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Before the
Federal Communications Commission
Washington, D.C. 20554

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| In re |) | |
| |) | |
| GERARD A. TURRO |) | MM Docket No. 97-122 |
| |) | |
| For Renewal of License |) | File Nos. BRFT-970129YC |
| for FM Translator Stations |) | BRFT-970129YD |
| W276AQ(FM), Fort Lee, NJ, and |) | |
| W232AL(FM), Pomona, NY |) | |
| |) | |
| MONTICELLO MOUNTAINTOP |) | |
| BROADCASTING, INC. |) | |
| |) | |
| Order to Show Cause Why the |) | |
| Construction Permit for FM Radio |) | |
| Station WJUX(FM), Monticello, NY, |) | |
| Should Not Be Revoked |) | |

Appearances

Charles R. Naftalin, Esq., and Alan Y. Naftalin, Esq., on behalf of Gerard A. Turro; James P. Riley, Esq., Ann Bavender, Esq., and Andrew S. Kersting, Esq., on behalf of Monticello Mountaintop Broadcasting, Inc.; Richard A. Helmick, Esq., and Roy R. Russo, Esq., on behalf of Universal Broadcasting of New York, Inc.; Alan E. Aronowitz, Esq., and Suzan B. Friedman, Esq., on behalf of the Chief, Mass Media Bureau, Federal Communications Commission; James K. Edmundson, Esq., on behalf of witness Carol Montana; and Kathryn R. Schmeltzer, Esq., on behalf of witness Eugene H. Blabey.

**INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE ARTHUR I. STEINBERG**

Adopted: August 9, 1999

Released: August 16, 1999

I. PRELIMINARY STATEMENT

1. By *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing*, 12 FCC Rcd 6264 (released April 18, 1997) ("*HDO*"), the applications of Gerard A. Turro ("*Turro*") for renewal of licenses of radio stations W276AQ(FM), Fort Lee, New Jersey ("*Fort Lee translator*"), and W232AL(FM), Pomona, New York ("*Pomona translator*"), were designated for hearing. The following issues were specified against Turro:

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

- (2) To determine whether Gerard A. Turro engaged in an unauthorized transfer of control, or otherwise exercised and/or continues to exercise *de facto* control over WJUX(FM), Monticello, New York, in violation of Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540(a) of the Commission's Rules.
- (3) To determine whether Gerard A. Turro misrepresented and/or lacked candor to the Commission concerning the operation of translator stations W276AQ(FM), Fort Lee, New Jersey, and W232AL(FM), Pomona, New York.
- (4) To determine whether, in light of the evidence adduced under the foregoing issues, the public interest will be served by the grant of the above-captioned renewal applications filed by Gerard A. Turro.

(HDO at para. 21.)

2. The HDO also directed Monticello Mountaintop Broadcasting, Inc. ("MMBI") to show cause why the construction permit for radio station WJUX(FM), Monticello, New York, should not be revoked. The following issues were specified against MMBI:

- (5) To determine whether Monticello Mountaintop Broadcasting, Inc., has violated and/or continues to violate Sections 73.1120 and 73.1125(a) and (c) of the Commission's Rules with respect to the maintenance of a main studio for Station WJUX(FM), Monticello, New York.
- (6) To determine whether Monticello Mountaintop Broadcasting, Inc., engaged in an unauthorized transfer of control or otherwise abdicated control of Station WJUX(FM), Monticello, New York, to Gerard A. Turro or an affiliated entity in violation of Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540(a) of the Commission's Rules.
- (7) To determine whether Monticello Mountaintop Broadcasting, Inc., and/or its agents misrepresented and/or lacked candor to the Commission concerning the operation of Station WJUX(FM), Monticello, New York.
- (8) To determine whether, in light of the evidence adduced under the foregoing issues, Monticello Mountaintop Broadcasting, Inc., possesses the requisite qualifications to be or remain a Commission broadcast permittee.

(HDO at para. 24.)

3. Pursuant to Sections 309(e) and 312(d) of the Communications Act of 1934, as amended ("Act"), the HDO assigned to the Mass Media Bureau ("Bureau" or "Bur.") the burden of proceeding with the introduction of evidence on all the issues. The ultimate burden of proof on Issues 1 through 4 was

assigned to Turro, and the ultimate burden of proof on Issues 5 through 8 was assigned to the Bureau. (*HDO* at paras. 22 and 25.) In addition, the *HDO* stated that if the hearing record does not warrant an order denying Turro's license renewal applications or revoking MMBI's construction permit, it shall be determined, pursuant to Section 503(b) of the Act, whether an order of forfeiture in an amount not to exceed \$250,000 should be issued against Turro and/or MMBI for each of the alleged violations which occurred or continued within the applicable statute of limitations. (*Id.* at paras. 31 and 32.) Further, the *HDO* made Universal Broadcasting of New York, Inc. ("Universal"), a party to this proceeding. (*Id.* at para. 29.)

4. Prehearing conferences were held on May 20, September 3, and October 8, 1997. The hearing commenced in Washington, D. C., on November 24, 1997, with the admission of the parties' respective direct case exhibits. Witnesses appeared for live testimony in Washington, D. C., on December 2, 3, 4, 5, 8, 9, 10, 11, and 12, 1997. The record was initially closed at the conclusion of the December 12, 1997, hearing session. (Tr. 2128-29; *Order*, FCC 97M-206, released December 16, 1997.) By *Order*, FCC 98M-1, released January 12, 1998, the record was reopened for the limited purpose of receiving additional exhibits into evidence. The record was then reclosed. (*Id.*) Proposed findings of fact and conclusions of law ("PFCs") were filed by all the parties on March 13, 1998. Reply findings were filed by all the parties on April 3, 1998.

II. FINDINGS OF FACT

5. It must be noted at the outset that many of the facts contained in the Findings of Fact are relevant to more than one issue. An attempt has been made to place those facts in their most appropriate and logical context and to avoid, as much as possible, unnecessary repetition. As a result, facts which have been cited or summarized in the Conclusions of Law, *infra*, may have been drawn from portions of the Findings of Fact which related to different issues.

A. Background

6. Turro and MMBI. Turro is the licensee of the Fort Lee and Pomona translators. (Turro Ex. 1, p. 1.) His application for a license for the Fort Lee translator was granted in March 1986, and he acquired the license for the Pomona translator in January 1995. (Bur. Ex. 21, pp. 381, 390 and Bur. Ex. 22, pp. 456, 460; Bur. Ex. 23, p. 471 and Bur. Ex. 24, p. 555; Tr. 1402.) The Fort Lee translator is licensed to operate on Channel 276 and the Pomona translator is licensed to operate on Channel 232. (Official notice taken.) Turro is also the former licensee of Intercity Microwave Relay Station WMG-499 ("WMG-499"), which operated on 951 MHz. (Bur. Ex. 9.) The license for WMG-499 was granted on September 23, 1993. (*Id.* at 155.) In his application for what became WMG-499, Turro stated that the Fort Lee translator (then) rebroadcast the signal of a noncommercial FM station in Franklin Lakes, New Jersey, and that WMG-499 would "be used to feed 30-second spot announcement originations concerning financial support and operational communications from the . . . studio [of the Franklin Lakes station] to the [Fort Lee translator] transmitter." (*Id.* at 151; Tr. 1805-06.) WMG-499 was in use until early July 1995. (Turro Ex. 1, p. 12; Tr. 1616, 1722.)

7. Turro is the sole shareholder of FM 103.1, Inc. ("FM 103.1"), doing business as Jukebox Radio. Jukebox Radio is a for-profit corporation which produces radio programming consisting predominantly of music of the 1940s and 1950s along with news, weather, and public service programming. Turro founded and developed the Jukebox Radio format. (Turro Ex. 1, p. 1.) Prior to

January 1, 1995, Bergen County Community Broadcast Foundation ("BCCBF") did business as Jukebox Radio. (Tr. 1943.)¹ The Jukebox Radio service is commercial, selling advertising generally in Bergen County, New Jersey, and Sullivan County, New York, to local, regional, and national advertisers. (Turro Ex. 1, p. 6; Tr. 2102-05.)

8. Turro is a life-long resident of Bergen County, New Jersey, and its vicinity. He testified that, for many years, it had been his "dream" to provide an FM radio service to Bergen County. For a period of approximately 24 years, Turro was the chief engineer or operator at 13 different radio stations operating in the New York City metropolitan area. Turro testified that he is skilled and experienced in the technical aspects of radio broadcasting, and predominantly in FM radio broadcasting. (Turro Ex. 1, p. 2.)

9. MMBI is the permittee of WJUX(FM), Monticello, New York ("WJUX") (MMBI Ex. 1, p. 1), which is licensed to operate on Channel 259 (Bur. Ex. 2, p. 40).² Wesley R. Weis is the sole shareholder and President of MMBI. He has been engaged in various businesses in the broadcast radio industry for many years, including antenna site management, equipment sales, and tower and antenna erection, sales, and service. Prior to acquiring the construction permit ("CP") for WJUX, Weis had been a part owner of FM translator stations, including the Pomona translator, but had never been the owner or licensee of a broadcast radio station. (MMBI Ex. 1, p. 1; Bur. Ex. 23, p. 471 and Bur. Ex. 24, p. 555.)

10. Weis has known Turro for many years, perhaps as long as 20. They met during the course of work which Weis's businesses did for radio stations while Turro was employed in the radio industry. At one point Turro and Weis became partners in the ownership of the Pomona translator. (MMBI Ex. 1, p. 1; Turro Ex. 1, p. 4; Tr. 1336-37, 1730.) For a time, Turro and Weis used the same attorneys. (Tr. 1846.) In 1990 or 1991, Jukebox Radio became a tenant in a building in Dumont, New Jersey, which Weis had owned since December 1986 ("Dumont studio"). (Tr. 1396-97, 1435-36.)

11. The 1991 Declaratory Ruling. The Fort Lee translator began operations on March 13, 1986, and rebroadcast the signal of WPST(FM), Trenton, New Jersey. Approximately four months later, Turro sought a waiver of the Commission's rules in order to allow the origination of programming on the Fort Lee translator. This request was denied by the Bureau and the Commission denied review of that determination. *Gerard A. Turro*, 2 FCC Rcd 6674 (1987). The denial was upheld on appeal. *Turro v. FCC*, 859 F.2d 1498 (D.C. Cir. 1988). In 1989, Turro filed comments in response to the Commission's Notice of Inquiry in MM Docket No. 88-140 regarding the use of FM translator stations. Turro requested that the Commission amend its rules to permit the origination of local programming on translator stations serving counties with no present or future possibility of FM allocations. The Commission rejected Turro's proposal. *FM Translator Stations*, 5 FCC Rcd 7212, 7219-20 (1990) ("*FM Translator I*"), *recon. denied and clarified*, *FM Translator Stations*, 8 FCC Rcd 5093 (1993) ("*FM Translator II*"). (Tr. 2055-57, 1780-81; Bur. Ex. 21, pp. 381-82 and Bur. Ex. 22, p. 456; official notice taken.)

¹ For ease of reference, Jukebox Radio will be referred to herein as "Jukebox Radio," "the Network" or "Jukebox Radio Network" regardless of whether it was operating under BCCBF or FM 103.1.

² Unless the context requires otherwise, the Monticello FM station will be referred to as "WJUX." Its call sign was WXTM(FM) when the unbuilt construction permit was acquired by MMBI. It was changed to WJUX(FM) on April 14, 1995. (Bur. Ex. 23, p. 470 and Bur. Ex. 24, p. 555; Tr. 1403.)

12. By letter dated January 30, 1991, to the then Chief of the Mass Media Bureau's Auxiliary Services Branch, Turro requested the issuance of "an informal declaratory ruling concerning the operation of commercial FM translators." (Bur. Ex. 1, p. 6.) Specifically, Turro asked whether it would be permissible for a licensee of a commercial FM translator station to purchase broadcast time on the FM station that originates the programming rebroadcast by the translator if

[t]he following conditions would exist:

1. The translator would be operating outside of the originating station's primary contour.
2. The primary station would not re-imburse [sic] the translator licensee for air-time pursuant to the Commission's rules. At no time would the primary station be financially supporting the translator licensee.
3. Any airtime purchased on the primary station by the translator licensee would abide by the Commission's rules regarding purchase of brokered airtime.
4. Advertising may be sold for broadcast during such brokered airtime to support this programming.

(*Id.*) Turro testified that when he wrote this letter he meant by the phrase "brokered airtime" the purchase of 100 percent of the time of the primary station. He acknowledged, however, that this was not stated in his letter. (Tr. 2039-40.)

13. By letter dated November 19, 1991 ("Bureau Letter" or "Letter"), the Chief of the Mass Media Bureau responded to Turro's request, and concluded that Turro's "proposal would [not] be prohibited by the Commission's rules or policies." (Bur. Ex. 1, p. 9.) In this Letter, the Bureau stated, in pertinent part:

[T]he issue presented by Mr. Turro's request is whether the licensee of a translator station is permitted to enter into a time brokerage contractual arrangement with its primary station, provided that the primary station does not either reimburse the translator station licensee for the purchase of the brokered time or provide financial support for the translator station's operation.

....

Under § 74.1232(e), an FM translator station whose coverage contour extends beyond the protected contour of the primary station cannot receive any support, before or after construction, either directly or indirectly, from the primary station. This applies to all persons and entities having any interest or connection with the primary station.

With regard to brokerage arrangements between licensees and brokers, such arrangements usually involve the broker as both program producer and commercial salesperson for a time block purchased from the licensee. Our rules only require licensees to keep brokerage contracts at the station and make them available for Commission inspection upon request (47 C.F.R. § 73.3613(d) (1989)).

In view of the specific circumstances presented by Mr. Turro's request, we conclude that his proposed operation would be consistent with the Commission's rules and policies as outlined above. However, this conclusion rests on the following requirements: the time brokerage contract must be kept at the primary station and made available for Commission inspection upon request per § 73.3613(d); there must be a bona fide, arm[']s-length transaction between the primary station and the translator; the licensee of the translator station will have to pay the primary station a rate charge comparable to the amount charged other purchasers of brokered airtime, 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.

(*Id.* at pp. 8-9.)

14. Universal's Complaint to the Commission. By letter dated February 15, 1995, from counsel for Universal to the Chief of the Complaints and Investigations Branch of the Bureau's Enforcement Division, Universal lodged a complaint against Turro and Weis. Universal alleged that Turro, in the operation of the Fort Lee and Pomona translators, and Weis, in the operation of WJUX, were violating the Commission's rules. (Bur. Ex. 2.) One of the allegations made by Universal was that Turro was providing Jukebox Radio programming to the Fort Lee translator by sending it directly from the Dumont studio to the translator over WMG-499 in violation of the Commission's rules. (*Id.* at 34.) Universal requested that the Commission keep its identity confidential. (*Id.* at 32.)

15. Universal's complaint included, and was supported by, an engineering report dated February 10, 1995, prepared by the consulting engineering firm of Cohen, Dippell and Everist, P.C. ("CDE"), which was based upon sworn statements of three CDE engineers. (Bur. Ex. 2, p. 49.) In that report, the CDE engineers stated that they had investigated Turro's operations on February 2, 1995 (*id.* at 53), and alleged that they had established that Jukebox Radio programming was being provided directly from the Dumont studio to the Fort Lee translator on a full time basis through the use of a studio-to-transmitter link ("STL") operating on 951 MHz in violation of Sections 74.531 and 74.1231(b) of the Commission's Rules. (*Id.* at 54, 56.) In addition, the engineers alleged that the Jukebox Radio programming was "fully oriented" to the area of Bergen County, New Jersey, giving the appearance that the Fort Lee translator was a full service FM station serving that county, in violation of Commission policy (*id.* at 54-55), and that the Pomona translator was simultaneously carrying the Jukebox Radio programming so that it, too, was in violation of the same Commission rules and policies as the Fort Lee translator (*id.* at 55). The CDE engineers further alleged that, based upon testing from the roof of a building in Fort Lee near the transmitter location of the translator, the off-the-air, directly received signal of the Monticello station "was unusable for retransmission on [the Fort Lee translator] due to low signal strength and severe 1st adjacent channel interference from [radio station] WBAI[, New York, New York]." (*Id.* at 58-59.) The CDE engineers also stated that the "high aural quality and absence of noise" on the Pomona translator "may indicate" that it, too, was not retransmitting the signal of the Monticello station but "may be" retransmitting the Fort Lee translator's signal or receiving a direct program feed. (*Id.* at 59-60.)

