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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C 20554

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 December 23, 1993, Listeners' Guild, Inc. ("Guild") filed an Application for Review of the Review Board's Memorandum Opinion and Order, FCC 93R-61 (released November 23, 1993) ("MO&O"), insofar as the MO&O denied Guild's Appeal from an order of the Presiding Judge¹ which conditionally granted GAF Broadcasting Company, Inc.'s application for renewal of license of Station WNCN(FM), New York, New York,² and terminated this proceeding. For the following reasons, Guild's Application for Review should be denied.

2. The Board denied Guild's Appeal on the basis of Section 1.302(a) of the Commission's Rules, which provides that only a "party to the proceeding" may appeal an ALJ ruling terminating a proceeding. The Board's MO&O properly noted that Guild was

¹ See, Memorandum Opinion and Order, FCC 93M-593 (released September 17, 1993).

² Although the station's call sign was recently changed to WAXQ(FM), the Bureau will continue to refer to the station as "WNCN(FM)," for administrative convenience.

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not a party to this proceeding.

3. Guild does not dispute the fact that it lacks party status. Rather, Guild claims that it was somehow "required" to appeal the Presiding Judge's action terminating this proceeding so that it could file the instant application for review and thereby preserve its right of judicial review. See, Section 1.115(k) of the Commission's Rules ("[t]he filing of an application for review shall be a condition precedent to judicial review of any action taken by delegated authority.") This argument lacks merit because Guild has already preserved its right to judicial review by filing an application for Commission review of GAF Broadcasting Company, Inc., 8 FCC Rcd 6678 (Rev Bd. 1993), wherein the Board upheld the Presiding Judge's denial of Guild's request for intervention.

4. In sum, the Board properly determined that Guild is foreclosed from appealing the Presiding Judge's order terminating this case because Guild lacks party status. Furthermore, inasmuch as Guild has apparently already perfected its right to judicial appeal, the instant Application for Review is superfluous.

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

Respectfully submitted,
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January 7, 1994

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 7th day of January 1994, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Opposition to Application for Review" to:

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