

#### 4. Loginow's Response to Turro's Interpretation of the Unannounced Inspections

39. In response to Turro's direct testimony, Loginow reiterated that the roof-level of the Mediterranean Towers building was the logical place to conduct his signal testing to maximize results. Tr. 365-66. Although his experience suggested that most translator antennae are at roof level (including some for W276AQ), Loginow denied that his location during the May 15, 1995, test would have greatly impacted the results. Specifically, he testified that if there was equipment in the basement of Mediterranean Towers sensitive enough to pick-up Pomona's one-watt signal from 22 miles away, that equipment would be likely to receive the ½-watt dead-carrier signal being generated on the same frequency as many as 26 floors above it. Tr. 370, 378, 549.

40. Loginow testified that his signal could have been impacted positively by the phenomenon known as "ducting" (*e.g.*, a signal entering an air-conditioning duct or elevator shaft) or negatively by obstacles (*e.g.* cinder block surroundings), but believed that any such impacts to the signal he generated were unlikely to affect significantly the results he obtained. Tr. 359-60, 369, 496, 549, 574-77. Moreover, Loginow made that assessment *before* learning of an alleged hot spot for reception of the Pomona frequency in the basement of the Mediterranean Towers. Hurst disputes that Loginow's signal generator would have blocked reception of the Pomona signal as received in the basement of Mediterranean Towers on the

basis that during his October 19, 1997, visit to the Fort Lee facility, he placed a signal generator with an output of 5 watts in the basement but was unable to block receipt of the Pomona signal as received on the roof of the building. Turro. Ex. 35, pp. 3-4. There is, however, no evidence that Hurst tested whether his signal generator on the roof could not block reception of Pomona's over-the-air signal as received in the basement as claimed by Turro.

41. In July, 1995, Hurst first visited the Fort Lee facility to assist Turro in his preparation of a response to the Bureau's June 21, 1995, Letter Of Inquiry, which, among other things, questioned the operation of the translators. At that time, despite Turro's suspicions that the Commission was behind the May 15 "jamming incident," Hurst did not inspect the basement of the Fort Lee facility for any equipment and did not conduct tests relating to the receipt of the Pomona signal at the Fort Lee translator. Turro Ex. 2; Tr. 1877, 1892-94.

42. Loginow did not inspect the basement of the Mediterranean Towers either on May 15, or during a subsequent visit in August 1995. Tr. 369, 392. In fact, during Loginow's visit to Dumont to check on the status of the ICR on August 2, 1995, Turro specifically brought up the May 15, 1995, jamming incident and related to Loginow his belief that the Commission was responsible for it. Tr. 349, 502, 567, 1972. At that time, Turro wanted to show Loginow the Fort Lee and Pomona translators, and Loginow went along in Turro's car and looked at everything Turro showed him at those facilities. Tr. 309, 362, 390-

92, 1761-62, 1972. However, Turro never mentioned or offered to show Loginow any equipment located in the basement of the Fort Lee facility. Tr. 503. On his part, Turro testified that although he understood that Loginow was under "marching orders" from Washington to get to the bottom of things, he did not mention anything about or offer to show to Loginow any equipment located in the basement. Tr. 1762-63, 1972-74. Turro did not offer any additional information supposedly because Loginow had responded negatively when Turro asked if Loginow had any more questions. Tr. 1972-77. Turro also testified, however, that he told Loginow that he had had other receive antennas, tried to discuss the subject and show him the basement, and even told Loginow -- without even being asked -- that he wanted to show him how everything worked, but that Loginow was not interested. Moreover, Turro testified that he was cooperative with Loginow, was willing to answer anything Loginow asked him, but that he "had to fight [Loginow] on this." Tr. 1972-77.

## **C. Unauthorized Transfer of Control**

### **1. Acquisition of the Construction Permit**

43. In connection with his efforts to find an outlet for his programming in Bergen County, Turro had asked the Bureau in January 1991, about the propriety of establishing a relationship between a translator station and a primary station that would be consistent with Section 74.1232(d) of the Commission's Rules. MMB Ex. 1, Att. A. Based upon the information contained in Turro's letter, the Bureau responded that the arrangement described

would be permissible provided that it met a number of requirements set forth in the letter.<sup>4</sup>

MMB Ex. 1, Att. B.