16. The FCC Inspections of April and May 1995. On March 8, 1995, the Bureau's Complaints and Investigations Branch requested the Compliance and Information Bureau to inspect the Monticello station and the Fort Lee and Pomona translators. (Bur. Ex. 3, pp. 80-81; Bur. Ex. 16, p. 250.) On

April 13, 1995, FCC field engineer Serge Loginow, Jr., inspected the Monticello station. (Bur. Ex. 4; Turro Ex. 25, pp. 3-6.) On April 14, 1995, Loginow conducted tests of the Fort Lee and Pomona translators and inspected the Dumont studio. (Turro Ex. 25, pp. 6-7; Bur. Ex. 4.) On May 15, 1995, Loginow conducted further tests of Fort Lee translator. (Turro Ex. 25, pp. 7-8; Bur. Ex. 4.) In his May 23, 1995, Radio Station Inspection Report, which was forwarded to the Bureau, Loginow stated:

WXTM Main Studio - Location

WXTM main studio is located at the existing studio of radio station WVOS AM/FM . . . in Ferndale NY. However, there were no signs on the outside of the building to indicate to the public that it is the studio for WXTM (only a WVOS AM/FM sign). No telephone line is set aside for WXTM calls, nor is any line answered as WXTM.

WXTM Main Studio - Staff

The main studio is staffed by General Manager Eugene Blabey and Public Service Director Carol Montana. Eugene Blabey is also the owner of WVOS AM/FM. Carol Montana is also the Business Manager of WVOS AM/FM. She stated that she spends about 25% of her time for WXTM and 75% for WVOS.

WXTM Main Studio - Programming

The main studio for WXTM is a former production room of WVOS leased by Wesley Weis. Blabey states, however, that although it is capable of being used, it has never actually provided programming to the WXTM transmitter. Indeed, he indicated that in order to do so would require going to the transmitter site and effecting a change of cabling at the patch panel to connect the transmitter to the studio.

Programming is 100 percent from Jukebox Radio in Dumont NJ, including music, advertising, news, and callsign [sic] identification. A telephone line is used [to] deliver the audio to the transmitter.

WXTM Main Studio - Transmitter Control

There is no remote equipment installed at the main studio to control the WXTM transmitter or to read transmitter operating parameters. The transmitter is controlled full time by personnel of Jukebox Radio in Dumont NJ by telephone line.

WXTM - LMA

There is no Local Marketing Agreement between WXTM and Jukebox Radio. Instead, WXTM entered into a network agreement with Jukebox Radio. A copy of the network agreement, signed by Gerald Turro and Wesley Weis was provided to the inspecting engineer.

Jukebox Radio - STL WMG499

. . . The STL transmitter was active at the time of inspection, however, the translator at Fort Lee was determined to [be] receiving programming off the air from the translator at Pomona NY operating on 94.3 MHz. The Pomona NY translator was determined to be receiving programming from WXTM on 99.7 MHz. Although the quality of the audio at Pomona and Fort Lee was degraded due to splatter from WBAI (in New York NY on 99.5 MHz), Turro stated that the condition was due to the WXTM transmitter operating

at reduced power due to a recent lightning strike. The inspecting engineer had observed that the operating power at WXTM was reduced.

Jukebox Radio - Control of WXTM

Remote control equipment was observed at Jukebox Radio that was stated to be for the control of WXTM. Gerald Turro, by telephone, stated that he is Chief [O]perator for WXTM, however, he does not receive any salary for that position.

....

Fort Lee NJ Translator - Second Monitoring

The Fort Lee translator was monitored again on May 15, 1995. Audio quality was considered very high, with no detectable splatter from WBAI. While on the top floor of the apartment building housing the Fort Lee translator, the inspecting engineer transmitted a low level signal on the frequencies of 99.7 MHz, 94.3 MHz and 951.0 MHz while listening to the translator signal on 103.1 MHz. The translator output was blocked only with the transmission of a test signal on the frequency of the STL, 951.0 MHz.

(Bur. Ex. 4, pp. 82-84; Bur. Ex. 16, pp. 250, 253-55.) Additional details relating to these and other Commission inspections will be discussed below.

B. Issues 2 and 6: Unauthorized Transfer of Control Issues

17. Subsequent to receiving the Bureau Letter, Turro started looking for opportunities to form an arrangement such as that described in the Letter to bring FM programming to Bergen County, New Jersey. Sometime in 1994, Turro received a telephone call from Larry Fishman, who held a CP to build a new FM station to serve Monticello, New York. Fishman, who had never talked to Turro before, asked a number of questions about how to start up a new FM station. After Turro explained to Fishman what would be involved, Fishman stated that he no longer wanted to construct and operate the station, and asked Turro if he knew of someone who would buy the CP. In the summer of 1994, Turro mentioned the availability of the Monticello CP to Weis. (Turro Ex. 1, pp. 3-4; MMBI Ex. 1, p. 1; Tr. 1337, 1729-30, 1823, 2063, 2070-73.) Turro thought Weis wanted to own a radio station, having been in the business of building them. (Tr. 2063-64.) Turro also believed this opportunity would be advantageous to his long-standing "dream" of providing a commercial FM radio service to Bergen County. (Turro Ex. 1, p. 2; Tr. 2062-64.)

18. At a later meeting, Turro described the Bureau Letter to Weis and may have given Weis a copy of the Letter. (MMBI Ex. 1, p. 1; Tr. 1384-86, 1731, 1825.) Turro advised Weis about his (Turro's) understanding of what the Letter meant. (Tr. 1825.) Weis understood that the Bureau Letter authorized a translator station licensee to act as the time broker for an FM broadcast station and also rebroadcast the FM station on the translator. (MMBI Ex. 1, p. 1; Tr. 1385.) Turro proposed that Weis acquire the CP for the Monticello station, and that Turro supply Weis with the existing Jukebox Radio programming as well as commercial advertising for the station. (Tr. 1338-40.) Weis knew that Turro could not acquire the CP for the Monticello station, and understood it was because of Commission rules having to do with "the owner of the primary station and the owner of the translator." (Tr. 1337-38.)

19. Weis met with Fishman at the latter's office to discuss the sale of the Monticello CP. (Tr. 1340-41.) Weis's best recollection was that there were three meetings with Fishman and that Turro was present at two of them. (Tr. 1341-42.) There was discussion of the purchase of the CP, the financial and security arrangements, the transfer of a lease or option, and the indemnification of Fishman for certain liabilities. (Tr. 1342.) The purchase price and terms of payment were negotiated. Weis testified that Turro was in the room when the payment terms were negotiated. Weis could not recall if Turro took part in those discussions, but Weis testified that Turro did not discuss with him what payment terms he (Turro) would have liked to see. (Tr. 1343-44.) Weis did not consult with communications counsel during his discussions with Fishman. (Tr. 1344.) Turro testified that he had "no significant involvement" in the agreement reached between Weis and Fishman. (Turro Ex. 1, p. 4.)

20. Weis reached an agreement with Fishman to acquire the CP for \$120,000. (MMBI Ex. 1, p. 2; Turro Ex. 1, p. 4; Tr. 1342.) MMBI agreed to pay Fishman \$40,000 at the closing and give him a Secured Note for the \$80,000 balance. (MMBI Ex. 1, p. 2; MMBI Ex. 5, p. 15; Tr. 1347-48, 1360.) The balance was to be made payable in 24 monthly installments of \$3,618.18 each beginning on November 17, 1994. (MMBI Ex. 5, p. 15.) Weis decided to go ahead with the CP acquisition and the arrangement proposed by Turro because it appeared to be a good business opportunity that had been specifically approved in advance by the Chief of the FCC's Mass Media Bureau. (MMBI Ex. 1, p. 2; Tr. 1345-46.) Although at this point in time Weis had not yet prepared a business plan, he concluded that he "could make some money" because he had been "on the fringes of [the] broadcasting business . . . for 25 years, [and] it appeared to be a good enough deal." (Tr. 1345.)

21. Turro and Weis discussed an arrangement between Jukebox Radio and MMBI which would be consistent with the terms of the Bureau Letter. They agreed that Jukebox Radio would pay Weis's corporation, MMBI, monthly payments in return for which MMBI would provide air time on the Monticello station to be programmed by Jukebox Radio, and that the Monticello station's signal would be rebroadcast by the Fort Lee and Pomona translators. (Turro Ex. 1, p. 4.)

22. The Network Affiliation Agreement. On October 17, 1994, Turro, on behalf of BCCBF (which was then doing business as Jukebox Radio), and Weis, on behalf of MMBI, entered into a Network Affiliation Agreement. (Bur. Ex. 8, pp. 137-38; Tr. 1943.) The document was structured as a network affiliation agreement, rather than a time brokerage arrangement, based upon the advice of legal counsel. Turro had told counsel that he intended to provide Jukebox Radio programming to other stations. According to Turro, counsel had read his January 30, 1991, letter and the Bureau Letter prior to rendering this advice. (Tr. 1787-88, 2065.)

23. The Network Affiliation Agreement provided that:

Network [i.e., Jukebox Radio] will provide MMBI with twenty-four hours of programming on a seven day basis, 365 days a year. Network will also provide all local station identifications . . . , public affairs programming, and Emergency Broadcast System ["EBS"] tests.

Network agrees to indemnify MMBI and hold it harmless from any and all fines, surcharges, forfeitures, levies, and any other monetary damages imposed by the F.C.C.

Network is responsible for delivery of usable audio programming to MMBI via satellite, phone lines or other suitable means. Network is responsible for all costs incurred for delivering Network audio. Network will abide by all applicable FCC rules concerning program content.

Network will compensate MMBI for carrying all network programming on a twenty-four hour basis as follows:

Year One – \$8,575.00 per month
Year Two – \$8,975.00 per month
Year Three – the first six months – \$9,140.00 per month
Year Three – the second six months – \$5,400.00 per month
Year Four – \$5,400.00 per month
Year Five – \$4,675.00 per month
Remaining 5 Years – Year 5 plus 5% or the CPI, whichever is greater.

.....

The monthly compensation to MMBI will be reduced by \$3,600.00 per month after the first thirty months of network affiliation.

.....

MMBI agrees to allow translator W276AQ [the Fort Lee translator] to rebroadcast 99.7 FM, Monticello[,] New York.

(Bur. Ex. 8, pp. 137-38, underlining omitted.)

24. On October 17, 1994, in order to induce MMBI to enter into the Network Affiliation Agreement, Turro signed a Guaranty of Payment wherein he personally guaranteed all payments from the Network to MMBI for the full term of the Network Affiliation Agreement up to a limit of \$400,000. (Bur. Ex. 8, p. 139.) Weis testified that the Guaranty was his idea and that he suggested it because of the possibility that Turro's operation could go out of business. (Tr. 1381-83, 1392.) Weis did not have the assistance of counsel in preparing the Guaranty but copied it from an existing item in his files. (Tr. 1381.) Weis testified that the amount of the Guaranty was related to a business plan he had prepared (Tr. 1383) sometime prior to the execution of the Network Affiliation Agreement (Tr. 1354-55). If MMBI did not receive its scheduled monthly payment and could not collect it from the Network, Weis stated that, pursuant to the Guaranty, MMBI could initiate a lawsuit against Turro to obtain the money. (Tr. 1447-48.) Turro testified that if the Network defaulted in its monthly payments or went bankrupt, he would be ultimately responsible for the payments. (Tr. 1842, 1846.)

25. MMBI was also paid \$40,000 by BCCBF as an incentive for entering into the Network Affiliation Agreement. (Tr. 1347.) Weis testified that without the Network Affiliation Agreement he would not have built the station, "and the [Network Affiliation A]greement was based on that \$40,000 up[front] payment." (Tr. 1409-10.) As regards this \$40,000 payment, Turro testified that he did not know how the figure was determined, but that Weis presented the figure and he accepted it. (Tr. 1828-29, 1837.) Turro also testified that Weis did not have to repay the \$40,000. (Tr. 1831-32.)

26. The amount of the monthly payments to MMBI by the Network was determined by Weis on the basis of his business plan, which was designed to cover capital costs and operating expenses and produce a profit. (Tr. 1354-57, 1391.) Weis's general recollection was that the figure he used for his return on investment was 15 to 20 percent, and he stated that he could have gotten more but "[d]idn't have any reason to think about it." (Tr. 1356.) The compensation to MMBI was reduced by \$3,600 per month after 30 months because the \$80,000 balance due to Fishman on the purchase price of the CP would be paid off by that time, and a major part of the cost of equipment would also have been amortized by that point since Weis "was loading in a price up[-]front." (Tr. 1360-63.) Weis's business plan did not contemplate any profits or returns from the sale of commercial time, and such sales were not anticipated. (Tr. 1356.) In addition to 24-hour per day programming, station identifications, public affairs programming, and EBS tests, Weis understood that the Network would provide commercial time. (Tr. 1352-54.)

27. Turro testified that Weis presented him with the monthly payment figures and that he accepted those figures. (Tr. 1829-30.) Turro had no recollection of negotiating those figures with Weis (but also stated that he may have done so (Tr. 1830)), or of questioning Weis's numbers, and he never asked Weis how he derived his figures. (Tr. 2080.) Turro stated that he agreed to make the monthly payments in the amounts specified by Weis because "[i]t made business sense" to him and the Network to do so. (Tr. 2099-2100.)

28. Turro testified that, at some point, Weis sought an increase in the monthly payments for the Network Affiliation Agreement of about \$100 a month. (Tr. 2100, 2116.) Weis also testified to having sought and obtained an increase to cover the additional capital investment for a standby generator and auxiliary transmitter. (Tr. 1366-68.)³ Turro stated that he agreed to the increase because Weis was going to install a generator at the WJUX transmitter site which would protect the Network equipment there. (Tr. 2100-01, 2116.)

29. MMBI received a check every month in accordance with the Network Affiliation Agreement. There had not been a month when MMBI's expenses exceeded the monthly payment, including amortization of equipment and other accounting expenses. (Tr. 1349-50, 1365-66, 1434-35.)

30. With respect to the indemnification provision of the Network Affiliation Agreement, Weis stated that if MMBI was fined by the FCC for something the Network did, Weis would advise Turro that the Network was responsible for indemnifying MMBI and, if Turro refused, MMBI would sue the Network first, and then sue Turro personally. (Tr. 1364, 1448-49.) On the other hand, if MMBI was assessed a forfeiture by the FCC for something MMBI did, such as a main studio rule violation, the Network would not reimburse MMBI. (Tr. 1364.) Similarly, Turro testified that the indemnification provision meant that if Jukebox Radio provided programming broadcast by WJUX which violated FCC regulations, the Network would be responsible to MMBI for any forfeiture. (Tr. 1840-41.) Turro stated the indemnification was limited to programming and neither Turro nor the Network would be responsible

³ When asked about the amount of this increase, Weis testified: "Oh, I would say less than [\$]2,000; more than [\$]1,000." However, Weis prefaced this answer by stating: "I honestly don't know. I would be guessing." (Tr. 1368-69.) On the other hand, when Turro was asked about this matter, there was no hesitation or indication that he was guessing. (Tr. 2100, 2116.) Consequently, Turro's testimony as to the amount of the monthly increase has been credited.

if MMBI was assessed a fine, for example, for operating the transmitter above its authorized power. (Tr. 1841-42.)

31. Both Turro (Tr. 2113) and Weis (MMBI Ex. 1, p. 2) believed that the Network Affiliation Agreement was consistent with the Bureau Letter. In addition, Turro thought that the Network Affiliation Agreement was a bona fide arm's-length transaction between the primary station and the translator. (Tr. 1789.) Weis acknowledged that he did not know the distinction between a time brokerage agreement and a network affiliation agreement. While Weis agreed that the Bureau Letter authorized a translator station to act as a time broker and did not discuss a network affiliation agreement, Weis believed that the Letter covered the arrangement he had with the Network whatever that arrangement was called. (Tr. 1387-90.) In this regard, Weis thought that a network affiliation agreement could represent or constitute a time brokerage agreement. (Tr. 1387, 1390.) Further, Weis did not notice that the Bureau Letter talked about a time brokerage agreement as opposed to a network affiliation agreement, and he never raised that distinction with Turro. (Tr. 1387.) To Weis, the "key word" was "agreement." (*Id.*; Tr. 1388-89.) Weis understood that BCCBF was a broadcast network. (Tr. 1349.) At the time MMBI became an affiliate of the Network, it was Weis's understanding that there would be other affiliates. (Tr. 1432-33.)

