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

JUN 30 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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)	
)	
To: Honorable Arthur I. Steinberg		
Administrative Law Judge		

MASS MEDIA BUREAU'S MOTION FOR RELEVANCY
DETERMINATION TO COMPEL THE ANSWER OF
ADMISSIONS OF FACT AND GENUINENESS OF DOCUMENTS

1. On June 6, 1997, the Mass Media Bureau ("Bureau") submitted its First Request for Admissions of Fact and Genuineness of Documents to Gerard A. Turro ("Turro"). Turro filed a response on June 25, 1997. Within that response, Turro states:

The Bureau has sought a number of admissions which are directed to a station licensed to Franklin Lakes, New Jersey, and because that station and its operations are not mentioned in the Hearing Designation Order in this proceeding, in each instance Mr. Turro has responded "not relevant to this proceeding."

Pursuant to the provisions of Section 1.246(d) of the Commission's Rules, 47 C.F.R.

§1.246(d), the Bureau now requests that the Presiding Judge determine, on an expedited basis,

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the relevance of the Bureau's admissions requests and direct Turro to answer said admissions. An expedited ruling will greatly facilitate the preparation of responses to the presently pending interrogatories and scheduled depositions.¹ In support, the Bureau submits the following:

2. In March, 1986, Turro acquired FM translator station W276AQ, Ft. Lee, New Jersey. In order to provide service to Bergen County, Turro first sought a waiver of the Commission's Rules to permit his FM translator station to originate programming. The Commission denied that request, and that denial was later affirmed when Turro appealed to the United States Court of Appeals for the District of Columbia Circuit. Thereafter, Turro petitioned to change the Commission's Rules to permit FM translator stations to originate programming. That, too, was unsuccessful, a decision later reaffirmed by the Commission.² Having failed to change the rules with regard to translators, Turro understood that his translator station would have to be operated in compliance with those rules, which require translators to rebroadcast the signal of an appropriate full-power FM station without originating local programming.

3. Thereafter, Turro formed Bergen County Community Broadcast Foundation ("BCCBF"), a non-profit entity, which acquired from a local high school the license of 10-

¹ Among others, Turro is currently scheduled for oral deposition on July 15, 1997, and MMBI's Weis on July 17, 1977.

² See *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing* in MM Docket No. 97-122, released April 18, 1977 ("*HDO*") at ¶18.

watt Class D non-commercial educational station WRRH(FM), Franklin Lakes, New Jersey. That station is the subject of Turro's instant objection and the Bureau's requested relevancy determination. Based upon evidence being developed, the Franklin Lakes station WRRH(FM), later WJUX(FM), served as the "primary" station for Translator W276AQ and the Jukebox Radio programming. Based upon the evidence now available the Bureau believes that W276AQ could not and/or did not receive the over-the-air signal of the relatively limited 10-watt Franklin Lakes station. The Bureau also believes that the Franklin Lakes signal was delivered to the translator station by telephone lines and/or Inter-City Relay WMG-499. Inter-City Relay WMG-499 is licensed to BCCBF/Turro and is associated with the non-commercial operation of the Franklin Lakes non-commercial station. Notwithstanding that the Franklin Lakes station was a non-commercial station, it appears that Turro formed a for-profit entity, FM-103.1, Inc., to sell Jukebox Radio advertising that was originated for broadcast over the translator station, but was deleted for broadcast over the non-commercial Franklin Lakes station. Attached hereto are copies of various newspaper articles on Turro's operation during this time.

4. Due to the inherent limitations associated with the operation of the non-commercial Franklin Lakes facility, it was inadequate to fully develop the Jukebox Radio service to Bergen County. To make that service work, Turro needed a commercial FM station with a stronger signal. Hence, when Turro learned of the availability of the Monticello construction permit, he sought to make use of it. The Bureau believes that the Monticello station better served Turro's over-all plan because it was a commercial station and had a higher operating

power than the Franklin Lakes station to potentially place a stronger signal to the Ft. Lee translator. From the admissions thus far responded to by the parties, it is clear that because Turro could not acquire the Monticello station and operate it as a primary station for the Ft. Lee translator to serve his target Bergen County audience, Turro encouraged his business associate Wesley R. Weis to acquire that station and "affiliate" with Jukebox Radio.³ Weis thereafter formed Monticello Mountaintop Broadcasting, Inc. ("MMBI") and acquired the Monticello station. Thereafter MMBI entered into an agreement with BCCBF for the delivery of programming, and, admittedly with Turro's technical and financial assistance, constructed and began operation of the Monticello station. When the Monticello station began broadcasting, the Franklin Lakes station was deactivated, and its WJUX(FM) call sign shifted to the Monticello station. This allowed Turro to originate his commercial Jukebox Radio service to Bergen County. It thus appears that Turro's current operation is a continuation of his prior operation of the Franklin Lakes station.

