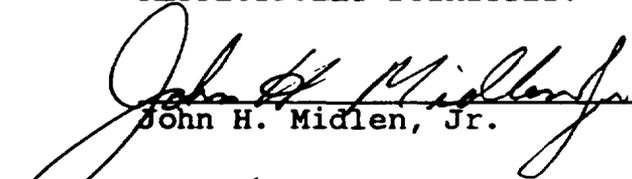
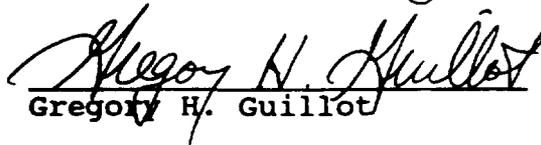


and the misrepresentations advanced in the pleading filed in this matter. Caprock's position quite obviously is that everything is "OK" until Caprock gets caught. Unfortunately, Williams is not ready to assume the responsibility or expense for investigating each aspect of operations with respect to all of Caprock's facilities and filings. Surely, this is not what the Commission requires either.

Commission licensees, permittees and applicants assume certain responsibilities in connection with the trust bestowed upon them by the public. One of these is the duty to abide by the processes enabling placement of the public trust. Caprock's credibility is nonexistent, its qualifications less, and its violations many. Accordingly, as stated in its initial Petition to Deny, Williams seeks the maximum array of sanctions against Caprock for its unlawful and incredible activities. At minimum, Caprock's above-captioned modification application should be DENIED.

RESPECTFULLY SUBMITTED:


John H. Midlen, Jr.


Gregory H. Guillot

JOHN H. MIDLEN, JR., CHARTERED
P.O. Box 5662
Washington, D.C. 20016-5662

May 31, 1989

EXHIBIT 1

STATE OF TEXAS)
) SS
COUNTY OF POTTER)

AFFIDAVIT

BEFORE ME, the undersigned Notary Public, on this 25th day of May, 1989, personally came and appeared:

STEVAN A. WHITE

who, having been first duly sworn, did hereby state as follows:

1. My name is Stevan A. White. I have personal knowledge of the facts recited herein.

2. From October, 1986, until January, 1988, I was employed by Kent Atkins as Director of Operations for FM Broadcast Station KRGN at Amarillo, Texas. Kent Atkins is the sole proprietor of Atkins Broadcasting, licensee of KRGN. Atkins also is a principal in Caprock Educational Broadcasting Foundation, licensee of FM Broadcast Stations KLMN at Amarillo, Texas.

3. KLMN operates at the same location from which KRGN operates. Both the antenna for KRGN and the antenna for KLMN are on the same tower, located at 6000 N. Western Street, about 2.5 miles north of Amarillo, Texas. The transmitters for the two stations are within approximately 20 feet of one another. It is my understanding that KLMN should be about 8 or 10 miles away, at a different location. However, I have seen the transmitter installation for KLMN and know that this is not the case.

4. On Friday, May 19, 1989, at the request of Williams Broadcast Group, I went to the KRGV/KLMN tower site for the purpose of photographing the unauthorized location of the KLMN transmitter. Attachment A, appended hereto, consists of two photographs of the site as it appears from the front and side. The photograph at the bottom of Attachment A depicts the transmitter buildings for both stations. KRGV's "building" is the trailer which appears on the left side of the photograph; the small gray hut on the right houses the KLMN transmitter. As the black cables running from each of the structures in the photograph demonstrate, both the KRGV and KLMN transmitters are linked to the common tower appearing between them.

5. Attachment B, also appended hereto, consists of two photographs of the common tower. The picture on the left side of Attachment B shows the tower in its entirety. The photograph on the right side of Attachment B, taken with a telephoto lens, depicts the antenna for each station. KRGV's antenna consists of the eight bay configuration in the foreground of the photograph. KLMN's four bay antenna is mounted beside the KRGV structure and may be seen through the upper portion of KRGV's antenna; the KLMN antenna appears darker than the eight bay structure and appears in the background.

