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

DISPATCHED BY

In re)	
)	
GERARD A. TURRO)	MM Docket No. 97-122
)	
For Renewal of License)	File Nos. BRFT-970129YC
for FM Translator Stations)	BRFT-970129YD
W276AQ(FM), Fort Lee, NJ, and)	
W232AL(FM), Pomona, NY)	
)	
MONTICELLO MOUNTAINTOP)	
BROADCASTING, INC.)	
)	
Order to Show Cause Why the)	
Construction Permit for FM Radio)	
Station WJUX(FM), Monticello, NY,)	
Should Not Be Revoked)	

MEMORANDUM OPINION AND ORDER

Issued: June 17, 1997 ; Released: June 19, 1997

1. Under consideration are a Motion to Enlarge Issues, filed on May 8, 1997, by Universal Broadcasting of New York, Inc. ("Universal"); a Supplement to Motion to Enlarge Issues, filed on May 19, 1997, by Universal; an Opposition to Motion to Enlarge Issues, filed on May 19, 1997, by the Mass Media Bureau; an Opposition to Motion to Enlarge Issues, filed on May 23, 1997, by Gerard A. Turro ("Turro"); and a Reply to Opposition to Motion to Enlarge Issues, filed on June 2, 1997, by Universal.

2. Universal seeks the addition of an ex parte solicitation issue against Turro. In support, Universal states that on April 28, 1997, subsequent to the designation of this case for hearing, Senator Robert G. Torricelli and Congressman Steve Rothman sent a letter to the Chairman of the Commission discussing the merits of the matters raised in this proceeding. Further, Universal claims that, on the same date, Senator Torricelli, Congressman Rothman, and Bergen County Executive William "Pat" Schuber participated in a 15-minute call-in program which was broadcast by WJUX(FM) and Turro's translators (collectively "Jukebox Radio"), that the program was produced, originated and controlled from Turro's Dumont, New Jersey, studio, and that ex parte communications were solicited from the public during the program. Universal argues that Turro's direct involvement in the solicitation of these ex parte presentations "must be presumed" because the program was produced, controlled and distributed for broadcast over facilities controlled by or licensed to Turro. Attached to Universal's motion and supplement are copies of the April 28, 1997, letter and the Commission's response, a copy of a newspaper article describing the broadcast in question, and a partial transcript of that broadcast transcribed by Universal's counsel.

3. In a declaration under penalty of perjury appended to his opposition, Turro states that he never asked Senator Torricelli, Congressman Rothman, or anyone else, to contact the Commission on his behalf to discuss the merits of his position in this proceeding. With respect to the broadcast referred to in Universal's motion, Turro states that he was contacted by a member of Senator Torricelli's staff who requested approximately 15 minutes of air time to address the public and answer callers' questions about Jukebox Radio's situation, and that Turro made the time available. Turro further states that the broadcast was live and unrehearsed, and that there were no prior understandings as to its substance. Also appended to Turro's opposition is another letter to the Chairman of the Commission from Senator Torricelli¹ in which it is stated, inter alia, that "no one at Jukebox [Radio] or any other party requested that I send [the April 28, 1997,] letter to the FCC. I took this action purely for the benefit of my constituents."

4. In its reply, Universal admits that its motion is based upon circumstantial evidence. However, Universal claims, because Turro has historically exhibited a pattern of involving political figures in an attempt to advance his interests at the Commission, it is likely that he did so in this instance. Universal also contends that Turro's description of the circumstances surrounding the April 28th broadcast is not credible. In this connection, Universal maintains that, by making the air time available, Turro "must be deemed to have implicitly consented" to, and to have indirectly participated in, the solicitation of ex parte contacts.

5. Universal's motion to enlarge issues will be denied. Section 1.229(d) of the Commission's Rules requires that petitions to enlarge issues be supported by affidavits (or declarations) of individuals having personal knowledge of the facts alleged therein. It has been emphasized that this requirement was promulgated in order to assure the validity of allegations made before this agency, and that failure to observe this requirement would result in the denial of the request for enlargement. Eastern Broadcasting Corp., 29 FCC 2d 472, 474-75 (Rev. Bd. 1971); Martin Lake Broadcasting Co., 28 FCC 2d 457, 459 (Rev. Bd. 1971). More recently, in Proposals to Reform the Commission's Comparative Hearing Process, 6 FCC Rcd 157, 161 (1990), the Commission affirmed its policy of strictly adhering to the standards of Section 1.229. See also Great Lakes Broadcasting, Inc., 6 FCC Rcd 4331, 4333 (1991).

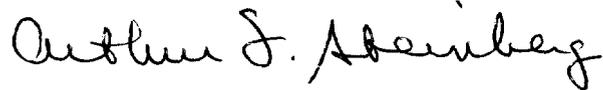
6. Universal has failed to meet the stringent standards of Section 1.229(d). Specifically, its motion is not supported by personal knowledge affidavits. On the contrary, its assertion that Turro was involved in improper ex parte solicitations appears to be based on speculation and surmise. It is well established that issues will not be added on those bases. Folkways Broadcasting Co., Inc., 33 FCC 2d 806, 811 (Rev. Bd. 1972); West Central Ohio Broadcasters, Inc., 1 FCC 2d 1178 (Rev. Bd. 1965). Moreover, Turro, in his declaration, has denied the allegations, and his statements have not been

¹ This letter, dated May 23, 1997, reflects that copies were sent to counsel for all the other parties to this proceeding.

rebutted by any individual with personal knowledge of the facts. Under these circumstances, the addition of the requested issue is not warranted.

Accordingly, IT IS ORDERED that the Motion to Enlarge Issues, filed by Universal on May 8, 1997, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script that reads "Arthur I. Steinberg". The signature is written in black ink and is positioned above the printed name and title.

Arthur I. Steinberg
Administrative Law Judge