

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

MM Docket No. 92-122

In re Application of

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

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

Appearances

Joseph E. Dunne III on behalf of Calvary Educational Broadcasting Network; and Charles E. Dziedzic and Y. Paulette Laden on behalf of Mass Media Bureau.

DECISION

Adopted: October 18, 1994; Released: November 2, 1994

By the Review Board: MARINO (Chairman) and GREENE.¹

Board Member GREENE:

1. Before the Review Board is the *Initial Decision* of Chief Administrative Law Judge Joseph Stirmer, 8 FCC Rcd 4789 (1993), granting Calvary Educational Broadcasting Network, Inc. a one-year short-term renewal for noncommercial FM station KOKS and assessing a \$10,000 forfeiture against Calvary for multiple violations of 47 CFR 73.318 (FM blanketing interference rule). The Board also has before it Exceptions to the *Initial Decision* filed by the Commission's Mass Media Bureau, Calvary's Reply Brief, Calvary's responses to two orders of the Review Board, *Memorandum Opinion and Order*, 9 FCC Rcd 575 (1994) (*MO&O I*), and *Memorandum Opinion and Order*, 9 FCC Rcd 1834 (1994) (*MO&O II*), and the Bureau's Comments on Calvary's first response. For the reasons stated below, the Board is affirming the one-year renewal and adjusting the forfeiture to one thousand dollars.

BACKGROUND

2. The blanketing interference controversy is fully described in the *ID* and summarized in *MO&O I*, 9 FCC Rcd at 575-77 ¶¶ 2-9, which are incorporated herein by reference, and need not be repeated in detail.² Suffice it to say that Poplar Bluff is located in an area where people had been receiving substandard television service off-the-air with good results from remotely located, widely separated television stations. When Calvary began operating from a transmitter tower located on land at the personal residence of Donald and Nina Stewart, its officers, area residents complained to both Calvary and the Commission of KOKS-caused interference to their reception of television and radio signals, particularly Channel 6, WPSD-TV, Paducah, Kentucky, which does not encompass Poplar Bluff with its Grade B contour, and Channel 8, KAIT-TV, Jonesboro, Arkansas, and to a lesser extent Channel 12, KFVS-TV, Cape Girardeau, Missouri, and Channel 15, KPOB-TV, Poplar Bluff. *ID* ¶ 12. The number of complaints was considerable, generated in part by neighbors who objected to the tower's location near their homes as well as to the deteriorated broadcast service.³ See *ID* ¶¶ 10, 15.

3. Calvary's obligation to remedy these complaints is described in 47 CFR 73.318. Under this rule, Calvary is required to satisfy all complaints of blanketing interference received during a one year period starting with the commencement of program tests -- at no cost to the complainant. 47 CFR 73.318(b). After the one year period, Calvary must provide technical information or assistance to complainants. 47 CFR 73.318(d). The areas assumed to be blanketed and in which Calvary's obligation applies are assumed by Commission rule to be the areas adjacent to the transmitting antenna within the station's 115 dBu contour, an area extending about 2.45 miles from the antenna site in Calvary's case. 47 CFR 73.318; *ID* ¶¶ 19, 40. Calvary has no obligation to resolve complaints of interference resulting from malfunctioning or mistuned receivers, improperly installed antenna systems, or the use of high gain antennas, antenna booster systems, mobile receivers, or non-RF devices. 47 CFR 73.318(b). The Commission resolved one area of uncertainty when, in a footnote to the *Hearing Designation Order* in this proceeding, it clarified that "the FM blanketing rule does not limit a licensee's responsibility to complainants residing within the Grade B contour of television stations." 7 FCC Rcd at 4037 n.4. Thus, Calvary's obligation includes curing interference to the signal of channel 6 beyond that station's Grade B contour.

4. Calvary's response to the complaints was far from effective. It misunderstood its obligation to cure blanketing interference, particularly with respect to Channel 6.⁴ It disregarded the technical advice from the Commission's

¹ Board Member Norman B. Blumenthal, who was also a member of this panel, passed away on May 11, 1994.

² "FM blanketing occurs when an FM station's signal strength or signal power density is of such magnitude that it causes [FM and TV] receivers near the transmitting antenna to be partially or completely blocked from receiving other broadcast stations." *FM Broadcast Station Blanketing Interference*, 57 RR 2d 126 (1984), quoted in *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037, 4037 n.3 (1992) (*Hearing Designation Order*).

³ The Chief, FM Branch forwarded 698 complaints by letter

dated March 29, 1989, some of which apparently duplicated complaints earlier forwarded by FOB. *Id.* ¶¶ 40, 43. The total number Calvary dealt with reached "almost a thousand complaints." *ID* ¶ 66.

⁴ Calvary's communications counsel and engineering consultant as well as the Commission's Field Operations Bureau advised that Calvary had no responsibility to cure interference beyond a station's Grade B contour, *ID* ¶¶ 18, 20, 86, and the Mass Media Bureau's Audio Services Division had not finally determined the scope of the Commission's blanketing rule until the Commission's policy was announced in the *Hearing Des-*

Kansas City Field Office by responding to complaints with inexpensive and ineffective filters and generally limiting the installation of filters to only one television set per household. It also failed to effectively satisfy the Audio Service Division's October 30, 1990 *Order* requiring restoration of service to as many as 220 unsatisfied complainants in the blanketing area by inadequately querying complainants about the extent of their problems, *see ID* ¶ 58, failing to recontact those it had previously but not necessarily accurately reported as cured, providing inexpensive and ineffective filters, and advising some complainants that they were responsible for buying the filters.⁵ Its reports to the Commission about the results of its restoration efforts were disputed by some of the complainants. *See Hearing Designation Order*, 7 FCC Rcd at 4037 ¶ 3, 4039 ¶ 10. These problems led to the blanketing interference and misrepresentation/lack of candor issues tried below. *See Id.* at 4041.

BLANKETING INTERFERENCE

5. The crux of the blanketing interference problem has been Calvary's admitted lack of technical and economic resources for an effective response. Calvary was completely unaware of the requirement in 47 CFR 73.318 when it built KOKS and completely unprepared to deal with it. But, as the Board emphasized in *MO&O I*, 9 FCC Rcd at 577 ¶ 10, compliance with 47 CFR 73.318 is required, including compliance with respect to Channel 6, and financial inability is an unacceptable defense. The Board agreed with the concern expressed in Bureau Brief at page i that the record below provided no indication that Calvary would comply with the blanketing rule insofar as the Bureau regards compliance. The Board said:

Unless and until Calvary demonstrates that it is technically and financially qualified (*see* 47 U.S.C. § 308(b)), the Board sees little purpose in granting a renewal, hence risking the perpetuation of continued noncompliance and yet further enforcement proceedings initiated for an obviously unsatisfied Mass Media Bureau.

MO&O I, 9 FCC Rcd at 577 ¶ 10 (footnote omitted). Thus, while acknowledging the difficulties involved in strict compliance because of the distance and separation of the affected stations in this case, as shown in reports from the Commission's Kansas City Field Office engineers, the Board was constrained to require from Calvary:

(1) a written showing of the measures it proposes to take to come into full compliance with § 73.318, including a detailed time schedule of proposed actions; and (2) a written showing of the licensee's finances sufficient to demonstrate that it possesses the resources necessary to achieve full compliance with § 73.318.

ignation Order starting this proceeding. *ID* ¶ ¶ 56, 108. For this reason, the Board agreed with the Presiding Officer that Calvary cannot be faulted for failing to correct blanketing problems affecting Channel 6, which accounted for as many as 60% of the complaints against Calvary. *MO&O I*, 9 FCC Rcd at 576 ¶ 6 and n.5.

Id ¶ 11.

6. Calvary responded to *MO&O I* on March 7, 1994. It conceded the shortage of funds and its ignorance of the blanketing rule from the outset and emphasized its newfound understanding of the relationship of compliance to its stewardship of its supporters' contributions. Response at 16; *MO&O II*, 9 FCC Rcd at 1834-35 ¶ 5. Also:

Calvary has here submitted several exhibits that propose the equipment it might require for its "Compliance Program," and the engineering assistance it hopes to employ to effect that program. Response at 1-4. Its "best" estimate of the cost of such a program is \$45,642.50. *Id.*, at 4. Additionally, it claims it will mail to "[e]very complainant noted as being within the blanketing contour in the Commission's October, 1990 letter" its own new missive asking as to any KOKS-caused interference and offering to resolve such, to the degree required by the rule. *See id.*, at 7-9. "Implementing the [KOKS] Compliance Program will take at least 120 days, and that will be rushing it." Response at 12.

As for the financing of the above-described program, Calvary proffers a bank letter of February 25, 1994 agreeing to increase an existing \$18,233 Stewart loan by an additional \$50,000 (altogether \$68,233), provided that (1) the Stewarts collateralize any such loan with a deed of trust on the real estate upon which KOKS is located and a second deed of trust on their house, as well as on all KOKS equipment; and (2) the Stewarts also show proof of Title Insurance and the absence of any liens on the foregoing assets. *See* Response, Exh. E (Peoples Bank of Wayne County). In that regard, it is asserted that "Calvary has no current obligations in excess of \$500." Response at 4; the Stewarts hope to pay off the loan(s) with listener donations, *see id.*, at 16.

MO&O II at 1835 ¶ ¶ 6-7 (footnote omitted).

7. The Bureau conceded that "Calvary's technical proposals to address blanketing interference caused by Station KOKS(FM) appear, on their face, technically sufficient." Bureau Comments at 2. It took a different view of Calvary's financial proposal, arguing the inadequacy of Calvary's cost estimates in light of the possible need to eliminate interference caused to channel 6 in more homes than Calvary predicted, and arguing the inadequacy of Calvary's provisions for reimbursing complainants who had addressed the KOKS interference at their own expense. Finally, even if Calvary's current obligations are insignificant, the Bureau questioned whether it can secure the needed funds in light of substantial indebtedness accumulated by the Stewarts' former egg-laying business and, thus, the Stewarts personally. The Stewarts have been the moving force behind Calvary, and they proposed to secure the bank loan with the tower site and personal residence they had deeded to Calvary. The Bureau submitted docu-

⁵ Calvary was also ordered to provide technical information and assistance to both people outside the protected area and people who complained after the one-year period. *Id.* ¶ 57.

mentation showing over \$300,000 in unpaid federal tax assessments and substantial additional unpaid judgments and state tax liens.

8. In light of this, the Board demanded a reply from Calvary

that fully answers the three basic matters interjected by the Bureau. Calvary must reply, directly and unambiguously, to the questions of whether (1) its "Compliance Program" is intended to satisfy *all* covered first-year complaints, including those related to TV Channel 6; (2) its "Program" is intended to reimburse those complainants who were entitled to such under § 73.318; and (3) its estimate of \$45,642 was intended to encompass those two items, and confirm where in its submitted "Program" these were delineated (if they were). Further, inasmuch as Calvary's entire "Program," as here presented, depends on a \$50,000 increase on an extant bank loan which, in turn, is contingent on the absence of liens on *all* of the specified Stewart assets, Calvary's reply must include (1) evidence of the status of each and every lien and judgment appending Bureau Comments, Attachment B (as well as any other similar potential encumbrances); and (2) a written declaration from Calvary's proposed lender listing -- specifically by claimant, date and dollar amount -- any recorded liens and judgments and stipulating that any such claims would have no impact whatever on the immediate \$50,000 loan to Calvary.

MO&O II at 1836 ¶ 9 (footnote omitted).⁶ The Board further explained that no financial issue has been added or tried, in spite of Calvary's multiple admissions that it lacked sufficient finances for compliance. Rather,

"[o]ur sole instant purpose is to determine . . . whether a short-term renewal (such as that proposed in the Chief ALJ's *I.D.*) would likely result in expeditious compliance with the Commission's technical rules, all of the unique circumstances here considered. Inasmuch as Calvary's prime defense for noncompliance is, and from 1988 forward has been, its lack of finances, then the *technical* issue inextricably turns on the licensee's present fiscal resources."

Id.

9. Calvary submitted the Verified Statement of Nina Stewart, Calvary's Secretary-Treasurer, on May 9, 1994. There Mrs. Stewart stated: (1) "Calvary intends to cure all complaints of blanketing interference received by the FCC during the first year of operation, including any of those which relate to blanketing interference to channel 6. . . . Now that the Commission has made its obligation to cure channel 6 blanketing interference clear we will do what is necessary to comply with the Commission's requirements." Verified Statement ¶ 1. This was shown, she said by the unqualified commitment to cure the blanketing interference and the equipment proposed, including filters with preamps and antenna rotors. (2) "Calvary will reimburse those entitled to reimbursement under

§73.318." Verified Statement ¶ 2. Although not explicit in the earlier Response, Calvary stated it had reimbursed two complainants, would reimburse a third if she could be found, and would state its intent to pay for any work done to cure the problem in letters to complainants within the blanketing area. This reimbursement would come from the same funds set aside for the Compliance Program. *Id.*

10. To establish its ability to finance its compliance program, Calvary showed: (1) a \$48,000 certificate of deposit in Calvary's name with Peoples Bank dated April 29, 1994 ; and (2) a line of credit in Calvary's name for \$48,000 from Peoples Bank, also dated April 29, 1994, with a maturity date of April 29, 1995. Verified Statement, Attachment B. This is secured by the certificate of deposit. Advances under the line of credit are to be given "per instructions of loan officer," *id.*, which means, according to Mrs. Stewart, that "[a] Bank officer will have to approve any request for funds based on a showing by Calvary that the funds will be used for implementation of the Compliance Program. We structured the loan this way to assure the Commission that the funds would be available and that whatever funds were available would be used strictly to fund the Compliance Program." Verified Statement ¶ 5. Angela Thurston, Co-President of Peoples Bank said in a notarized statement on April 29, 1994:

Peoples Bank of Wayne County is aware of Federal Liens and Judgments which are filed against Donald W. Stewart. Calvary Educational Broadcasting Network is not financially responsible for any of these liens or judgements, according to a title record search prepared for Peoples Bank of Wayne County by Butler County Abstract & Title Company, Inc., Poplar Bluff, MO dated 03-14-94.

Verified Statement, Attachment C. Although Ms. Thurston's statement referred only to debts of Donald Stewart, Mrs. Stewart claims she gave Ms. Thurston copies of all the documents attached to the Bureau's Comments. Verified Statement ¶ 4. In every instance in which Mrs. Stewart is named, Donald Stewart is also named. As also required by the Board's *MO&O II*, Mrs. Stewart addressed the status of the liens and judgments shown in the Bureau's Comments, pointing out that none of them are against Calvary. Verified Statement ¶ 7. They have to do with the egg-laying business sold on April 1, 1987. *Id.* ¶ 8. The Stewarts "are in no way responsible for any debts of the corporation after that date," *id.*, which includes the majority of the liens and judgments shown in the Bureau Comments. Two of the other judgments are shown to be satisfied; one was thought to have been settled with a property sale; the Stewarts were not aware of three others until receiving the Bureau's Comments and dispute their responsibility in light of the sale of their business; and one federal tax lien is the subject of discussions with the Internal Revenue Service.

