Blabey told him that the WJUX transmitter could be controlled remotely only from Dumont; that WJUX had never actually originated programming; and that WJUX could not do so from the alleged main studio without first making adjustments at the transmitter site. MMB Ex. 5, p. 83. MMB Ex. 18, p. 331. Loginow observed a control board, some tape machines, and a microphone in the production room. Loginow did not observe an operator who had control of the transmitter. MMB Ex. 18 p. 330; Tr. 539.

91. According to Blabey, WJUX's production room could be identified as either a WVOS or a WJUX studio. Sometimes WVOS uses it, other times it is used by WJUX, and at other times, it is not in use at all. Tr. 1023-24. WVOS and WJUX share studio equipment.[11] Tr. 1015.

92. Blabey also advised Loginow that all of the programming on WJUX is provided by Jukebox Radio and is delivered from Dumont to the WJUX transmitter by a telephone line. MMB Ex. 4, p. 83. Blabey told Loginow that while WJUX did not originate programming for broadcast from that location, it was possible to do so. Tr. 1027. Loginow reported that Blabey told him that in order to originate programming, someone would have to go to the transmitter site and effect a change of cabling at the patch panel to connect the

[11] Sometime after the April 1995 inspections, WJUX moved out of the space it shared with WVOS in the WVOS building and built a studio in the basement of that building. Tr. 985

transmitter to the studio.[12] MMB Ex. 4, p. 83. Nevertheless, Blabey testified that he personally never used or tried to use the equipment in the WJUX/WVOS studio to originate programming, and that in any event, that studio was not used to originate programming on WJUX until after the FCC inspection.[13] Tr. 1030. Montana also testified that before Loginow's inspection, WJUX had not originated programming from its studio. Tr. 893.

4. Remote Control

93. In response to the Bureau's request for Admissions from MMBI, Weis admitted that on the day of the Commission's inspection, the WJUX transmitter was not controlled via

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[12] During the hearing, however, Blabey stated that he believes he may have confused Loginow on this point. Tr. 1029. Blabey testified that he told Loginow that, in order to originate programming on the WJUX transmitter from the Liberty studio, someone must throw a switch patch in the WVOS transmitter room, take the studio feed, and patch it out to the transmitter. Tr. 1027-8. In other words, whereas Loginow reported that a switch had to be turned at the transmitter site, Blabey claimed he said that a switch had to be turned in the transmitter room down the hall from the production room serving as the WJUX main studio within the WVOS studios. Tr. 1027-8. Moreover, Blabey's testimony in this regard is consistent with Montana's testimony that WJUX had the ability to originate programming. She also said there was a switch on the WVOS transmitter for that purpose, but thought it was on a piece of Jukebox Radio network equipment. Tr. 895-6. Montana said there was no way to originate programming from the WJUX studio itself because the switch was in the WVOS studio. Tr. 896-97.

[13] On one occasion, following a snow storm in Sullivan County, Blabey recalled preparing an emergency announcement directed to citizens of Sullivan County for WJUX that the roads would be closing that afternoon. No date was established for this event. Blabey prepared the message and faxed it to Dumont for inclusion on the Jukebox radio feed to WJUX. He was concerned that people in Bergen County might be confused by the message and think it was intended for them. Blabey called Dumont to give the people there advance notice that the emergency message was coming. Blabey claims he could have made the announcement from WJUX. Tr. 981-83.

remote control from the station's main studio but that the remote control was located at Dumont. MMB Ex. 24, Admissions 65 & 66. Blabey and Turro told Loginow there was no remote control equipment at WJUX and that the WJUX transmitter is controlled full time by personnel of Jukebox Radio in Dumont by telephone line. Tr. 440, 458, 962; MMB Ex. 4, p. 83; MMB Ex. 17, Answer 15. Turro also told Loginow that there was telephone dial-up remote in Liberty for the WJUX transmitter, but Loginow did not independently confirm this information. Tr. 508-09, 543, 546.

5. Telephone

94. At the time of Loginow's April 13, 1995, inspection, there was no telephone line dedicated to WJUX at its studio location. All calls to WJUX were answered in Dumont. Tr. 482, 967-68, 969; MMB Ex. 13, page 228. The telephone bills were paid for by Jukebox Radio. MMB Ex. 11, p. 189-214. Weis never reimbursed Jukebox Radio for these bills. when Weis called WJUX, he used the WVOS telephone number. Tr. 1441. A dedicated telephone was first installed at the purported WJUX main studio in early July 1995. Tr. 861-864.