32. On July 17, 1995, Turro, on behalf of BCCBF, and Weis, on behalf of MMBI, signed an Amendment to Network Affiliation Agreement. The Amendment specified, *inter alia*, that MMBI retained responsibility for ascertaining the needs of its community and service area, that MMBI had the right to broadcast programming other than Network programming, that MMBI had the right to "delete or preempt in its sole discretion" any Network programming in order to broadcast MMBI programming responsive to the issues of concern to its community of license, and that MMBI "maintains the independent right to preempt or delete any Network programming which [it] believes to be unsatisfactory or unsuitable or contrary to the public interest, or to substitute programming which, in [its] opinion, is of greater local or national importance." The Amendment also specified that MMBI's acceptance and broadcast of Network programming was subject to MMBI's responsibility to comply with all FCC regulations including, among others, compliance with political programming and sponsorship identification rules, maintenance of the station's public and political files, and the compilation of quarterly issues/programs lists. (Bur. Ex. 8, pp. 140-41.)

33. The Amendment stated that it was "retroactive to the commencement of the [Network Affiliation] Agreement," and that it was "agreed to in Oct[.], 1994." (Bur. Ex. 8, pp. 140-41.) In this regard, both Turro and Weis testified that the Amendment was agreed to in November 1994, but they did not get around to signing it until July 17, 1995. (MMBI Ex. 1, p. 2; Tr. 1369-70, 1945-46, 2094.) Both Turro and Weis stated the Amendment was not related to an FCC inspection of the Monticello station which occurred in the spring of 1995. (Tr. 1370, 1945.)

34. The Network Affiliation Agreement was amended upon the advice of counsel, and the Amendment was prepared by counsel. (MMBI Ex. 1, p. 2; Tr. 1370-73, 1423, 2094.) Weis testified that the purpose of the amendment was to provide a better definition or clarification of the Network Affiliation Agreement to reflect what MMBI's obligations were to the Commission. (Tr. 1379-80, 1416.) Weis stated, however, that his activities with respect to operating WJUX did not change as a result of the Amendment. (Tr. 1418-19.) The only times that MMBI substituted or preempted Network programming were in the early summer of 1995 when taped music was originated from the WJUX main studio when the Network's program feed went out (Tr. 858, 972-74, 2041-42), and during the 1997 elections when political commercials were broadcast instead of Network programming (Tr. 1380; *see also* Tr. 857).

35. MMBI's Acquisition of the CP, and the Construction and Commencement of Operation of WJUX. On October 18, 1994, the assignment of the Monticello CP from Fishman to MMBI was consummated. (Bur. Ex. 23, p. 469 and Bur. Ex. 24, p. 555.) When MMBI acquired the permit on October 18, Weis paid Fishman \$40,000 and gave him a Secured Note, on which MMBI was the sole maker and sole obligated party, for the remaining \$80,000. (MMBI Ex. 1, p. 2; MMBI Ex. 5, p. 15; Tr. 1347-48, 1360.) The \$40,000 that MMBI received as an inducement to sign the Network Affiliation Agreement was deposited into MMBI's checking account on October 17, 1994, and co-mingled with other funds already in the account. The \$40,000 payment made to Fishman was drawn from MMBI's account. (Tr. 1347-48, 1426.)

36. MMBI assumed Fishman's tower lease with Mountain Broadcasting Corporation ("MBC") and agreed to indemnify Fishman against any claims arising from Fishman's guaranty under the tower lease. There was no other indemnitor. (MMBI Ex. 1, p. 2; MMBI Ex. 5, p. 20.) MMBI then entered into a tower lease with MBC, which Weis alone personally guaranteed. (MMBI Ex. 1, p. 2; MMBI Ex. 5, p. 2.)

37. MMBI also entered into a lease with MBC for studio and office space in Ferndale, New York, in a building which housed the studios and offices of WVOS(AM) and WVOS-FM, Liberty, New York (collectively "WVOS"), stations which were licensed to MBC. Weis alone personally guaranteed that lease. (MMBI Ex. 1, pp. 2-3; MMBI Ex. 5, pp. 12-14; Tr. 1431-32.)

38. Eugene Blabey, whom Weis engaged as WJUX's General Manager, was an owner of MBC and acted as General Manager of WVOS. (Tr. 909-11, 947-48; Bur. Ex. 13, p. 226; MMBI Ex. 8.) Blabey first met Weis about the time Weis acquired WJUX. Weis came to Blabey's office and said he was acquiring the CP from Fishman. Their first conversation revolved around whether or not Weis would assume the WJUX tower lease that Blabey had previously negotiated with Fishman. Blabey and Weis negotiated Weis's assumption of WJUX's tower lease and negotiated a separate studio lease. (Tr. 940-42.) Turro was usually present when Blabey and Weis met but Blabey and Weis met alone on some occasions. (Tr. 941-42, 990, 1001.) Turro was introduced to Blabey as Weis's Chief Engineer. (Tr. 941.)

39. During one of the earlier discussions with Weis, the possibility of Blabey acting as General Manager for WJUX arose, perhaps at Blabey's suggestion. (Tr. 942-43.) Blabey believed that being the General Manager of WJUX would work for him as he was already performing many functions of a General Manager for WVOS and it would not be overly burdensome to him. (Tr. 947.) In addition, Blabey stated that if he was going to be in "this close contact" with another station, he wanted to be involved "just for [his] own purposes." (Tr. 942-43.)

40. At a later meeting, Blabey was told that WJUX's programming would be coming from New Jersey, and that WJUX would be rebroadcast by a translator. Weis also told Blabey that he did not think the target audience of WJUX would impact on Blabey's audience. Blabey understood that Jukebox Radio Network would sell commercial time on WJUX, and that those commercial spots would be primarily directed to Bergen County, New Jersey. (Tr. 990-91.) Blabey also "suspected" that Bergen County would be the primary source of WJUX's advertising revenue. (Tr. 1018.) However, Blabey received no assurance that time sales would not be made in Sullivan County. (Tr. 991-92.)

41. On October 21, 1994, three days after Weis purchased the WJUX permit, the station went on the air. (MMBI Ex. 1, p. 2; Tr. 1392-93.) Weis said all of the equipment was on order or on standby

and the station was built in two days. He said that construction of radio stations was his business. Weis stated he wanted the station to be completed so quickly because winter was coming and because the sooner the station was on the air, the sooner he would begin receiving money under the Network Affiliation Agreement. (Tr. 1393-94.) Turro, too, wanted to get the station on the air in a hurry because he wanted to begin selling commercial advertising. (*Id.*; Tr. 1736-37.)

42. Turro testified that when Weis decided to purchase WJUX, Turro was providing technical advice and a decision was made that Turro would be the Chief Operator and provide technical support. (Tr. 1792.) Turro was never paid for being Chief Operator and it took up very little of his time. (Turro Ex. 1, p. 7; Tr. 2013.) It was Turro's understanding that the Commission's rules allowed him to be Chief Operator as long as he did not get paid. Turro reasoned that if, under the rules, a primary station could provide "technical support" to a translator station, "the translator should be able to give the primary station support as long as you're not getting paid for it." (Tr. 1789-90, 2013.) In other words, if the chief engineer of the primary station could not be paid for maintaining the translator, no payment could be made if the translator was giving technical support to the primary station. Turro testified: "So if it can go one way without any money changing hands . . . it should be able to go the other way, and that's the logic." (Tr. 1790.)

43. Turro stated that he assisted Weis in a general sort of way in starting up the Monticello station but did not personally build WJUX's facilities. He testified that his primary role during the construction of WJUX was to install his Network audio equipment and test to see that everything worked. (Turro Ex. 1, p. 6; Tr. 1394, 1794-96, 2017.) Turro said that Weis and the people who worked for him were capable of constructing radio stations and he (Turro) "supervised" the construction. (Tr. 1793.) By "supervised," Turro stated that he meant that he "watched the guys" install the transmitter and antenna, and put the power to, and "commission," the transmitter. (Tr. 2105-06.) Turro personally inspected the WJUX main studio equipment and verified that everything was working. (Tr. 1794-95.) Turro said Weis was present throughout the construction process, directing a construction crew from Weis's company. (Tr. 2106.) Weis testified that, as Turro was the Chief Operator of WJUX, he took an interest in what Weis and Weis's crew were doing with the transmitter, electrical wiring, and remote control. (Tr. 1394.)

44. Weis stated that in October 1994, about two weeks before WJUX went on the air, there was a discussion about the need for him to divest his interest in the Pomona translator. (Tr. 1399-1400.) Weis understood, from his general knowledge, that as the owner of WJUX he could not own a translator station outside of WJUX's 1 mV/m contour on which WJUX was rebroadcast. (Tr. 1401.) On January 10, 1995, Weis transferred his ownership interest in the Pomona translator to Turro pursuant to FCC approval. (Bur. Ex. 23, p. 471 and Bur. Ex. 24, p. 555; Tr. 1402.) Shortly thereafter, the Pomona translator started to rebroadcast the signal of WJUX on 94.3 MHz. (Turro Ex. 1, p. 8.)

45. By letter dated November 30, 1994, one of Turro's consulting engineers, on behalf of Turro, "formally inform[ed]" the Bureau's Auxiliary Services Branch that the Fort Lee translator "now rebroadcasts primary station WXTM(FM), Monticello, New York." (Bur. Ex. 2, p. 46.) On April 14, 1995, the Monticello station changed its call letters from WXTM(FM) to WJUX(FM). (Bur. Ex. 23, p. 470 and Bur. Ex. 24, p. 555; Tr. 1403.) Weis stated he instructed his FCC attorneys to apply for the call sign change on his behalf, knowing in advance from Turro that Turro's station in Franklin Lakes, New Jersey, was turning in the call sign. (Tr. 1403-04.) Weis understood it to be important to Turro that the Monticello station get the call letters WJUX. (Tr. 1405.)

46. Finances. Weis testified that he, and he alone, had exercised financial control over WJUX and been responsible for the obligations of MMBI and WJUX. (MMBI Ex. 1, p. 6.) Turro, too, testified that he never had any financial control over or responsibility of any kind for either WJUX or MMBI. (Turro Ex. 1, p. 7.) According to Weis, Turro, and entities affiliated with Turro, had never guaranteed any debt incurred by MMBI or MMBI's performance of any contract or lease entered into by MMBI. (MMBI Ex. 1, p. 6.) MMBI made all payments due Fishman under the Secured Note for the remaining portion of the purchase price for WJUX's construction permit. (*Id.* at 2.) MMBI made the lease payments for its transmitter site and main studio. MMBI paid all of the compensation to persons it employed in the operation of WJUX. MMBI paid all bills for services, products, and utilities used in the operation of WJUX, with the exception of bills for telephone service from October 1994 to mid-1995, when those bills were sent by the local telephone company, NYNEX, to Jukebox Radio. MMBI paid all subsequent bills for WJUX telephone service. (*Id.* at 3.) Neither Turro, Jukebox Radio, BCCBF, nor FM 103.1 paid for any of the costs of constructing WJUX. (Turro Ex. 1, p. 6; Tr. 2081-82.) Turro did not pay and was not obligated to pay any of Weis's legal expenses for the acquisition of WJUX, the response to a Commission letter of inquiry, or with respect to the hearing in this proceeding. (Tr. 1958-59.)

47. Weis testified that he had the ultimate financial responsibility for WJUX. (Tr. 1449.) Weis wrote the checks to build the station, pay the staff, and pay the operating expenses. (Tr. 1358.) Weis signed personal guarantees when MMBI assumed Fishman's transmitter and tower site lease, and when MMBI leased its studio and office space from MBC. (MMBI Ex. 5, pp. 11, 14; Tr. 1431-32.) If Jukebox Radio missed a monthly payment to MMBI, MMBI was still required to pay WJUX's lease payments and other bills. If MMBI stopped receiving payments from the Network, MMBI could terminate the Network Affiliation Agreement and sue Turro. However, while MMBI was suing Turro, Weis would have to put his own money into MMBI so that the bills would be paid. (Tr. 1432, 1450-51, 1453.) If MMBI never recovered anything from Turro, MMBI's obligations would remain in place, Weis would have lost money, and MMBI would still have to meet its obligations. (Tr. 1451.)

48. Blabey did not have final monetary authority over MMBI or sign MMBI paychecks. (Tr. 937.) Blabey sent or faxed to Weis in New Jersey matters that needed Weis's attention. These generally involved financial matters. (Tr. 915.) Carol Montana, who was WJUX's Public Affairs Director and served as the general WJUX staff support person (MMBI Ex. 1, p. 6; Tr. 822, 856), did not handle finances for WJUX (Tr. 853). She brought bills to the attention of Blabey and Weis for payment and handled petty cash up to approximately \$50. (Tr. 819-20, 853.)

49. Personnel. Weis stated that he exercised responsibility over the personnel of WJUX, including engaging Blabey as General Manager and, at Blabey's recommendation, Montana and George Spicka. The latter performed engineering services for WJUX on a part-time basis. Weis also directly engaged Alan Kirschner, the current WJUX Chief Operator. (MMBI Ex. 1, pp. 6-7.) Kirschner was a friend of Turro's, and had no employment relationship with Jukebox Radio. (Tr. 1968-69.) Blabey characterized his role in hiring and firing at WJUX as recommending employees for Weis to place on the payroll. (Tr. 936-37.) Blabey, however, played no role in the hiring of Kirschner. (Tr. 937.)

50. As discussed earlier, Blabey met Weis about the time Weis acquired WJUX. (Tr. 940-41.) During one of Blabey's earlier discussions with Weis, the possibility of Blabey acting as General Manager for WJUX arose. Blabey may have suggested the possibility. (Tr. 942-43.) Blabey then had several meetings with Weis concerning taking on a General Manager role or any role at WJUX. (Tr. 946, 990.) Weis agreed to pay Blabey \$100 per week to act as General Manager, and that amount has not changed.

(Bur. Ex. 13, p. 226; Tr. 1395-96.) Blabey later entered into an agreement with Weis with respect to advertising sales for WJUX in addition to his General Manager duties. (MMBI Ex. 8; Tr. 1002.)

51. Blabey did not perform all of the same duties for WJUX that he performed for WVOS. Blabey explained that he was an owner of WVOS and had the ultimate financial authority for that station but not for WJUX. As an owner of WVOS, he handled license renewals, equal employment opportunity reports, and other paperwork for the FCC for WVOS. He did not do any of that for WJUX. Rather, Weis did all of that. (Tr. 929-30.) Blabey had no daily contact with Jukebox Radio, although there were occasions on which he was in touch with the Network. (Tr. 915.) Blabey thought he called Jukebox Radio in Dumont to report outages. (Tr. 978.)

52. Montana learned about the opportunity of a position at WJUX from Blabey. (Tr. 817.) Blabey introduced Montana to Weis sometime prior to October 1994 and she discussed the WJUX job with Weis at that time. (Tr. 818.) Montana considered herself to be an employee of WJUX. (Tr. 834.) In October 1994, when she was hired, Montana entered into a letter agreement with Weis regarding her employment, effective the first date of broadcasting. (Bur. Ex. 12; Tr. 836-38.) Her starting salary at WJUX was \$100 per month. (Tr. 817-18; Bur. Ex. 12, p. 224.) At one point, Weis raised Montana's salary because Blabey recommended that he do so. (Tr. 1440-41.)