6. During the same day on which the attached photographs were taken, May 19, 1989, I also recorded a portion of the KLMN broadcast signal. The tape containing this recording is appended hereto as Attachment C, and included a station identification, for KLMN. The broadcasts embodied on the tape originated from the KLMN transmitter, located on the antenna shared with KRGN.

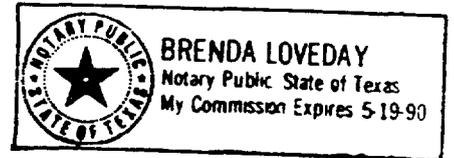
7. The photographs and recordings attached hereto are true and accurate, have not been retouched, and were taken at and from the KRGN tower site on the day referenced above.

Stevan A. White
Stevan A. White

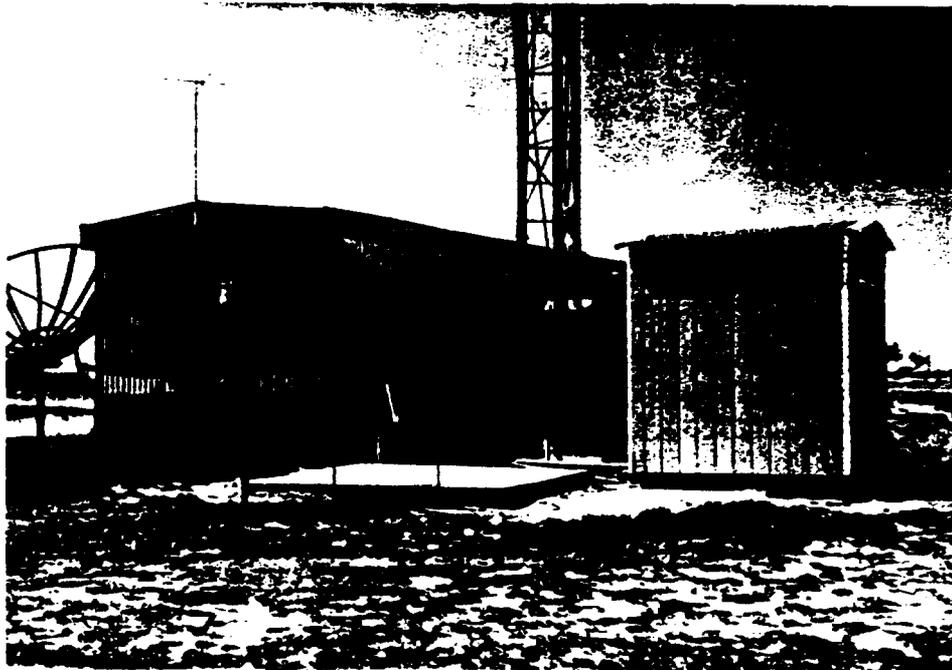
SWORN TO AND SUBSCRIBED BEFORE ME THIS 25 DAY OF May,
1989.

Brenda Loveday
NOTARY PUBLIC

My commission expires 5/19/90.



