

FCC MAIL SECTION

FILE # 97-122

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

FCC 97M-121
71518

In re)	
DISPATCH)	
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: July 9, 1997 ; Released: July 11, 1997

1. Under consideration are: (a) a Notice of Deposition Upon Oral Examination, filed on June 18, 1997, by the Mass Media Bureau ("Bureau") seeking to take the deposition of Jean Swann ("Mrs. Turro"); (b) an opposition to (a), filed on June 25, 1997, by Gerard A. Turro ("Turro"); (c) a reply to (b), filed on June 30, 1997, by the Bureau; (d) a Motion for Relevancy Determination to Compel the Answer of Admissions of Fact and Genuineness of Documents, filed on June 30, 1997, by the Bureau; (e) an opposition to (d), filed July 2, 1997, by Turro; and (f) comments in support of (d), filed on July 7, 1997, by Universal Broadcasting of New York, Inc. ("Universal").

Motion to Compel

2. On June 6, 1997, the Bureau submitted its First Request for Admissions of Fact and Genuineness of Documents to Turro. Therein, the Bureau sought a number of admissions relating to a station licensed to Franklin Lakes, New Jersey. See, e.g., Requests 9, 10, 12, 18-21, 23-34, 37-43, 45, and 60. In his June 25, 1997, response, Turro objected to those requests, claiming that the matters into which the Bureau was inquiring are beyond the scope of the issues in this proceeding.

3. In the instant motion, the Bureau seeks a ruling that the admission requests in question are relevant to the issues, and an order compelling Turro to respond to those requests. In support, the Bureau argues that Turro's operation of the Franklin Lakes station has relevancy because the current operation of the captioned stations is a continuation of the Franklin Lakes operation. The Bureau also contends that the admission requests are relevant to the question of whether a certain intercity relay station was used to transmit programming to Turro's translators prior to the acquisition of Station WJUX(FM). The Bureau further maintains that the admission requests "are likely to yield

. . . highly relevant facts concerning . . . Turro's state of mind, opportunity, intent, plan, knowledge, and the absence of mistake." Motion at 5.

4. Universal supports the Bureau's motion. Noting that the Franklin Lakes station was mentioned in Universal's February 1995 complaint to the Commission, Universal claims that Turro's current operations were a direct and immediate outgrowth of Franklin Lakes, and that the former cannot be fully appreciated and understood without reference to the latter. Turro opposes the Bureau's motion.¹

5. The Bureau's motion will be denied. Inquiry into the Franklin Lakes, New Jersey, station is beyond the scope of the issues in this proceeding. The Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, FCC 97-137, released April 18, 1997 ("HDO"), specified issues to determine whether Turro's operation of his translator stations violated certain provisions of the Commission's rules, to determine whether Turro engaged in an unauthorized transfer of control or otherwise exercised control over Station WJUX(FM), Monticello, New York, which is licensed to Monticello Mountaintop Broadcasting, Inc. ("MMBI"), and to determine whether Turro misrepresented facts and/or lacked candor concerning the operation of his translator stations.² As a partial basis for the specification of these issues, the HDO referred to an inspection, conducted by a Commission field engineer, of Station WJUX(FM), Turro's Dumont, New Jersey, studio facilities, and Turro's Fort Lee, New Jersey, translator. See HDO at paras. 7, 8, 10, 13, and 15. The HDO also referred to the licensees' responses to Commission letters of inquiry which dealt with the relationships between, and the operations of, MMBI and WJUX(FM) on the one hand, and Turro, his translator stations and studio facilities on the other. See HDO at paras. 9, 10, 13, 15, 17, and 18.

6. As Universal's comments make clear, the Commission had knowledge of the Franklin Lakes station more than two years prior to the release of the HDO in this proceeding. However, despite such knowledge, it does not appear that the Commission investigated or inquired about that station. Further, nothing in the HDO mentions, describes, refers to, or rests upon, the Franklin Lakes station. Consequently, since the Commission had the opportunity to include Franklin Lakes within the scope of the inquiry, but chose not to do so, it must be concluded that the Commission did not intend the designated issues to encompass the exploration of matters relating to that operation. Thus, Turro will not be compelled to respond to the admission requests relating to Franklin Lakes.

Notice of Deposition

7. The Bureau has noticed Mrs. Turro for deposition upon oral examination. Citing the HDO, the Bureau's notice stated that she "will be examined upon matters relevant to the designated issues" in this proceeding. Notice at 2.

¹ At note 1 of his opposition, Turro misconstrues the ruling made in Order, FCC 97M-120, released July 3, 1997. Specifically, the Order did not grant the Bureau's Motion for Relevancy Determination. Rather, the Order simply directed Turro to respond to that motion by a date certain.

² Additional issues were specified against MMBI.

Turro opposes the notice, claiming that Mrs. Turro has never been employed by MMBI or its principal in any capacity, and has never had any working relationship of any kind with WJUX(FM), Monticello, New York. In its reply, the Bureau has outlined the basis for its belief that Mrs. Turro has relevant information.

8. Mrs. Turro's deposition shall be taken. It appears from the Bureau's reply that Mrs. Turro may possess information which appears reasonably calculated to lead to the discovery of admissible evidence. See Section 1.311(b) of the Commission's Rules. However, as discussed above, exploration of matters relating to the Franklin Lakes station will not be permitted.

Accordingly, IT IS ORDERED that the Motion for Relevancy Determination to Compel the Answer of Admissions of Fact and Genuineness of Documents, filed by the Bureau on June 30, 1997, IS DENIED.

IT IS FURTHER ORDERED that the deposition upon oral examination of Jean Swann SHALL BE TAKEN.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge