading.

transgressions with virtually everyone. First, Caprock would have the Commission believe that its egregious violations are Williams' fault, because Williams did not police Caprock's operations and warn Caprock of the consequences of its unlawful activities before reporting to the Commission. Caprock even suggests that "[i]f sanctions are to be imposed here, they ought to be imposed equally against Williams." *Opposition* at 9.

Caprock apparently would blame the Commission for its problems as well; the former permittee<sup>2</sup> does not feel that it should be subject to the Commission's Rules and policies because it decided to prosecute its application and commence construction without consulting an attorney. Notably, however, Caprock does not deny violating the statutes and rules set forth by Williams in its Petition; rather, Caprock claims former ignorance, apologizes and promises never to do such things again. *Opposition* at 3. Unfortunately, Caprock has never stopped. And, Caprock must be stopped.

Caprock's desperate attempts to deny the seriousness of its violations and its meager excuses for its prior misrepresentations lack either legal or logical foundation. Worse, Caprock has continued its misrepresentations in its *Opposition*, raising additional questions regarding its basic

---

<sup>2</sup>Caprock's construction permit, BPED-840626IE, expired at 3:00 a.m. local time on April 16, 1989. See, *Petition to Deny*, filed by Williams on April 25, 1989.

character qualifications. Caprock is a wolf in sheep's clothing; clever, perhaps, but by no means innocent.

Caprock's purported ignorance regarding the provisions of the Communications Act and the Commission's Rules--even if true--provides no excuse for its unlawful behaviors. Over twenty-five years ago, this matter was settled once and for all, as the Commission stated:

An individual applicant who attempts to represent himself in a Commission proceeding must assume responsibility for full knowledge of the law and rules and cannot rely on his inexperience and lack of knowledge of procedures as an excuse for his improper conduct. . .

*Western Broadcasting Co.*, 1 RR2d 732 (1963). See also *PacTel Mobile Access*, 63 RR2d 733 (1986). Caprock, whose dominant principal Kent Atkins is far from inexperienced,<sup>3</sup> must be held accountable for its admitted, willful and repeated violations, whether committed mistakenly or not. Otherwise, future permittees, licensees and applicants could merely refuse to seek counsel, do whatever they want (lack of authorization notwithstanding) and then use this "ignorance" to escape Commission scrutiny. The setting of such a precedent would seriously erode the effectiveness of the Commission's

---

<sup>3</sup>Atkins, either as sole proprietor or dominant principal, has broadcast interests in both applications pending before the Commission and permitted and licensed stations, among them, KRGN(FM), KLMN(FM) and KENT(TV) at Amarillo, Texas. Additionally, Atkins has completed and tendered all filings on behalf of these facilities to the Commission, along with many others.

processes, which Caprock already has abused.

Notwithstanding Caprock's inability, as a matter of law, to fall back on its purported ignorance to excuse its conduct, as a matter of fact, such ignorance did not exist. Caprock's deceptive behavior in matters before the Commission is and has been pervasive and apparently extends to Caprock's representations to its own attorney. Caprock's claim, expressed on page 2 of its Opposition, that it ceased operation of the unauthorized KAMY facility of its own volition is hogwash, and is undermined by the sworn statement of Mr. Atkins, attached as an exhibit thereto. In paragraph 15 of Atkins' statement, Atkins acknowledges that it ceased operations following a call from Mr. Arthur Doak of the Commission. This call was a direct result of Williams' complaint; Caprock quit because Caprock got caught.

Similarly laughable is the notion, expressed in the same paragraph of Atkins' statement, that Caprock called counsel regarding Doak's request for information concerning the location and power of the KAMY facilities and then learned that its operations were unauthorized. Caprock's entire defense is premised upon the fact that its filings and operations were undertaken without consulting counsel at all. *Opposition* at 5. How is it then, that Caprock consulted the same counsel in order to find out where the station was located and what its power was? Moreover, how did Caprock

build and broadcast without reference to this information? Caprock's inconsistencies subvert its posed sincerity. The ultimate proof is in the pudding; Caprock builds wherever and whenever it wants to, without bothering with the Commission or its Rules.

Caprock's deception before the Commission is further evidenced by the telegram it sent to the Commission, which is attached to Caprock's Opposition as Exhibit 1. Caprock suggests that this exhibit ". . .clearly indicates that the applicant was not attempting to hide anything from the Commission." *Opposition* at 6. The opposite is true, however. First, as Caprock readily admits, ". . .this telegram was not an effective vehicle for obtaining program test authority." *Id.* Additionally, however, the telegram is deceptive. By its own wording, the telegram states that "In accordance with the construction permit . . . we shall begin broadcasting today . . . ." *Opposition* at Exhibit 1. However, this was a lie; Caprock actually began broadcasting at a location far away from that authorized by the construction permit. Caprock misrepresented its position before the Commission and now, it ironically seeks to use that misrepresentation as a defense against character allegations. No amount of rationalization, however, can transform the telegram from prevarication to truth.

Nor can rationalization or explanation eliminate the fact of Caprock's *continuing* violations. Even as Caprock pleaded innocent mistake and its counsel apologized to the Commission for its inadvertant error, Caprock continued to commit the same transgressions -- construction and operation of an FM broadcast facility without authorization from the Commission. This time, however (and, Williams suspects, last time), Caprock cannot maintain its facade of purity; Caprock, through this proceeding, stood advised.