5. The Bureau believes that, based on testimonial evidence being developed and the agreement between MMBI and BCCBF, Turro used BCCBF to acquire control of the Monticello station. Moreover, the alleged use of Inter-City Relay WMG-499 is at the heart of the alleged violation of Section 74.531(c) of the Commission's Rules noted in Issue 1 of the *HDO*. Issue 1 seeks to determine, *inter alia*, whether Turro's operation of the translators violated Section 74.531(c) of the Commission's Rules. Such a violation would have occurred

³ Much like the Franklin Lakes facility, the Monticello station is not licensed to an area within, and does not place a satisfactory signal over, Bergen County to serve that area outright.

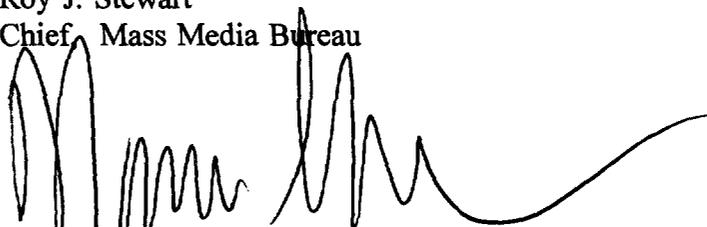
if Turro used WMG-499 to transmit programming from his Dumont studio directly to his translator. The thrust of the unanswered admissions requests is to ascertain whether WMG-499 had also been used by Turro to transmit programming prior to and/or after the acquisition by MMBI of the Monticello station. Inter-City Relay WMG-499 is licensed to BCCBF and is associated with the non-commercial operation of the Franklin Lakes station. The Bureau also contends that these facts are relevant to the alleged misrepresentations of the parties and are likely to yield evidence on their credibility during this proceeding.

6. Thus, the Bureau asserts that the admissions propounded to and objected to by Turro are designed to discover evidence directly related to the issues in this proceeding. Certainly, the facts to be developed in this area are likely to yield, at minimum, highly relevant facts concerning, but not limited to, Turro's state of mind, opportunity, intent, plan, knowledge, and the absence of mistake. Further, the Bureau asserts that while the relevant Rules of Evidence are likely to permit admissibility of the evidence adduced, at the very least, this area should be developed in discovery.

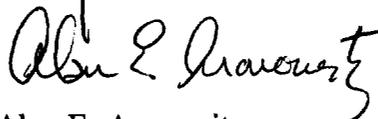
7. Accordingly, the Bureau respectfully requests that the Presiding Judge, consistent with Section 1.246(d) of the Rules, make a determination that those matters contained in the noted admissions requests to Turro are relevant. In addition, the Bureau respectfully requests that Turro be directed to respond to the Bureau's requests for admissions in an expedited fashion so as not to delay or undermine scheduled depositions, overall discovery, and the

scheduled commencement of the hearing in this case.

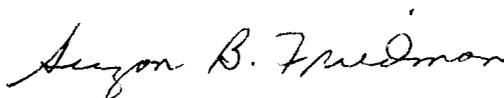
Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau

A handwritten signature in black ink, appearing to read "Norman Goldstein". The signature is fluid and cursive, with a long horizontal stroke at the end.

Norman Goldstein
Chief, Complaints & Political Programming Branch

A handwritten signature in black ink, appearing to read "Alan E. Aronowitz". The signature is cursive and somewhat stylized.

Alan E. Aronowitz
Attorney

A handwritten signature in black ink, appearing to read "Suzan B. Friedman". The signature is cursive and elegant.

