

Federal Communications Commission

Docket No. 92-122 Exhibit No. MMB-3

Presented by FCC

Identified

Disposition

Received

Rejected

Reporter GR

Date 11-24-97

ORIGINAL

*Jules Cohen, P.E.*  
*Consulting Engineer*

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Engineering Statement  
Universal Broadcasting of New York, Inc.

Page 2

height above average terrain of 91 meters. Transmitter site coordinates are: 41° 45' 09" North, 74° 43' 01" West (1927 Datum). W276AQ is licensed to operate on channel 276D (103.1 MHz) with maximum effective radiated power of 35 watts, with directional antenna, and height above average terrain of 136 meters. Transmitter site coordinates are : 40° 51' 15" North, 73° 59' 00" West (1927 Datum). The distance from WJUX to W276AQ is 117.2 kilometers (72.8 miles). As shown on the terrain profile graph included herein as Figure 1, the path from WJUX to W276AQ is blocked by two major obstacles, both introducing substantial diffraction losses.

An analysis employing Longley-Rice, Version 1.2.2 methodology<sup>1</sup> shows that, for a median field, the excess path loss over free space predictions is 57.4 dB, including a 10 dB factor to increase the confidence factor of the prediction. To convert from a median field strength to that predicted to be present for 90 percent of the time, an additional 10.4 dB margin is necessary<sup>2</sup>. Taking into account the foregoing factors, the signal strength predicted to exist at the Fort Lee translator from the WJUX transmission is 5.5 dBμ. For periods of time greater than 90 percent, the expected signal

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<sup>1</sup> G.A. Hufford, A.G. Longley and W.A. Hissick, *A Guide to the Use of the ITS Irregular Terrain Model in the Prediction Mode*, U.S. Department of Commerce, April, 1982, and January 30, 1985 modifications by G.A. Hufford.

<sup>2</sup> Determined by reference to FCC field strength data for 50 and 10 percent of the time for a path 117.2 kilometers in length. Advantage is taken of the symmetry of the field strength distribution curve. The 90 percent value is as far below the median as the 10 percent value is above the median.

*Jules Cohen, P.E.*  
*Consulting Engineer*

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Engineering Statement  
Universal Broadcasting of New York, Inc.

Page 3

strength would be even less. Such signal strength is marginal and subject to periods of severely degraded signal quality.

Exacerbating the WJUX reception problem at Fort Lee is the fact that WBAI(FM)<sup>3</sup> operates on channel 258, first adjacent to WJUX channel 259, at a site only 11.75 kilometers (7.3 miles) from the W276AQ location. A clear line of sight path exists between WBAI and W276AQ. The calculated field strength from WBAI at the W276AQ location is 91.8 dB $\mu$ , 86.3 dB greater than the calculated, 90 percent of the time signal strength from WJUX at Fort Lee. A combination of sophisticated filtering and antenna discrimination could not eliminate completely interference from this first adjacent channel station.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 9, 1997.



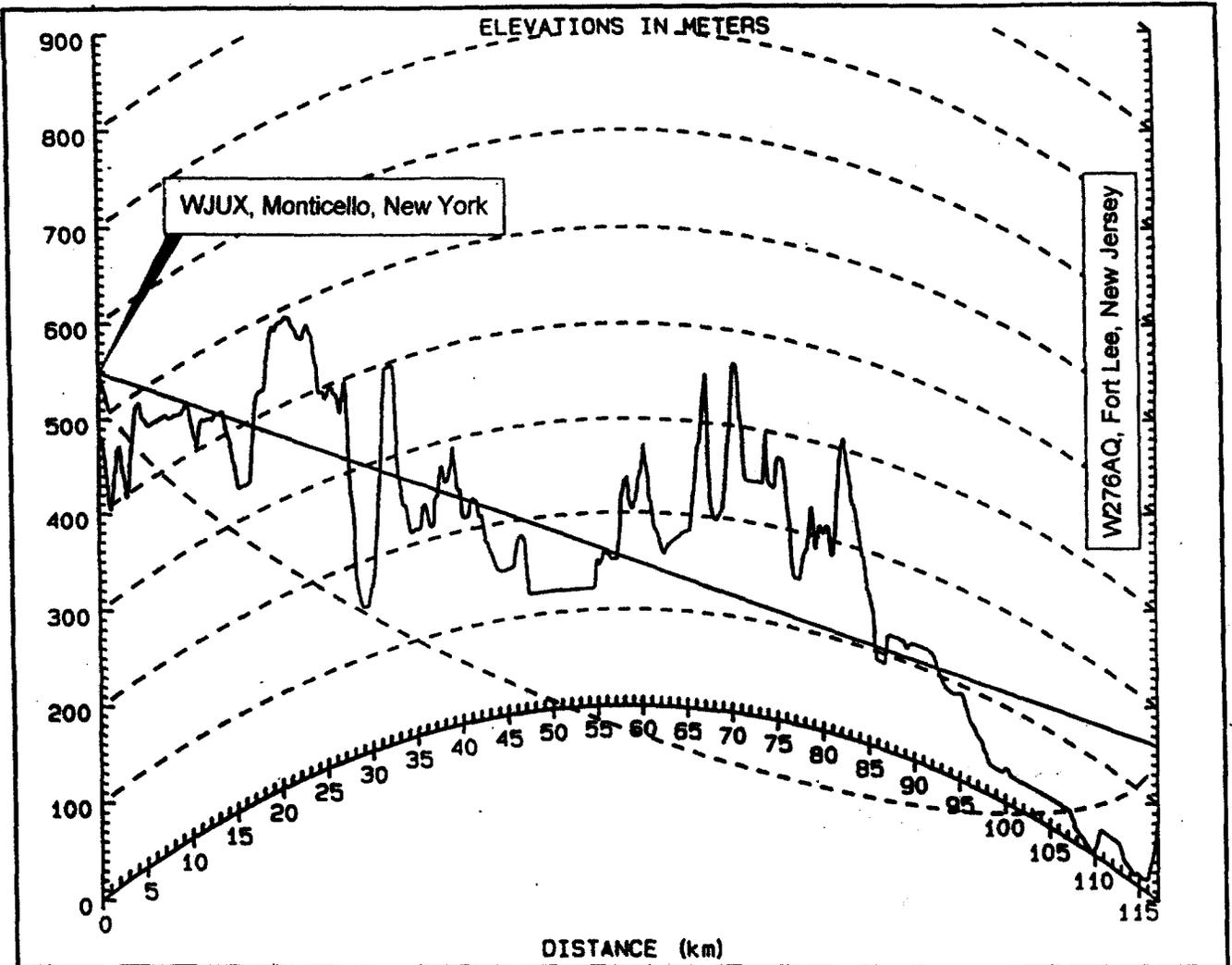
Jules Cohen, P.E.

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<sup>3</sup> WBAI, New York City, 4.3 kW ERP, 415 meters above average terrain, transmits from an antenna on the Empire State Building.

Figure 1

JULY 1997



Notes: Terrain data from 3 arc-second data base.  
4/3 earth radius assumes normal atmosphere.

TERRAIN PROFILE  
WJUX(FM) TO W276AQ  
Prepared for  
UNIVERSAL BROADCASTING OF NEW YORK, INC.  
Jules Cohen, P.E. Consulting Engineer

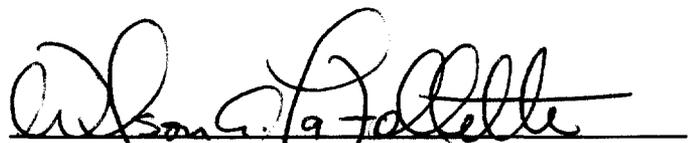
COHEN, DIPPELL AND EVERIST, P. C.

Statement of Wilson A. La Follette

1. I, Wilson La Follette, state as follows:
  
2. I am an electrical engineer with the firm of Cohen, Dippell and Everist, P.C., Consulting Engineers. I was previously employed for nearly 29 years with the Federal Communications Commission.
  
3. I have reviewed the February 10, 1995, engineering report submitted as part of the complaint filed on February 15, 1995, by Universal Broadcasting of New York, Inc., which is attached hereto. I affirm that the statements contained therein are true.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 22nd day of October 1997.

  
Wilson La Follette

ENGINEERING REPORT ON BEHALF OF  
UNIVERSAL BROADCASTING OF NEW YORK, INC.  
WVNJ(AM), 1160 KHZ, OAKLAND, NEW JERSEY

FEBRUARY 1995

COHEN, DIPPELL AND EVERIST, P.C.  
CONSULTING ENGINEERS  
RADIO AND TELEVISION  
WASHINGTON, D.C.

**000c34**

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington            )  
  ) ss  
District of Columbia         )

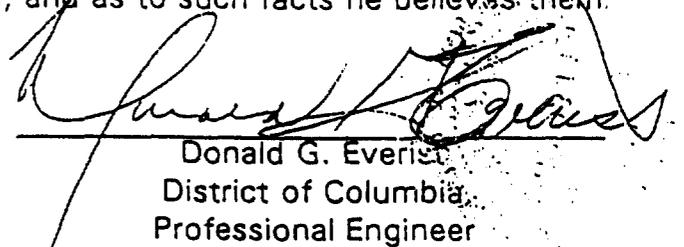
Donald G. Everist, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer, a Registered Professional Engineer in the District of Columbia, and is President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005;

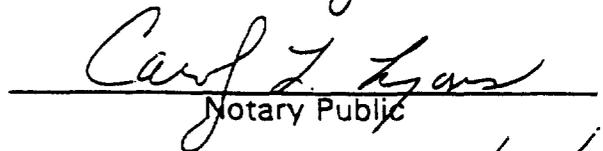
That his qualifications are a matter of record in the Federal Communications Commission;

That the attached engineering report was prepared by him or under his supervision and direction and

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.