53. Blabey supervised Montana's work for WJUX and she consulted with him on WJUX matters. (Tr. 838, 950.) Montana stated that at WJUX she first reported to Blabey, who was the General Manager, and then ultimately to Weis, who was the owner. (Tr. 818, 893.) Montana met with Weis on WJUX business on an as-needed basis. (Tr. 818.) Blabey was the person who could give her directions regarding WJUX programming, and he directed her to send a "bulletin board" of public service announcements ("PSAs") to the Network. (Tr. 893-94.) It was Montana's understanding that Weis, as Blabey's immediate supervisor, could give Blabey directions. (Tr. 894.) Montana knew Turro and met him approximately the same time she met Weis. (Tr. 818.) During the first few months of operation of WJUX, Montana saw Turro at the station, but she could not recall how often. Turro spoke with her, but she did not recall any of the conversations. (Tr. 819.)

54. Programming. Weis testified that he exercised ultimate authority over the programming of WJUX. At the time he acquired the WJUX permit and agreed to enter into the Network Affiliation Agreement with Turro's company, Weis knew that Jukebox Radio would provide an entertainment service of popular musical standards, including music of the big band era, which would appeal to a large segment of the Sullivan County population. In addition, at the commencement of WJUX operations, Weis directed that the station carry public service and public affairs programming aimed at serving Monticello and Sullivan County. (MMBI Ex. 1, p. 7.)

55. To accomplish the broadcasting of public affairs and public service programming, Weis had discussions with Blabey which resulted in the public affairs programs produced by Blabey and aired on WVOS being rebroadcast over WJUX on different days and at different times than they were broadcast over WVOS. (MMBI Ex. 1, p. 7; Tr. 1438-39, 996.) In that way, those programs had the opportunity to be heard by a different audience in Sullivan County than originally heard them. (MMBI Ex. 1, p. 7.) Weis did not believe that Turro was a party to these discussions initially. (Tr. 1439.) Weis did not pay Blabey for these programs because Blabey never asked for payment. Weis also believed that Blabey was a community-minded individual who, through this arrangement, was getting the public affairs programming broadcast twice. (Tr. 1439-40.) Turro stated that when Weis and Blabey arranged to have

public affairs programming provided for broadcast on WJUX, he made a decision for the Network to carry that programming on the Network. (Tr. 2098.)

56. The program "People Who Make a Difference" was a weekly program that highlighted the work and accomplishments of citizens in the Sullivan County area who had a positive influence on the community. (MMBI Ex. 3, p. 7.) The program was produced locally in WJUX's main studio (Tr. 971-72, 1009), and was broadcast by WJUX at least as early as February 2, 1995 (MMBI Ex. 3, p. 7). The program was broadcast on both WJUX and WVOS, and a version of the program appeared in a weekly Sullivan County newspaper. (Tr. 1009-10.) The producer recorded the shows "in bulk, . . . four or five [or more] at a time." (Tr. 1022, 1024.) Neither WVOS nor WJUX paid the producer for the programs. (Tr. 1024.) After the shows were recorded, WVOS later broadcast tapes of the program from its studio, and Blabey sent tapes of the programs to Jukebox Radio for broadcast on the Network. (Tr. 1022, 1433.) Blabey "suspect[ed]" that listeners who heard this program on WVOS thought it was a WVOS program, and that listeners who heard it on WJUX thought it was a WJUX program. (Tr. 1025.)

57. The program "Open Mike" was originally broadcast on WVOS and later rebroadcast on WJUX. This program provided a platform for community leaders to appear and be questioned about their areas of interest and to take telephone questions from listeners. (Tr. 955.) Blabey sent tapes of the program to the Network (Tr. 1433), and it was aired on WJUX on a tape-delayed basis (Tr. 956). WJUX did not pay WVOS for the programming, but Blabey negotiated with Weis a \$10 per program "talent fee" for the host of the show, who was also WVOS's news director. (Tr. 956.) Blabey believed that WVOS received a benefit from the broadcast of this program on WJUX in that politicians were more likely to accept an invitation to appear on the program if it was going to be heard on two stations. (Tr. 956-57.) Blabey did not think "Open Mike" was on WJUX when that station first went on the air, and he did not recall how long thereafter it began to be broadcast on WJUX. (Tr. 995-96.) The first WJUX issues/programs list on which "Open Mike" appeared showed a date of broadcast of May 12, 1996. (MMBI Ex. 3, p. 17.)

58. Between October 1994 and October 1995, WJUX did not air programs directed at residents of Sullivan County which were not also broadcast (at different times) on WVOS. However, during this period of time there were PSAs that were broadcast on WJUX that were not also aired on WVOS. (Tr. 957-58.)

59. Weis also had discussions with Blabey which resulted in the broadcast over WJUX of PSAs which Weis believed were of interest to Monticello and Sullivan County. Montana was in charge of gathering material for PSAs, compiling a bulletin board of prospective PSAs, and forwarding it to Jukebox Radio for broadcast over WJUX. (MMBI Ex. 1, pp. 7-8; Tr. 823-26, 1440, 1442-43.) This was a part of her original job at WJUX. (Tr. 1442.) Jukebox Radio made the determination as to which PSAs to produce, produced them, and determined which items to air. Montana designated on the bulletin board, or called the Network regarding, PSAs that were particularly important and should be aired. The Network followed her suggestion on almost every occasion. (Tr. 827-28, 833-34, 885-86.)

60. Turro testified that when Montana sent to Jukebox Radio a list of PSAs, or when he received public affairs programming from WJUX that had been produced by Blabey, the Network had complete discretion to reject that programming. (Tr. 2036, 2095.) He also stated that if the Network were to exercise this discretion, WJUX would have the right to delete Network programming and put the PSAs and public affairs programming on the air directly at WJUX. (Tr. 2096-97; Bur. Ex. 8, p. 140.)

61. Blabey made the decisions on putting emergency announcements regarding Sullivan County on WJUX. (Tr. 979-80.) As an example, Blabey testified that during a snow storm in Sullivan County, he received a call from the Sullivan County Manager advising that all roads in the county were being closed. Blabey called Jukebox Radio, told them he had an emergency message to air on WJUX, prepared the message, and faxed it to the Dumont studio to be originated. (Tr. 980-82.)

62. Weis and Blabey talked about how they would handle WJUX's advertising. They thought there were possible "synergies" in jointly selling WJUX's and WVOS's different audience segments. (Tr. 921.) Blabey made joint proposals to sell commercial time on both WJUX and WVOS but was unsuccessful. (Tr. 920-22.) However, he did sell political time on both stations to the same candidates. (Tr. 920.) Blabey did not make sales presentations for WJUX exclusively. (Tr. 922.) Montana did not know of any advertising sold by WJUX for the Sullivan County area except for the political advertisements sold by Blabey. (Tr. 853-54.) Montana did not receive any inquiries from local advertisers about purchasing time directly on WJUX. (Tr. 867.)

63. WJUX had a local rate card for buying 30-second advertisements on WJUX. (Bur. Ex. 39; Tr. 922-24.) Blabey did not prepare the rate card and believed Weis did so. (Tr. 924-25.) From October 1994 through 1995, the WJUX local rate card "was used [but] was never used successfully." (Tr. 928-29.) After 1995, advertisements were sold to political candidates at the rates shown on the WJUX rate card. (Tr. 923-24.) On September 25, 1995, Blabey issued a statement advising that WJUX was "not accepting political orders until further notice." (Bur. Ex. 35, p. 699.) Weis made the decision not to accept political orders and related his decision to Blabey. (Tr. 927-28.) Blabey advised Weis that WJUX would have to accept advertising for a Federal election, but there was no such election at the time. Weis subsequently changed the policy of not selling political time. (Tr. 928.)

64. Although Blabey understood that the Network would air commercial spots which were primarily directed to Bergen County, he was never promised or assured that Jukebox Radio would not sell advertising time in Sullivan County. (Tr. 991-92, 1018.) Very early on, in approximately January 1995, Jukebox Radio hired Georgia Fleenor, a sales representative who had formerly worked for Blabey at WVOS, and placed her in Sullivan County as its own salesperson to sell advertising time there. (Tr. 992-93, 2102-03.) Fleenor did succeed in selling some advertising for the Network in Sullivan County. (Tr. 993, 2103.) Jukebox Radio subsequently replaced her with another salesperson, Stan Feinblatt, who currently has an office in Sullivan County and sells Network advertising time to Sullivan County advertisers. (Tr. 992, 2103.)

65. With the exception of local political spots sold in October or November 1997, all the commercial spots broadcast on WJUX were sold and originated by Jukebox Radio. (Tr. 928, 2046.) In this regard, the Network was not obligated to broadcast any advertisements which it did not sell. (Tr. 1952.)

66. Turro testified that, in the two years preceding the hearing, about 10 percent of the advertising buys on the Network had been from businesses located in Sullivan County, 45 percent came from Bergen County businesses, and about 45 percent came from regional or national businesses. (Tr. 2046-47, 2103-05.) In Turro's opinion, about 80 to 90 percent of the Network's commercial advertisements were "focused" toward the Bergen County/Rockland area. (Tr. 2048.) However, Turro believed that regional or national advertisers would be trying to sell their products in both Bergen County and Sullivan County. (Tr. 2105.)

C. Issue 5: Main Studio Issue

67. WJUX's community of license, Monticello, and WVOS's community of license, Liberty, are located about 10 miles apart in Sullivan County, New York, and are the two principal villages in the county, with populations of 7,000 and 5,000 respectively. (Tr. 912.) Ferndale, where the WJUX and WVOS main studios are located, is immediately adjacent to Liberty. (Tr. 916.) The WJUX studio in Ferndale is within the WJUX predicted 70 dBu (3.16 mV/m) contour. (Bur. Ex. 11, p. 174.) Sullivan County has, for many years, been a second home community for people from the New York metropolitan area. (Tr. 912.)

68. The WJUX main studio is located in a building which also houses the WVOS main studio. WJUX is a tenant of MBC, the licensee of WVOS. There currently are, and were in 1995, separate quarters in the building for the WJUX and WVOS main studios. (Tr. 916-18.) The WJUX main studio was previously used as a spare production studio for WVOS. (Tr. 1022.) According to Blabey, he agreed to lease "non-exclusive use" of a "production studio" to MMBI. Blabey explained that, when the studio was not otherwise being utilized, WVOS could use it for its purposes. He stated: "There's plenty of time for that studio to serve multiple purposes." (Tr. 1023-24.) In 1995, WJUX's main studio was on the first floor, with WJUX's studio at one end of the hall and WVOS's studio at the other end. (Tr. 917-18.) MMBI later built an enhanced main studio for WJUX on the ground floor of the same building it had been occupying. (MMBI Ex. 1, p. 8; Tr. 917, 985.)

69. Weis testified that it was his belief that MMBI has not violated the FCC's rule requiring the maintenance of a main studio, with the possible exception, for a period of time, with regard to local telephone service. Weis stated that MMBI has always had a main studio properly located under the rules of the FCC, and that the studio was equipped to originate programming and deliver that programming to the WJUX transmitter site for broadcast. Weis also testified that the WJUX transmitter was capable of being remotely controlled from WJUX's main studio by telephone dial-up. (MMBI Ex. 1, p. 5.)

70. WJUX's Program Origination Capability. Weis testified that he was experienced in the design and operation of radio stations and knew from personal observation that, prior to and including April 13, 1995, the station was fully capable of originating programming from its main studio directly to its transmitter without the need for anyone to go to the transmitter site. Indeed, Weis stated that, without any significant change to WJUX's equipment having been made subsequent to April 13, 1995, musical programming was later originated from WJUX's main studio, when the program feed from the Dumont studio was severed, without anyone having to first visit the WJUX transmitter. (MMBI Ex. 1, p. 5.)

71. Herman Hurst was a consulting engineer for both MMBI and Turro. (Tr. 1862.) Hurst had represented Turro in this capacity since 1983 or 1984. (Tr. 1884.) Hurst had more than 35 years of experience in the field of broadcast and communications systems engineering (Turro Ex. 2, Att. A), having provided engineering services to well over 1,000 broadcast stations and having personally visited and viewed more than 100 broadcast stations (Tr. 1866). Hurst was the Manager, Broadcast Consulting Services, and the Principal Engineer for Carl T. Jones Corporation. (Turro Ex. 2, Att. A.)

72. Hurst first visited the WJUX main studio on July 6, 1995.⁴ Hurst testified that:

⁴ Photographs which Hurst took on that date (Tr. 1919) appear at MMBI Ex. 2, p. 4.

The WJUX(FM) main studio is equipped with a Sparta 8-channel console, a reel-to-reel tape machine, cassette deck, cart machine, turntable, microphone and audio processing equipment. In addition, an EBS receiver and alert tone generator is also located at the WJUX(FM) studio. The WJUX(FM) main studio has programming capability, production capabilities and remote control capability to the main transmitter.

(MMBI Ex. 2, p. 2.) Hurst had no reason to believe that the capabilities he observed on July 6, 1995, did not exist prior to the April 1995 FCC inspection. (*Id.* at 1.) In this regard, Turro testified that he personally inspected the main studio equipment and verified that it was all working at the time WJUX was constructed in October 1994 (Tr. 1794-95), and Montana testified that there were no physical changes to the WJUX main studio after the FCC inspection (Tr. 892).

73. As noted above, on April 13, 1995, Loginow, an FCC inspector, conducted an inspection of WJUX's main studio and transmitter. (Tr. 336-37.) Loginow testified that, at the main studio, Blabey and Montana readily identified themselves to him as holding positions with WJUX, Blabey as General Manager and Montana as Public Affairs Director. (Tr. 484.) Blabey stated that he was on the premises, but outside the building, when Loginow arrived. (Tr. 960-61.) Montana stated that she was also on the premises when Loginow arrived. (Tr. 848-49.) She remembered talking with him in her office, but did not recall what they talked about. (Tr. 849-50.) Loginow testified that his recollection of who was there when he arrived and the timing of the initial part of his visit was "rather hazy. . . . [and] not very clear at all." (Tr. 580.)

74. Loginow asked Blabey for information about WJUX and Blabey responded that there was not too much to show him because most of WJUX's affairs were handled at Jukebox Radio's Dumont studio. Blabey told Loginow that all program logs for the station were kept in Dumont. Blabey offered to show Loginow WJUX's public file but Loginow declined. Blabey gave Loginow a copy of the Network Affiliation Agreement. (Bur. Ex. 18, p. 330.)

75. During the inspection, Blabey told Loginow he wanted to call WJUX's Chief Operator, Turro. Blabey called Turro's office, was told that Turro was out of town, and that Turro's office would contact Turro. Sometime later, Turro called WJUX's main studio and Blabey put him on the telephone with Loginow. (Tr. 962-63.) Turro spoke with Loginow for about five minutes. (Tr. 1963-64, 1743.) Turro asked Loginow if he had any questions for him. (Tr. 1743.) Loginow asked if Turro was the Chief Operator of WJUX and Turro said he was. (Tr. 1743, 1964.) Loginow also asked Turro about remote control capability. (Tr. 1964.) At the time of the inspection, Weis and Turro were at the National Association of Broadcasters convention in Las Vegas. Turro found Weis there and told him there was an inspector at WJUX. (MMBI Ex. 1, p. 3; Tr. 1407-08.)

76. Loginow asked to see the WJUX main studio and Blabey took him there, showed him the equipment, and answered all his questions. (Tr. 961.) Blabey informed Loginow that the equipment at WJUX's main studio was capable of allowing WJUX to originate programming from that studio. (Tr. 1029.) Loginow stated that he was in the WJUX main studio "very briefly." (Tr. 475.) While there, he saw a control board of the type typically found in a broadcast studio from which programming could be originated, as well as a microphone and tape machines. (Bur. Ex. 18, p. 330; Tr. 475-76.) Loginow testified that he did not examine the wiring to see if the equipment was connected, and had no reason to think the microphone and tape machines were not connected to the control board. (Tr. 476.) Loginow

did not test the program origination equipment to see whether it could create programming suitable for broadcasting. (Tr. 489-90.)