ATTACHMENT A



ATTACHMENT B

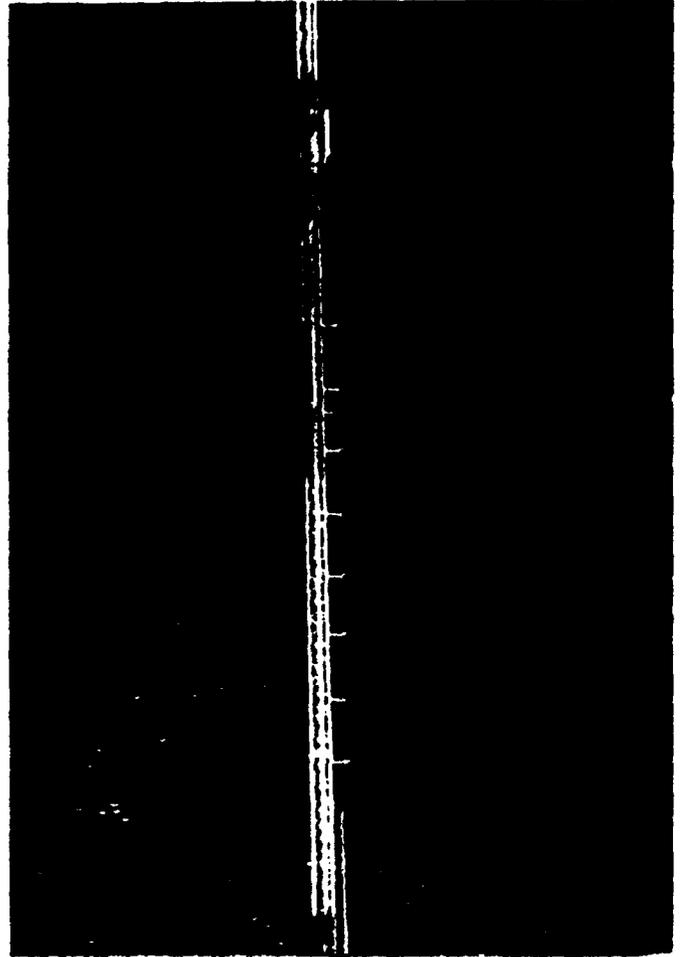
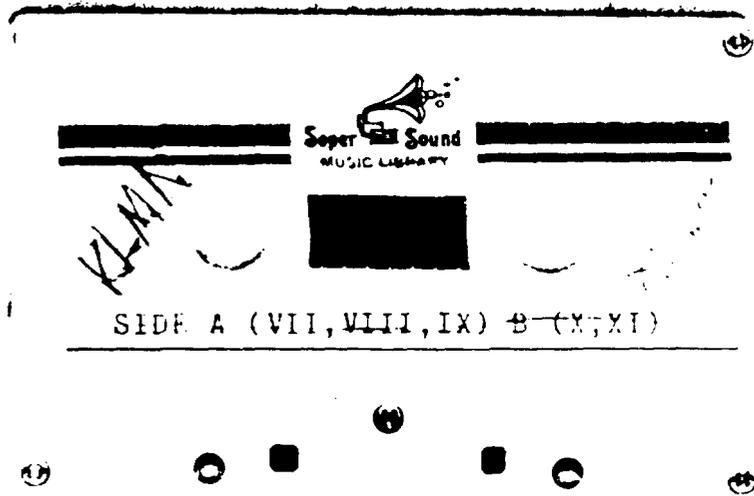


EXHIBIT 2

ATTACHMENT C



Actual cassette tape submitted with original only.

operator provided me with the following number for KRGN:
(806) 376-5746. I then dialed the number provided.

4. My call was answered by a young gentleman, with the greeting, "KRGN." I told the gentleman that I wished to contact KLMN and asked for the station's address and telephone number. The gentleman implied that in calling KRGN, I had reached KLMN as well. The mailing address he provided to me for KLMN was Post Office Box 10050, Amarillo, Texas, 79116.

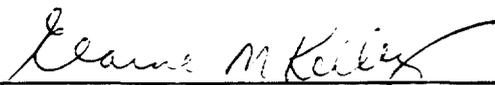
5. I then asked the gentleman where the KLMN transmitter and antenna were located. The man answered that the KLMN transmitter was located on North Western Street, on the north side of town, at North Western and St. Francis. I thanked the gentleman for the information and terminated the conversation.

6. On May 26, 1989, at approximately 11:20 a.m., I again contacted the above number and asked about KLMN. A young gentleman again answered the telephone, "KRGN." I asked the gentleman if the KLMN transmitter was located on the KRGN tower. The gentleman said that it was, but that KLMN had been taken off the air temporarily. I thanked the gentleman and terminated the conversation.



Mary Ellen Sera

SWORN TO AND SUBSCRIBED BEFORE ME THIS 26th DAY OF MAY, 1989.



Elaine M. Kelley, Notary Public

My commission expires May 31, 1994.

