

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

In re)
)
GERARD A. TURRO)
)
For Renewal of License)
for FM Translator Stations)
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

MM Docket No. 97-122
File Nos. BRFT-970129YC
BRFT-970129YD

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MASS MEDIA BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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I. Summary

This is a proceeding to determine whether the renewal applications of Gerard A. Turro ("Turro") for FM Translator Stations W276AQ(FM), Fort Lee, New Jersey, and W232AL(FM), Pomona, New York, should be granted. In addition, this proceeding is to determine whether the construction permit of Monticello Mountaintop Broadcasting, Inc. ("MMBI") for operating FM Radio Station WJUX(FM) ("WJUX"), Monticello, New York should be revoked. Based upon the evidence adduced at the hearing, the Mass Media Bureau submits that Turro's renewal applications should be denied, and that MMBI's construction permit should be revoked.

Turro violated Section 74.531(c) of the Commission's Rules by using his inter-city relay station to transmit aural program material directly to the Fort Lee translator. In addition, Turro violated Section 74.1231(b) of the Commission's Rules by transmitting Jukebox Radio programming directly to the Fort Lee translator rather than by rebroadcasting the over-the-air signal of its primary station.

MMBI violated Sections 73.1120 and 73.1125(a) and (c) of the Commission's Rules with respect to the maintenance of a main studio for WJUX. Specifically, WJUX's purported main studio lacks program transmission capability and a meaningful management-level staff presence. Further, that studio lacked a telephone from October 1994, until July 1995.

MMBI and Turro violated Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540(a) of the Commission's Rules by engaging in an unauthorized transfer of control of WJUX. Turro, not MMBI, was in control of WJUX from its inception.

Most significantly, Turro and MMBI misrepresented facts and lacked candor to the Commission with respect to material facts concerning the operations of the subject stations.

Accordingly, the Mass Media Bureau submits that Turro and MMBI both lack the requisite character qualifications to be or remain a Commission licensee/permittee. Accordingly, Turro's renewal applications should be denied, and MMBI construction permit should be revoked. Alternatively, if it is determined that denial of Turro's renewal applications or revocation of MMBI's construction permit is not warranted, the Mass Media Bureau recommends that the maximum forfeiture of \$250,000 be imposed against each party for their willful and/or repeated violations of Sections 310(d) of the Communications Act of 1934, as amended, and Section 73.3540(a) of the Commission's Rules; for Turro's violations of Sections 74.531(c) and 74.1231(b); and for MMBI's violations of Sections 73.1120 and 73.1125(a) and (c) of the Commission's Rules.

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I. Preliminary Statement

1. By *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing*, 12 FCC Rcd 6264 ("*HDO*"), the Commission designated for hearing the renewal applications of Gerard A. Turro ("Turro") for FM Translator Stations W276AQ(FM), Fort Lee, New Jersey, and W232AL(FM), Pomona, New York. In addition, the Commission ordered Monticello Mountaintop Broadcasting, Inc. ("MMBI") to show cause why the construction permit for FM Radio Station WJUX(FM) ("WJUX"), Monticello, New York, should not be revoked.

2. The *HDO* at ¶ 21 designated the following issues pertinent to Turro:

(1) To determine whether Gerard A. Turro's operation of translator stations W276AQ (FM), Fort Lee, New Jersey, and W232AL (FM), Pomona, New York, violated Sections 74.531(c) and 74.1231(b) of the Commission's Rules with respect to the operation of translator stations.

(2) To determine whether Gerard A. Turro engaged in an unauthorized transfer of control, or otherwise exercised and/or continues to exercise *de facto* control over WJUX(FM), Monticello, New York, in violation of Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540(a) of the Commission's Rules.

(3) To determine whether Gerard A. Turro misrepresented and/or lacked candor to the Commission concerning the operation of translator stations W276AQ(FM), Fort Lee, New Jersey, and W232AL(FM), Pomona, New York.