Suzan B. Friedman
Attorney

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June 30, 1997

ATTACHMENTS



NORTHERN NEW JERSEY

BUSINESS

Business Focus: Travel pg. 26

NEW JERSEY'S BUSINESS NEWSPAPERS

Volume 2, Number 23

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DUMONT

Tiny WJUX Has Discovered a Formula For Radio Success

by Joseph Romano

Big-band music plus local news and traffic reports works for a 35-watt station

As every entrepreneur knows, not even hard work, long hours, deep pockets and a good idea are enough to guarantee business success. Sometimes you just have to get your hands dirty. Perhaps it was with that in mind that several years ago Gerry Turro, a 40-year-old Oradel resident with a lifelong dream of starting a radio station in Bergen County, found himself in a garbage dumpster in New York City hip-deep in old records. But that kind of drive is leading to his success in the competitive world of radio.

"We're a little baby pea-shooter of a station," Turro says proudly of WJUX-FM, the 35-watt station he established within earshot of the already-saturated New York City market. "But we're breaking new ground here. With 50,000-watt stations right at our back door, we're kicking butt. We're getting ratings."

In fact, after just 18 months on the air, Jukebox Radio—103.1 FM—has attracted more than 70,000 listeners and a cadre of sponsors by broadcasting local news, traffic and "music from America's Golden Age"—ballads and big-band hits from the 1930s, '40s, and '50s.

Just last month, the little pea-shooter acquired its first commercial affiliate station, the 6,000-watt WXTM-FM in Monticello, N.Y., which broadcasts from the top of a mountain in Liberty, N.Y., and can be heard as far as 85 miles away.

Acquiring the new affiliate, however, means more to Jukebox Radio than just an increase in the number of potential listeners. From its inception Jukebox Radio has been licensed as a non-commercial, educational station. As such, it could not accept paid advertisements from sponsors. Now, with the addition of the Monticello station, Jukebox Radio has become a commercial station and can sell advertising.

"We're already sold out," Turro says, adding that the fledgling station is in the black and that he expects Jukebox Radio to have well over \$1 million in revenues for its current fiscal year.

Life was not always so easy, however. In fact, Turro fought for more than eight years just to convince the Federal Communications Commission that Bergen County needed a radio station of its own. His argument

was that while Northern New Jersey residents might get a smorgasbord of radio programming out of New York City, they were receiving a paltry serving of local news, traffic and weather. But federal regulators weren't buying. "The FCC shot us down repeatedly," Turro says. "They'd say, 'No way. You don't need local service.'"

Turro finally decided to make an end-run around the FCC. He bought an existing 10-watt high school radio station in Franklin Lakes. The broadcasting range of the station was about one mile. "I paid \$100,000," he says. "That was about \$99,000 more than the station was worth."

But owning the station gave Turro a license and the right to broadcast. So, with license in hand, he rented a 1,000 sq.-ft. space in Dumont and installed a studio and a newsroom. From there the Jukebox Radio signal was transmitted to the 10-watt station in Franklin Lakes, which is where the program would technically originate—and then it would be retransmitted from there to another transmitter in Fort Lee, which boosts the Jukebox Radio signal to 35 watts and sends it out over the airwaves.

"It took off like a shot," Turro says, pointing to a wall of proclamations and commendations he has received from local public officials. In fact, although Jukebox Radio's 35-watt Fort Lee transmitter only provides a consistent signal for a radius of seven to 10 miles, the station has been getting ratings in Hudson and Essex counties as well as in Rockland County and New York City. Recent Arbitron ratings indicate that even without counting the listeners resulting from the acquisition of the Monticello affiliate, Jukebox Radio has about 70,000 listeners a week. "We were stunned," Turro says, reflecting on Jukebox Radio's rapid growth and its appeal outside the intended listening area. "We didn't expect it to go much beyond Bergen County."

On a recent afternoon in the studio, Peter Vann, the station's so-called afternoon drive guy was busy cooing into a vintage 1950s microphone. Behind Vann were racks of tape cassettes bearing song titles like "Moonlight Serenade."



THE MOUSE THAT ROARS: The station's success has surprised even Turro (standing)

Next door in the newsroom, David Matthau, the station's news director, was preparing the next broadcast of Northern New Jersey news. Matthau says that what makes Jukebox Radio unique is its emphasis on Northern New Jersey coverage, which the large New York City stations ignore. Local traffic information provided by Shadow Traffic is another popular feature. "People stuck in traffic in Bergen County don't need to know the conditions on the Long Island Expressway," he says.

But the most obvious drawing card for Jukebox Radio is its music—big-band hits and other sentimental favorites. "And what's really amazing," Turro says, "is that nearly everything you're listening to came out of the garbage."