  
\_\_\_\_\_  
Donald G. Everist  
District of Columbia  
Professional Engineer  
Registration No. 5714

Subscribed and sworn to before me this 10<sup>th</sup> day of February, 1995.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 2/28/98

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington            )  
  ) ss  
District of Columbia         )

Wilson A. La Follette being duly sworn upon his oath, deposes and states:

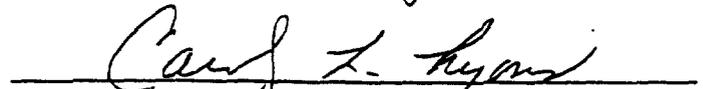
He is a graduate electrical engineer of the University of Arkansas, an engineer with the firm of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005; and previously employed for nearly 29 years with the Federal Communications Commission.

That his qualifications are a matter of record in the Federal Communications Commission;

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts, he believes them to be true.

  
Wilson A. La Follette

Subscribed and sworn to before me this 10<sup>th</sup> day of February, 1995.

  
Notary Public

My Commission Expires: 2/28/98



COHEN, DIPPELL AND EVERIST, P.C.

INTRODUCTION

This Report has been prepared on behalf of Universal Broadcasting of New York, Inc., licensee of radio station WVNJ(AM), 1160 kHz, Oakland, New Jersey. WVNJ(AM) reports that for several months FM translator station W276AQ (BLFT-9315TC), Fort Lee, New Jersey, has been observed operating in a non-traditional translator fashion which violates and abuses FCC rules and policies.

Cohen Dippell and Everist, P.C. ("CDE"), was requested by WVNJ(AM) to assist it in assessing W276AQ's operations. Wilson A. La Follette and Robert W. Guill, employees of CDE, and Mr. Terry Dalton, a technical consultant for WVNJ ("investigators"), performed measurements and monitoring observations related to some of W276AQ's technical operation on February 2, 1995.<sup>1/</sup>

BACKGROUND

Commercial FM translator station W276AQ is one of several FM translator stations licensed to Gerard A. Turro proximate to Bergen County New Jersey.<sup>2/</sup> W276AQ, operates on 103.1 MHz with a licensed maximum power of 35 watts ERP and an antenna height above average terrain (HAAT) of 140 meters.<sup>3/</sup> The current primary station associated with W276AQ is commercial FM station WXTM(FM),

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<sup>1/</sup>An affidavit dated February 7, 1995, is included for Mr. Guill attesting to his participation in the monitoring and measurements that were performed.

<sup>2/</sup>Other translator stations licensed to Gerard Turro in the general area are W232AL, Pomona, NY, and W276AV, Stamford, CT. Applications filed by Turro for Edgewater, NJ, and Hoboken, NJ, were dismissed or denied by the Commission. WJUX(FM), licensed for Channel 204D, Franklin Lakes, NJ, which is controlled by Turro also has a pending application for Channel 205D. A map in Figure 1 is included for convenience. W244AS, Oakhurst, NJ, previously licensed to Gerard Turro, has been transferred to Wesley R. Weis (BALPT-941019TD) who is the current licensee of WXTM(FM).

<sup>3/</sup>A map from the FCC files depicting the 1 mV/m (60 dB $\mu$ ) service contour for W276AQ is shown in Figure 2.

channel 259A, Monticello, Sullivan County, New York.<sup>4/</sup> W276AQ is well outside of the predicted 1 mV/m contour of WXTM(FM).

### SUMMARY OF OBSERVATIONS

Monitoring and measurements by the investigators show that the licensee of W276AQ is relaying aural programming material identified as "Juke Box Radio" from a studio located at 75 Second Street, Dumont, New Jersey, directly to FM translator station W276AQ(FM) and aired. This full-time local origination is being accomplished by use of a studio-to-transmitter-link (STL) operating on 95.1 MHz in violation of § 74.531 of the Commission's rules. W276AQ is also in violation of § 74.1231(b) of the rules because it is employing a direct program feed rather than direct reception of its primary station, WXTM(FM). Simultaneously, the identical aural programming material is aired by WXTM(FM).<sup>5/</sup> W276AQ and the Dumont studio are each located far outside of the WXTM(FM) 1.0 mV/m 60 dBu contour.<sup>6/</sup>

The investigators monitored the transmissions from W276AQ and it was observed that the programming for Juke Box Radio is fully oriented to the Bergen County and the proximate area of New Jersey with significant commercial spots sold to merchants in this area. Promotional announcements, commercials, news broadcasts, etc., aired by W276AQ give the appearance that the translator is a full-service FM station serving Bergen County. Such broadcasting practices and full time local origination clearly fall within the prohibited practices recited in the Report

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<sup>4/</sup>It appears that initially the primary station was WBAB-FM, Channel 272, Babylon, New York. It was subsequently changed to WJUX(FM). More recently it was changed to WXTM(FM).