11. *Discussion.* In pursuing additional information from Calvary, the Board has been concerned about whether Calvary has the technical and financial wherewithal to comply with the blanketing interference rule so that any renewal conditioned on compliance would not be an

⁶ The Board did not ask for further reply from the Bureau.

exercise in futility or an improvident wasting of Commission resources. We are satisfied -- finally -- that Calvary understands its obligation under 47 CFR 73.318 and has developed a technical proposal likely to be successful, even under the difficult conditions present within the area where Calvary must cure complaints of blanketing interference. The Bureau concedes the facial adequacy of Calvary's technical proposal to achieve compliance. Bureau Comments at 1, 2.

12. Calvary and the Bureau differ, however, about how long Calvary should provide a cure for any intractable blanketing interference problems by paying for basic cable service if reception cannot otherwise be restored to the pre-KOKS quality. Calvary proposes to turn to cable service in the most difficult cases, and, if it does, it proposes to pay for installation and one year of basic service. Calvary Response at 10. The Bureau, while skeptical that a cable connection will completely eliminate blanketing interference, Bureau Comments at 3-4, recommends that Calvary be required to continue its offer to pay for cable service "until over the air interference no longer exists." *Id.* at 6. The Board agrees with the Bureau that it should accept Calvary's offer to pay for cable service where blanketing interference cannot otherwise be cured. However, rather than specify any length of time, we will tie this commitment to the duration of Calvary's operation under the license renewal ordered herein, including any period during which the license continues in effect under the Administrative Procedure Act, 5 U.S.C. § 558(c), pending action on a timely filed renewal application. Any need for continuing cable service to complainants can be reviewed at the next renewal along with Calvary's overall compliance with the blanketing rule.

13. We are also satisfied that Calvary -- finally -- has demonstrated the financial resources to carry out the described Compliance Program. It now has a secured line of credit from an informed local bank for more than it estimates its Compliance Program will cost, which it can access only for the Compliance Program. This answers the Bureau's and the Board's earlier concern that the bank on whom Calvary was relying for financing the Compliance Program might not be willing to make funds available once informed of the Stewarts' potential or actual liabilities. See *Liberty Productions, A Limited Partnership*, 8 FCC Rcd 4264, 4265 ¶ 7 & n.7 (1993) (no factual question about financial qualifications where bank stated awareness of liens and willingness to make loan); compare *Eve Ackerman*, 8 FCC Rcd 4205, 4206 n.9 (1993) (citing cases where financial issue added because of liens and judgments of major amounts) (subsequent history omitted). Although the Bureau questions whether Calvary has underestimated the cost of the Compliance Program by underestimating the number of complainants who will want assistance, it has not offered an alternative estimate. Calvary's estimate assumes that it will install a complete system at the home of every complainant who wanted a visit in 1991, about half of the affected homes in the blanketing contour. According to Calvary, "[T]his sort of complete installation should be necessary only in the most difficult situations. In most homes, a combination of filters in conjunction with preamps and/or antenna rotors should be sufficient to cure blanketing interference problems." Calvary Response at 1-2. Calvary's conservative equipment estimate, along with the two thousand dollar

cushion in its line of credit, provides a cushion should more complainants than estimated accept Calvary's offer for a blanketing interference cure.

MISREPRESENTATION

14. Although Calvary has satisfied the concern about its ability to come into compliance with 47 CFR 73.318, the matter does not end there, for the Bureau also took exception to the Presiding Officer's resolution of the misrepresentation/lack of candor issue in Calvary's favor, an exception acknowledged but not addressed in the Board's *MO&O I* and *MO&O II*. The issue arose out of Calvary's representations in its reports to the Commission that service to various complainants had been restored when it had not installed filters on all the television sets in the homes visited, attempted to restore radio reception, or even considered portable television sets, and many complainants reported to have been satisfied said they were not. *HDO* at 4040 ¶ ¶ 13, 14.

15. The Bureau specifically challenges the Presiding Officer's conclusions about the truthfulness or candor of Calvary's reports about its efforts regarding seven complainants as contrary to the record evidence. The subject complainants are: Mary Wynn, Joanne Gray, Sandra Durbin, Doris Smith, Edward Hodgins, and William and Jean Hillis. It argues the *ID* should have found that Calvary submitted incomplete and misleading information by failing to report its lack of effort to address interference to radios and, in many instances, to more than one television. The Bureau also argues that the *ID* should have found that Calvary principal Donald Stewart lied during his testimony.

16. Two principals must guide our analysis here. The first is the importance of the "trait of truthfulness" to both an applicant's basic qualifications for a license and the integrity of the Commission's regulatory process. *Character Policy Statement*, 102 FCC 2d 1179, 1210 (1986). "[T]he agency's demand for unalloyed candor is its *sine qua non* for licenseship, because it is primarily upon a licensee's uninvestigated representations that this agency must routinely rely." *Tri-State Broadcasting Co., Inc.*, 5 FCC Rcd 1156, 1173 ¶ 114 (Rev. Bd. 1990); accord, *Nick J. Chaconas*, 28 FCC 2d 231, 233 (1971). Whether less than fully accurate information is disqualifying, however, depends on whether a willful intent to deceive is found. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983). Inaccurate information resulting from carelessness, exaggeration, faulty recollection, or merely falling short of the punctilio normally required by the Commission falls short of the deceptive intent normally required for disqualification. See *MCI Telecommunications Corp.* 3 FCC Rcd 509, 512 (1988) ("bare existence of a mistake" without indication of deception does not elevate a mistake to an intentional misrepresentation), citing *Kaye-Smith Enterprises*, 71 FCC 2d 1402, 1415 (1979); *Standard Broadcasting, Inc.*, 7 FCC Rcd 8571, 8574 ¶ 11 (Rev. Bd. 1992).

17. The second guiding principal is the deference owed to the credibility findings of the presiding officer, who has observed the testimony of the witnesses first hand, where substantial evidence supports these findings. *TeleSTAR, Inc.*, 2 FCC Rcd 5, 12-13 (Rev. Bd. 1987), *review granted in part and denied in part*, 3 FCC Rcd 2860 (1988), *aff'd by judgment*, 886 F.2d 442 (D.C. Cir. 1989) (Table). "While the Board is not absolutely bound by these findings, it may not upset them unless its reversal is sup-

ported by substantial evidence." *WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1141 (D.C. Cir. 1985) (citations and footnote omitted). On the other hand, the Board must make a fair estimate of the relevant evidence and not merely rubber stamp the findings of the presiding officer. *Sun Over Jupiter Broadcasting, Inc.*, 8 FCC Rcd 8206, 8208 ¶ 7 (Rev. Bd. 1993), citing generally to *Allentown Broadcasting Corp. v. FCC*, 349 U.S. 358 (1955); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 489-90 (1951) (Frankfurter, J.); *Lorain Journal Co. v. FCC*, 351 F.2d 824, 828 (D.C. Cir. 1965), cert. denied sub nom. *WWIZ, Inc. v. FCC*, 383 U.S. 967, rehearing denied, 384 U.S. 947 (1966).

18. *Durbin, Wynn and Gray Complaints*. For the first several months after KOKS began operating, the Commission's Kansas City Field Office received complaints about KOKS-caused interference and forwarded them to Calvary with a request that Calvary report back on the status of the complaints. In response Calvary filed several reports, including a report addressing the complaint from Mary Wynn on January 24, 1989; one addressing the complaint from Joanne Gray on February 24, 1989; and ones addressing the complaint from Sandra Durbin on December 6, 1988 and January 24, February 10 and February 24, 1989.⁷ On March 15, 1989, the Field Office referred the matter to the Mass Media Bureau, which sent Calvary copies of 698 complaints, including some earlier sent by the Field Office, and ordered a report about each complaint that identified the type and location of the interference, described the assistance provided by KOKS and the dates, and answered whether the interference had been resolved. *ID* ¶ 40.⁸ Calvary responded on September 22, 1989 with a report to Dennis Williams, Chief of the Bureau's FM Branch, addressing, *inter alia*, the Durbin, Wynn, and Gray complaints but, the Bureau argues, failing to make clear that it had not resolved these complaints.