E. Misrepresentations/Lack of Candor

95. Despite persistent efforts that began as early as 1986, Turro was unable to obtain authority to originate programming on the Fort Lee translator. Turro stated at hearing

that due to these unsuccessful efforts, he came to understand what the Commission's rules permitted him to do *vis-a-vis* program origination on translators generally,[14] and on the Fort Lee translator in particular. Tr. 1782-84. He understood that a translator must receive the over-the-air signal of a primary FM station for rebroadcast. Tr. 1783.

1. 1991 Informal Declaratory Ruling

96. By letter dated January 31, 1991, Turro requested an "informal declaratory ruling" from the Bureau on the question of whether it would be consistent with the Commission's Rules for a translator licensee to purchase air time on the "originating" (primary) station that it is rebroadcasting, under the following circumstances: (a) the translator station would operate outside the primary signal contour of the station being rebroadcast; (b) the primary station would not reimburse the translator licensee for the air time that is purchased or provide any financial support to the translator station licensee; (c) the translator station licensee would purchase the air time through a time brokerage agreement containing terms that satisfy the Commission's rules and policies; and (d) the translator station would solicit commercial advertisements to be aired during the brokered time to support the programming presented. MMB Ex. 1, Att. A, p. 6.

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[14] Section 74.1231 of the Rules provides, among other things, that FM translators are generally prohibited from originating any programming except for the broadcast of emergency warnings of imminent danger (such announcements being no longer or more frequent than necessary to protect life and property) and 30 second announcements to seek or acknowledge financial support deemed necessary to the continued operation of the translator. 47 CFR §74.1231(f) and (g).

97. Turro testified that he understood "time brokerage" to involve the purchase of discrete blocks of time, which involved only a few hours a day over the brokered station, as opposed to a local marketing agreement (where one takes over a station's operations) or a network affiliation (where a station can take as much programming as it wants). Tr. 2034-39. Turro testified, however, that when he filed the 1991 request, he intended to provide 100 percent of the programming to the "originating" station. Tr. 2039-40. Turro testified that if the Commission were concerned that he might provide 100 percent of the programming to the "originating" station, the Commission would have mentioned it in the return letter to him. Tr. 2040. However, when confronted with the Commission's subsequent rescission of the informal declaratory ruling based, in part, upon learning that Turro was indeed providing 100 percent of the programming to the Monticello station, Turro denied that Jukebox Radio provides 100 percent of the Monticello station's programming. Rather, he testified, it is MMBI that has the "capability" to air Jukebox Radio 24 hours a day on the Monticello station. Tr. 2040-42.

98. Based upon the specific information presented in his request, the Bureau informed Turro by letter dated November 19, 1991 ("1991 Bureau Letter"), that the proposed operation of a translator station would not be prohibited by the Commission's rules. Among other things, the Bureau specifically stated that its conclusion was based on the following requirements: the time brokerage contract must be kept at the primary station and made available for Commission inspection upon request; there must be a *bona fide*, arms-length transaction between the primary station and the translator; the translator licensee will have to

pay to the primary station a rate charge comparable to the amount charged other purchasers of brokered air time or an amount consistent with such charges in the local broadcast community; and at no time would the translator station receive financial support, directly or indirectly, from the primary station to cover any costs associated with the operation and maintenance of the translator station pursuant to Section 74.1232(e) of the Commission's Rules. MMB Ex. 1, Att. B, p. 9.

99. After Turro received the 1991 Bureau Letter, he began looking for an opportunity to form an arrangement like the one he intended. Turro Ex. 1, p. 3; Tr. 1727. That opportunity came when he learned of the availability of the Monticello construction permit, and he was able to convince Weis to consider purchasing the station as an outlet for Jukebox Radio programming.

