

1 And it's important to understand the only phone
2 with the transmitter is this phone.

3 JUDGE STEINBERG: Okay.

4 THE WITNESS: So that's where that came from.

5 JUDGE STEINBERG: In item number two, basically if
6 you were on the phone with Mr. Luna, then you could not have
7 been on the phone with Mr. Spicka simultaneously; is that --
8 that's what you said?

9 THE WITNESS: It would have been very difficult,
10 Your Honor.

11 JUDGE STEINBERG: But it's possible that you could
12 have been on the phone with one person on a regular phone
13 and the other person on a cellular phone.

14 THE WITNESS: Anything is possible, Your Honor.

15 JUDGE STEINBERG: Okay, but that's not -- okay,
16 your testimony here today is that did not happen?

17 THE WITNESS: No, Your Honor.

18 JUDGE STEINBERG: That you were only on one phone.

19 THE WITNESS: I wasn't on the phone with anyone,
20 Your Honor.

21 JUDGE STEINBERG: Okay. Oh, I see, yes, because
22 Mr. Luna said you were on the phone, and you say that you
23 did not have that conversation with Mr. Luna.

24 THE WITNESS: No, Your Honor.

25 JUDGE STEINBERG: Okay, got you.

1 Okay, let me take you to page 17.

2 THE WITNESS: Yes, Your Honor.

3 JUDGE STEINBERG: This is something for Mr.
4 Naftalin. You can think about this tonight. I think there
5 is either a typo or a misstatement on page 17. In the
6 paragraph at the bottom beginning, "One other point should
7 be made here." You're talking about Mr. Luna and Mr. Gaghan
8 testifying that when light number five on the Fort Lee
9 translator indicated the microwave path was active, that's
10 not what they said. You may have to change that number.

11 THE WITNESS: Yes, Your Honor.

12 JUDGE STEINBERG: And that might have an impact on
13 something -- something else in the paragraph. I don't know
14 if it does or doesn't. But I picked that up. But I'm not
15 going to ask any questions about it.

16 We know from the demonstrations what various
17 lights did. I just think that there might have been a
18 misstatement in your direct case.

19 Okay, page 19.

20 THE WITNESS: Yes, Your Honor.

21 JUDGE STEINBERG: Paragraph number two toward the
22 bottom, there is a reference to WBAI, do you see that?

23 THE WITNESS: WBAI does not significantly
24 interfere?

25 JUDGE STEINBERG: Yes.

1 THE WITNESS: Yes, Your Honor.

2 JUDGE STEINBERG: What's your definition of

3 "significantly" as it's used there?

4 THE WITNESS: Can't hear it. Can't hear WBAI
5 get into the WJUX signal.

6 JUDGE STEINBERG: So it doesn't interfere in any
7 way, shape or form, in any manner?

8 THE WITNESS: No.

9 JUDGE STEINBERG: So "significantly" in this case
10 means doesn't -- it doesn't have any meaning?

11 THE WITNESS: Yes, Your Honor.

12 JUDGE STEINBERG: Okay, page 20.

13 THE WITNESS: Yes, Your Honor.

14 JUDGE STEINBERG: You're talking about the remote
15 control units in Dumont, and you say, "They have never had
16 the ability to raise and lower power."

17 THE WITNESS: Is that the first paragraph, Your
18 Honor?

19 JUDGE STEINBERG: Yes.

20 THE WITNESS: Yes, Your Honor.

21 JUDGE STEINBERG: Do you see that part of --

22 THE WITNESS: Yes, Your Honor.

23 JUDGE STEINBERG: -- as I sated earlier?

24 THE WITNESS: Yes, Your Honor.

25 JUDGE STEINBERG: Are there any modifications that

1 you know about that you could make that would allow the
2 TC-8s to raise and lower power?

3 THE WITNESS: The only modification that one would
4 make would be to the transmitter themselves, Your Honor, and
5 I am not aware of any modification you can make to do that.

6 JUDGE STEINBERG: To the TC-8s?

7 THE WITNESS: The TC-8s can raise and lower power
8 if the transmitter on the other end is capable of having
9 power raised and lowered. Neither transmitter in Fort Lee
10 or the transmitter in Monticello has the capability to raise
11 and lower power.

