

that became part of the NAA. Weis testified that the amount of these monthly payments was derived from his anticipated expenses for the station plus a profit for him. Weis intended for Turro to pay for everything, "the whole set-up." Weis agreed to sign the NAA on the basis that all his expenses would be paid directly by Turro through the NAA monthly payments. Weis' business plan was accurate. He testified that there was never a month that the station's expenses exceeded the monthly payments. In fact, when two additional pieces of equipment were needed for the station, Turro readily agreed to fund their purchase by increased payments.

135. While Weis paid WJUX's expenses from MMBI's checking account, all the funds came from Turro. The station had no other source or means of revenue as Jukebox Radio retained any advertising revenues. A licensee should be able to operate independently from the broker at anytime it believes the arrangement is no longer satisfactory. *WGPR, Inc.*, 10 FCC Rcd 8140, 8145 (1995). As to the operation of WJUX, MMBI had no such ability. MMBI is totally dependent upon money received pursuant to the NAA to operate WJUX. Moreover, there is no provision in either the NAA or the Amended NAA for MMBI to terminate the agreement for any reason.

136. Weis testified that he knew purchasing the permit was a good deal. Yet he reached this conclusion without first drawing up his "business plan." It can be inferred from these facts that Weis agreed to purchase the permit only after he was assured that the venture would involve the absolute minimum financial risk, yet afford him an opportunity to earn an

ample profit. In short, Weis was a "straw man" for Turro.

4. Programming

137. A licensee's mere participation in a time brokerage arrangement does not constitute an unauthorized transfer of control under Section 310(d) of the Communications Act unless the agreement vests a disproportionate degree of control in the broker. *Roy R. Russo, Esq.*, 5 FCC Rcd 7586, 7587 (MMB 1990) ("*Russo*"). In *Paramount Stations Group of Kerrville, Inc.*, 12 FCC Rcd 6135, 6146 (1997) ("*Paramount*"), the Commission found that despite the existence of a time-broker agreement, the licensee had ultimate control over the programming. *Paramount, supra*, 12 FCC Rcd at 6145. In particular, the licensee retained control over ascertaining needs and interests of its community of licensee. *Paramount, supra*, 12 FCC Rcd at 6146, citing *Cosmopolitan Broadcasting Corporation*, 59 FCC 2d 558, 560-61 (1976). The Commission also looks to the extent of the broker or prospective purchaser's daily involvement in the station's operations. *Russo, supra*, 5 FCC Rcd at 7587. Another factor in determining whether an unauthorized transfer of control has taken place is whether the time brokerage agreement is irrevocable. *Stereo Broadcasters, Inc.*, 87 FCC 2d 87, 94 (1981).

138. It is clear that under the NAA, MMBI had no control over programming decisions. The NAA provided that Jukebox Radio will supply 100 percent of the programming for WJUX. There were no exceptions. There were no provisions for public

service programming, for preemption or deletion of Jukebox Radio programming, or for broadcasting of programs produced by MMBI. The NAA also provided that Jukebox Radio will supply all local station identifications, public affairs programming, and Emergency Broadcast System tests. In sum, under the NAA, MMBI had no authority to exert any control over programming.

139. It is also clear that even after the NAA was amended following Loginow's inspections to include provisions which conferred authority on MMBI to make programming decisions, MMBI did not exercise any such control. Weis testified that he saw no real difference between the two documents and did not change any of his activities with respect to the station as a result of its signing. Yet the differences between the two documents are substantial. The amended NAA provides that MMBI has decision-making authority over programming, a provision which was lacking in the original NAA. Weis, however, was certainly accurate that the signing of the amended NAA had no effect on his activities as there is no evidence that Weis made any programming decisions either before or after the amended NAA was signed. This inattention to the wording of the amended NAA shows that Weis did not trouble himself with matters concerning the station. If he did, even a cursory reading of the amended NAA would indicate that MMBI needed to exert meaningful control over the operation of the station.

140. Moreover, the fact that counsel had Weis, on behalf of MMBI, and Turro sign the agreement as soon as the Commission began questioning their operation should have given

Weis a clear signal that some changes in his activities *vis a vis* WJUX were in order.