2. Letter of Inquiry to Turro

100. Following the receipt of Universal's complaint (MMB Ex. 2), and Loginow's inspections which confirmed elements of the complaint, the Bureau, on June 21, 1995, sent Turro a Letter of Inquiry ("LOI"). The LOI sought detailed information concerning Turro's operation of the Fort Lee and Pomona translators and the ICR, as well as the interrelationship among Turro's stations and MMBI's WJUX. Among other things, the LOI inquired whether Turro had, since October 18, 1994, originated any programming for the Fort Lee or Pomona translators via ICR WMG-499 from the Jukebox Radio studio in Dumont, while

simultaneously delivering the same programming to WJUX in Monticello. The Bureau also asked for information about whether Turro had a management, time brokerage or any other agreement concerning the ownership, programming, staffing sales, or operation of WJUX, or any other involvement in the construction or operation of WJUX. MMB Ex. 7.

3. Turro's Response to the LOI

101. In his response to the LOI, Turro stated that Jukebox Radio programming is delivered to WJUX via a telephone line, WJUX's off-air signal received by an antenna located at the Pomona translator, and the Pomona off-air signal in turn received by an antenna located at the Fort Lee translator for rebroadcast over that station. Until the Pomona translator began to carry Jukebox radio programming following Weis' divestiture of his interest in that station, the WJUX signal was received directly off-air at the Fort Lee translator. Turro also represented that the ICR had been used to provide telemetry to the Fort Lee translator until it was ordered off the air pursuant to a letter from the WTB. The ICR had been turned off no later than early July, 1995. MMB Ex. 8 p. 114-15; Turro Ex. 1, p. 24.

102. Turro also explained that he was aware of Universal's complaint, including the allegations that the Fort Lee translator was receiving Jukebox Radio programming directly from Dumont, rather by the reception of an over-the-air broadcast signal, and that the over-the-air signal of WJUX as received by the Fort Lee translator is inadequate to provide a high quality broadcast signal. Turro knew about Universal's complaint before he received the LOI.

having previously received a copy from his attorney sometime in June. Tr. 1771-2. Prior to receiving the complaint, Turro claimed that he had no indication that the Commission was concerned about the operation of WJUX. Tr. 1773-74. Aside from Loginow's inspections in April 1995, and his suspicions regarding the Commission's involvement in the May 15, 1995, "jamming incident," Turro conceded that he was aware that Universal had been publicly accusing Jukebox Radio of being an "illegal operation" as early as the winter of 1995. Tr. 1779. Although Turro and his consulting engineer denied in the LOI that WJUX's over-the-air signal was not being received (either directly, or later via the Pomona translator) at the Fort Lee translator, they did not discuss with any specificity how the Fort Lee translator was configured or operated -- and the full role that the ICR played in that configuration, in the July 1995 response to the LOI. MMB Ex. 8, pp. 114-18.

4. Use of the ICR

103. Turro also stated that until his ICR station was deactivated pursuant to Commission direction, the ICR was used to provide telemetry. MMB Ex. 8, pp. 114-15. Turro emphasized that the ICR was not used as a source of programming for the Fort Lee translator, other than the 30-second financial support messages that he later testified did not air after October 1994. MMB Ex. 8; Tr. 1718.

104. Turro did acknowledge in his response to the LOI that the ICR would permit the Fort Lee translator to directly broadcast emergency announcements. In fact, early in this proceeding, Turro claimed that:

> *At all times relevant to this hearing*, the only times that the Dumont studios delivered programming directly to W276AQ was for broadcast of emergency messages at the request of the Bergen County Office of Emergency Management.

MMB Ex. 22, Admission 124 (emphasis added). That is also consistent with Turro's representations regarding ICR-delivered programming to the Fort Lee translator made to the WTB on June 13, 1995 (MMB Ex. 8, p. 123); in his deposition, where he said that there were less than five such incidents (Tr. 1814-15); and in his direct hearing statement, where he said

that the ICR was "used rarely" in emergencies (MMB Ex. 1, p.11); and his oral testimony. Tr. 2087. Turro then stated in his direct testimony that, although he kept no records, there were no more than five such announcements, several made "in cooperation" with the Bergen County Office of Emergency Management ("BCOEM"). Turro Ex. 1, p. 11. However, BCOEM's Sgt. Eironhaufer said his office never requested that the Fort Lee translator or Jukebox Radio make any emergency broadcasts requiring the interruption of regular programming. Tr. 1327-29. Thereafter, Turro declared that, despite his earlier recollections, he could not recall *any* emergency announcements broadcast on the Fort Lee translator. When asked to explain these apparent discrepancies, Turro stated that he thought the original questions encompassed the Fort Lee translator's operation as far back as when it rebroadcast the Franklin Lakes station. Tr. 1808. Until then, Turro had consistently maintained in pre-hearing pleadings filed in this proceeding that events prior to October 1994, or relating to the operation of the Franklin Lakes station, were irrelevant to this proceeding. *See, e.g.*, MMB Ex. 27, p. 574; MMB Ex. 22, p. 456, n.2.

