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November 8, 1999

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
Portals II, Filing Counter, TW-A235
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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Re: Gerard A. Turro, MM Docket No.97-122

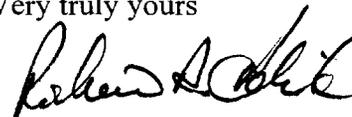
Dear Ms. Salas

Submitted on behalf of Universal Broadcasting of New York, Inc., are an original and fourteen copies of its Consolidated Reply to Oppositions to 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.

Please note that a copy of the above pleading has been served on all Commissioners with the exception of Chairman Kennard; Chairman Kennard has recused himself from participation in this proceeding.

Please direct any questions regarding this matter to undersigned counsel.

Very truly yours



Richard A. Helmick

cc: Attached Service List

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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

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

**CONSOLIDATED REPLY TO OPPOSITIONS TO 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 files a consolidated reply to pleadings of the Mass Media Bureau ("Bureau"), Monticello Mountaintop Broadcasting, Inc. ("MMBI"), and Gerard A. Turro ("Turro"), which oppose Universal's October 20, 1999, petition renewing its January 10, 1997 Petition for Extraordinary and Immediate and requesting expedited issuance of an order requiring Turro to immediately commence compliance with the requirements of 47 C.F.R. §74.1232 governing the FM translator service. In support of its consolidated reply, Universal sets forth the following:

1.. The Commission's Hearing Designation Order in this proceeding expressly affirmed the Bureau's April 5, 1996, letter ruling that Turro's current operations, by which he provides, pursuant to a "network affiliation agreement," all the programming broadcast by MMBI's WJUX, which programming, in turn, is rebroadcast by Turro's above-captioned FM translator stations to areas wholly outside the authorized WJUX service area, violate Section 74.1232 (d) of the Rules which prohibits Turro from having "any interest whatsoever, or any connection with" WJUX. Thus, while Turro's continued violation of Section 74.1232 (d) of the Rules is not in dispute, the Commission stated in its HDO that "we will not pursue in this proceeding any violation of Section 74.1232 (d)...." Gerard A. Turro, 12 FCC Rcd 6264, 6269-70, n. 13 (1997).

2. Indeed, the Bureau's April 5, 1996, letter to Turro rescinding its 1991 letter ruling and advising Turro that he was in violation of Section 74.1232 (d), constitutes a final judgment as Turro was afforded a full and fair opportunity to litigate the issue through the appeal process. Once the Commission issues a final decision against a party who does not appeal, it need not expressly designate the issue for hearing in a subsequent proceeding against the same party because no further factual or legal dispute exists with respect to that issue, which is res judicata and cannot be re-litigated. See United Broadcasting Company, 86 FCC 2d 452, 459 (at n.28), 460-61 (at n. 35); RKO General, Inc., 82 FCC 2d 291, 313 (1980). Accordingly, note 13 of the HDO merely reflects the Commission's determination that Turro has indeed been violating Section 74.1232 (d) of the Rules, but that this fact alone does not warrant revocation of his licenses or a forfeiture, due to the Bureau's 1991 letter to Turro.

3. Universal's renewed petition for extraordinary relief does not ask that the Commission re-litigate or pursue in this proceeding any violation of Section 74.1232 (d); Universal simply asks that the Commission require Turro to come into immediate compliance

with Section 74.1232 (d) of the Rules either by (a) terminating his “network programming” and other unlawful connections with WJUX, or (b) immediately ceasing to rebroadcast the WJUX signal on his translator stations. In other words, Universal is simply asking that the Commission enforce its rules as to a matter which is not in dispute and which does not require a hearing or forfeiture proceeding to resolve issues of fact and culpability.

4. The Commission simply does not have the discretion to ignore its Rules and permit a continuing violation of its Rules. Reuters, Ltd. v. FCC, 781 F.2d 946, 951 (D.C. Cir. 1986). After five years of ongoing rule violations by Turro and MMBI which have directly and adversely affected Universal, Universal’s renewed petition that the Commission enforce its Rules would seem to be a fair, uncomplicated and uncontroversial request.