19. The Presiding Officer found that Calvary's "representations cannot be viewed as deliberate misrepresentations of fact designed to mislead the Commission." *ID*. ¶ 112. The Bureau excepts, arguing that Calvary knew, at least when it filed its September 22, 1989 report,⁹ it had not resolved the problems of Mrs. Wynn, Mrs. Gray and Ms. Durbin. "Nevertheless," the Bureau argues, "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." Bureau Brief at 12-13.

20. Whether Calvary misrepresented or was otherwise lacking in candor depends on whether it knowingly submitted false or incomplete reports or otherwise failed to

keep the Commission informed of the changed status of blanketing interference problems with intent to deceive the Commission. Like the accuracy of Calvary's reporting, Calvary's intent or state of mind is a factual question, which can be found from evidence affording a reasonable inference. See *California Public Broadcasting Forum*, 752 F.2d 670, 679 (D.C. Cir. 1985). For example, fraudulent intent can be found from "the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity." *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991), quoting from *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980).

21. The Bureau makes several important points. Mrs. Stewart read the complaints received from the Commission and gave counsel the information used in preparing its reports to the Commission. *ID* ¶ 48. The complaints received after Calvary's January and February reports were clear in expressing dissatisfaction with television reception of signals in addition to that of channel 6. After looking at Calvary's reports, the Commission concluded that problems other than with channel 6 had been resolved. However, from our review of all the facts as per the requirements of *Character Policy Statement*, 102 FCC 2d at 1211, we find the Presiding Officer's conclusion, that Calvary's failure to address these complaints was not due to any deceptive intent on Calvary's part, is supported by a preponderance of the record evidence.

22. Mrs. Stewart was dealing with what eventually totalled almost a thousand complaints the first year, 698 of which were attached to the FM Branch Chief's letter that Calvary answered in its September 22, 1989 report. *ID* ¶ ¶ 40, 66. The complaints came in batches which overlapped so that Mrs. Stewart was unsure whether she had dealt with some of the complaints once or twice. Tr. 565-66, 614. From calls received at the station, visits to the station from people picking up free filters, and conversations during her visits to homes, Mrs. Stewart understood the primary concern of a majority of complainants to be channel 6 reception, even though many complaint forms showed additional problems. Tr. 559-61, 573, 577. She also had reason to suspect the accuracy of some of the complaints, not only because they differed from what Mrs. Stewart understood to be the signers' real complaints, but also because one woman had told her she had no problem but had signed a complaint to satisfy Mrs. Smith and Mrs. Hillis, and someone with a satellite receiver told her he had not circled two channels shown to be receiving interference in his complaint. *ID* ¶ 48; tr. 572.¹⁰ With only three full time employees at the station, Mrs. Stewart bore the brunt of the responses, spending twenty to thirty hours a week on the problem. Tr. 567, 570. No one at the station helped her and she could not

⁷ The reports are included in the record as the following exhibits:

December 6, 1988 report -- Bureau Exh. 15;
January 24, 1989 report -- Bureau Exh. 17;
February 10, 1989 report -- Bureau Exh. 18;
February 24, 1989 report -- Bureau Exh. 19;
September 22, 1989 report -- Bureau Exh. 21.

⁸ This letter was sent to an old address for Calvary, and Calvary did not receive it until sometime later, perhaps June 1989. Tr. 467.

⁹ Because complaints went through Mrs. Smith and Mrs. Hillis and the Commission before being sent to Calvary, complaints signed a few days after a home visit and contradictory to Calvary's view of the results of the home visit usually would not reach Calvary for two to three weeks after they were signed. Tr. 436-37.

¹⁰ During testimony Mrs. Stewart recalled this person as a man, possibly a Mr. Greene. Tr. 572. Bureau Exh. 19 at 76 is a copy of a complaint from Barbara L. Green showing interference to channels 6 and 8 and to radio. Mrs. Stewart's notes, which are superimposed on the complaint form, state that Ms.

afford to hire help in 1989. Tr. 621-22, 630. She did not review complaint forms before visiting homes. *ID* ¶ 48. When she visited homes, she did not change the KOKS power to see the effects or talk with the residents about what reception had been like before KOKS began operating, and she had no personal experience with off-the-air reception before KOKS began operating. Tr. 588-89; cf. tr. 507. She addressed only problems raised during the visits other than the channel 6 problem for which she erroneously thought she was not responsible. Her reports to the Commission were based on what she saw during the visits. Tr. 553. She explained, "At the point when I was there, they were satisfied. The ones that I reported satisfied, when I was there I reported it as it was at that time, Your Honor." *Id.* Calvary's submissions were voluminous, including the contemporaneous notes made during the home visits. *ID* ¶ 115 n. 22. The quality of reception appeared to vary, depending in part on atmospheric conditions,¹¹ and filters (and other remedies for blanketing interference) could diminish the strength of already weak off-the-air signals, so that Commission engineers investigating the situation perceived slight or negligible improvement even with KOKS off the air. *ID* ¶¶ 106, 107.

23. Sandra Durbin's initial written complaint was of interference generally to television and radio, but it identified no specific channels. *See* Bureau Exh. 5 at 7. After receiving the complaint, Calvary reported that Ms. Durbin was among a group of complainants receiving interference only to channel 6. Bureau Exh. 15 at 2, Exh. 17 at 3, 84.¹² After Mrs. Stewart visited the Durbin home, however, Calvary listed Ms. Durbin among those whose problem had been cured with the installation of a filter. Bureau Exh. 19 at 2. According to Mrs. Stewart's contemporaneous notes attached to this report, the filter installed on February 21 "improved reception very much." *Id.* at 62. In its September 22, 1989 report, Calvary said only that, "On a visit to Ms. Durbin's home, blanketing interference was observed on Channels 8 and 12. A filter was installed to improve reception." Bureau Exh. 21 at 9. Ms. Durbin acknowledged that the filter seemed to improve reception, but only "for a short time." Bureau Exh. 5 at 11.¹³ "After two weeks, I removed the filter because it seemed to make reception worse. Sometime later, though not right away, I called Nina Stewart and reported this." Bureau Exh. 5 at 3. In each of her post-visit documents, Ms. Durbin complained of interference to four television channels, *see* Bureau Exh. 7 at 9, 11, 15, 17, but neither her post-visit dissatisfaction nor her complaint that the

filter's usefulness was short-lived was acknowledged in Calvary's September 22 report or later. *See generally ID* ¶¶ 25, 34.

24. In finding no misrepresentation on Ms. Durbin's part in the September 22 report, the Presiding Officer observed that Calvary merely reported what its representative had done, *i.e.*, "that a filter was installed to improve reception to Channels 8 and 12." *ID* ¶ 112. He found "understandable" Mrs. Stewart's explanation that she had "just missed picking up on" some complaints, including Ms. Durbin's, tr. 553-54, "in view of the volume of complaints received by KOKS." *ID* ¶ 112n. 21. The Bureau argues that the last complaints Calvary should have overlooked were those from people like Ms. Durbin who were experiencing blanketing interference, but this does not persuade us that the Presiding Officer's acceptance of Mrs. Stewart's explanation for her oversight is in error. The Board also finds no misrepresentation in Calvary's reporting of its initial pre-visit view that Ms. Durbin's problem was only with channel 6, for after its visit Calvary reported its observation of interference to two channels. The Bureau has pointed to nothing other than the reports before and after Calvary's visit to Ms. Durbin to support its mistrustful view of Calvary's intent and has not taken into account the sequence of events informing Calvary's understanding of the Durbin problem, which Calvary reported. That Calvary's understanding evolved over time does not establish deceitful intent.