5. Incident During the FCC Field Inspections

105. During Loginow's April 1995, inspections, Blabey informed Jay Epstein, then Jukebox Radio's general manager, that a Commission inspector was at the Monticello studio. Tr. 1138. Epstein gathered Luna, Gaghan and Bill Owen together in the Jukebox Radio studio. Turro Ex. 24, p. 4. Luna was at the studio's control board, Gaghan was at the remote controls for the Fort Lee translator, and Owen was at the remote controls for the Monticello

station transmitter. Tr. 1110; Tr. 764. Turro was not present but Luna took instructions from him by telephone. Tr. 763-64; MMB Ex. 15, p. 243-4.

106. Luna and Gaghan understood that the purpose of the testing was to determine if employees in Dumont could remotely control the Monticello transmitter. MMB Ex. 14, p. 235; MMB Ex. 15, p. 243. In fact, Gaghan recalls that it was his responsibility to hold down the number 5 button on the TC-8 remote control unit in Dumont, so there would be no opportunity for it to switch back to microwave delivery of Jukebox Radio programming to the Fort Lee translator. By holding down this button, Gaghan understood that it would keep the over-the-air signal going to the Fort Lee translator, as it should be, and prevent the remote control from "jumping" to the ICR, which occasionally happened. MMB Ex. 15, p. 244; Tr. 764-65. Turro then called Luna, and after following his directions, it was determined the remote control unit for Monticello did not work. Tr. 763-65, 1154.

107. Turro denied that this "incident" or anything like it ever took place. Turro Ex. 1, p. 14; Tr. 1966-67, 2084. Owen, the other Jukebox Radio employee involved in the incident, claims that he does not remember the event. Turro Ex. 4, p. 2. He remembered that the Commission inspector came to Jukebox Radio, and he remembers the year but he had no recollection as to the month of the visit. Tr. 1219-20. He admitted that he did not write his statement dated October 30, 1997, submitted as Turro Ex. 4, and that he just accepted the April 1995, date as the correct date of the inspection. Tr. 1226. He was able to recall some details about the inspection, such as a conversation he had with Loginow about music, but

claimed to have no memory of the incident. Tr. 1222. Owen conceded that if someone asked him to push a button, he would have complied. Tr. 1238-39. He has no knowledge of how the equipment in the studio operated. Turro Ex. 4 at 2; Tr. 1216.

108. As noted previously, Turro also represented to Loginow and in his response to the LOI that, after January 1995, the Fort Lee translator was receiving and rebroadcasting the over-the-air signal of the Pomona translator without fully discussing the role of the ICR in connection with the Fort Lee translator. Moreover, Turro later testified at hearing that if the complete ICR-delivered microwave signal (including both the data *and* audio paths) was lost, he would lose control of the translator, another relay would close and 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. Turro also testified that if all these fail-safes failed, the Fort Lee translator could still receive the signal of the Monticello station directly. Tr. 1631, 1675-78, 1681-82. However, as described *supra*, when the ICR-delivered microwave signal was completely blocked by Loginow on May 15, 1995, the Fort Lee translator fell completely silent. Moreover, when Loginow conducted his testing on May 15, 1995, the Fort Lee translator was not receiving the over-the-air signals of either the Pomona or Monticello stations. MMB. Ex. 18, pp. 333-34; Tr. 348-56.

6. Relationship between Jukebox Radio and WJUX

109. Turro denied that he had any ownership interest in WJUX. MMB Ex. 8, p. 116. Moreover, Turro denied paying for the cost of constructing or outfitting the audio or transmitting facilities of WJUX, guarantying repayment of funds borrowed by MMBI or for the purchase of equipment. He did acknowledge assisting Weis to install "some of his equipment" at WJUX, without charge. *Id.* at 117. Turro's response to the LOI did not address Turro's role installing network equipment, or testing the WVOS equipment in what would eventually be designated the WJUX main studio.

