

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

DA 96-1292

In re Application of)	
)	
GERARD A. TURRO)	File Nos. BALFT-960531TW
(Assignor))	BALFT-960531TX
)	
and)	
)	
STEPHEN M. GANSLER, Trustee)	
(Assignee))	
)	
For Assignment of Licenses of)	
FM Translator Stations W276AQ,)	
Ft. Lee, New Jersey, and)	
W232AL, Pomona, New York)	

MEMORANDUM OPINION AND ORDER

Adopted: August 13, 1996

Released: August 13, 1996

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, 47 C.F.R. §0.283, has before it the above-captioned application for assignment of licenses of FM Translator Stations W276AQ, Ft. Lee, New Jersey, and W232AL, Pomona, New York, from Gerard A. Turro ("Turro") to Stephen M. Gansler ("Gansler"), proposed trustee under the Gerard A. Turro Trust.¹ A Petition to Deny the assignment application was filed by Universal Broadcasting of New York, Inc. ("Universal"), licensee of AM Broadcast Station WVNJ, Oakland, New Jersey. Turro filed an opposition to the Petition to Deny.

Background

2. On February 15, 1995, the Commission received a written complaint on behalf of Universal alleging, among other things, that Turro was engaged in prohibited activities involving the operation of his translator stations and WJUX(FM), Monticello, New York. As a result, the Commission conducted an investigation into the relationship of Turro and his FM translator stations with Monticello Mountaintop Broadcasting, Inc. ("MMBI"), licensee of Station

¹ Attached to the assignment application is an unexecuted trust agreement between Turro, as the grantor, and Gansler, as the trustee. Exhibit 1 to the assignment application states that "under the trust, those licenses and all assets associated with the translators will be assigned to the trustee upon grant of Commission consent."

WJUX(FM). Wesley R. Weis ("Weis") is the sole principal of MMBI. Based upon the parties' responses to letters of inquiry to Turro and MMBI, as well as the results of field inspections of the referenced stations conducted by the Commission's Compliance and Information Bureau, it appeared that Turro, d/b/a Bergen County Community Broadcast Foundation, and Weis, d/b/a MMBI, were 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 appeared that Turro and MMBI were 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).

3. 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, general and limited partners, family members and business associates."² Since Section 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), Turro appeared to be in violation of Section 74.1232 of the Commission's Rules.

4. By letter of April 5, 1996, from the Chief, Mass Media Bureau ("Bureau"), Turro was advised that so long as one or both of his translator stations continue to rebroadcast WJUX(FM)'s off-air programming, he must cease from having any interest in or other connection with WJUX(FM).³ Alternatively, so long as Turro continued to maintain any interest in or connection of any kind with WJUX(FM), he was advised to cease from also rebroadcasting WJUX(FM)'s off-air programming over his translator stations. Turro was afforded 60 days to sever and/or discontinue any and all prohibited interests, connections, contracts, relationships, agreements, and activities, and to take any further action necessary to comply fully with all of the provisions of Section 74.1232 of the Commission's Rules.

The Proposed Transaction

5. On May 31, 1996, Turro filed the instant application to assign the translator licenses

² 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).

³ The April 5, 1996, letter to Turro stated specifically that such a prohibited interest included, but was 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 WJUX(FM).

to Gansler as trustee of the Gerard A. Turro Trust.⁴ As stated in the subject application, "the purpose of the proposed assignment of the translator licenses is to carry out the intent of the April 5, 1996 letter by placing the translator licenses in trust." Under the proposed trust agreement, Turro is to have no communication with the trustee, who will have complete discretion to change the mode of operation of the translators, including a change in the primary station rebroadcast over the translators. Turro, as grantor of the trust, is to transfer the translator licenses to the trustee, is free to add additional property to the trust, and is the beneficiary of the trusts' proceeds. The agreement also provides that the trust will terminate upon notice to the trustee from Turro that: the FCC determines that translators are permitted to engage in local program origination; Turro "is no longer associated with the primary radio station being translated by the translators," or the "FCC determines that [Turro] may be associated with the primary radio station and be simultaneously associated with the translators."

6. In its Petition to Deny, Universal contends that the proposed trust arrangement is inadequate to achieve compliance with the Commission's Rules and is a sham designed to circumvent the Commission's translator rule.⁵ Universal contends that a trust arrangement is generally used to effect compliance with Commission rules in order to avoid a temporary, short-term violation of the Commission's rules, but should not be countenanced here to permit Turro to achieve indirectly that which he cannot achieve directly; namely, maintain a prohibited relationship with WJUX(FM) and the translators. Because FM translators are passive facilities, essentially limited to rebroadcasting the signal of a primary station rather than originating programming, Universal maintains that it is the function and the operation of the translators, rather than their legal ownership or control, which should be the Commission's focus in evaluating the efficacy of the proposed trust.⁶ In addition, Universal alleges that Gansler is a long-time personal friend of Turro, and for that reason alone, cannot be viewed as wholly independent of Turro, who is to fully fund the trust. Further in this regard, Universal notes that there are no provisions in the trust to compensate the trustee, and thus alleges that the trust arrangement is nothing more than an accommodation to Turro which would do nothing to sever the prohibited network programming relationship between Turro, WJUX(FM) and the translators.