(4) To determine whether, in light of the evidence adduced under the foregoing issues, the public interest will be served by the grant of the above-captioned renewal applications filed by Gerard A. Turro.

3. The *HDO* at ¶ 22, placed the initial burden of going forward with the introduction of evidence on issues 1 - 4 upon the Mass Media Bureau ("Bureau"). Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the *HDO* placed both the burden of proceeding and the ultimate burden of proof with respect to issues 1 - 4, upon Turro.

4. The *HDO* at ¶ 24 designated the following issues pertinent to MMBI:

(5) To determine whether Monticello Mountaintop Broadcasting, Inc. has violated and/or continues to violate Sections 73.1120 and 73.1125(a) and (c) of the Commission's Rules with respect to the maintenance of a main studio for Station WJUX(FM), Monticello, New York.

(6) To determine whether Monticello Mountaintop Broadcasting, Inc., engaged in an unauthorized transfer of control or otherwise abdicated control of Station WJUX(FM), Monticello, New York, to Gerard A. Turro or an affiliated entity in violation of Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540(a) of the Commission's Rules.

(7) To determine whether Monticello Mountaintop Broadcasting, Inc. and/or its agents misrepresented and/or lacked candor to the Commission concerning the operation of Station WJUX(FM), Monticello, New York.

(8) To determine whether, in light of the evidence adduced under the foregoing issues, Monticello Mountaintop Broadcasting, Inc. possesses the requisite qualifications to be or remain a Commission broadcast permittee.

5. The *HDO* at ¶ 25, placed the burden of proceeding with the introduction of evidence and the ultimate burden of proof upon the Bureau as to issues 5 - 8.

6. The *HDO* at ¶ 23 held in abeyance the pending application to assign the translator stations' licenses from Turro to Press Broadcasting Co. At ¶ 26, the *HDO* held in abeyance MMBI's application (BLH-941031KD) for a license to cover the construction of

WJUX's facilities. Finally, the *HDO* at ¶ 29 made Universal Broadcasting of New York, Inc. ("Universal") a party to this proceeding.

7. Hearing sessions were held in Washington, D.C., from December 3, 1997, through December 12, 1997. The record was closed on December 12, 1997. Tr. 2129. It was reopened on January 8, 1998, to receive Turro Exhibits 38, 39, and 40 and then reclosed. *Order*, FCC 98M-1, released January 12, 1998.

II. Proposed Findings of Fact

A. Overview

8. On January 23, 1986, Turro was granted a construction permit for a new FM translator station at Fort Lee, New Jersey. MMB Ex. 22, Admission 1. Turro's application for a license for W276AQ(FM), Fort Lee ("Fort Lee translator") was granted on March 27, 1986. MMB Ex. 22, Admission 2. From March 1986, until March 1993, the Fort Lee translator rebroadcast the signal of WPST, Trenton, New Jersey. Tr. 2055.

9. From March 1993, until October 25, 1994, the Fort Lee translator rebroadcast the signal of noncommercial FM Radio Station WJUX(FM) (later WNJW), Franklin Lakes, New Jersey.¹ Tr. 1821-22. WNJW aired Turro's Jukebox Radio programming, which was delivered to the Fort Lee translator via Turro's Inter-city Relay ("ICR") station WMG-499. MMB Ex. 9. When WJUX, Monticello, commenced operations and began broadcasting Jukebox Radio programming, WNJW went silent. MMB Ex. 8, p. 120; Tr. 2012, 2063. Commission records indicate that Turro surrendered that license and, at his request, the WNJW license was cancelled and its call letters deleted, by letter dated January 30, 1998, from the Audio Services Division. That station was licensed to Bergen County Community Broadcast Foundation ("BCCBF"). BCCBF is a non-profit entity controlled by Turro who is a founding member of its Board of Directors. MMB Ex. 22, Admissions 11 & 12.

¹ For ease of reference, this station will be identified throughout as WNJW.