110. Turro acknowledged serving without charge to MMBI as WJUX's Chief Operator until May 1, 1995. Turro understood this arrangement to be permissible so long as he was not compensated in that capacity. Turro reasoned that if a primary station could provide "technical support" to a translator station, the translator operator should be able to provide technical support to the primary station. So long as no money changed hands, there would be no violation of the translator rules insofar as the Commission's rules prohibit business relationships between a primary and translator station. Tr. 2013, 2057. Nevertheless, after Loginow's April inspection, Turro was replaced as WJUX's Chief Operator by Alan Kirschner. Kirschner is a trusted friend of Turro and is familiar with the Jukebox Radio operation. Tr. 1967-71.

111. Turro denied paying WJUX's operating expenses, rents, or other expenses, with the exception of the telephone bills. In this regard, Turro acknowledged paying phone bills, but could not recall the circumstances under which they were sent to him. Turro also denied that he controlled what is broadcast on WJUX and asserted that Weis has the complete discretion to make programming decisions. There was nothing in Turro's response to suggest that Jukebox Radio was providing 100 percent of WJUX's programming and advertising. Moreover, although the NAA, Turro's Personal Guaranty and the Amended NAA were attached to Turro's response, there was no reference to or discussion of the significance of the monthly "network payments" made to MMBI. MMB Ex. 8, pp. 114-18.

7. Letter of Inquiry to MMBI

112. On the same day that the Bureau sent an LOI to Turro, the Bureau also sent an LOI to Weis, the owner of MMBI, permittee of WJUX. The Bureau's LOI to MMBI sought information concerning, among other things: the ownership and operation of WJUX, Monticello; Turro's role in the acquisition, construction or operation of the station; the location and maintenance of, and the nature of any functions performed at, a main studio for WJUX; whether the station maintained a local or toll-free telephone number; whether the station had entered into a management, time brokerage or any other agreement concerning the ownership, programming, staffing sales, or operation of WJUX; and the nature of the programming carried on WJUX. MMB Ex. 10.

8. MMBI's Response to the LOI

113. Weis asserted that he is the sole shareholder of MMBI, the permittee of WJUX, and that Turro has no ownership interest in the station and has no right to acquire any such interests. Weis stated that he provided the funds to acquire and construct WJUX, Monticello, and had on hand much of the necessary equipment for the station. He acknowledged that Turro gave him $40,000 as an inducement to enter into the NAA, and that he used those funds to help pay Fishman for the construction permit. Weis stated that the only money he borrowed to purchase equipment and to construct the station was a $15,000 loan from his mother. MMB Ex. 11, p. 161.

114. Weis maintained that he was the only person who controls the finances of WJUX and who pays the station's operating expenses. Weis stated only that it was an "oversight, which is now being corrected" that resulted in the phone bill for WJUX being paid for by Jukebox Radio. MMB Ex. 11, p. 162. He said he knew the project was economically viable, and that's why he did it. This response did not disclose, as discussed previously, the nature of monthly "network" payments or fact that Weis structured those payments (and had Turro sign a personal guaranty) to ensure that he had no personal financial risk.

9. WJUX Main Studio

115. The LOI asked specific questions about the location, staffing and function of,

as well as public access to, the main studio, as well as any other auxiliary studios for WJUX. MMB Ex. 10, pp. 157-59. Weis responded that WJUX maintains its main studio at the WVOS studios in Liberty, New York, within WJUX's principal community contour. He further stated that the main studio had capability for program origination and remote control for the transmitter. Weis also represented that WJUX had no auxiliary studio. MMB Ex. 11, p. 164. Weis did not mention that 100 percent of WJUX's programming, including advertisements, were originating from the Dumont studios of Jukebox Radio, which also maintained remote control of the Monticello station's transmitter. MMB Ex. 11, p. 163. He also stated that the WJUX telephone was answered at the Dumont studios of Jukebox Radio. *Id.* However, he later admitted that most of those calls were forwarded to Jukebox Radio in Dumont, although he did not state that when he responded to the LOI. MMBI Ex. 1, p. 9-10.