<sup>5/</sup>It is assumed that the programming is sent to WXTM(FM) via telephone lines.

<sup>6/</sup>In its FCC 302-FM (File No. BLH-941031KD), WXTM(FM) listed the Dumont address as an alternate remote control point.

and Order in MM Docket No. 88-140, FCC 90-375 regarding the KBUR-AM/KGRS-FM case (see, paragraphs 36-41).

The investigators also observed through monitoring that FM translator station W232AL, Channel 232, Pomona, New Jersey, also licensed to Gerard Turro, was simultaneously carrying the programming for Juke Box Radio identical to that rendered on W276AQ.<sup>21</sup> Consequently, the programming practices of W232AL are also in violation of some of these same FCC rules and policies.

It does not appear that the required formal applications using FCC Form 349 have been filed to change the input channels of W276AQ and W232AL in accordance with § 74.1251(b)(6) of the rules.

In conclusion the operation and broadcasting practices of W276AQ and W232AL were observed by the investigators to be in flagrant violation of the FCC rules and policies and immediate action by the Commission is requested. We wish to note that W276AQ's operation has already attracted attention and if the FCC condones this operation it should be prepared for similar operations to "spring up like mushrooms" elsewhere.

#### DISCUSSION

Use of Studio-Transmitter-Link. Gerard A. Turro is authorized aural intercity relay station, WMG-499, 951 MHz, associated with W276AQ. The licensed transmitter location is 75 Second St, Dumont, New Jersey. The investigators observed a 951 MHz vertically polarized antenna installed at the Dumont address

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<sup>21</sup>The transmissions of W276AV were not monitored.

which is oriented in the direction of W276AQ.<sup>8/</sup> Moreover, over-the-air monitoring using a hand-held scanner revealed emissions on 95.1 MHz from the studio location which were identical to those being broadcast by W276AQ.<sup>9/</sup>

This clearly indicates that WMG-499 is being used as an STL to relay locally originated programming to W276AQ in violation of § 74.531 of the FCC rules. Moreover, broadcasting such program material by W276AQ is in violation of § 74.1231(b) of the FCC rules. This rule states:

"An FM translator may be used for the purpose of retransmitting the signals of a primary FM radio broadcast station or another translator station which have been received directly through space ..." (Emphasis added.)

An exception to this prescription in the rules pertains to non-commercial FM translators on reserved channels. A review of the engineering statement appended to Gerard Turro's application for WMG-499 indicates that W276AQ's primary station at the time of filing was non-commercial station WJUX(FM), Channel 204D, Franklin Lakes, New Jersey. It stated "the ICR will be used to feed 30-second spot announcement originations concerning financial support and operational communications from the WJUX(FM) studio to the W276AQ transmitter".

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<sup>8/</sup>The antenna appeared to be a Scala type MF960 or equivalent. Recent photographs taken by Mr. Dalton prior to February 2, 1995, which were provided to CDE show that a similar antenna oriented toward the Dumont studio is installed at the W276AQ transmitter site.

<sup>9/</sup>Other communications antennas were also noted on the roof of the Dumont studio, but their purpose or use was not determined.

COHEN, DIPPELL AND EVERIST, P.C.

Since then our research of FCC records indicates that the primary station for W276AQ was changed to commercial station WXTM(FM).<sup>10/</sup> In spite of the change of the primary station, the monitoring observations show that the STL is still being employed for full time local program origination.

Local Origination of Programming on W276AQ. As noted above, full-time local program origination by W276AQ through use of the STL, WMG-499, was observed by the investigators. The transmissions of W276AQ were observed to significantly exceed the limits and proscriptions contained in Section 74.1231(f) and (g) of the FCC rules in regard to local origination of aural material.

It was observed that the full-time locally originated programming for W276AQ is entirely oriented to Bergen County, New Jersey, and the surrounding area. Commercials, announcements, and other non-entertainment aural material broadcast all appear to be intended for listeners in the Bergen County area, and the operation has the appearance of a full-service FM station operating in and serving Bergen County. These practices are well demonstrated in the station promotional material and news clippings contained in the attached appendix regarding W276AQ's operation which were provided to the investigators by WVNJ(AM).