5. The Bureau argues that “while the Commission concluded that Turro had been violating Section 74.1232 (d), the Commission also concluded that it would not address the effect of such violations in the instant proceeding. In other words, questions concerning Section 74.1232 (d) would have to be addressed in a different proceeding” in the form of a notice of apparent liability pursuant to Section 1.80 of the Rules or a cease and desist proceeding pursuant to Section 1.91 of the Rules. Bureau Opposition at 2. However, Universal’s petition seeks neither a forfeiture nor revocation of license, but, rather, simply requests that the Commission require that Turro and MMBI immediately come into compliance with Section 74.1232 (d).

6. The effects or consequences of Turro and MMBI’s noncompliance with Section 74.1232 (d) can be resolved by the Commission and the Bureau in another proceeding, if necessary or appropriate, but Turro and MMBI’s continuing violation of Section 74.1232 (d) of the Rules is res judicata and the Commission and the Bureau do not have the discretion to simply

ignore that fact, absent a waiver or some other extraordinary relief, which, Universal submits, would be entirely inappropriate in this instance.

7. MMBI opposes Universal's renewed petition on the grounds that such petition is not contemplated in the Commission's post-decision hearing review process and, moreover, the relief Universal seeks, i.e., Turro and MMBI's immediate compliance with Section 74.1232 (d) of the Rules, was not provided for in the HDO as the Commission, having expressly found that Turro and MMBI were in violation of 74.1232 (d), permitted Turro to continue to provide programming to WJUX and to rebroadcast such programming over Turro's translators. In other words, MMBI urges that the Commission should not countenance Universal's "unwarranted and unsupported distraction from the orderly progress of this case toward its conclusion," but, rather, should stay the course and permit an ongoing five year violation of Section 74.1232 (d) to continue. MMBI Opposition at 3-4.

8. Turro contends that Universal's renewed petition for the Commission to immediately require MMBI and Turro to comply with Section 74.1232 (d) of the Rules is contrary to the fact that the Commission, in its HDO, "has decided that it will not pursue any question of violation of Section 74.1232 in this proceeding." Turro Opposition at 1. To buttress the perceived wisdom and merit of this viewpoint, Turro proceeds to obscure the simplicity of the issue which Universal has presented to the Commission, i.e., whether the Commission has an obligation to enforce its rules in the face of an acknowledged violation which has been conclusively adjudicated to exist.

9. Turro's railing against Universal as having engaged in "extensive ex parte lobbying of the Bureau" and submitting "a secret complaint" to obtain a rescission of the Bureau's 1991 letter ruling are nothing more than misstated attacks against the messenger, not

the message. Turro Opposition at 4-5. Similarly, Turro's allegation that the ALJ's Initial Decision has fully exonerated him "from all charges of misconduct which could have been the basis for ordering him to terminate the programming arrangement precipitously" is simply untrue. The ALJ did not issue any ruling regarding Turro's compliance with Section 74.1232, nor did any of the designated issues concern that matter, nor *could* the ALJ have issue a ruling on that issue, given the fact that the Commission itself had already resolved that issue – adversely to Turro – in the HDO.

For the reasons set forth above, the Commission should grant immediate relief to Universal as requested in its renewed petition.

Respectfully submitted

UNIVERSAL BROADCASTING OF NEW YORK, INC.

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Dated: November 8, 1999

CERTIFICATE OF SERVICE

I, Maryam B. Jeffrey, an administrative assistant in the law firm of Cohn and Marks, hereby certify that I have, this day, November 8, 1999, by hand delivery, sent a copy of the foregoing CONSOLIDATED REPLY TO OPPOSITIONS TO 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 to the following:

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Federal Communications Commission
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The Honorable Susan Ness
Commissioner
Federal Communications Commission
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Washington, DC 20554

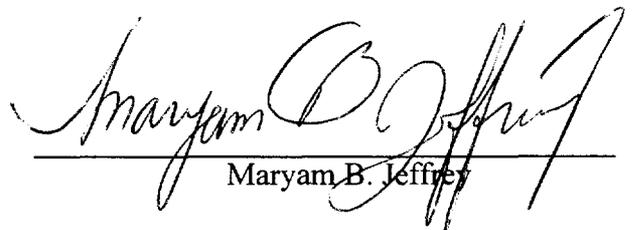
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