

1 BY MR. HELMICK:

2 Q You are making available all the broadcast time on
3 WJUX to Bergen County Community Broadcast Foundation under
4 the network affiliation agreement, are you not, sir?

5 A Yes.

6 Q What was the purpose of the amendment to the
7 network affiliation agreement? What was that designed to
8 address, if you know?

9 A It obviously was not complete. It needed better,
10 for lack of a better work, better definition to what was
11 included in it.

12 JUDGE STEINBERG: When you say "it," what do you
13 mean?

14 THE WITNESS: The network agreement. I'm sorry.

15 JUDGE STEINBERG: So the network agreement needed
16 more -- something more in it?

17 THE WITNESS: Yes.

18 BY MR. HELMICK:

19 Q What was that something more? What was it
20 designed to do?

21 A It was designed so that it would meet the
22 requirements of the FCC for WJUX.

23 Q And what are those FCC requirements, sir?

24 A They are listed in the agreements.

25 JUDGE STEINBERG: In the amendment?

1 THE WITNESS: In the amendment. I'm sorry.

2 BY MR. HELMICK:

3 Q Mr. Weis, has MMBI ever deleted or preempted any
4 network programming under the network affiliation agreement?

5 A Yes.

6 Q And what programming is that?

7 A Commercials.

8 Q What commercials?

9 A Political.

10 Q Wait a minute.

11 Okay, so you preempted or deleted network
12 programming for political commercials?

13 A Yes.

14 Q When did that occur?

15 Is that within the last couple of months, the last
16 election?

17 A Yeah, actually, for this last election.

18 Q That's the first and only time you've ever
19 preempted network programming?

20 A Yes, I believe so.

21 Q Mr. Weis, I would like to give --

22 MR. HELMICK: Once again, Your Honor, there are
23 more copies, I believe. This is Bates stamped 432 from the
24 Mass Media Bureau record in the case, a one-page document
25 entitled "Guarantee of Payment."

1 JUDGE STEINBERG: Okay it's part of Bureau
2 Exhibit 21, page 432.

3 (Witness reviews document.)

4 BY MR. HELMICK:

5 Q have you had a chance to look at that, sir?

6 A Oh, yes. I'm sorry.

7 Q Okay. This document is dated 17 October 1994.
8 That is the same date as the basic network affiliation
9 agreement with Bergen County Community Broadcast Foundation
10 and MMBI?

11 A Yes.

12 Q How would you characterize -- well, let me back
13 up.

14 How did this document come into being? Was it
15 your idea?

16 A Yes.

17 Q Did you have assistance of FCC counsel or any
18 other counsel in preparing this document?

19 A No.

20 Q Did you draft this document yourself?

21 A I plagiarized it from something that was existing
22 in my files.

23 Q Okay. Is it your understanding that this document
24 constitutes a personal guarantee of Gerard Turro?

25 A Yes.

1 Q Whereby Mr. Turro unconditionally guarantees the
2 full and prompt payment by the network, meaning Bergen
3 County Community Broadcast Foundation, when due to MMBI as
4 successors and assigns for the full term of the network
5 affiliation agreement, and for all indebtedness, liabilities
6 and obligations of every nature and description, including
7 all attorney fees, costs and expenses of collection incurred
8 by MMBI.

9 A Yes.

10 Q What prompted you to have Mr. Turro give you this
11 personal guarantee, sir?

12 A Business decision.

13 Q Does a network affiliate usually get a personal
14 guarantee from a network, if you know?

15 A I wouldn't know.

16 Q Usually get a personal guarantee from a president
17 or principal of a network?

18 A I wouldn't know that either.

19 Q Were you concerned about the possibility of Mr.
20 Turro getting origination authority for the Fort Lee
21 translator and then dumping MMBI, or WJUX, as an affiliate?

22 A Not really. I knew about it.

23 Q Well, what was the purpose of this guarantee of
24 payments? You surely must have had some reservation about
25 the network agreement and receiving your full return on

1 investment, if you will.

2 A Well, reservation was with Mr. Turro's operations.
3 He could go broke.

4 Q Is that the only concern with his operations?

5 A We were just trying to guarantee payment back,
6 payment period.

7 JUDGE STEINBERG: When you say "we," who do you --

8 THE WITNESS: Myself, MMBI.

9 BY MR. HELMICK:

10 Q Were you concerned that we might be in a situation
11 like we are today and hearing over this matter, that
12 something like that might have occurred?