However, the only change followed Blabey's suggestion that WJUX air some public affairs programs directed toward Sullivan County. Thus, tapes of programs that had already aired on WVOS were offered free of charge and played on WJUX.

141. Weis admitted that the first time Jukebox Radio programming was preempted was in 1997. The programming was preempted to insert local political advertisements. Other than these instances, the programming was entirely controlled by Jukebox Radio.

142. A station that airs brokered programming 24 hours a day must, nonetheless, remain responsive to the needs of its community of license. *See Brian M. Madden, Esq.*, 7 FCC Rcd 1871 (MMB 1991). As evidenced both from testimony and MMBI's quarterly issues and programs lists, until questions were raised WJUX aired no programs directly responsive to the needs of Sullivan County. WJUX's public affairs programming during this period was directed to Jukebox Radio's target audience in Bergen County. Then, starting in February 1995, WJUX began airing a weekly public affairs program that was directed to Sullivan County. This program, "People Who Make a Difference," was merely a program produced for WVOS and re-broadcast on WJUX. Another WVOS program, "Open Mike," was not broadcast on WJUX until May 1996. The rest of the public affairs programs were directed to Bergen County, New Jersey. Therefore, WJUX programming can charitably be viewed as only marginally responsive to the needs of its community of license.

143. It is well established that it is the actions of the licensee, not the terms of a NAA or any other type of agreement he may have with a program provider, that determine whether the licensee in fact controlled programming on a particular station. In *Brooke Communications, Inc.*, 10 FCC Rcd 8249 (MMB 1995), *recon. pending* ("*Brooke*"), the licensee and the broker had entered into a Service Station Agreement (SSA) under which the licensee had the authority to present one regularly-scheduled public affairs program. *Id.*, 10 FCC Rcd at 8250. The Bureau concluded that an unauthorized transfer of control had occurred after finding that the broker effectively controlled the station's entertainment programming, employees, main studio and finances.

144. *Brooke* is analogous to the circumstances presented here. Turro has provided all of WJUX's entertainment programming. Turro's staff at Dumont essentially operate WJUX via remote control. As discussed *infra*, WJUX does not have a main studio in the Monticello area; rather, the station's main studio is for all practical purposes in Dumont. Finally, as discussed above, Turro's money is used to operate WJUX.

145. In *Salem*, the licensee entered into a "Lease and Option Agreement" as part of an agreement to transfer control of the station's permit. The Bureau found that while the terms of the agreement allowed Salem to preempt programming, Salem acknowledged that it had never done so once the station went on the air. The Bureau also found that there was no provision in the agreement for Salem to originate programming or to ascertain needs of the community of license. The Bureau determined that Salem's minimal involvement in the

station's programming, basically as a consultant rather than as a hands-on decision maker, negated its contention that it was in control of the station's programming. *Id.*, 6 FCC Rcd at 4173.

146. In the case before us, the original NAA contained no provisions for MMBI to preempt programming or to ascertain community needs. While these provisions were included in the amended NAA, there is no evidence that MMBI exercised its preemption rights or made sure that the needs of WJUX's service area were met. As noted previously, the only issue-responsive programming offered by WJUX was WVOS' "People Who Make a Difference," which was replaced by "Open Mike." This does not represent an honest effort to air public affairs programming. Moreover, neither Weis, nor WJUX's "public affairs director" nor its "general manager," made any meaningful efforts to ascertain community needs on that station's behalf.

5. General Abdication of Control

147. When Loginow came to WJUX, Montana called Dumont when she was unable to reach the WVOS engineer. Turro, not Weis, was then contacted, although both were attending the NAB convention in Las Vegas at the time. It was Turro who took charge of the matter, not Weis. Turro was the one who answered Loginow's questions regarding the remote control equipment for WJUX. Weis had no involvement in the inspection despite the fact that Turro told him about it while they were in Las Vegas. Weis did not call either

Blabey or Montana to find out what happened. Weis barely discussed the inspection with Turro. Moreover, Turro never even told Weis that Loginow was interested in whether there was remote control from Dumont to the WJUX transmitter.

148. Weis also did not concern himself with program interruptions at WJUX. Montana testified that when these occurred, she called WVOs personnel or Turro. Luna also called Turro when there were program interruptions. Blabey testified when both WVOs and WJUX were off the air, his first concern was to get his own station back on the air. No one testified that Weis was called in the event of a program interruption.