44. It took Turro three years to find a broadcast station that would enable him to implement his plan. Tr. 1728. The opportunity came when Fishman contacted Turro in the summer of 1994. Turro Ex. 1, p. 3; Tr. 1730. Fishman was the permittee of an unbuilt FM station in Monticello, New York. Fishman did not want to construct and operate the station, and he asked Turro whether he knew of someone willing to purchase the construction permit. Tr. 1730.

45. In the summer of 1994, Turro told his friend, Weis, about the availability of the construction permit. Tr. 1730, 1823, 1337; MMB Ex. 1, p. 1. Weis and Turro had known each other for about 20 years. Tr. 1336; MMB Ex. 1, p. 1. At that time, Weis had ownership interests in a number of antenna and tower sales, service, and site management companies. He also had an interest in a railroad. MMB Ex. 11, p. 163. In addition, he was a part owner, with Turro, of translator station W232AL(FM), Pomona, New York. MMB Ex. 22, Admission 72; MMB Ex. 24, Admission 38; Tr. 1336. Turro claims he brought the Monticello construction permit to Weis' attention because he thought Weis wanted to own a radio station. Tr. 2063.

---

<sup>4</sup> A detailed description of Turro's letter and the Bureau's response thereto, appears in the Misrepresentations/Lack of Candor section, *infra*.

46. Turro told Weis that if he acquired the station, Turro would supply the station with all of its programming, including all commercial time -- the existing Jukebox Radio programming. Tr. 1339-40. Weis was familiar with the Jukebox Radio programming format which was then being broadcast on WNJW. Tr. 1339. Weis was aware that Turro wanted to rebroadcast the Monticello station on his Fort Lee translator. Weis was generally aware that the Commission's rules prohibited Turro from owning both the Monticello station and the Fort Lee translator if Turro intended to rebroadcast the signal of the Monticello station on the translator. Tr. 1338. Weis also knew that Turro had been unsuccessful both before the Commission and the courts in obtaining authority for the Fort Lee translator to originate programming. Tr. 1346.

47. Turro told Weis about the 1991 Bureau Letter. Tr. 1825; Turro Ex. 1, p. 4. Weis believed that the arrangement proposed by Turro had been specifically approved by the Bureau. MMBI Ex. 1, p. 2. Weis understood that the Bureau had given advance approval for an arrangement whereby a translator operator would either broker or enter into a network affiliation agreement for 100 percent of the air time of a primary FM broadcast station in exchange for payment. Tr. 1385. Weis believed that the arrangement proposed by Turro was consistent with the 1991 Bureau Letter. Tr. 1384.

48. Weis knew that the 1991 Bureau Letter referred to a "time brokerage agreement" and not a network affiliation agreement. MMBI Ex. 1, p. 2; Tr. 1386-7, 1391. However, Weis claims not to know the difference between a network affiliation agreement

and a time brokerage agreement. Weis believes a time brokerage agreement is the same as a network affiliation agreement, even though he admits he does not really know the definition of a time brokerage agreement.<sup>5</sup> Tr. 1390. He did not discuss with Turro why their agreement took the form of a network affiliation agreement instead of a time brokerage agreement. Tr. 1386-89. Nevertheless, Weis believes that the agreement he reached with Turro comports with the terms of the 1991 Bureau Letter. Tr. 1389.

49. Weis interpreted the wording of the 1991 Bureau Letter to permit a translator station licensee to act as the time broker to an FM broadcast station that would then be rebroadcast by the translator station. MMBI Ex 1, p. 1. He did not consult with his communications counsel about the purchase of the construction permit for WJUX or about the terms of the network affiliation agreement. Tr. 1406. Weis has no knowledge of any other network that does commercials or station identifications or performs EBS tests for its affiliates. Tr. 1354. Turro believes that BCCBF's arrangement with MMBI is a *bona fide*, arm's-length transaction between the primary station and the translator as described in the 1991 Bureau Letter. Tr. 1789.

50. During the summer of 1994, Turro and Weis met with Fishman, at the latter's office, to discuss the sale of the Monticello construction permit. Tr. 1340-41. While Weis

---

<sup>5</sup> Weis also stated that in his opinion, the NAA "preserves my ability to perform my duties as a licensee of the station to no less extent than many LMAs, network arrangements, and brokerage agreements with which the Commission has found no fault." MMB Ex. 11, pp. 162-63.

could not remember the exact number of meetings that were held, he thinks there were three and that Turro was present for at least two of them. Tr. 1341, 1342. The three men discussed the purchase of the construction permit, the financial and security arrangements, and the assumption of an existing antenna lease Fishman had with Blabey, a principal of WVOS (AM & FM), Liberty, New York.<sup>6</sup> Tr. 1342.