13 A That never occurred to me.

14 Q Okay. This personal guarantee, I believe, as it
15 states, it's up to a sum not to exceed \$400,000; is that
16 correct?

17 A Yes.

18 Q How did you arrive at the \$400,000 limit?

19 A I don't recall.

20 Q Does that have anything to do with your business
21 plan?

22 A Oh, I'm sure that it does. But how that number
23 came about, I don't know.

24 Q But it is related to your business plan, though?

25 A I would say so, yes

1 Q Yes. Early on in your testimony you stated that,
2 well, let me not characterize it.

3 You made reference to a 1991 Commission letter or
4 decision which -- well, you made reference to a 1991 letter
5 from Mr. Roy Stewart.

6 Do you recall that?

7 A Yes.

8 Q When you had discussions, when Mr. Turro came to
9 you about the possibility -- proposed that you acquire the
10 Monticello CP, he made reference to this 1991, January 1991
11 Commission letter -- excuse me -- November 1991 Commission
12 letter, which -- did he not?

13 A Yes.

14 Q And what did he say -- what was his understanding
15 or what did he tell you about this 1991 letter from the
16 Commission?

17 A That it was prior approval from the FCC to
18 construct this facility and bring this operation up to
19 completion.

20 Q Did he show you a copy of the 1991 letter at that
21 time?

22 A I believe he did.

23 Q Were you aware that the 1991 Commission letter was
24 addressed to Koteen & Naftalin?

25 A No.

1 Q Did you accept Mr. Turro at his word that this
2 Commission letter would approve a situation whereby
3 transmitter operator could broker 100 percent of the time,
4 or enter into a network affiliation agreement for 100
5 percent of the time of a primary FM broadcast station?

6 A Yes.

7 Q Is there any difference in your mind, sir, between
8 a network affiliation agreement such as you have with the
9 Bergen County Community Broadcast Foundation and a time
10 brokerage agreement?

11 A I don't know. I don't know what a time brokerage
12 agreement is.

13 THE WITNESS: Excuse me. I have a question. I
14 have to back up three questions. There is something
15 bothering me about the answer I gave.

16 JUDGE STEINBERG: Go ahead.

17 THE WITNESS: You asked me if Turro showed me a
18 copy of the network affiliation agreement.

19 JUDGE STEINBERG: No, the letter from Roy Stewart.

20 THE WITNESS: The letter from Roy Stewart, I'm
21 sorry.

22 Could you put a time frame on that? That's why I
23 am --

24 BY MR. HELMICK:

25 Q I asked you specifically in the time frame where

1 you were discussing the acquisition of the construction
2 permit for the Monticello station, did Mr. Turro show you a
3 copy of the November 19, 1991, letter from Roy Stewart to
4 Koteen & Naftalin?

5 A At the first meeting, the answer is no. But he
6 did show it to me at some time.

7 JUDGE STEINBERG: Some time between the first
8 meeting and today?

9 THE WITNESS: Yes.

10 BY MR. HELMICK:

11 Q Was it early on before the application was filed
12 to acquire the permit?

13 A I can't be sure, but I would believe so.

14 MR. HELMICK: I'm going to give the witness a copy
15 of that letter, Your Honor, which is Bates stamped 437 and
16 438.

17 JUDGE STEINBERG: Okay, again, that's part of Mass
18 Media Bureau Exhibit 21.

19 (Witness reviews document.)

20 BY MR. HELMICK:

21 Q Have you had a chance to look at that, Mr. Weis?

22 A Yes.

23 Q All right. You will notice that numbered item
24 three there is an indented portion, and indented item three
25 says that "The translator licensee would purchase air time

1 on a primary broadcast station through a time brokerage
2 agreement."

3 Do you see that?

4 A Yes.

5 Q And subsequently in the letter on page 2, the
6 Commission refers in the second full paragraph starting
7 with, "Regarding brokerage fee arrangements," they are
8 clearly talking in there, they reference the fact that
9 purchase of a block of time from the primary station
10 licensing.

11 Do you see that?

12 A Yes.

13 Q You don't have a time brokerage agreement with
14 Bergen County Community Broadcast Foundation, do you, sir?

15 A I can't answer that because I don't know if the
16 network affiliation agreement represents a time brokerage
17 agreement.

