

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

In re Applications of	)	
	)	
NBC Subsidiary (WRC-TV), Inc.	)	File No. BRCT-910523KL
	)	
For Renewal of License of	)	
Station WRC-TV	)	
Washington, D.C.	)	
	)	
and	)	
	)	
National Capital Communications, Inc.	)	File No. BPCT-910903KF
	)	
For Construction Permit for a New	)	
Commercial Television Station on Channel 4	)	
Washington, D.C.	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 9, 1996**

**Released: August 19, 1996**

By the Commission:

1. The Commission has under consideration an application for review filed by Glenn M. Heller (Heller). Review is sought of the April 2, 1996 action of the Mass Media Bureau, denying Heller's objection to a joint settlement agreement between the above-captioned applicants.

2. In May of 1991, NBC Subsidiary (WRC-TV), Inc. (WRC-TV), the licensee of station WRC-TV, Channel 4, Washington, D.C., filed an application for renewal of its license. Thereupon, National Capital Communications, Inc. (NCCI), filed a mutually exclusive application for a new commercial television station to operate on Channel 4. Prior to designation of these applications for an evidentiary hearing, however, WRC-TV and NCCI entered into an agreement looking toward the dismissal of the NCCI application in exchange for WRC-TV's partial reimbursement of NCCI's legitimate and prudent expenses incurred in preparing, filing and prosecuting that application. In May of 1993, Heller, who had filed neither a petition to deny nor an informal objection against the WRC-TV license renewal application, petitioned to reject the agreement, arguing that approval of the agreement would *de facto* signify the Commission sanction of the fitness of the General Electric Company (GE), WRC-TV's parent, despite its prior criminal convictions. Heller also maintained that the agreement contravened Section 73.3523 of the Commission Rules, which restricted reimbursement concerning the withdrawal of applications such as that of NCCI, and he challenged the factual and legal bases set forth by the applicants

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in support of their request for waiver of Section 73.3523. Approximately a year later, Heller petitioned to deny the application of National Broadcasting Co., Inc. (NBC), another wholly owned subsidiary of GE, for renewal of its license for station WNBC-TV, New York, New York, directly challenging GE's qualifications to remain in control of a Commission licensee on the basis of the criminal convictions noted in his opposition to the WRC-TV and NCCI settlement agreement.

3. In its application for review, Heller maintains that the staff's approval of the settlement agreement and dismissal of NCCI's application represented a "regulatory benefit," that is, removing from scrutiny in an evidentiary comparative renewal proceeding the qualifications of GE. According to Heller, approval of the agreement should be disallowed by the Commission since GE's record of adjudicated misconduct rendered it ineligible to be, and any of its subsidiaries ineligible to continue as, a Commission licensee. We disagree. Prior to acting on the instant settlement agreement, the staff addressed, on their merits, the facts and agreements set forth by Heller in its petition to deny the WNBC-TV license renewal, concluding that those matters did not raise a substantial and material question of fact concerning the character qualifications of NBC or GE. Heller appealed that determination.<sup>1</sup> However, in a separate action today, we have denied that appeal upon concluding that the issues raised in that proceeding were fairly considered and properly decided by the staff. Thus, neither WRC-TV nor GE was ineligible to receive the "regulatory benefit" complained of by Heller.

4. Next, Heller argues that the staff erred in not determining the veracity of statements made by WRC-TV and NCCI regarding the joint settlement agreement which he had challenged in his petition to reject the agreement. We disagree again. In the April 2nd action, the staff found that Section 73.3523(b)(1) of the Commission's Rules did, in fact, prohibit in a comparative renewal context reimbursement for the withdrawal of a competing application prior to the Initial Decision stage of that proceeding. While the statements and reasons initially proffered by the applicants in support of their requested waiver of that rule were viewed as "absurd" by Heller, the staff did not, nor did it need to, address that showing in light of our action on September 15, 1995, temporarily waiving the above proscription and permitting reimbursement of the legitimate and prudent expenses of a competing applicant, such as NCCI, prior to the Initial Decision stage of the proceeding, provided such settlement was consistent with all other pertinent regulatory requirements. See FCC Waiver Limitations on Payments, 10 FCC Rcd 12182, reconsideration denied, 11 FCC Rcd 4748 (1996). Since there was no longer a need to waive that proscription, the disputed statements and reasons advanced by the applicants were not material to the staff's consideration of the agreement. Further, the terms of the agreement, the certifications of the applicants, and the documents, as supplemented, substantiating the expenses claimed were not challenged by Heller, and the applicants were properly found to have complied with the Commission's other requirements pertaining to such settlements.

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<sup>1</sup> In its April 2nd action, the staff noted the pendency of this appeal and found that such did not bar consideration of the subject agreement, which did not involve any action with respect to the pending WRC-TV license renewal application. Accordingly, the staff's action did not, as Heller implies, constitute a de facto ruling as to the fitness of GE or its subsidiary corporate broadcast station licensees.

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5. Finally, Heller contends that the staff erred in acting upon the settlement agreement prior to the Commission's consideration of his "Emergency Petition for Declaratory Ruling," which was filed on January 11, 1996. According to Heller, his petition requests the Commission, as a matter of due process, to afford parties the ability to formally intervene prior to approval of any settlement agreements in comparative renewal proceedings, such as the instant WRC-TV proceeding, that are affected by the Commission's temporary waiver of Section 73.3523(b)(1). We do not find that the staff's action approving the WRC-TV and NCCI agreement prejudicial to Heller. Heller's opposition to that agreement was raised well before our September 15, 1995 waiver ruling, and his standing to do so was determined at the time of the filing of his petition to reject the agreement. Moreover, that petition was principally premised upon the qualifications of GE and its subsidiary corporate licensees, a matter not directly at issue here and a matter fully and fairly considered and resolved in the WNBC-TV proceeding. Under these circumstances, we are not persuaded to alter the staff's approval of the settlement agreement and dismissal of the NCCI application.<sup>2</sup>

6. Accordingly, IT IS ORDERED, That the application for review filed by Glenn M. Heller IS DENIED.

7. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the parties by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

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<sup>2</sup> In view of our decision here, we need not and do not address in this proceeding the issue set forth in Heller's declaratory ruling request. That request will be considered as a general matter at a later date.