149. Another example of unauthorized transfer of control is that Turro and MMBI shared counsel until the time the *HDO* was issued. At that point, it was obvious that their interests were at odds. Prior to that, Koteen and Naftalin represented both of them before the Commission. A critical time when they shared counsel was when they each received the LOIs from the Bureau. Turro's response was sent with a cover letter on Koteen and Naftalin letterhead. MMBI's was not. However, at the hearing, Weis testified that, in fact, Koteen and Naftalin had prepared MMBI's response, yet Weis chose to withhold that information from the Bureau. One can infer from that action the Weis was attempting to conceal the fact that MMBI shared counsel with Turro.

150. Turro and MMBI also shared engineering firms. Hurst, an engineer with the firm of Carl T. Jones Corporation, prepared the engineering statement that accompanied both

Turro and MMBI's responses to the LOI. Hurst also prepared statements that were included in both Turro's and MMBI's direct testimony. In addition, Turro served as the unpaid chief operator for WJUX and held that position until he was replaced by his friend, Kirschner, after the April 1995, inspections.

151. In conclusion, there is scant evidence of Weis' involvement with WJUX, save for writing checks for which the source of funds was Turro. The station was operated primarily by Turro and for his benefit.

6. Personnel

152. The only area in which Turro did not exercise complete control over the station is in the hiring of personnel. Weis exercised some nominal control over personnel, to the limited extent that the station had any personnel. In the Main Studio Section, *infra*, the Bureau demonstrates that, in fact, WJUX had no full-time employees. Blabey and Montana worked primarily for WVOS. Their few duties at WJUX were merely an extension of their work at WVOS. Both received nominal salaries and performed minimal duties for WJUX.

7. Conclusion

153. The record evidence establishes that from its inception, Turro, not MMBI, was in control of WJUX. The only reason Turro sought out Weis to purchase the permit was that the former could not own it. Turro understood that the Commission's rules prohibited the owner of a primary station, here WJUX, from also owning the translator station, here the Fort Lee translator, which rebroadcasts its programs. The only reason Weis agreed to purchase the permit was that he was assured that Turro would provide all the money and programming. In essence, Weis admitted that the purchase of the permit was a good business deal for him, and then he abdicated all control over the operation of the station to Turro.

154. Although a licensee or permittee may delegate certain functions to an agent or employee on a day-to-day basis, ultimate responsibility over essential station matters, such as personnel, programming and finances, is nondelegable. *Southwest Texas Public Broadcasting Council, supra*, 85 FCC 2d at 715. The totality of the facts here clearly indicates that Weis never had control, nor did he ever intend to have control, over the finances and the programming of WJUX. Weis, through MMBI, was essentially a "straw man" for Turro's operation. The only reason Turro sought out Weis to purchase the permit was because Turro could not own it himself. Turro was intent on finding a way to circumvent the Commission's translator rules to fulfill his ambition to serve Bergen County by using the Fort Lee translator. Turro, knowing that he could not own the primary station himself, turned to his friend Weis to own it in his stead. Therefore, WJUX was purchased for the sole purpose of implementing

Turro's plans. Significant matters, such as Commission inspections and program interruptions, were handled by Turro's employees at Jukebox Radio. In addition, Turro and MMBI shared law and engineering firms. The only area where Turro did not exercise complete control was over personnel matters. However, since, as indicated above, the station was not properly staffed, control over personnel is not a critical element of control in this particular situation.

155. Under Issue 2, 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 engaged in an unauthorized transfer of control, or otherwise exercised and/or continues to exercise *de facto* control over WJUX, 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. With respect to Issue 6, the Bureau had the burdens of proceeding and proof as to whether MMBI transferred control without Commission authorization to Turro. The evidence demonstrates and, thus, it is concluded that Turro, not MMBI, was in control of WJUX from its inception as indicated by Turro's domination of programming and financing decisions. In addition, the record indicates and it is further concluded that Turro, not MMBI, managed the day-to-day activities of WJUX. Accordingly, the Bureau submits that Issues 2 and 6 should be resolved adversely to Turro and MMBI, respectively.