18 Q When you saw this letter did you notice that this
19 letter talks about a time brokerage agreement as opposed to
20 a network affiliation agreement?

21 A No.

22 Q And you never raised that distinction with Mr.
23 Turro?

24 A No. "Agreement" is the key word when I viewed it.

25 Q Agreement.

1 Did you ever discuss with your counsel, Koteen &
2 Naftalin, at that time the distinction between a network
3 affiliation agreement and a time brokerage agreement?

4 MR. RILEY: Your Honor, I understand this to be
5 within the area that Mr. Weis waived privilege to, the
6 formation of the network affiliation agreement.

7 JUDGE STEINBERG: Is that correct, Mr. Helmick?

8 MR. HELMICK: Yes.

9 JUDGE STEINBERG: Okay.

10 THE WITNESS: No.

11 BY MR. HELMICK:

12 Q So you were -- when Mr. Turro told you that based
13 upon this 1991 Commission letter from Roy Stewart to Koteen
14 & Naftalin, he told you that that Commission letter
15 authorized the arrangement he was proposing to enter into
16 with Monticello Mountaintop Broadcasting, Inc., the network
17 affiliation agreement, you understood him to say -- you were
18 relying upon Mr. Turro's representations that the Commission
19 had approved that arrangement, were you not, sir?

20 A Yes.

21 JUDGE STEINBERG: Let me just ask, in your own
22 mind you don't know the distinction between a time brokerage
23 agreement and network affiliation agreement?

24 THE WITNESS: That's correct.

25 JUDGE STEINBERG: And that as far as you're

1 concerned, the word "agreement" is sufficient to include
2 whatever arrangement you have within the terms of Mr.
3 Stewart's November '91 letter?

4 THE WITNESS: Yes.

5 BY MR. HELMICK:

6 Q Mr. Weis, if you know, who was it that proposed a
7 network affiliation agreement as opposed to a time brokerage
8 agreement? Did Mr. Turro present the network agreement to
9 you?

10 A I -- I can't say as opposed to. Mr. Turro did
11 present me with the network affiliation agreement.

12 Q All right. Did Mr. Turro ever discuss with you
13 any -- did Mr. Turro ever tell you about any discussions
14 with Koteen & Naftalin as to why the agreement took the form
15 of a network agreement as opposed to a time brokerage
16 agreement?

17 A No.

18 JUDGE STEINBERG: On page 1 of your statement,
19 this is MMBI Exhibit 1, the fourth line from the bottom you
20 used the term "authorized the translator station to act as
21 the time broker."

22 Now, what did you mean by the term "time broker"
23 as you used it in your own statement?

24 I only ask hard questions.

25 THE WITNESS: I know.

1 It was a bad choice of words.

2 JUDGE STEINBERG: Well, what did you mean by it?

3 THE WITNESS: It should have said "network," I
4 believe.

5 Let me read this once over once.

6 JUDGE STEINBERG: Yes, take your time.

7 (Witness reviews document.)

8 THE WITNESS: No, that's correct as it stands.
9 I'm sorry.

10 JUDGE STEINBERG: Okay, but what -- you basically,
11 you said a couple of times, I think, that you don't know
12 what a time brokerage agreement is.

13 THE WITNESS: Yes.

14 JUDGE STEINBERG: But yet you used the term in
15 your statement "time broker," and I'm wondering if you can
16 explain what, if you know what a time broker is, and what
17 that term means in the context of the sentence on page 1?

18 THE WITNESS: I believe it was just taken as words
19 from this original FCC letter and still I would constitute
20 a time broker as, again, the network affiliation agreement.
21 If it said "time brokerage agreement," I wouldn't for sure.

22 BY MR. HELMICK:

23 Q Mr. Weis, just a follow-up question on Judge
24 Steinberg's question to you.

25 Turn to page 2 of your statement, MMBI Exhibit 1,

1 the first paragraph at the top where you're discussing Mr.
2 Stewart's 1991 letter, and you say that, "This appeared on
3 my analysis to be a good business opportunity that had been
4 specifically approved in advance by the Chief of the Mass
5 Media Bureau."