The investigators took particular note of these programming practices during their observations because it is believed that they are a clear example of unacceptable practices that the FCC discussed in the Report and Order in MM Docket No. 88-140, FCC 90-375. In paragraphs 36-41 of this R&O, the Commission discussed an

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<sup>10/</sup>We are aware that a letter was filed with the Commission advising of the change of the primary station. However, to our knowledge no formal application was filed with the FCC in accordance with § 74.1251(b)(6) of the rules. This rule requires formal application by FCC Form 349 any time the input or output frequency is changed. Changing the primary station to WXTM(FM) would require a change of the input frequency if direct reception is being employed.

example of an abuse of the 30-second limitation on FM translators which was alleged by KBUR-AM/KGRS-FM, Burlington, Iowa. The FCC stated in paragraph 41:

"As with the alleged abuses regarding ownership and financial support, we are also concerned by the purported abuses alleged by KBUR/KGRS. Therefore, we wish to emphasize that any Commission licensee which engages in a practice designed primarily to evade the 30-second limitation potentially subjects itself to the full panoply of Commission enforcement mechanisms. Indeed, because intentional evasion of Commission rules represents behavior which jeopardizes the Commission's ability to discharge its regulatory mandate, we view such behavior with particular disfavor."

**Measurement Observations.** Measurements and observations were performed by the investigators from the roof of the Hampshire House, 1590 Anderson Avenue, Whiteman Court, Fort Lee, New Jersey. The geographic coordinates of this location are North Latitude: 40° 51' 02" and West Longitude: 73° 58' 39". This test site is approximately 0.6 km southeast of the W276AQ transmitter location. The building roof used for the measurements is approximately the same height above ground and as free of obstructions as the W276AQ translator site and, based on experience, the investigators believe that the received signal levels on the two buildings are closely similar.

The following is a list of equipment used in conducting the measurements.

1. Hewlett-Packard, Spectrum Analyzer, Model No. 8591A
2. Scala CL-FM UCM, Yagi Receive Antenna (88-108 MHz) 50 ohms, SN 1194
3. Potomac Instruments, FIM-71, Field Strength Meter
4. Sony digital AM/FM receiver

**000103**

5. Radio Shack scanner
6. Carver, PSB-11 Synthesized Stereo Receiver
7. JPSNTR-1 DSP, noise/tone reducer (noise reduction unit)

Figure 3 contains a plot of the display for the HP spectrum analyzer centered on 99.7 MHz while connected to the Scala CL-FM antenna. The Scala antenna was carefully aligned towards the WXTM(FM) location when the plot was made.<sup>11/</sup> The plot shows that the direct received signal level of WXTM(FM) taken from the antenna is nominally -78 dBm (28  $\mu$ V). Also shown in the plot of the spectrum analyzer display is WBAI, Channel 258B (99.5 MHz), New York, New York, with a signal level of -40 dBm (2.24 mV). The ratio between WXTM(FM)'s received signal to WBAI's is approximately -38 dB, whereas, +6 dB is recognized in §73.215 of the FCC rules as the 1st adjacent channel ratio required to be interference free. The high quality Carver stereo receiver was connected to the Scala antenna oriented toward WXTM(FM) and it was observed that the direct received signal of WXTM(FM) was unusable for retransmission on W276AQ due to low signal strength and severe 1st adjacent channel interference from WBAI.

The investigators also noted that W232AL, Pomona, New York, was in operation and monitoring of the translator's signal showed that it was transmitting programming identical to that of W276AQ.<sup>12/</sup> Figure 4 is a plot of the HP spectrum analyzer with the Scala antenna oriented towards the W232AL transmitter site. It is shown that the received level taken from the antenna is -60 dBm (224  $\mu$ V). The signal of W232AL was monitored using the Carver receiver. The high aural quality and

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<sup>11/</sup>The manufacturer's specified gain for the antenna is 7 dB over a dipole with a 25 dB front to back ratio. This is considered typical of commercial FM yagi antennas.

<sup>12/</sup>FCC records indicate that the primary station for W232AL is WHTZ, Channel 262, Newark, New Jersey. To our knowledge no formal application has been filed to change the input frequency of the translator.

COHEN, DIPPELL AND EVERIST, P.C.

Report Regarding W276AQ, Fort Lee, NJ

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absence of noise observed may indicate that the Pomona W232AL translator is not retransmitting the signal of WXTM(FM). Instead, it may be retransmitting W276AQ or it may be receiving a direct program feed.