77. Blabey told Loginow how programming could be originated from WJUX's main studio and transmitted to WJUX's transmitter. (Tr. 1027.) According to Loginow, Blabey told him that to enable broadcasts to originate from the WJUX studio "would require going to the transmitter *site* and effecting a change of cabling at the patch panel to connect the transmitter to the studio." (Bur. Ex. 16, p. 254, emphasis added; Tr. 473-74.) The FM transmitter site was located 2.3 miles from the Ferndale studios (Tr. 1014), and was about a 15-minute drive (Tr. 476). Blabey, however, denied telling Loginow that a visit to the transmitter site was required in order to originate programming from the WJUX main studio; that had never been required. (Tr. 1012-14.) Blabey instead recalled that Loginow asked: "How can you put this studio on the air from here?" and he responded: "You have to throw a switch in the transmitter *room*." (Tr. 1027-28, emphasis added.) The transmitter room to which Blabey was referring was the WVOS(AM) transmitter room, which was located in the Ferndale building about 10 to 15 feet down the hall from the WJUX main studio. (*Id.*; Tr. 1013-14.) Blabey could not say whether he said to Loginow the "AM transmitter room" or just the "transmitter room." (Tr. 1028.)

78. Blabey stated that there had always been a switch or switch patch in the WVOS(AM) transmitter room where the WJUX main studio feed could be connected to the WJUX transmitter. (Tr. 1012-13, 1027.) This could be done by simply taking an audio cord from one circuit and "jack[ing] it into a hole" in order to transfer that circuit to another circuit. (Tr. 1014; *see also* Tr. 477.) Blabey did not demonstrate to Loginow how this was done, nor show Loginow the patch, because Loginow did not ask. (Tr. 1028-29.) Blabey stated that an individual in a studio building who was running a line from the building to a transmitter would place the patch at the studio, not at the transmitter. Blabey testified: "It would be silly to make it at the transmitter." (Tr. 1027.) Loginow found the need to make a change at a transmitter site 15 minutes away from a main studio in order to put the studio on the air "[h]ighly unusual." (Tr. 477.)

79. Montana, too, testified that, at the time of the inspection, programming could have been originated from WJUX's main studio without going outside the studio building. (Tr. 892.) She stated that, at that time, there was a switch located on a piece of equipment in the WVOS(AM) transmitter rack which was in the WJUX main studio building, 10 to 15 feet down the hall from WJUX's main studio, that enabled programming to be originated from WJUX's main studio. (Tr. 892, 895-96.) Montana testified that, to originate programming from the WJUX main studio, the switch had to be placed in the "up" position, and once the switch was thrown, the WJUX main studio would operate the same as any other radio station studio. (Tr. 897-98.)

80. Blabey testified that there was no patch panel at the WJUX transmitter site. (Tr. 1014.) Loginow stated that, if there had been one, it would have been in the enclosed building housing the transmitters. (Tr. 478.) Loginow testified that he entered that building, made observations, and recalled observing remote control equipment there, but did not see a patch panel. (Tr. 478-79.) Although Blabey accompanied Loginow to the WJUX transmitter site, Loginow did not ask Blabey while there to show him the patch panel in which Loginow understood cabling had to be changed to put the WJUX studio on the air. (Tr. 474, 476-77.)

81. Weis testified that, for reasons of economy and efficiency, both WJUX's public affairs and public service announcements were fed to the WJUX transmitter from the Dumont studio. Weis stated

that this achieved economy because MMBI did not have to engage another staff person to come to the MMBI studio to replay the public service programs on MMBI's tape equipment, and feed the programs and announcements from WJUX's main studio to its transmitter. According to Weis, it was always technically possible to do so and the programs would have sounded the same over the air. (MMBI Ex. 1, p. 8.)

82. The WJUX Staff. Weis testified that the WJUX main studio was adequately staffed by Blabey, WJUX's General Manager, and Montana, WJUX's Public Affairs Director. Both were based essentially full time in the Ferndale main studio building. Weis stated that, although Blabey and Montana had other employment with WVOX, which was also located in that building, they each had more than adequate time to perform their duties for WJUX. (MMBI Ex. 1, p. 6.)

83. Blabey was an owner of MBC, the licensee of WVOX, and acted as the General Manager of those stations. (Tr. 909-10.) During normal business hours, there were anywhere from one to four employees at WVOX, including Montana. Blabey supervised these employees. (Tr. 949-50.)

84. Blabey was also WJUX's General Manager since WJUX commenced broadcasting. (Tr. 910-11, 948; Bur. Ex. 13, p. 226.) Blabey's letter agreement with MMBI stated that Blabey was "engage[d] . . . as an independent consultant on radio station management matters." (Bur. Ex. 13, p. 226.) Blabey testified that he was not an employee of WJUX, and that the agreement was structured as it was for tax reasons. (Tr. 910-11.) The agreement also provided that Blabey would be available for consultations during normal business hours, Monday through Friday, as needed. (Bur. Ex. 13, p. 226; Tr. 948.) Blabey testified that he was already present at the main studio during those hours in connection with WVOX. (Tr. 948.) In deciding to become General Manager of WJUX, Blabey believed the position would not be overly burdensome because he was already performing many functions of a General Manager for WVOX. (Tr. 947.)

85. Blabey stated that since Weis did not live in Sullivan County and was not part of the Sullivan County community, he represented the community to Weis and vice versa. Blabey testified that he and Weis discussed the county's economy and county happenings. (Tr. 914.) Blabey stated that he was involved in the community on behalf of both WJUX and WVOX and people in the community associated him with both stations. (Tr. 932.) For example, he was a member of the Chamber of Commerce on behalf of both WVOX and WJUX, with WJUX having a separate membership. He received two copies of correspondence from the Chamber, one for MMBI and the other for WVOX and, when he went to Chamber meetings, he was there in two capacities. (Tr. 933.) Blabey did promotional announcements on both WVOX and WJUX for an air show the Chamber promoted each summer, and he volunteered his time at the air show. In doing so, Blabey stated he was representing both stations. (Tr. 933-34.) There were no community organizations of which he was a member in which he represented WJUX exclusively or WVOX exclusively. (Tr. 934.)

86. Blabey characterized his role in hiring and firing at WJUX as recruiting and suggesting employees for Weis to hire. (Tr. 914.) Blabey never recommended anyone to Weis that Weis did not put on the payroll. (Tr. 937.) With the exception of Kirschner, who replaced Turro as WJUX's Chief Operator, all of the employees that WJUX hired were recommended to Weis by Blabey. (Tr. 914, 937.) For example, Blabey suggested that Weis hire Spicka as WJUX's local engineer. (Tr. 937-38.)

87. On an average day, the actions that Blabey took on behalf of WJUX included answering the telephone, going through the mail, handling inquiries that he could handle himself, sending or faxing to Weis in New Jersey matters that needed Weis's attention (generally involving financial matters), arranging for programming, and making decisions. (Tr. 914-15.) Blabey was familiar with WJUX's issues/programs lists (Tr. 997), which were prepared by the Jukebox Radio staff (Tr. 1412). He prepared the Arbitron information requests for WJUX. (Tr. 1017.) The routine activities Blabey performed on behalf of WJUX did not take a lot of his time each day. (Tr. 915.) Blabey did not have any contact with Jukebox Radio on a daily basis. (Tr. 915.)

88. Blabey testified that he or others in the building were able to tell whether WJUX's service had been interrupted because they monitored that station "periodically" on the radios in their offices and because listeners called in. (Tr. 974.) When Blabey learned that WJUX was off the air, he attempted to get the station back on the air by calling an engineer, "cranking up the generator," or calling the power company. (Tr. 976-77.) If both WJUX and WVOS were ever off the air at the same time, Blabey stated that he would put WVOS back on the air first. (Tr. 977-78.)

89. Weis and Blabey had an arrangement under which Blabey received a commission for sales made locally for commercials on WJUX. (MMBI Ex. 8; Tr. 920, 1001-03.) Blabey sold time under the agreement, which was still in effect. (Tr. 920, 1003.) During the first year of the agreement, however, Blabey made sales presentations, but did not succeed in making sales. (Tr. 1003.)

90. In February 1995, Blabey sought to engage a salesperson other than himself to sell time locally for WJUX. (MMBI Ex. 9; Tr. 1005.) Weis approved the hiring of Stan Silverstein to make local sales for WJUX, with compensation on the basis of commissions. (Tr. 1005.) Silverstein worked only for WJUX, and not for WVOS. (Tr. 1026.) Silverstein made sales presentations for WJUX for a short time, but did not sell any advertisements. (Tr. 1005, 1026.) Blabey believed that selling advertising on WJUX was difficult since the station was not among the top four stations in the community and, in a small market such as Monticello/Liberty, many businesses would only advertise on the top station or the top two stations in the market. (Tr. 920-22.)

91. Montana, WJUX's Public Affairs Director (Tr. 822), testified that she was employed full time by WVOS and part time by WJUX. (Tr. 816.) As WVOS's business manager, she handled the books, entered time orders, handled the billing, did the bookkeeping, prepared the broadcast log, prepared the payroll, gave out prizes, acted as receptionist (Tr. 816), sold advertisements, and participated in programming (Tr. 950). Blabey described her as a very competent individual who held the WVOS operation together. (Tr. 950.)

92. Montana was employed at WJUX since late October 1994. (Tr. 817.) She was originally engaged as an independent consultant but this was later changed, for tax purposes, to employee. (Bur. Ex. 12, p. 224; Tr. 838, 834.) At the time of her employment, Blabey told her she would work the same hours for WJUX that she worked for WVOS. Blabey told Montana he had a part-time position available to staff WJUX's office, answer the telephone, deal with the people who walked in, pick up and route the mail, and other similar things. (Tr. 817.)

93. Montana performed numerous tasks for WJUX each day. She went to the post office to pick up the mail for both WVOS and WJUX. When she returned to the studio building, she distributed the mail. If there was mail that needed attention from Weis or Blabey, she made sure that they saw it. She

brought bills to the attention of Blabey and Weis for payment. She handled petty cash, dealt with walk-ins, answered the telephone, and took care of the callers' requests. (Tr. 820.)

94. Montana recalled receiving only two listener complaints about WJUX. The first concerned the inability of a listener to receive WJUX on his cable system. The second was from a listener who complained that WJUX was not playing enough Perry Como music. With respect to the latter, Montana called the Network and told them the nature of the complaint. The Network responded by adding to its schedule a weekly Perry Como show. (Tr. 884-85.)

95. Montana monitored WJUX broadcasts when going to and from work, but did not monitor that station during the work day because WVOX's programming was heard on the speakers in the studio building throughout the day. (Tr. 840-41.) On the rare occasion when there was a program interruption at WJUX, Montana would check what was going on, and call WJUX's engineer. (Tr. 839-41.)

96. As WJUX's Public Affairs Director, Montana represented WJUX in the community and made sure that PSAs of interest to the community were broadcast on WJUX. (Tr. 822.) Montana did not belong to any civic groups or charitable organizations for the specific purpose of representing WJUX. (Tr. 823.) However, she testified that she had lived in Sullivan County for almost 20 years, that people knew she worked for WJUX, and that they told her of relevant happenings for broadcast on both WJUX and WVOX. (Tr. 822-23, 825.)

97. Montana prepared the PSA bulletin boards for both WJUX and WVOX. (Tr. 824-26.) The bulletin boards for both stations were generally the same. Montana testified that she prepared the bulletin board for WVOX first and then used it for WJUX. On one or two occasions, however, she edited something out of the WVOX bulletin board before using it for WJUX. (Tr. 881-82.) Montana was the one who made the choices as to what would or would not be included on the bulletin board. (Tr. 824-26.) She did not consult with either Blabey or Weis in this regard. (Tr. 824.) Montana received, but had no role in preparing, the quarterly issues/programs lists for WJUX and put them in the WJUX public file. (Tr. 856-57, 889; MMBI Ex. 3, p. 1.) In this regard, WJUX's public file was maintained at the Monticello Public Library. There was also a copy of the file at WJUX's main studio. (MMBI Ex. 1, p. 10; Tr. 889.)

98. When WJUX began broadcasting, Turro was the Chief Operator of the station. (MMBI Ex. 1, p. 7; Tr. 847-48.) He was not compensated because both Turro and Weis believed that was precluded by the Commission's rules. (Tr. 1423-24, 1789-90, 2013; MMBI Ex. 1, p. 7; Turro Ex. 1, p. 7.) Turro served as the Chief Operator until he was replaced by Kirschner in mid-1995. (MMBI Ex. 1, p. 7; Tr. 937, 1424.) Subsequent to his replacement, Turro did not act in the capacity of Chief Operator or hold that title. (Turro Ex. 1, p. 7.) Kirschner was hired by Weis. (MMBI Ex. 1, pp. 6-7.)

99. Spicka, WJUX's local engineer (Tr. 937-38), was hired by WJUX in August 1995 to conduct weekly Emergency Action Notification System tests and meter readings (Tr. 839). Prior to his hiring, these tests were originated from the Dumont studio. (Tr. 857, 996-97.) Spicka was an employee on WJUX's payroll, not a consultant. (Tr. 938.) He did not also work for WVOX. (Tr. 939.) Spicka worked one to two hours per week, checked over the equipment and conducted the tests, and went out to the transmitter site when necessary. (Tr. 938.) He was also on call since he lived about two miles from the station, was semi-retired, and was available on a moment's notice. (Tr. 937-38.) Blabey called Spicka in to assist at the time of the FCC inspection. (Tr. 939.) In addition, when a fiber optic cable was cut and the Jukebox Radio program feed interrupted, an event which Montana believed occurred in the early

summer of 1995, Spicka originated music from the WJUX main studio by playing a music tape for several hours. (Tr. 858, 972-74.) Montana stated that she heard about this program interruption from Turro, who telephoned her at her office. (Tr. 845, 860.)

100. Charles Martin was also an employee on WJUX's payroll. Martin lived about 10 miles from WJUX's main studio and could be called in if Spicka was out of town. Blabey arranged for Martin to cover the office functions for WJUX when he (Blabey) and Montana were testifying at the hearing in Washington, D. C. (Tr. 974-75.)

101. WJUX's Remote Control Capability. During his April 13, 1995, inspection of WJUX, Loginow made inquiries regarding WJUX's remote control capability. (Tr. 439-40, 459-60.) Before he inspected WJUX Loginow had read the complaint lodged by Universal against Turro and Weis, and understood that one of the allegations made was that WJUX was an unattended operation in the sense that the transmitter was not being controlled at the main studio in Ferndale. (Tr. 484-85, 542.) However, Loginow testified that he knew of no FCC rule stating that a broadcast station's transmitter may not be controlled from a point other than its main studio. (Tr. 485-86.)

102. Loginow asked Turro about remote control, and Turro responded that remote control and meter readings were handled at the Dumont studio. (Tr. 508-09, 541, 1964.) Turro also informed Loginow that there was "no remote control *equipment*" at the WJUX studio (Tr. 440, emphasis added), but that a dial-up remote control system was available at WJUX's main studio (Tr. 510-11, 541, 1964). Turro did not mention who knew how to operate the dial-up system. (Tr. 511.) Based on Turro's answers, Loginow presumed that the remote control equipment at Dumont was functioning. (Tr. 508-09.) Loginow chose not ask Turro any additional questions about the telephone dial-up remote control system. (Tr. 463-64, 545-46.)

103. Blabey testified that Loginow asked him if there was a "remote control *unit*" for WJUX at the main studio, and he answered, "No." (Tr. 962, emphasis added.) Similarly, Loginow testified that he asked Blabey whether there was any "remote control *equipment*" at WJUX's main studio. (Tr. 577, emphasis added; Bur. Ex. 18, pp. 330-31.) Blabey told Loginow that the WJUX transmitter could be remotely controlled from the Dumont studio. (Tr. 963.) Loginow did not make any inquiry of Blabey about telephone dial-up remote control. (Tr. 470-71, 547.)

104. Blabey testified that there was a telephone number posted at WJUX's main studio and that, by dialing the number and entering a code, the WJUX transmitter could be turned off. (Tr. 965.) Blabey stated that there were other codes which could be used to turn the transmitter on, take readings, or do other functions required by FCC regulations. (Tr. 965-66.) Blabey said he knew the codes and how to use them, and could do it from a telephone located anywhere. (Tr. 963, 965-66.) Blabey stated that at the time of the inspection there was a telephone in the WJUX main studio which had four lines on it, all of which were WVOS extensions, and that any of those lines could have been used from the main studio to dial the WJUX transmitter and control it. (Tr. 967-68.)