6 Now, I'm focusing on the word "specifically."
7 Now, you have looked at Mr. Stewart's letter and it talks in
8 terms of a time brokerage agreement; specifically in terms
9 of a time brokerage agreement.

10 It does not discuss a network affiliation
11 agreement in there, does it, sir?

12 A No.

13 Q I'll take you back for just a minute on your -- on
14 your business plan. Your business plan, if I understand it,
15 took all your capital and operating expenses, and you built
16 in a profit, a return on your investment, and you came up
17 with a number which would pay all your expenses, meet all
18 your capital and operating expenses and give you a return on
19 your investment, and that's how you derived the payments
20 that Bergen County Community Broadcast Foundation would have
21 to pay MMBI; is that correct, sir?

22 A Yes.

23 Q And you had, in addition to the network
24 affiliation agreement, you had a personal guarantee of Mr.
25 Turro to make good on the terms of the network affiliation

1 agreement for the entire term of the agreement, up to a
2 maximum of \$400,000; is that correct, sir?

3 A Yes

4 Q As a station owner, where is your risk or exposure
5 in this type of an arrangement? And you're selling --
6 remember, your business plan is based on the sale of no
7 local broadcast, commercial broadcast time. You're relying
8 strictly upon network payments to meet your goals.

9 Where is your risk sir?

10 A If the programming is no longer available because
11 Mr. Turro's business fails, I would have a problem, and
12 that's what the personal guarantee was for.

13 Q But you have a personal guarantee though.

14 A Now I have a personal guarantee.

15 Q Thank you, sir.

16 JUDGE STEINBERG: Now, if Mr. Turro himself goes
17 broke, then you are out of luck

18 THE WITNESS: Yes.

19 BY MR. HELMICK:

20 Q October 17, 1994, you enter into this network
21 affiliation agreement with Bergen County Community Broadcast
22 Foundation, correct, sir?

23 A Yes.

24 Q You closed and purchased the network affiliation
25 agreement construction permit on October 18, 1994, correct,

1 sir?

2 A Yes.

3 Q And three days later, on October 21, 1994, what
4 was then WXTN, which is now WJUX, went on the air; is that
5 correct, sir?

6 A Yes.

7 Q Did you essentially build the entire station in
8 three days, or was some -- were you involved in work to put
9 the station, get the station ready to go on the air prior to
10 closing on the purchase of the construction permit?

11 A We built the entire thing in two days. All the
12 equipment was on order, on standby. This is my business.

13 Q Was there a reason why you wanted to get this
14 station on the air so quickly?

15 A Winter is coming, number one. Number two, the
16 sooner it's on the air, the sooner I get money.

17 Q Did the decision to put the station on the air in
18 such a short period of time have anything to do with selling
19 commercial time for the political season in New Jersey, the
20 November 1994 elections?

21 A No, not to my recollection.

22 Q You don't recall Mr. Turro pressing to get the
23 station on the air so he could sell commercial time for
24 political spots?

25 A He wanted it on the air, but I'm not going to

1 agree with the commercial spots. He may have said that --
2 I'm sorry -- political spots -- but I don't recall that.

3 JUDGE STEINBERG: Okay. what don't you recall?

4 THE WITNESS: That it was specifically so he could
5 play political spots.

6 BY MR. HELMICK:

7 Q Did he want it on the air so he could start
8 selling commercial time? Let's limit it to that.

9 A Oh, yes.

10 Q So part of your decision to get it on the air so
11 quickly was so you could start getting money on a network
12 agreement and Mr. Turro could start selling commercial time
13 on whatever arrangement he had?

14 A Yes.

15 Q What role did Mr. Turro play in the construction
16 of what is now WJUX? What did he do in the three-day period
17 that it took to get this station ready and on the air?

18 A Basically, got all of his network audio equipment
19 squared away in the racks; got all the testing done so that
20 everything worked.

21 Also, he was the chief operator at that point of
22 the station, so he certainly took an interest in what we
23 were doing with the transmitter and the electrical wiring
24 and remote control.

25 Q Do you recall, sir, you employed -- initially, you

1 employed both Mr. Blabey and Carol Montana as consultants;
2 is that correct, sir?

3 A Yes.

4 Q Why did you -- who suggested that they be -- that
5 their title or role be as a consultant rather than as an
6 employee?

