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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)	MM DOCKET NO. 93-54
)	
GAF BROADCASTING COMPANY, INC.)	File No. BRH-910201WL
)	
For Renewal of License of Station)	
WNCN(FM) (104.3 MHz), New York,)	
New York)	

To: The Review Board

MASS MEDIA BUREAU'S CONSOLIDATED OPPOSITION TO PETITION FOR INTERVENTION AND MOTION TO ENLARGE ISSUES

1. On October 8, 1993, Listeners' Guild, Inc. ("Guild") filed a Motion to Enlarge Issues and an interrelated Petition for Intervention in the above captioned proceeding. The Mass Media Bureau submits the following consolidated opposition.¹

2. Guild requests that the record in this proceeding be reopened, that issues be added against GAF Broadcasting Company, Inc. ("GAF") and that Guild be allowed to intervene with respect to all subsequent proceedings on the added issues. Specifically, Guild seeks the addition of age discrimination, securities law violations and Section 1.65 issues.

3. Where an attempt is made to reopen the record, the

¹ This proceeding was terminated by Memorandum Opinion and Order, FCC 93M-593, released September 17, 1993. On September 27, 1993, Guild filed a Notice of Appeal stating that it will file a timely Appeal of that Memorandum Opinion and Order. Also, on October 12, 1993, Guild filed an Application for Review of the Review Board's Memorandum Opinion and Order, FCC 93R-50, released September 13, 1993, which denied Guild's appeal from the Memorandum Opinion and Order, FCC 93M-360, released June 15, 1993, of the Presiding Judge, which denied Guild's earlier Petition for Intervention and Motion to Enlarge Issues.

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movant must show: 1) that it relies on new or newly discovered evidence that could not, through the exercise of due diligence, have been discovered earlier; 2) that the new evidence, if proven, would raise a substantial and material question of fact affecting the ultimate outcome of the proceeding; and 3) that there is a substantial likelihood of proving its potentially disqualifying allegations if the case is remanded for further hearings. Eve Ackerman, 8 FCC Rcd 4205 (1993). Guild fails to meet these stringent standards for reopening the record to add the requested issues. Moreover, since Guild's intervention request is predicated on addition of the unwarranted issues, that request also must be denied.

3. Guild's request for age discrimination and securities law violations issues are predicated on the declaration of former GAF General Manager Matthew Field (Field") and Field's accompanying law suit filed in the Superior Court of New Jersey. Guild contends that the age discrimination and securities fraud violations raised therein should be considered in light of Guild's earlier allegations of similar misconduct in a prior proceeding in which Guild petitioned to deny the transfer of control of GAF.

4. The Bureau opposes addition of these requested issues. It is well established that the Commission will refrain from taking any action on non-FCC misconduct prior to adjudication by another agency or court. There must be an ultimate adjudication by an appropriate trier of fact, either a government agency or

court, before the Commission will consider the activity in its character determinations. Character Qualifications, 102 FCC 2d 1179, 1204-05 (1986). Accordingly, the Bureau submits that it would be premature to consider addition of the requested issues since there has been no final adjudication of Field's law suit. To the extent that Guild urges their consideration at this time in light of its prior allegations of similar misconduct by GAF, suffice it to say, that the Commission previously denied the Petition to Deny in which those charges were raised. See, Shareholders of GAF Corporation, 7 FCC Rcd 3225 (1992).

5. Guild's request for a Section 1.65 issue is predicated on its contention that GAF did not timely notify the Commission of the filing of Field's law suit. Specifically, although Field filed his law suit on July 22, 1993, GAF did not amend its application to reflect that event until September 29, 1993.

6. The Bureau also opposes addition of the requested Section 1.65 issue. It is well established that a Section 1.65 issue is not warranted unless the unreported information is decisionally significant or there is a prima facie showing of concealment or a pattern of violations. Goodlettsville Broadcasting Company, Inc. 8 FCC Rcd 5181 (1993); Merrimack Valley Broadcasting, 99 FCC 2d 680, 683 n.9 (1984). Guild has failed to meet these requirements. Accordingly, addition of the requested 1.65 issue is not warranted.

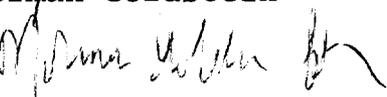
7. In summary, the Bureau opposes Guild's petition for intervention, and motion to reopen the record to add age

discrimination, securities law violations and Section 1.65 issues. The Bureau further submits that Guild's instant requests border on an abuse of the Commission's processes. Having been denied intervention in this proceeding, it appears that Guild is groping for alternative means to continue to harass the licensee. Such efforts engender a waste of public resources and should not be condoned.

Respectfully submitted,
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October 20, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 20th day of October 1993, sent by First Class mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Consolidated Opposition to Petition for Intervention and Motion to Enlarge Issues"** to:

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