51. The purchase price was negotiated during the meetings. Weis testified that Turro was present when the price was negotiated, but Weis did not remember if Turro took part in those discussions. Tr. 1343. Turro denied having any "material involvement" in these discussions. Turro Ex. 1, p. 4. Although Weis had communications counsel, Koteen and Naftalin, at that time, he was not represented by any such counsel during the discussions with Fishman. Tr. 1344. An agreement was reached with Fishman to sell the Monticello construction permit for \$120,000. A \$40,000 payment was due at closing, with the \$80,000 balance to be paid over a period of time pursuant to a secured note. MMBI Ex. 1, p. 2; MMBI Ex. 5 p. 15; Tr. 1342, 1347, 1360. At that time, the station had no equipment. Tr. 1343.

52. Weis agreed to purchase the construction permit because he viewed the undertaking as a means to make money. He believed the venture was a "good business opportunity." MMBI Ex. 1, p. 2; Tr. 1345. Although Weis had not yet prepared a business

---

<sup>6</sup> As discussed later in the findings, Weis ultimately leased both antenna and studio space from Blabey. In addition, Blabey became the "general manager" of WJUX.

plan, he claimed he knew from being around the business for 25 years that it appeared to be "a good enough deal." Tr. 1345. The application (File No. BAPH-940725GR) to assign the permit from Fishman to MMBI was filed on July 25, 1994.

53. Turro and Weis then met with Blabey to discuss MMBI's assumption of Fishman's antenna lease. Tr. 941. Blabey recalls that Turro accompanied Weis on the first visit and on most of the subsequent meetings with Blabey. Tr. 941, 990. Turro was introduced to Blabey as Weis' chief engineer. Tr. 941. An agreement was reached for MMBI to assume Fishman's lease for antenna space for WJUX. Tr. 940-41.

54. A separate lease was prepared for the leasing of studio space. The space leased by Weis for WJUX's main studio was a production room at WVOS's studio in Liberty, New York. Tr. 942. Weis signed a "Guaranty" for the rent for the studio space that made him personally liable for the rent. MMBI Ex 5, page 10; Tr. 1431-32. Weis understood this to mean that if Turro ceased making payments under their arrangement and was unable to make good on his personal guaranty, discussed *infra*, Weis remained obligated for the rent pursuant to these guarantees. Tr. 1432. Weis did not sign a similar guaranty for the antenna site.

55. The antenna and studio leases were signed in September 1994. MMBI Ex. 5; Tr. 942. From the very beginning, Blabey and Weis agreed that WVOS would lease non-exclusive use of its production studio to WJUX. Tr. 1023. Weis knew that the studio space also served as a spare production studio for WVOS. Tr. 1022-24. The stations have shared

equipment, such as microphones and tape recorders. Tr. 918.

56. Weis and Blabey also discussed unattended operations, in the context of another Liberty radio station that was automated and operated out of a telephone answering service. Blabey understood that Weis was interested in such an arrangement for the proposed Monticello station. Tr. 946-47. Blabey then suggested to Weis that he (Blabey) be hired as the general manager of the proposed Monticello station. Tr. 943, 990. Blabey offered, in part, because it would not require a lot of time and effort on his part, that he was already there performing general manager functions, and that such an arrangement would not be overly burdensome to him. Tr. 946-47. Blabey also told Weis that if another station was going to be in this close contact with his station, he wanted to be involved with that station for his own purposes. Tr. 943. Moreover, Blabey did not regard the two stations as competing for the same audience share or commercial advertisers because the proposed Monticello station was to target Bergen County, New Jersey. Tr. 990-91. While Blabey did not make his employment at WJUX a condition of signing the lease for the studio space, he said he would have had "reservations" about the lease if Weis intended to bring someone else in to run the station. Tr. 943.

57. The application to assign the construction permit from Fishman to MMBI was granted on October 14, 1994. Consummation of the assignment occurred October 18, 1994. Tr. 1347.