10. From October 25, 1994, to the present, W276AQ has broadcast the programming of WJUX, Monticello, New York.² MMBI, an entity wholly owned by Wesley R. Weis ("Weis"), holds the construction permit for WJUX. MMB Ex. 11, p. 161; MMB Ex. 24, Admission 2.

11. FM 103, Inc., is a for-profit entity formed by Turro in order to sell advertising on the Fort Lee translator. Tr. 2045-46.

12. Between 1986 and 1991, Turro made several attempts to gain program origination authority for his Fort Lee translator. MMB Ex. 22, Admissions 4, 5, 6, 7 & 8; Tr. 1780-81; 2056. In 1986, Turro's request for a waiver of the Commission's rules to originate programming was denied by the Commission, and the United States Court of Appeals, District of Columbia Circuit denied review of the Commission's decision. *See Gerard A. Turro*, 2 FCC Rcd 6674 (1987), *aff'd sub nom. Turro v. FCC*, 859 F. 2d 1498 (D.C. Cir. 1988). MMB Ex. 22, Admissions 3, 4, & 5; Tr. 2056.

13. In 1989, Turro filed comments in response to an FCC Notice of Inquiry in MM Docket No. 88-140 regarding the use of FM translator stations. MMB Ex. 22, Admission 6. Ultimately, the Commission rejected Turro's proposal to amend the rules to permit the origination of local programming on translator stations. MMB Ex. 22, Admission

² The call sign for the station was changed from WXTM to WJUX on April 14, 1995. MMB Ex. 22, Admission 83. For ease of reference this station will be identified throughout as WJUX.

7. The Commission then denied Turro's petition for reconsideration of that decision. *See Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212, 7219-20 (1990), *recon. den.*, 8 FCC Rcd 5093 (1993). MMB Ex. 22, Admission 8; Tr. 2057.

14. In January 1991, Turro requested an informal ruling from the Bureau as to whether the rules permitted a translator station to purchase air time from a primary station that would be broadcasting the signal of the translator station under certain circumstances. MMB Ex. 1, Att. A, p. 6. In a response dated November 19, 1991 ("1991 Bureau Letter"), the Bureau informed Turro that his proposed operation of a translator station would be permissible, subject to certain provisos concerning the relationship between the translator station and the primary station. MMB Ex. 1, Att. B, p. 9. Upon receipt of the Bureau's letter, Turro set out to find a primary station. Turro Ex. 1, p. 3; Tr. 1727.

1. Acquisition of WJUX

15. In the summer of 1994, Larry Fishman ("Fishman"), permittee of a new FM station in Monticello, New York, contacted Turro about the possible sale of the construction permit. Turro Ex. 1, p. 3-4. Turro then contacted Weis about the construction permit. Turro Ex. 1, p. 4; Tr. 1337, 1730, 1823.

16. Fishman ultimately agreed to sell the construction permit to Weis for \$120,000.

MMBI Ex. 1, p. 2; MMBI Ex. 5; Tr. 1342, 1347, 1360. Weis closed the sale after Turro paid him \$40,000 as an inducement fee to sign a Network Affiliation Agreement ("NAA"), which provided that BCCBF would supply the station to be built by Weis with 100 percent of the programming, including commercial advertising, and that BCCBF would make monthly payments to Weis in exchange for the broadcast time. MMB Ex. 4, p. 85-6; MMB Ex. 24, Admission 16; Tr. 1347, 1409. In addition, Turro agreed to sign a personal Guaranty of Payment which provided that if for any reason BCCBF defaulted on its payments to MMBI or Weis, Turro remained personally responsible for the payments. MMB Ex. 11, p. 218. After the sale was closed, the station that became WJUX was built in two days and thereafter commenced operations.