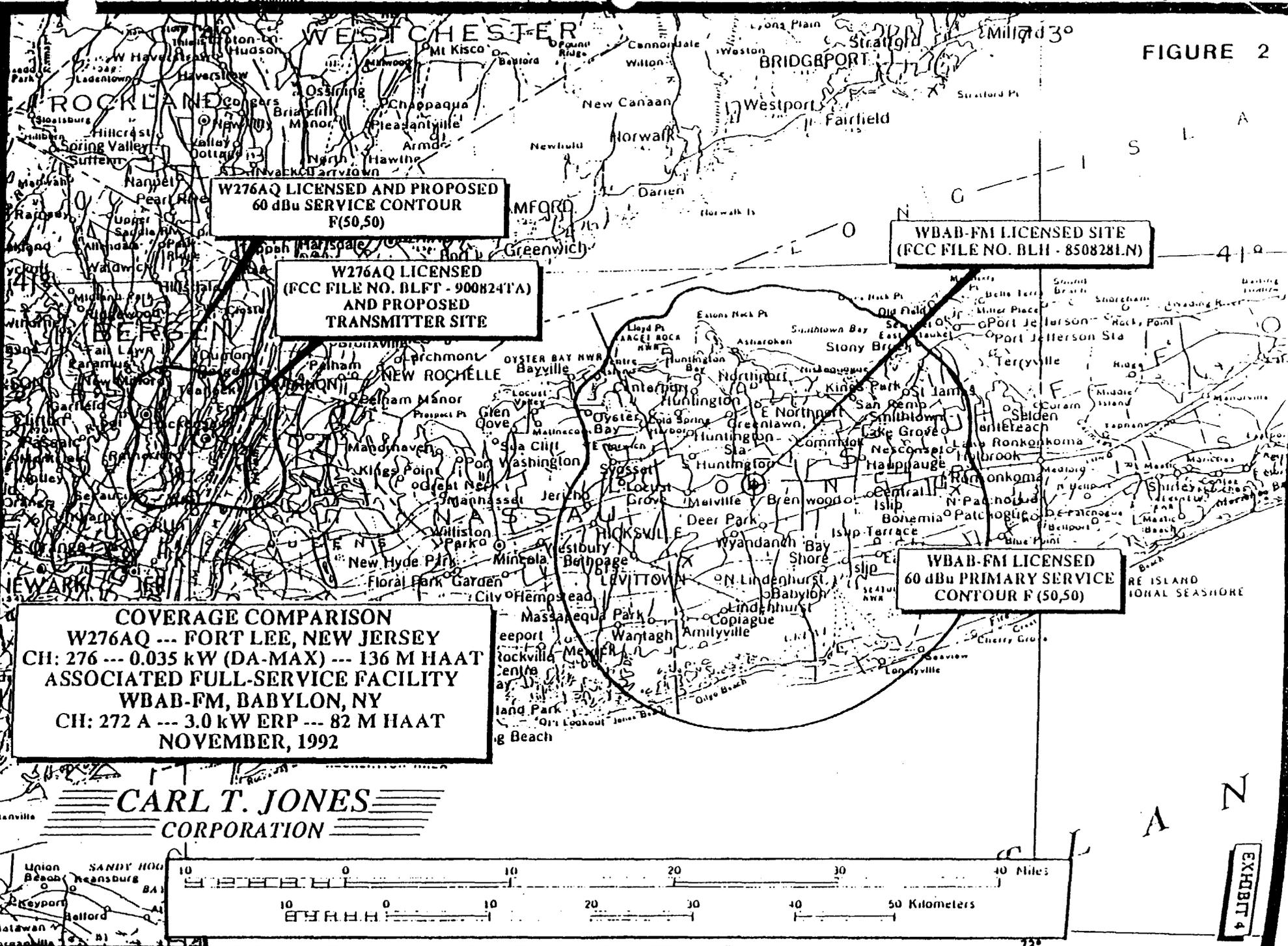
Monitoring observations were made from the site on 951 MHz. It was observed that 951 MHz emissions carrying the programming for Juke Box Radio were present at the building roof measurement site. Figure 5 is a plot of the spectrum analyzer display showing the presence of the emissions, however, the indicated signal levels are not relative since an antenna designed for 951 MHz was not employed.<sup>13/</sup>

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<sup>13/</sup>The Scala FM antenna was used.

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FIGURE 2



**W276AQ LICENSED AND PROPOSED  
60 dBu SERVICE CONTOUR  
F(50,50)**

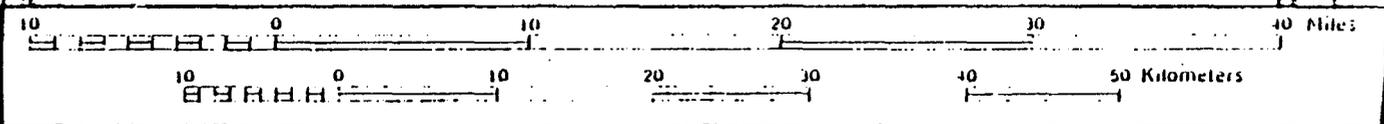
**W276AQ LICENSED  
(FCC FILE NO. BLFT - 9008241A)  
AND PROPOSED  
TRANSMITTER SITE**

**WBAB-FM LICENSED SITE  
(FCC FILE NO. BLH - 8508281.N)**

**WBAB-FM LICENSED  
60 dBu PRIMARY SERVICE  
CONTOUR F(50,50)**

**COVERAGE COMPARISON  
W276AQ --- FORT LEE, NEW JERSEY  
CH: 276 --- 0.035 kW (DA-MAX) --- 136 M HAAT  
ASSOCIATED FULL-SERVICE FACILITY  
WBAB-FM, BABYLON, NY  
CH: 272 A --- 3.0 kW ERP --- 82 M HAAT  
NOVEMBER, 1992**