## 2. Financial Arrangements

58. On October 17, 1994, BCCBF paid \$40,000 to MMBI as an inducement fee for entering into a "Network Affiliation Agreement" ("NAA"). MMB Ex. 22, Admission 55; MMB Ex. 24, Admission 16; Tr. 1347, 1409. MMBI has no obligation to repay that fee. MMB Ex. 24, Admission 18; Tr. 1831-32. There were no negotiations between Turro and Weis with regard to the amount of the inducement fee. Tr. 1830. If it weren't for the NAA, Weis would not have built the station and his decision to sign the NAA was based on that \$40,000 payment. Tr. 1409-10. At that time the NAA was signed, Jukebox Radio was a financially struggling operation and did not have the cash on hand to make this initial payment. Tr. 1832-33. Turro had to take out a loan for the \$40,000 used to pay Weis to sign the NAA. Tr. 1833. Turro claims he has "no idea" why Weis asked for a \$40,000 inducement fee and has no idea what Weis did with the money. Tr. 1828.

59. Weis claims that the \$40,000 was not used directly to pay Fishman. In this regard, the money was deposited in MMBI's checking account and commingled there for 24 hours. Tr. 1347-48; 1426. The day after MMBI received the inducement fee, Weis paid \$40,000 to Fishman for the down payment on the construction permit. Tr. 1347-8.

60. Weis could not recall who drafted the NAA, but he remembered that Turro gave it to him to sign. Tr. 1350. The NAA is for a term of 10 years, and provides that in return for monthly payments, BCCBF would provide WJUX with all of its programming 24

hours a day, seven days a week, 365 days a year, including all advertisements, local station identifications, public affairs programming, and Emergency Broadcast System tests. MMB Ex. 8, p. 137-38; MMB Ex. 11, p. 219-20; Tr. 1352.

61. The payment schedule set forth in the NAA was derived from and based on a business plan prepared personally by Weis. Tr. 1354. Weis prepared the business plan by making "a list of the items and expenses that each one would cost, put a profit on it . . . decided how long I wanted to amortize this thing, what period of time, what would be a fair profit on it, and that's where the numbers came from." Tr. 1355. Among the "items" factored into Weis' business plan were the costs to acquire and build the station, salaries, legal expenses, utility bills and other operating expenses. Tr. 1355-58, 1363. According to Weis, the NAA does not obligate BCCBF to indemnify MMBI for any legal fees but limits BCCBF's obligation to reimbursing MMBI for any fines or forfeitures assessed by the FCC for program-related violations. Tr. 1364. However, Weis acknowledges that his legal fees were incorporated into the monthly compensation he received from Turro, and Weis understands that the Guaranty of Payment (discussed *infra*) would obligate BCCBF to pay any forfeitures assessed against MMBI as a result of this proceeding. Tr. 1357, 1364.

62. The NAA payment schedule is as follows:

Year One: \$8,575.00 per month

Year Two: \$8,975 per month

Year Three: the first six months -- \$9,140.00 per month  
the second six months -- \$5,400.00 per month

Year Four: \$5,400.00 per month

Year Five: \$4,675 per month

Remaining 5 years: \$4,675 per month plus 5 percent of the [Consumer Price Index], whichever is greater.

MMB Ex. 4, p. 85.

63. As indicated above, the \$40,000 inducement fee covered the down payment. The payments from the NAA were calculated to cover the remaining cost of purchasing the construction permit; *i.e.*, paying off the \$80,000 note to Fishman, purchasing equipment and operating the station. Tr. 1361. Weis recalled that the payments also included a profit factor of between 15 - 20 percent.<sup>7</sup> The compensation to MMBI was reduced by \$3,740 per month after 30 months to reflect the fact that the balance of the purchase price would be paid off at that time. MMBI Ex. 5, pp. 15-19; Tr. 1362. In addition, a major portion of the cost of the equipment was also paid off at that time because Weis had loaded the price of the equipment up front. Tr. 1360. Weis' business plan, and, hence, the NAA, did not calculate any profits or returns on the sale of commercial time, as Weis did not contemplate any advertising being sold by the station. Tr. 1356.

---

<sup>7</sup> According to Weis, he could have figured more profit than that into his calculations, but "[d]idn't have any reason to think about it." Tr. 1356.

64. Turro claims that the figures for the monthly payments set out in the NAA were provided to Turro by Weis. Turro does not remember if there was any negotiation of those amounts, but that he agreed to pay those amounts. Tr. 1830. In Weis' opinion, Turro paid Weis for the whole set up, which he interpreted as meaning the purchase of the construction permit and all the equipment to build the station. Tr. 1429. In early 1996, the network compensation was increased by about \$1,000 per month when Weis installed a generator and an auxiliary transmitter. Tr. 1366-67. It was Weis' idea to purchase the additional equipment. He passed the costs on to BCCBF, and Turro did not object to the increased payments. Tr. 1368