7 A Mr. Blabey.

8 Q What did Mr. Blabey tell you in this regard?

9 A It just had to do with personal tax reasons;
10 income tax reasons.

11 Q Have you ever heard of the cross-interest policy
12 of the Commission? Do you know what that is?

13 A No.

14 Q Mr. Blabey ever tell you that he could not be an
15 employee as opposed to a consultant, could not be an
16 employee of two competing radio stations in the same market?

17 A No.

18 Q Specifically, not just an employee, but a general
19 manager of two competing radio stations in the same market?

20 A No.

21 Q You paid Mr. Blabey a fee of \$100 per week as a
22 consulting fee; is that correct, sir?

23 A Yes.

24 Q Is that fee, is it the same amount of money that
25 you're paying him today as you paid him initially? Has that

1 fee increased or decreased?

2 A That's the same.

3 Q The same.

4 And the same would true of Ms. Montana, you paid
5 her a fee of \$25 per week, and that has not changed?

6 A No, she gets -- she is paid by the month.

7 Q Would that be \$100 a month?

8 A No, it's \$125. She had an increase.

9 Q She had an increase

10 How long have you been Mr. Turro's landlord, so to
11 speak -- let me back up.

12 The Jukebox studio at 75 2nd Street, Dumont, New
13 Jersey, the building those studios are in, you own that
14 building, sir?

15 A Yes, with my wife.

16 Q And how long have you and your wife owned that
17 building?

18 A I -- December of 1986.

19 Q Does Jukebox Radio occupy the entire building?

20 A Yes.

21 Q And have they done so since 1986?

22 A No.

23 Q When did they become your tenant?

24 A I believe, 1990, 1991. I'm not sure.

25 Q Do you know what Jukebox Radio's operations -- did

1 they occupy the entire building from whatever date it was
2 that they became your tenant?

3 A No.

4 Q Initially, when they first became your tenant,
5 what space did they occupy and what facilities were there?

6 A They occupied the second floor.

7 Q Do you know what facilities were on the second
8 floor at that time?

9 A Some offices and a bath room.

10 Q Did they have any production studios?

11 A I'm sorry?

12 Q Any production studios?

13 A Were they there, or did we build them?

14 Q No. Were they there when they --

15 A No.

16 Q At what point in time did Jukebox begin to use
17 production studios in the 75 2nd Street building?

18 A From the beginning.

19 Q Do you know where the programming -- the
20 programming they were producing or whatever program it was,
21 do you know what it was for?

22 A I believe it was for the Franklin Lakes station.

23 Q And this was in 1990 or 1991?

24 A Again, it's my best recollection.

25 Q Do you know if the Franklin Lakes station is

1 currently on the air?

2 A No.

3 MR. NAFTALIN: Your Honor, could we just lodge a
4 continuing -- if this is contextual, it's not intended for
5 any direct purpose, we don't object to it, but we would have
6 a continuing objection --

7 MR. HELMICK: That's understood.

8 MR. NAFTALIN: -- to the truth of the matter.
9 Okay.

10 JUDGE STEINBERG: The witness said he didn't --
11 you didn't know if they were still on the air?

12 THE WITNESS: Right, I don't know.

13 JUDGE STEINBERG: Okay.

14 THE WITNESS: Excuse me.

15 Can I make notes?

16 JUDGE STEINBERG: Sure.

17 MR. RILEY: If you don't object, Your Honor.

18 JUDGE STEINBERG: Why do I care?

19 MR. RILEY: But don't make notes on your --

20 THE WITNESS: Do you have a piece of paper?

21 MR. RILEY: Can I give the witness --

22 JUDGE STEINBERG: Sure.

23 MR. ARONOWITZ: I'll give him a couple.

24 MR. RILEY: May I talk to the witness a moment,

25 Your Honor --

1 JUDGE STEINBERG: Yes.

2 MR. RILEY: -- about making notes?

3 JUDGE STEINBERG: Let's go off the record.

4 (Pause off the record.)

5 JUDGE STEINBERG: We will go back on the record,
6 and we'll just keep going.

7 Okay, do you want to make your statement now?

8 MR. RILEY: I just wanted to indicate that the
9 witness has told me he does not intend to make notes, Your
10 Honor.

11 JUDGE STEINBERG: Okay

12 BY MR. HELMICK:

13 Q Mr. Weis, at some point you were co-owner with Mr.
14 Turro in the Pomona, New York, translator; is that correct?

15 A Yes.

16 Q When did the discussion first come up about the
17 need for you to divest your interest in that translator
18 station? Was it after the WJUX construction permit
19 application, assignment and application was filed or before
20 it was filed?