Several years ago, while working as an engineer at WNEW in New York City, Turro arrived for work one morning to discover that the walls of the station's record library had been stripped bare. The station had switched to an all-talk format. "I asked where everything was," Turro says. "Someone told me it was out on the loading dock in a dumpster."

Turro dashed to the dock. "I gave the guys \$50 and told them, 'Nobody touches this dumpster until I say so,'" he recalls. "I went back upstairs, told my boss, 'Don't pay me for two days,' and then spent the next two days in the dumpster."

For his labors, and his investment of \$50, Turro emerged with nearly 4,000 tapes and records. And if that wasn't luck enough, a few months later someone at WNEW called him

and told him they had located "the other half" of the library.

"Give us a thousand bucks, and it's yours," the caller said. Turro gladly paid the asking price. "There are records that are 40, 50 years old," he says. "It was the cream of the crop."

Turro's collection of golden oldies, which now exceeds 10,000 titles, became the heart and soul of Jukebox Radio. But while the station's popularity with listeners and sponsors skyrocketed, it was a bitter-sweet success for Turro. As long as it was broadcasting on the former high-school station's license, he had to remain a non-commercial station. Sponsors, for example, could not buy advertising but had to settle for so-called enhanced underwriting.

All that changed last month, however, when WXTM signed on as Jukebox Radio's first affiliate. In exchange for providing all of its programming to WXTM, Jukebox Radio is allowed to originate its broadcast from there. Since the broadcast now originates at WXTM—a commercial station—Jukebox Radio can carry paid advertisements for the first time.

Turro is still pressing the state's congressional delegation to persuade regulators in Washington to grant an increase in Jukebox Radio's Fort Lee transmitter power from 35 to 250 watts. "Not a day goes by that we don't get calls from people asking about the power increase," he says. But regulators still question whether the area needs its own radio station. Says he: "The fact that a 35-watt station is getting 70,000 listeners convinces me that there's a need." ♦

DAILY NEWS



'Jukebox Radio' gets in its 35 watts' worth

By **DAVID HINCKLEY**

Daily News Staff Writer

IT'S usually considered an indisputable fact that there's no room on New York airwaves for more radio stations.

So Gerry Turro found some anyway. He calls his station WJUX (103.1 FM, "Jukebox Radio") and now that he's got a foothold, he wants it to grow.

In a fascinating sidestep, Turro bought a 10-watt high school station in Franklin Lakes, N.J., and began relaying its signal to a tower (a "repeater") in Dumont, N.J., where the power increases to 35 watts.

That's small, since big stations broadcast with 50,000 watts. But WJUX now covers most of Bergen County and about half of Manhattan, and Turro has applied to the FCC for an increase to 250 watts, which would greatly increase the station's range.

Since WJUX plays American popular standards, with a lot of Big Band, it is obviously aiming at the audience that used to listen to WNEW-AM, and now listens mostly to WQEW.

Toward that goal, Turro owns most of the old WNEW record library. Just as important, says WJUX' Bill Gaghan, "We have an FM signal — and all this music just sounds so gorgeous on FM."

At a time when city radio stations can sell for \$50-\$70 million, of course, there's some resistance to letting Turro tiptoe into the market with a high school station he bought for \$100,000. Many New York radio people feel he bought the station primari-

ly to serve New Jersey and he should stay there. But Gaghan says the WJUX listener count is up to 100,000, and those listeners want more.

Gaghan says a daily Frank Sinatra segment, 2:30-3 p.m., is the kind of thing that's especially popular with WJUX listeners.

RADIO

The New York Times

The Little Radio Station That Could

By JAY ROMANO

STUFFED into a cramped studio on the second floor of a cinder-block building here, a tiny FM radio station short on power but long on enthusiasm is changing the way tens of thousands of residents in northern New Jersey tune their radios.

The station, WJUX-FM, 103.1, has just celebrated its first anniversary as "Bergen County's Hometown Radio Station." In one year it has attracted 40,000 listeners a week and a cadre of loyal sponsors by broadcasting local news, traffic reports and ballads and big-band hits from the 1930's, 40's and 50's.

In fact, Jukebox Radio, as it calls itself, has been such a hit with residents of the area that the station's owner recently requested Federal Communications Commission permission to increase the station's broadcasting power. That application has the support of state, county and local officials, as well as the backing of some Federal legislators.