10. WJUX Staffing

116. The LOI also sought information on WJUX staff assigned to the station's main studio and their responsibilities. In addition, questions were asked with respect to the specific person or persons responsible for establishing and implementing station programming, administrative and policy decisions. MMB Ex. 10, 157-60. Weis, on behalf of MMBI, stated that Blabey was the General Manager of WJUX and that Montana was the station's Public Affairs Director under Blabey's supervision.[15] Weis stated that Blabey and Montana were at

[15] MMBI's response to the LOI also noted Blabey's and Montana's relationship to WVOS. In that regard, Blabey was described as the "owner" and the full-time general manager of WVOS. Montana was described as the full-time business manager of WVOS.

the studio during normal business hours. Weis also stated that he hired and fired station personnel, with some exceptions. Weis explained that Blabey interviewed potential employees from time to time and made recommendations as to whether they should be hired.[16] Weis also noted that during the fall of 1994, he asked Turro to interview an individual being considered for the position of the station's chief engineer, but that nothing had come of that so Turro took the position until May 1, 1995. MMB Ex. 11 p. 162-63. This response did not disclose the circumstances of the hiring of Turro's friend, Kirschner, after Loginow's inspections in April 1995.

117. Koteen and Naftalin assisted Weis in the preparation of his response to the LOI. MMBI Ex. 11; Tr. 1418. Hurst, who is also Turro's consulting engineer, prepared the engineering report that accompanied the response. MMBI Ex. 11.

118. In response to the LOI, Weis stated that the WJUX telephone is answered at the studio in Liberty. MMB Ex. 11, p. 163. Weis also testified that if he had to call WJUX, he just called the number for WVOS' studio and admitted that he never used the telephone number assigned to WJUX. Tr. 1441-42. However, the copies of telephone bills attached to

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MMBI's response contended that Blabey's and Montana's employment at the three stations, WVOS(AM) and (FM) and WJUX, was not precluded by Commission cross-interest policies under Section 73.3555 of the Commission's Rules. MMB Ex. 11, p. 163.

[16] Blabey testified, however, that he recommended only Montana and one other individual, George Spicka. Tr. 937-38. In addition, MMBI's response indicates that it was Blabey who hired Spicka to turn the Monticello transmitter on and off during Loginow's inspection in April 1995. Spicka was eventually retained to conduct weekly EBS tests for WJUX, beginning in August 1995. MMB Ex. 32, p. 671; Tr. 937-38.

his response to the LOI show that the calls were forwarded to Dumont and that Jukebox Radio was responsible for paying the bills for telephone service. MMB Ex. 11, p. 189-214. Nor did Weis disclose that he did not reimburse Jukebox Radio for those telephone bills. Tr. 1438.

III. Conclusions of Law

A. Inter-city Relay and Translator Operations

119. Section 74.531(c) of the Commission's Rules, 47 C.F.R. §74.531(c), authorizes an aural broadcast inter-city relay station to transmit aural program material between noncommercial educational FM stations and their co-owned noncommercial educational translator stations assigned to reserved channels (Channels 201-220) and between FM radio stations and FM translator stations operating within the coverage contour of their primary stations. Section 74.1231(b) of the Commission's Rules, 47 C.F.R. §74.1231(b), provides, in pertinent part, that 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, converted, and suitably amplified.

120. Turro conceded that he was using ICR Station WMG-499 as a remote control and audio link between the Dumont studio of Jukebox Radio and the Fort Lee translator. In October 1994, after the Franklin Lakes station went silent and the Monticello station became

the "primary" station for the Fort Lee translator and Jukebox Radio programming, Turro continued to use the ICR -- not as initially (and mistakenly) authorized, but rather as a direct microwave link between the Dumont studio of Jukebox Radio and the Fort Lee transmitter. Regardless of how the ICR was originally authorized, between October 1994, and July 1995, when Turro discontinued operation of the ICR, WMG-499 was not used either to transmit aural programming between noncommercial stations operating on reserved channels or to transmit directly aural programming between an FM station and a translator station providing fill-in service, *i.e.*, a translator station operating within the coverage contour of the asserted primary station in Monticello. Rather, the ICR was used to control the Fort Lee translator and to supply the translator with Jukebox Radio programming. Turro's uses of the ICR for telemetry and the delivery of programming directly to the Fort Lee translator were not permissible uses of that authorization, and, therefore, constitute a violation of Section 74.531(c) of the Rules.