EXHIBIT 3

Law Offices
JOHN H. MIDLEN, JR.
Chartered
P.O. Box 5662
Washington, D.C. 20016-5662

(202) 333-1500
Facsimile (202) 659-0194

MAY 25 '89

OFFICE OF THE SECRETARY

May 25, 1989

Ms. Edythe Wise, Chief
Complaints and Investigations Branch
Mass Media Bureau, Room 8210
Federal Communications Commission
2025 M Street N.W.
Washington, D.C. 20554

Re: COMPLAINT
Station KLMN(FM), Amarillo, Texas
Caprock Educational Broadcasting Foundation
License File No. BLED-880620KB

Dear Ms. Wise:

Williams Broadcast Group (Williams), licensee of Station KJAK(FM), Slaton, Texas, requests that you investigate, and close down, the current operation of Station KLMN(FM), Amarillo, Texas, owned and operated by Caprock Educational Broadcasting Foundation (Caprock) on Channel 206A. Caprock's authorized transmitter location, as specified in its above-referenced license, is 0.4 kilometers southeast of 34th and Helium Road in Amarillo, Texas, at geographic coordinates North Latitude 35 10 21.0, West Longitude 101 57 13.0. Caprock has pending an application for modification of its construction permit, File No. BMPED-880321IA, seeking authorization 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 101 52 53, and to increase its power and antenna height.¹ However,

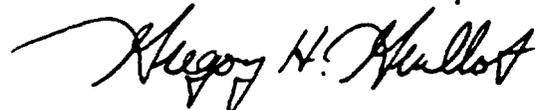
¹Apparently, the proposed location is the same location as that used by FM Broadcast Station KRGN, Amarillo, Texas, on 6000 North Western. See FCC License No. BLH-861125KA. KRGN is licensed to Atkins Broadcasting, owned by Kent Atkins, Caprock's dominant principal. However, Williams notes that the geographic 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 are the same. This variance serves as yet another example of Caprock's imprecision and flagrant disregard for the Commission's Rules.

Ms. Edythe Wise
May 25, 1989
Page Two

Station KLMN has commenced operations from and with the facilities described in its modification application. Accordingly, the unauthorized operation is from an entirely different location than is currently authorized. Moreover, we believe current operation to be substantially over power.

It is requested that Station KLMN be contacted², that the information contained herein be confirmed, and that the station be ordered, by telegram, to return to operation from its currently authorized facilities.

Very truly yours,



John H. Midlen, Jr.
Gregory H. Guillot
Counsel for
Williams Broadcast Group

cc: Mr. Dennis Williams
Mr. Arthur E. Doak
James L. Oyster, Esq.

²For the Commission's convenience Williams notes that no telephone listing or address is available for Station KLMN; all communications with the unauthorized facility apparently must be made through the listing available for KRGV; the stations are co-located.

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, May 31, 1989, a copy of the foregoing REPLY TO OPPOSITION TO 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

FILE COPY

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

0111

DEC 11 '89

In Re Applications of:

CAPROCK EDUCATIONAL BROADCASTING
FOUNDATION

For Transfer of Control of
STATION KAMY (FM), LUBBOCK, TEXAS
AND STATION KLMN (FM) AMARILLO, TEXAS

To: Chief Mass Media Bureau

)
)
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) File No. BTCED-891003GG
) File No. BTCED-891003GF
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REPLY TO CONSOLIDATED OPPOSITION

Williams Broadcast Group (Williams) herewith replies to the Consolidated Opposition to Petition to Deny and Informal Objection filed November 28, 1989 by Caprock Educational Broadcasting Foundation.

Initially it should be pointed out that the Construction Permit for Station KAMY(FM), Lubbock, Texas has expired and there is nothing to transfer. Instead, it should be affirmatively cancelled. See letter from Chief Audio Services Division, Federal Communications Commission to Lynn L. Martin dated February 27, 1989, regarding cancellation of permit for Station KRKA (FM), Alva, Oklahoma with an expired permit in

the face of an assignment application. Attachment 1. Of course, like KRKA, the Caprock transferees make no commitment to construct.