17. Weis and Turro were joint owners of translator station W232AL(FM), Pomona, New Jersey. MMB Ex. 22, Admission 72; MMB Ex. 24, Admission 38; Tr. 1336. Under the Commission's Rules, Weis was required to divest his interest in the Pomona translator when it was used by Turro to rebroadcast the signal of WJUX. Tr. 1399-1400. On January 10, 1995, Weis transferred his ownership interest in the Pomona translator to Turro. Tr. 1401; Turro Ex. 1, p. 4-5.

2. The Complaint

18. On February 15, 1995, the Commission received a written complaint from Universal, licensee of Radio Station WVNJ(AM), Oakland, New Jersey. MMB Ex. 2.

Universal alleged that the Fort Lee translator was originating, not rebroadcasting, 100 percent of its program transmissions in violation of Section 74.1231(g) of the Commission's Rules. The complaint asserted that the programming on the Fort Lee translator was being transmitted from Turro's Jukebox Radio studio in Dumont, New Jersey via the ICR. Universal's complaint contained an engineering report claiming that the nature of WJUX's signal made it highly unlikely that it was being received over-the-air and rebroadcast on the Fort Lee translator. *Id.* at 35. Universal also claimed that Turro was simultaneously transmitting the Jukebox Radio programming to WJUX by broadcast conditioned telephone line to make it appear that the programming was going from Dumont to the Monticello station and then to the Fort Lee translator. Moreover, Universal charged that almost all the Jukebox Radio programming and commercials were directed to Bergen County, New Jersey, which was not within WJUX's service area. Thus, Universal concluded, Turro was operating the Fort Lee translator as a "primary" station in a manner contrary to the Commission's translator rules. Universal also maintained that Turro misled the Bureau in his January 1991, letter to the Bureau insofar as he did not accurately portray the proposed relationship between a primary station and the translator. Universal alleged that while Turro described the proposed operation as one in which the primary station would support the translator, Turro, in fact, intended to have the translator station support the primary broadcast station.

19. The Bureau referred Universal's complaint to the Compliance and Information Bureau ("CIB") on March 8, 1995, with a recommendation that CIB review the complaint and inspect the stations. MMB Ex. 3, p. 80; Tr. 494. As a result, Serge Loginow, Jr.

("Loginow"), a CIB field engineer, conducted an investigation of the WJUX studio and transmitter site on April 13, 1995, conducted signal tests and visited the Jukebox Radio studio in Dumont, New Jersey, on April 14, 1995, and, finally, performed additional signal tests at the Fort Lee translator on May 15, 1995. MMB Ex. 16; Tr. 336. Loginow prepared a report, entitled "Radio Station Inspection Report," describing his observations during these inspections. This report was then forwarded to the MMB with a cover memo. MMB Ex. 16, p. 253-54.

20. On June 21, 1995, the Bureau sent letters of inquiry (LOI) to Turro and MMBI. MMB Ex. 7; MMB Ex. 10. The LOI asked Turro questions concerning the operation of his translator stations in Fort Lee, New Jersey, and Pomona, New York, and his ICR in Dumont, New Jersey, and asked Turro to respond to allegations that he was originating all the programming transmitted by the translator stations from Jukebox Radio's studio located in Dumont, New Jersey. The LOI also inquired as to whether Turro was in control of Station WJUX. MMB Ex. 7. In response, Turro asserted that the programming produced in his Dumont studio was delivered via telephone to WJUX, which rebroadcast it pursuant to a network affiliation agreement between Turro and MMBI. The WJUX signal was then received off-air at the Pomona translator. The WJUX signal was then received by the Fort Lee translator from the Pomona translator. The ICR had been used, according to Turro, to provide telemetry to the Fort Lee translator, but had been deactivated pursuant to a letter from the Commission's Wireless Telecommunications Bureau ("WTB"). Turro also denied having any ownership interest in or control over WJUX. MMB Ex. 8.