12 JUDGE STEINBERG: Okay. And you could not make --
13 if such modifications could be made, you couldn't make them
14 yourself?

15 THE WITNESS: I'm not --

16 JUDGE STEINBERG: You answered that earlier.

17 THE WITNESS: No. I mean, I just -- no.

18 (Pause.)

19 JUDGE STEINBERG: Page 21.

20 THE WITNESS: Yes, Your Honor.

21 JUDGE STEINBERG: You use the term "temperature
22 inversion" toward the bottom of the page.

23 THE WITNESS: Yes, Your Honor.

24 JUDGE STEINBERG: What do you mean by that?

25 THE WITNESS: There are times -- during certain

1 times of the year, particularly in May and September, there
2 is -- what's the word I'm looking for here? There is a
3 fluke in nature where you have cold air and warm air, and
4 usually warm air is above it because warm air rises, and it
5 hold the cold air down, where you get this phenomenon where
6 they actually shift.

7 And what happens is when that happens you get an
8 effect where FM signals instead of coming down into the
9 community they are supposed to serve, they travel 100 or 150
10 miles, and you can year them 150 miles away, but you can't
11 hear them in the community served because it's going over
12 everybody's heads.

13 JUDGE STEINBERG: So the warm air is on the bottom
14 and the cold air is top?

15 THE WITNESS: It's something -- I may have this
16 kind of backwards, but I think that's basically what it is.
17 I know what temperature inversion is because I have seen it
18 for my entire life. And basically, as I recall, warm air
19 rises cooler. They get reversed. It's a phenomenon that
20 happens in the weather, Your Honor, where FM signals which
21 normally would travel a line of sight may travel great,
22 great distances, and I've seen that many, many times.

23 And I'll give you an example, and I hope I'm not
24 straying too far, Your Honor. Where the facility at Fort
25 Lee at -- the facility in Monticello, New York, at 99.7

1 picks up a station at -- a christian radio station in
2 Maryland at 99.7. And we star getting noise and chatter
3 from the 99.7, 300 miles away because of temperature
4 inversion. And that generally happens in the middle of
5 September.

6 But the same impact that we have would impact the
7 people in Monticello where the signal which is splattering
8 all over the place, and that just takes off like it's going
9 down a shoot, and just goes -- you can't hear it in
10 Monticello.

11 JUDGE STEINBERG: You can't hear it locally?;

12 THE WITNESS: No.

13 JUDGE STEINBERG: You talk about Mr. Gaghan on
14 page 21 and page 22 in paragraph seven. We know about the
15 time in the Beehive Restaurant.

16 THE WITNESS: Yes, Your Honor.

17 JUDGE STEINBERG: You say, "His performance while
18 working at Jukebox Radio was unsatisfactory and he was
19 disruptive," and i want you to explain that or expand upon
20 it. Why was it unsatisfactory? And what did he do that was
21 disruptive?

22 THE WITNESS: Mr. Gaghan had a policy when I
23 wasn't around, which wasn't that often, of taken the
24 employees and turning them against me; that I'm a bad guy;
25 that I'm a louse; follow him; don't follow me; I'm a nasty

1 guy. There are a number of times when I would say to him,
2 and I mean, he was just -- when I was there he was the
3 nicest guy in the world. When I was away, and I found this
4 out after the fact, unfortunately, that he really tried to
5 turn the employees against me. That's just his personality,
6 that's the way he is, God bless him.

7 There were problems where -- there were situations
8 where CDs would come into the radio station, and I would say,
9 "Oh, this is great, we can add these to the collection."
10 The next thing I know they're gone. I said, "What happened
11 to the CDs? We can add them." He said, "Ah, yeah, we don't
12 need those." I knew damn well we needed them. He took them
13 home.

14 There was an incident where my wife went to him
15 and said, "Hey, listen, Disney is going to be at the
16 Meadowlands. I know that you can get comp tickets for us.
17 Will you get us comp tickets, so, you know, Jerry and
18 Christopher and I can go to see this."

19 He says, "Ah, I can't get tickets. It can't
20 happen. It's too late."

21 So my wife said, "Okay. You know something, I'll
22 call up and get them on my own." She called up, the guys
23 says, "Sure, they will be at the press gate for you."