105. Montana testified that, at the time of the FCC inspection in April 1995, there was dial-up remote control capability for the WJUX transmitter from the WJUX main studio. At the time of the inspection, Montana knew how to use the remote control. She explained that all she had to do was pick up a telephone, dial a number, enter a code, and an automated voice responded. On two occasions Montana had instruction on how to use the dial-up remote control. (Tr. 852-53, 879-80.) Loginow did

not make any inquiry of Montana about telephone dial-up remote control. (Tr. 547.) Both Weis (MMBI Ex. 1, p. 5) and Hurst (MMBI Ex. 2, pp. 1, 2) testified that WJUX had remote control capability to its transmitter from its main studio at the time Loginow inspected the station.

106. On the basis of his inspection and his meetings with Blabey and Montana, Loginow concluded that WJUX was “[a]ttended out of Dumont.” (Tr. 485.) Loginow testified that, in his opinion, dial-up remote control was not adequate remote control for a station unless it met certain guidelines. (Tr. 514.) One of those guidelines was that the dial-up remote control must have a dedicated telephone line “available continuously, exclusively for that purpose only.” (Tr. 450, 441, 514.) In this connection, the following colloquy took place:

Q [by Mr. Riley]: Well, isn't a telephone, when it's equipped to a telephone dial up remote control, a station equipped with telephone dial up remote control, the telephone set itself becomes remote control equipment, does it not?

A [by Mr. Loginow]: No, it doesn't, not until you're actually using it.

Q: You mean that if I had a telephone sitting here and was speaking with my wife, that it would *not* be remote control equipment?

A: That's correct.

Q: If I then hang up on my wife and dial the telephone number for the remote control equipment at the radio station and enter the code word if needed, and then begin to use that telephone to turn it on and off or to access a power meter, that *is* remote control equipment, is that right?

A: That's correct.

(Tr. 440-41, emphasis added; *see also* Tr. 465-67.) Loginow acknowledged that he did not know for a fact that there was no telephone circuit dedicated to remotely controlling the WJUX transmitter; he knew only what Blabey and Turro told him. (Tr. 487.)

107. WJUX Main Studio Telephone. Beginning on November 2, 1994, WJUX established and maintained a local telephone number for the main studio. (Bur. Ex. 11, pp. 165, 190; Bur. Ex. 24, p. 555.) This number was listed by the local telephone company (MMBI Ex. 1, p. 9; Bur. Ex. 11, p. 193), NYNEX, and was toll-free for residents of Monticello (MMBI Ex. 1, p. 9; Bur. Ex. 24, p. 555). However, calls to that number were not answered at the WJUX main studio until July 1995. (Bur. Ex. 24, p. 555; Bur. Ex. 25, p. 562.) Rather, prior to July 1995, all calls to the WJUX number were forwarded to the Dumont studio and were answered there. (MMBI Ex. 1, p. 9; Bur. Ex. 25, p. 562.) Telephone billing records for the WJUX telephone number for the period from November 1994 to June 1995 showed that a number of calls were forwarded to Dumont, that long distance charges and charges for call forwarding service were made for individual calls, but that those charges were not billed to the callers. (MMBI Ex. 1, p. 9; Bur. Ex. 11, pp. 190, 197, 199, 201, 205, 208, 212, 214.)

108. Weis stated that, subsequent to the FCC inspection, a telephone jack for the WJUX number was relocated within the building housing the WJUX main studio, a telephone was acquired, and the practice of forwarding calls placed to the WJUX number was ended. (Bur. Ex. 25, p. 562.) Since some point in mid-1995, Weis testified, all calls to the WJUX telephone number were answered at the WJUX main studio. (MMBI Ex. 1, p. 10.)

109. Weis testified that he did not recall knowing of the call-forwarding arrangement as of late July 1995. (MMBI Ex. 1, p. 9; Bur. Ex. 11.) Weis stated that he never tried to call the WJUX telephone number, so his calls were never forwarded to Dumont. If Weis needed to call and talk to Blabey or Montana, he called the WVOS number. This was a continuation of his habit in dealing with Blabey from the very beginning. Weis never tried to call the number listed in the directory for WJUX just to see what would happen. (Tr. 1441-42.)

110. Howard Warshaw, one of the owners of Universal, which lodged a complaint with the Commission against Turro and Weis (Bur. Ex. 2; Tr. 1043-44), testified that on January 30, 1995, he called directory assistance for area code 914 and was given the telephone number for WXTM. Upon dialing that number he eventually spoke with Turro, who gave him the location in Monticello, New York, of the station's public inspection file. (Bur. Ex. 2, p. 48; Tr. 1067.)

111. Similarly, in seeking to locate WXTM on April 13, 1995, Loginow called directory assistance in Ferndale and was given a telephone number for WXTM. When he called the number, it was answered in Dumont, New Jersey. During the course of this call, Loginow was treated courteously and was given directions to WXTM's main studio. (Tr. 481-82.)

112. According to Blabey, at the time of the inspection WJUX had a telephone line into the office building in which the WJUX and WVOS studios were located, but WJUX's telephone line was not connected to its main studio room. (Tr. 967-68.) Blabey testified that calls made to the WJUX telephone number were automatically forwarded to the Network in Dumont, New Jersey. (Tr. 968-69.)

113. Montana testified that at the time WJUX went on the air she was not aware of a telephone "at the WJUX premises" for individuals calling that station. (Tr. 821.) At that time Montana did not have a telephone in her office for WJUX's line. (Tr. 820.) She stated that a telephone for WJUX was installed on her desk in early July 1995. (Tr. 861-62.) Montana testified that "[t]he community" somehow found out that the WJUX studio was located at the WVOS studio and, if someone in the community wished to call WJUX, they called on the WVOS line. (Tr. 820-21.) The calls she received were generally calls complimenting the music on WJUX and asking for requests to be played. (Tr. 864-65.) Montana recalled that there was a listing for WXTM in the May 1995 local telephone directory, which was the first to be published after the station began operations. (Tr. 887-88.)

114. All of the bills for telephone service from November 1994 to mid-1995 were sent by NYNEX to Jukebox Radio, which paid those bills. (MMBI Ex. 1, p. 3; Bur. Ex. 11, pp. 189-214.) At the hearing, Weis "speculat[ed]" that this occurred because Turro placed the order for WJUX's telephone service. Weis explained that when the station was being built, it was recognized that WJUX needed a telephone in the studio. Turro was working in the Ferndale studio with his Network equipment while Weis was at the tower site in Liberty installing equipment. Weis believed that Turro "picked up the

phone, called NYNEX, [and] ordered a telephone.” (Tr. 1437.) Since WJUX had no account with NYNEX anywhere, Turro ordered the service on Jukebox Radio’s account since he had the information at his fingertips. (Tr. 1437-38.) When it was subsequently discovered that Turro was paying Weis’s telephone bill, Weis did the required paperwork, the billing was changed, and MMBI paid all subsequent bills for WJUX telephone service. (Tr. 1438; MMBI Ex. 1, p. 3.) Weis never reimbursed Turro or Jukebox Radio for the telephone bills they paid. (Tr. 1438.)

D. Issue 1: Translator and Auxiliary Station Rules Issue

(1) Background and Technical Operations

115. Network Connections to WJUX. Turro leased a 56 Kbps land line from the telephone company to carry the Jukebox Radio programming feed and remote control commands from the Dumont studio to WJUX. (Turro Ex. 1, p. 8; Tr. 1504.) The 56 Kbps land line had two channels, a wide channel for audio and a narrow channel for data. The narrow data channel was used for remote control of the WJUX transmitter. (Tr. 1504, 1545; Turro Ex. 33.) Turro subsequently established a second land line to WJUX as a backup in case the first line was interrupted. This was done because the Network had experienced service outages due to failures of the land line. (Turro Ex. 1, p. 8.)

116. With few exceptions, Jukebox Radio programming was originated in the Dumont studio. (Turro Ex. 1, p. 8.) That studio contained both program creation and audio production control rooms. (Turro Ex. 7, p. 2.) The programming was transmitted, live or taped, through the land lines to the WJUX main studio or to its transmitter. There, Network equipment processed the programming feed, and the programming was broadcast by WJUX on its authorized frequency of 99.7 MHz. (Turro Ex. 1, p. 8.) Turro personally installed the Network equipment which allowed this to be done. (*Id.* at 6.) According to Turro, the broadcast from WJUX could be received directly off the air, or “directly through space,” by the Fort Lee and Pomona translators, processed, and retransmitted by both of them. (*Id.* at 8.)

117. The TC-8 Remote Control System. TC-8 Remote Control Systems allowed remote control and monitoring of broadcast transmission facilities from a studio or other remote location. The system consisted of two physically identical units, one located at the transmitter site and the other at the remote location. (Turro Ex. 28, p. 5.) The TC-8 Remote Control System allowed for telemetry, also called data (Tr. 1511), to pass between the units to provide information at a remote location in the form of eight different status lights and eight different channels, along with “raise” and “lower” switches, to control remotely such items as transmitters and antenna switches. (Turro Ex. 28, p. 5.) A five-digit dot-matrix array on each unit displayed the channel selected (first digit) and the analog values associated with that particular channel (last four digits). (*Id.* at 5-6, 15.) The link between the studio and transmitter TC-8 units may be by either wire or radio connection. The radio links were typically an STL subcarrier for the studio-to-transmitter path and an FM subcarrier for the return path from the transmitter to the studio. (*Id.* at 5.)⁵

⁵ During the hearing, Turro provided live demonstrations of the operations of the TC-8 Remote Control Systems in place at Jukebox Radio for control of the WJUX and Fort Lee transmitters. These demonstrations featured identical model TC-8 units as were actually used in the Dumont studio and at the transmitters. (Monticello demonstration: Tr. 1488-1612; Turro Exs. 33, 38. Fort Lee demonstration: Tr. 1612-1725; Turro Exs. 34, 39.)

118. The eight status lights essentially provided the studio with on/off indications. (Tr. 1534-35, 1648-51.) The channels were used to control functions remotely from the studio or to read numerical status. The uses and functions of the channels were entirely independent of the status lights. (Tr. 1525-27, 1529, 1532-33, 1556-57, 1573, 1614.)

119. Since WJUX first went on the air in late October 1994, Jukebox Radio maintained two separate and independent TC-8 systems for the remote control of WJUX and the Fort Lee translator, one system for each of those stations. (Turro Ex. 1, p. 10; Tr. 1501.) These units were never replaced. (Tr. 1490.) The link between the Dumont studio TC-8 unit and WJUX was by a data path on the 56 Kbps land line which carried the Jukebox Radio program feed from the Dumont studio. (Turro Ex. 1, pp. 8, 10.) The link between the Dumont studio TC-8 unit and the Fort Lee translator initially was on a data path along WMG-499. (*Id.* at 11-12.) Turro testified that he never maintained any remote control capability for the Pomona translator. (*Id.* at 10.)

120. Arrangement for Remote Control of WJUX. The 56 Kbps land line connecting the Dumont studio to WJUX had two purposes. The first was carriage of the programming on a wide audio channel from the Dumont studio for broadcast by WJUX. The second was carriage of telemetry on a narrow data channel between both ends of the TC-8 Remote Control System for control of the WJUX transmitter from the Dumont studio. (Tr. 1504; Turro Ex. 33; Turro Ex. 2, p. 4.)

121. Initially, Turro installed a small amber strobe light in the Dumont studio as part of the TC-8 remote control arrangement for the WJUX transmitter. Turro hand-wrote "Off Air" on the strobe light. (Tr. 1496-97; Turro Ex. 38.) Turro attempted to connect the light in such a way that if the land line connection between the Dumont studio and the WJUX transmitter failed, the light would flash and warn the Dumont studio staff of a problem. (Tr. 1504-05, 1548-49; Turro Ex. 33.)

122. Turro had never installed such an arrangement before (Tr. 1504), and he learned that the strobe light would flash in the event that there was trouble on the narrow data channel, even though the broader audio channel carrying the program feed would be functioning properly and the WJUX transmitter would also be functioning properly (Tr. 1497, 1505-06, 1604, 1605-07, 1608-10). Turro also came to learn that the operation of the data path itself was unreliable, which would cause the strobe light to flash sporadically, even though at all times the program feed from the Dumont studio to the WJUX transmitter, and the transmitter itself, were operating properly. (Tr. 1505-06, 1510, 1546.)⁶ Turro stated that the strobe light was disconnected in the spring or summer of 1995. (Tr. 1585.)

123. Turro also installed an "outboard safety button" which disabled the on/off and raise/lower functions of the TC-8 unit in the Dumont studio. Turro testified that in order to turn the WJUX transmitter on or off, the outboard safety button and a button on the TC-8 unit would have to be pressed

⁶ At the hearing, Turro demonstrated that the data channel could be "shorted out," causing the strobe light to flash, but that power at the WJUX transmitter would be uninterrupted. (Tr. 1515-17.) Turro testified that this showed that the flashing strobe light in the Dumont studio did not indicate that WJUX had stopped transmitting or that the station had lost its audio feed from the Dumont studio. (Tr. 1517-21.)

simultaneously. He did this in order to prevent an accidental shut down of the WJUX transmitter if the "wrong buttons" on the TC-8 unit were pressed. (Tr. 1535, 1568-69.)

124. On July 6, 1995, the land line carrying programming from the Dumont studio to WJUX was cut, causing a loss of program delivery to the station. This resulted in "dead carrier" being heard on the air from WJUX and from the Fort Lee and Pomona translators. (Tr. 1580-83, 1586-88, 1598.) Turro testified that "dead carrier" sounded like "[n]othing. Not noise, just silence. . . . Very quiet." (Tr. 1586; *see also* Tr. 1745-46.) On that day, Hurst, one of Turro's consulting engineers (Tr. 1862), and Turro were inspecting the translator facilities and WJUX. Thus, Hurst also personally observed that when the land line was cut, WJUX and the two translators all transmitted dead carrier. (Tr. 1588-94, 1869-70.)

125. Turro testified that a second land line cut subsequently occurred which again resulted in the transmission of dead carrier by WJUX and the Fort Lee and Pomona translators. (Tr. 1595.) When this happened, Spicka was called to WJUX and played music tapes from the WJUX main studio, restoring programming to WJUX and the Fort Lee and Pomona translators. (Tr. 1611, 858, 972-74.) According to Turro, the only time in the history of WJUX that the transmitter completely lost the ability to generate carrier was on April 14, 1995, when Loginow instructed that the transmitter be turned off and on as a part of his inspection of that station. (Tr. 1579; Bur. Ex. 17, pp. 264, 267.)

126. Arrangement for Remote Control of the Fort Lee Translator. The TC-8 Remote Control System between the Dumont studio and the Fort Lee translator utilized the same model TC-8 units as did the system for remote control of the WJUX transmitter. The Dumont-Fort Lee system, however, was completely separate from the Dumont-WJUX system, and the functions of the status lights and channels were different. (Tr. 1501, 1613-16.) Over time, installations at the Fort Lee translator included several different antennas to receive signals off the air from WJUX and from the Pomona translator, a main and auxiliary transmitter, a main and auxiliary transmitting antenna and, while it was in operation, receive facilities for WMG-499. The TC-8 system between the Dumont studio and the Fort Lee translator allowed Turro to switch remotely among those facilities, but did not permit remote adjustments to the power of the Fort Lee translator transmitter. (Turro Ex. 1, p. 10; Turro Ex. 2, p. 4.) In this connection, because of the way it was manufactured, the power of the WJUX transmitter could not be raised or lowered by remote control. Power adjustments had to be done on site. However, the WJUX transmitter could be turned on and off by remote control. (*Id.*; Tr. 1535, 1537, 1539-43, 1569, 1741.)

127. During the time when WMG-499 was in operation, Turro used it to transmit the remote control telemetry from the TC-8 unit at the Dumont studio to the TC-8 unit at the Fort Lee translator. (Turro Ex. 1, pp. 11-12; Turro Ex. 34.) The Fort Lee translator's FM subcarrier transmitted the telemetry from the Fort Lee translator to the Dumont studio. (Tr. 1707-08.) Turro also maintained an audio path carrying the Jukebox Radio programming on WMG-499 at all times. (Turro Ex. 1, p. 12; Turro Ex. 34.) The audio path terminated into a "dummy load" (Tr. 1619), which consisted of a 600 ohm resistor (Tr. 1667). Turro explained that, by keeping an external load on the output audio section of the microwave unit, energy was dissipated into the resistor, and damage to the facilities of the Fort Lee translator was prevented. (Tr. 1667-70.)