7. In an opposition pleading, Turro states that "the purpose of the trust is to insulate Mr. Turro from any attributable interest in the translators," and points to provisions that the trustee

⁴ By letter dated June 5, 1996, the Chief, Mass Media Bureau, granted Turro's request to continue the translator stations' current program service, but only until such time as the pending assignment application, trust and related agreements, and any comments received thereon are evaluated.

⁵ In its Petition to Deny, Universal also alleges that the operation of the translators raises questions as to Turro's qualifications to remain a Commission licensee, which Turro challenges in his opposition pleading. These allegations stem from those matters raised in Universal's complaint filed on February 15, 1995. Those allegations are the subject of an ongoing Enforcement Division investigation.

⁶ Because translators are passive, non-income-producing facilities, Universal asserts that the only control and operational duties to be performed by the trustee are "ministerial" in nature – to arrange for periodic maintenance and payment of bills. Inasmuch as the trust is to be fully funded by Turro, Universal claims that it is a distinction without a difference as to whether Turro or the trustee pays the bills and arranges for maintenance. Under these circumstances, it contends that the proposed trust can only be viewed as a sham to perpetuate the current illegal operation of the translators.

"shall not communicate with" Turro with respect to the operation of the translators and that the trustee is authorized to act with or without notice to him. According to Turro, this independence includes deciding whether or not to keep the translators' present program service. Moreover, Turro states that the trust agreement specifically provides that the trust is intended to comply with all the existing and future requirements of the FCC, including, if necessary, amendment of the agreement to comply with any applicable governmental regulation. Turro also maintains that both he and the proposed trustee intend to comply fully with these trust provisions, and that he is willing to seek a different trustee should the Commission deem that necessary.⁷ Thus, Turro asserts that "the pending assignment application represents a good faith effort" on his part to resolve the issues raised in the Bureau's April 5 letter, and that there is no basis for Universal's concerns regarding the proposed trust.

Discussion

8. We agree with Universal that the proposed trust is inadequate for Turro to achieve compliance with Section 74.1232, as directed by the Bureau's letter of April 5, 1996. Section 74.1232 of the Commission's Rules prohibits the authorization for an FM translator operation in these circumstances "to any person or entity having *any* interest whatsoever, or *any* connection with a primary FM station."⁸ The translator rule contemplates *any* interest -- not just an attributable interest -- and does not exempt a mere equitable interest. Nor does Turro attempt to demonstrate that a beneficial interest under a trust arrangement is not an "interest" subject to Section 74.1232. Thus, we find that Turro's retained interest -- as the intended beneficiary of the proposed trust -- precludes him from achieving compliance with Section 74.1232 of the Rules so long as he also continues to provide the programming for the primary and translator stations. Turro's retained reversionary interest in the translators also appears to violate the "any interest" proscription of Section 74.1232 of the Rules. Indeed, we believe that so long as the present programming arrangements for the primary and translator services continue, no modification of the proposed trust will alleviate the concerns identified in the Bureau's April 5, 1996, letter. Moreover, we note that, as a general matter, the Commission has looked to trusts to resolve regulatory problems in the short-run, not as permanent solutions to our concerns,⁹ while the trust proposed here appears to contemplate an indefinite duration.

Conclusion

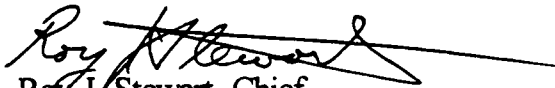
9. In light of the above discussion, we conclude that the proposed assignment of the translator licenses would not achieve compliance with the Bureau's April 5, 1996, directive to cease the relationship between his translators and WJUX(FM). We will, therefore, take no action

⁷ Turro states that should the Commission deem that the proposed trust agreement requires modification in order to achieve compliance with FCC rules and regulations, Turro will attempt to accomplish such modifications rather than "destroy [the translators'] program service."

⁸ 47 C.F.R. §74.1232(d) (emphasis added).

⁹ See *Attribution of Ownership Interests*, 97 FCC 2d 997, 1023-24 (1984), *recon. in part* 58 RR2d 604 (1985), *further recon.*, 1 FCC Rcd (1986). See also, e.g., *Twentieth Holdings Corporation*, 4 FCC Rcd 4052 (1989).

on the pending assignment application. Turro is directed to advise us within 10 days of receipt of this Memorandum Opinion and Order what steps he will undertake to effect compliance with that rule.



Roy J. Stewart, Chief
Mass Media Bureau
Federal Communications Commission