

OCT 21 1993

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), New York, New York)

To: The Commission

MASS MEDIA BUREAU'S OPPOSITION TO
APPLICATION FOR REVIEW

1. On October 12, 1993, Listeners' Guild, Inc. ("Guild") asked the Commission to review and reverse the Review Board's Memorandum Opinion and Order, FCC 93R-50 (released September 13, 1993) ("MO&O"), which upheld the denial of Guild's request for intervention in this proceeding. The Mass Media Bureau opposes Guild's Application for Review for the following reasons.

2. Guild's request for intervention and/or party-status in this proceeding has thus far thrice been denied -- first, by the Presiding Judge in Memorandum Opinion and Order, FCC 93M-360 (released June 15, 1993), when Guild's initial request for intervention was rejected; second, by the Commission in Memorandum Opinion and Order, FCC 93-385 (released August 16, 1993), when Guild's request for reconsideration of the Hearing Designation Order, 8 FCC Rcd 1742 (1993) was rejected; and third, in the referenced MO&O, when the Board upheld the Presiding Judge's ruling on intervention. The Bureau submits that Guild's request for intervention has thoroughly been considered and properly

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rejected in all instances. Furthermore, Guild has not demonstrated any basis for further review.¹

3. As it has done previously, Guild suggests that it is somehow entitled to intervene in this proceeding on the basis that it petitioned to deny the then-pending GAF renewal application. However, as has clearly been articulated by the Presiding Judge, the Review Board, and the Commission, all of Guild's arguments were either denied or referred to the Bureau's Equal Employment Opportunity Branch for Commission disposition. Therefore, Guild has no foundation on which to base a claim of party-status. Nor has Guild demonstrated how its participation as a party in this proceeding on the issues that were specified prior to termination would assist the trier of fact.²

4. In sum, Guild is doing nothing more now than "beating a dead horse." While Guild is indeed entitled to avail itself of the range of remedies provided by the Commission processes, the filing of seriatim pleadings containing essentially the same arguments which have been considered and soundly rejected serves no purpose whatsoever.

¹ The Bureau notes that, pursuant to Memorandum Opinion and Order, FCC 93M-593 (released September 17, 1993), the Presiding Judge conditionally granted the application of GAF Broadcasting Company, Inc., for renewal of license of Station WNCN(FM), New York, New York, and terminated this proceeding. On September 27, 1993, Guild filed with the Review Board a notice of its intention to appeal that ruling. However, because there is absolutely no legitimate basis for the Board to return this case to active hearing status, it would appear that Guild's continuing request for intervention is, for all intents and purposes, a moot issue.

² In apparent recognition of its failure up to this point to state a legitimate basis on which to claim status as a party in interest, Guild, on October 8, 1993, concocted and filed with the Review Board a baseless Motion to Enlarge Issues against GAF. Not surprisingly, the Motion to Enlarge Issues is accompanied by a new request for Guild's intervention. The Bureau yesterday filed a consolidated opposition to Guild's requests for issues and for intervention.

5. Accordingly, Guild's Application for Review should be denied.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Charles E. Dziejcz
Chief, Hearing Branch



Norman Goldstein



Gary P. Schonman
Attorneys
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W., Suite 7212
Washington, D.C. 20554
(202) 632-6402

October 21, 1993

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 21st day of October 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Opposition to Application for Review" to:

David M. Rice, Esq.
One Old country Road, Suite 400
Carle Place, New York 11514

Aaron I. Fleischman, Esq.
Fleischman & Walsh
1400 16th Street, N.W.
Washington, D.C. 20036

David Honig, Esq.
1800 N.W. 187th Street
Miami, Florida 33056


Michelle C. Mebane