128. Turro testified that he kept WMG-499 in operation continuously to allow it to provide constant telemetry, and to prevent damage to its facilities because it was the kind of unit that could have

been damaged by being turned on and off repeatedly. Turro further testified that, because the New York City area suffered from severe frequency congestion, he placed the Jukebox Radio feed on the WMG-499 audio path so that the WMG-499 signal could be monitored and identified easily by third parties wishing to know the source of the signal. (Turro Ex. 1, p. 12.) Turro testified that, for the entire time that WJUX broadcast Jukebox Radio programming, he never caused the WMG-499 audio path to provide programming to the Fort Lee translator transmitter unless there was an emergency. (*Id.* at 12, 27.) Turro stated that the Fort Lee translator transmitter was set to rebroadcast the signal of the Pomona translator or WJUX. (*Id.* at 12.)

129. Turro testified that the ability to provide audio programming directly from the Dumont studio to the Fort Lee translator allowed him to place emergency messages on the air. (Turro Ex. 1, pp. 10-11.) In this regard, Jukebox Radio had a cooperative understanding with the Bergen County Office of Emergency Management ("Office") by which Jukebox Radio would broadcast emergency messages to the public, as necessary, as the broadcast information outlet of the Office. (*Id.* at 11; Turro Ex. 3.) Turro's memory was unclear as to the number of emergency messages that might have been put on WMG-499 during the period from October 1994 to its deactivation, and he testified that it was possible that no emergency messages were put on during that period. (Tr. 1807-10, 2107-08.) Turro never maintained records of emergency messages. (Turro Ex. 1, p. 11.)

130. Sergeant Paul A. Einreinhofer of the Office (Turro Ex. 3, p. 1) testified that the Office had requested that Turro put "official information" on the air, and that the Office had supplied Turro with such information. However, the Office never requested Turro to interrupt regular programming to broadcast "emergency" information. (Tr. 1327-29.) Einreinhofer explained that the word "emergency" had different meanings depending on the context in which it was used and the individual using it. (Tr. 1329-31.)

131. Turro also testified that the ability to provide audio programming directly from the Dumont studio to the Fort Lee translator allowed him to insert 30-second announcements. (Turro Ex. 1, p. 10.) However, Turro acknowledged that after WJUX went on the air there was no purpose in sending 30-second announcements to the Fort Lee translator, and that none were, in fact, broadcast over that translator. (Tr. 1718.)

132. By letter to the Chief of the Commission's Microwave Branch, dated June 13, 1995, William J. Getz, one of Turro's consulting engineers (Bur. Ex. 8, p. 115), stated that WMG-499 provided remote control capability to switch from the Fort Lee main transmit antenna to its authorized auxiliary antenna, and that this was critical to the operation of that translator because of "frequent operational problems with the main transmit facility." (*Id.* at 123 n.1.) Getz also stated that WMG-499 was used to deliver 30-second messages and emergency warnings to the population of Bergen County, as authorized by Section 74.1231(g) of the Commission's Rules. Getz stated that WMG-499 was in use 24 hours per day for two reasons. First, he stated that the microwave equipment was not manufactured to operate on an intermittent basis, and that switching it on and off every hour for a 30-second transmission would eventually lead to equipment failure. Second, Getz stated that WMG-499 must be operational continuously to make it "readily identifiable." In this connection, Getz stated: "In the event WMG-499 causes interference, the offended party will have the ability to easily identify the transmission source. In a once-an-hour, 30-second message, it would be extremely difficult to identify the interfering source." (*Id.* at 123.)

133. Turro testified that, during the time that WMG-499 was in operation, he had two means of taking remote control of the Fort Lee translator audio transmission from the Dumont studio in the event of an emergency. The primary way was to use the telemetry which was carried on the data channel on WMG-499. The second way was a "fail[-]safe." In the event that the telemetry path on WMG-499 was interrupted, the remote control unit at the Fort Lee translator was programmed to home immediately onto the audio path on WMG-499 and rebroadcast that signal. (Turro Ex. 1, pp. 12-13; Tr. 1621-26, 1629-32, 1637-38.) Turro testified that he maintained this arrangement so that, if all else failed, he could still get emergency messages on the air by simply taking the data off of WMG-499. (Turro Ex. 1, p. 13; Tr. 1624-26.) However, if the microwave receiver at the Fort Lee translator lost the 951 MHz input completely, that is, if there was no 951 MHz signal coming in at all, the receiver was programmed to force the translator to receive the off-air signal from the Pomona translator or WJUX. (Turro Ex. 1, p. 13; Tr. 1628-29, 1631-32, 1633-34, 1676-78, 1681-82, 1683.)

134. In addition to WMG-499, Turro maintained a low quality 8 kHz circuit which could have been used to carry spoken emergency messages. (Turro Ex. 1, p. 12; Tr. 1715, 1719.) This circuit was installed in 1993, prior to the licensing of WMG-499. The installation cost was approximately \$2000 and the monthly service charge for the circuit was about \$100 to \$150. (Tr. 1714-15.) Turro testified that, after receiving the WMG-499 license, he kept the 8 kHz circuit in place because he had already invested \$2000 in its installation and he was afraid that if he gave it up he would never get it back. (Tr. 1715-16.) According to Turro, the 8 kHz circuit was never used, and the audio quality of music programming sent over such a circuit would have been severely degraded. (Turro Ex. 1, p. 12; Tr. 1714, 1719; *see also* Tr. 1876.)

135. Turro did not believe that this 8 kHz circuit could have been used for telemetry (Tr. 1716-18), stating that, in the 25 years he had been either a chief engineer or chief operator of radio stations, he had never seen an 8 kHz circuit used for the transmission of data (Tr. 1723). However, Turro also testified with respect to such use: "[O]ne thing I have learned in life is never say anything is impossible. It's entirely possible. I have never ever seen it done." (Tr. 1717.)

136. Hurst testified that an 8 kHz telephone line would be sufficient for remote control telemetry purposes if analog equipment was being used. He did not know whether digital equipment could be controlled through an 8 kHz circuit. (Tr. 1875.) He also testified that, because of the limited band width, an 8 kHz circuit would not normally be used for transmitting both audio and telemetry. (Tr. 1883.)

137. When WMG-499 was deactivated in early July 1995 (Tr. 1616), Turro used a 9600 baud telephone circuit to carry the remote control telemetry between the Dumont studio and the Fort Lee translator. (Turro Ex. 1, p. 13; Turro Ex. 2, p. 5; Tr. 1722.) Turro testified that this 9600 baud circuit was entirely inadequate to carry the Jukebox Radio programming material. (Turro Ex. 1, p. 13; Tr. 1741-42.) Hurst, too, testified that a 9600 baud telephone line was not of sufficient bandwidth to provide acceptable quality audio, but could be used for the switching capability for which it was intended. (Turro Ex. 2, p. 5.)

138. The Fort Lee Translator. The Fort Lee translator is located on the 24th floor of the Mediterranean Towers apartment building in Fort Lee, New Jersey. The Mediterranean Towers is 26

stories tall, and Turro had access to the roof for the placement of antennas. (Turro Ex. 1, pp. 6, 25; Turro Ex. 2, p. 1.)

139. In late October 1994, Turro adjusted the receiving equipment at the Fort Lee translator to start receiving the signal of WJUX, which transmitted at 99.7 MHz. (Turro Ex. 1, p. 5.) Turro had previously performed tests and located an area of about four square feet on the roof of the Mediterranean Towers, which he called a "hot spot," from which he was able to receive the signal of WJUX directly off the air using nothing but a digital Sony car radio, Model XR2500, and a car antenna. (Turro Ex. 32, pp. 1-2.) This hot spot was a specific, discrete location on the roof with a "high field" where "good quality" reception of WJUX existed even though various propagation models would have predicted such reception as "marginal." (Turro Ex. 2, pp. 1-2; Turro Ex. 35, p. 2.) On August 2, 1995, Turro showed Loginow the hot spot, and Loginow heard WJUX off the air from that location. (Tr. 1760-61; *see also* Tr. 390-91.)

140. Hurst also testified to the existence of the hot spot which, he stated, was two to three square feet, where "good quality" reception of WJUX was possible without the use of filtering devices. (Turro Ex. 2, p. 2; Tr. 1877, 1887, 1888-89.) Beyond this two-to-three square foot area, Hurst observed that the reception of WJUX was degraded. (Tr. 1877.) From any other location on the roof, Hurst stated, filtering devices would have been necessary in order to receive a good quality signal from WJUX. (Tr. 1887-89.)

141. Hurst personally observed the hot spot in July 1995 and October 1997. He stated that it was in exactly the same location on both occasions, and that reception in the hot spot was "very good" both times he was there. (Turro Ex. 2, pp. 1-2 and Att. B, p. 3; Turro Ex. 35 p. 2; Tr. 1876-77.) Hurst saw nothing on the roof that would have explained the hot spot, including any reflector device. He also stated that he had previously seen hot spots like this that were continuous over a long period of time in a two-to-three square foot area. (Tr. 1877-78, 1890.) Hurst believed the probability of finding a similar hot spot on the top of a building where an individual already had a lease was "[l]ess than one percent." (Tr. 1891.)

142. Hurst defined "dummy load" as "a resistive load which is utilized normally to feed a transmitter for test purposes to be able to determine the performance of the transmitter as it[']s operating into a known precision load." (Tr. 1879.) In Hurst's opinion, the presence on the roof of the Mediterranean Towers of a microwave audio path dummy load could not have been a contributing factor to the existence of a hot spot. (Tr. 1908.) Similarly, it was Hurst's judgment that a telephone line, placed under the tar and gravel surface of the roof, terminating in a dummy load would not have resulted in the hot spot he detected and observed. (Tr. 1880.) Although Hurst never checked for the possibility that the hot spot might have been created by locally generating a signal into a dummy load (*id.*), he did not think that there was anything of that nature in operation (Tr. 1912).

143. John E. Hidle, another consulting engineer for Turro, observed the hot spot in October 1997, and personally heard WJUX off the air, free from interference from WBAI, by listening to a radio receiving from that spot. Hidle characterized the reception quality as "fairly good [but not] perfect[, with] a slight bit of what appeared to be adjacent channel interference, occasionally." (Tr. 1923-24; Turro Ex. 36, p. 2.) Hidle testified that he made an "extra effort . . . to discover a hidden method[] of signal delivery" to the Fort Lee and Pomona translators, but none was found. (Turro Ex. 7, p. 6.) In this regard, he stated: "Careful examination of the rack wiring [of the Pomona translator] revealed no unidentified wires or cables[, and a]ll wiring and interconnections [of the Fort Lee translator] were similarly accounted

for. There were no sources of audio program input observed other than that provided by the off-air reception." (*Id.*)

144. In October 1994, Turro installed a Yagi-type receive antenna in the hot spot for reception of WJUX. He also installed a second such antenna a few feet away to receive first adjacent station WBAI. (Turro Ex. 32, p. 2.) He connected transmission lines from both antennas to a Microwave Filter Company, Inc., Model 2903-UHF "Phase Canceller" according to the manufacturer's instructions, and adjusted the Phase Canceller until interference from WBAI was eliminated. (*Id.*; Turro Ex. 40, p. 1; Tr. 1723-24; *see also* Tr. 1928-32.) This Phase Canceller was manufactured, sold, or shipped in October 1994. (Tr. 1910-11, 2111.)⁷

145. Turro testified that this arrangement was used exclusively from late October 1994 to mid-January 1995, and at all times provided an adequate signal from WJUX for rebroadcast. Turro's testimony in this regard was based upon his monitoring of the Fort Lee translator on a daily basis during this period. However, to maintain good reception of WJUX, Turro had to go to the Fort Lee translator about three times to make minor adjustments to the Phase Canceller. (Turro Ex. 32, p. 2.) These adjustments were made by turning two knobs built into the device. (Tr. 2111-12.) Turro testified that during the time the Phase Canceller was in use, the quality of the WJUX signal received and rebroadcast was consistently good and variations in signal reception were minor. (Turro Ex. 32, pp. 2-3.)

146. In the spring of 1995, Turro replaced the Phase Canceller with a 40 dB notch filter. The notch filter performed virtually the same function as the Phase Canceller but did not require occasional adjustments. The notch filter did not cause any significant change in reception quality as compared to the Phase Canceller. (Turro Ex. 32, p. 3.) Hurst saw this 40 dB notch filter in place when he inspected the Fort Lee translator on July 6, 1995. (Turro 35, p. 2; Turro Ex. 32, pp. 3-4.)

147. In late July 1995, Turro replaced the 40 dB notch filter with a connected pair of 30 dB notch filters. Turro observed no difference in signal quality due to this change in filtering devices. This arrangement of filters was in place and was observed by Loginow on August 2, 1995, and has remained basically unchanged since then. (Turro Ex. 32, p. 4.)

148. Hurst testified that, although filtering would improve or increase the reliability of reception "slightly" as a result of any long-term fade which may occur in the signal, there would have been no material change in the ability of the Fort Lee translator to receive WJUX. (Tr. 1863, 1864-65.) Hurst explained: "You have to remember that you don't need a filter. You can stand on the roof and you can receive [the] Monticello [station] with the Sony radio[] and a simple dipole antenna without interference from the adjacent Channel WBAI." (Tr. 1864.)

149. The Fort Lee translator received programming from the Pomona translator by use of one of Turro's receiving antennas and one of his receivers tuned to 94.3 MHz, the frequency of the Pomona translator. The receive antenna for the Pomona translator was usually located on the roof of the Mediterranean Towers. However, during the spring of 1995, vandals had stolen or damaged Turro's roof-

⁷ Photographs of the Phase Canceller appear at Turro Ex. 40.

mounted equipment several times. Turro found a secure location in the basement of the Mediterranean Towers which received a strong signal from the Pomona translator, placed a receive antenna there to receive that translator, and connected it to the receiver by internal telephone wiring. This arrangement was in place on May 15, 1995. (Turro Ex. 1, p. 22.)

(2) Inspections, Tests, and Observations

150. The April 14, 1995, Testing and Inspection. As discussed earlier, on April 13, 1995, Loginow conducted an inspection of WJUX's main studio and transmitter (Tr. 336-37), and spoke with Turro on the telephone (Bur. Ex. 18, p. 331). Loginow told Turro that he was going to the Dumont studio the next morning to test whether the Fort Lee and Pomona translators were receiving the WJUX over-the-air signal by switching the station's transmitter on and off and listening to the translators. Turro told Loginow that, because of a recent lightning strike, he preferred that it be turned on and off by an experienced engineer at the transmitter site rather than by remote control. Blabey informed Loginow that he would arrange for someone to be posted at the transmitter site and gave Loginow the telephone number at that site. (Bur. Ex. 18, pp. 331-32.)

151. On April 14, 1995, Loginow drove an FCC vehicle to a location on Route 9 in New Jersey where he could receive the signals of both the Pomona and the Fort Lee translators. Loginow used a cellular telephone to call the telephone number for the WJUX transmitter site that Blabey had given him. After identifying himself to the engineer at the transmitter,⁸ Loginow directed that individual to "kill it," meaning to turn the transmitter off. (Bur. Ex. 18, p. 332.) "Nearly instantaneously," the programming that Loginow had been hearing from the Pomona and Fort Lee translators was replaced by "white noise" on the translators' frequencies. (*Id.*; Tr. 344.) Loginow described white noise as "the sound that you hear when you tune between two FM stations," like a hissing sound. (Tr. 344-45.) Turro demonstrated what white noise sounded like and it was described as a "staticy crackle." (Tr. 1746-47.) Loginow testified that hearing white noise "was consistent with the [WJUX] transmitter being turned off . . . resulting in the loss of that over-the-air signal by the translators." (Bur. Ex. 18, p. 332.) Loginow then instructed the engineer at the transmitter site to turn the transmitter back on and Jukebox Radio programming returned to the Pomona and Fort Lee translators almost instantaneously. (Tr. 346.)

152. Loginow stated that, from this testing, he determined to "a high degree of assurity" that on April 14, 1995, the Fort Lee translator was receiving Jukebox Radio programming off the air from the Pomona translator. At the same time, Loginow was able to determine that the Pomona translator was receiving Jukebox Radio programming off the air from WJUX. (Tr. 345-46.) Loginow observed, however, that the audio quality of the Fort Lee and the Pomona translators was "degraded due to splatter from WBAI," which Turro attributed to the WJUX transmitter operating at reduced power due to a recent lightning strike. In this connection, Loginow had previously observed that the operating power of WJUX was reduced. (Tr. 385-86; Bur. Ex. 4, p. 84; Bur. Ex. 16, p. 255; *see also* Turro Ex. 1, p. 28.) Loginow stated that the two translators passed the test on April 14, 1995. (Tr. 345-46.)

⁸ Loginow could not recall the engineer's name (Tr. 343), but Blabey testified that it was Spicka (Tr. 964-65).

153. After this testing, Loginow went to the Dumont studio, where he asked to see the remote control equipment for WJUX. Loginow was shown the equipment, but he did not inspect or test it. The duration of Loginow's visit to the Dumont studio was about ten minutes or less. (Bur. Ex. 18, p. 333; Tr. 346-48.)

154. On October 17, 1997, Hurst, Hidle, and Kirschner tested the ability of the Pomona translator to receive WJUX when it operated at reduced power. Hurst testified that, based upon this actual testing, it was determined that the Pomona translator remained able to receive WJUX with the WJUX transmitter operating at levels below 100 watts before the signal could no longer be received. (Turro Ex. 2, pp. 4-5.) WJUX was authorized to operate with an Effective Radiated Power ("ERP") of 6.0 kW. (Bur. Ex. 2, p. 41; Bur. Ex. 5, p. 89; Bur. Ex. 11, p. 174; Turro Ex. 2, Att. B, p. 4.)

155. The May 15, 1995, Testing. On May 15, 1995, without any prior warning to WJUX or Jukebox Radio personnel, Loginow conducted some testing from the roof level of the Mediterranean Towers building. (Bur. Ex. 18, p. 333; Bur. Ex. 4, p. 84; Bur. Ex. 16, p. 255; Tr. 353.) This was the first time that Loginow visited and tested the Fort Lee translator. He did not, at this time, view or inspect any of the translator's facilities. (Tr. 363.) Loginow characterized the audio quality he heard on the Fort Lee translator on that day as "very high, with no detectable splatter from WBAI." (Bur. Ex. 4, p. 84; Bur. Ex. 16, p. 255.)

156. Using a portable signal generator (Tr. 349) set at the frequencies of WJUX (99.7 MHz), the Pomona translator (94.3 MHz), and WMG-499 (951 MHz), Loginow was attempting to determine whether the Fort Lee translator was rebroadcasting the signal of WJUX, the Pomona translator, or WMG-499. (Bur. Ex. 18, p. 333.) Specifically, Loginow wanted to see if the receive equipment of the Fort Lee translator would pick up the signal he was generating, which was an unmodulated, or "dead," carrier, and then retransmit it on its frequency of 103.1 MHz. (Tr. 355, 358.) The tests involved generating a "low level signal" on a frequency that "would override another weaker or more distant signal on the same frequency." (Bur. Ex. 18, p. 333.) Loginow testified that the maximum output of the signal generator was less than half a watt. A three-foot whip antenna which was capable of being hand held was attached to the signal generator. (Tr. 352, 358.)

157. Loginow first generated a signal on 99.7 MHz, determined that the generated signal "was not overriding any other signal on that frequency," and concluded that there was no signal from WJUX being rebroadcast by the Fort Lee translator. Loginow next generated a signal on 94.3 MHz, determined that the generated signal "was not overriding any other signal on that frequency," and concluded that there was no signal from the Pomona translator being rebroadcast by the Fort Lee translator. (Bur. Ex. 18, pp. 333-34.)

158. According to Loginow, if his dead carrier had been "getting into" the receiver of the Fort Lee translator, it would have "disrupted," or gradually silenced, the WJUX or Pomona translator off-air signals if the Fort Lee translator had been receiving those signals. (Bur. Ex. 18, p. 334; Tr. 355-59.) To determine this, Loginow monitored the Fort Lee translator by listening to its output through headphones connected to a "standard Sony radio." Had the Fort Lee translator been receiving the signal of WJUX or the Pomona translator, Loginow stated, the signal he was hearing on the headphones would have gradually become silent. He testified: "[I]t would sound like the station [was] getting weaker and weaker,

fading out[.]” and there would be a hissing noise “until eventually . . . you would get just silence.” (Tr. 355-57.) The fact that neither the signal of WJUX nor the Pomona translator was disrupted in this manner indicated to Loginow that the Fort Lee translator was not receiving those off-air signals. (Bur. Ex. 18, p. 334.)

159. Loginow then generated a signal on 951 MHz and determined that the generated signal “was overriding another signal on that frequency.” (Bur. Ex. 18, p. 334; Tr. 376.) Loginow stated that he interrupted or blanketed this signal twice for a maximum of five seconds each. Approximately five seconds intervened between the two interruptions. He also stated that, at the beginning part of the five seconds, the signal being emitted from the signal generator would not have reached sufficient strength to overwhelm the microwave's signal. (Tr. 379, 564, 568-69.) Loginow concluded from this that the Fort Lee translator “was receiving and rebroadcasting its radio frequency signal from . . . WMG-499.” (Bur. Ex. 18, p. 334.)

160. Loginow performed these tests from the inside of the stair enclosure at the roof level of the Mediterranean Towers, which was at least 25 stories above the ground. (Tr. 353-54.) He stated that, ideally, he would have wanted to perform the testing out on the roof (Tr. 360), but found that the door leading to that area was locked (Tr. 354). The stair enclosure was surrounded by cinder block walls and had a metal staircase below it. (Tr. 359.) Loginow stated that these surroundings would have “attenuated [or lessened] the signal somewhat toward the receiving end.” (Tr. 359.) He also stated that he rotated the antenna of the signal generator around in various positions in the stairwell to get “maximum indications.” (Tr. 358.)

161. Loginow testified that “nearly all translator installations have the[ir] receive antenna[s] and the[ir] transmitting antenna[s] located on the roof . . . or on a tower.” (Tr. 361.) In this instance, Loginow understood that the receive antennas for WJUX, for the Pomona translator, and for WMG-499 were all located on the roof (Tr. 365) because the roof was the only “technically logical place” for such antennas (Tr. 364). He stated that “[a]ny other place would [have been] severely deficient.” (*Id.*) Loginow therefore went up to the roof level to do the testing; he wanted to be near those antennas. (Tr. 365-66.) However, Loginow could not actually observe what was on the roof because he was in a locked stair enclosure and did not have with him an accurate map of the antenna locations. (Tr. 366.)

162. Loginow testified that the distance between the signal generator and the antenna he wanted to affect was important to the testing process, “[d]epending on the sensitivity of the receiver.” (Tr. 360.) He stated that he went up to the roof level to do his testing because the closer he could get to the antennas being tested the more accurate the tests would be. (Tr. 360.) Loginow stated that, given the low level signal generated by a signal generator, distance would, at some point, make the signal unable to affect a receiver. (Tr. 360-61.) Loginow also testified that obstructions between the signal generator and the system being tested could affect the validity of the tests. He agreed that the signal generator would not work as well from the inside of a big safe as it would work out in the open. (Tr. 361.)

163. Loginow testified that he had never performed a complete inspection of all of the floors and rooms of the Mediterranean Towers. (Tr. 379.) He also stated that he had no personal knowledge as to what materials, equipment, or other things may have been in the building that theoretically could have

interrupted or shielded from an antenna situated in the basement the signals being transmitted by the signal generator. (Tr. 380.)

164. Loginow testified that an antenna in the basement would not have been able to receive the Pomona translator signal to a degree sufficient to rebroadcast it. (Tr. 369.) However, Loginow had never tested the sensitivity of any antenna which may have been located in the basement of the Mediterranean Towers, and he never tested whether a signal generator on the roof level of that building would have been able to overwhelm an antenna located in the basement. (Tr. 370.)

165. It was Loginow's opinion that the less than half-watt signal he generated from the inside of the stair enclosure at the roof level of the Mediterranean Towers would have been able to overwhelm a signal being received by an antenna located in the basement of the building. He based his opinion on a phenomenon he termed "ducting[, which is t]he capability to transmit through a building." (Tr. 369.) Loginow explained ducting as "where a radio signal enters into a cavity and it travels . . . very efficiently through the cavity to the other end where the cavity opens up." (Tr. 574.) As examples, Loginow cited air conditioning ducts and elevator shafts. (Tr. 574-75.) However, Loginow testified that he did not examine the elevator shafts or air conditioning system at the Mediterranean Towers, and he believed that the stairwell from which the tests were conducted was "probably too irregular" to exhibit ducting. (Tr. 575.) Loginow also testified that, "[a]ccording to [his] experience, if a receiving system was sensitive enough to be located in the basement, below ground level, and receiving a one watt signal [from the Pomona translator] 22 miles away, it would receive the signal generator [from] 26 floors up." (Tr. 370.) However, as noted earlier, this was never tested by Loginow. (*Id.*) The Commission's records show that the Pomona translator was authorized to operate with a transmitter power output of 2.5 watts. (License for an FM Broadcast Translator/Booster Station, File No. BLFT-900112TC, dated June 5, 1990, official notice taken.)

166. As discussed above, Turro testified that during the spring of 1995, including on May 15, he used an antenna located in the basement of the Mediterranean Towers to receive the signal of the Pomona translator. (Turro Ex. 1, p. 22.) Turro stated that, when Loginow performed his frequency generator tests on May 15, the Fort Lee translator was in fact receiving its programming off the air from the signal of the Pomona translator through the antenna located in the basement. It was Turro's opinion that the output of the frequency generator used by Loginow was "much too weak to reach that Pomona receive antenna through more than 23 stories of concrete, steel [sic], pipes, ducts, etc. of the Mediterranean Towers." (*Id.* at 22-23.) Turro further opined that Loginow "must have assumed that he was near the active receive antenna for the Pomona translator, but because he was very far from it, and because his frequency generator was greatly shielded from that antenna, it did not pick up the dead carrier he generated with his portable unit." (*Id.* at 23.)

167. Hurst testified that during a visit he and Hidle made to the basement of the Mediterranean Towers on October 17, 1997 (Tr. 1892, 1924), they attempted to interfere with the reception of the Pomona translator with the receive antenna located on the roof of the building. Hurst stated that from the basement location where the Pomona translator receive antenna had been situated, a signal generator was used to generate a 5 watt signal on the frequency of the Pomona translator. According to Hurst, this 5 watt signal was not able to cause interference to the receipt of the Pomona translator with its antenna located on the roof of the building. In Hurst's opinion, someone located on or near the roof of that

building would not have been able to cause interference with the reception of the Pomona translator with a 0.5 watt signal when the receiving antenna was located in the basement. (Turro Ex. 35, pp. 3-4.)

168. Hurst testified that he observed in the basement location an abandoned antenna, "covered in dust," which Turro told him was the antenna that had been used for reception of the Pomona translator. (Tr. 1894, 1898-99.) Hurst also testified to the signal from the Pomona translator which could be received on an inexpensive portable receiver in the basement of the Mediterranean Towers where Turro had located his antenna. Hurst characterized this reception as "unusual [and] possibly phenomenal." (Turro Ex. 35, p. 3, parenthesis omitted.) He further testified that he "personally was surprised to see a location in the basement . . . with such a high receive signal." (Tr. 1897.) Hidle characterized the signal received on a portable FM receiver in the basement as "acceptable audio." (Turro Ex. 7, p. 4.)⁹

169. Turro testified that Loginow's conclusion, that the May 15 testing proved that WMG-499 was providing programming directly to the Fort Lee translator, was incorrect. (Turro Ex. 1, p. 22.) Turro stated in this regard:

Apparently, Mr. Loginow was near the Fort Lee translator receive antenna for microwave station WMG-499, which was mounted on the roof [of the Mediterranean Towers]. I believe that when Mr. Loginow transmitted his dead carrier on 951 MHz, the transmit frequency for WMG-499, he interrupted all signals on the path, including the telemetry. As I stated earlier, my failsafe [sic] was if telemetry was interrupted, then the Fort Lee translator was programmed to home immediately to the microwave audio channel to receive emergency messages. Mr. Loginow's dead carrier must have disrupted the telemetry, caused the receiver to home onto the microwave audio channel, and then it transmitted the dead carrier. In other words, Mr. Loginow caused the results he reported by overriding or jamming the telemetry channel on the microwave.

(*Id.* at 23.)

170. Turro further testified:

A [by Mr. Turro]: Okay. So if someone were to come along and say, "Hey, listen, I'm going to jam this microwave unit," what's the first thing they are going to strip away? What's the weakest component of this system?

It's the data path. It takes a half-lane [of] highway. So if someone comes along and starts jamming this, the first thing they are going to do is strip away the data, and the first thing the translator in Fort Lee is going to do is fall back on its own audio, the microwave.

Q [by Mr. C. Naftalin]: And why is the data path, as you say, the weakest part?

⁹ The reception of the Pomona translator in the basement of the Mediterranean Towers was demonstrated in a videotape associated with Turro Ex. 2.

A: Well, because you've got eight lanes of audio, so it's a little more robust, and you've got a half lane of data, so it's not as robust. So if someone started jamming the thing and started turning the power up real slowly, the first thing it would interrupt would be the data.

Q: Meaning because it's a much narrower path?

A: Yes, and it's fragile and it's on the edge of the microwave. It's on the last highway way out.

(Tr. 1623-24; *see also* Tr. 1694.) Turro also testified that, when Loginow stopped transmitting a signal on 951 MHz, the data path would have returned. (Tr. 1699, 1721.)

171. Turro testified that he had a clear memory of the May 15, 1995, jamming incident because it was unusual. He was in the Dumont studio at the time, listening to the Fort Lee translator on 103.1 MHz. He distinctly heard the programming audio "erratically break up" for about three to four seconds and then fall to dead carrier. Turro hurried upstairs to check the remote control unit, intending to switch to the receiver tuned to WJUX. By the time he got there, however, the Fort Lee translator was transmitting the Jukebox Radio programming again. Turro immediately noticed that status light number 6 on the TC-8 unit was lit, indicating that the translator was rebroadcasting the audio path from WMG-499. Turro switched the Fort Lee translator reception back to the Pomona translator, and status light number 5 came back on, indicating reception of the Pomona translator's signal. (Turro Ex. 1, pp. 23-24; Tr. 1639-40, 1696-99.) Turro testified that the May 15, 1995, incident was the first and only time since October 1994 that the audio on WMG-499 was broadcast over the air on the Fort Lee translator in a non-emergency situation. (Tr. 1632-33, 1639, 1699; Turro Ex. 1, pp. 12, 27; *see also* Tr. 1637-38.) Turro also stated that the translator would have indefinitely broadcast the audio path from WMG-499 had he not been there to switch the reception back to the Pomona translator. He added, however: "Fortunately, that never happened." (Tr. 1699-1700.)

172. Turro testified that he was angry about the May 15, 1995, incident because he assumed that someone from a competing radio station had been interfering with his operations and ended up jamming the microwave path. Turro called Hurst and described the jamming incident. Turro stated that Hurst told him that it was unlikely that the competing station had caused the jamming, and that it probably had been the FCC conducting tests. (Turro Ex. 1, p. 24; Tr. 1640-41.)

173. Hurst confirmed that, on May 16, 1995, Turro had called him and explained that someone had "jammed" the microwave the prior afternoon "in a manner that caused the control circuit to fault to the fail-safe program feed to the translator from the microwave[']s primary audio channel." (Turro Ex. 2, pp. 5-6.) Hurst also confirmed that it was his opinion, expressed to Turro, that it was FCC personnel who had caused the jamming, failing to understand how the equipment was configured. (*Id.* at 6.)

174. Loginow generally believed that Turro's explanation of the effects of the May 15, 1995, testing was without merit, inconsistent with good engineering practice, highly problematic, and not logical. (Tr. 559.) By good engineering practice, Loginow stated that he meant his own experience as an FCC field engineer, and that he was not referring to published manuals or the FCC rules. (Tr. 559-60.)