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October 20, 1999

VIA HAND DELIVERY

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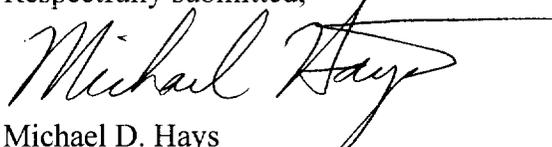
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Exceptions to Initial Decision of Universal Broadcasting of New York, Inc.
MM Docket No. 97-122, File Nos. BRFT-970129YC and BRFT-970129YD

Dear Ms. Salas:

On behalf of Universal Broadcasting of New York, Inc. ("Universal"), attached are Universal's Exceptions to the Initial Decision in the above-referenced proceeding. Please note that Chairman Kennard has not been served with a copy of the pleading because he has recused himself from this proceeding.

Respectfully submitted,


Michael D. Hays

MDH/cmn
Enclosure

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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OFFICE OF THE SECRETARY

In re)
)
GERARD A. TURRO)
)
For Renewal of License)
for FM Translator Stations)
W276AQ(FM), Fort Lee, NJ, and)
W232AL(FM), Pomona, NY)
)
MONTICELLO MOUNTAINTOP)
BROADCASTING, INC.)
)
Order to Show Cause Why the Construction)
Permit for FM Radio Station WJUX(FM),)
Monticello, NY, Should Not Be Revoked)

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

To: The Commission

**EXCEPTIONS TO INITIAL DECISION OF
UNIVERSAL BROADCASTING OF NEW YORK, INC.**

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SUMMARY

This case involves a complex, multi-year, fraudulent conspiracy by Gerard A. Turro (“Turro”) and his close business associate, Wesley Weis (“Weis”), to evade the Commission’s rules for their own commercial gain. For nearly five years, Turro has operated an illegal commercial FM radio station in Bergen County, New Jersey, by rebroadcasting Turro’s locally originated Jukebox Radio programming over his FM translator serving Fort Lee, Bergen County, New Jersey. Turro’s illicit operations were made possible through the close cooperation of his longtime business associate, Weis. Weis, along with Turro, established a sham primary radio station, WJUX, some 60 miles away in Monticello, New York, to serve as a conduit for Turro’s Jukebox Radio programming pursuant to an “Network Affiliation Agreement” that the Commission has ruled violates Section 74.1232(d). That section forbids “any connection” between a primary station and a translator licensee, such as a network affiliation agreement. In the course of pursuing their improper scheme, Turro and Weis have made a mockery of the Commission’s rules and policies -- all for their own commercial gain.

Despite explicit rulings by the Mass Media Bureau and the Commission that these operations violate Section 74.1232(d), and despite making factual findings that demonstrate that Turro and Weis violated numerous other Commission rules, the ALJ made a number of significant legal errors that must be corrected by the FCC upon review.

First, the ALJ erred in granting Turro’s renewal applications *in the face of his continuing violation of Section 74.1232(d)*. As part of its *de novo* review, the Commission must reverse the Initial Decision’s authorization of the continuing violation of its rules.

Second, the ALJ erred in failing to find that Turro and Weis engaged in misrepresentations and lack of candor. Among other things, use of a Commission process to

achieve a result for which the applicant knows it was not intended constitutes fraud and lack of candor. Here, Turro omitted decisionally significant information from a request for an informal declaratory ruling to dupe the Bureau into approving a time brokerage arrangement between a primary station and a translator licensee that Turro knew (from his participation in the *FM Translator Stations* proceeding) was directly contrary to Section 74.1232(d).

Other omissions from information provided to the Bureau conclusively establish Turro's misrepresentations in 1991 when he submitted his request, as well as Turro and Weis' lack of candor in 1994 when they commenced operations. In neither case did Turro (or Weis in the latter case) tell the Bureau that the intended operations included: "around-the-clock" total programming of the "primary" station (WJUX) by the translator station licensee; use of the "primary" station as a mere conduit to launder programming designed specifically for broadcast on Turro's "translator" stations to Bergen County; and the funding by Turro of the entire costs of acquiring, constructing, and operating the shell "primary" station. The ALJ's conclusion that Turro and Weiss had no intent to deceive is simply unfathomable in light of this evidence.

Third, the ALJ erred in concluding there was no transfer of control. Here, Turro: (i) funded all of the costs of acquiring, constructing and operating the station; (ii) executed a \$400,000 personal guaranty covering payments to Weis; (iii) indemnified Weis for any and all fines and damages that the Commission might impose on Weis; (iv) provided 100 percent of WJUX's programming; and (v) controlled the personnel who remotely operated WJUX.

Finally, Weis violated the FCC's main studio rules by establishing sham radio station WJUX that had almost no facilities of its own, virtually no staff, originated no programming and did not serve its community of license. For these reasons, the Initial Decision must be reversed.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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

**EXCEPTIONS TO INITIAL DECISION OF
UNIVERSAL BROADCASTING OF NEW YORK, INC.**

Universal Broadcasting of New York, Inc. (“Universal”), by its attorneys and pursuant to Section 1.276(a) of the Commission’s rules, hereby files its exceptions to the Initial Decision (“ID”) of Administrative Law Judge Arthur I. Steinberg (“ALJ”) in this proceeding.¹

I. INTRODUCTION

This case involves a complex, multi-year, fraudulent conspiracy by Gerard A. Turro (“Turro”) and his close business associate, Wesley Weis (“Weis”), to evade the Commission’s rules for their own commercial gain.² For nearly five years, Turro (in conjunction with Weis) has illegally conducted a commercial FM radio operation in Bergen County, New Jersey, by

¹ In re Gerard A. Turro, *Initial Decision of Administrative Law Judge Arthur I. Steinberg*, MM Doc. No 97-122, File Nos. BRFT-970129YC, BRFT-970129YD (rel. Aug. 16, 1999).

² Where textually appropriate, references to “Turro” shall include his various companies, including Jukebox Radio Network, and references to “Weis” shall include MMBI.

rebroadcasting Turro's Jukebox Radio programming over his FM Translator W276AQ, serving Fort Lee, Bergen County, New Jersey ("Ft. Lee Translator") via an impermissible "Network Affiliation Agreement" between Turro and the translator's primary station, Weis's WJUX.³

Turro, through his extensive participation in the *FM Translator Stations* proceeding, knew that Section 74.1232(d) precluded any connection (such as a network affiliation agreement) between a primary station and a translator. Nonetheless, Turro filed a deceptive declaratory ruling request, whose purpose was not to resolve "uncertainty" as specified by the declaratory ruling provision (47 C.F.R. § 1.17), but rather to fraudulently induce the Mass Media Bureau ("Bureau") into approving a business relationship between a primary station and a translator that Turro knew was contrary to Section 74.1232(d). To perfect his scheme, Turro then proceeded to exceed the limited scope of the letter he extracted from the Bureau.