**CARL T. JONES  
CORPORATION**

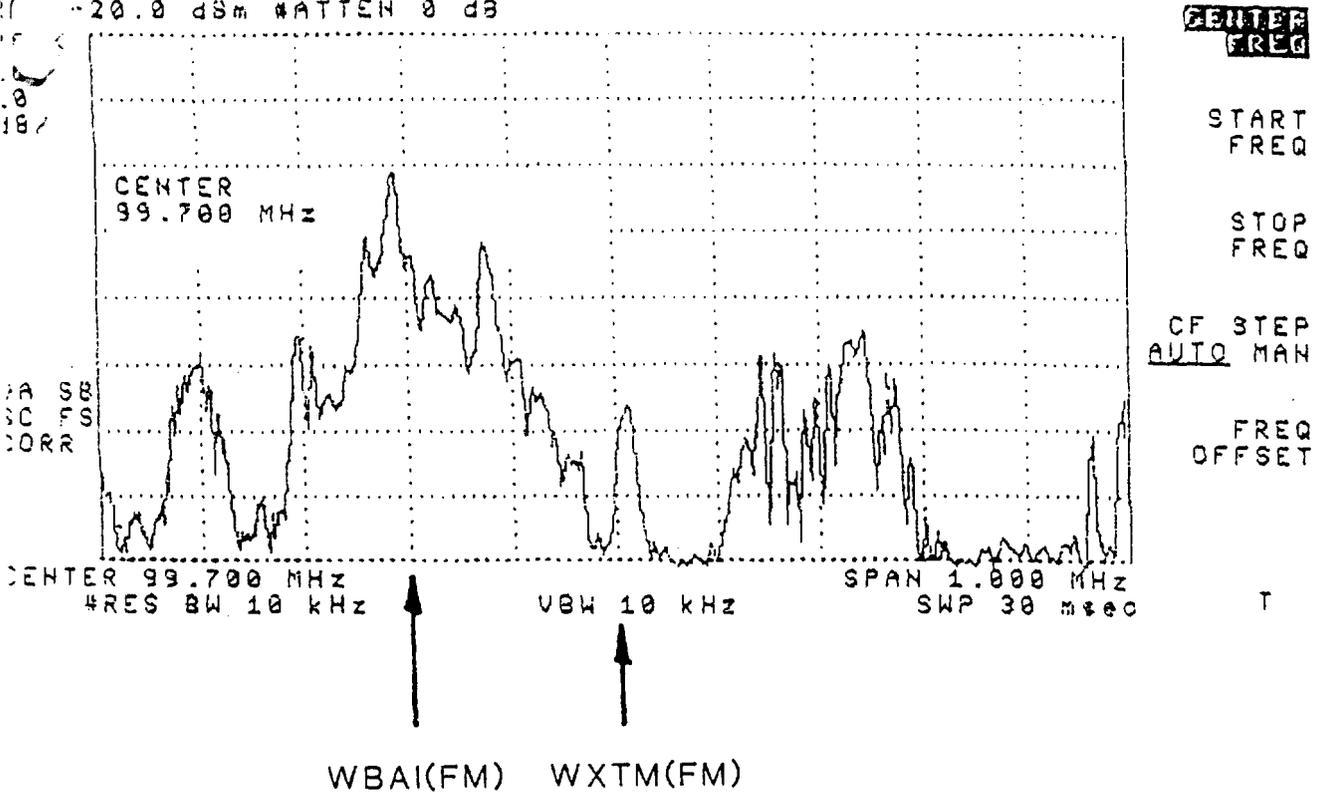


**EXHIBIT 4**

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FIGURE 3

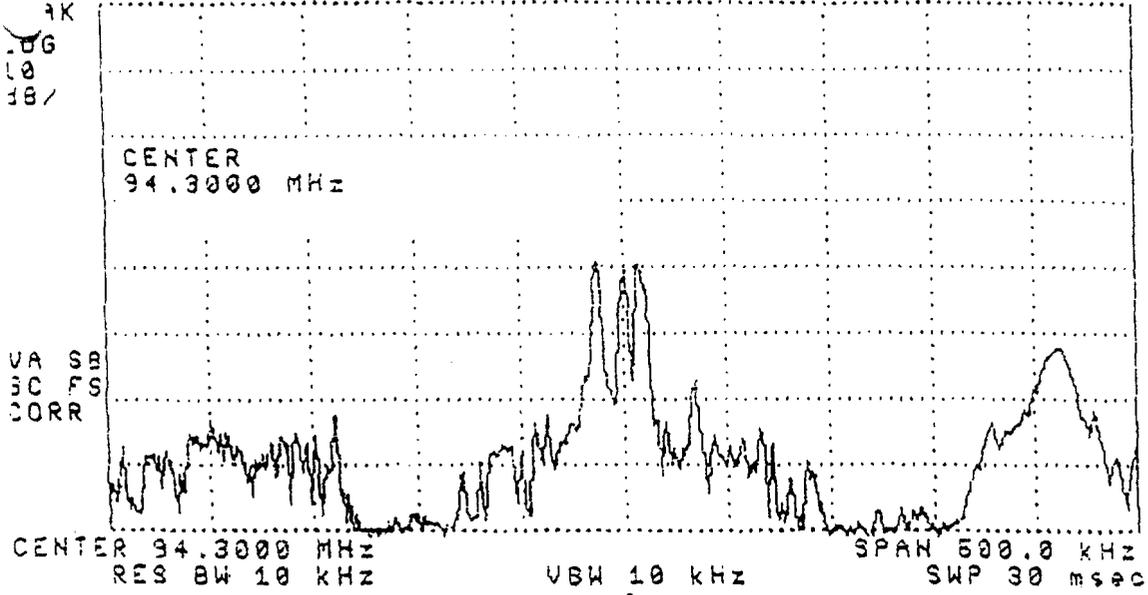
10:45:02 FEB 06, 1995  
15:04:19 FEB 02, 1995  
-20.0 dBm #ATTEN 0 dB