21. The Bureau directed questions to MMBI concerning the ownership and control of WJUX and whether the station maintained a main studio within its principal community contour. MMB Ex. 10. MMBI denied that it had engaged in an unauthorized transfer of control and asserted that it maintained a main studio. MMB Ex. 11, p. 161, 163.

22. By letter dated April 5, 1996, the Bureau informed both Turro and Weis of the results of its investigation into their respective operations of the translators and WJUX. The Bureau determined that their arrangement violated Section 74.1232(d) of the Commission's Rules because Turro, as the licensee of a translator station, had an impermissible relationship with WJUX, its primary station. The Bureau further stated that "to the extent that the November 19, 1991, opinion letter may have been construed as having conferred authority upon Turro to engage in this extensive business relationship with WJUX(FM), that authority is hereby rescinded." MMB Ex. 1, Att. C, p. 12. Turro was then given 60 calendar days from the date of the letter to sever all prohibited interests with MMBI and to take whatever action was necessary to comply fully with the provisions of Section 74.1232(d) of the Commission's Rules. *Id.*

23. Turro attempted to assign his translator licenses to Stephen M. Gansler ("Gansler"), proposed trustee under the Gerard A. Turro Trust. The Bureau rejected this application on the basis that the proposed trust did not achieve compliance with Section 74.1232(d) as directed by the Bureau's April 5, 1996, letter, because Turro would retain an interest in the primary station as the intended beneficiary of the proposed trust. *Gerard A.*

Turro, 11 FCC Rcd 22346 (MMB 1996); MMB Ex. 1, Att. D, p. 15. Turro did not appeal the Bureau's decision. On September 6, 1996, Turro requested that the Commission dismiss his application to assign the translator stations to Gansler. Turro then filed an application to assign his translator stations to Press Broadcasting Co. ("Press"). On April 18, 1997, the Commission released the *HDO*. The *HDO* granted Turro's request to dismiss the Gansler assignment application, and it held in abeyance the application regarding Press. *Id.*, 12 FCC Rcd at 6265.

B. Inter-city Relay Station and Translator Operations

24. On September 23, 1993, Turro obtained a license for a new ICR station, operating on 951 MHz, for use as a microwave link between BCCBF's Dumont studio and the Fort Lee translator. MMB Ex. 9. As filed, the application stated that the ICR would be used "to feed 30-second spot announcement origination concerning financial support and operational communications from the [WNJW,] Franklin Lakes main studio in Dumont to the W276AQ transmitter." MMB Ex. 9, p. 151. Turro stated that, in addition to originating the 30-second translator support messages, he also intended to use the ICR to provide telemetry (*i.e.*, remote control) for operation of the Fort Lee translator from Jukebox Radio's Dumont studio. Tr. 1805-06.

25. On November 30, 1994, after WNJW ceased broadcast operations, Turro notified the Commission that the Fort Lee translator station had changed its associated primary station from WNJW to WJUX. That letter did not identify or discuss the use of the

ICR in connection with the Fort Lee translator's rebroadcasting of WJUX. MMB Ex. 2, p. 46.

26. According to Turro, after WNJW went silent, the ICR between Dumont and Fort Lee was used primarily to operate the Fort Lee translator from October, 1994, until July, 1995. He explained that the ICR-delivered microwave signal from Dumont to the Fort Lee translator was split into two distinct paths, a relatively narrow microwave data path used for telemetry (*i.e.*, remote control), and a wider microwave audio path which carried Jukebox Radio programming. Tr. 1617-19. The primary use of the ICR was for telemetry, which Turro testified was necessary to operate the Fort Lee translator. Tr. 1490-91, 1614, 1620, 1670, 1679-80. Turro later explained at hearing that his use of the word "primarily" referred to the fact that the ICR operated on a continuous basis. Tr. 1703.

