

RECEIVED

DOCKET FILE COPY ORIGINAL

OCT 27 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of
GAF BROADCASTING COMPANY, INC.
For Renewal of License of Station
WNCN(FM), New York, New York

) MM DOCKET NO. 93-54
)
) File No. BRH-910201WL
)
)
)

To: The Review Board

MASS MEDIA BUREAU'S OPPOSITION TO
APPEAL OF LISTENERS' GUILD, INC.

1. On October 18, 1993, Listeners' Guild, Inc. ("Guild") filed an appeal of Memorandum Opinion and Order, FCC 93M-593 (released September 17, 1993), in which the Presiding Judge conditionally granted the captioned application of GAF Broadcasting Company, Inc. ("GAF"), for renewal of license of Station WNCN(FM), New York, New York, and terminated this proceeding. For the following reasons, Guild's appeal should be denied.

2. Guild acknowledges that it is not a party in this case and that Section 1.302 of the Commission's Rules precludes appeals by non-parties. Consequently, as Guild further acknowledges, it is prosecuting the instant appeal simply to preserve its rights in the event

No. of Copies rec'd
List ABCDE

2411

that it is ultimately afforded party-status.¹

3. The Bureau maintains that Guild's *contingent* appeal provides absolutely no basis for returning this case to active, hearing status. Guild's appeal is predicated on its being made a party to this proceeding. In this regard, Guild merely incorporates by reference in the instant appeal the arguments that it has advanced in support of intervention. However, none of the arguments has any merit with respect to either the matter of Guild's party-status or the actions taken by the Presiding Judge in the MO&O. As the Presiding Judge, the Review Board, and the Commission have made clear thus far,² all of the issues that Guild sought against GAF prior to designation of this case for hearing were either rejected or referred to the Mass Media Bureau's Equal Employment Opportunity Branch for appropriate disposition. Consequently, Guild's request for intervention was properly denied by the Hearing Designation Order, 8 FCC Rcd 1742 (1993). Moreover, Guild's pending Petition to Enlarge Issues is totally without merit. Therefore, there is no basis whatsoever for Guild's intervention. Since the instant appeal is predicated on Guild being made a party, and there is no basis for affording Guild party-status, the appeal must be rejected.

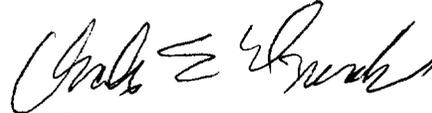
4. In sum, the Presiding Judge properly granted GAF's application for renewal of license of Station WNCN(FM) with a condition, and properly terminated the proceeding. Guild has utterly failed to demonstrate why its appeal should be granted.

¹ Guild is presently seeking (and the Bureau has opposed) Commission review of the Memorandum Opinion and Order, FCC 93R-50 (released September 13, 1993), in which the Board upheld the denial of Guild's initial request for intervention in this proceeding. There is also pending before the Board a Petition to Enlarge Issues upon which Guild has predicated a new request for intervention. The Bureau has opposed those petitions, as well.

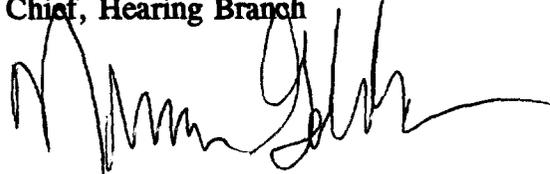
² See, Memorandum Opinion and Order, FCC 93M-360 (released June 15, 1993); Memorandum Opinion and Order, FCC 93R-50 (released September 13, 1993); and Memorandum Opinion and Order, FCC 93-385 (released August 16, 1993).

5. Accordingly, Guild's contingent Appeal should be denied.

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



Charles E. Dziejic
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 27, 1993

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 27th day of October 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Opposition to Appeal of Listeners' Guild, Inc." 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
Michelle C. Mebane