Sections 310(d), 309(e) and 308 of the Communications Act govern permissible Commission action on applications for transfers of control. Thus, Section 310(d) provides that there shall be no transfer of a construction permit or license "except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby." The sub-section goes on to provide that transfer applications shall be handled as if they were Section 308 applications. Section 309 applies if Section 308 applies, which, as we have just seen, it does. Section 309(e) provides that if there is presented a substantial and material question of fact the application must be designated for hearing. Exactly what Williams here seeks. Given that "Caprock acknowledges the dilemma it finds itself in as a result of the serious allegations which have been made by Williams ..." it can hardly be suggested that there is here absent the statutory "substantial and material question of fact." Caprock does not deny the allegations and concedes that "[t]o the extent that Mr. Atkins [de facto controlling transferor] may have been involved in any wrongdoing, he is being removed from his position with Caprock"

Interestingly, Caprock takes note that there is Commission "policy of withholding transfer of control where the transferor has been accused of wrong doing..." In arguing that this policy should not apply Caprock analogizes to the distress sale policy. The distress sale policy was struck down by the United States Court of Appeals for the District of Columbia Circuit in *Shurberg Broadcasting of Hartford, Inc. v. FCC*, 876 F.2d 902 (D.C. Cir. 1989), *Petition for Cert. pending sub nom, Astroline Communications Co. v. Shurberg Broadcasting of Hartford, Inc.* (No. 89-700). Indeed, the Solicitor General's Brief for the Federal Communications Commission in Opposition in *Astroline* is instructive. There he said:

In the Communications Act of 1934, Congress assigned to the Federal Communications Commission the exclusive authority to grant, and oversee the transfer of, licenses to build and operate radio and television stations in the United States. See 47 U.S.C. 151, 301, 303, 307. The FCC generally prohibits a television or radio broadcast licensee, whose license has been designated for a revocation hearing, or whose renewal application has been scheduled for a qualification hearing, from assigning or transferring that license until the Commission has determined that the licensee remains qualified to hold the authorization. See, e.g., *Northland Television, Inc.*, 42 Rad. Reg.2d (P & F) 1107, 1110 (1978)....

Id. at 2.

Curiously the thrust of Caprock's opposition is that because the stations are noncommercial educational stations

supported by contributions they should be let off the hook. Educational broadcasters are under no lesser standard of care than are commercial broadcasters. In *Trustees of the University of Pennsylvania*, 69 FCC 2d 1394 (1978) it was said:

Given the nature of our licensing scheme, all licensees -- large and small, commercial or noncommercial -- are considered public trustees. As such, the aforementioned principles of accountability and responsibility apply with equal vigor to all Commission licensees. We emphasize that while "[t]he noncommercial broadcast service by definition differs markedly from the commercial service... it is a mistake to regard the noncommercial service as something apart from, and outside of, the basic structure of the Communications Act and Commission policies" (footnotes omitted).

Id. at 1399

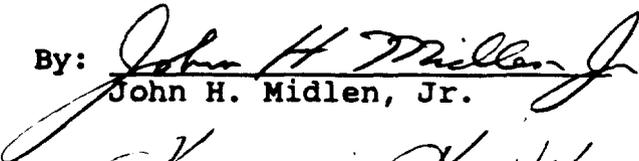
That Caprock has twice constructed unauthorized facilities is a very serious violation of the Communications Act the very prohibition of which occurs in Section 310(d) which in turn relates back to Section 308 which in turn relates forward to Section 309(e) and the "substantial and material question of fact" problem Caprock now faces. There is nothing in the act, in the Commission's Rules nor is there any Commission policy permitting the Commission to treat educational broadcasters differently from the way it treats commercial broadcasters.

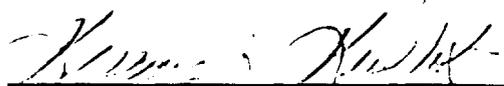
For the foregoing reasons, the applications for transfer of control for Stations KAMY and KLMN should be denied.

Respectfully submitted,

WILLIAMS BROADCAST GROUP

By:


John H. Midlen, Jr.