C. Main Studio

156. Section 73.1120 of the Commission's Rules provides, in pertinent part, that each FM broadcast station will be licensed to the principal community which it primarily serves. The evidence demonstrates that WJUX primarily serves Bergen County, New Jersey, not Monticello, New York, its specified community of license. The quarterly issues and programs lists for WJUX indicate that the preponderance of the public affairs programs were directed towards listeners in Bergen County, New Jersey. Examples of such programs include "Access Bergen County," "Rutgers University Forum" and "Target New Jersey." By comparison, the only programming directed toward Sullivan County (and not toward Monticello, in particular) were programs previously broadcast on WVOS.

157. Under Section 73.1125 of the Commission's Rules, a main studio is expected to facilitate the key function of serving the needs and interest of the residents of the station's community of license. *See Main Studio and Program Origination Report and Order*, 2 FCC Rcd 3215 (1987), *clarification*, 3 FCC Rcd 5024, 5026 (1988). To fulfill this function, a station must maintain continuous program origination and production facilities, a full-time management and staff presence during regular business hours, and provide local or toll-free telephone service to facilitate contact by members of the community. *Id.* In *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615 (1991), *clarification*, 7 FCC Rcd 6800 (1992) ("*Jones Eastern*"), the Commission defined a minimally acceptable "meaningful presence" as a full-time managerial and full-time staff employee. The Commission further found that there must

be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful." *Id.*, 6 FCC Rcd at 3616 n. 6; 7 FCC Rcd at 6800 n. 4. *See also*, *Pappas Telecasting of the Carolinas (WHNS(TV))*, 104 FCC 2d 865 874 (1986); *McNulty Broadcasting Corp.*, 7 FCC Rcd 4860 (MMB 1992) (licensee assessed a forfeiture for failure to maintain program production and transmission capability at its main studio).

158. The evidence adduced at the hearing supports a conclusion that MMBI violated the Commission's rules by failing to maintain a main studio for WJUX. As a practical matter, WJUX did not have program origination and production facilities until the winter of 1997. In addition, WJUX never had and still does not have a meaningful managerial and staff presence.

1. Program Origination and Production Facilities

159. A critical element of a main studio is that it must be equipped with production and transmission facilities and maintain continuous program transmission capability. Blabey, the purported general manager of WJUX, was not able to answer correctly Loginow's questions about whether the WJUX studio had program origination capability and remote control. Although he later testified on these matters, it is abundantly clear that Blabey (or, for that matter, Montana) was unaware of how to originate programming in April 1995, and was not so informed until he was prepped for the hearing. In any event, Blabey never personally used or tried to use the equipment in the WJUX/WVOS studio to originate programming.

Moreover, while it is likely that the WJUX transmitter could be controlled by telephone, neither MMBI, nor Blabey or Montana was aware of this during the April 1995, inspection.

2. Personnel

160. Blabey and Montana, with their minimal employment responsibilities at WJUX, do not constitute "meaningful management and staff presence." Blabey claims he has the title of general manager and Montana claims she is the public affairs director. However, their job titles do not match their employment letters. According to these letters, Blabey and Montana were each hired as "an independent consultant on radio station management matters." They were not even hired as "employees," although Montana claims that she asked to be considered an employee for tax reasons.¹⁷ A description of their actual duties at WJUX as well as their meager salaries clearly indicate that Blabey and Montana are not full-time employees, but rather merely caretakers, of WJUX. Moreover, their job titles are virtually meaningless, and they are paid accordingly.

161. Their "employment" at WJUX was a sham from the start. As for Blabey, he attended to WVOS. For example, if both stations were off-the-air, his first concern was to put WVOS back on the air. He also did not maintain a regular schedule at the WJUX "main studio" but came and went as necessary to attend to WVOS matters. When he made sales presentations, he made them for both stations. However, he sold advertising only for WVOS.

¹⁷ The only copies of pay stubs submitted by Montana indicate that she is a consultant.

When he attended civic meetings in the community, he did so for both stations. Other than administrative functions, Blabey did not perform any meaningful tasks exclusively for WJUX. Moreover, during the April 13, 1995, inspection, Blabey was not aware of two critical features of the WJUX studio -- its remote control and program origination capabilities. Blabey is paid a nominal sum of \$100 per week for his work as the supposed general manager of the station.