25. Mrs. Wynn's initial complaint listed specific channels that were receiving interference, although we cannot tell from either copy in the record whether the copy sent to Calvary showed all of the affected channels.¹⁴ *See* Bureau Exh. 10 at 7, Exh. 17 at 54. Mrs. Stewart responded by visiting the Wynn home and installing a string filter.¹⁵ As a result, "[s]he was receiving everything except Channel 6. . . . And so I turned it in as her complaint was resolved, because she was receiving all of her channels except Channel 6." Tr. 438. When reporting to the Commission, Calvary listed Mrs. Wynn among those whose complaints had been resolved -- but also attached Mrs. Stewart's notes showing Mrs. Wynn's dissatisfaction. Bureau Exh. 17 at 2, 54. Calvary described that visit in its September 22, 1989 report:

Ms. Wynn complained of interference on Channels 6, 8, 12 and 15. KOKS personnel visited the home in January and did not see any evidence of any blanketing or other interference on any channel. A filter was installed on Mrs. Wynn's set in January

Green told her she had signed the form without circling any channels because she had no interference. According to the notes, Ms. Green was amenable to telling this to the FCC.

¹¹ This may help to explain why the complaints from Mrs. Wynn and Mrs. Gray varied over time. *See* paragraphs 20 and 21, *supra*.

¹² Mrs. Stewart's notes about Ms. Durbin included among Miscellaneous Responses recite only that "CHANNEL 6 IS OUT called 11-10-88." Bureau Exh. 17 at 84.

¹³ Ms. Durbin said in her June 7, 1989 petition that the filter "seemed to improve 8 & 15," Bureau Exh. 3 at 11, but recalled in her 1992 written testimony that "the filter seemed to sharpen the picture on Channels 12 and 15, and I told her as much. There was no effect on Channels 6 or 8. . . . Bureau Exh. 3 at 3. In light of the fact that Calvary and Ms. Durbin each reported improvements on two channels at the time of the visit, the

Board draws no adverse conclusions from the inconsistencies among their various recollections as to which two channels these were.

¹⁴ Complaints were collected and sent to the Commission by Mrs. Smith and Mrs. Hillis, then sent to Calvary by the Commission. Tr. 429, 464. Mrs. Smith kept the originals, Bureau Exh. 2 at 3, and Calvary received copies or copies of copies from the Commission. Tr. 447. Mrs. Smith and Mrs. Hillis were cautioned by Larry D. Eads, Chief, Audio Services Division, Mass Media Bureau, to retain the original complaints until the Commission has made a final determination in this matter. Bureau Exh. 25 at 4 n. 7.

¹⁵ String filters were made by the KOKS engineer, who cut wire to a length appropriate for filtering the KOKS frequency and added a connector. Tr. 563-64. These turned out not to be very successful.

and improved reception on all channels except channel 6. Mrs. Wynn was not satisfied with this result.

Bureau Exh. 21 at 19;¹⁶ tr. 442. Mrs. Stewart explained that she had installed the filter in spite of the lack of evidence of blanketing interference because "[t]here was a lot of junk floating around out there, sir, and a filter will take out any kind of stuff. And you will see improvement on channels when you install a filter just simply because it does take out stuff that is in the air."¹⁷ Tr. 443. Mrs. Stewart believed Mrs. Wynn was dissatisfied with this result "[b]ecause Channel 6 did not come in." Tr. 443.

26. After additional complaints, Mrs. Stewart made another visit to the Wynn household and installed what she called an O-75 filter on the television and a choke filter on a radio. Tr. 439. Calvary said in its September 22 report, "Reception on channels 8, 12 and 15 was very good. Channel 6 still did not come in, and Mrs. Wynn remained unsatisfied." Bureau Exh. 21 at 19, 81. According to Mrs. Stewart, Mrs. Wynn's primary complaint was about channel 6 during the first visit and additionally included channels 8 and 12 during the second visit. Tr. 610-11. Mrs. Wynn consistently complained in writing of interference to channels 6 and 8 but less consistently complained of interference to channels 12 and 15. See Bureau Exh. 10, Attach. 1-4. Mrs. Stewart thought Mrs. Wynn ultimately had a good picture on channel 6. "It had just a faint snow, but I thought it was a good picture for Channel 6, what I had saw of Channel 6." Tr. 613. The choke filter was installed on the radio on the advice of Radio Shack employees who told her that interference was coming in through the electrical cord. Tr. 445. Mrs. Wynn's radio problem improved over time and she did not complain about that during Mrs. Stewart's 1991 visit. Tr. 659. Mrs. Wynn's post-visit dissatisfaction was not acknowledged in Calvary's September 22 report or later. See generally *ID* ¶¶ 36, 46.

27. The Presiding Officer found that, "contrary to the Bureau's argument, Calvary did not report that it had cured or resolved Wynn's problem. Indeed, it clearly reported that Wynn was dissatisfied." *ID* ¶ 112. Thus, he found no intent to mislead. The Bureau excepts, arguing that Calvary's reporting was misleading because Mrs. Wynn remained unsatisfied after both visits and Calvary failed to report this. We disagree. We read Calvary's September 22, 1989 report of the fact that Mrs. Stewart made a second visit to the Wynn household as an acknowledgment that Mrs. Wynn had continued to complain after Mrs. Stewart had installed the string filter, not as a deceptive hiding of Mrs. Wynn's continuing dissatisfaction. Mrs. Wynn was not satisfied by either visit and Calvary reported this, although we recognize that poor channel 6 reception was reported as the main concern. See Bureau Exh. 17 at 54, Exh. 21 at 19, 81.

28. The first complaint from Mrs. Gray identified interference to television channels 6 and 8 and to radio and was expanded during a telephone call to include channel

12. Bureau Exh. 7 at 7; Bureau Exh. 19 at 66. After Mrs. Stewart visited the Gray household, Calvary reported that the Gray complaint was cured by the installation of a filter, Bureau Exh. 19 at 2, 66, a view not necessarily inconsistent with Mrs. Gray's questionnaire response two years later that the KOKS representative admitted the filter "didn't help *much*," Bureau Exh. 7 at 14 (emphasis added), a point Mrs. Gray repeated in her subsequent written testimony. *Id.* at 3. Calvary's September 22, 1989 report stated, "Blanketing interference was observed on Channels 6 and 8. A filter was installed that cured the blanketing interference on channel 8." Mrs. Gray repeated her complaint about channel 12 after the visit, Bureau Exh. 19 at 66, Exh. 7 at 9,¹⁸ and Mrs. Stewart later testified, "[T]he reception was restored on all channels except Channel 6." Tr. 446, 448. Mrs. Gray's post-visit dissatisfaction was not acknowledged in Calvary's September 22 report or later. See generally *ID* ¶¶ 36, 45.

29. The Presiding Officer found that "there was no claim that the blanketing interference to Channel 6 was satisfactorily resolved." *ID* ¶ 112. Thus, in this situation as well as those involving Ms. Durbin and Mrs. Wynn, he found no intentional deceit. Although the Bureau argues that Calvary had claimed it had cured the Gray problem, the Presiding Officer's conclusion is supported by the record. Calvary reported its representative's observations in its September 22, 1989 report and claimed nothing more. That the Commission may have drawn broader conclusions about the results of Calvary's efforts than Calvary reported does not establish intentional deceit on Calvary's part.

30. An important element to the Presiding Officer's analysis is his acceptance of Mrs. Stewart's testimony about how she responded to complaints and about the basis for her reports. See *ID* ¶ 115. Although not specifically called credibility findings by the Presiding Officer, his acceptance of Mrs. Stewart's beliefs about what she was doing and reporting is entitled to deference if supported by substantial evidence. Apart from pointing out that Mrs. Stewart and the complainants had different views of the results of Calvary's efforts, the Bureau has not shown why accepting Mrs. Stewart's explanation -- which does not require rejection of the complainants' views of interference from KOKS -- is unsupported by substantial evidence. Our review of the record shows substantial evidence for the Presiding Officer's acceptance of Mrs. Stewart's testimony, and therefore Calvary's explanations, as credible.