"Everybody realizes that it's about time Bergen County had its own radio station," said the owner, Gerry Turro, a determined 39-year-old Oradell resident whose lifelong dream has been to bring FM radio back to its

birthplace in the county.

Achieving that goal has taken Mr. Turro on an odyssey that ranged from a two-day stint in a Dumpster in New York City to an eight-year battle with Washington bureaucrats trying to persuade the F.C.C. that Bergen County needed a radio station it could call its own. Before Jukebox Radio, Bergen was the largest county in the country without a 24-hour FM radio station.

After years of rejection, Mr. Turro stumbled upon a backdoor into radio-land. And now, one year later, Jukebox Radio is being beamed into homes and automobiles from Franklin Lakes to Fort Lee and beyond.

"We were stunned," said Mr. Turro, reflecting on Jukebox Radio's rapid growth and the fact that it has attracted fans in Hudson County, Essex County, Rockland County and even New York City. "We didn't expect it to go much beyond Bergen County."

To understand Mr. Turro's surprise, one needs to know only that some radio stations broadcasting from Manhattan — the radio market closest to the one served by Jukebox Radio — send out 50,000-watt signals. Jukebox Radio broadcasts at a whop-

station," Mr. Turro said proudly.

Jukebox Radio's entire broadcast center — studio, sales office, business office, newsroom and executive office — is squeezed into a 1,000-square-foot second-floor loft in Dumont, a quiet, middle-class community in northeastern Bergen County. A small satellite dish outside is the only hint that something electronic is going on inside.

The main studio is a 12-by-14-foot soundproof room. "That's Peter Vann, our afternoon drive guy," Mr. Turro said, opening a door to the studio and pointing to a disk jockey sitting at a console in front of a vintage 1950's microphone. Peter Vann, who moved to Jukebox Radio from another station in Rockland County after a career as a teacher, was just beginning his afternoon shift.

"Jukebox Radio," he said in a voice that could melt lead, "playing only the music that you want to hear."

'Their Own Spotlight'

Next door, in the newsroom, the news director, David Matthau, was preparing the next broadcast of local news.

"The whole point of this place is to give people the opportunity to find out what's going on in their own backyard," Mr. Matthau said. "We're giving people who live in the shadow of New York City their own spotlight."

One of the most popular items broadcast by the station, Mr. Turro said, is local traffic information provided by Shadow Traffic.

"People stuck in traffic in Bergen County don't need to know the conditions on the Long Island Expressway," he said, adding that local weather reports are also provided.

But what seems to be the biggest drawing card for Jukebox Radio is its music — big-band hits and sentimental favorites from the 30's, 40's and 50's, like "When You and I Were Young, Maggie," "Praise the Lord and Pass the Ammunition," "It Had to Be You" and "Moonlight Serenade."

Treasures From the Garbage

"And what's really amazing," Mr. Turro said, "is that nearly everything you're listening to came out of the garbage."

He explained that several years ago, while working as an engineer at WNEW radio in New York City, he arrived for work one morning to discover that the walls of the station's

Tapes and records that were thrown out become a lure for radio listeners.

record library had been stripped bare. That, he said, was the time when WNEW was switching to an all-talk format.

"I asked, 'Where is everything?' " he said. "They told me, 'On the loading dock, in a Dumpster.'"

Mr. Turro, whose dream of starting a radio station was wanting in one important area — records — dashed to the loading dock.

"I gave the guys \$50 and told them, 'Nobody touches this Dumpster until I say so,' " he recalled. "I went back upstairs, told my boss, 'Don't pay me for two days,' and then I spent the next two days in the Dumpster."

For his labors, Mr. Turro emerged with nearly 4,000 tapes and records.

"The stuff was in the garbage," he said. "It would have been gone forever."



Lenore Davis for The New York Times

Gerry Turro, the owner of radio station WJUX-FM.

CERTIFICATE OF SERVICE

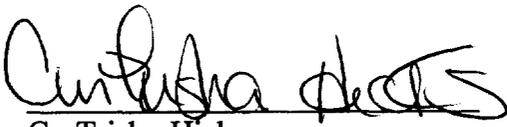
CurTrisha Hicks, a secretary in the Enforcement Division, Mass Media Bureau, certifies that she has on this 30th day of June, 1997, sent by regular U.S. mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Motion for Relevancy Determination to Compel the Answer of Admissions of Fact and Genuineness of Documents**" to

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