24 Well, I go down there and he's got his wife and
25 family down there, and Kathy, my business manager, at the

1 window. I said, "What are you doing here?"

2 "Oh, I got free press passes to get in."

3 I'm thinking, "Son of a gun, you get them for
4 yourself. I asked you to get them for me, and you tell me
5 you can't do it, and here you are using these things."

6 His on-air work was, to say the least, marginal,
7 and I'm being kind, Your Honor. I mean, I'm not here to
8 slam the man, and that's why I didn't get into this here.
9 You're asking me, I'm telling you.

10 His audio work was, at best, marginal, and he had
11 zero programming expertise, zero. He had never in his
12 entire life programmed the facility. Basically, when he was
13 there I directed him, as I do today with Dave Charles, and I
14 love Dave Charles.

15 JUDGE STEINBERG: Who is he?

16 THE WITNESS: Dave Charles was here. He's the
17 program director now. Here is what I want you to do; here
18 is how I want you to do it, here is when I want you to do
19 it. Maybe that's why he resented me, because, you know, he
20 didn't keep the station on track the way I wanted him to. I
21 had to tell him to do it, and he didn't have any experience
22 in programming.

23 And he just was not a really good employee, and
24 I've give you the Reader's Digest version of it, Your Honor.

25 JUDGE STEINBERG: Okay. If he wasn't very

1 experienced in programming, why did you hire him?

2 THE WITNESS: Because one thing he did know and
3 understand was music, and he helped with the music,
4 programming the music, and he had a handle on that. I
5 wanted to take Jukebox Radio in a slightly different
6 direction and he fought me on it. i wanted to play more
7 music of the fifties and sixties, and he battled me on that.

8 So he had a music background. Originally, he was
9 really a music consultant to the station, and he begged me,
10 "Please make me program director. I want the title.
11 Please, please."

12 So I said, yeah, I'll give the guy a break. If I
13 ride herd on him, he'll do okay. I made a mistake. I made
14 a mistake.

15 MR. NAFTALIN: Your Honor, may I clarify one
16 thing?

17 Dave Charles is the on-air name for David Charles
18 Lynch, the witness in this proceeding.

19 JUDGE STEINBERG: Okay. Is that correct?

20 THE WITNESS: I'm sorry. Yes, Your Honor.

21 MR. NAFTALIN: Everyone calls him Dave Charles.

22 JUDGE STEINBERG: Okay.

23 MR. NAFTALIN: But his true name is David Charles
24 Lynch.

25 JUDGE STEINBERG: The last case I had we had 12

1 names for everybody -- not the last case. We had 12 names
2 for everybody. We had to decide on what to call everybody.

3 Okay, page 25.

4 THE WITNESS: Yes, Your Honor.

5 JUDGE STEINBERG: The second line from the bottom
6 where you're talking about the August 2, 1995, inspection
7 from Mr. Loginow?

8 THE WITNESS: Yes, Your Honor.

9 JUDGE STEINBERG: And you say, "He seemed fully
10 satisfied."

11 Could you just elaborate on that?

12 Let me just ask, on August 2nd, was he nasty and
13 condescending?

14 THE WITNESS: No.

15 JUDGE STEINBERG: Okay, what was his state of
16 mind? What was his attitude towards you on August 2nd as
17 perceived by you?

18 THE WITNESS: He kind of laughed when he saw how
19 this thing worked. I think he was kind of surprised to see
20 a Sony car radio in the rack picking this thing up, and a
21 big grin came to his face. He couldn't believe that's how I
22 was doing it. I explained to him, "it works." And he did
23 get a real chuckle out of it. He really was not
24 antagonistic at all in that inspection.

25 During that inspection I said, "Listen, I've got

1 to show you something," because it was just too cool not to
2 show him. I said, "You know, it's unfortunate that I've had
3 vandalism problem on the roof over the last six - seven
4 months where people have been cutting the antennas on the
5 roof," and I explained that to him. But I said, "I've got
6 to show you something. This is something to see."

