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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILE

In the Matter of) MM DOCKET NO. 92-201
)
Order to Show Cause)
Directed Against)
)
Mario J. Gabelli)
and)
Gabelli Funds, Inc.)

To: Chief Administrative Law Judge
Joseph Stirmer

MASS MEDIA BUREAU'S
OPPOSITION TO PETITION FOR LEAVE TO INTERVENE

1. On September 1, 1992, Garden State Broadcasting Limited Partnership (Garden State) filed a Petition for Leave to Intervene. The Mass Media Bureau submits the following opposition.

2. Garden State claims that it is entitled to intervene in this proceeding pursuant to Section 1.223 of the Commission's Rules.¹ It claims that it has a substantial interest in this proceeding. Garden State states that it has filed an application for a new television station at Secaucus, New Jersey, which is mutually exclusive with the application of WWOR-TV, Inc., for

¹ Section 1.223(a) does not apply because this proceeding does not involve the types of cases specified in the rule section. Victor Muscat, 31 FCC 2d 620 (1971). Section 1.223(b) provides that the petition for leave to intervene must: (1) set forth the interest of the petitioner in the proceeding; (2) show how such petitioner's participation will assist the Commission in the determination of the issues in question; (3) set forth any proposed issues in addition to those already designated for hearing; and (4) be accompanied by an affidavit of a person with knowledge as to the facts set forth in the petition.

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renewal of the license of WWOR-TV. While the Commission has denied Garden State's application and granted WWOR-TV, Inc.'s renewal, WWOR-TV, Inc., 7 FCC Rcd 636 (1992), Garden State has an appeal of this decision pending with the United States Court of Appeals for the District of Columbia Circuit (Case No. 92-1052). Garden State also notes that it filed a petition to deny the application to transfer control of WWOR-TV, Inc., from Pinelands, Inc., to BHC Communications, Inc. The Commission dismissed in part and denied in part Garden State's petition to deny and granted the transfer of control application by Memorandum Opinion and Order, FCC 92-376, released August 21, 1992. Garden State has also filed a notice of appeal of this action with the Court of Appeals (Case No. 92-1388).

3. Garden State argues that it should be made a party to this proceeding because it wants to use this forum to gather information to be used in both of its appeals. Garden State believes that information about Gabelli's media interests will be relevant to arguments it plans to make in its appeal concerning Pinelands' qualifications to be a Commission licensee. Additionally, Garden State would like to obtain information about Gabelli's media interests to use in connection with the standard comparative issue in the comparative renewal proceeding it is seeking to have remanded.

4. Garden State claims that its participation in this proceeding will assist the Commission because it is familiar with the record generated in the transfer of control proceeding.

Moreover, "[i]t intends to conduct a focused inquiry into Gabelli's media interests and the circumstances surrounding the prior failures to report those interests." Garden State believes that it, as a private party, would have more of an incentive to develop a complete record than would the Mass Media Bureau.

5. Garden State does not propose any additional issues. However, it would like to conduct discovery in the following areas: "(1) all media interests held by Gabelli or entities in which he has an interest since the filing of the WWOR-TV, Inc. renewal application, (2) any inquiries or responses to inquiries addressed to Gabelli or related entities seeking information regarding the media interests of Gabelli or related entities, and (3) all reports or documents prepared by Gabelli or related entities listing, describing or otherwise relating to media interests held by Gabelli or related entities." Finally, Garden State's petition is accompanied by a declaration from its attorney attesting to the facts contained in the petition.

6. It is clear from Garden State's petition that it seeks to litigate in the instant proceeding the issues and applications which were previously denied by the Commission. Garden State candidly admits that it is seeking to develop evidence which it can use in its appeals. Thus, its request to intervene is designed only to serve its private goals and has nothing to do with advancing the public interest. See Office of Communications of the United Church of Christ v. FCC, 359 F.2d 994, 1001 (D.C. Cir. 1966). Moreover, if Garden State is successful on either of

its appeals, it will have an opportunity to present its case in an appropriate forum. In the mean time, it should not be allowed to use this proceeding to undertake litigation which the Commission has previously foreclosed in other proceedings.

7. Garden State does not meet the requirements of Section 1.223 in that it has failed to show how its participation will assist the Commission. The Bureau disagrees with Garden State's argument that a private party will best be able to develop a record in this proceeding. As the Commission has previously held, the development of a full and complete record is traditionally fulfilled by the Administrative Law Judge and the Bureau. Muncie Broadcasting Corp., 89 FCC 2d 123, 125 n. 1 (Rev. Bd. 1982) (citing Pressley v. FCC, 437 F.2d 716, 719 (D.C. Cir. 1970)). Garden State has not shown that the Presiding Judge and the Bureau would not be able to perform their roles in this proceeding.

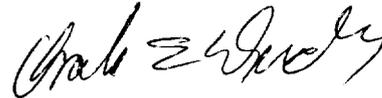
8. Garden State has not shown that it has any particular knowledge about Gabelli's media holdings which would be of assistance to the Commission. Nor has Garden State indicated that it has any other facts that would be relevant to this proceeding. Thus, the cases cited by Garden State, West Jersey Broadcasting Co., 89 FCC 2d 469 (1980) and Quality Broadcasting Corp., 4 RR 2d 865 (1965), are inapposite.

9. It is evident from the discovery which Garden State wants to pursue that it is more interested in developing evidence for its private litigation than in assisting in the instant show

cause proceeding. The instant proceeding is limited to determining Gabelli's current media holdings and requiring him to come into compliance with appropriate Commission rules. However, Garden State would like to obtain information about past media holdings of Gabelli and what efforts were made to ascertain or report those holdings. This information would not be relevant to the instant inquiry. Moreover, it is "reasonable, particularly in a prosecutory-type proceeding where the agency has the burden of proof, to require a substantial showing of special circumstances in order to justify intervention by parties who are otherwise strangers to the proceeding. Such a showing would require that the intervenors raise substantial issues of law or fact which have not or would not otherwise be properly raised or argued; and that the issues be of sufficient import and immediacy to justify granting the petitioners the status of a party." Victor Muscat, 31 FCC 2d at 621. Garden State has failed to make such a showing.

10. In view of the foregoing, the Bureau opposes Garden State's Petition for Leave to Intervene.

Respectfully submitted,
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Chief, Mass Media Bureau



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September 15, 1992

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 15th day of September, 1992, sent by United States mail, U.S. government frank, copies of the foregoing "Mass Media Bureau's Opposition to Petition for Leave to Intervene" to:

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