121. Loginow's signal testing on May 15, 1995, established that, at least on that day, the ICR was used as the mechanism to deliver Jukebox Radio programming to the Fort Lee translator for rebroadcast to areas within Bergen County, New Jersey. When the ICR frequency was blocked, the Fort Lee translator did not rebroadcast the over-the-air signal of either the Pomona translator or WJUX in Monticello as Turro claimed would happen. Rather, when the ICR signal was blocked, the Fort Lee translator fell completely silent. While Hurst claimed that he was unable to block the Pomona signal on the roof of Mediterranean Towers from the basement, that conclusion is not relevant to the ability of Loginow's signal generator

to be effective in blocking the Pomona signal as allegedly received *in the basement* where an alleged hot spot made for unusually strong reception of the Pomona over-the-air signal there possible. Thus, Turro violated Section 74.531(c) by using the ICR to deliver programming to the Fort Lee translator. In addition, Turro also violated Section 74.1231(b), since the Fort Lee translator was not rebroadcasting the over-the-air signal of WJUX or the Pomona translator but was rebroadcasting the signal of the ICR.

122. Finally, Luna's and Gaghan's testimony also indicate that Turro was using the ICR microwave signal to feed programming directly from Dumont to the Fort Lee translator. Thus, the violations of Sections 74.531(c) and 74.1231(b) occurred during the entire period Turro used the ICR in conjunction with the programming of WJUX and the Fort Lee translator.

123. Under Issue 1, the Bureau had the initial burden of going forward with the introduction of evidence, and Turro had the ultimate burden of proof, as to whether 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. The findings demonstrate and, thus, it is concluded that Turro violated Section 74.531(c) by operating the ICR to deliver programming direct to the Fort Lee translator between October 18, 1994, and July 1995, when the use of the ICR ceased. It is further concluded that Turro also violated Section 74.1231(b) of the Commission's Rules during that same period by transmitting Jukebox Radio programming

directly to the Fort Lee translator via inter-city relay link WMG-499. Accordingly, the Bureau submits that Issue 1 should be resolved adversely to Turro.

B. Unauthorized Assumption of Control Issues

124. A fundamental duty of any Commission licensee/permittee is the maintainance of ultimate control over its station. Section 310(d) of the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. § 310(d), as well as Section 73.3540(a) of the Commission's Rules, essentially provide that no broadcast authorization shall be voluntarily transferred or assigned without prior Commission evaluation and consent. In the context of a broadcast station, the Commission has stated that "licensee control over the operation and management of their broadcast facilities has been central to the proper functioning of the regulatory scheme mandated by Congress and enforced by the Commission." *Trustees of the University of Pennsylvania*, 69 FCC 2d 1394, 1396 (1978).

125. There is no exact formula by which control of a broadcast station can be determined. But, in ascertaining who controls a broadcast station, the Commission traditionally looks beyond the legal title to who has obtained the right to determine the basic operating policies of the station, particularly those policies relating to the station's personnel, programming, and finances. *See WHDH, Inc.*, 17 FCC 2d 856 (1969), *aff'd sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923

(1971). Although a licensee may delegate certain functions to an agent or employee on a day-to-day basis, ultimate responsibility for essential station policies cannot be delegated. *Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713, 715 (1981). *See also Salem Broadcasting, Inc.*, 6 FCC Rcd 4172 (MMB 1991) ("*Salem*").

126. As indicated above, there is no set formula for determining whether an unauthorized transfer of control has taken place. All aspects of the operation are to be examined for "telltale signs" of undisclosed control. Each case must be analyzed on the particular facts presented. *The Seven Hills Television Company*, 2 FCC Rcd 6867, 6878 (Rev. Bd. 1987), citing *Stereo Broadcasters, Inc.*, 87 FCC 2d 87 (1981).

1. Turro was in Control of WJUX from its Inception

127. The findings demonstrate beyond question that Turro, not MMBI, controlled WJUX from its inception. Turro conceived the idea of finding a commercial broadcast outlet for his Jukebox Radio programming. He spent three years looking for the appropriate broadcast station. Once he found an available permit, he was the one who approached Weis to acquire the permit, provided the necessary funding, and supplied 100 percent of the programming, including all advertising.