7 And I had my little -- I had a spare Sony car
8 radio with a battery with headphones, and I took it out the
9 roof. I said, "Watch this," and I took him to this spot on
10 the roof and I said, "Listen to this," and I held the car
11 antenna and he could hear Monticello loud and clear without
12 any type of filtering devices at all.

13 I said, "This is really, isn't it?" He looked at
14 me like, "Wow." And I said, "This is" -- I said, "This is
15 how I picked it up from October till January," and he kind
16 of like got a grin on his face and he shook his head. I
17 said, "I can't explain it, but here it is."

18 At that point I said, "Listen, you're here. I'm
19 here. I have time. Let's go to Pomona. I really want to
20 show you that now while I'm around." And he didn't really
21 want to go. And I said, "Come on, let's go. We really need
22 to do this now."

23 He said, "All right, let's go."

24 So we drove in my family car. We drove to Pomona.
25 I opened the door to Pomona. He saw the Sony car radio on

1 the rack and he got the same grin on his face again. I
2 said, "That's how I do it." And he looked at it, and he
3 says, "Okay, I've seen enough."

4 I said, "Listen, do you want me to demonstrate
5 anything for you?"

6 Now, here is where our stories conflict a little
7 bit, but they are what they are. Mr. Loginow says you
8 couldn't hear 103.1 there on that mountain top. I mean it's
9 like of sight is Fort Lee. I did have a boom box up there.
10 We did listen to 103.1 FM, and we were hearing it. I said,
11 "Let me show you something." We turned off the Pomona
12 transmitter and Fort Lee went off with it. The Jukebox
13 Radio programming went off in Fort Lee, and went with it.
14 So I turned the transmitter back on, and the programming
15 returned to Fort Lee. We did hear that. Now, he doesn't
16 remember it that way, but I must tell you that's how it
17 happened.

18 We drove back. I spoke to him how upset I was
19 about how he treated me on April 14th; how he was really
20 screaming at me. And I said, "Serge," I said, "I'm not a
21 criminal. I'm not a crook. I didn't do anything wrong
22 here. There is no reason to get nasty and angry with me."

23 He said, "Well, I have my marching orders from
24 Washington to get to the bottom of this. I have to answer
25 to the people." He actually didn't say it in that tone, I

1 apologize. He said it nicely. He said, "I have my marching
2 orders from Washington. I had to get to the bottom of this.
3 It doesn't matter what it takes, and I was told what to do
4 and I did it."

5 I said, "Listen, in the future please, you know,
6 I'm a nice, easy going guy. I have nothing to hide from
7 you, you know, please."

8 So I said, "What do you think of the inspection
9 today?"

10 He goes, "It went very well."

11 I said, "Are there any questions? Is there
12 anything that I didn't cover? Is there anything you need to
13 know?"

14 He says, "No, you've covered everything."

15 I says, "Well, how did I do?"

16 He goes, "Looks fine to me." He said, "But your
17 friend, Wes Weis, eh's got a problem."

18 And I said, "What's that?"

19 And he goes something about giving up control or
20 something or other. And I said, "That's none of my
21 business. I didn't even want to get into that with you."

22 So we just drove back and we just did basic chit-
23 chat and that was it. We shook hands and that was the end
24 of it.

25 JUDGE STEINBERG: Those are the questions that I

1 had, and hopefully there won't be much questioning on those
2 areas, at least the same things I'm asking him about
3 tomorrow.

4 Let's recess for the day, and we will resume at
5 9:00 a.m., tomorrow.

6 Off the record.

7 (Whereupon, at 4:47 p.m., the hearing was
8 recessed, to resume at 9:00 a.m., on Thursday, December 11,
9 1997.)

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

REPORTER'S CERTIFICATE

FCC DOCKET NO.: MM Docket No. 97-122

CASE TITLE: Gerard R. Turro

HEARING DATE: December 10, 1997

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 12/18/97

Shari R. Brown
Official Reporter
Heritage Reporting Corporation
1220 "L" Street, N.W.
Washington, D.C. 20005

TRANSCRIBER'S CERTIFICATE

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 12/18/97

Lyne Rose
Official Transcriber
Heritage Reporting Corporation

PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 12/18/97

Lois Adams
Official Proofreader
Heritage Reporting Corporation