

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

In re: Applications of	)	
	)	
<b>WINV, Inc.</b>	)	File Nos. BR-970203V7, BAL-970310ED
(Assignor)	)	
	)	
and	)	
	)	
<b>WGUL-FM, Inc.</b>	)	
(Assignee)	)	
	)	
For Renewal and Assignment of License of	)	
WINV(AM), Inverness, Florida	)	

#### MEMORANDUM OPINION AND ORDER

Adopted: December 7, 1998

Released: December 14, 1998

#### By the Commission:

1. The Commission has before it an application for review filed February 3, 1998 by Dickerson Broadcasting, Inc. ("Dickerson") and related pleadings. Dickerson seeks review of the November 26, 1997 Mass Media Bureau ("Bureau") letter decision granting WINV, Inc.'s applications for renewal and assignment of license for WINV(AM), Inverness, Florida to WGUL-FM, Inc.<sup>1</sup> For the reasons set forth below, we dismiss the application for review.

2. *Background.* Dickerson is the licensee of WEAG(FM), Channel 292A, Starke, Florida. On May 22, 1997, Dickerson filed a petition to deny the subject renewal and assignment applications, as well as a modification application to change WINV's community of license to Beverly Hills, Florida (File No. BP-970408AB). Dickerson claimed that it had standing as a party in interest under 47 U.S.C. § 309(d) because the licensee of a third station, WXOF(FM), Channel 292C3, Beverly Hills, *might* seek permission to change community of license, and the hypothetical application would be more likely to be granted if WINV were licensed to Beverly Hills. *See, e.g., Memorandum Opinion and Order* in MM Docket No. 88-526, 5 FCC Rcd 7094, 7096-97 (1990) (removal of a community's sole local broadcast service is restricted). Dickerson did not explain how a change in WXOF's

<sup>1</sup> WGUL-FM, Inc. filed an opposition on February 17, 1998 and Dickerson filed a reply on March 4, 1998. Dickerson also submitted an unopposed motion for extension of time within which to file its application for review on January 20, 1998. For good cause shown therein, we grant the motion for extension of time.

community of license would adversely affect Dickerson.<sup>2</sup> The Bureau determined that Dickerson lacked standing as a party in interest to file a petition to deny.<sup>3</sup> Nevertheless, the Bureau considered Dickerson's arguments against the assignment and renewal applications on their merits as informal objections and denied them. The Bureau deferred action on the WINV modification application and stated that it would consider Dickerson's arguments concerning that application as informal objections in conjunction therewith.<sup>4</sup> Dickerson now argues that the Bureau erred by concluding that it lacked standing and committed substantive errors in addressing the merits of its arguments.

3. *Discussion.* We need not address Dickerson's arguments because we conclude that it lacks standing as an applicant for review. In order to show that it is "aggrieved" by an action taken pursuant to delegated authority, as required by 47 C.F.R. § 1.115(a), an applicant for review must demonstrate an actual or threatened injury to itself as a direct result of the challenged action. See *Hanford FM Radio*, 11 FCC Rcd 8509, 8511 (1996) (applicant for review must identify "direct economic or other connection" between its interests and grant of the challenged applications), citing *Clarke Broadcasting Corp.*, 11 FCC Rcd 3057 (1996); see also *Matter of Warren Ache*, 9 FCC Rcd 2464, 2467 (1993) ("A party seeking to establish standing to file a petition to deny must demonstrate not only a direct or threatened distinct and palpable injury, but also a causal link between the claimed injury and the challenged action.") (citations omitted).<sup>5</sup> Dickerson does not allege competitor or listener status with regard to WINV and does not allege that operation of the station has any technical impact on WEAG, the station licensed to Dickerson. See *Hanford FM Radio*, 11 FCC Rcd at 8511. Although Dickerson alleges that grant of the WINV modification application might enable WXOF's licensee to change WXOF's community of license, Dickerson has not explained how such a change would harm its interests. Furthermore, any injury to Dickerson would be the direct result of WXOF's relocation rather than the Bureau's challenged action. See *id.*, 11 FCC Rcd at 8511 (applicant for

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<sup>2</sup> Although Dickerson states in its pleadings that its claim to party-in-interest standing is based on its participation in a separate allotment proceeding, see *Memorandum Opinion and Order* in MM Docket No. 92-195, 11 FCC Rcd 4641 (M.M.Bur. 1996), *recon. pending*, Dickerson's arguments there do not shed light on why it fears relocation by WXOF. In the MM Docket 92-195 proceeding, Dickerson opposed a Channel 292C3 upgrade at Beverly Hills on the ground that the allotment was short-spaced to WEAG and impeded Dickerson's efforts to increase WEAG's operating power to six kilowatts. Dickerson's challenge was dismissed in 1996 based on the conclusion that Dickerson was no longer aggrieved because the authorized facilities of WXOF now protect WEAG as a six-kilowatt facility. *Id.* at 4642.

<sup>3</sup> The Bureau also determined that Dickerson's petition to deny was untimely with regard to the subject assignment application, public notice of which was issued by the Commission on March 20, 1997.

<sup>4</sup> We note that the WINV modification application is now subject to the existing freeze on new and major modification applications for AM stations adopted in the Commission's *Notice of Proposed Rule Making* in MM Docket 97-397, 12 FCC Rcd 22363, 22388 (1997).

<sup>5</sup> Sections 309(d) and 405 (reconsiderations) of the Communications Act each incorporate the judicially-derived "aggrieved" or adversely affected test. 47 U.S.C. §§ 309(d), 405; see *NAB Petition for Rulemaking*, 82 FCC 2d 89, 95-96 (1980), as modified by *Maumee Valley Broadcasting, Inc.*, 12 FCC Rcd 3487 (1997), *recon. pending*.

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review not "aggrieved" for purposes of Section 1.115(a) where grant of assignment application allegedly affected its comparative chances in a separate proceeding for a new FM station in a different market).<sup>6</sup> Accordingly, we shall dismiss the application for review for lack of standing.

4. For the foregoing reasons, IT IS ORDERED that the application for review filed February 3, 1998 by Dickerson Broadcasting, Inc. in the above-captioned matter IS DISMISSED.<sup>7</sup>

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>6</sup> Dickerson argues that it is "aggrieved" for purposes of Section 1.115(a) so long as there is a possibility that the proposed relocation of WINV to Beverly Hills could be considered as a factor in connection with a hypothetical application for change of WXOF's community of license. This argument clearly lacks merit, as it turns the standing requirement on its head. *See, e.g., Federated Publications, Inc.*, 2 FCC 2d 627, 628 (1966) (petitioner to deny must demonstrate that grant of challenged application "*will probably result in a substantial, immediate and direct injury*") (italics added).

<sup>7</sup> As noted above, Dickerson's May 22, 1997 petition to deny also challenged the WINV modification application. *See supra*, ¶ 2. Despite its determination that Dickerson lacked standing as a party in interest to file a petition to deny that application, the Bureau stated that it would consider Dickerson's arguments concerning the application as informal objections in conjunction therewith. *Id.* Based on the Bureau's finding of lack of standing, however, we direct the staff to dismiss Dickerson's May 22, 1997 petition to deny as it relates to the modification application and to treat that application as uncontested. *See* 47 C.F.R. § 73.3584(d) (procedurally defective petitions to deny and other pleadings subject to return without consideration). If Dickerson wishes to have its arguments concerning the application considered, it must file an informal objection thereto.

