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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of	)	
	)	
RAINBOW BROADCASTING COMPANY	)	**GC Docket No. 95-172**
	)	**File No. BMPCT-910625KP**
For an Extension of Time to Construct	)	**File No. BMPCT-910125KE**
	)	**File No. BMPCT-911129KT**
and	)	
	)	
For an Assignment of its Construction Permit	)	
for Station WRBW(TV), Orlando, Florida	)	

To: The Commission

SEPARATE TRIAL STAFF'S OPPOSITION TO PETITION FOR LEAVE TO INTERVENE TO FILE EXCEPTIONS AND REOPEN THE RECORD

The Separate Trial Staff ("Staff") hereby submits its opposition to the Petition for Leave to Intervene to File Exceptions and Reopen the Record, filed by Guy Gannett Communications ("Gannett") on September 26, 1997. The pleading is grossly out of time and should be dismissed or denied. In support, the Staff states as follows.

1. The time for filing exceptions to the Initial Decision in this proceeding has long since passed. *See* Section 1.276(a)(1) of the Commission's Rules. The Initial Decision of Administrative Law Judge Joseph Chachkin, *Rainbow Broadcasting Company*, 12 FCC Rcd 4028, was released over six months ago on April 2, 1997. Exceptions to the Initial Decision were filed by the Staff and by Press Broadcasting Company on May 16, 1997. Rainbow Broadcasting Company and Rainbow Broadcasting Limited filed separate replies to the exceptions on May 29, 1997, and the case is now ripe for decision. Therefore, Gannett has a heavy burden to demonstrate that its pleading should even be considered by the Commission.

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2. Gannett's pleading is completely silent as to why it could not have sought leave to intervene months ago to file exceptions to the Initial Decision. On the merits, Gannet claims that it is a third party aggrieved by certain statements made by the Administrative Law Judge in the Initial Decision. According to Gannett, it should be allowed to intervene and file exceptions to these baseless statements. Gannett thus asserts that the Initial Decision's suggestions of wrongdoing by Gannett are wholly without basis in the existing record and should be stricken. In the alternative, Gannett asks the Commission to reopen the record -- which was closed on July 11, 1996 -- to include an affidavit of James E. Baker, Chief Financial Officer and Treasurer of Gannett, which is attached to the petition. Finally, Gannett contends that upon consideration of the affidavit and the existing record, the Commission should strike all such suggestions of wrongdoing by Gannett from the Initial Decision.

3. As noted above, the request for leave to intervene pursuant to Section 1.223 of the Commission's Rules is grossly untimely and should be dismissed on that ground alone. To the extent Gannett seeks to reopen the hearing record, the petition should be dismissed or denied. A petition to reopen the record after the close of the hearing 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 the potentially disqualifying allegations if the case were remanded for further hearings. *See Coast TV*, 11 FCC Rcd 4074, 4075 ¶ 9 (1996), *aff'd sub nom. Mission Broadcasting Corp. v. FCC*, 113 F.3d 254 (D.C. Cir. 1997); *Evergreen Broadcasting Company*, 7 FCC Rcd 6601, 6602 ¶ 8 (1992).

4. Gannett has not even attempted to explain why it could not have filed a petition to reopen the record and presented Baker's affidavit -- and other attachments to its pleading -- earlier in the proceeding. The petition should therefore be dismissed. In any event, the Staff agrees with Gannett that there is no basis in the existing record for any adverse conclusions against Gannett.[1] That being the case there is no need to reopen the record.

CONCLUSION

The petition for leave to intervene to file exceptions and reopen the record, filed by Guy Gannett Communications, should be dismissed or denied.

Respectfully submitted,

David Silberman
Stewart A. Block
Separate Trial Staff
Federal Communications Commission
Washington, D.C. 20554

October 7, 1997

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[1] The Staff has argued that there is no basis in the hearing record for any of the Initial Decision's adverse findings and observations about Press, a party to the proceeding. *See* Separate Trial Staff's Exceptions, p. 10, n. 7.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Separate Trial Staff's Opposition to Petition for Leave to Intervene to File Exceptions and Reopen the Record were sent by first class mail, postage prepaid this 7th day of October 1997, to the following:

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