31. Important to the Board's analysis of the Bureau's exceptions is Calvary's reliance in its reports on its own observations at complainants' homes. As the Presiding Officer found, "whether television reception was improved or blanketing interference was cured or resolved, in many instances constituted a matter of judgment based on subjective perceptions. This is particularly true in this case because of the poor quality of the television signals to begin with." *ID* ¶ 115 (footnote omitted). Calvary is at fault for not using expert help from the beginning and for

¹⁶ Mrs. Stewart corrected the statement about blanketing interference on cross examination to mean she saw no evidence of interference on any channel *except* channel 6.

¹⁷ Mrs. Stewart's understanding of the characteristics of blan-

keting interference came from a telephone conversation with a Commission representative in the Kansas City Field Office. Tr. 420.

¹⁸ Mrs. Gray also complained about channel 15 in her June 7, 1989 petition, but said in her March 18, 1991 questionnaire that channel 15 "is clear most of the time." Bureau Exh. 7 at 12, 14.

not paying sufficient attention to follow-up complaints from Ms. Durbin, Mrs. Gray and Mrs. Wynn, but under all the circumstances here -- the large number of complaints, the subjective evaluation of signal quality, the voluminous contemporaneous notes submitted to the Commission, and Calvary's failure to pay more attention to the written complaints before making home visits or preparing its September 21, 1989 report -- we do not find that the Presiding Officer erred in concluding that Calvary's reports, even though imperfect, were not intended to deceive the Commission.

32. Nor do we find Calvary's failure to follow up its reports with *errata* reporting additional complaints to be lacking in candor. As Calvary argues in its Reply Brief at 6, it received the complaints from those at the Commission who were evaluating its efforts. It could hardly intend to deceive the Commission by not telling the Field Office and the Bureau what the Field Office and the Bureau had told it! This distinguishes Calvary's situation from situations such as *Capitol City Broadcasting*, 8 FCC Rcd 1726, 1735-36 ¶ 32 (Rev. Bd.), *review denied*, 8 FCC Rcd 8478 (1993), where the fact that ownership information was available in Commission files did not exonerate an applicant from a finding of fraudulent intent for failing to disclose that information in its application; the information was not automatically available for the record in the proceeding and was not likely to come to the decisionmaker's attention without disclosure by a party.

33. *Smith Complaints*. The Bureau also complains that the Presiding Officer erred in failing to find that Calvary lacked candor in its reports about its efforts to cure blanketing interference for the Smiths. The Presiding Officer focused in *ID* ¶ 113 on Calvary's assessment that Mrs. Smith was uncooperative in KOKS' efforts to cure the interference problem. According to the Bureau, the point is that Calvary did not tell the Commission that the filter it had installed on Mrs. Smith's television set did not work when it tried to blame Mrs. Smith for failing to cooperate. The Bureau also argues that, at the same time Calvary was complaining of Mrs. Smith's lack of cooperation, Mrs. Stewart was telling Mrs. Smith that she would call when a suitable filter arrived. *Id.*

34. According to both Mrs. Smith and Mr. Stewart, Mr. Stewart visited the Smith home in November 1988 and tried a string filter, which did not work on either of two television sets. Tr. 737, 911-12. Mrs. Smith says that Mr. Stewart left saying something to the effect of, "Well, I don't know what's wrong. I'll be back," or something of that nature, and he left. You know, 'I'll discuss this with an engineer,' or, 'I'll, I'll see what I can do,' or something, and, and he left, and there were no unfriendly words." Tr. 912. She added that she asked about Calvary's plans to expand its hours of operation and increase its power. "And he said, 'Yes.' And I said, 'Without clearing up this interference problem?'" And he said, 'Yes.' And that's when I looked straight at him and I said, 'You'll have a fight on your hands.'" Tr. 912-13.

35. Calvary said in its December 6, 1989 report to Karen Raines, Bureau Exh. 15 at 2-3:

Miscellaneous Situations. There are roughly six complaints that, for one reason or another, have not yet been resolved by KOKS personnel. . . .

Paul and Doris Smith. Since the Smiths live very close to the station's antenna site, the possibility of blanketing interference is here especially severe. Mrs. Smith began to complain about interference on channels 6 and 12. KOKS representatives visited the Smiths and provided a filter for their television set. When the Smiths' complaints continued a KOKS representative called again on November 29 and asked permission to install a filter on their outside antenna. Mrs. Smith refused, stating that the Smiths were installing a new antenna and that she would call the station to let them know when installation was completed so that KOKS personnel could install a new filter. Mrs. Smith has subsequently called the station and informed KOKS that the Smiths are not changing their antenna, but refused KOKS personnel access to the Smiths' rooftop antenna to install a filter because the Smiths' did not wish KOKS personnel to "walk on their roof."

[Calvary] will attempt to do all within its power to resolve the Smiths' legitimate interference complaints, but it can do little without cooperation from the Smiths. Mrs. Smith's initial letter to the Commission, dated October 25, closes with the allegations that the station has "ruined the looks of our country atmosphere and devalued our property by putting up that ugly tower" KOKS suggests that the Smiths may not ultimately be satisfied until the "ugly tower" and the station itself disappear, and clearly neither [Calvary] nor the Commission can satisfy that complaint.

Mrs. Smith has also had printed a broadside which invites residents of Poplar Bluff to write to her and complain concerning any alleged "electrical" interference which can be attributed to KOKS. . . . Once again, KOKS will do its best, in the spirit of cooperation, to resolve legitimate interference complaints. It cannot, however, resolve complaints without the good faith cooperation of the complainants, and it can do little if some complainant's chief avocation is drumming up more complaints.

While some of this report is about Calvary's concerns about a lack of cooperation because of broader opposition to the station, Calvary did clearly state that the Smith complaint was not resolved, that complaints continued after KOKS had provided a filter, that KOKS proposed a different filter in response, and that the Smiths denied Calvary access to their roof to install the filter. Nowhere in this report did Calvary claim that the first filter had resolved the interference problem at the Smith home. We do not find this report misleading with regard to the effectiveness of the first filter, and the Bureau does not argue that Calvary's description of its offer to install a filter on the outside antenna or its concerns about opposition from the Smiths were inaccurately reported.

36. In its January 24, 1989 report to Raines, Calvary said, "Some complaints await resolution because Mrs. Stewart cannot contact the complainants, including: . . .

Doris Smith . . .¹⁹ Bureau Exh. 17 at 3. Attached to this report are Mrs. Stewart's notes reflecting five unsuccessful attempts to call Mrs. Smith in January 1989 and also stating: "Talked to Mrs. Doris Smith on 1-15-89 at 4:00 P.M. Told her we are waiting for filters to come in and we would call her for an appointment as soon as they come in."²⁰ *Id.* at 84. This January conversation, which occurred more than a month after Calvary's December report, does not contradict any information provided in December about Calvary's efforts until then, and Calvary's January report does not reassert any lack of cooperation on Mrs. Smith's part. The language in the January report is misleading, however, in addressing only Mrs. Stewart's unsuccessful efforts to reach Mrs. Smith, without mentioning the conversation the two women actually held on January 15. Nonetheless, we do not find an intent to deceive in this omission from the text of the report, for Calvary made no attempt to conceal the information from the Commission. Instead it attached Mrs. Stewart's notes about the telephone conversation to the report. It is unlikely that one intending to deceive the Commission by providing inaccurate information in a report would then accompany the report with the very information it had omitted from the text. *Compare Richardson Broadcast Group*, 7 FCC Rcd 1583, 1585 (1992) (applicant disqualified for false and evasive testimony).