27. Telemetry via the ICR allowed Turro to switch among various audio inputs (*i.e.*, Pomona and Monticello over-the-air signals, audio from the ICR) and transmitters (*i.e.*, main and auxiliary) at the Fort Lee translator via a TC-8 remote control unit located in Dumont. Tr. 1620. When the data path was operational and providing telemetry to the Fort Lee translator, the ICR-delivered audio microwave path was terminated into a "dummy load" to prevent damage to the ICR. Tr. 1626. In this regard, the dummy load was used to feed the audio signal into a resistor, so that when that signal was not being fed into the Fort Lee transmitter, the "load" would be dissipated rather than damage the equipment. Tr. 1667-69. If, for any reason, telemetry along the microwave data path was lost, the ICR-delivered microwave audio path from Dumont containing Jukebox Radio programming would shift

automatically from the dummy load to the Fort Lee transmitter for direct broadcast by the Fort Lee translator. Turro Ex. 1, p. 23, Tr. 1626, 1631, 1634-35, 1637-38, 1652, 1681-82. In addition, Turro stated that the microwave audio path would allow him to originate 30-second financial support messages for the translator and emergency announcements on the Fort Lee translator. Tr. 1621-22.

28. Turro testified that if the complete ICR-delivered microwave signal (including both the data *and* audio paths) was lost and he would lose control of the translator, the Fort Lee translator would then seek out the over-the-air signal of the Pomona station (and, prior to Pomona coming on-line in January 1995, the Monticello station) for rebroadcast over the Fort Lee translator. Tr. 1631, 1675-78; 1681-82. Turro could also switch among these various inputs for the Fort Lee translator by the use of the remote control unit located in Dumont. Tr. 1626.

29. Turro did not identify or otherwise mention the use of the ICR in connection with WJUX to the Microwave Branch of the WTB until June 13, 1995, in response to an order to show cause why the ICR should not be revoked. MMB Ex. 8, p.122-24. Turro was so ordered after it became known that he was, among other things, using the ICR in a manner inconsistent with the original grant. *Id.* at 120-21. Turro testified that, to avoid trouble, he deactivated the ICR shortly after receiving the WTB order, and that he did not seek reconsideration or otherwise appeal the WTB order. Turro Ex. 1, p. 24

1. Establishing a Benchmark of Operation.

30. On April 13 and 14, 1995, Loginow conducted various field investigations at the behest of the Mass Media Bureau. MMB Ex. 16: Tr. 336. Among other things, he arranged to monitor the transmissions of the Fort Lee and Pomona translators on April 14, 1995, by having the Monticello station's transmitter shut off, and listening to the output of the translators. Loginow was able to determine from this test that the Fort Lee translator was receiving the over-the-air signal from the Pomona translator, and that the Pomona translator was receiving the over the air signal from WJUX. Tr. 345-47. In addition, he noted that the ICR was "active," but not the source of the Fort Lee translator's programming. The results of this testing were not unexpected by Loginow, as he disclosed his plans to monitor the frequencies to Turro and Eugene Blabey ("Blabey"), the "general manager" of WJUX, the previous day. Consistent with sound investigative techniques, the results of that testing were to be used as a frame of reference for later unannounced monitoring to determine any variations. MMB Ex. 17, p. 267; MMB Ex. 18, p. 333.

2. May 15, 1995, Unannounced Inspection at Fort Lee Translator

31. On May 15, 1995, without any prior warning either to WJUX or Jukebox Radio personnel, Loginow drove to Mediterranean Towers in Fort Lee, New Jersey, the apartment building where the Fort Lee translator broadcasting equipment is located. Tr. 348. Using a signal generator set at the frequencies of WJUX (99.7 MHz), the Pomona translator

(94.3 MHz) and ICR Station WMG-499 (951 MHz). Loginow attempted to determine whether the Fort Lee translator was rebroadcasting the signal of Station WJUX, the Pomona translator or the ICR. This test involved generating a signal on the signal generator on a frequency that would override another weaker or more distant signal on the same frequency. MMB Ex. 4, p. 84; MMB Ex. 16, p. 250-51.