Caprock's repeat of the Lubbock, Texas, KAMY violations have taken place in Amarillo, Texas, the community to which Caprock station KLMN(FM) is located (FCC License File No. BLED-880620KB). In Amarillo, Caprock did essentially the same thing it did in Lubbock. Caprock's authorized transmitter location, specified in its license for KLMN, is 0.4 kilometers southeast of 34th and Helium Road in Amarillo, at geographic coordinates North Latitude 35 10 21.0, West Longitude 101 57 13.0.<sup>4</sup> Caprock has pending an application for modification of its underlying construction permit (FCC File No. BMPED-880321IA), seeking to relocate its transmitter and antenna to a location 2.5 miles north of Amarillo on FM 1719, at geographic coordinates North Latitude 35 15 39, West Longitude

---

<sup>4</sup>Williams requests that the Commission take Official Notice of Caprock's license for KLMN, which is contained in the Commission's files.

101 52 53, and to increase its power and antenna height.<sup>5</sup> Yet, Caprock already has commenced operations from and with the facilities described in its modification application. See *Affidavit of Stevan W. White*, attached hereto as Exhibit 1. As the photographs and recordings appended to Exhibit 1 indicate, Caprock's identical violations in Amarillo continued even after Caprock (supposedly voluntarily) pulled KAMY off the air. Exhibit 1 at Attachments A, B. In fact, Caprock's Amarillo violations continued until one day following Williams' filing of a complaint with the Commission regarding the unauthorized operations of KLMN, a copy of which is attached hereto as Exhibit 3. See also *Exhibit 2*.

Undoubtedly, when faced with the filing of papers in Amarillo similar to the ones filed in this proceeding, Caprock again will resort to its "innocent mistake" excuses. However, how long can Caprock's deceitful excuses be excused? Assuming, *arguendo*, that Caprock's errors in Lubbock were the result of ignorance, such ignorance was not present with

---

<sup>5</sup>Apparently, the proposed location is the same location as that used by FM Broadcast Station KRGN, Amarillo, Texas, on 6000 North Western. See FCC License No. BLH-861125KA. See also *Affidavit of Mary Ellen Sera*, attached hereto as Exhibit 2. KRGN is licensed to Atkins Broadcasting, owned by Kent Atkins, Caprock's dominant principal. However, Williams notes that the geographic coordinates listed for KLMN's proposed move in its above-referenced application differ from the coordinates listed in KRGN's above-referenced license, although the address and tower specified are the same. This variance serves as yet another example of Caprock's imprecision and flagrant disregard for the Commission's Rules.

respect to the operations of KLMN at Amarillo. Rather, Caprock continued to operate gleefully until the arrival of yet another complaint at the Commission. Caprock had been counseled regarding its unauthorized operations and had received copies of Williams' complaint and Petition in this proceeding while it continued to operate an illegal facility elsewhere in Texas, and quite likely, even elsewhere. Caprock's excuses have worn thin, as have any vestiges of its "good" character.

Caprock directs great resentment towards Williams for reporting Caprock's violations to the Commission rather than privately informing Caprock, accusing Williams of choosing to ". . . secretly gather information in an effort to destroy a competitor."<sup>6</sup> However, Caprock is wrong. Williams gave Caprock every conceivable benefit of the doubt. Williams did not complain, even in light of Caprock's extensive pre-authorization construction, because it is well established

---

<sup>6</sup>Interestingly, these accusations destroy Caprock's assertions that Williams has no standing to bring a petition to deny against KAMY because Williams and Caprock are not competitors. The fact is, that Williams interest in Caprock's conduct is three-fold. First, Williams is a competitor, both as an FM station in the same service area and as a Christian broadcasting entity interested in enhancing community values through its broadcasts. Second, Williams is a Commission licensee and is concerned when other permittees, licensees or applicants are exempt somehow from the expenses, delays and efforts which others must undertake in order to become public trustees. Finally, as a listener in the area, Williams has standing to challenge Caprock's character qualifications and its unlawful operations, as well as to complain regarding them.

that certain steps may be taken prior to receipt of authorization to construct: site clearance, pouring of concrete footings for a tower, installation of a tower base and anchors, installation of a new power line, purchase and on-site storage (but not installation) of radio equipment and other "preliminary steps" not having an "intrinsic" radio communication use "related to the proposed facility." *MCI Telecommunications Corp*, 64 RR2d 672 (1988); *Christian Broadcasting of the Midlands, Inc.*, 103 FCC 2d 375 (1986), reconsideration denied, FCC 87-328 (released October 19, 1987); *King Country Broadcasters*, 55 RR2d 1591, 1592 (1984) overruled on other grounds, *Christian County Broadcasting of the Midlends, Inc.*, supra; *Patton Communications Corp.*, 81 FCC 2d 336, 338 (1980); *Childress Broadcasting Corp.*, 24 RR 669 (1962).

However, when KAMY began full scale operations, it became apparent to Williams that Caprock's construction was not preliminary. Accordingly, and almost immediately upon the commencement of KAMY broadcast operations, Williams complained to the Commission. Williams gave Caprock every chance to be honest; Caprock was and is not.

In sum, Caprock's Opposition appears to be no more than stored-up resentment. Caprock does not deny its myriad of violations. Moreover, Caprock hardly appears penitent, especially in light of its continuing violations in Amarillo,