21 A It was in October of 1994.

22 Q October 1994.

23 So is it fair to -- given the fact that WXTM, WJUX
24 went on the air on October 21 of '94, using that as a
25 reference date, when did the first discussion come up about

1 you needing to divest your interests in the Pomona
2 translator?

3 A Two weeks prior to that, maybe.

4 Q And who told you that you had to divest your
5 interest? Why did you have to do that?

6 A I don't know who told me. It came up in a
7 discussion. I really don't remember who the discussion was
8 with and who was there. I just -- it came up. I don't know
9 by anyone -- by who it was.

10 Q Did your counsel tell you?

11 A No.

12 Not initially, is that what your question is?

13 Q Yes.

14 A No.

15 Q Was your ownership in Pomona something that had
16 kind of fallen through the crack, so to speak?

17 No one had ever focused on it up until right
18 before WJUX went on the air?

19 A As to?

20 Q Whether or not you could be a part owner of that
21 translator facility, being outside -- first, let me lay a
22 foundation.

23 Was Pomona outside the 1 mill primary, 1.0
24 millimeter contour for WJUX?

25 A Yes.

1 Q Is it your understanding that as the owner of WJUX
2 you could not own a translator station beyond your 1 mill
3 contour of the WJUX station?

4 A That's -- and rebroadcast WJUX, is that the --

5 Q That's correct.

6 A Okay. Yes.

7 Q And where is your understanding -- where does that
8 understanding come from?

9 A At this point, general knowledge.

10 Q Do you know, sir, when -- you filed an application
11 to divest your interest or transfer control of the Pomona
12 translator to Mr. Turro at some point in October of 1994; is
13 that correct?

14 A I don't know when the application was filed.

15 Q But it was filed somewhere around that time frame?

16 A Yes.

17 Q Is it not true that as of January 10, 1995, you
18 actually transferred your ownership interest in the Pomona
19 translator to Mr. Turro pursuant to Commission authority?

20 A I'm not trying to be a wise --

21 Q No, accept the date subject to check. I have
22 taken it out of the --

23 A It's the nature of your question.

24 Q Okay.

25 A "Is it not true."

1 Q All right.

2 A You can say "is it true" or --

3 MR. ARONOWITZ:

4 Q Is it true that --

5 A It turns it around on me.

6 Q You got me.

7 Is it true that, accept subject to check, that on
8 January 10, 1995, you transferred your ownership interest in
9 the Pomona FM translator to Mr. Turro pursuant to Commission
10 authority?

11 A Yes.

12 Q Do you understand the FCC rules to preclude any
13 kind of a business relationship between a primary station
14 owner and a FM translator licensee when that translator
15 license is outside the primary contour of the FM station?

16 JUDGE STEINBERG: I think you're going to have to
17 put a time frame on it because I think we what his
18 understanding then, when he entered into this arrangement.

19 MR. HELMICK: All right.

20 JUDGE STEINBERG: And then -- because his
21 understanding to day --

22 MR. HELMICK: I understand.

23 JUDGE STEINBERG: -- there has been an intervening
24 letter.

25 BY MR. HELMICK:

1 Q In the period October 1994 through January 1995,
2 within that time period, was it your understanding that so
3 long as you divested your interest in the Pomona station
4 that resolved any possible question about your business
5 relationship with Mr. Turro, by divesting that interest that
6 resolved the issue?

7 A I divested of that translator because I could not
8 broadcast my own program.

9 Q At that time did you have any understanding as to
10 whether the Commission rules precluded any other kind of
11 business arrangement between the translator operator and the
12 primary station?

13 A No.

14 Q And at some point, accept the date subject to
15 check, but I am taking it out of the admissions, on April
16 14, 1995, WXTM, Monticello, New York, changed its call
17 letters to WJUX; is that correct sir?

18 A April 14th?

19 Q April 14, 1995.

20 A Yes.

21 Q Do you know how that came about, sir, the call
22 sign change?

23 A Yes.

24 A Can you tell us?

25 A Call signs became available, and I instructed