In the course of executing their illicit scheme, Turro and Weis violated the Commission's translator rules, engaged in misrepresentation and lack of candor, established a sham radio station (WJUX) that violates the main studio rule, and effected an unauthorized transfer of control of that station -- all for their own commercial gain. These deliberate and egregious violations of the Commission's rules constitute extremely serious offenses that warrant denial of Turro's renewal applications and revocation of Weis's broadcast authorization.

Turro and Weis's scheme makes a mockery and, under the *ID*, continues to make a mockery of the Commission's rules and policies. The ALJ made a number of significant legal errors that must be corrected upon review. First, the ALJ fundamentally erred in approving Turro's renewal applications for the Fort Lee Translator and the W232AL(FM), Pomona, New York ("Pomona Translator") when it is undisputed, and the Commission has found, that Turro is

³ Turro is the owner of FM 103.1, Inc., d/b/a Jukebox Radio, a for-profit corporation that produces radio programming broadcast over the Ft. Lee Translator on 103.1 MHz. *ID* ¶ 7.

operating those translators in violation of Section 74.1232(d).⁴ The *ID* incredibly authorizes these license renewals *in the face of this continuing violation of the Commission's rules*.

Second, despite making *factual* findings that in reality demonstrate that Turro and Weis engaged in misrepresentation and lack of candor, effected an unauthorized transfer of control of WJUX, and violated the main studio rules, the ALJ erroneously found in favor of Turro and Weis. In so doing, the ALJ misapplied applicable Commission policies and precedent, failed to credit substantial evidence in the record, and improperly credited evidence of “post-spotlight” facts that occurred after the commencement of the Commission’s investigation. When properly examined, the record in this proceeding compels a finding against Turro and Weis.

II. STATEMENT OF THE CASE

On April 18, 1997, the Commission designated for hearing Turro’s license renewal applications for the Ft. Lee Translator and Pomona Translator and directed Weis’s company, 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 issues against Turro included violation of the translator rules, misrepresentation and lack of candor, unauthorized transfer of control of WJUX, and “whether, in light of the evidence adduced under these issues, the public interest will be served by the grant of the renewal applications filed by Turro.” *HDO* ¶ 21. The Commission explicitly found that the business arrangement between Turro and Weis violated Section 74.1232(d), but the Commission determined not to pursue any violation of Section 74.1232(d) that may have resulted from “Turro’s reliance on the 1991 [Bureau] letter.” *HDO* at n. 13.⁵ The issues against Weis included

⁴ *In re Gerard A. Turro*, Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, 12 FCC Rcd 6264 (rel. April 18, 1997) (“*HDO*”) n.13.

⁵ Thus, the *HDO* did not insulate Turro from the consequences of a violation of Section 74.1232(d) to the extent Turro did not rely on the 1991 Bureau Letter.

misrepresentation and lack of candor, unauthorized transfer of control of WJUX, violation of the main studio rules, and “whether, in light of the evidence adduced under these issues, MMBI possesses the requisite qualifications to remain a Commission broadcast permittee.” *HDO* ¶ 24.

III. STATEMENT OF FACTS

In the *ID*, the ALJ significantly credited a substantial amount of “post-spotlight” evidence concerning facts that occurred after the commencement of the Commission’s investigation in this case that was entitled, in fact, to “little or no consideration.” *White Mountain Broadcasting Co., Inc.*, 60 FCC 2d 342, 347-48 (1976). Accordingly, the Commission should consider only the methods of operation of Turro and Weis in existence on or before April 13, 1995 (the “Relevant Period”), the date on which the Commission first inspected the subject facilities, and therefore the latest date by which Turro and Weis became aware of the Commission’s suspicions.

A. Turro’s Longstanding Monetary Ambition To Provide Commercial FM Radio Service In Bergen County, New Jersey.

Turro had a longstanding ambition to provide commercial FM radio service to Bergen County, New Jersey, an ambition fueled by a compelling business reality: Bergen County, a wealthy suburb of New York City with a population of 825,300, had no local commercial FM station. *ID* ¶ 8; Mass Media Bureau Exhibit (“Bur. Ex.”) 8 at 115-6. Turro knew that providing commercial FM service to this wealthy and populous area could prove very profitable. However, no additional FM allotments were available to Bergen County. Therefore, Turro applied for and, in March 1996, was granted a license for a new FM translator in Ft. Lee, New Jersey, some 60 miles from Monticello, New York (where WJUX would later be located). *ID* ¶ 6.

Commission rules preclude translators from originating programming or selling commercial airtime for profit; they may only rebroadcast programming received off the air from a primary FM station or another translator, and may insert only one 30 second acknowledgment

of financial support per hour. 47 C.F.R. §§74.1231(b), (g); *Guide to FM Translator Rules and Policies*, 55 Rad. Reg. 2d 1247 (1984). Thus, although Turro had a translator license to provide limited service to Bergen County, he could not operate the lucrative FM station he intended.

B. Turro's Failed Attempts To Secure Program Origination Authority For The Ft. Lee Translator.

In an effort to obtain the program origination authority necessary to render his translator operation as profitable as he had hoped, between 1986 and 1991 Turro made numerous attempts to gain commercial program origination authority for the Ft. Lee Translator. In 1986, the Commission denied Turro's request for a waiver of its rules to enable him to originate commercial programming, and the United States Court of Appeals for the District of Columbia Circuit affirmed. *ID* ¶ 11. In 1989 and 1990, Turro filed comments in the Commission's *FM Translator Stations* proceeding urging the Commission to permit the origination of commercial programming on translators located in regions with no existing or allocable local commercial FM service. *ID* ¶ 11. The Commission rejected Turro's proposals in December 1990, and thereafter denied reconsideration of that decision. *ID* ¶ 11.

In the *FM Translator Stations* proceeding, the Commission also amended Section 74.1232(d) to prohibit grant of a translator license "to any person or entity having any interest whatsoever, or any connection with a primary station." *FM Translator Stations*, 5 FCC Rcd 7212 (1990) at App. B. Thus, not only did the Commission specifically reject Turro's request to permit broadcast origination by translators, it also established explicit limitations on the permissible relationship between translator licensees and primary FM stations.⁶ Turro, through his participation in these proceedings, was well aware of the limitations imposed by this section.

⁶ The Commission's "no connection" policy was designed to avoid subverting its "basic FM allotment scheme," to protect "other stations' service areas" from the adverse effects of a
continued...

C. Turro's Scheme To Circumvent The Commission's Translator Rules.

Repeatedly rebuffed by the Commission and the courts in his direct attempts to secure broadcast origination authority for his translator, Turro turned to indirection and trickery. In January 1991, only two months after the Commission rejected his proposals in the *FM Translator Stations* order, Turro submitted a letter to the Bureau requesting a ruling on whether a translator licensee could purchase "brokered airtime" from the primary station that originates the programming rebroadcast by the translator. Bur. Ex. 1, Att. A; *ID* ¶ 12. Although Section 1.17 specifies that declaratory rulings are to remove "uncertainty," there was no uncertainty regarding Turro's request: Turro knew (from his involvement in the *FM Translator Stations* proceeding) that the scheme he was planning was contrary to Section 74.1232(d), which explicitly forbade any such business relationship between the primary station and translator licensee. Moreover, Turro failed to disclose in the letter material information that would have made the Section 74.1232(d) violation even more apparent, including the fact that Turro intended to provide around-the-clock programming pursuant to the agreement with the primary station. Tr 2034-40.

Based on the specific, misleading information in the request, the Bureau mistakenly informed Turro by letter dated November 19, 1991 ("1991 Bureau Letter") that Turro's proposed time-brokerage operations would not be inconsistent with the Commission's rules "as outlined" in the letter, subject to certain restrictions, including a *bona fide*, arms-length transaction between the primary station and the translator. *ID* ¶ 13. (However, in 1996, when the Bureau was fully apprised of the facts, it revoked its 1991 ruling and found that the arrangement proposed by Turro violated Section 74.1232(d). Bur. Ex. 1, Att. C, at 12-13. The Commission

...continued

primary station's extension of service via translator, and to encourage "full-service radio broadcast station" development. *FM Translator Stations*, 5 FCC Rcd at 7215; 8 FCC Rcd 5093.

affirmed that conclusion. *HDO* at n. 13.) To perfect his scheme, Turro needed an FM station for which he could originate programming for rebroadcast by the Ft. Lee Translator. Enter WJUX.

D. Turro and Weis Enter Into An Improper Business Arrangement That Far Exceeds The Scope Of The Bureau's 1991 Letter.

Turro's first real opportunity to implement his scheme came in the summer of 1994 when he learned that a construction permit for a new commercial FM station in Monticello, New York, was available for purchase from Larry Fishman. *ID* ¶ 17. Turro contacted his long-time friend, Wesley Weis (from whom Turro rented Jukebox Radio's Dumont studio and with whom he had other dealings). Turro proposed that Weis acquire the construction permit and allow Turro's Jukebox Radio Network to provide 100 percent of the station's programming. *ID* ¶ 18.

Turro and Weis had several meetings with Fishman. *ID* ¶ 19. Ultimately, Weis agreed to purchase the construction permit from Fishman for \$40,000 down and an \$80,000 balance payable in twenty-four monthly installments. *ID* ¶ 20. Weis had no specific business plan at the time he agreed to the transaction. *ID* ¶ 20.

In connection with Weis's purchase, Weis and Turro agreed upon a Network Affiliation Agreement and related provisions that resulted in Turro paying all the acquisition costs, providing all the monthly revenue, and assuming all the risk of operating WJUX. First, Turro agreed to pay Weis a \$40,000 "inducement" fee to enter the Network Affiliation Agreement, the exact amount required for Weis's downpayment to Fishman. *ID* ¶¶ 20, 25.⁷ Second, Turro agreed to pay Weis a monthly amount that Weis contemplated would be the *only* source of

⁷ Turro acknowledged that Weis did not have \$40,000. Tr. 1831-37. Although Turro was present during the negotiations regarding the purchase price, he suggests that he had "no idea" how the \$40,000 figure was determined. *ID* ¶ 25. Weis acknowledged that his acceptance of Turro's plan was based on that \$40,000 up-front payment, and that the \$40,000 from Turro "indirectly" went to pay the downpayment to Fishman. Tr. 1426.

income for WJUX. *ID* ¶¶ 23, 27.⁸ During the Relevant Period, *all* of WJUX's income came from Turro. *ID* ¶ 65. Third, Turro agreed to personally guarantee the payments from Jukebox Radio for the full ten-year term of their Network Affiliation Agreement, up to a limit of \$400,000. *ID* ¶¶ 23, 24. Finally, Jukebox Radio agreed to "indemnify MMBI [Weis's company] and hold it harmless from any and all fines" and "any other monetary damages imposed by the F.C.C." *ID* ¶ 23. Weis acknowledged that collectively these provisions insulated Weis from any risk, even the risk of Jukebox Radio's bankruptcy. Tr. 1392.

On October 17, 1994, Turro paid Weis the \$40,000 "inducement" fee and the parties executed the ten year, non-cancelable "Network Affiliation Agreement" that provided Turro with virtually total control over WJUX's programming. Among other things, it provided that Turro's Jukebox Radio would provide MMBI with around-the-clock programming 24 hours per day/365 days per year, including all local station identification, public affairs programming and Emergency Broadcast System tests. *ID* ¶ 23. Further, it gave Weis *no* right to preempt the Jukebox Radio programming. One day later, Weis made a \$40,000 downpayment to Fishman and closed on the purchase of the construction permit. *ID* ¶ 35.

E. Turro And Weis Establish A Sham FM Radio Station To "Originate" Jukebox Radio Programming For The Ft. Lee Translator.

Turro and Weis next proceeded to set up a sham commercial FM radio station, WJUX, in rural Sullivan County, New York to "originate" Jukebox Radio programming for rebroadcast to listeners in Bergen County, located some 60 miles away. This sham radio station, which was built in two days, had almost no facilities of its own, virtually no staff, originated no programming, and did not serve its community of license, poor, rural and sparsely populated

⁸ These figures were designed to cover all of Weis costs, plus a 15 to 20 percent profit, because Weis did not contemplate (and never earned during the Relevant Period) revenues from any other source, including the sale of commercial time. *ID* ¶¶ 26, 65.

Sullivan County, New York, but instead served wealthy, populous Bergen County, New Jersey.
See discussion *infra* pages 16-18.

IV. QUESTIONS PRESENTED

1. Whether, in view of the *HDO*'s explicit holding that the business relationships between Turro and MMBI violate Section 74.1232(d), the ALJ erred in ultimately concluding that the public interest would be served by grant of Turro's renewal applications.
2. Whether the ALJ erred in finding that Turro and MMBI had not engaged in misrepresentation and lack of candor before the Commission when the evidence adduced in this proceeding establishes that Turro and MMBI pursued an elaborate scheme to circumvent the Commission's translator rules.
3. Whether the ALJ misapplied Commission policies and precedent regarding unauthorized transfers of control and otherwise erred in finding that Turro had not improperly assumed *de facto* control of WJUX from MMBI.
4. Whether the ALJ misapplied Commission policies and precedent and otherwise erred in finding that that MMBI had not violated the main studio rules.
5. Whether the ALJ erroneously found that Turro had not operated the Ft. Lee Translator in violation of the Commission's Rules.
6. Whether the ALJ improperly credited "post-spotlight" evidence of facts occurring after Turro and Weis became aware of the Commission investigation.

V. ARGUMENT

The Commission conducts a *de novo* review of the initial decision of an ALJ.⁹ As demonstrated below, such a review demonstrates that the ALJ made a number of significant legal errors that require reversal of *ID*.

⁹ *See* 5 U.S.C. § 557(b) (1999) (on review of initial decision, "agency has all the powers which it would have in making the initial decision"); *Adjudicatory Reregulation Proposals*, Notice of Proposed Rulemaking, 56 FCC 2d 527, 536 (1975) (Commission reviews ALJ decisions *de novo*).

A. The ALJ Fundamentally Misconstrued The HDO In Approving The Renewal Of Turro's Licenses Despite Turro's Continuing Violation Of Section 74.1232(d).

In the *HDO*, the Commission explicitly found that the business arrangement between Turro and Weis, which remains ongoing to this day, violates Section 74.1232(d). *HDO* at n. 13. Turro, however, had procured the 1991 Bureau Letter. Accordingly, the HDO provided that the instant proceeding would not pursue any violation of Section 74.1232(d) that may have resulted from “Turro’s *reliance* on the 1991 [Bureau] letter.” *HDO* at n. 13 (emphasis added).

The ALJ fundamentally misconstrued this limited exclusion and instead failed to consider the Commission’s explicit determination that the relationships between Turro and Weis violate Section 74.1232(d). *Compare HDO* at n. 13 *with ID* ¶ 307. Incredibly, the ALJ granted Turro’s translator renewal applications in the face of his ongoing violations of Section 74.1232(d).

The *ID* provides absolutely no legal basis for concluding that renewal of authorizations for translators that have operated for nearly five years in violation of Section 74.1232(d) would advance the public interest. Absent a waiver for good cause shown, operations that have been found to contravene the Commission’s rules are *per se* contrary to the public interest. In this case, the Commission has specifically held that Turro’s scheme violates Section 74.1232(d) and has not granted a waiver. Thus, as part of its *de novo* review, the Commission must reverse the *ID*’s authorization of the continuing violation of its rules as contrary to the public interest.

The “reliance” caveat contained in note 13 of the HDO provides no basis for the ALJ’s grant of license renewals in the face of Turro’s ongoing violations of Section 74.1232(d). It is readily apparent, as described in detail in the next section, that Turro could not have justifiably relied on the 1991 Bureau Letter at any time for two reasons. First, Turro procured the 1991 Bureau Letter through misrepresentation and lack of candor. Second, upon inducing Weis to join

him in his business venture, Turro then proceeded, as part of his scheme to evade the translator rules, to depart from the 1991 Bureau Letter's limited ruling.¹⁰

B. The ALJ Erred By Failing To Find That Turro And Weis Engaged In Misrepresentation And Lack Of Candor Before The Commission.

"Absolute candor is perhaps the foremost prerequisite for being a Commission licensee." *Chameleon Radio Corp.*, 12 FCC Rcd 19348, 19361 (1997). The duty of candor requires an applicant to be "fully forthcoming as to all facts and information relevant" to matters before the Commission. *Swan Creek Comm., Inc.*, 39 F.3d 1217, 1222 (D.C. Cir. 1994). To avoid a lack of candor finding, individuals must "go much beyond the barest 'technical accuracy' and must candidly apprise the Commission of *all* circumstances which are likely to be of decisional significance." *George E. Cameron, Jr.*, 91 FCC 2d 870, 894 (1982) (emphasis in original); see *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986).

Breach of the duty to deal truthfully and candidly with the Commission takes two general forms: misrepresentation and lack of candor. The Commission examines the totality of the circumstances in evaluating cases of misrepresentation and lack of candor. *Miami Valley Broad. Corp., et al.*, 78 FCC 2d 684, 729 (1980). Intent to deceive may be inferred from motive, and a licensee's indifference and disregard for the accuracy of its representations and its obligations to the Commission are equivalent to an affirmative and deliberate intent. *Joseph Bahr*, 10 FCC Rcd 32, 33 (1994). *RKO General Inc. v. FCC*, 670 F.2d 215, 225 (D.C. Cir. 1981). Reckless disregard is the equivalent of knowing deception. *Id.*

¹⁰ Moreover, Turro could not have relied on the 1991 Bureau Letter after the Commission released its *FM Translator Stations* reconsideration order affirming Section 74.1232(d)'s cross-interest restrictions. See 8 FCC Rcd 5093 at ¶ 10 and App. B. At the latest, Turro's alleged reliance ended when the Bureau issued its April 5, 1996 letter advising Turro he was in violation of Section 74.1232(d) ("1996 Bureau Letter"). Bur. Ex. 1, Att. C. Indeed, the 1996 Bureau Letter revoked its 1991 Letter and specifically advised Turro that failure to comply fully with all
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1. Turro And Weis' Illicit Scheme To Evade The Translator Rules.

The ALJ erred in his conclusions regarding Turro's multi-year, malicious, and fraudulent scheme to evade the Commission's translator rules in at least four respects. Each of these four issues independently requires reversal of the *ID*.

(a) **ALJ's Failure To Address Fraudulent Inducement.** The ALJ erred in concluding that "the record does not show that Turro intended to deceive the Commission even assuming, arguendo, that he omitted any material information" in connection with his 1991 request for an informal ruling. *ID* ¶ 295. In reaching this conclusion, the ALJ simply abandoned his responsibility to consider the evidence demonstrating that Turro fraudulently induced the Bureau into issuing its 1991 Letter.

Instead, the ALJ simplistically concluded that that the Bureau "must be presumed to have known of Turro's unsuccessful attempt to persuade the Commission to allow translators to originate programming," yet nonetheless "gave Turro the declaratory ruling he had requested, although it was under no obligation to do so." *ID* ¶ 299. Thus, under the ALJ's remarkable theory, Turro could not have engaged in misrepresentation or lacked candor because the defrauded party (the Bureau) gave Turro what he asked for.

At the outset, as a legal matter, contrary to the ALJ's conclusion, the fact that the Bureau granted Turro's request cannot legitimize Turro's conduct. As the Commission stated in *Trinity Broadcasting* in a remarkably similar situation:

The fact that the Bureau seemingly ignored the problematic nature of Exhibit 1 [a request for an extension of time prepared by the licensee], however, does not provide a basis to conclude that the exhibit raises no question of candor.

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of the provisions of Section 74.1232 "may result in the imposition of" administrative sanctions. 1996 Bureau Letter, at 3.

Trinity Broadcasting, 15 CR 757, 1999 FCC LEXIS 1591 (April 15, 1999) at 47.

The ALJ's analysis obviously begs the question of whether Turro engaged in misrepresentation or lack of candor in obtaining the 1991 Bureau Letter. When viewed in the context of the totality of the evidence, Turro's scheme to obtain the 1991 Bureau Letter as part of his attempt to evade the Commission's translator rules is apparent for at least three reasons.

First, intent to deceive can be inferred from motive. *See RKO General, Inc.*, 4 FCC Rcd 4679, 4684 (1989). The undisputed record evidence reveals that Turro had a substantial motive to deceive the Commission and circumvent its translator rules: significant commercial gain by providing FM service via the Ft. Lee Translator to wealthy and populous Bergen County.

Second, use of a Commission process to achieve a result that the applicant knows it was not intended to achieve constitutes fraud and lack of candor. *Trinity Broadcasting*, 1999 FCC LEXIS 1591 at 46-47. Here, Turro's application for an informal ruling in an attempt to dupe the Bureau into providing authorization for an operation that he knew violated the Commission's rules clearly constitutes a fraud on the Commission.

The purpose of the declaratory ruling procedure is to resolve "uncertainty," not to modify existing rules. 47 C.F.R. § 1.17. Nonetheless, in January 1991, less than two months after the Commission had rejected his attempt to obtain program origination authority for the Ft. Lee Translator, Turro applied for an "informal" declaratory ruling to shield conduct that he knew was directly contrary to amended Section 74.1232(d). Turro's request was therefore merely an effort to dupe the Bureau. Given Turro's familiarity with the Commission's translator rules, his participation in the *FM Translator Stations* proceeding, and his representation by counsel, Turro could not have believed his request was consistent with the translator/primary station cross-interest prohibitions (or later interpreted the 1991 Bureau Letter to overrule those prohibitions).

Third, Turro's fraudulent intent and the deceptive nature of his letter is also evident from his own testimony. Turro testified that at the time he submitted his request to the Bureau, he intended to provide *100 percent* of the primary station's programming. Tr. 2034-40. He nonetheless concealed this intent from the Bureau. Instead, he mischaracterized the intended relationship as "time brokerage," which he specifically testified at his deposition he understood as involving the purchase of discrete blocks of time consisting of "a few hours a day." Tr. 2034-40.¹¹ Having twice had his applications to the Commission denied, Turro obviously did not want to advise the Bureau of the full scope of his intended programming because it would make more apparent the that fact that his intended operation violated Section 74.1232(d).

Finally, other omissions from information provided to the Bureau conclusively establish Turro's misrepresentations in 1991 when Turro submitted his request, as well as Turro and Weis' lack of candor in 1994 when they commenced operations that far exceeded the scope of the Bureau's response to Turro's requested ruling. In neither case did Turro (or Weis in the latter instance) tell the Bureau that the intended operations included: "around-the-clock" total programming of the "primary" station (WJUX) by the translator station licensee; use of the "primary" station as a mere conduit to launder programming designed specifically for broadcast on Turro's "translator" stations to Bergen County; Turro's funding of the entire cost of acquiring, constructing, and operating the shell "primary" station; and the generation of revenues by the sale of time to advertisers seeking to reach the New Jersey area served by the "translator" stations, not the New York area served by the "primary" station. The ALJ's conclusion that Turro had no intent to deceive is simply unfathomable in light of this evidence.

¹¹ At the hearing, Turro provided absolutely no explanation for the misleading representation contained in his letter to the Bureau. Instead, he glibly suggested, in contradiction of the duty of candor, that "if it were important to the Commission, they would have mentioned it in the return letter to me." Tr. 2040.

(b) Turro's Misrepresentations Were Material.

Second, the ALJ found that that Turro's misrepresentations were not material. In this regard, the ALJ found that "a review of the contemporary case precedent establishes that, even if Turro had disclosed the above details to the Bureau in his request for a declaratory ruling, the Bureau's ruling would not have been substantially different." *ID* ¶ 295. This bizarre conclusion is directly contrary to the record evidence. The Bureau, in its letter dated April 5, 1996 (Bur. Ex. 1, Att. C), upon learning the true nature of Turro's operation, rescinded its 1991 Letter and advised Turro that he was in violation of Section 74.1232(d). Turro never appealed this determination, and therefore conceded that his conduct violated Section 74.1232(d). The so-called "chart" prepared by the ALJ demonstrates how far afield his analysis strayed from this materiality issue.

(c) Turro's Departure From The 1991 Bureau Letter Evidenced An Intent To Deceive.

Third, the ALJ's conclusion that Turro's deliberate departure from the conditions set forth in the 1991 Bureau Letter was "without decisional significance" is error and again demonstrates the ALJ's myopic view. *ID* ¶ 295. Indeed, Turro's deliberate departure from the conditions set forth in the Bureau letter was an integral part of his scheme.

The 1991 authorization was limited to "*bona fide*, arms-length arrangements" between translator licensees and the primary station. For the reasons noted above, Turro's relationship with Weis was anything but a *bona fide* arm's length relationship. Moreover, Turro entered into a Network Affiliation Agreement, not the time brokerage agreement authorized by the 1991 Bureau Letter, to minimize the chances of Commission scrutiny of his illegal arrangement.¹²

¹² Section 73.3526(e)(14) of the Commission's rules requires that a time brokerage agreement must, at a minimum, be kept on file at the station's local public inspection file. On the other hand, a "Network Affiliation Agreement" need not be placed in the public inspection file or filed with the Commission. *See* 47 C.F.R. § 73.3613(a)(1).

2. Turro And Weis's Fraudulent Scheme To Vest Control Of WJUX In Turro.

The evidence at the hearing amply demonstrated that Turro and Weis conspired to knowingly and intentionally vest control of WJUX in Turro, and then to hide Turro's control from the Commission. Turro required this control in order to "launder" the Jukebox programming through WJUX. The ALJ erred in failing to apply the totality of the circumstances test to this evidence, and in absolving Turro and Weis from their intentional misconduct because certain of their post-spotlight answers were technically accurate. The Commission demands more from its licensees.

During the Relevant Period, Turro created WJUX to complete his scheme to provide programming to Bergen County, even picking its call sign (*ID* ¶ 45; Tr. 1403-04); Turro provided all the funds for the operation of WJUX (*ID* ¶¶ 29, 65); through an interlocking series of provisions, Turro assumed all the risk of operating WJUX (*see* discussion *infra* 7-8); and through the ten-year, non-cancelable "Network Affiliation Agreement," Turro provided all the programming for WJUX. Bur. Ex. 11, 216-17. During the Relevant Period, WJUX did not have the contractual right to preempt and did not preempt Jukebox Radio programming for a single second. Bur. Ex. 11, 216-17; *ID* ¶ 34.

3. Turro And Weis's Fraudulent Creation Of A Sham Radio Station.

The final piece of Turro and Weis' scheme was the creation of a sham radio station, WJUX. The evidence at the hearing demonstrated that Turro and Weiss conspired to intentionally violate Commission rules requiring licensees to serve their community of license to create a sham station to air their programming in Bergen County on the Ft. Lee Translator.

The Commission has recognized that the creation of such "sham" corporations to subvert its rules is actionable misconduct. *Trinity Broadcasting* ¶ 82; *Religious Broadcasting Network*, 3 FCC Rcd 4085, ¶¶9, 26 (Rev. Bd. 1988) ("Unless sham applicants are stoutly rebuffed, the very

fabric of the Commission's licensing process will be irreparably rent"). In *Trinity*, the Commission found that the sham station was improperly created in order to "give TBN outlets for its programming that would otherwise be unavailable." *Id.* Similarly, Turro and Weis created WJUX not to serve its community of license, but to air programming over the Ft. Lee Translator to Bergen County.¹³

WJUX did not serve and Turro and Weis never intended it to serve its community of license, poor, rural, and sparsely populated Sullivan County, New York. Rather, WJUX was simply a sham station, its programming destined for wealthy, populous Bergen County, New Jersey, some 60 miles away. This sham radio station, which was built in two days, had almost no facilities of its own,¹⁴ virtually no staff,¹⁵ originated no programming,¹⁶ and did not serve its

¹³ The record also demonstrates that Turro routinely delivered Jukebox Radio programming to the Ft. Lee Translator in violation of Sections 74.531(c) and 74.1231(b) the Commission's rules. Two former Jukebox Radio employees stated that the Ft. Lee Translator routinely rebroadcast programming received directly from Turro's microwave station WMG-499, rather than off the air from WJUX. Tr. 733-36; Bur. Ex. 15 at 240. This evidence is consistent with Turro's admission that at all times during the period when WGM-499 was in operation, it transmitted the Jukebox Radio audio signal directly to the Ft. Lee Translator (*ID* ¶¶ 127-128) and with the results of tests conducted by Commission's field engineer. *See ID* ¶¶ 150-165. The ALJ also erred in finding in favor of Turro on this designated issue as well.

¹⁴ During the Relevant Period, WJUX's "main studio" consisted of a spare 10'x10' room in the WVOS studio (*ID* ¶¶ 36-37; MMB Ex. 11 at 221); its equipment, such as it was, was shared with WVOS (Tr. 918-9); no WJUX telephone was installed at the main studio (*ID* ¶¶ 41-43); and there was no sign indicating that WJUX was located there (*ID* ¶ 113; Tr. 871).

¹⁵ During the Relevant Period, WJUX's "staff" consisted of two part-time "consultants" who were also full-time employees of WVOS -- Eugene Blabey, owner and General Manager of WVOS, was WJUX's \$100 per week (or \$2.50/hr.) General Manager (*ID* ¶¶ 50-51, 84) and Carol Montana, WVOS's business manager, was hired as a part-time Public Affairs Director for \$100 per month (\$.63/hr.). Neither Blabey nor Montana even listened to WJUX programming during the day because WVOS programming is heard on the studio speakers. *ID* ¶ 95. They performed essentially ministerial jobs, such as sorting mail, since there was little else to do at the "main studio."

¹⁶ During the Relevant Period, WJUX's "main studio" originated no programming. *ID* ¶ 34. Although licensed to serve Monticello, New York, WJUX merely rebroadcast Turro's commercial Jukebox Radio programming to listeners in Bergen County via the Ft. Lee Translator. From his Dumont, New Jersey studio, Turro provided 100 percent of WJUX's

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community of license.¹⁷ Finally, Turro improperly used the inter-city relay (“ICR”) station WGM-499 as part of his scheme to improperly provide service through the Ft. Lee Translator.¹⁸

C. Turro And Weis Effected An Unauthorized Transfer Of Control Of WJUX.

Section 310(d) of the Communications Act prohibits licensees from transferring broadcast authorizations without prior Commission consent. *See* 47 U.S.C. § 310(d); *see also* 47 C.F.R. § 73.3540(a) (requiring Commission consent prior to transfer). The Commission has described “licensee control over the operation and management of their broadcast facilities” as “central to the proper functioning of the regulatory scheme mandated by Congress and enforced by the Commission.” *Trustees of the University of Pennsylvania*, 69 FCC 2d 1394, 1396 (1978).

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programming, including advertising, station identification, tests, local news, weather, and public service announcements. Turro installed equipment to ensure he could control the operation of WJUX remotely from his studio in Dumont, New Jersey. *ID* ¶¶ 43, 120-125.

¹⁷ Bergen County, not Monticello, was the focus of the WJUX operations. Approximately 80-90% of WJUX’s commercial advertisements were focused towards Bergen County businesses. Turro Ex. 1 at 29; Tr. 2048. Indeed, the Jukebox Radio rate card, which bears the phrase “Bergen County’s FM 103.1” (the frequency of the Ft. Lee Translator) lists rates that have “no economic relationship to” the rates that one could obtain in Sullivan County. MMB Ex. 2 at 74; Tr. 925-27. Although WJUX had a separate local rate card, WJUX never sold any airtime prior to the Commission’s investigation in this case. Tr. 925-29. Indeed, Blabey agreed to accept the position at WJUX because Blabey was advised that WJUX’s commercial advertising would be directed to Bergen County, New Jersey. *ID* ¶ 40; Tr. 990-91.

¹⁸ Among other things, Turro engaged in affirmative misrepresentations and lack of candor before the Commission with respect to his operation of ICR. In his application for the ICR, dated June 8, 1993, Turro maintained that the station would be “used to feed 30-second spot announcement originations concerning financial support and operational communications from the WJUX(FM) [Dumont] studio to the W276AQ transmitter [Ft. Lee Translator].” Bur. Ex. 9. In fact, however, the ICR was used to transmit Jukebox Radio audio programming to the Ft. Lee Translator on a full-time basis, and to transmit telemetry data. *ID* ¶ 128. Turro did not inform the FCC of his alternative use of the ICR until June 13, 1995, in response to an order to show cause why the ICR authorization should not be revoked. Bur. Ex. 8 at 122-24.

1. The ALJ Erred In Applying Traditional LMA Precedent In The Restrictive Primary/Translator Context.

Because Section 74.1232(d) forbids any connection between a primary station and a translator, the Commission has not previously addressed unauthorized transfer of control issues in the primary/translator context. Given the *sui generis* nature of this case, the particularly dependent nature of the primary/translator relationship, and the prohibition contained in Section 74.1232(d), the ALJ erred in applying traditional transfer of control precedent. Instead, the Commission should scrutinize closely transfer of control issues that arise in the translator/primary context and apply a suitably strict analysis. However, as discussed below, whether analyzed under a more restrictive transfer of control analysis or under traditional LMA precedent, the record establishes that Turro and Weis improperly effected an unauthorized transfer of control of WJUX.

2. The ALJ Erred In Finding There Was No Transfer Of Control.

While no precise formula for determining the locus of control exists, the Commission has held that the person who controls policies relating to the station's programming, finances and personnel controls the licensee. While licensees may delegate some functions, they must retain ultimate responsibility for essential station policies. *Southwest Texas Public Broad. Council*, 85 FCC 2d 713, 715 (1981). The Commission examines the totality of the circumstances in examining transfers of control. *Stereo Broadcasters, Inc.*, 87 FCC 2d 87, 92-93 (1981).

As established below, the record of this proceeding demonstrates that Weis abdicated control of WJUX and Turro assumed control of the station from the outset. Far from exercising the "licensee vigilance" required by the Commission, Weis assumed the "passive role of a common carrier" under the Network Affiliation Agreement in broadcasting Turro's Jukebox Radio programming. *Fresno FM Limited Partnership*, 6 FCC Rcd 1570, 1572 (1991).

(a) **Turro Controlled WJUX's Finances.** Control of finances is a critical element because “one of the most powerful and effective methods of control of any business . . . is control of its finances.” *La Star Cellular Telephone Co.*, 5 FCC Rcd 3286, 3291-92 (1990). The ALJ concluded that Weis, not Turro, controlled WJUX's finances. *ID* ¶ 218. However, although the ALJ examined individual elements of Weis's financial relationship with Turro, the ALJ failed to consider the totality of these relationships which, in the aggregate, establish that Turro was in ultimate financial control of WJUX.

Commission precedent establishes that when a broker assumes unusual responsibilities, such as infusing capital into a station and becoming intimately involved in station construction and/or operation, then it transcends the function of a time broker and assumes control. *Salem*, 6 FCC Rcd 4172, 4173 (1991). Similarly, when all the station revenue comes from a broker, it demonstrates a lack of licensee control over finances. *Id.*

In this case, Turro's financial relationship with Weis went far beyond that of a traditional time broker and resulted in Turro being the source of all of WJUX's revenue and assuming all the risk. Turro induced Weis to purchase the WJUX construction permit and effectively bankrolled the transaction by: (i) providing to Weis the \$40,000 in capital for the \$40,000 downpayment on the construction permit (*ID* ¶¶ 25, 35);¹⁹ (ii) providing the only income to WJUX (*ID* ¶¶ 23, 26; 29, 65); (iii) personally guaranteeing the payments to Weis up to \$400,000 (*ID* ¶ 24); (iv) indemnifying Weis for “any and all fines, surcharges, forfeitures, levies, and any other monetary damages imposed by the F.C.C.” (Bur. Ex. 8 at 137);²⁰ and (v) increasing the

¹⁹ Processing funds through a licensee's accounts does not eliminate indicia of control. *Baker Creek Communications, L.P.*, 13 FCC Rcd 18709, 18722-23 (1998).

²⁰ Improperly relying on parol evidence to alter the unambiguous terms of the Network Affiliation Agreement, the ALJ erroneously concluded that the indemnification only covered fines imposed on Weis for actions taken by Turro's Jukebox Radio Network. *ID* ¶ 30. See *continued...*

monthly payments to Weis to cover the costs of other capital equipment purchased for the station (ID ¶¶ 25, 28). Under these circumstances, it is clear that Turro had pervasive control over the finances of WJUX.²¹

(b) Turro Controlled WJUX's Programming. The ALJ also erroneously concluded that Weis controlled WJUX programming, despite factual findings and Commission precedent to the contrary. First, in determining there was no transfer of control, the ALJ relied not on the original Network Affiliation Agreement, but rather on the post-spotlight amendment to the Network Affiliation Agreement dated July 17, 1995 ("Amendment"). ID ¶ 227. The unamended Network Affiliation Agreement, which was in effect during the Relevant Period, unquestionably transferred control to Turro. Among other things, it did not provide Weis with any right to preempt the 24 hour/365 day per week programming during the ten-year, non cancelable term of the agreement.

Although the ALJ improperly credited the testimony of Turro that Turro and Weiss orally agreed to the Amendment in November 1994 that was not signed until July, 1995, that finding is legally irrelevant. The statute of frauds precluded Weis from enforcing the unsigned Amendment.²² See *Payne Communications, Inc.*, 1 FCC Rcd 1052, 1056-57 (Rev. Bd. 1986).²³

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Washoe Shoshone Broadcasting, 3 FCC Rcd 3948 (1988) (ALJ erred in accepting "self-serving parol testimony at complete variance" with the "express terms of that written agreement").

²¹ Moreover, the contractual requirement that Turro pay "any and all" fines and other monetary penalties assessed on Weis by the FCC constitutes a "dereliction of [] non-delegable responsibilities" that is "plainly inconsistent with bedrock licensee accountability." *Fresno FM Limited Partnership*, 6 FCC Rcd 1570, 1572 (1991) (citations omitted).

²² N.Y. General Obligations Law § 5-701(a) (Consol. 1999); N.J. Stat. § 12A:2-201(1) (1999). Moreover, the signing of the purported Amendment, as an action taken after the commencement of the Commission's investigation in this case, must be afforded little or no weight. See, e.g., *Trustees of the University of Pennsylvania*, 69 FCC 2d 1394 (1978) ¶¶54-60.

Accordingly, as a matter of law, Turro exercised total *de jure* control over the programming during the Relevant Period.

Second, the ALJ's conclusion that Weis exercised ultimate authority over programming is contrary to the facts that he found. *ID* ¶ 228. *Fresno FM Limited Partnership*, 6 FCC Rcd 1570, 1571 (1991) (although "contract nominally reserved" control of programming, "the practice made utterly hollow the contract"). Weis turned over control of the programming to Turro by entering into the ten-year Network Affiliation Agreement on October 17, 1994, even before Weis purchased the WJUX license on October 18, 1994. Moreover, Turro provided 100 percent of WJUX's programming. *MMB Ex. 8* at 137. Finally, the ten-year agreement contained no termination provision and no right to preempt Jukebox Radio programming. *Id.*²⁴ Thus, Turro, in practice and as a matter of contract, controlled the programming of WJUX.

(c) Turro Controlled WJUX's Personnel. With respect to control of personnel, the ALJ misinterpreted the record and Commission precedent in concluding that Weis, not Turro, exercised control of WJUX personnel. *ID* ¶ 236. While, given the menial nature of Blabey's and Montana's activities, this issue is of lesser importance than the other factors discussed above, the evidence also demonstrates that Turro controlled station personnel.

First, the record plainly indicates that WJUX's two part-time employees, Blabey and Montana, both sought out and followed instructions from Turro, rather than Weis, on how to handle issues associated with the Commission's inspection of WJUX facilities. *ID* ¶¶ 75, 150.

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²³ In *Payne*, the Review Board found that an oral partnership agreement provided "insufficient assurance of the continuity of such stated interests to award integration credit." *Payne Communications*, 1 FCC Rcd 1052, 1056-57. Accordingly, the alleged oral agreement to enter into the Amendment obviously provides "insufficient assurance" in the transfer of control area, which goes to the heart of the Commission's licensing scheme.

Second, the ALJ entirely failed to consider the largely ministerial nature of Blabey's and Montana's activities versus the substantial operational responsibilities Turro assumed as the Chief Operator of WJUX during the Relevant Period. *Compare*, for example, *ID* ¶¶ 42, 43, 74, 75, 81, 120-123, 126-128 *with ID* ¶¶ 50-53, 84-97.²⁵ Third, although the Commission also looks to the supervision of non-licensee personnel that actually operate the licensed facilities in its control analysis, this issue was ignored by the ALJ.²⁶ In this case, Turro's Jukebox Radio personnel remotely operated WJUX from the Dumont studio and Weis had no contractual right or attempted to exercise any control over those personnel. Finally, the ALJ again improperly credited post-spotlight personnel decisions at WJUX (such as the replacement of Turro as Chief Operator and hiring a part-time Chief Engineer) to overcome substantial evidence that establishes that Turro exercised control of personnel that operated WJUX. *ID* ¶ 236.²⁷

D. Weis Violated The Commission's Main Studio Rules And Policies.

Section 73.1120 requires each FM station to be licensed to the principal community that it serves; and Section 73.1125 requires licensees to maintain a main studio to serve the needs and interest of the residents in the station's community of license. *See Main Studio and Program Origination Rules*, 3 FCC Rcd 5024, 5026 (1988). The ALJ concluded that Weis was in

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²⁴ Another factor in determining whether an unauthorized transfer of control has occurred is whether a time brokerage agreement is irrevocable. *Stereo Broadcasters*, 87 FCC.2d at 94.

²⁵ Of course, Turro must be deemed to control those functions which he performed as WJUX's Chief Operator, including supervising construction of WJUX, installing and maintaining Network audio equipment at the facility, and preparing issue lists for WJUX. *See Roy M. Speer*, 11 FCC Rcd 18393, 18415 (1996) (control of station's construction).

²⁶ *See Fresno FM Limited Partnership*, 6 FCC Rcd 1570, 1571 (examining licensee authority over broker's personnel that actually operated the station).

²⁷ Other indicia of control traditionally examined by the Commission confirm that Turro controlled WJUX. For example, Turro supervised the construction of WJUX and chose the call letters for the station. Tr. 1404, 1825-6, 2060.

violation of the Commission's local toll-free telephone number requirement for a 12-day period, but that "[i]n all other respects, [Weis] was in full compliance with the applicable Commission rules." *ID* ¶ 241. This conclusion is contrary to the evidence and Commission precedent regarding the purpose of the main studio – to insure service to the community of license.²⁸

Weis violated the main studio rules by failing to maintain: (i) a readily accessible main studio; (ii) a meaningful management and staff presence at its facility; (iii) a local toll-free telephone line to its station; and (iv) broadcast remote control capability that complied with the Commission's requirements. *Main Studio and Program Origination Rules*, 3 FCC Rcd at 5026.

First, WJUX's sham "main studio," which during the Relevant Period had no WJUX telephone or WJUX sign, can in no way be considered "readily accessible to the community of license" or otherwise be construed to satisfy the main studio requirements.²⁹ Second, WJUX did not maintain a "meaningful" managerial and staff presence at its facility.³⁰ Although the Commission has indicated that licensee personnel may take on other business responsibilities in their spare time, in no way has the Commission suggested that the requirement of a "meaningful," full-time management and staff presence can be met by a part-time, skeleton staff of two "consultants" whose primary responsibilities and loyalties run to another broadcast

²⁸ "The policy of requiring a readily accessible main studio has long been seen to be an integral means by which the Commission facilitates service to a community of license." *Maines Broadcasting, Inc. WMRX(FM)*, 8 FCC Rcd 5501, 5502 (1993).

²⁹ WJUX's local telephone number was actually forwarded to and answered by personnel at Turro's Jukebox Radio – not by WJUX personnel. *ID* ¶¶ 107-14; Tr. 871.

³⁰ Blabey and Montana, WJUX's \$100 per week General Manager and \$100 per month Public Affairs Director, were part-time WJUX "consultants" who worked full-time for WVOX and spent only a fraction of their time on their WJUX activities, which were menial in nature. Tr. 816, 915. Blabey's routine duties generally included going through the mail, forwarding to Weis matters that needed Weis's attention, and forwarding to Jukebox Radio taped public affairs programming previously played at WVOX. *ID* ¶¶ 56, 57, 85, 87. Montana's activities included picking up the mail, preparing public service announcement bulletin boards for WVOX and then reusing them for WJUX. *ID* ¶ 97.

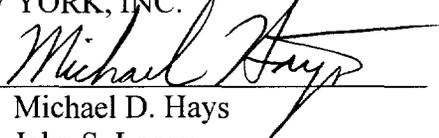
station.³¹ Third, Weis failed to maintain a local toll-free telephone number to the station as required by Section 73.1125(c).³² Finally, WJUX did not maintain satisfactory transmitter remote control capability at the “main studio.” WJUX did not even have a telephone installed for its use at the “main studio,” much less a remote system that satisfied the Commission’s requirements.³³

VI. CONCLUSION

WHEREFORE, Universal respectfully requests that the *ID* be reversed. Universal also requests oral argument on the exceptions pursuant to Section 1.276(c).

Respectfully submitted,

UNIVERSAL BROADCASTING OF
NEW YORK, INC.

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October 20, 1999

³¹ For example, Blabey testified that if both WJUX and WVOS were ever off the air at the same time, he would put WVOS back on the air first. *ID* ¶ 88.

³² Each broadcast licensee “must at all times maintain a toll-free telephone line from its community of license to its main studio, wherever located.” *1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules, and Processes*, 13 FCC Rcd 23056 (1998) at App. D, Items 9 and 15 (emphasis added). The local WJUX phone number forwarded to and answered by Turro’s Jukebox Radio personnel was insufficient. *ID* ¶ 247.

³³ See *ID* ¶ 255-56; *Clarification of the Commission’s Rules Pertaining to Broadcast Station Transmitter Remote Control Operation*, 3 FCC Rcd 5695 (1988), requiring that the “circuit remains available at all times for the exclusive use of the duty operator” or “provide a means for the operator to interrupt” any other telephone access to the remote equipment.

CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC, do hereby certify that on October 20, 1999, a true and correct copy of the foregoing "Exceptions to Initial Decision of Universal Broadcasting of New York, Inc." was sent by first-class U.S. mail, postage prepaid, to the following:

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*Commissioner Michael Powell
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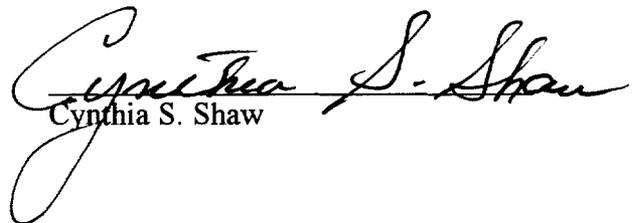
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