### 3. Guaranty of Payment

65. In addition to the NAA, Weis had Turro sign a Guaranty of Payment ("Guaranty") on October 17, 1994. MMB Ex. 11, p. 218. The Guaranty states that it was signed as an inducement for MMBI to enter into the NAA with BCCBF. *Id.* Under the terms of the Guaranty, Turro is personally liable to MMBI for the full term of the NAA for "any and all indebtedness, liabilities and obligations, of every nature and description, including attorney's fees, costs and expenses of collection incurred by MMBI." The limit on liability was set at \$400,000. MMB Ex. 11, p. 218. Weis was unable to recall exactly where that \$400,000 figure was derived from other than it was related to his business plan. Tr. 1383. Weis understood that the Guaranty would obligate Turro to pay any forfeitures assessed against MMBI as a result of this proceeding. Tr. 1364.

66. It was Weis' idea to have Turro sign the Guaranty. Tr. 1381. The Guaranty was prepared from a copy of a document in Weis' files. Tr. 1381. Weis had Turro sign the Guaranty because he wanted to ensure that he would receive his money from Turro if either BCCBF became insolvent or Turro terminated the NAA because he obtained local origination authority for the translators. Tr. 1382-83.<sup>8</sup> With the Guaranty, Weis believed that he had no risk or exposure from the arrangement he had with Turro, unless Turro himself became bankrupt. Tr. 1392. Although both Weis and Turro were using the same law firm, Koteen & Naftalin, the firm that had prepared the NAA, neither of them consulted with counsel with regard to the Guaranty. Tr. 1381, 1846.

67. At closing, Weis paid Fishman \$40,000. MMBI Ex. 1, p.2; Tr. 1347. Weis has received all monthly checks under the NAA. Initially, the checks came from BCCBF, later they came from FM 103.1. Tr. 1349-50. Weis stated that there has not been a month when the monthly expenses of WJUX exceeded the amount of money that was received from BCCBF pursuant to the NAA. Tr. 1365-66. In fact, all of WJUX's income was derived from these payments. Tr. 1355. Weis wrote the checks and paid the station's expenses with money that came from BCCBF/FM.103, Inc.'s monthly payments as set out in the NAA. Tr. 1358-59.

#### 4. Construction of WJUX

---

<sup>8</sup> The NAA, however, does not contain any termination provision.

68. The Monticello station was built in only two days. Tr. 1393. Turro was the station's Chief Engineer/Operator at this time. MMB Ex. 22, Admission 63; Turro Ex. 1, p. 7. Turro remained the chief engineer for WJUX until April 1995 when he was replaced by Alan Kirschner. Tr. 1424. In his direct statement, Turro stated that he assisted Weis in a "general sort of way in starting up the Monticello station." Turro Ex. 1 p. 6. At the hearing, Turro acknowledged that he supervised construction of the station, installed network equipment, and inspected and tested what was later to become the WJUX main studio equipment. Weis supervised his own construction crew's activities. Tr. 1793-95.

69. Weis says the station was built so quickly because winter was coming and, because the "sooner it's on the air, the sooner I get money." Tr. 1393. Turro was anxious to get the station on the air in time for the 1994 political election to air commercial and political advertising. However, while advertising continued to be sold by FM 103, Inc., no advertising was broadcast on WJUX from October, 1994, until sometime in the beginning of January, 1995. Turro Ex. 1, p. 6; Tr. 1735-37.

## 5. Programming

70. The NAA provided that Jukebox Radio would furnish WJUX with 100 percent of its programming. Consequently, from October 1994 until August 1995, WJUX did not originate any programming, including advertising, from its "main studio." Tr. 857, 971-72; MMB Ex. 24, Admission 69. The first time WJUX preempted any Jukebox Radio

programming was in the Fall of 1997 when the programming was preempted to air two political advertisements. Tr. 857, 1380, 2042.

71. There were no public affairs programs directed towards Sullivan County or Monticello, WJUX's community of license, until February 1995 when the station began weekly broadcasts of the program "People Who Make a Difference." MMBI Ex. 3, p. 7. WJUX did not pay for the production of this program. Tr. 1024. The program was produced for and aired on WVOS first and then a copy of the program was aired on Jukebox Radio. Tr. 1010, 1022. The show is no longer produced. Tr. 1009. The quarterly issues and programs lists provided by MMBI show that the preponderance of the public interest programs aired on WJUX between November 1994 and December 1995 were directed towards Bergen County, New Jersey. MMBI Ex. 3, p. 1-14. Programs such as "Rutgers University Forum," "Target New Jersey," and "Access Bergen County" were consistently broadcast during this time-frame. *Id.* On May 12, 1996, a program entitled "Open Mike" was first broadcast on WJUX. Tr. 955; MMBI Ex. 3, p. 17. This program also was previously broadcast on WVOS and then rebroadcast on WJUX. Tr. 955.