162. Montana was hired by MMBI at Blabey's suggestion. She was already employed as the business manager for WVOS. By hiring Montana, Blabey was assured that she would watch out for WVOS' interests while he was out of the office. Montana, while ostensibly the WJUX public affairs director, did little to justify that job title. Her only activity related to WJUX's public affairs was to prepare a "bulletin board" -- virtually the same as she prepared for WVOS -- which contained public service announcements for potential broadcast on WJUX. Montana did nothing to ascertain WJUX's community's needs or to ensure that its programming was responsive to those needs. The major part of her job at WJUX was picking up the mail and forwarding things to Blabey and/or Weis, as appropriate. Although she stated that answering the telephone was her responsibility, there was no telephone at WJUX from October 1994 until July 1995. According to Montana, if people wanted to call WJUX, they would call WVOS' number because they "somehow knew" that both stations were at the same place.¹⁸ For her job as the so-called public affairs director,

¹⁸ It is interesting to note that Weis also called the WVOS number if he wanted to talk to someone at WJUX and apparently was unaware that calls to the WJUX number were forwarded to Dumont. It is also of note that there was no sign outside the WVOS studio to

Montana earned a net income of approximately \$27 per week.

163. In contrast to their limited activities at WJUX, Blabey and Montana spent considerable time operating WVOX. In view of Blabey's and Montana's substantial duties at WVOX, it is difficult to conclude that either of them could be viewed as "a substantial management presence" for WJUX. Save for a few administrative duties, neither of them could point to any meaningful activities they performed solely for the benefit of WJUX. These factors, taken in conjunction with their meager salaries, leads to the conclusion that, as a practical matter, WJUX did not have a meaningful management and staff presence.

3. Telephone

164. There was no telephone for the WJUX studio from October 1994 until July 1995. Turro first revealed this fact in his answer to the LOI. Although MMBI asserted in its response to the LOI that the telephone was answered at the studio, copies of the telephone bills submitted with the response to the LOI clearly showed that Turro was paying the bills and that the calls were being answered in Dumont. Weis later admitted these facts both in his direct statement and in his testimony at the hearing. Montana testified that she purchased a telephone for the station in July 1995.

indicate the presence of WJUX. One wonders how people "just knew" that the station was there.

165. Under Issue 5, the Bureau had the burdens of proceeding and proof as to whether MMBI violated 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. The findings demonstrate and, thus, it is concluded that MMBI violated Sections 73.1120 and 73.1125(a) and (c) because: 1) WJUX serves Bergen County, New Jersey, not Monticello or Sullivan County, New York; 2) WJUX did not have, as a practical matter, production and transmission facilities until the winter of 1997; 3) WJUX did not have and still does not have a meaningful management and staff presence; and 4) WJUX had no local telephone between October 1994 and July 1995. Accordingly, the Bureau submits that Issue 5 should be resolved adversely to MMBI.

D. Misrepresentations and Lack of Candor

166. Misrepresentation involves a false statement of fact. Lack of candor involves concealment, evasion and other failure to be fully forthcoming. Both represent deceit; they differ only in form. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983). An intent to deceive is an essential component of both. *Pinelands, Inc.*, 7 FCC Rcd 6058, 6065 (1992). The nature of the misrepresentation or lack of candor is essentially irrelevant, because it is the "willingness to deceive" that is most significant. *Speer, supra*, 11 FCC Rcd at 18421, *citing FCC v. WOKO, Inc.*, 329 U.S. 223, 227 (1946). Intent can be shown in many ways. If a party makes a false statement known to be false, that is sufficient proof of an intent to

deceive. *LeFlore Broadcasting Co. Inc.*, 636 F.2d 454, 462 (D.C.Cir. 1980). It can be inferred when a party has a clear motive to deceive. *See, e.g., RKO General, Inc.*, 4 FCC Rcd 4679, 4684 (Rev. Bd. 1989). Intent can also be found when surrounding circumstances clearly show the intent to deceive, even if there is no direct evidence of intent to deceive. *American International Development, Inc.*, 86 FCC 2d 808, 816 n. 39 (1981).