37. *Hodgins complaint.* The Bureau also disputes the Presiding Officer's conclusion in *ID* ¶ 114 that Calvary did not misrepresent facts when reporting it did not resolve the complaint of Edward Hodgins because a convenient time for a visit could not be arranged. *See* Bureau Exh. 18 at 2. Hodgins testified in writing the station made but failed to keep three appointments. *ID* ¶ 114; Bureau Exh. 8 at 2. The Presiding Officer found it significant that this appeared to be the only instance in which Calvary failed to keep an appointment, and said in ¶ 114:

Having regard for the fact that KOKS made countless appointments and home visits, it does not seem reasonable that with respect to Hodgins the station deliberately failed to keep appointments with him and, thereafter, knowingly misrepresented facts that a convenient time for an appointment could not be arranged.

38. The Bureau disputes that this is an isolated instance, arguing that Calvary also failed to keep an appointment with Ms. Durbin. The record shows that Durbin filled out a petition form that asked:

Did KOKS make an appointment with you? yes no
More than one appointment? yes no Did KOKS
show up for the appointed time? yes no Comments:

Ms. Durbin circled "yes" for the first two questions and "no" for the last question and commented, "did come out the 2nd time." Bureau Exh. 5 at 11. Mrs. Stewart's notes attached to Mrs. Durbin's Dec. 2, 1988 complaint reflect that an appointment for early Feb. 1989 was cancelled

and later rescheduled. Bureau Exh. 19 at 62. The notes do not show who cancelled the appointment, and Calvary never claimed any inability to get together with Ms. Durbin. The Durbin situation clearly differs from Mr. Hodgins' and does not contradict the Presiding Officer's view that the Hodgins situation was unique.

39. The Bureau also disputes the Presiding Officer's analysis, arguing that Hodgins is more believable than Calvary because Hodgins' February 26, 1989 complaint does not reflect advice about a filter Calvary claims in its February 10, 1989 report KOKS personnel gave Hodgins. Mr. Hodgins was not cross examined, and there is no way to draw any conclusions about his silence on this matter or his failure to dispute the Calvary report filed ten days earlier. The Bureau's speculation from Hodgins failure to mention Calvary's advice, that Calvary must have been lying about giving the advice and therefore must have lied about the Hodgins appointments, is insufficient to show that the Presiding Officer erred in his analysis, which was based on the record as a whole.

40. *Hillis' Complaints.* The Bureau alleges that the Presiding Officer erred in failing to address whether Calvary lacked candor in its reports to the Commission regarding Mr. and Mrs. Hillis. According to the Bureau, the *ID* found at para. 33 that Calvary informed the Commission its station was not interfering with the Hillis' main television and that Calvary would do no work for the Hillis' until Mr. Hillis reduced his complaints to writing, yet, it also found that Mrs. Stewart had acknowledged hearing KOKS on channel 6 and that the Hillis' had repeatedly complained orally and in writing about radio and television reception. Indeed, the Bureau argues, in view of the findings of two Commission inspection teams over a two year period that KOKS was interfering with reception at the Hillis residence, it must be concluded that Calvary was misrepresenting facts when it claimed it was not causing interference.

41. This is another instance in which Calvary might have handled the problem better than it did. Nonetheless, on balance we do not find that a preponderance of record evidence establishes willful misrepresentation in Calvary's reports about its dealings with the Hillis' problems. Mrs. Stewart certainly should have reviewed the written complaints from both Mr. and Mrs. Hillis before visiting the Hillis home in 1989, and she should have reviewed these complaints with Mr. Lampe, the new KOKS contract engineer who accompanied her for the first time on the Hillis home visit, tr. 488, but she apparently did not. *See* tr. 232, 519. The 1989 visit to the Hillis home did not go well, according to all descriptions of it. Mrs. Stewart's perception was that Mr. and Mrs. Hillis had somewhat different complaints and that Mr. Hillis, the only one at home during the visit, had different complaints than he had earlier communicated. Tr. 523-24. Mr. Lampe's recollection is that Mr. Hillis had a long list of items affected by interference from KOKS, including items for which Calvary was not responsible, which he wanted fixed right away, and Mr. Lampe wanted Mr. Hillis "to identify exactly what the problem was and what he wanted done. . . . As best as I can recall I believe that he said he would write his problems down and mail them to me, and I

¹⁹ The preceding sentence reads: "Several others, including those of . . . , await resolution because of the unavailability of necessary filters." Bureau Exh. 17 at 3.

²⁰ According to Mrs. Stewart, "Radio Shack would run out of [the filters] from time to time and we would have to wait for them to get a new shipment in." Tr. 512.

left." Calvary Exh. 1 at 6. Mrs. Hillis, who was not at home during the 1989 visit, recounted in her December 18, 1989 Petition to Deny the KOKS renewal that Mr. Lampe and Mrs. Stewart "looked at everything and left, did not offer to put a filter on or anything." Bureau Exh. 3 at 7. Although there are numerous references in the record to petitions from the Hillises, the only copy of a complaint in the record is of Mrs. Hillis' Petition to Deny. *See id.* at 7-8. There is no dispute that Calvary took no action on interference described in this petition until visiting the Hillis home again in 1991 at the Bureau's direction.

42. What does seem to be in dispute is whether Mrs. Stewart and Mr. Lampe noted blanketing interference on the main Hillis television during the 1989 visit, at least with respect to channel 6. Calvary argues that the Bureau's accusation confuses Calvary's two visits to the Hillis residence. Reply Brief at 9. We find this confusion in Mrs. Stewart's testimony at tr. 530 where she gives the date of the visit when she heard audio on channel 6 as 1989 but describes circumstances she had said elsewhere were present during the 1991 visit. *See* Calvary Exh. 3 at 19. But, Mrs. Stewart did not appear to be confused in her written testimony where she clearly said in the context of her first visit to the Hillis home, "When we turned on the TV there was no channel 6." Calvary Exh. 3 at 18. Nonetheless, this visit was during the period when Calvary believed it was not responsible for interference to channel 6. Neither Mrs. Stewart nor Mr. Lampe asked Mr. Hillis to describe his television reception before KOKS began operating, tr. 519, and there is no evidence that the KOKS transmitter was turned off for comparative purposes²¹ as it was later during the Commission engineers' visits.²² Mr. Lampe, Calvary's technical advisor in this instance, was generally of the view that many factors other than blanketing interference could affect television reception under the difficult conditions present in Poplar Bluff. *See, e.g.,* Calvary Exh. 1 at 2-4; *cf id.* at 12 and tr. 279-81 (Lampe testimony that, during later visit to Hillis home, problems with channel 6 and 12 reception were not due to KOKS). When the preponderance of the record evidence is considered, we do not find deceitful intent in Calvary's statement in its February 10, 1989 report that it did not observe interference.²³

43. *Donald Stewart.* The Bureau also argues that Mr. Stewart should have been adjudicated a liar because of conflicts between his testimony and that of Craig Meador about a single alleged incident of overpowered operation of the KOKS transmitter. The Presiding Officer found Mr. Stewart to be "an unconvincing witness. His testimony at times was incoherent; it was at times disjointed; and he had a tendency at times to inject irrelevant matter." *ID* ¶

117 n.23. But, the Presiding Officer reached no conclusions about the alleged incident from the weak testimony of Meador. The Presiding Officer's demeanor finding about Mr. Stewart was of his incoherence, which he attributed to possible health problems, not of any deceitful demeanor or intent. The Bureau has offered no persuasive reason for rejecting the Presiding Officer's first hand view of the witness to reach a more nefarious conclusion about why he found Mr. Stewart unconvincing, particularly given the vagueness of Meador's testimony and his reluctance to stand behind the details of his written testimony when cross examined. *Compare* Bureau Exh. 11 at 2 with tr. 1112, 1114 regarding Meador's recollection of what he saw and when he saw it. We will draw no broader conclusion on this record than the Presiding Officer did after observing Mr. Stewart's testimony.