## 6. Program Interruptions

72. Carol Montana, the "public affairs director" for WJUX, and Blabey do not routinely listen to WJUX. Tr. 841, 974, 977. Montana was able to recall two occasions when there was an interruption in WJUX's programming. One morning she received a call

from a listener who reported that the station was off the air. In response, Montana called the WVOs operations manager. Tr. 844-45. There was another program interruption in the summer of 1995 when a fiber optic cable had been cut during road construction. Tr. 1869-70. Montana and Blabey heard about that program interruption from Turro. Tr. 845, 860, 972-73. Blabey stated that if both WVOs and WJUX were ever off the air at the same time, his first priority was to put WVOs back in operation. Tr. 978.

## 7. Amendment to the Network Affiliation Agreement

73. On July 17, 1995, after Loginow's initial inspections and after the Bureau sent MMBI and Turro letters of inquiry concerning the operation of their respective stations, Turro and Weis amended the NAA. While the amended NAA was dated November 1994, with the exact date left out, it was not signed until July 17, 1995. The amended NAA includes a hand-written notation, "agreed to in October 1994." MMB Ex. 8, p. 140; Tr. 1370.

74. Weis maintains that the Commission's inspection had no bearing on the timing of the signing of the amendment. Koteen and Naftalin prepared the amendment, but Weis claims to have no knowledge of why it was prepared. Tr. 1370. Weis later testified that he believed the amendment was prepared to clarify the original NAA with respect to his responsibilities vis-a-vis Commission requirements. Tr. 1379, 1416. Weis could not recall what those responsibilities were other than to refer to the amended NAA. Tr. 1379.

75. In contrast to the original NAA, the amended NAA contained language regarding MMBI's authority to delete or preempt "network" programming for the purpose of broadcasting public affairs or other programming, although there is no evidence that MMBI actually did so or would have alternative programming to provide. Moreover, the amended NAA specifically made MMBI's acceptance of Jukebox Radio programming subject to "MMBI's responsibility to comply with all FCC regulations governing the operation of the Station . . . ," including, among other things, the ascertainment of programming responsive to community concerns, compliance with political programming and sponsorship identification rules, preparing appropriate quarterly programs/issues lists. MMB Ex. 8, p. 140. Although the amended NAA was designed to make MMBI appear to have more responsibilities, most of the activities spelled out therein were already, and continued to be, undertaken on MMBI's behalf by Jukebox Radio. . In addition, while the amended NAA specifically set forth the right of MMBI to delete or preempt in its sole discretion any Jukebox Radio programming, there is no evidence that it did so until 1997, or would have alternative programming to broadcast in its place before 1997.

76. Weis acknowledged that his activities with respect to WJUX did not change as a result of the amendment to the NAA. Tr. 1419. In fact, despite the wording of the amendment, MMBI did not preempt Jukebox Radio programming provided to WJUX between October 1994, until the Fall of 1997, when MMBI pre-empted two political commercials aired over the Jukebox Radio programming feed to insert two political commercials into its programming. Tr. 857, 1380; 2042. Weis said that was the first and only time MMBI

preempted Jukebox Radio programming. Tr. 1380.

## 8. Advertising

77. Other than the Fall of 1997, all advertisements aired by WJUX were originated by Jukebox Radio, and were sold by the network or its related entity, FM 103, Inc. Tr. 2046. Although there were no such advertisements between October 1994, and sometime in January 1995, FM 103, Inc., continued to sell advertising for Jukebox Radio during this time. Tr. 853, 1952. There were no "non-network" advertisements sold or broadcast on WJUX until the Fall of 1997, when two political ads were aired on WJUX. Tr. 1380, 2042. In fact, Turro testified that the "network" had no responsibility to broadcast advertising that it did not sell. Tr. 1952. Blabey made sales presentations to potential advertisers to buy advertisements on both stations, as a "package deal," but with no success. Blabey never made any sales presentations exclusively for WJUX. Tr. 921-22. Blabey testified that the rates listed in the Jukebox Radio rate card for WJUX were too expensive for Sullivan County businesses. Tr. 925; MMB Ex. 2, p. 74. Blabey testified that WJUX does not rank in the Arbitron listing in Sullivan County and that it does not have a significant audience share. Tr. 920. According to Blabey, in a relatively unpopulated area like Sullivan County, businesses generally purchase time only on the top-rated stations.<sup>9</sup>

---

<sup>9</sup> In February 1995, MMBI hired Stan Silverstein as an independent salesman for WJUX but he too was unable to sell any "non-network" advertisements. Tr. 1005; MMBI Ex. 9.