167. The Commission must be able to rely upon the completeness and accuracy of the information provided to it by its licensees and applicants. Given the Commission's limited resources to investigate independently each and every claim made by those parties, its system of regulatory control must, of necessity, presuppose the honor of its regulatees. *Tri-State Broadcasting Co., Inc.*, 5 FCC Rcd 1156, 1173 (Rev. Bd. 1990), *recon. denied*, 5 FCC Rcd 3727 (Rev. Bd. 1990), *rev. denied*, 6 FCC Rcd 2604 (1991). The integrity of the Commission's processes cannot be maintained if it cannot believe and rely on its licensees and applicants. The Commission cannot "play procedural games with those who come before it in order to ascertain the truth . . . and license applicants may not indulge in common-law pleading strategies of their own devise." *RKO General, Inc. v. FCC*, 670 F.2d 215, 239 (D.C. Cir. 1981).

168. Where the submission of false or inaccurate information results from an intent to deceive, the remedy may be total disqualification, even if the facts concealed do not appear to be particularly significant. *Standard Broadcasting, Inc.*, 7 FCC Rcd 8571, 8573-74 (Rev. Bd. 1992), cited in *Contemporary Media, Inc.*, 12 FCC Rcd 14254, 14295 (ALJ 1997)

("Contemporary"). In this regard, the Commission is concerned with "whether the licensee will in the future be likely to be forthright with the Commission and to operate its station consistent with the requirements of the Communications Act and the Commission's Rules and policies." *See Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1209-10 (1986). Indeed, the "trait of truthfulness" and the "future reliability" of a licensee are the two key elements of the character necessary to operate a broadcast station in the public interest. *Id.*

169. In this case, there is compelling and overwhelming evidence that Turro repeatedly and intentionally misrepresented facts to and lacked candor with the Commission concerning the operation of the Fort Lee translator and his relationship with MMBI. Turro's submissions to the Commission show a repeated refusal to provide meaningful information concerning what eventually evolved into operation of the Fort Lee translator and the relationship between Jukebox Radio and MMBI. Similarly, MMBI's submissions failed to portray an accurate picture of its relationship to Turro and Jukebox Radio.

1. Turro

170. In order to understand Turro's state of mind, it is important to consider the underlying circumstances that led to operation of the Fort Lee translator and his relationship with MMBI. For years, Turro unsuccessfully tried to convince the Commission to allow him to originate programming on his translator at Fort Lee, which would be directed to the needs

and interests of the residents of Bergen County, New Jersey. Thereafter, he acquired a noncommercial full-service FM station, WNJW, Franklin Lakes, to act as the "primary station" for the Fort Lee translator. The programming carried on the Franklin Lakes station, and rebroadcast over the Fort Lee translator, was virtually the same Jukebox Radio programming carried today on WJUX, Monticello, and the Fort Lee translator -- except that commercial announcements were limited to the 30-second "underwriting" messages transmitted via the ICR direct from Dumont and broadcast only on the Fort Lee translator. Thus, in order to expand the commercial viability of Jukebox Radio, Turro knew that he had to find an available commercial full-service FM station to serve as a primary station for the Fort Lee translator.

2. 1991 Letter

171. In 1991, Turro was aware that the Commission's rules prohibited the licensee of an "other area" translator -- one whose coverage contour extends beyond the protected contour of its commercial primary station -- from having any interest in or connection with the primary FM station. Thus, as a first step, he had to devise some method that allowed him to maintain a relationship with a primary station -- at minimum, delivering his Jukebox Radio programming (including commercials) to the primary station -- so that it could be rebroadcast over the Fort Lee translator. He therefore sought the informal ruling from the Commission

for authority to purchase "brokered" airtime.¹⁹ The Bureau, based on the specific circumstances presented by Turro, did not object to such an arrangement, subject to certain safeguards including that any time brokerage agreement be subject to an arm's-length transaction between the primary station and the translator, and that the translator licensee pay a rate for the brokered time comparable with the rate charged other purchasers of time on the station or an amount consistent with other charges in the local broadcast community.

