

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of)	
)	
National Broadcasting Co., Inc.)	File No. BRCT-940131LI
)	
For Renewal of License of)	
Station WNBC-TV)	
New York, New York)	

MEMORANDUM OPINION AND ORDER

Adopted: August 9, 1996

Released: August 19, 1996

By the Commission:

1. The Commission has under consideration applications for review filed by James H. Warner, as Assistant General Counsel, National Rifle Association of America (NRA), and by Glenn M. Heller (Heller), an individual, and related pleadings. Review is sought of the December 7 and December 22, 1994, actions of the Mass Media Bureau, denying the objections of Warner and Heller, respectively, to the application of National Broadcasting Co., Inc. (NBC), a wholly-owned subsidiary of the General Electric Company (GE), for renewal of license of station WNBC-TV, New York, New York.

2. We have examined the applications for review in which NRA and Heller restate their allegations and their disagreement with the staff's conclusions regarding their lack of standing to file petitions to deny and the denial of their allegations when their petitions were considered on their merits as informal objections. Further, we have reviewed the staff's analysis of the facts and arguments presented and conclude that the issues raised were fairly considered and properly decided. While no new facts or arguments have been raised that would cause the Commission to alter the Bureau's rulings, certain matters do warrant further discussion.

3. NRA argues that since it has 100,000 members in the area served by WNBC-TV, and the petition was filed on behalf of those members, the lack of an affidavit from an individual member resident in the area or a viewer of the station, which it now supplies, did not warrant the dismissal of its pleading. We disagree. Since the pleading was not supported by an affidavit establishing NRA as a party in interest, it did not meet the petition to deny requirements of Section 309(d) (1) of the Communications Act of 1934, as amended, and was correctly treated as an informal objection. Applications of Certain Broadcast Stations Serving Communities in the State of South Carolina, 5 FCC Rcd 1704 (1990). In any event, the staff considered NRA's pleading on its merits and concluded that the facts and arguments set forth failed to raise any

Federal Communications Commission

substantial and material questions of fact with respect to the qualifications of NBC. To the contrary, NRA argues, citing Federal Rules of Civil Procedure, Rule 56, 47 C.F.R. §1.351, that since the facts alleged in its pleading were not disputed, supporting affidavits were unnecessary and the pleading should not have been denied. We disagree again. While NBC admitted that inaccuracies were made in its presentation of the stories complained of, such admission falls far short of the extrinsic evidence of management involvement or abdication of licensee responsibility that would warrant Commission intervention in the sensitive area of licensee journalistic judgment.

4. Heller maintains that the Bureau's decision erred in finding that he had failed to establish standing to file a petition to deny.¹ Heller contended that he had standing because he regularly viewed WNBC-TV during his frequent travels to New York City, and he now claims standing because he was raised in New York City. These facts do not establish standing. The Commission accords party in interest status to residents of a station's service area, not to transients. See Mutual Radio of New York, 61 RR 2d 703 (1986); Kaye-Smith Enterprises, 41 RR 2d 746 (1977). Heller further claims now that as a part-time resident of Monterey, Massachusetts, in Berkshire County, an area allegedly within WNBC-TV's service area, he has standing. However, a review of the Television & Cable Factbook No. 61 shows that Monterey, Massachusetts, is not within WNBC-TV's Grade B service area.

5. Heller also claims standing now on the ground that he is aggrieved by any finding in favor of GE because such finding will affect the outcome of the WRC-TV comparative renewal proceeding in which he filed a pleading opposing a settlement agreement.² Heller's pleading opposing the settlement agreement in the WRC-TV matter did not make him a party in interest to the instant proceeding. The pendency of an objection against a licensee does not confer standing on that objector to challenge another of the licensee's applications. See, e.g., Pinelands, Inc., 71 RR 2d 175 (1992); and Straus Communications, Inc., 64 RR 2d 556 (1987).

¹ Heller also claims that the staff's finding that David S. Jacobs, who resides within WNBC-TV's service area and who had attested to his support of Heller's petition, was not a party in interest was wrong. However, Heller did not and has not submitted any information to show that Jacobs was the petitioner or that Jacobs would be aggrieved by our decision. Nor has Heller ever stated that he represented Jacobs. The act of providing an affidavit in support of a petition is not a substitute for the filing of a petition to deny and does not convert the affiant into a petitioner.

² On September 3, 1991, National Capital Communications, Inc. (NCCI) filed an application for construction permit which was mutually exclusive with the renewal application of WRC-TV, Washington, DC, licensed to NBC. However, NCCI's application was dismissed on April 2, 1996, when a Joint Petition for Approval of Agreement was approved by a staff letter. In approving the Agreement, the staff denied Heller's "Petition to Reject the Proposed Agreement Between NBC and NCCI and to Designate for Hearing the Comparative Renewal Matter." On May 2, 1996, Heller filed an application for review of that decision, which we are addressing today by separate action.

Federal Communications Commission

6. Accordingly, IT IS ORDERED, That, in accordance with Section 1.115(g) of the Commission's Rules, the applications for review filed by the National Rifle Association of America and by Glenn M. Heller ARE DENIED.

7. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of the decision to the parties by Certified Mail -- Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary