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October 20, 1999

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
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445 12th Street, S.W.
Washington, D.C. 20554

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OCT 20 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 97-122; Assignment Application of Gerard A. Turro and Press Broadcasting Company, Inc. (FM Translator Stations W276AQ and W232AL) (Not Yet Accepted for Filing)

Dear Ms. Salas

On behalf of Universal Broadcasting of New York, Inc., there are herewith submitted an original and fourteen copies of the following pleadings for consideration by the Commission in connection with the above-referenced matters:

- ✓ 1. Renewed Petition for Extraordinary Relief and Issuance of an Order Requiring Gerard A. Turro to Come into Immediate Compliance with 47 C.F.R. §74.1232;
- 2. Motion for Expedited Processing; and
- 3. Supplement to Petition to Deny and Post-Hearing Statement of Position of Universal Broadcasting of New York, Inc.

In connection with this submission, please note that copies of the above-listed pleadings have been hand served on this date on the offices of Commissioners Ness, Powell, Tristani and Furchtgott-Roth. Copies of these filings have not been served on the offices of Chairman Kennard, because the Chairman has rescued himself from participation in the consideration of the matters to which these pleadings pertain.

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Ms. Magalie R. Salas
October 20, 1999
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Please direct any questions regarding these submissions to the undersigned.

Very truly yours

A handwritten signature in black ink, appearing to read "Brian DeBoice". The signature is fluid and cursive, with the first name "Brian" written in a larger, more prominent script than the last name "DeBoice".

J. Brian DeBoice

Enclosures

cc: Attached Service List

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OCT 20 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

In re Application of)
)
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

To: The Commission

**RENEWED PETITION FOR EXTRAORDINARY RELIEF
AND ISSUANCE OF AN ORDER REQUIRING GERARD A. TURRO
TO COME INTO IMMEDIATE COMPLIANCE WITH 47 C.F.R. §74.1232**

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Dated: October 20, 1999

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SUMMARY

Five years ago, Gerard Turro began operating his two FM translator stations in direct violation of Section 74.1232 of the Commission's rules. In April of 1996, the Mass Media Bureau ruled that Turro's operations are unlawful under Section 74.1232 and must therefore cease. In April of 1997, the Commission affirmed the Mass Media Bureau's determination. Today, Turro is *still* operating his translator stations in direct violation of Section 74.1232 of the Commission's rules, exactly as he has done without pause for the past five years.

The Commission must put an end to this unlawful situation now. Turro has no excuse for his continuing violation of Commission rules, nor could there possibly be an excuse for such conduct. The Commission must therefore issue an order requiring Turro to come into immediate compliance with Commission rules. This should be done with the greatest possible dispatch.

BEFORE THE
Federal Communications Commission

In re Application of)	
)	
GERARD A. TURRO)	MM Docket No. 97-122
)	
For Renewal of License)	File Nos. BRFT-970129YC
)	BRFT-970129YD
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)	

To: The Commission

**RENEWED PETITION FOR EXTRAORDINARY RELIEF
AND ISSUANCE OF AN ORDER REQUIRING GERARD A. TURRO
TO COME INTO IMMEDIATE COMPLIANCE WITH 47 C.F.R. §74.1232**

Universal Broadcasting of New York, Inc. (“Universal”) hereby renews its January 10, 1997 Petition for Extraordinary and Immediate Relief filed in this matter and requests the expedited issuance of an order requiring Gerard A. Turro to commence immediate compliance with the requirements of 47 C.F.R. §74.1232 governing the FM translator service.

I. INTRODUCTION

Contemporaneously with this filing, Universal has also filed exceptions to the *Initial Decision* of ALJ Steinberg (“*ID*”). In those exceptions, Universal has urged the Commission to reverse the ALJ’s decision and find Gerard A. Turro and his associate Wesley Weis unqualified

to remain Commission licensees.¹ But separate and apart from whether Turro and/or Weis are ultimately ruled unfit to retain their broadcast licensees, there is a serious, long standing problem in this case -- one that needs to be corrected now. The problem is simply stated: Turro is currently operating his FM translator stations in direct violation of Section 74.1232 of the Commission's rules, and he has been engaged in this same unlawful operation on a continuous basis for the past five years. This must stop.

Five years ago, in October of 1994, Turro began the illegal operation of his FM translator stations which has continued, uninterrupted, to this day. As described in more detail in Universal's exceptions to the *ID*, Turro's illegal operation consists of three basic elements: (1) the creation and maintenance of a shell "primary" station -- Station WJUX(FM), Monticello, New York -- the central purpose of which is to broadcast around-the-clock whatever Turro originates from his studios in New Jersey; (2) Turro's production in New Jersey of a so-called "network" origination service -- including associated, lucrative sales of commercial air time -- designed and intended for the populous, suburban and well-heeled New Jersey area within the signal reach of Turro's FM translator stations, and not for the comparatively rural, less populous New York area which the shell "primary" station was authorized by the Commission to serve; and (3) the broadcast on Turro's translator stations of Turro's New Jersey program origination feed and the associated New Jersey ads that Turro sells, after first routing the program feed, under a so-called "network affiliation" agreement, through the conduit of the shell "primary" station, thereby "laundering" the feed to maintain a thin veneer of false pretension to legality.

¹ Weis holds the construction permit, and has filed the covering license application, for Station WJUX(FM) through his wholly-owned company, Monticello Mountaintop Broadcasting, Inc.

On April 5, 1996, following an investigation by the Mass Media Bureau's Enforcement Division, the Bureau issued a ruling which found that Turro's so-called "network affiliation" arrangement with purported "primary" FM station WJUX rendered Turro's translator station operations in direct violation of 47 C.F.R. §74.1232.² In that ruling, now more than three and one-half years old, the Bureau directed Turro to cease his illegal operations within sixty days.

Turro responded by proposing to "assign" his translator stations to a trust in which the sole trustee was a friend of his and in which he himself was the sole beneficiary. On August 13, 1996, the Mass Media Bureau issued a *Memorandum Opinion and Order* which rejected that obvious attempt by Turro to perpetuate his illegal operations and directed Turro to state his plan for complying with Commission regulations within ten days.³ On September 12, 1996, Turro responded by filing an application which proposed to assign his translator stations to Press Broadcasting Company, Inc. ("PBC"). That application contained no assurance whatsoever that the assignment to PBC was not intended to be, and would not ultimately become, yet another ruse to permit Turro to continue the long standing unlawful operations of his translator stations.

On January 10, 1997, Universal filed a Petition for Extraordinary and Immediate Relief in this proceeding, asking the Commission to take affirmative, expedited action to enforce the requirements of 47 C.F.R. §74.1232, which Turro had at that point been violating on a continuous basis for well over two years. Following the filing of that petition (and Universal's subsequent Petition for Writ of Mandamus filed with the United States Court of Appeals for the District of Columbia Circuit on February 4, 1997), the Commission designated this proceeding

² April 5, 1996 Mass Media Bureau letter ruling directed to Turro (Mass Media Bureau Hearing Exhibit 1, pages 11-13) (reproduced in Attachment 1 hereto).

³ *Gerard A. Turro*, 11 F.C.C. Rcd. 22346 (DA96-1292) (M.M. Bur., Aug. 13, 1996). The Bureau later extended this deadline for a short period at Turro's request.

for hearing in April of 1997 to determine Turro's fitness to retain his translator licenses and the corresponding fitness of Weis to retain the WJUX license.⁴ In the *HDO*, the Commission reiterated and expressly affirmed the Bureau's April 1996 ruling that Turro's translator station operations are illegal because in direct violation of 47 C.F.R. §74.1232.⁵ The Commission indicated that it would hold the proposed assignment to PBC in abeyance during the pendency of the hearing. The Commission said nothing in the *HDO* that could possibly have been construed to authorize Turro to continue his illegal translator operations during the entire course of the hearing in this case. Yet that is exactly what Turro has done.

In sum, although Turro has been told twice – and although the Commission has formally ruled twice, the first time being more than three and one-half years ago – that Turro's FM translator operations are unlawful, Turro has nevertheless continued those unlawful operations, unabated and undeterred, to the present day. Something is wrong with this picture.

It is time – and in truth, rather past time – to put a permanent end to Turro's five-year history of illegal FM translator operations. The Commission's rules are sentinels of the public interest, and to violate them is to harm the thing they protect. Five years of unremitting violation of Commission rules is unarguably more than enough. The public interest – to say nothing of the rule of law – absolutely demands that Turro be required to stop his long-running illegal FM translator operations *now*, without a single further instant of unjustified delay.

⁴ *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing*, 12 F.C.C. Rcd. 6264 (FCC 97-137) (rel. April 18, 1997) ("*HDO*").

⁵ *HDO*, 12 F.C.C. Rcd. at 6269-70 n.13.

II. THAT TURRO IS OPERATING ILLEGALLY IS BEYOND ANY RATIONAL DISPUTE

Turro never appealed or otherwise sought to contest either the Mass Media Bureau's 1996 ruling that his translator operations are unlawful or the Commission's 1997 affirmance of that ruling. That Turro's operations are unlawful has therefore been settled with administrative finality for several years. But even if this were not so, the facts originally developed in the Enforcement Division investigation have now been confirmed in detail in the hearing record. Since Turro is unlikely (one would assume) to try to dispute at this late date the obvious fact that his operations are unlawful, we will touch on the reasons why they are unlawful only briefly.

Under 47 C.F.R. §74.1232, an FM translator station providing "other area" service is required to be entirely independent of the primary commercial FM station which it rebroadcasts. Such primary and translator stations are prohibited from having *any form of interest in or connection with one another*, whether or not attributable, other than limited technical support relationships of no relevance whatsoever to this case. 47 C.F.R. §74.1232(d) & (e); *see generally Report and Order* in MM Docket No. 88-140 (*Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*), 5 F.C.C. Rcd. 7212 (1990), *on recon.*, 8 F.C.C. Rcd. 5093 (1993). The purpose of Section 74.1232's prohibition is to preserve the integrity of the FM allocations scheme, and in particular the central distinction between primary FM stations authorized to provide a local origination service within their protected service areas and secondary FM translator stations forbidden to provide any such local origination service, and further forbidden to rebroadcast a primary commercial FM station's signal beyond its protected service area on anything other than a truly independent basis.

As recounted in more detail in Universal's exceptions to the *ID*, the hearing record reflects that Turro has done much more than simply violate the letter of Section 74.1232. That

rule prohibits *any* common interest or connection between a translator station and the primary station which it rebroadcasts. Turro has created essentially *every* type of connection of any significance between his own translator operations and those of the purported “primary” station WJUX – so much so that he was called to answer in the hearing not for a single or even multiple illegal connections with WJUX, but rather for his apparent unauthorized assumption of *total de facto control* over the so-called “primary” station that his translator stations are rebroadcasting.

Among the more significant of Turro’s many unlawful connections with his so-called “primary” station which are documented in the hearing record, Turro instigated and bankrolled the acquisition of the “primary” station’s construction permit; Turro bankrolled and supervised the construction of the “primary” station’s facilities (such as they are); Turro was thus the precipitating force who put the “primary” station on the air in the first place; Turro bankrolled the entire subsequent operation of the “primary” station; and Turro programmed and continues to program the “primary” station on an around-the-clock basis with his own New Jersey-oriented programming feed.⁶ For all practical purposes, Turro and his New Jersey programming and translator operations *are* the only true “primary” station in this case. Turro’s associate Weis and the shell WJUX operation in New York are by comparison so much window dressing.

To sum up, Turro’s illegal operation transformed the “primary” station into a mere shell that launders programming for Turro’s “secondary” translator stations, and transformed the “secondary” translator stations into unallocated and unauthorized primary FM stations which

⁶ Indeed, Turro even took charge of various comparatively ministerial functions of the purported “primary” station, such as “issues/programs list” preparation, program log retention and production of local PSAs. *ID* at ¶¶59-60, 74 & 87. Turro also answered the “primary” station’s telephone – by having its calls forwarded to his New Jersey headquarters, no less -- until the Commission caught him red-handed in the act of doing this. *Id.* at ¶¶107-114. These and Turro’s many other prohibited connections with his “primary” station are recounted in more detail at pages 7-8, 16-17 & 19-23 of Universal’s contemporaneously filed exceptions to the *ID*.

provide an illegal program origination service. Turro's "primary" station is his translator, and his "translator" stations are his primary station. He has turned the FM allocations scheme on its head. He has done this for his own personal profit (which has been considerable – well into the seven figure range) and for no other reason, in direct violation of Section 74.1232 and the rest of the Commission's FM allocations rules, on a continuous basis for the past five years.

III. TURRO HAS NO EXCUSE OR EQUITABLE DEFENSE FOR HIS UNLAWFUL OPERATIONS

Universal anticipates that Turro may try to defend his unlawful actions by claiming that he was innocently misled by the Mass Media Bureau into believing that his actions were permitted. It was Turro who misled the Bureau, not the other way around.

In 1991, Turro sent the Bureau a letter requesting what he called an "informal" ruling regarding whether the licensee of an FM translator station could "purchase broadcast airtime" on the primary commercial station which the translator was rebroadcasting.⁷ In that letter, Turro did not tell the Bureau what he actually had in mind. He did not tell the Bureau that what he had in mind was the total programming of the "primary" station, on an around-the-clock basis, by the translator station licensee. He did not tell the Bureau that what he had in mind was using the "primary" station as a mere conduit to launder a local origination service designed specifically for broadcast on his "translator" stations. He also did not tell the Bureau that what he had in mind was funding the entire costs of acquiring, constructing and operating the shell "primary" station with revenues generated by the sale of commercial time to advertisers seeking to reach the New Jersey area served by his "translator" stations, not the New York area served by the

⁷ This letter appears in the hearing record as Mass Media Bureau Hearing Exhibit 1, page 6.

“primary” station. Turro did not tell the Bureau, in short, that his plan was to stand Section 74.1232 and the rest of the Commission’s FM allocations rules on their collective head. Turro withheld this rather important and useful information because he knew that if he disclosed it to the Bureau, his chances of gaining the Bureau’s approval would fall to zero in less than the time it takes to say “denied.”⁸

By withholding all of the material information about his plans, Turro managed for a time to deceive the Mass Media Bureau, and during that time he induced the Bureau to issue a highly qualified letter which contemplated only the arm’s length purchase of small amounts of broadcast time on a *true* primary station by a *true* translator station.⁹ Turro’s failure to tell the Bureau forthrightly what he actually had in mind is, in Universal’s view, the single most compelling reason why Turro is unfit to retain his broadcast licenses. But whether or not Turro’s lack of candor is ultimately ruled disqualifying, as precedent indicates it should be, such conduct quite plainly destroys any possible claim that “equity” should permit Turro to continue his illegal operations, because he “relied” on the Bureau’s 1991 letter. Turro was not “misled” by any “pie in the sky” notion that his plainly illegal plan – which he carefully concealed from the Bureau --

⁸ During the hearing, Turro appeared to “waffle” regarding whether he had already conceived at the time of his 1991 letter to the Bureau his plan to use a “primary” station as a shell conduit to launder an around-the-clock programming service designed for his translator stations. See Tr. 2034-40; see also Universal’s exceptions to the *ID* at 13-14. It does not matter for present purposes, however, which version of Turro’s 1991 mental state is true, since his lack of candor is evident under either scenario. If Turro knew what he planned to do when he sent his 1991 letter to the Bureau, he plainly concealed all of the material facts about his plans when he submitted that letter to the Bureau. And if Turro first concocted his plan later, then he failed at that time to come forward, in an open and forthright manner, and candidly disclose to the Bureau the material facts about his plan. Under either scenario, Turro has been equally lacking in candor in his dealings with the Commission, and thus equally in breach of his primary obligation and duty to the Commission as a licensee.

⁹ The Bureau’s November 19, 1991 response to Turro’s letter is reproduced in Mass Media Bureau Hearing Exhibit 1, pages 8-9. The understanding upon which the Bureau based its 1991 letter is described in the Bureau’s 1996 ruling directed to Turro (copied in Attachment 1).

had been somehow transformed into a perfectly lawful enterprise by the highly qualified letter that he managed to induce the Bureau to issue. It was rather Turro who misled the Bureau into believing that what Turro had in mind was an innocuous and lawful course of conduct. Turro did this by failing to inform the Bureau of every single material fact that would have made clear how egregiously unlawful the enterprise was upon which Turro intended to embark.

Moreover, Turro has been on notice for *more than three and one-half years*, since the April 1996 Bureau ruling, that his operations are illegal and must cease. Indeed, the Bureau expressly *rescinded* its 1991 letter in its April 1996 ruling, the instant it became plain to the Bureau how badly Turro had misled it. As already noted, the April 1996 Bureau ruling directed Turro to cease his unlawful operations within sixty days – or by June of 1996. That was more than three years ago. It is impossible for Turro to claim now with any semblance of credibility that he should be permitted to continue his unlawful operations straight on into a new millennium, because he relied five years ago on a letter that the Bureau expressly rescinded more than three years ago. Turro has had ample time – over three and one-half years – to conform his conduct to the requirements of Commission rules. Since Turro has failed in all this time to obey the rules voluntarily, it is necessary that he now be compelled by the Commission to do so.

IV. THE PROPOSED ASSIGNMENT TO PBC PROVIDES NO BASIS FOR PERMITTING TURRO TO CONTINUE TO VIOLATE COMMISSION RULES

Universal also anticipates that Turro may claim he should be permitted to continue his unlawful translator operations until the Commission resolves the matter of his pending application to assign his translator stations to PBC. The fact that Turro has proposed to assign his translator stations in an application that is currently being held in abeyance provides absolutely no justification for Turro's continued unlawful operation of his translator stations in direct violation of Commission rules. No Commission rule or policy of which Universal is

aware affords a licensee the anarchic freedom to disregard and violate the Commission's rules, so long as it has pending before the Commission an application seeking to assign the offending stations to somebody else.

As the Commission recognized in the *HDO*, the matter of Turro's basic qualifications to hold his translator licenses must be resolved before it can be determined whether Turro is legally permitted to retain, and thus to assign, those licenses. The process of resolving that basic qualifications issue has already taken more than two years, and it could well take from one to three additional years to reach a final resolution of that issue. During that period, as reflected in the *HDO*, consideration of the proposed assignment of the translator stations to PBC must be deferred, because if Turro is found unqualified, the law will not permit him to assign his licenses to another.

Turro plainly cannot be permitted to continue his five-year history of unlawful translator station operations while the Commission (to say nothing of the Courts) resolves the question of whether Turro is even basically qualified to own the translator stations in the first place. There is no Commission rule or policy so absurd as to hold that a licensee whose basic qualifications are in question is relieved, by virtue of the cloud it is under, of any duty to obey the Commission's rules for so long as its fitness to hold a license remains in dispute.

In addition, even after the matter of Turro's basic qualifications is resolved, and even assuming that the final resolution of that issue is in Turro's favor – a matter still in considerable doubt, notwithstanding the ALJ's *ID* – it would at that point be necessary for the Commission to resolve the public interest questions which exist regarding whether the proposed assignment to PBC is in the public interest. There are substantial and material questions regarding whether the proposed assignment to PBC is nothing more than another effort by Turro to preserve in another

guise the long-running history of illegal operations by Turro's FM translator stations. Those issues will have to be resolved before the Commission can make a public interest determination regarding the proposed assignment to PBC.¹⁰

In sum, the pendency of the PBC assignment application provides no colorable justification or excuse for Turro's continuing operation in direct violation of Commission rules. It is bedrock administrative law that, unless waived, an administrative agency's duly-promulgated regulations must be obeyed, not disregarded. Turro has been granted no waiver of 47 C.F.R. §74.1232, nor has he ever sought one, nor could he possibly obtain one under governing legal standards.¹¹ The filing of an assignment application confers no waiver or other color of authority to violate the Commission's rules.

The PBC assignment application will presumably be placed on public notice and processed by the Commission in due course, if Turro is ultimately found fit to retain his translator station licenses. In the meantime, Turro must be required to comply with Section 74.1232 and the rest of Commission's FM allocations rules.

¹⁰ Contemporaneously with the filing of this petition, Universal has also filed a supplement to its original petition to deny the PBC assignment application. In that supplement, Universal notes that the Commission has not yet accepted the assignment application for filing or placed it on public notice. If the application is ultimately placed on public notice, Universal intends to further oppose the application, based on the substantial and material questions which the hearing record demonstrates exist regarding whether a grant of the application would be contrary to the public interest. Since the Commission may find Turro basically unqualified and thus never reach the merits of the PBC assignment application, it would be premature to address that application's public interest defects at this time.

¹¹ The Commission has already denied Turro on two separate occasions a comparable waiver of the FM translator rule which prohibits translator origination of programming. *See Report and Order* in MM Docket No. 88-140, *supra*, 5 F.C.C. Rcd. at 7219-20 (¶¶47-52); *Order*, 2 F.C.C. Rcd. 6674 (1987), *aff'd sub nom. Gerard A. Turro v. FCC*, 859 F.2d 1498 (D.C. Cir. 1988). Nothing material has changed since those decisions, other than Turro's long standing subsequent course of illegal FM translator operations.

V. CONCLUSION

A principal of Universal recently remarked that broadcasters should be required to “play by the rules.” She could not understand why Mr. Turro has not been required to play by the Commission’s rules for the past five years. The proper response to her concern can only be at this point an expression of faith and confidence that Mr. Turro – like everyone else – is indeed required to play by the rules, and that the Federal Communications Commission will now make it clear – if somewhat belatedly – that this is so. And that is exactly what the Commission must now do.

Universal has been injured for the past five years and is still being injured today, financially and otherwise, by Turro’s illegal FM translator operations. Universal therefore asks once again, after five years of unlawful Turro operations, that the Commission now carry out with the greatest possible dispatch its obligation to enforce its rules. As the Court said in the *Reuters* decision,

Simply stated, rules are rules, and fidelity to the rules which have been properly promulgated, consistent with applicable statutory requirements, is required of those to whom Congress has entrusted the regulatory missions of modern life.¹²

¹² *Reuters Ltd. v. FCC*, 781 F.2d 946, 951 (D.C. Cir. 1986).

For the foregoing reasons, Universal requests that the Commission enter an order on an expedited basis requiring Gerard A. Turro to come into immediate compliance with 47 C.F.R. §74.1232, either by (1) immediately terminating his programming and other unlawful connections with Station WJUX; or (2) immediately ceasing to rebroadcast the WJUX signal on his translator stations. In view of his long history of unlawful translator operations, the Commission's order should also expressly direct Turro to avoid in future any form of prohibited connection with any station that is rebroadcast on Turro's translator stations.

Respectfully submitted

UNIVERSAL BROADCASTING
OF NEW YORK, INC.

By: 

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Dated: October 20, 1999

ATTACHMENT 1

**APRIL 5, 1996 MASS MEDIA BUREAU LETTER RULING
DIRECTED TO GERARD A. TURRO**



Federal Communications Commission
Washington, D.C. 20554

APR 5 1996

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Gerard A. Turro
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Wesley Weis
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Dear Messrs. Miller, Turro, and Weis:

The Commission, pursuant to delegated authority, has before it the results of an investigation into Gerard A. Turro ("Turro"), licensee of FM Broadcast Translator Stations W276AQ, Fort Lee, New Jersey, and W232AL, Pomona, New York, and Monticello Mountaintop Broadcasting, Inc. ("MMBI"), licensee of Station WJUX(FM), Monticello, New York. Wesley R. Weis ("Weis") is the sole principal of MMBI. On February 15, 1995, the Commission received a written complaint on behalf of Universal Broadcasting of New York, Inc. ("Universal"), licensee of Station WVNJ(AM), Oakland, New Jersey. Universal alleged that Turro and Weis were engaged in prohibited activities involving the operation of their respective stations. On June 21, 1995, the Commission directed letters of inquiry to Turro and MMBI concerning Universal's allegations. Thereafter, on July 28, 1995, Turro and MMBI submitted their respective responses. Additionally, staff from the Commission's Compliance and Information Bureau conducted field inspections of the referenced stations.

It appears from the information before us that Turro, d/b/a Bergen County Community Broadcast Foundation, and Weis, d/b/a MMBI, are parties to a Network Affiliation Agreement pursuant to which WJUX(FM) broadcasts, on a full time (24-hour) basis, programming provided by Turro in consideration for certain financial remuneration paid by Turro to MMBI. It also appears that Turro and MMBI are parties to two rebroadcast agreements pursuant to which Turro rebroadcasts WJUX(FM)'s off-air programming over his Fort Lee and Pomona translator stations. The coverage contour of each of Turro's translator stations is located beyond the protected (1 mV/m) contour of WJUX(FM).

Section 74.1232(d) of the Commission's Rules states, in pertinent part, that an authorization for an FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station "will not be granted to any person or entity having any interest whatsoever, or any connection with a primary FM station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees,

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general and limited partners, family members and business associates." See also Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 5 FCC Rcd 7212 (1990), aff'd and clarified, 8 FCC Rcd 5093 (1993). Since § 74.1232(d) of the Commission's Rules prohibits Turro from having "any interest whatsoever, or any connection with" WJUX(FM) beyond rebroadcasting WJUX(FM)'s off-air programming over his translator stations, and Turro is a party to a Network Affiliation Agreement which establishes for him a further significant business relationship with WJUX(FM), it is apparent that Turro is in violation of § 74.1232(d) of the Commission's Rules.

It is acknowledged that this office, by letter dated November 19, 1991, expressed a more permissive interpretation of the prevailing law on the subject of business relationships between translator and primary station licensees. That opinion letter, in response to a request by Turro for a declaratory ruling,¹ however, contemplated that Turro would have no more than a *de minimis* interest in or nominal connection with a then-unbuilt primary station. The November 19, 1991, letter did not anticipate -- and the Commission has never condoned -- a situation where, as here, Turro would have an ongoing and substantial business relationship with WJUX(FM) involving the provision of programming to the primary station on a full-time basis. Thus, to the extent that the November 19, 1991, opinion letter may have been construed as having conferred authority upon Turro to engage in this extensive business relationship with WJUX(FM), that authority is hereby rescinded. This result is consistent with the interpretation of § 74.1232(d) affirmed by the Commission subsequent to the November 19, 1991, opinion letter. See Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 8 FCC Rcd 5093 (1993).²

Accordingly, you are hereby given notice that so long as Turro continues to rebroadcast WJUX(FM)'s off-air programming over either one or both of his FM translator stations, Turro must cease from having any interest in or other connection with WJUX(FM). This prohibition shall include, but is not limited to, the Network Affiliation Agreement and the provision of programming by Turro to WJUX(FM) or the purchase or acquisition of time by Turro on

¹ Turro sought guidance from the Commission in January 1991 on the propriety of a proposal whereby a translator station licensee would purchase air time on the primary station that it is rebroadcasting, and: (a) the translator station would operate outside the primary contour of the station being broadcast; (b) the primary station would not reimburse the translator licensee for the air time that is purchased or provide any financial support to the translator station licensee; (c) the translator station licensee would purchase the air time through a time brokerage agreement containing terms that satisfy the Commission's rules and policies; and (d) the translator station would solicit commercial advertisements to be aired during the brokered time to support the programming presented. The November 19, 1991, letter determined that this proposal would not be prohibited by the Commission's rules or policies.

² It is noted that Turro has *twice* been denied requests for a waiver of the Commission's rules to allow him to originate programming over his translator stations. See Order, 2 FCC Rcd 6674 (1987), aff'd sub nom. Gerard A. Turro v. FCC, 859 F.2d 1498 (D.C. Cir. 1988); Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 5 FCC Rcd 7212 (1990), at ¶ 47-48.

WJUX(FM). In the alternative, so long as Turro continues to maintain any interest in or connection of any kind whatsoever with WJUX(FM), Turro shall cease from also rebroadcasting WJUX(FM)'s off-air programming over either one or both of his translator stations. You are hereby afforded 60 calendar days from the date of this letter within which to sever and/or discontinue any and all prohibited interests, connections, contracts, relationships, agreements, and activities, and to take whatever further action is necessary in order to comply fully with all of the provisions of § 74.1232 of the Commission's Rules. You are also hereby requested to notify the undersigned in writing by the expiration of the 60 day grace period of the steps that you have taken in response to this letter and to certify therein that you comply fully with all of the provisions of § 74.1232 of the Commission's Rules. Your failure to comply fully with all of the provisions of § 74.1232 after the expiration of the aforementioned 60 day grace period may result in the imposition of administrative sanctions, pursuant to § 312 of the Communications Act of 1934, as amended.

Sincerely,


Roy T. Stewart, Chief
Mass Media Bureau

cc: Richard A. Helmick, Esq.

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CERTIFICATE OF SERVICE

I, Barbara J. McKeever, do hereby certify that on October 20, 1999, a copy of the foregoing "Renewed Petition for Extraordinary Relief and Issuance of an Order Requiring Gerard A. Turro to Come into Immediate Compliance with 47 C.F.R. §74.1232" was hand delivered to the following:

The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
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Washington, DC 20554

The Honorable Michael Powell
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, DC 20554

The Honorable Susan Ness
Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, DC 20554

The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
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Barbara J. McKeever