128. Turro provided the NAA to Weis and assured him that the arrangement had been sanctioned by the Commission. Turro provided, through the payment of the monthly

fees, all the funds necessary to operate the station and to ensure a pre-determined profit for Weis. In this regard, Turro also signed a personal guaranty to assure these payments. Weis made the signing of the Guaranty a condition for his signing the NAA. The Guaranty provides that Turro is personally liable for the monthly payments under the NAA in the event that BCCBF defaults. Turro agreed to these terms despite the fact that he was under financial constraints at the time and had to secure a loan for MMBI's inducement fee. From these facts, it is clear that Turro was ultimately responsible for the finances for WJUX and that Weis provided virtually no money and assumed minimal risk in the venture.

129. Turro also chose the call letters for the station and made sure that these were transferred from BCCBF's station in Franklin Lakes, New Jersey, to the new outlet for his Jukebox Radio programming in Monticello, New York. Neither Turro nor MMBI made any significant effort to ascertain the needs of WJUX's service area in Sullivan County, New York, as the station was never intended to serve that area but rather the geographic area chosen by Turro, Bergen County, New Jersey. Thus, with few exceptions, WJUX aired only public affairs programming and advertising directed toward Bergen County. Weis knew from the day Turro first approached him about acquiring the permit that the station would be serving Bergen County, New Jersey, not Sullivan County, New York.

130. Weis also agreed to purchase the permit on the proviso that Turro, in addition to providing all the necessary funds to purchase and operate the station, would be furnishing *all* the programming and would be selling *all* the advertising time for the station. Weis had

no intent to exercise control over programming decisions and in fact, until the Fall of 1997, no Jukebox Radio programming was preempted at MMBI's direction. In sum, the NAA and the parties' actions related thereto evidence Weis' minimal, if any, involvement with the programming of the station.

2. Construction

131. Another critical factor in determining that Turro was exerting undue control over WJUX is the extent of his role in the actual construction of WJUX. In his testimony, Turro stated that "[I] basically supervised the construction." His role in the construction extended to the physical installation of network equipment at the station and to his personal inspection of the WJUX studio to verify that it was operational. The Commission looks to which party was actively in charge throughout the construction period. *See Roy M. Speer*, 11 FCC Rcd 18393, 18415 (1996), *recon. pending* ("*Speer*"). Here, it is obvious that Turro was in charge of the construction of WJUX. Weis' admitted interest in the construction process was limited to making sure the station was on the air as soon as possible. For, as soon as that occurred, the sooner Weis would receive money from Turro pursuant to the NAA.

3. Finances

132. The Commission looks to the terms of any financial arrangement, since "one of the most powerful and effective methods of control of any business . . . is the control of its

finances." *La Star Cellular Telephone Company*, 5 FCC Rcd 3286, 3292 n. 12 (1990), *citing Cornbelt Broadcasting Co.*, 15 FCC 2d 315 (1969). Control of finances is a critical element in determining if an unauthorized transfer of control took place. If the only revenue for a station is from a broker, it shows a lack of licensee control over finances. *Salem*, *supra*, 6 FCC Rcd at 4173; *Benito B. Rish, M.D.*, 6 FCC Rcd 2628 (1991).

133. When a "broker" takes on the characteristics of a lessee by infusing capital into the station and becoming intimately involved in decisions as to the construction and/or operation of a station, it transcends the traditional function of a time-broker which is the purchase and resale of air time. *See Salem*, *supra*, 6 FCC Rcd at 4173, *citing United Broadcasting of New York, Inc.*, 4 RR 2d 167, 173 (1965). In *Salem*, the Bureau found that the licensee had engaged in an unauthorized transfer of control by abdicating its duty to determine the manner and means of constructing and operating the station. The evidence there showed that the broker had infused the station with working capital, bought equipment for the station, chose a format and had otherwise participated in and financed the construction of the station. *Salem*, 6 FCC Rcd at 4173.

134. Here, it is apparent that Turro has gone well beyond the role of a time-broker and has controlled the finances of WJUX from the start. After the purchase price and terms of payment were agreed upon with Fishman, Turro paid Weis $40,000 as an "inducement" for signing the NAA. That amount happened to coincide with the amount of the down payment needed for the purchase. Then Weis presented Turro with a schedule of monthly payments