Gregory H. Guillot

Its Attorneys

JOHN H. MIDLEN, JR., CHARTERED
3238 Prospect Street, N.W.
Washington, D.C. 20007
(202) 333-1500

December 8, 1989

ATTACHMENT 1

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEB 27 1989

IN REPLY REFER TO:

8920-RAB

Lynn L. Martin
109 Aspen Drive
Alva, Oklahoma 73717

In re: KRKA(FM), Alva, Oklahoma
BAPH-881019GW
BPH-8901271B

Dear Applicant:

This letter is in reference to: (i) the above-captioned application to assign the construction permit of KRKA(FM), Alva, Oklahoma from Lynn L. Martin to AlvaOmni, Inc, and (ii) the application, filed on January 29, 1989 to modify KRKA(FM)'s facilities by changing its height above average terrain.¹

The original construction permit (BPH-801128AK), granted October 25, 1982, required construction to be completed by October 25, 1983. To date, four extensions, one replacement, one modification and two assignments of the construction permit have been granted. The most recent extension (BMPH-870625JB) was granted on August 4, 1987 and required construction to be completed by February 4, 1988. Therefore, the construction permit has been expired for over ten months.

In the subject application, you have not demonstrated either that substantial progress has been made toward construction or that the failure to make such progress is due to circumstances beyond your control, as required by Section 73.3535(b). Additionally, you fail to supply a statement from the assignee that it will commence construction immediately upon consummation of the assignment, which is required in applications to modify or assign the construction permit filed after nine months from the original grant. See Memorandum Opinion and Order, 102 FCC 2d 1054, 1056. See also 47 C.F.R. § 73.3535(b).

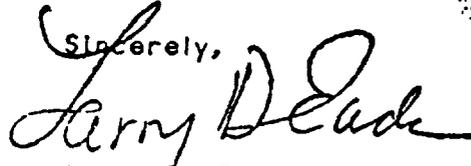
Since you have neither a valid construction permit on hand nor an application for reinstatement of the construction permit on file at the present time, and since you have failed to demonstrate compliance with the requirements of § 73.3535(b), we find that your application to assign the construction permit to AlvaOmni, Inc. must be dismissed as unacceptable for filing.

Accordingly, your application to assign the construction permit to AlvaOmni, Inc. IS DISMISSED as unacceptable for filing. In addition, pursuant to 47

1 This application was accepted on February 14, 1989.

U.S.C. § 319(b), and 47 C.F.R. § 73.3599, the construction permit and call letters ARE HEREBY FORFEITED AND CANCELLED. Additionally, in view of the action taken herein, the modification application (BPH-8901271B) IS HEREBY DISMISSED AS MOOT.

Sincerely,



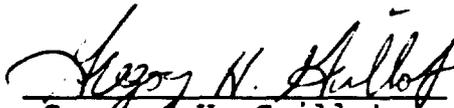
Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

cc: John H. Midlen, Jr.
AlvaOmni, Inc.

CERTIFICATE OF SERVICE

I, Gregory H. Guillot, do hereby certify that I have caused to be sent via First Class U.S. Mail, postage prepaid, today, December 8, 1989, a copy of the foregoing REPLY TO CONSOLIDATED OPPOSITION, to the following:

James L. Oyster, Esquire
Law Offices of James L. Oyster
Rt. 1, Box 203A
Castleton, Virginia 22716

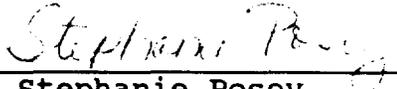

Gregory H. Guillot

CERTIFICATE OF SERVICE

I, Stephanie Posey, do hereby certify that I have caused to be sent via First Class U.S. Mail, postage prepaid, today, January 11, 1990, a copy of the foregoing INFORMAL OBJECTION, to the following:

Alan C. Campbell, Esquire
Dow, Lohnes & Albertson
Suite 500
1255 23rd Street, N.W.
Washington, D.C. 20037

James L. Oyster, Esquire
Law Offices of James L. Oyster
Rt. 1, Box 203A
Castleton, Virginia 22716


Stephanie Posey