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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The Commission

JOINT OPPOSITION TO PETITION FOR LEAVE TO INTERVENE

1. Rainbow Broadcasting Limited and Rainbow Broadcasting Company (collectively Rainbow) oppose the "Petition for Leave to Intervene to File Exceptions and Reopen the Record" filed by Guy Gannett Communications (Gannett) on September 26, 1997. Gannett, former owner of the Bithlo Tower, seeks to intervene, file exceptions to the *Initial Decision*, 11 F.C.C. Rcd. 1167, released April 2, 1997, and reopen the record in light of the ALJ's belief that Gannett may have colluded with Press Broadcasting Company to wrongfully prevent Rainbow from utilizing the Bithlo Tower for its Channel 65 operation.

2. Gannett offers no explanation for its failure to seek intervention when this proceeding was designated

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for hearing in November 1995, *Memorandum Opinion and Order and Hearing Designation Order*, 11 F.C.C. Rcd., 1167, released November 22, 1995, or even when the *Initial Decision* of which it complains was released. The procedural rule governing intervention, 47 C.F.R. § 1.223(b), is clear: a person desiring to participate as a party in any hearing may file a petition to intervene not later than 30 days after publication of the *HDO* in the Federal Register. The *HDO* in this proceeding was published in the January 31, 1996 edition of the Federal Register, 61 Fed. Reg. 3423. A person seeking intervention more than 30 days after Federal Register publication must, under Section 1.223(c), 1) set forth his interest in the proceeding; 2) show how his participation will assist the Commission in determination of the issues; and 3) set forth the reasons why it was not possible to file a timely petition. Gannett fails in each of these particulars.

3. Here, as in *Golden State Broadcasting Corp.*, 92 F.C.C.2d 761, 763 (Rev. Bd. 1982), the petition is very late and reflects no effort to show why it was not possible to file in a timely fashion. Gannett cannot sit back until a decision is reached and then decide it takes issue with some aspects of the ALJ's decision. Surprise,

if that is Gannett's excuse, is not a sufficient justification for untimely intervention: "If we were to require the Commission to accept surprise as a sufficient justification for a new party to seek reconsideration, the Commission's-- and indeed the public's-- interest in finality of licensing decisions would be eviscerated." ***Committee for Community Access v. F.C.C.***, 737 F.2d 74, 84 (D.C. Cir. 1984).

4. Nor, in any event, can there be a question of surprise here. The record in this proceeding indicates that Gannett not only had imputed notice of the issues, as evidenced by Federal Register publication, *supra*, but also actual knowledge that its actions were considered germane to the issues designated. Counsel for Press sought and received documents relating to Channel 65's construction from Gannett. Tr. 640. Therefore Gannett knew that it could be implicated in this record.

5. Even if surprise or unforeseeability had been shown and were the acceptable equivalent of good cause for a late request, Gannett offers no explanation for waiting more than 6 months after the ALJ issued the offending *I.D.* to file its petition. The ALJ issued his Decision on April 2, 1997; exceptions and replies were filed on May 16, 1997 and May 29, 1997 respectively; and

the case is now awaiting Commission decision. At this stage, quite independent of the appropriateness, *vel non.*, of Gannett's participation as a substantive matter, its effort would both be disruptive of the Commission's processes and further delay final resolution of a licensing proceeding that has spanned more than 15 years. Indeed, the gross untimeliness of Gannett's Petition may even raise further questions about its motives.

6. Gannett has also failed to demonstrate either of the other two requisites for intervention. Rather than showing how its participation would assist the Commission's determination of the issues, as required by Rule 1.223(c), Gannett specifically disavows any interest in the outcome of the proceeding, noting that it "was not a party . . . and neither supports nor opposes the application of Rainbow Broadcasting Company (Rainbow), which the ALJ granted." Petition, page 1. Gannett's only "interest" is in expunging from the record what it considers unflattering and erroneous references to its behavior. However, the Commission "do[es] not permit intervention vaguely to protect reputation." ***The Seven Hills Television Company***, 2 F.C.C. Rcd. 6867, 6889 (Rev. Bd. 1987).

7. Accurate or not, no reference to Gannett in the *Initial Decision* could form the basis for any action

against Gannett in this or any subsequent proceeding. In the first place, the challenged references were observations beyond the scope of the issues which the ALJ thought the Commission might want to pursue in another forum.^{1/} And in any case, since Gannett was not a party, no determination affecting its rights could have been made and any adverse finding "could be raised in other subsequent proceedings" and Gannett "would have the right to litigate any such adverse finding in such a subsequent proceeding." *La Star Cellular Telephone Co.*, 6 F.C.C. Rcd. 1245, 1245-1246 (1991). In short, Gannett suffered no cognizable injury. This was, then, no more than a dilatory effort "to claim the status of a party-- intervention, exceptions and oral argument-- in order to attempt to vindicate . . . personal interests," an effort which "cannot be tolerated." *WKKQ, Inc.*, 94 F.C.C.2d 482, 483 (Rev. Bd. 1983).

8. Finally, Gannett has also failed to meet the criteria for reopening the record. Reopening a record closed under Rule 1.258 requires a showing of newly discovered evidence and a full explanation of why that evi-

^{1/} While the ALJ termed the conduct "suspicious", he held that "the actions of Gannett and Press are outside the purview of this hearing", noting that "the Commission may wish to further consider this matter." *I.D.*, para. 114 & n.21.

dence could not have been earlier discovered. *See American International Development, Inc.*, 86 F.C.C.2d 808, 811 (1981). Gannett makes no showing or claim of either.

9. Notwithstanding the foregoing, if Gannett wishes to pursue the matter, there is in place an appropriate forum. As noted in the Petition, there is now pending a Petition to Deny Press' application for renewal of license for Station WKCF-TV, Clermont, Florida (BRCT-961001KZ) which addresses, among other issues, the question of Press' involvement in Gannett's delay in constructing Rainbow's facility. If Gannett seeks Commission consideration of the matters urged in its Petition, the Clermont proceeding directly raises them and constitutes both a timely and an appropriate forum in which to seek intervention and to support Rainbow's pending request for an evidentiary hearing. *See La Star, supra.*

CONCLUSION

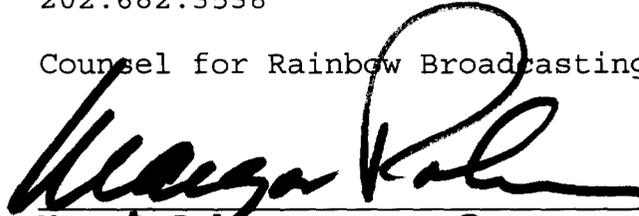
Gannett's grossly untimely Petition for Leave to Intervene to File Exceptions and Reopen the Record should be rejected for its utter failure to meet any of the applicable procedural standards and because its consideration would unduly delay final resolution of this 15 year old proceeding.

Respectfully submitted,

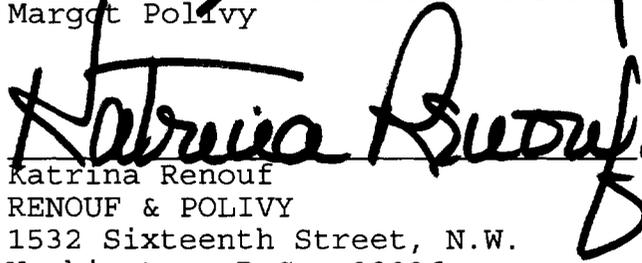


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7 October 1997

CERTIFICATE OF SERVICE

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