78. Montana did not know of any local advertising that was ever sold on WJUX with the exception of some political advertising that was sold in 1997. Tr. 853. Montana said that she never received any inquiries from local advertisers about purchasing time directly on WJUX rather than from Jukebox Radio. Tr. 867. Turro testified that about 80-90 percent of the Jukebox Radio commercial advertisements were focused towards Bergen County businesses as opposed to Sullivan County businesses. Tr. 2048.

### 9. Call Sign Change

79. Soon after Weis acquired the construction permit for the Monticello station, Turro relinquished the "WJUX" call sign for his Franklin Lakes station. Tr. 1826. Turro had told Weis that the call letters would soon be available. Tr. 1404. Turro also assisted Weis in obtaining the call sign. Tr. 1404. Weis instructed his counsel, Koteen and Naftalin, to obtain the call letters for the Monticello station. Tr. 1403. Weis understood that it was important to Turro that the Monticello station have the call letters "WJUX." Tr. 1405. On April 14, 1995, the Monticello station acquired the call letters "WJUX." Tr. 1403.

## **D. Main Studio**

### 1. April 13, 1995, Inspection

80. On April 13, 1995, Loginow inspected WJUX. Tr. 336; MMB Ex. 4. Initially, he had difficulty locating the studio. There was no sign for WJUX at the building. MMB Ex. 4; p. 83; MMB Ex. 17, p. 262-63. He called directory assistance for the station's telephone number. The call was answered at Jukebox Radio's Dumont studio.<sup>10</sup> The person on the telephone gave Loginow directions to the WJUX studio. *Id.*; Tr. 481.

81. When Loginow entered the building, he was informed that Blabey was the general manager of the station. After Loginow waited between 10 - 20 minutes, Blabey appeared. Tr. 536, 579. Blabey informed Loginow he was the general manager for WJUX, as well as the owner of WVOS, and that Montana was the "Public Service Director." Tr. 484, 537; MMB Ex. 4, p. 83. When Loginow asked Blabey for information about WJUX, Blabey replied that there was not too much to show him because most of WJUX's affairs were handled at the Dumont studios for Jukebox Radio. MMB Ex. 18, p. 330. Among other things, Blabey also told Loginow that all program logs for the station were kept in Dumont. Blabey gave a copy of the NAA to Loginow. MMB Ex. 18 at 330.

---

<sup>10</sup> Although there was a number for WJUX listed in the Sullivan County telephone directory, calls to the WJUX studio number were forwarded to Jukebox Radio offices in Dumont until July, 1995, after the Commission's inspections. MMB Ex. 4, p. 262; MMB Ex. 30, Answer 3.

82. Loginow also advised Blabey that he wanted to conduct a test of the translators by turning the WJUX transmitter off and listening to the translators' output. At some point, Blabey called Jukebox Radio in Dumont to talk to Turro, but learned that Turro was in Las Vegas attending a National Association of Broadcasters Convention. Tr. 962. Loginow did not ask Blabey to call Turro. Tr. 541. Turro called back sometime later. Tr. 962. Weis was also in Las Vegas at that time and Turro told him about the inspection. Tr. 1407. Turro told Weis that the inspector wanted to turn the transmitter on and off and that Blabey had hired Spicka for that purpose. Turro did not inform Weis that the inspector was interested in whether there was remote control from Dumont to the WJUX transmitter. Tr. 1408.

## 2. Personnel

83. Blabey is an owner of Mountain Broadcasting Corporation ("Mountain"), which is the licensee of WVOS(AM/FM). Tr. 910. Mountain leases both studio and antenna space to MMBI. MMBI Ex. 5. Blabey describes himself as the general manager for both WVOS and WJUX. Tr. 910.

84. Blabey was hired by MMBI in October 1994 as "an independent consultant on radio station management matters" for MMBI. MMB Ex. 13, p. 226. Blabey was hired as a consultant, not an employee, of WJUX for tax reasons. Tr. 910. Blabey is paid a consulting fee of \$100 per week. Tr. 1395. While Blabey understood that he was to be at WJUX during normal business hours, he was at the studio anyway in his capacity as general manager

for WVOS, and he had no set schedule for WJUX. Tr. 838, 948. According to Blabey, his activities at WJUX do not take up much of his time. Tr. 915.