32. The signal generator Loginow used had, effectively, a maximum power of less than ½ watt, which Loginow described as a "low level" signal. Tr. 532. Based on his experience and logic, Loginow conducted the testing at roof level, where reception of all the signals he intended to test is maximized, but inside a stairwell enclosure, as access to the locked roof would have required alerting building personnel to his presence. Tr. 360, 364-66. Loginow used the signal generator with a hand-held antenna, which he rotated around in all different positions within the stairwell to get maximum indications. Tr. 358. Loginow listened to the impact of the signal generator on the various frequencies tested on a Sony car radio. Tr. 356. When the signal generator impacted a select frequency, Loginow testified that he would hear gradual silencing to complete silence, which Loginow described as a "fading out," as he increased the signal from low to high, and gradual returning when he reversed the process, which lasted a total of approximately 10 seconds. Tr. 357, 568-9. Loginow also testified that testing one channel with the signal generator would not impact operations on other frequencies. Tr. 376-77.

33. When he tested, Loginow first generated a signal on 99.7 MHz. He determined

that there was a negative result (*i.e.*, the generated signal was not overriding any other signal on that frequency), and thus concluded that WJUX's signal was not being rebroadcast by the Fort Lee translator. He then generated a signal on 94.3 MHz, determined that there again was a negative result and thus concluded that the Pomona translator's signal was not being rebroadcast by the Fort Lee translator. Had the Fort Lee translator been receiving the WJUX or W232AL (Pomona) off-air signals, the signal generator should have disrupted those signals. The fact that neither signal was disrupted led Loginow to conclude that the Fort Lee translator was not receiving those off-air signals. He then generated a signal on 95.1 MHz and determined that there was a positive result (*i.e.*, the generated signal was overriding another signal on that frequency). Loginow thus concluded that the Fort Lee translator was receiving and rebroadcasting *not* the over-the-air signals of the Monticello or Pomona stations, but, rather, the radio frequency signal from the ICR. MMB Ex. 18, pp. 333-34; Tr. 348-56.

34. That the ICR was used to deliver Jukebox Radio directly from Dumont to the Fort Lee translator was also confirmed by ex-Jukebox Radio employees Vincent Luna ("Luna") and William Gaghan ("Gaghan"), who maintain that during their employment from February 1993, to May 1995, the Fort Lee translator directly received the Jukebox Radio programming from Dumont via the ICR-delivered microwave signal most of the time. MMB Ex. 14, pp. 230-31; MMB Ex. 15, p. 241, Tr. 240-42; 735, 738. They stated that their conclusions were based not only on observing the remote control units in Dumont, but also on hearing variations in audio quality -- the ICR-delivered programming heard on the Fort Lee translator generally sounded better than an over-the-air rebroadcast signal from Monticello or

Pomona. MMB Ex. 14, pp. 230-31; MMB Ex. 15. p. 240-41, 243, 246; Tr. 734, 738, 1116, 1119. Moreover, Luna and Gaghan testified that there were occasions when the Monticello station was off the air, but that regular Jukebox Radio programming still could be heard on the Fort Lee translator. MMB Ex. 14, p. 232; MMB Ex 15, p. 242-43; Tr. 1119, 1132-33, 1136-37. Luna specifically recounted an occasion when he was driving home from work and he was listening to the Fort Lee station on his car radio. Luna heard the staff announcer, Chuck Garland, make three song dedications to him. Finding this rather unusual, Luna pulled off the road and called Garland in Dumont and was told that the Monticello station was off the air, although Luna was listening to the Jukebox Radio program on the Fort Lee translator. MMB Ex. 14 at 232-33; Tr. 778-79. Although Garland could not initially recall this incident, he conceded that it could have happened. Turro Ex. 6; Tr. 1280.