172. At the time he filed his 1991 request for an informal declaratory ruling, Turro could not have made specific representations with regard to what was to become his relationship with MMBI. However, he could have disclosed, but chose not to disclose to the

¹⁹ "Time brokerage" is the sale by a broadcast licensee of discrete blocks of time to a "broker," who then supplies the programming to fill that time and sells advertising to support it. *See Petition for Issuance of Policy Statement or Notice of Inquiry on Part-Time Programming*, 82 FCC 2d 107, n.2 (1980). Time brokerage was initially encouraged to foster the development of independent "specialized" programming. *Id.* at 120. However, the rulings and policies for time brokerage have evolved to allow all or nearly all of a station's broadcast week to be brokered by another station in the same market. *Letter to Gisela Huberman*, 6 FCC Rcd 5397 (1991) and cases cited therein. However, the Commission has also made clear that in a brokerage arrangement, the "brokering" entity must not obtain an undue amount of control over the brokered station and, conversely, the "brokered" licensee must not abdicate ultimate control in the area of finances, personnel matters, and programming; that the "brokered" licensee fully comply with main studio, including main studio staffing requirements; and that the "brokered" station's programming remain responsive to its community's needs. *Id.* Moreover, in 1992, in order to prevent the use of time brokerage to circumvent the broadcast ownership limitations, the Commission determined that when an individual has an attributable broadcast interest in a market, time brokerage of another station in that market for more than 15 percent of the "brokered" station's broadcast week would result in the brokered station being considered toward the broker's permissible ownership totals. This was done to assure that a station owner could not use the brokerage rules substantially to broker a station in a market where it could not own that station. *Revision of Radio Rules*, 7 FCC Rcd 2755, 2788-89 (1992). *recon. granted on other grounds*, 9 FCC Rcd 7183 (1994).

Commission, his clear intent to program 100 percent of the primary station's programming, his intent to be the only purchaser of brokered time on the primary station, and his intent to have the translator station (in this case through a company formed to sell advertising time on the translator) solicit all the commercial advertising during that time. His failure to disclose his actual plans was a lack of candor. Turro testified that if the Commission had these concerns, the Commission would have brought them up to him. In fact, when the Bureau learned of Turro's ongoing and substantial relationship with MMBI and that Turro provided all the programming to the primary station on a full-time basis, the Bureau rescinded its 1991 Letter, a ruling that was not challenged or otherwise appealed by Turro.

3. Response to the Letter of Inquiry

173. In his July 28, 1995, response to the Bureau's LOI, Turro denied having any ownership interest in WJUX. However, he falsely denied that he had provided or guaranteed payment of the funds to acquire, construct and operate WJUX, that he had paid the costs associated with MMBI's equipment, or that he controlled what is broadcast on the station. He contended that his arrangement with WJUX, including the rebroadcasting of that signal over the translators, complied with Commission rules and policies. In this regard, Turro specifically referenced the 1991 Bureau Letter. He stated that while the network affiliation agreement between himself and MMBI was not a brokerage agreement, he believed that his

arrangement with MMBI fully met the requirements of the 1991 Bureau Letter.²⁰

174. When Turro embraced the 1991 Bureau Letter as condoning the relationship he eventually entered into with MMBI, Turro did not candidly disclose that he and he alone, was the sole source of income and funding for WJUX through the initial inducement to enter into the NAA and the monthly payments pursuant to the NAA. Nor did he disclose that he was providing all the programming and commercials for WJUX.²¹ Nor did he disclose the understandings reached between himself and Weis with respect to the acquisition, construction, equipment and operation of WJUX whereby it was essentially agreed that MMBI and WJUX would operate as the conduit for distributing Jukebox Radio programming over the Fort Lee translator.

175. While Turro characterized the agreement he has with MMBI as a network affiliation rather than a brokerage agreement, he falsely claimed that the arrangement met the requirements of the 1991 Bureau Letter. However, by providing essentially all of WJUX's

²⁰ Turro continued to take that position in testimony during the hearing. He reiterated that, although structured as a network affiliation agreement rather than one for time brokerage on the advice of counsel, the relationship between himself and MMBI fully complies with the Bureau's 1991 Letter. He stated that the difference between a time brokerage agreement and a network affiliation agreement is that in the former, the "broker" can purchase as much time as the station might sell him, whereas in the latter case, the station takes as much programming as it wants from the network.