85. Blabey's duties as general manager for each station differ. Tr. 929. At WJUX, he generally sorts the mail, answers the telephone, forwards matters pertaining to finances to Weis, and organizes certain programming. Tr. 915. Blabey also supervises Montana. Tr. 818; 950. Weis has hired the individuals, such as George Spicka, that Blabey has recommended for employment at the station. Tr. 937. At WVOS, Blabey reports news, sells advertising, and does remote live broadcasts. Tr. 951. In addition, Blabey does on-air editorial commentary and contributes to public affairs programming at WVOS. Tr. 951-2. Blabey is involved in the community as a representative for both stations. He believes that people in the community associate him with both stations. Tr. 932.

86. Montana has been the Business Manager at WVOS since September 1990. Tr. 816. Blabey described her as "the glue that holds the operation [WVOS] together." Tr. 950. Montana maintains that she is employed full-time by WVOS and part-time by WJUX. Tr. 816. Montana told Loginow that she spends about 25 percent of her time working for WJUX and 75 percent for WVOS. MMB Ex. 4, p. 83. Montana's job as business manager for WVOS entails entering time orders, billing, bookkeeping, preparing broadcast logs, preparing the payroll, giving out station prizes, and being a receptionist. Tr. 816. Montana's net salary for her work at WVOS is \$628 every two weeks. Tr. 817.

87. Montana has been employed at WJUX since October 1994. Blabey had recommended her to Weis. Her title at WJUX is Public Affairs Director. Tr. 822. Montana claims that she was originally hired as an employee but is now a consultant. Tr. 838. However, her letter of employment with MMBI contains the same job description that is contained in Blabey's letter, namely, that she was hired "as an independent consultant on radio station management matters." MMB Ex. 12, p. 224. Her hours were to coincide with her schedule at WVOS. Tr. 817. Her duties at WJUX include answering the telephone, meeting with visitors, and picking up and routing the mail. Tr. 817. She also takes bills to Blabey and Weis for payment. Tr. 820. Her net salary at WJUX is \$108.00 per month. MMB Ex. 12, p. 225; Tr. 1441.

88. Montana met Turro the same time she met Weis. Tr. 818. She reports to Blabey, and then to Weis. She meets with Weis on an as-needed basis. Tr. 818. She could not recall how often she met with Weis or Turro during the first few months of WJUX's operation. Tr. 819. Montana has one office in the WVOS/WJUX building where she does her work for both stations. Tr. 820. Montana acknowledged there was no telephone for WJUX from October 1994 until July 1995. Montana testified that people "somehow found out" that WJUX's studio was at the same place as WVOS' studio and called there. Tr. 820-21. While Montana claims she represents WJUX in the community, she does not perform any specific duties in this regard. For example, she does not belong to any civic groups or charitable organizations for that purpose. Tr. 823.

89. Montana is also responsible for preparing and faxing to Dumont approximately every other day a community "bulletin board" which contains potential public service announcements to be aired over WJUX. Tr. 820, 823. She does not send that information to anyone in particular. Tr. 823. Montana would know if any such announcements are broadcast only by listening to WJUX, but she does not routinely listen to the station. Tr. 823, 841. Montana makes some decisions about what items are included in the bulletin board. She does not consult with either Blabey or Weis about what goes on the bulletin board. Tr. 824. However, Montana prepares exactly the same bulletin board for both WJUX and WVOS. Tr. 881. Jukebox Radio produces the WJUX public service announcements. Tr. 827. Blabey has no idea whether Montana makes recommendations or suggestions concerning public service announcements. Tr. 936. According to Montana, some items on the bulletin board are ultimately not broadcast, but that the final decision is made at Dumont. Tr. 827-8. Montana does not discuss what goes on the public service announcements with anyone at Dumont, nor does she make the ultimate decision about what announcements are broadcast over WJUX. Tr. 834. Montana knows what quarterly program lists are, but she has no role in preparing them for WJUX. Tr. 856-7. The lists are prepared by the Jukebox Radio staff. Tr. 1412.

### 3. Program Origination Capability

90. In his report, Loginow noted that the main studio for WJUX is a former production room of WVOS leased by MMBI. MMB Ex. 4, p. 83. Loginow recounts that