44. *Radio.* Finally, the Bureau takes exception to the Presiding Officer's conclusion in *ID* ¶ 115 that Calvary did not submit incomplete and misleading information when claiming it had resolved complaints when it did not address complaints of KOKS interference to radio. Problems with radio reception were seldom raised by complainants during the home visits, even though they were indicated on the complaint forms. Tr. 574-77. Mrs. Stewart did not specifically ask about radios during her visits, *id.*, and Mr. Lampe could not recall of any mention of radios during his 105 home visits in 1991 to cure blanketing interference. Tr. 321. Thus, radio problems were generally not addressed in Calvary's reports for the same reasons that Calvary neglected to address other problems raised in the written complaints. Although the Bureau argues that Calvary's failure to treat radio makes misrepresentations of statements about resolved complaints, the Presiding Officer saw the problem as part of Calvary's violation of the blanketing interference rule rather than as the submission of incomplete information. *ID* ¶ 115. "KOKS reported the complainants visited and what was done in an effort to address the blanketing interference." *Id.* We see no evidence from the record that the Presiding Officer misconstrued the facts in his analysis and, thus, no basis for reversing his conclusion on this point.

CONCLUSIONS

45. *Renewal application.* Having found substantial evidence to support the Presiding Officer's view that Calvary did not make misrepresentations or lack candor in its reports to the Commission, we want to emphasize that this Board does not condone the inadequacy of Calvary's efforts to cure blanketing interference or to report more accurately to the Commission. The Commission's rules require Calvary to cure the blanketing interference caused

²¹ When testifying about his 1991 visit to the Hillis home, Mr. Lampe said he never thought of turning off the KOKS transmitter or asking about reception before KOKS began operating. Tr. 279, 281. Mrs. Stewart testified that she never had the transmitter power adjusted or asked about signal quality before KOKS during any of the 1991 home visits. Tr. 507.

²² According to the Commission's engineers, reception of channel 6 was affected by the KOKS signal, as was channel 8 and possibly channel 15. *See* Calvary Exh. 5 at 1-2 (June 4, 1989 report of Poole investigation); Calvary Exh. 6 at description of Hillis home visit, Dec. 12, 1989 (Dec. 29, 1989 Moffitt & Raines report). These observations were based on comparisons of the signals with and without KOKS transmissions. *See* Calvary Exh.

5 at 1-2; Calvary Exh. 6 at 1. Both of these studies came later than the visit Calvary reported in its February 10, 1989 report, Bureau Exh. 18 at 3-4. In any event, Calvary had no contemporaneous information about Mr. Poole's evaluation of reception in the homes he visited. Tr. 476.

²³ We, likewise, do not find deceit about Calvary's intentions with respect to the Hillis problem in its reporting of the fact of civil litigation against it and the ownership of some of the named interference complainants by the Hillises in its Sept. 22, 1989 report. *See* Bureau Exh. 21 at 2, 26, 175-77.

by KOKS, even under the difficult conditions in Poplar Bluff, and as a licensee, Calvary is bound to comply unless granted a waiver. The inadequacy of its efforts has caused considerable problems for the television viewers within the KOKS blanketing contour, the Commission to whom so many have complained, and Calvary whose attention has been diverted from its primary purpose of serving the public interest. Calvary must do better if it is to retain its license for the long term. Calvary has now offered a specific -- and funded -- plan for a cure to be overseen by its communications counsel and implemented by an experienced technician who has not previously been involved in dealing with the complaints. We accept Calvary's plan, which the Bureau advises is technically adequate, and we accept Calvary's time frame -- 120 days "pushing it" -- and will affirm the one-year renewal awarded by the Presiding Officer subject to the compliance and reporting requirements detailed in *ID* ¶ 117 (footnotes omitted):

[T]he licensee will be required to comply with the requirements of Section 73.318 of the rules. . . . KOKS is responsible for curing the blanketing interference to Channel 6 notwithstanding that the station does not place a Grade B signal over Poplar Bluff. In addition, KOKS must comply with the requirements of the *Order* released October 30, 1990, which is Mass Media Bureau Ex. 25. This includes satisfying all individuals KOKS inaccurately reported as having had their blanketing problems resolved. The additional efforts to be undertaken by the licensee . . . shall include taking all reasonable and necessary steps, including the installation of antennas, coax cabling, rotors, boosters, and high quality filters, or any combination thereof, by a qualified repairman, at no cost to the home owner. This work shall be accomplished by the licensee within 120 days to radios and television sets in each household that desires such work. A complete report shall be submitted to the Mass Media Bureau within 20 days after the repairs have been completed setting forth in detail the nature of the work done, the equipment installed, and the results of the effort. This report shall be verified by the licensee and the repairman who performed the work. The home owner shall be requested to sign the report and acknowledge, in writing, whether they are satisfied and if not, why not.

46. *Forfeiture*. One matter remains. The Presiding Officer determined that Calvary should forfeit \$10,000 for its violation of the blanketing interference rule. He determined the amount of the forfeiture by referring to *Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), which has since been vacated by the court in *United States Telephone Ass'n v. FCC*, No. 92-1321 (D.C. Cir., July 12, 1994). We agree with the Presiding Officer that a forfeiture is warranted by Calvary's repeated violations of 47 CFR 73.318. We have reassessed the amount pursuant to the guidelines in the Communications Act, 47 USC 503(b)(2)(D), which directs consideration of "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require," and the Commission's implementing rule, 47 CFR 1.80(b)(4). We are concerned

here that Calvary be deterred from future violations, which it avows it is, and that, in imposing a forfeiture, we not undermine Calvary's financial ability to comply, which the record has repeatedly shown to have been at least a part -- but not all -- of the problem, although specific information about the finances of this non-profit licensee has not been introduced into evidence. We have considered the record as a whole, including the "difficulties (and, perhaps, mitigating circumstances)" that confronted Calvary as set forth in *MO&O I*, 9 FCC Rcd at 576 ¶¶ 5-7, and reviewed further here: the organized objections from neighbors on aesthetic as well as interference grounds; the erroneous advice given Calvary about its obligation to cure the interference to channel 6, which caused the majority of the complaints and in which the Commission was complicitous; and, as found by the Commission's investigating engineers, the poor reception conditions with which Calvary was dealing. We conclude that a forfeiture should be assessed in the amount of \$1,000. Our primary concern here is that the people of Poplar Bluff within the KOKS blanketing contour will no longer be deprived of the quality of off-the-air broadcast service they received prior to the initiation of KOKS' service and that blanketing interference caused by KOKS be quickly cured.

47. ACCORDINGLY, IT IS ORDERED That the application of Calvary Educational Broadcasting Network, Inc. (File No. BRED-891103UA) for renewal of the license for Station KOKS(FM), Poplar Bluff, Missouri, IS GRANTED for a term of one year from the date of release of this Decision.

48. IT IS FURTHER ORDERED That the licensee of Station KOKS(FM) SHALL COMPLY with the provisions of Section 73.318 of the Commission's Rules as described herein within 120 days from the release of this Decision.

49. IT IS FURTHER ORDERED That the licensee of Station KOKS(FM) SHALL SUBMIT the report required in paragraph 45 of this Decision within 20 days after completion of the licensee's efforts to come into compliance with Section 73.318 of the Commission's Rules.

50. IT IS FURTHER ORDERED That the licensee of Station KOKS(FM) SHALL REMIT a forfeiture in the amount of \$1,000. Such payment SHALL BE SENT to the following address:

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marjorie Reed Greene
Member, Review Board