²¹ Although Jukebox Radio did begin to air some programming responsive to the WJUX audience (beginning around the time that Turro became aware that Universal was allegedly spreading rumors that Jukebox Radio was an "illegal operation" and noted with greater frequency following the Commission's inspection), it was ultimately Turro's decision to make it a part of the "network" programming.

programming on a "network" rather than brokered basis, there was no ability to meet the express condition of the 1991 Bureau Letter; namely, buying discrete blocks of time at comparable rates charged other brokers on the station or in the local radio market on an arm's-length basis. There is no evidence that such rates for any other brokered *or* network time on WJUX or any other station were even considered. Instead, the evidence overwhelmingly indicates that Weis figured MMBI's total costs to operate WJUX and, after attaching a profit margin, passed those costs on to Turro for reimbursement through the monthly NAA payment. Nor was there any direct purchase of time for a particularized price on WJUX. Moreover, Turro testified that MMBI would be entitled to that payment whether or not it ultimately broadcast or preempted Jukebox radio programming, although there was no realistic expectation that preemption would occur. Turro paid MMBI a pre-determined monthly price with every expectation that all programming would be aired on WJUX and therefore on the Fort Lee translator, allowing Turro effectively to serve Bergen County.

176. Moreover, there is no evidence that the agreement between Turro, on behalf of BCCBF, and Weis, on behalf of MMBI was entered into at arms-length. In fact, the evidence establishes that there were no negotiations concerning the costs Turro would have to pay MMBI, as presented by Weis -- Turro just accepted them. Turro more than benefitted by merely having a primary station carrying his Jukebox Radio which could be rebroadcast in Bergen County on the Fort Lee translator, and he was willing to cover Weis' costs to ensure

continued operation of WJUX.²² Thus, by failing to candidly disclose the true nature of the arrangement he had then on-going with MMBI, but instead claiming that the "network affiliation" complied with the requirements of the 1991 Bureau Letter, Turro materially misrepresented the manner by which he was providing programming to WJUX.

177. Turro had ample motive to mislead and/or lack candor with the Commission. Having been unsuccessful in his attempts to originate programming aimed at Bergen County residents directly over the Fort Lee translator, he then formulated a scheme to circumvent the Commission's rules. He devised a method to do the exact thing the Commission said he could not do, only now, indirectly, through WJUX, Monticello, and he dressed it up as a time brokerage, and, later, a network affiliation agreement. Turro repeatedly testified that he relied on the 1991 Bureau Letter for authority for his arrangement with MMBI. Yet, in seeking that Bureau guidance, Turro did not describe the type of arrangement that he ultimately had with MMBI. Turro disclosed just enough information to make it appear that the arrangement was achieved at arm's-length, but omitted other critical information which, when learned, caused the Bureau to rescind its 1991 Letter.

178. Turro's time brokerage proposal effectively subverted the Commission's translator rules by allowing him to broker substantially *the* station in which he could not have

²² In fact, as noted *infra*, Turro's financial responsibility to MMBI was the *raison d'etre* for Weis' participation in this scheme, and Turro admitted at the hearing that he had to borrow some of the initial funds necessary for MMBI's purchase of the Monticello construction permit, and that he did so with no strings attached to MMBI.

any ownership or other interest.²³ Yet Turro intended to use the time brokerage rules, and later used the network affiliation agreement, to do just that: substantially program a station in which he could not, under the circumstances, have an interest under the translator rules.

4. ICR/Translator Operations

179. In his response to the LOI, in statements to Loginow, and in his hearing testimony, Turro repeatedly represented that the Fort Lee translator rebroadcasts the over-the-air signal of the Pomona translator (and from October 1994, to January 1995, that it had rebroadcast the over-the-air signal of WJUX, Monticello). Additionally, Turro repeatedly represented that ICR station WMG-499, was used to provide telemetry, not programming, between the Dumont studio of Jukebox Radio (initially described to WTB as the remote control point and secondary studio for WJUX) and the Fort Lee translator. Moreover, Turro initially represented to WTB and the Bureau that only 30-second "translator support" and emergency messages were broadcast over the Fort Lee translator via the ICR, but that regular Jukebox Radio programming was carried on the ICR (but not broadcast on the Fort Lee translator) merely for identification purposes in the event it caused interference to another signal.

²³ While Turro is not *per se* prohibited from having an ownership interest in WJUX, Monticello, he was well aware that he is strictly prohibited from *any* such interest, ownership or relationship, under Section 74.1232 of the Commission's Rules while the Fort Lee translator rebroadcasts WJUX.