3. Turro's Understanding of the Surprise Inspection

35. Turro did not dispute the impact of Loginow signal-generating tests on May 15, 1995. In fact, Turro recalled being at the Dumont studio of Jukebox Radio during the May 15, 1995, testing. He relates that he was listening, as usual, to Jukebox Radio programming coming out of the Fort Lee translator, when he heard the programming audio "break up" for three to four seconds and then fall to dead carrier (*i.e.*, complete silence). Turro claims that he assumed initially that the Fort Lee translator had failed, but that by the time he reached the Fort Lee remote control unit located in Dumont, Jukebox Radio programming had returned to the air, and the remote control unit indicated that the Fort Lee translator was receiving and

rebroadcasting the Jukebox Radio programming from the ICR-delivered microwave audio path. Turro then claims he switched the Fort Lee translator back to receive and rebroadcast the over-the-air signal of the Pomona translator. Turro Ex. 1, pp. 23-24; Tr. 1607, 1694-99.

36. Turro interpreted the events of May 15, 1995, as a jamming of the entire ICR-delivered microwave signal, which "stripp[ed] the microwave receiver of incoming telemetry for remote control and thus caus[ed] the microwave unit to directly feed audio to the Fort Lee translator." Turro Ex. 1, p. 24; Tr. 1694. Turro claimed that he was angry because he first suspected that someone from Universal's Station WVNJ was responsible for the program interruption. Turro Ex. 1, p. 24; Tr. 1639-41. However, after discussing the matter with Herman Hurst ("Hurst"), his consulting engineer, Turro concluded that it "probably had been the FCC conducting tests." Turro Ex. 1, p. 23-24. Turro explained that the Fort Lee translator would operate absent the ICR-delivered microwave signal. However, when the entire IRC-delivered microwave path (and, consequently, all the signals on the path) was blocked, the Fort Lee translator station did not rebroadcast the over-the-air signal of the Pomona translator (or even the Monticello station), but instead fell silent. Turro Ex. 1, p. 23; Tr. 1696-97.

37. In addressing Loginow's negative result when he used the signal generator to test the receipt of the Pomona translator's frequency at the Fort Lee translator, Turro testified that, contrary to Loginow's understanding, he had a receive antenna for the Pomona translator located in the basement of Mediterranean Towers between April 1995, and sometime in 1996.

In this regard, Turro claims that during the spring of 1995, vandals stole or damaged his roof-mounted equipment, so he placed an antenna in a location in the basement that "received a strong signal from the Pomona translator," and connected it to the Fort Lee receiver by internal telephone wiring.³ Turro thus concludes that Loginow must have assumed he was near the active receive antenna for the Pomona translator, but that, in actuality, he was far enough away that the output from the signal generator was too weak and the shielding (from such things as concrete, steel, pipes, ducts) too great to reach that receive antenna with dead carrier more than 23 stories below in the basement. Turro Ex. 1, p. 22-23.

38. Turro also testified that any calls to Luna and Gaghan from listeners who claimed they could not hear WJUX, Monticello, are easily explained by the fact that the Monticello station has, at times, operated at reduced power, or that its signal is temporarily lost due to weather conditions that can affect some receivers within WJUX's primary service contour. Turro Ex. 1, p. 21.

³ Hurst described this phenomenon of strong signal reception of the Pomona signal in the basement of Mediterranean Towers as a "hot spot." Tr. 1895. However, Hurst did not personally observe equipment in the basement of the Mediterranean Towers, and his conclusions regarding that equipment and reception are based on what he was told by Turro. Tr. 1876-78, 1886-87, 1892-94. Hurst further testified that while he has seen other hot spots, he does not often see ones that are stable and dependable for broadcast purposes, does not make it a practice to look for them, and would be unable to testify as to their "normality." Tr. 1890. Although the Mediterranean Towers was alleged to have *two* hot spots, Hurst figured that there is less than one percent probability of finding just *one* hot spot to aid in the reception of a radio station in a building where Turro had a pre-existing lease. Tr. 1891.