000107

FIGURE 4

10:46:17 FEB 06, 1995  
15109152 FEB 02, 1995  
-20.0 dBm #ATTEN 0 dB



CENTER FREQ

START FREQ

STOP FREQ

CF STEP AUTO MAN

FREQ OFFSET

T

↑  
W232AL

FIGURE 5

10:49:32 FEB 06, 1996  
15:23:67 FEB 02, 1995  
-20.0 dBm #ATTEN 0 dB

F K  
L 0  
10  
dB/

CENTER  
951.000 MHz

VA 98  
SC 79  
CORR

CENTER  
FREQ

START  
FREQ

STOP  
FREQ

CF STEP  
AUTO MAN

FREQ  
OFFSET

CENTER 951.000 MHz SPAN 1.000 MHz  
RES BW 10 kHz VBW 10 kHz #SWP 30 msec



STL

000109

MMB EX.6

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington )  
 ) ss  
District of Columbia )

Wilson A. La Follette being duly sworn upon his oath, deposes and states:

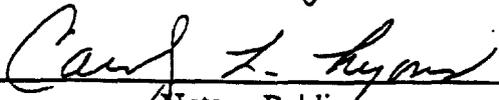
He is a graduate electrical engineer of the University of Arkansas, an engineer with the firm of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005; and previously employed for nearly 29 years with the Federal Communications Commission.

That his qualifications are a matter of record in the Federal Communications Commission;

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts, he believes them to be true.

  
Wilson A. La Follette

Subscribed and sworn to before me this 10<sup>th</sup> day of February, 1995.

  
Notary Public

My Commission Expires: 2/28/98

000036

Federal Communications Commission	
Docket No. <u>97-122</u>	Exhibit No. <u>HMB-6</u>
Presented by <u>fcc</u>	
Disposition	Identified <u>✓</u>
	Received <u>✓</u>
	Rejected _____
Reporter <u>[Signature]</u>	
<u>11-24-97</u>	

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington     )  
                                  ) ss  
District of Columbia )

Robert W. Guill being duly sworn upon his oath, deposes and states:

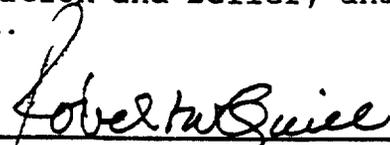
He is employed by the firm of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005;

His qualifications are a matter of record in the Federal Communications Commission;

He made measurements and observations as indicated in the attached engineering report.

Portions of the attached engineering report were prepared by him or under his supervision and direction and;

The facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts, he believes them to be true.

  
\_\_\_\_\_  
Robert W. Guill

Subscribed and sworn to before me this 7<sup>th</sup> day of February, 1995.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 2/28/98

## INTRODUCTION

This Report has been prepared on behalf of Universal Broadcasting of New York, Inc., licensee of radio station WVNJ(AM), 1160 kHz, Oakland, New Jersey. WVNJ(AM) reports that for several months FM translator station W276AQ (BLFT-9315TC), Fort Lee, New Jersey, has been observed operating in a non-traditional translator fashion which violates and abuses FCC rules and policies.

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## BACKGROUND

Commercial FM translator station W276AQ is one of several FM translator stations licensed to Gerard A. Turro proximate to Bergen County New Jersey.<sup>2/</sup> W276AQ, operates on 103.1 MHz with a licensed maximum power of 35 watts ERP and an antenna height above average terrain (HAAT) of 140 meters.<sup>3/</sup> The current primary station associated with W276AQ is commercial FM station WXTM(FM),

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<sup>3/</sup>A map from the FCC files depicting the 1 mV/m (60 dB $\mu$ ) service contour for W276AQ is shown in Figure 2.